Civil Society Report on the List of Issues for the Fourth Periodic Examination of Ireland under the International Covenant on Civil and Political Rights

109th Session of the UN Human Rights Committee
14 October – 1 November 2013

13 September 2013
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**Introduction**

The Irish Council for Civil Liberties (ICCL) is Ireland’s independent human rights watchdog which monitors, educates and campaigns for the respect and protection of human rights in Ireland. Founded in 1976 by Mary Robinson and others the ICCL has campaigned on a range of human rights issues including, but not limited to, the decriminalization of homosexuality, the introduction of divorce, the establishment of an independent Garda Síochána (Police) Ombudsman Commission, equality for same-sex couples, the rights of victims and women’s reproductive rights.

The ICCL welcomes the opportunity to contribute to the compilation of the List of Issues for Ireland’s Fourth Periodic Report under the International Covenant on Civil and Political Rights (ICCPR) ahead of the 109th Session of the Human Rights Committee - 14 October to 1 November 2013, Geneva.

This submission was compiled following consultation with civil society organisations in Ireland many of whom made submissions to the ICCL to assist in the compilation of the report. A Steering Group for the reporting project, including Gay and Lesbian Equality Network (GLEN), Transgender Equality Network Ireland (TENI), Terminations of Medical Reasons (TFMR), Educate Together, Immigrant Council of Ireland (ICI), Irish Family Planning Association (IFPA), Inclusion Ireland, Free Legal Advice Centres (FLAC) and the Irish Traveller Movement provided peer support, advice and relevant information on the compilation and content of the report.

Following on from Ireland’s last engagement with the Human Rights Committee in 2008, the ICCL notes a number of positive developments have taken place in Ireland including the recent adoption of the Protection of Life during Pregnancy Act 2013, the adoption of the Criminal Justice (Female Genital Mutilation) Act 2012, the State apology and subsequent movement towards redress for the women detained in Magdalene Laundries, the outcome of the referendum on the Rights of Children, penal reform measures and the adoption of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

The ICCL also welcomes recent positive developments in relation to proposals to provide for legal recognition of gender for transgender persons, new laws on assisted decision making and the commitment to close the children’s detention facility, St Patricks Institution.

However, as detailed in the report the ICCL regrets that there has been little or no movement on a number of areas of concern including, _inter alia_, broadening Ireland’s restrictive laws on abortion to meet its obligations under the Covenant, the enactment of the proposed Immigration, Residence and Protection Bill, measures to end the practice of direct provision for asylum seekers and to eliminate delays in the asylum applications system, progress on the recognition of Travellers as an ethnic group, strengthening the independence of Ireland’s policing Ombudsman together with very significant cuts to Ireland’s human rights and equality infrastructure during the reporting period.

This submission sets out the gaps where the ICCL considers Ireland not to be in compliance with ICCPR standards. We respectfully request that the Committee consider taking account of the issues raised in the submission when compiling the List of Issues on Ireland ahead of Ireland’s next examination under ICCPR in 2014.
Section 1 - International Human Rights Law and the Irish Legal Framework

ICCPR: Articles 2 and 3

1.1 Reservations
The withdrawal of the reservation to Article 19, paragraph 2 of the ICCPR by Ireland in 2011 since the conclusion of Ireland’s third reporting cycle is to be welcomed. However, Ireland continues to maintain reservations under Article 10 (2), Article 14 and Article 20 (1) of the ICCPR.

The Committee is urged to request detailed information on the status of Ireland’s remaining reservations under ICCPR and to seek clarification concerning the withdrawal of the remaining reservations.

1.2 National Human Rights Infrastructure

4. During the period of the fourth reporting cycle, the State-funded Irish Human Rights Commission and Equality Authority underwent significant cuts to funding and resources. In 2008, the budget of the Irish Human Rights Commission was cut by 32%, while the budget for the Equality Authority was cut by 43%. These cuts were widely considered to be of a disproportionate nature, subsequently impacting both the operation and efficiency of these bodies contrary to recommendations of the Committee. In addition, the National Consultative Committee on Racism and Interculturalism (NCCRI), which advised the Government on issues relating to racism and interculturalism, was closed down in 2008 coinciding with the ending of the National Action Plan against Racism (NPAR) which has not been replaced in the interim period. The Combat Poverty Agency, an independent statutory body, was also closed. Most but not all of the functions of both bodies were subsumed directly into Government departments.

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1 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), (25 July 2012), UN Doc CCPR/C/IRL/4 paras 648-657. Hereinafter referred to as the “State Report”.
2 UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, (30 July 2008), UN Doc CCPR/C/IRL/CO/3, para 5.
3 The Irish Human Rights Commission is Ireland’s National Human Rights Institution and was established under the Human Rights Commission Acts 2000 and 2001 as a State-funded agency with a role to protect and promote the human rights of everyone in Ireland. See http://www.ihrc.ie.
4 The Equality Authority was established under the Employment Equality Acts 1998 with a mandate to address discrimination under nine grounds which are covered by the legislation. See http://www.equality.ie.
6 Concluding Observations of the UN Human Rights Committee, op cit, para 7.
7 The National Consultative Committee on Racism and Interculturalism (NCCRI), a private limited company, was set up by the Department of Justice, Equality and Law Reform, as it then was, as a partnership body on racism and interculturalism. It ceased operating in December 2008 when its funding was cut. The NCCRI was not replaced. See http://www.nccri.ie. Its functions were subsumed into the Office of the Minister for Integration (now the Office of the Promotion of Migrant Integration, under the governance of the Department of Justice and Equality). See http://www.integration.ie.
8 The Combat Poverty Agency was a state agency that worked for the prevention and elimination of poverty and social exclusion. On 1 July 2009 the Combat Poverty Agency was integrated with the Office for Social Inclusion to form the Social Inclusion Division within the Department of Social and Family Affairs. On 1 May 2010 the Social Inclusion Division became part of the Department of Community, Equality and Gaeltacht Affairs. From 1 May 2011 the division moved to the Department of Social Protection. See http://www.cpa.ie.
As set out in the State Report, the existing Irish Human Rights Commission and the Equality Authority will merge to establish the Irish Human Rights and Equality Commission (IHREC), a single body with a mandate to carry out the functions of both organisations. In May 2012, the General Scheme of the Bill governing the proposed merger was published; however, at the time of submission, the final text of the Bill has yet to be published. In April 2013, in advance of the establishment of the new body, a Commission comprising fourteen independently selected Commissioners was appointed to oversee the establishment of the Commission.

There is growing concern at the pace of the establishment of the new combined Irish Human Rights and Equality Commission, the fact that governing legislation to establish the new body has yet to be enacted, the adequacy of resources that will be available to the new body and whether the new body will be established in full compliance with the Paris Principles, including maintaining its A-Status accreditation with the International Coordinating Committee (ICC).

The State Report describes the Government’s intention to merge five employment and equality related agencies into a single agency. This includes the Labour Court, Labour Relations Commission, Employee Appeals Tribunal, National Employment Rights Authority and Equality Tribunal. To date, legislation governing the merger has not yet been published; however, the Department of Jobs, Enterprise and Innovation has publicly indicated that the forum for complaints and appeals in

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9 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit, paragraph 16- 23.
12 Appointment of Members Designate of the new Irish Human Rights and Equality Commission, (17 April 2013), http://www.merrionstreet.ie/index.php/2013/04/appointment-of-members-designate-of-new-irish-human-rights-and-equality-commission/ (accessed 30/07/2013). The selection of the new Commission, which was scheduled to begin work in 2012, was delayed following correspondence between the selection panel, which was appointed by the Minister for Justice and Equality, and the Office of the High Commissioner for Human Rights concerning the independence of the process. The new Commission was appointed in 2013 although the position of Chief Commissioner remains vacant.
13 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit, paragraph 23.
15 In a recent response to a parliamentary question, the Minister for Justice and Equality noted that legislation had been approved by Government and that administrative responsibility for the Equality Tribunal had transferred to the Department of Jobs, Enterprise and Innovation with effect from 1 January 2013. Written Answer No 398, (Tuesday 5 March 2013), available at: http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2013030500081?opendocument (accessed 23/7/13).
relation to the Equal Status Acts 2000-2011 is still a matter for consideration.\textsuperscript{16} Although it is difficult to ascertain the impact that this merger will have on people taking cases concerning equal treatment in employment and under the Equal Status Acts,\textsuperscript{17} it is imperative that an accessible and cost-effective forum for anti-discrimination cases is retained.

Furthermore, it is clear that budget cuts to the Equality Tribunal have already had a significant impact on the decision-making capacity of the body. Between 2008 and 2012, the number of decisions issued by the Equality Tribunal in relation to cases concerning equal treatment in the provision of goods and services fell from an annual rate of 123 to 45. This sharp downturn could also be explained by a low level of awareness of the role and function of the Tribunal as well as a reduction in the willingness of potential complainants to seek redress.

The Committee should ask the State party to provide a detailed account on how the reform of the current State-funded human rights and equality bodies will produce a more coherent and effective institutional framework for the protection and promotion of human rights.

The Committee is urged to ask the State party for details on the current status of the planned reform of Irish Human Rights Commission and the Equality Authority, including a timeframe for the adoption of proposed legislation governing the reform processes, an outline of how the new IHREC will comply with the Paris Principles and how this newly established body will aim to satisfy the conditions for A-Status accreditation from the International Coordinating Committee.

The Committee is urged to ask the State party for detailed information on the adequacy of proposed funding and staffing arrangements, information on whether and how the existing levels of service can be improved and information on how awareness among members of the public of the role and function of these bodies will be raised.

The Committee is urged to ask the State party for details on the proposed merger of the employment and equality related agencies and for information on how cases under the Equal Status legislation will be dealt with in future.

The Committee is urged to ask the State party to explain the significant drop in cases taken to the Equality Tribunal from 2008 (123) to 2012 (45) under the Equal Status Acts.

\textbf{1.3 International Treaty Instruments}

As the Committee will be aware and as set out in the State Report, Ireland has signed, but not ratified, five of the main international treaties and covenants, including the UN Convention on the Rights of Persons with Disabilities (CRPD) and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).\textsuperscript{18}

\textsuperscript{16} Other than those relating to registered clubs and licensed premises which are currently heard in the District Court. See Department of Jobs, Enterprise and Innovation, (July 2012), \textit{Legislating for a World-Class Workplace Relations Service – Submission to Oireachtas Committee on Jobs, Enterprise and Innovation.} \url{http://www.workplacerelations.ie/en/media/Legislating%20for%20a%20Worldclass%20Workplace%20Relations%20Service%20July%202012.pdf} (accessed on 23/7/2013).

\textsuperscript{17} The Committee should note that between 2008 and 2012 the number of decisions issued by the Equality Tribunal in relation to cases concerning equal treatment in the provision of goods and services fell from an annual rate of 123 to 45. See \url{http://www.equalitytribunal.ie/Database-of-Decisions} Accessed on 24 July 2013

\textsuperscript{18} Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Right (ICCPR), op cit, paragraph 13.
On foot of its inaugural UPR examination in 2011, nine countries recommended that Ireland ratify the OPCAT.19

On 6 February 2013, in a written response to a Parliamentary question, the Minister for Justice, Equality and Defence stated that the Government had “approved the drafting of a General Scheme of an Inspection of Places of Detention Bill, which will include provisions to enable ratification of OPCAT”.20 He continued that the “Bill will make provision for the designation of National Preventative Mechanisms”.21 However, no timeframe was provided for the introduction of the legislation beyond his statement that “it is expected that the General Scheme will be completed early this year [2013]”.22 Given the significant delay in ratification of the OPCAT, it is submitted that this legislation should be prioritised within the upcoming Government Legislative Programme.

With respect to Ireland’s ratification of the CRPD, Ireland received UPR recommendations regarding ratification of the Convention from fifteen countries.23 The Government has consistently maintained that Ireland was not in a position to ratify the Convention until the law on assisted decision-making was aligned with the standards of the Convention. On 17 July 2013, the Assisted Decision-Making (Capacity) Bill 2013 was published and, if enacted, would remove any remaining barrier to Ireland’s ratification of the CPRD. The State Report indicated that once legislation on assisted decision-making is enacted, it is the intention of the State to ratify the Convention ‘as quickly as possible’.24

The Committee is urged to ask the State party when it will produce the General Scheme of an Inspection of Places of Detention Bill.

The Committee is urged to ask the State party how it will ensure an inclusive and genuinely participatory consultation process on the Inspection of Places of Detention Bill.

The Committee is urged to ask the State party to provide detailed information on what steps will be taken to incorporate all UN treaties and Covenants (including Optional Protocols) into Irish law, including specific timeframes for ratification and incorporation of these instruments.

The Committee should ask the State party when it intends to ratify the Optional Protocol to the UN Convention against Torture, and to establish effective National Preventative Mechanisms (NPM) under the Protocol.

19 Estonia, Brazil, Chile, France, Greece, Slovenia, United Kingdom, Switzerland and Peru.
21 Ibid.
22 Ibid.
23 Indonesia, Chile, Ecuador, Costa Rica, Argentina, Peru, Austria, Canada, Greece, Iran, Iraq, Spain, Algeria, France and Hungary.
24 Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, para 39.
Section 2 – Discrimination and Hate Crime

ICCPR: Articles 2 and 27

2.1 Hate Crime in the Criminal Law

In its Concluding Observations on Ireland’s Third and Forth Periodic Reports under the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Committee recommended that:

(a) in line with article 4(b) of CERD, legislation be passed to declare illegal and prohibit racist organisations; (b) that racist motivation be consistently taken into account as an aggravating factor in sentencing practice for criminal offences; and (c) that programmes of professional training and development sensitise the judiciary to the racial dimensions of crime.25

Despite the recommendations of the CERD Committee and, more recently, by the European Commission against Racism and Intolerance,26 Irish criminal law does not make express provision for racism as an aggravating circumstance at sentencing, except through the exercise of judicial discretion. Therefore, offences where racism may constitute a motivating factor continue to be dealt with in a generic fashion under the general criminal law.

The State Report notes that the review of Ireland’s Incitement to Hatred Act 1989 (the “1989 Act”), published in 2008, specifically recommended against the introduction of racially motivated offences but advocated that racism should be taken into account as an aggravating factor at sentencing.27 While the State party Report provides a useful summary of the recommendations of the authors of the review, it does not indicate whether the State party believes there is merit in the introduction of legislative provisions to ensure that aggravating factors are consistently taken into when sentencing.28

The Committee should note that the review of the operation of the 1989 Act found that there was a lack of a clear definition of ‘hatred’ under Irish law to assist prosecutors or judges. The report also found that while the Act punishes incitement offences, it is ineffective for specific hate crimes and that judges may consider aggravating factors when sentencing. However, they are not compelled by statute or binding precedent of the Courts to do so.

The Committee is urged to ask the State party to provide details of the number of cases in the reporting period in which a racial or related hate motivation was taken into account as an aggravating factor when sentencing.

25 Committee on the Elimination of All Forms of Racial Discrimination, Concluding Observations of the Committee on the Elimination of All Forms of Racial Discrimination, (4 April 2011), UN Doc CERD/C/IRL/CO/3-4, para 19.
27 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit., paras 659-672.
28 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit, para 659 – 672.
The Committee is urged to ask the State Party if it will consider the introduction of legislative provisions to ensure that racism and/or hate crime is taken into account as an aggravating factor, where appropriate, at sentencing in line with the recommendations of CERD.

The Committee is also asked to encourage the development of guidelines to assist the judiciary in relation to sentencing in cases where a racial motivation is clear and unambiguous.

2.2 Data on Hate Crime

In Ireland, racist, xenophobic or related hate crimes are generally prosecuted as generic offences under a range of existing legislation including the Criminal Justice (Public Order) Act 1994, Non Fatal Offences against the Person Act 1997 and the Criminal Damage Act 1991.

Statistics collected and produced by the Central Statistics Office (CSO) and external agencies such as the EU Fundamental Rights Agency point to a significant level of racially-motivated hate crime in Ireland. However, there is a dearth of official data in relation to hate crime against persons in other categories including persons with a disability and gender (including transgender persons).29

The table below highlights the number and type of suspected racially motivated crimes recorded by the Garda Síochána (Police) and published by the Office for the Promotion of Migrant Integration for the latest available years. A significant decline in the number of cases reported and recorded by the police is evident since incidents peaked in 2007.

Table 1 - Reported Racially Motivated Crimes 30

<table>
<thead>
<tr>
<th>Type of Offence</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor Assault</td>
<td>50</td>
<td>45</td>
<td>30</td>
<td>36</td>
<td>44</td>
<td>24</td>
</tr>
<tr>
<td>Assault Causing Harm</td>
<td>17</td>
<td>12</td>
<td>13</td>
<td>7</td>
<td>21</td>
<td>-</td>
</tr>
<tr>
<td>Harassment</td>
<td>11</td>
<td>9</td>
<td>7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Criminal Damage (Not Arson)</td>
<td>42</td>
<td>29</td>
<td>22</td>
<td>22</td>
<td>18</td>
<td>16</td>
</tr>
<tr>
<td>Robbery from the Person</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Public Order Offences</td>
<td>57</td>
<td>42</td>
<td>34</td>
<td>26</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Drunkenness Offences</td>
<td>6</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Offences under PIHA 1989</td>
<td>13</td>
<td>15</td>
<td>10</td>
<td>-</td>
<td>-</td>
<td>11</td>
</tr>
<tr>
<td>Menacing Phone Calls</td>
<td>-</td>
<td>5</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other Offences</td>
<td>18</td>
<td>15</td>
<td>19</td>
<td>24</td>
<td>19</td>
<td>17</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>214</strong></td>
<td><strong>172</strong></td>
<td><strong>128</strong></td>
<td><strong>122</strong></td>
<td><strong>142</strong></td>
<td><strong>98</strong></td>
</tr>
</tbody>
</table>

These figures may be contrasted to statistics on the numbers of Sub Saharan African and Central/Eastern European respondents to an EU Agency for Fundamental Rights (FRA) report on minorities and discrimination in the EU who indicated experiencing high levels of victimisation across five crime types.31 The report found that the 12 Month Victimisation Prevalence Rate in 2008 for Sub-Saharan

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31 Vehicle crime, Burglary, Theft of Personal Property, Assault or Sexual Harassment
Africans was 41 percent while for Central and Eastern European respondents it was 28 per cent. When compared with the official figures above this data suggests that racism and related hate offences may be significantly underreported in Ireland.\textsuperscript{32}

In addition, data from the Central Statistics Office indicates that only a small number of incidents classified under incitement to hatred are recorded and detected each year.\textsuperscript{33}

The lack of effective and systematic mechanisms to report/record data in relation to racially motivated incidents / prosecutions undermines efforts to determine the extent to which racist and related hate crime continues to be a problem in Ireland. While the FRA considers Ireland’s overall racist incident monitoring mechanism to be ‘good’, anecdotal evidence from statutory agencies (including the 2007 Garda Siochána Public Attitudes Survey\textsuperscript{34}), academic institutions, NGOs and community representative organisations suggest racially motivated crime is likely to be significantly under reported.\textsuperscript{35}

The Committee is urged to ask the State party how it plans to develop more effective reporting and recording mechanisms for the collection and dissemination of disaggregated data on crimes motivated by hate in Ireland.

The Committee is urged to ask the State party if it will consider expanding the grounds of Ireland’s existing legislation tackling hate crime to include disability and gender.

Section 3 - Disability

ICCPR: Articles 2, 16, 25

3.1 Ratification of Convention on the Rights of Persons with Disabilities

Ireland has not yet ratified the UN Convention on the Rights of Persons with a Disability (CRPD) although the Government has committed to ratification following the enactment of the Assisted Decision-Making (Capacity) Bill 2013. However, the original incarnation of the Bill was published in 2007; therefore, it is imperative that the Bill is progressed expeditiously through the Oireachtas (Irish Parliament).

The Committee is urged to ask the State party to provide details of when it will ratify the UN Convention on the Rights of Persons with a Disability (CRPD).

3.2 Assisted Decision Making (Capacity) Bill 2013

At present, there is no specific schedule for the enactment of the Assisted Decision Making (Capacity Bill) 2013. Under the Lunacy Regulation (Ireland) Act (1871), which is the current legislation governing capacity matters, a person, who is deemed to lack legal capacity, can be made a ward of court. In 2012, the Courts Services reported that 273 adults and minors were taken into wardship, including 106 persons with an intellectual disability. Figures from previous Annual Reports of the Courts Services indicate that each year, approximately 100 persons with an intellectual disability are admitted to wardship.

The impact of being made a ward of court is significant. As a result, a person is denied the right to vote, to make a will, make medical decisions, travel abroad, marry, or make a decision regarding his or her property. Moreover, wardship can lead to the disproportionate and unjustified curtailment of liberty. For example, a person admitted to wardship who is involuntarily detained in a psychiatric hospital or approved centre does not have a right to a hearing before a Mental Health Tribunal as provided in the Mental Health Act 2001.

Expressing its concern about this matter in 2011, the UN

36 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit, para 38.
40 In assessing this impact, the Supreme Court stated that ‘[w]hen a person is made a ward of court, the court is vested with jurisdiction over all matters relating to the person and estate of the ward.’ Re A Ward of Court (No.2) [1996] 2 IR 79.
41 The Law Reform Commission has noted that although the Court will have regard to the views of the ward’s committee (in effect, guardian) and family members, the Court will make decisions based on the criterion of the ‘best interests’ of the ward. However, generally no attempt is made to consult the ward in relation to those decisions. Law Reform Commission, (2006) Vulnerable Adults and the Law, LRC 2006, page 29, available at http://www.inclusionireland.ie/sites/default/files/attach/basic-page/846/capacityandthelaw-lrc.pdf (accessed 8/8/2013).
Committee against Torture (CAT) stated that the definition of a voluntary patient under the Mental Health Act 2001 is not sufficient to protect the right to liberty of a person who might be admitted to an approved mental health centre.\(^ {43}\) Similarly, in 2011, the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) questioned the compatibility of Ireland’s Mental Health Act 2001 with international human rights standards.\(^ {44}\)

The Committee is urged to ask the State party when it intends to bring the Assisted Decision Making (Capacity Bill) 2013 before the Oireachtas (Irish Parliament) in order to progress its enactment.

### 3.3 Care of Persons with an Intellectual Disability

The National Strategy for Mental Health services in Ireland - A Vision for Change\(^ {45}\) - recommends that adults with intellectual disabilities should be cared for, where appropriate, separately from people with a mental illness. However, a report by the Health Research Board Report found that in 2011, 113 people with a ‘primary admission diagnosis’ of intellectual disability were admitted to a dedicated psychiatric care setting.\(^ {46}\)

The Committee is urged to ask the State party to provide details of the number of persons with a primary diagnosis of intellectual disability who have been accommodated in psychiatric care settings in the reporting period, and how it plans to ensure persons with an intellectual disability who are not diagnosed with a mental illness are accommodated in appropriate care settings.

### 3.4 Jury Service

Although this matter is not addressed in the State Report, under current Irish law, deaf persons are excluded from serving on juries in civil and criminal trials. In October 2010, the High Court held that the County Registrar was wrong to exclude a potential juror who had never sought to be excused from service.\(^ {47}\) Similarly, in November 2010, the High Court ruled that a deaf person could sit on a jury in a criminal trial.\(^ {48}\)

In 2010, the Law Reform Commission recommended that a further study on safeguards for sign language interpreters be conducted.\(^ {49}\) This study has not materialised and an appropriate legal framework cognisant of the judicial decisions referenced above has not been established.

\(^ {43}\) UN Committee against Torture, Concluding Observations of the UN Committee against Torture, (17 June 2011), UN Doc CAT/C/IRL/CO/1, para 5.


\(^ {47}\) Clarke v Galway County Registrar (High Court, Unreported, July 2010).

\(^ {48}\) However, in this case, the person in question did not get to sit on the jury as lawyers for the defendant in the particular case exercised the option to challenge the juror without having to give further reasons. Flac, Judge Rules Deaf Man can Sit on Jury, 29 Nov 2010. Available at: [http://www.flac.ie/news/2010/11/29/judge-rules-deaf-man-can-sit-on-jury/](http://www.flac.ie/news/2010/11/29/judge-rules-deaf-man-can-sit-on-jury/) (accessed on 8/8/13)

The Committee is urged to ask the State party whether and, if so, how it plans to take steps to enable deaf persons to serve on juries with appropriate assistance and safeguards.
Section 4: Treatment of Persons in Care of the State

ICCPR: Articles 9, 10 and 16

4.1 Magdalene Laundries

In 2011, the UN Committee against Torture recommended that Ireland institute prompt, independent and thorough investigations into all complaints of torture and other cruel, inhuman or degrading treatment or punishment that were allegedly committed in the Magdalene Laundries and, in appropriate cases, prosecute and punish the perpetrators with penalties commensurate with the gravity of the offences committed, and ensure that all victims obtain redress and have an enforceable right to compensation, including the means for as full rehabilitation as possible. 50

Following on from this, an inquiry chaired by Senator McAleese was commissioned to establish the facts of State involvement in the Magdalene laundries; however, the inquiry “lacked many elements of a prompt, independent and thorough investigation”. 51

Three significant developments have taken place since the McAleese Inquiry concluded.

1. On 19 February 2013, the Taoiseach (Irish Prime Minister) gave a formal State apology to the Magdalene women, apologising “unreservedly to all those women for the hurt that was done to them, and for any stigma they suffered, as a result of the time they spent in a Magdalene Laundry”. 52

2. On 18 June 2013, the Irish Human Rights Commission (IHRC) published its Follow up Report on State Involvement with the Magdalene Laundries. 53 The IHRC called for a “comprehensive redress scheme that provides individual compensation, restitution and rehabilitation for the women in accordance with the State's human rights obligations”. 54

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50 Committee against Torture, Concluding Observations of the UN Committee against Torture, op cit para 21
54 Ibid and see IHRC Press Release, (18 June 2013), Irish State sailed to protect and vindicate the human rights of women in Magdalene laundries – redress scheme must reflect impact of human rights violations experience, available at http://www.ihrc.ie/newsevents/press/2013/06/18/irish-state-failed-to-protect-and-vindicate-the-hu/ (accessed 29/07/2013). The IHRC also made a number of recommendations regarding measures needed to ensure similar wrongs are not repeated in the future, including that measures should be implemented which as far as possible guarantee that surviving women who resided in Magdalene Laundries receive restitution and rehabilitation, for example by the provision of lost wages and any pension or social protection benefits arising from carrying out forced or compulsory labour which occurred on an unpaid and unacknowledged basis; and the provision of appropriate rehabilitation interventions including housing; health and welfare; education and; assistance to deal with the psychological effects of the time spent in the Magdalene Laundries. The IHRC further recommended that the State scrutinise “its interactions with non-State actors to ensure that its regulatory and oversight functions are sufficiently robust to prevent human rights breaches arising, and if any such allegations are made, that a competent statutory body be in a position to investigate them thoroughly and effectively and provide redress where merited”
3. On 26 June 2013, Mr Justice Quirke published *The Magdalene Commission Report*, concerning a redress scheme for the Magdalene women. The Quirke redress scheme is based on the McAleese findings which has lead to inconsistencies in redress as the McAleese Inquiry did not investigate “allegations of arbitrary detention, forced labour or ill-treatment”, despite receiving information regarding this from several sources. Consequently, the Quirke redress scheme does not provide a remedy to women who suffered physical abuse in the laundries. Additionally, eligibility may prove to be a significant barrier for some women especially as the religious orders maintain control of the records.

The Scheme offers *ex gratia* payments to women based on the length of their documented service in the laundries. Again this may be problematic due to the inaccuracies or incomplete nature of the records. In this respect, the Quirke scheme does not include individualised assessments of experience and injury suffered, despite the recommendation of the IHRC that a comprehensive redress scheme that “provides individual compensation for the impact of the human rights violations as experienced by women who resided in Magdalene Laundries”. The Quirke Scheme includes recommendations on social supports such as access to a medical card and the State pension. However, as pointed out by the IHRC, there should be provision also for “appropriate rehabilitation interventions including housing; health and welfare; education and; assistance to deal with the psychological effects of the time spent in the Magdalene Laundries”.

The Committee is urged to ask the State party:

(a) When will it establish a prompt, thorough and independent investigation into the abuse perpetrated in the Magdalene Laundries?
(b) How will the State ensure that the scheme is independently monitored and how will the appeals process operate?
(c) What measures will the State take to ensure former Magdalene residents currently living outside of Ireland are appropriately and adequately included, for example:
   o Effective advertising of the Scheme
   o Equivalent medical and other social supports (an Irish medical card is an integral component of the Scheme)

4.2 Detention in Psychiatric Hospitals

Under the Mental Health Act 2001, the definition of a ‘voluntary patient’ includes a person who lacks capacity to make decisions but is compliant with treatment and who is detained in an approved setting.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has raised concerns regarding the treatment of “voluntary patients” in Irish psychiatric settings and the insufficient safeguards set down in law. On foot of its country visit to Ireland in 2010, the CPT noted that:

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56 The Scheme also includes and provision for Magdalene women who remain in the care of religious institutions or the State; however it is unclear who will act as independent advocate for these women.
Any so-called “voluntary” patients were in reality deprived of their liberty; they were accommodated in closed units from which they were not allowed to leave and, in at least certain cases, were returned to the hospital if they left without permission. Further, if staff considered it necessary, these patients could also be subjected to seclusion and could be administered medication for prolonged periods against their wish... Many voluntary patients who indicate that they wish to leave the treatment facility may be detained against their will for a period of up to 24 hours, if a doctor or staff nurse is of the opinion that they are suffering from a mental disorder. However, there is no requirement to inform the Mental Health Commission of this change in status.

The Committee is urged to ask the State party to provide detailed statistics on the number of voluntary patients who have been detained under section 23 or section 24 of the Mental Health Act 2001 for the reporting period.

The Committee is urged to ask the State party whether new legislation on assisted decision making (capacity) provides adequate protection (including adherence to the principles of the UN CRPD) for both voluntary and involuntary patients detained in psychiatric institutions.

4.3 Advance Psychiatric Care Directives
An advance directive in the mental health context has been defined as “a legal document which provides a mechanism for individuals to stipulate, in advance, what types of psychiatric treatments they prefer or to appoint a health care agent to make such decisions for them, should they become incapacitated.” These advance directives protect rights to autonomy, dignity and bodily integrity. They allow people to retain control over their healthcare decisions at a time when they lack capacity to make such decisions.

Psychiatric advance directives can be used to record a person’s preferences about his/her mental health care and to refuse certain treatment. They can also be used to appoint proxy decision makers who can make treatment decisions on a person’s behalf in the event that he or she loses capacity to make those decisions. Such directives would be very helpful to underpin the positive role that family members and friends may play in health care decisions.

Currently Irish law does not provide for advance directives, including in relation to mental health treatment. The Law Reform Commission has noted that an advance directive made in the context of a recurring illness history and the use of effective medication during previous psychiatric episodes could improve the person’s adherence to a treatment plan, with its consequent benefits in terms of quality of life and reduced need for hospitalisation. The Commission also recommended that the legislative framework on advance care directives in relation to mental illness should be subject to review and separate analysis from any proposed legislative framework on advance care directives in general (e.g. in relation to end of life care, pregnant women, children etc).

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59 Mental Health Act 2001, Op cit, Section 23.
The Committee is urged to ask the State party whether it intends to introduce provision for advance psychiatric care directives including in legislation on assisted decision making (capacity) and, if so, to provide further information on the operation of such measures.

4.4 Force and Restraint

Seclusion and physical restraint remain in widespread use within the mental health services.\(^{63}\) The use of restraint is a restriction on a person’s freedom of movement and, depending on the circumstances, may be a serious infringement of his/her rights to bodily integrity and dignity and may constitute inhuman and degrading treatment. According to figures from the Mental Health Commission (released in 2013), in 2011, there were 1,683 seclusion episodes in psychiatric units in Ireland, a rate of 36.7 per 100,000.\(^{64}\) Two psychiatric units for children and adolescents used seclusion in 2011.\(^{65}\) In 16% of episodes of seclusion, it lasted between eight and 24 hours and in a further 6.9% of episodes it lasted between 24 and 72 hours. There were 33 episodes of seclusion which exceeded 72 hours, representing 2% of all seclusion episodes.\(^{66}\) More than three-quarters of psychiatric units used physical restraint in 2011, with a total of 3,056 episodes of physical restraint and a rate of 66.6 per 100,000 of the population. The number of episodes of physical restraint in child and adolescent units doubled in 2011 compared to 2010 (from 100 to 214). Four episodes of physical restraint lasted for longer than one hour.\(^{67}\)

Compliance by approved centres with the statutory Code of Practice on the use of Physical Restraint in Approved Centres\(^{68}\) and the Rules Governing the Use of Seclusion\(^{69}\) is still low. In 2012, only 29% of approved centres were in full compliance with the Rules on Seclusion and 48% were in compliance with the Code of Practice on Physical Restraint in 2012.\(^{70}\)

The Committee is urged to ask the State party what steps it intends to take to improve compliance among approved centres with statutory codes of practice on force and restraint.

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\(^{65}\) Ibid. at p.5.

\(^{66}\) Ibid. at p.6.

\(^{67}\) Ibid.


The Committee is also urged to ask the State party how it intends to reduce to a minimum the necessity to use force or restraint in treatment of persons with a mental health condition.

4.5 Consent to treatment - Electroconvulsive Therapy

The Mental Health Act 2001\(^{71}\) governs consent to treatments including the use of Electroconvulsive Therapy (ECT). The Mental Health Commission figures for 2011 show that a total of 332 programmes of ECT were administered in Ireland, which is a rate of 7.2 programmes per 100,000 population.\(^{72}\) More than 80% of recipients were registered as having voluntary status. For 25 programmes of ECT, the treatment proceeded where the individual was either unwilling or unable to give consent. In three such cases, ECT proceeded where both the treating and second opinion psychiatrist thought the recipient was capable but unwilling.\(^{73}\)

It is submitted that there is a need for stronger protections than those afforded in current legislation in relation to consent to ECT treatment, in line with the standards of the Convention on the Rights of People with Disabilities. These should include legislative provision that ECT should only be used as a treatment of last resort and never in an emergency. The Committee should also consider whether there is a need to ensure that all prescriptions of ECT should be reviewed by an independent body.

The Committee is urged to ask the State Party to provide detailed information on the use of ECT in relation to both voluntary and involuntary patients accommodated/detained in approved centres for the reporting period.

The Committee is also urged to ask the State party how it will ensure that ECT remains a treatment of last resort and that consent to ECT treatment is set down in law.

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71 Op cit, Sections 58 and 59.
73 Ibid. page35.
Section 5: LGBT Rights

ICCPR: Articles 2, 3, 16, 23, 24 and 26

5.1 Marriage Equality
The State Report highlights the progress made on equality for same-sex couples through the introduction of the civil partnership legislation.\(^\text{74}\) Although these developments are welcome, the current legal framework does not equate to full and equal recognition of same-sex relationships and families under the law, particularly with respect to children.\(^\text{75}\)

The State Report indicates that issues relating to same-sex couples parenting children together will be considered in the context of a planned Family Law Bill (although the status of the proposed Bill is unknown).\(^\text{76}\) Under current Irish law, children of same-sex couples cannot establish a joint legal connection to both parents. This means that the child is denied certain rights in respect of the parent’s civil partner that he or she would otherwise have in respect of a parent in a marital family including:

- access to financial maintenance from their non-biological parent if the parents’ relationship breaks down, (not guaranteed under civil partnership even if that person had taken on responsibility for all financial support);
- the right to claim inheritance from their non-biological parent;
- the right to equality in the context of protections that apply to the shared family home;
- adoption of the child by the biological parent’s civil partner.

It should be noted that legislation providing greater protection for children of same-sex couples will fall short of affording such children the opportunity to be part of the only constitutionally recognised type of family in Ireland, i.e. the family based on marriage.\(^\text{77}\) Reform of the constitutional position may only be achieved through a popular referendum.

In April 2013, the Convention on the Constitution recommended that provision be made for a referendum to provide for same-sex marriage and equivalent protections, including “parentage, guardianship and upbringing of children in families headed by same-sex married parents”.\(^\text{78}\) The Government has committed to responding to the recommendations of the Constitutional Convention within four months of the publication of its reports and to a full debate in the Oireachtas.


\(^{76}\) Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, para 702.

\(^{77}\) In the recent case of McD. v. L, the Supreme Court ruled that a lesbian couple and their child were not a family under the Constitution. The court acknowledged the loving and caring environment in which the child was being raised but stated that, for constitutional purposes, a family that is not based on marriage is not recognised under the Constitution (McD. v. L [2007] IESC 81).

The Committee is urged to ask the State to provide details of when proposed legislation governing issues of parenting in relation to same-sex couples will be brought before the Oireachtas and to what extent these issues will be addressed.

The Committee is urged to ask the State party if and when it intends to introduce provisions for a referendum to allow for full marriage equality for same-sex couples as recommended by the Convention on the Constitution.

5.2 Discrimination against LGBT Persons in Employment

The Employment Equality Act 1998 provides an exemption that allows for religious orders providing public services such as in schools or hospitals to discriminate against current and prospective employees on the basis of moral ethos. The provision impacts disproportionately on certain groups including LGBT people and single parents who are not part of the constitutionally defined family. The State Report acknowledges the impact of religious-affiliated schools, noting that 96% of primary schools in Ireland are under denominational patronage, with almost 90% under Roman Catholic patronage. In May 2013, the Government expressed their support for a Private Members Bill on the issue and their intention to take forward the Bill; however, legislation is not yet forthcoming.

The Committee is urged to ask the State party when it will introduce legislation to repeal Section 37 of the Employment Equality Act, which allows for discrimination against LGBT persons on the grounds of religious ethos.

5.3 Gender Recognition

In 2008, the Committee noted its concern that Ireland had not “recognized a change of gender by transgender persons by permitting birth certificates to be issued for these persons”. It called upon the Irish state to “recognize the right of transgender persons to a change of gender by permitting the issuance of new birth certificates”.

As reported to the Committee in 2008, the Irish High Court made a Declaration of Incompatibility in the 2007 case Foy v Registrar General, finding that the absence of any rules permitting the

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80 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit, para 612.

81 See Towards Recovery – Programme for a National Government 2011-2016 at p 43 where it states “people of non-faith or minority religious backgrounds and publically identified LGBT people should not be deterred from training or taking up employment as teachers in the State”. The Minister for Justice, Equality and Defence has indicated his intention to ask the Irish Human Rights and Equality Commission (when formally established) to “examine the issue as a priority” and to make recommendations. He has further stated his commitment to bring “forword Government proposals for any necessary anti-discrimination amendment to this provision”. Written Answers No 21876/13, (8 May 2013), Department of Justice and Equality: Employment Rights Issues.


recognition of gender identity in Ireland violated Article 8 of the European Convention on Human Rights, in contravention of the European Convention on Human Rights Act 2003. In 2010, the Committee of Ministers of the Council of Europe (COE) called upon all Member States to “take appropriate measures to guarantee the full legal recognition of a person’s gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents.”

Following on from the report of the Gender Recognition Advisory Group (GRAG) in July 2011, the Government published the General Scheme of Gender Recognition Bill in July 2013. However, certain provisions of the draft legislation do not meet international human rights standards. Specifically, a Gender Recognition Certificate may only be issued to persons who are at least 18 years of age on the date of application and are not in an existing valid marriage or civil partnership (without first obtaining a divorce or dissolution even though their eligibility for same is questionable if the relationship has not broken down).

Furthermore, following on from the General Scheme, no timetable has been forthcoming for the introduction of the Gender Recognition Bill and it is unclear whether it will be a priority in the coming legislative programme. In the meantime, trans people continue to experience severe challenges, including in relation to their safety, travel and accessing State services (applications for personal Public Service Numbers needed to access social welfare require the presentation of a birth certificate). In addition, there are particular ramifications also for young trans people, for example in accessing education. For example, one intersex-affected child, whose adoption certificate carried the female gender marker but who identified as male, was unable to access preschool education: the local Boy’s Preschool could not accept him because of his adoption certificate, and the local Girl’s Preschool would not accept him because he clearly identified as a boy.

The Committee is urged to ask the State party when it intends to introduce legislation to provide for full legal recognition of preferred gender.

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84 Ibid, para 109.
89 For example, see Section 11(2) Passports Act 2008, available at http://www.irishstatutebook.ie/2008/en/act/pub/0004/print.html (accessed 8/8/2013). Section 11(2) states: Where an applicant for a passport referred to in subsection (1) produces to the Minister— (a) evidence (including medical evidence from a registered medical practitioner) to the satisfaction of the Minister to confirm that the applicant has undergone, or is undergoing, treatment or procedures or both to alter the applicant’s sexual characteristics and physical appearance to those of the new sex, and (b) if appropriate, evidence to the satisfaction of the Minister of the use by the applicant of the new name, the Minister may, subject to this Act, issue a passport to the applicant in the new name, if appropriate, and in which the new sex of the applicant is entered.
The Committee is urged to ask the State party if and how it intends to guarantee the rights of married trans persons to legally acquire their preferred gender without recourse to dissolution of marriage.

The Committee is urged to ask the State party to provide details on what measures it has taken, in the absence of a formal procedure for issuing a new birth certificate, to ensure that transgender persons do not experience discrimination in their enjoyment of basic services such as employment, education and social security.
Section 6: Gender Equality

ICCPR: Articles 3, 6, 7, 9, 14, 16, 17, 23, 25, 26

In 2008, the Committee made a number of recommendations regarding the rights of women in Ireland, specifically in relation to the role of women within the Irish Constitution (Article 41.2) and the place of women in Irish public life, the regime in place to combat human trafficking and to support victims, violence against women, severe restrictions on accessing abortion and the effectiveness of the National Women’s Strategy (NWS). Some progress has taken place in the intervening years; however, many matters remain as pertinent now as they did in 2008.

6.1 Reform of the Irish Constitution: Article 41.2 (Role of Women)

Article 41.2 of the Constitution states,

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

Although presently this clause is largely symbolic it continues to perpetuate “traditional attitudes toward the restricted role of women in public life, in society and in the family”, as noted by the Committee in 2008.  

One of the priority tasks of the Convention on the Constitution has been consideration around greater participation of women in public life and the role of women in the home. In February 2013, in its second report to Government, the Convention recommended that the Government replace the ‘women in the home’ clause with a gender neutral clause valuing care work in Irish society. The Convention also recommended a number of other measures, including modifications to the electoral system and changes in political education in schools, which would enhance the participation of women in public life. However, no political commitment has been made yet regarding the holding of a referendum on the issue.

The Committee is urged to ask the State to indicate when it will hold a referendum on Article 41.2 of the Constitution (The Family), following on from the recommendation of the Convention on the Constitution.

6.2 Participation of Women in Public Life

Ireland ranks low by all international standards for its participation of women in public life. For example, only 15.8% of members of the upper house are women (bringing us to 89th place in the Inter Parliamentary Union tables and 23rd in the EU27).

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90 Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, para 10.
The most significant decision-making body in the State is the Cabinet in which 14 of the 16 positions are held by men (not including the Attorney General, a woman, who is an ex officio member). The two most recent appointments (at junior cabinet level) have been men, including the replacement of one woman. At local level 17% of councillors are women.⁹⁴

Poor numbers of women in leadership positions exist across the echelons of Irish society. Although the three most senior legal offices in the country are now occupied by women,⁹⁵ men still hold the overwhelming majority of judicial positions (occupying two-thirds of Supreme and High Court positions).⁹⁶ Ireland’s top 20 publicly listed companies (Plcs) have only 9% female board members.⁹⁷ State boards, despite a 40% target set in 1996, have only 35% women members.⁹⁸

The Programme for government contains a commitment to ensure that 40% of all state board positions are held by women.⁹⁹ However, all but “three out of 14 government departments failed to reach a 40% gender representation target”.¹⁰⁰

It remains to be seen whether the political system will open up to women following on from the enactment of the Electoral (Amendment) (Political Funding) Act 2012, which provides that political parties will lose their public funding if they do not put forward at least 30 per cent female candidates at the next general election (rising to 40 per cent).¹⁰¹

The Committee is urged to ask the State when it expects to achieve the 40% gender representation on State boards target, and what steps it is taking to achieve this.


⁹⁵ Attorney General Máire Whelan SC; Chief Justice Susan Denham and Claire Loftus, Director of Public Prosecutions.


The Committee is urged to ask the State what concrete steps it is taking to ensure greater participation of women in public life.

6.3 Women’s Support Organisations

In 2008, the Committee recommended that Ireland should “reinforce the effectiveness of its measures to ensure equality between women and men in all spheres, including by increased funding for the institutions established to promote and protect gender equality.”\(^{102}\) In sharp contrast, budget cuts over the past few years have disproportionately impacted on the capacity of women’s organisations to protect the rights of all women, in particular vulnerable women, through frontline services and advocacy work (see percentage cuts below).

The State Report notes that the National Women’s Council of Ireland (NWCI), which represents over 160 organisations, is “recognised by the Government as the body which puts forward women’s concerns and perspectives”\(^{103}\) as an “informed and constructive contributor to the implementation and review of policy initiatives”.\(^{104}\) However, the Report also acknowledges the sharp decrease in funding awarded to the Council in 2012 citing it as necessary in order to prioritise national security services (e.g. An Garda Síochána, Courts, Prisons etc). Indeed, over the past two years government funding to the NWCI has been cut by 50%\(^{105}\) while funding for locally based women’s projects has been cut by 35% since 2011.\(^{106}\) This has significantly reduced the level of services/support that organisations can provide and some organisations have been forced to close.

The Committee is urged to ask the State to re-evaluate the funding support provided to women’s organisation and to explain how it will reinforce the effectiveness of measures to achieve gender equality in the absence of research from organisations channelling a collective voice for women.

The Committee is urged to ask the State to ring fence funding to restore an adequate level of service provision and support effective advocacy to women’s groups at local, regional and national level.

6.4 Violence against Women

The baseline prevalence study on sexual violence, *Sexual Abuse and Violence in Ireland (SAVI)*, was published in 2002 and, though it has since acted as a key informant of Irish policy in relation to sexual violence, it is considerably out of date. The State Report acknowledges, that “there are significant data deficits in relation to domestic violence and that they need to be tackled”.\(^{107}\) The Report sets out the aim of the National Strategy on Domestic, Sexual and Gender-based Violence to improve data collection and also refers to a data Committee dealing with this matter. However, the Report lacks information with respect to a timeframe, projected outcomes and deliverables, or the participation of groups representing women who have been a victim of violence in the data collection process.

In May 2011, the Council of Europe’s Committee of Ministers adopted the Council of Europe Convention on preventing and combating violence against women and domestic violence. Out of the

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102 Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, para 10.
103 Ibid, para 139.
104 Ibid para 140.
106 Ibid.
107 Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, para 172.
47 states of the Council of Europe, Ireland is one of 18 countries that have not signed the Convention, despite its acceptance of Austria’s UPR recommendation when it announced that “Ireland can accept in principle the terms of the Convention.”

During the UPR process, the Irish Government further stated that the “detailed provisions of the Convention and the administrative and legislative arrangements that would be necessary to allow signature of the Convention by Ireland are currently being examined.” It is contended that the barrier to signature and ratification identified by the Government is Article 52 of the Convention which provides for emergency barring orders which are not provided for under Irish law. Notwithstanding the need to have such legislation in place in order to ratify the Convention, there is a clear need, in any event, for barring orders to be available outside of traditional Court hours, so that victims of domestic violence do not find themselves without protection for extended periods of time.

With respect to domestic violence support services, the State Report states that “the level of service density has also increased with the effect that activity levels in the domestic violence sector satisfy most of the guidelines set out by the Council of Europe.” However, the Report is silent on implementation of the accepted UPR Recommendation and/or when Ireland will ratify the Council of Europe Convention.

At the same time, NGOs providing services to women experiencing domestic and sexual violence are witnessing an unprecedented growth in demand for their services. Rape Crisis Centres have seen a relentless year on year increase in demand for their services, as demonstrated by the snapshot of statistics set out below:

- 2012 saw a 12% increase (since 2010) in survivors and others seeking counselling and support from their specialist services.

- Figures across Ireland in 2011 show that 42,383 helpline calls were answered, and 7,797 individual women and 3,066 individual children received support from domestic violence support services. This represents a 56.6% increase in demand for these support services since 2007, with some services experiencing up to 35% cut to their funding during this period.

- In 2011, on 2,537 occasions, services were unable to accommodate women in refuge, and on 2,302 occasions there were unable to accommodate children. This was because the refuge was full or there was no refuge in their area. The Council of Europe recommends that there should be a target by Member States of at least 1 refuge place per 10,000 of population.

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110 Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, para 176.
111 Rape Crisis Network Ireland, (November 2012), National Rape Crisis Statistics and Annual Report 2011, available at www.rcni.ie (accessed 8/8/2013). Dublin Rape Crisis Centre also report more than 9,000 calls in 2012, a 23% increase in first time callers of which 88% were women. Dublin Rape Crisis Centre, (24 July 2013), Annual Report.
112 Safe Ireland Annual Statistics, available at www.safeireland.ie (accessed 8/8/2013). It should also be noted that 190 women have died violently in Ireland since the beginning of 1996. In the 138 cases where perpetrators have been noted, 54% were killed by their partner or ex-partner - see Women’s Aid, Female Homicide Media Watch Statistics 1996-2013
Moreover, current Irish law on domestic violence does not recognise the various types and forms of relationships in Ireland today. Despite the extension of eligibility for orders in the Civil Law (Miscellaneous Provisions) Act 2011, the law still does not provide for women in dating relationships despite the fact that research indicates that Safety Orders should be available to all parties who are or have been in an intimate relationship. Furthermore, unmarried cohabitants have restricted eligibility with respect to barring orders.

With respect to sexual or gender-based violence experienced by asylum seekers in Ireland, guidelines on gender based violence and harassment have been prepared for Direct Provision accommodation centres. While welcome, the implementation of the policy is wholly dependent on reports being made to a designated member of centre staff (the ‘Reporting Officer’), who is neither independent nor qualified to deal with victims. There is no provision for victims to complain to an independent body, even where their complaint pertains to a member of centre staff.

Under current Irish law, immigrants to Ireland who experience domestic violence face further difficulties regarding their immigration status. Immigrants may apply for an independent permit where domestic violence has been experienced; however, information in respect of this is not widely published nor are guidelines available. It is important to note that the current discretionary administrative approach, referred to in section 14 of this submission that is taken towards applications to be granted an independent residence permit also has an effect of victims of domestic violence. In addition, the €300 registration fee generally payable by those people who are granted permission to remain in the State poses a significant barrier to applicants even those people who achieve a successful change of status under the current ‘Victims of Domestic Violence Immigration Guidelines’.

The Committee is urged to ask the State party to provide detailed information, including a timeframe, with respect to the sustained collection of data on sexual and domestic violence.

The Committee is urged to ask the State party when it will sign and ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence.

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114 Domestic violence does occur in young/dating relationships. 190 women have been murdered in Republic of Ireland since 1996. 39 (21%) of these women were aged between 18 and 25 years. Of the 39 women aged 18-25, 30 cases have been resolved. Of the resolved cases, 16 women were killed by someone with whom they were or had been in an intimate relationship with. See Women’s Aid, Female Homicide Media Watch Statistics 1996-2013.

115 Requirements related to the duration of the relationship and a property test requirement whereby the applicant must show an equal or greater legal or beneficial interest in the property can create huge problems for women seeking to obtain a barring order. As the legislation currently stands, children are not taken into account when making considerations regarding property interests.

116 For an explanation of the Direct Provisions system see section 14.


118 This responsibility would fall to the Irish Naturalisation and Immigration Service (INIS) and the Department of Social Protection/HSE. The information contained on the website is not easily accessible and remains contradictory in that, for example, the section on ‘Spouse of an Irish National/Civil Partnership with an Irish National’ continues to state that “(T)here are no rights of retention of residence in the event of separation/divorce”, available at http://www.inis.gov.ie/en/INIS/Pages/WP07000024 (accessed 8/8/2013).

The Committee is urged to ask the State party whether it will provide Safety Orders for women in dating relationships and whether it will provide the same access (in relation to eligibility requirements) to unmarried cohabitants with respect to barring orders.

The Committee is urged to ask the State party to provide independent complaints mechanism for asylum seekers who experience gender based violence or harassment.

The Committee is urged to ask the State party to review the €300 registration fee payable to people who have been granted leave to remain in the State.
Section 7: Women’s Reproductive Rights

ICCPR: Articles 2, 3, 6, 7 and 26

7.1 Laws Governing Access to Abortion in Ireland

In its Concluding Observations the Committee expressed its ‘concern regarding the highly restrictive circumstances under which women can lawfully have an abortion in [Ireland]’ calling for Ireland to bring its laws in line with the Covenant. In most cases abortion remains illegal in Ireland. The Protection of Life During Pregnancy Act 2013 (the “2013 Act”) provides for abortion in very limited circumstances and a highly restrictive regime remains in place governing all other aspects of reproductive rights for women. The 2013 Act was introduced in order to implement the judgment of the European Court of Human Rights in A, B and C v. Ireland. Although it is extremely limited, the legislation provides long overdue clarity on abortion where a mother’s life is at risk.

Provision for lawful abortion in Ireland must be framed in the context of Article 40.3.3 of the Constitution which provides for the defence of the right to life of the unborn, as far as practicable, with due regard to the equal right to life of the mother. In the Attorney General v X [1992] 1 IR 1 case, the Supreme Court held that abortion is constitutionally permitted only where there is a real and substantial risk to the life of the mother (including by suicide).

As such, the Irish legal framework places an absolute prohibition on abortion where the health of the woman is at risk. The Irish Constitutional position, as articulated in the 2013 Act, obliges doctors to make a distinction between a risk to a pregnant woman’s life, in which case abortion is lawful, but not to preserve her health or ensure her quality of life. These provisions will prevent medical practitioners from acting in the best interests of patients in their care.

The legislation falls a long way short of meeting international human rights standards. As noted above, a risk to the health of the woman is not catered for, contrary to recommendations of several UN Committees and stark criminal sanctions persist for women and their doctors where an

120 UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, op cit, para 13
121 Article 40.3.3° of the Irish Constitution provides that the right to life of a mother and that of her unborn child have equal status. Article 40.3.3° also guarantees the right to travel to access abortion in another state and the right to information about abortion.
124 Attorney General v X [1992] IESC 1 (5th March, 1992). The case involved a pregnant fourteen year old victim of rape who wished to leave the State to have an abortion. The Supreme Court ruled that abortion is permissible within the State: “if it is established . . . that there is a real and substantial risk to the life, as distinct from the health, of the mother, which can only be avoided by the termination of her pregnancy, such termination is permissible.” This includes a risk to the life of the mother including that arising from the threat of suicide. The Supreme Court rejected the contention that risk to life must be either a virtual certainty or that it must be imminent or immediate.
abortion is conducted outside the narrow confines of the legislation (see section 7.2).\textsuperscript{127} Furthermore, the procedure to determine whether or not a woman is suicidal (including the appellate procedure) is lengthy and requires pregnant women to undergo multiple assessments.\textsuperscript{128}

In addition, the circumstances in which a medical practitioner may exercise a conscientious objection to carrying out an abortion under the legislation to ensure that the practitioner has a duty of care to the patient requires clarity to ensure the expeditious transfer of the care of the woman to another doctor/health professional.\textsuperscript{129}

In its recently published observations on the Bill, the Irish Human Rights and Equality Commission (IHREC) raised a number of significant concerns in relation to aspects of the legislation, including:\textsuperscript{130}

- The legislation lacks a clear pathway for a woman or girl seeking access to the procedure set out in sections 7 and 9 of the Bill through which a medical certification [for an abortion] is made or refused and should be clarified accordingly;
- The number of examinations that a girl or woman is to be subjected to where she seeks treatment under this legislation, particularly girls and women in vulnerable situations, primarily those at risk of suicide, should be framed so as not to unduly increase her risk of mental anguish or suffering.
- The legislation should specify that where the action or inaction of a person claiming to have a conscientious objection and refusing to carry out or assist in carrying out a lawful procedure knowingly contributes to the death of or significant harm to the woman, that person and/or the institution shall be guilty of a specified offence.

The Committee is urged to ask the State party to describe how the Protection of Life During Pregnancy Act 2013 will adequately protect the lives of pregnant women and how it will ensure that a woman’s health and life will not be endangered by the distinction that doctors are required to make regarding a woman’s life, as distinct from her health.

The Committee is urged to ask the State party to provide a detailed assessment of how the current legislation on abortion upholds a woman’s right to health, privacy, life, freedom from inhuman or degrading treatment and non discrimination as specified under the Covenant.

The Committee is urged to ask the State to provide detailed information on whether and how the concerns raised by the National Human Rights Institution in its legislative observations on the Protection of Life during Pregnancy Bill 2013 will be met either in the enactment or subsequent amendment of the legislation, or by referendum.

7.2 Criminalisation of Abortion

In 2011, the UN Committee against Torture expressed its concern that “the risk of criminal prosecution and imprisonment facing both the women concerned and their physicians, [...] may raise issues that constitute a breach of the Convention”.\textsuperscript{131}

\textsuperscript{127} UN Committee against Torture, \textit{Concluding Observations of the UN Committee against Torture, op cit}, para 26.

\textsuperscript{128} Sections 9-14 Protection of Life During pregnancy Act 2013

\textsuperscript{129} Section 17 Protection of Life during Pregnancy Bill, \textit{Op cit}.

The Committee should note that undertaking an abortion in Ireland outside the narrow confines of the 2013 Act continues to attract significant criminal sanctions. Under the legislation, pregnant women and/or doctors and health professionals could face a penalty of up to 14 years imprisonment.\textsuperscript{132}

The Committee is urged to ask the State party to review the inclusion of provisions in the legislation which harshly penalizes women and practitioners who carry out an abortion and to describe whether and how such provisions may be repealed.

7.3 Freedom from Cruel, Inhuman and Degrading Treatment

\textit{Rape}

General Comment 28 recognises that Articles 3 and 7 of the ICCPR may be implicated where women are forced to undergo life-threatening clandestine abortions or are denied access to abortion in the case of rape.\textsuperscript{133} During the Parliamentary passage of the Act, the Government was adamant that provisions regarding rape could not be included in the legislation as the main purpose of the proposed legal framework was to “restate the general prohibition on abortion in Ireland by regulating access to a lawful termination of pregnancy in accordance with the \textit{X} case judgment and the judgment of the European Court of Human Rights in the \textit{A, B and C v. Ireland} case”.\textsuperscript{134} The Minister for Health stated that the purpose of the Bill [now Act] “is not to confer new rights regarding the termination of pregnancy but to clarify existing rights”.\textsuperscript{135}

We urge the Committee to ask the State party whether and how it plans to reassess the Constitutional position which prohibits access to a lawful abortion for women and girls in situations of rape.

\textit{Terminations for Medical Reasons}\textsuperscript{136}

Access to lawful abortion is not available to a woman carrying a foetus with a fatal abnormality. The 2013 Act is silent on this matter even though there is no settled position on whether this would be constitutionally permissible. For example, in the case of \textit{D v Ireland}\textsuperscript{137} the Irish Government argued before the European Court of Human Rights that it was possible to interpret the Irish Constitution as permitting termination of pregnancy in cases of fatal foetal abnormality. The European Court of Human Rights agreed that such an interpretation by the Irish Courts was possible; however, this position that has yet to be tested before the courts.

\begin{footnotes}
\item UN Committee against Torture, \textit{Concluding Observations of the UN Committee against Torture, op cit}, para 26.
\item Protection of Life During Pregnancy Bill 2013, section 22.
\item General Comment No 28, para 10.
\item Seanad Éireann Debate (15 July 2013), \textit{Protection of Life During Pregnancy Bill 2013: Second Stage}, available at \url{http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/seanad2013071500022}.
\item \textit{Ibid}.
\item In its General Comment 28, the Committee states that information on the availability of safe abortion to women who have become pregnant as a result of rape is required for assessment of compliance with Article 7. HRC Gen Comment No 28: Equality of rights between men and women (Article 3), UN Doc CCPR/C/21/Rev.1/Add.10 (2000).
\item Application No. 26499/02, Decision on admissibility of 27 June 2006; (2006) 43 EHRR SE 16.
\item Article 40.3.3.
\end{footnotes}
The Committee should also note that the most recent case law from the European Court of Human Rights on the issue of reproductive rights, in the cases of *RR v Poland* and *P and S v Poland*, indicates that Council of Europe states are obliged to ensure that women seeking lawful terminations are not exposed to inhuman and degrading treatment contrary to Article 3 of the European Convention on Human Rights. Similarly, as the Committee will be aware, the *K.L. v Peru* case held that the physical and psychological harm arising from forcing a pregnant girl to carry a pregnancy to term despite a diagnosis of anencephaly (a foetal complication incompatible with life) amounted to a violation of Article 7 of the Covenant.

The Committee is urged to ask the State party to clarify whether it is permissible under Irish law for a pregnant woman with a fatal foetal anomaly to have a termination in Ireland by reference to its arguments in *D v. Ireland*, and to provide details of their plans to provide certainty and assistance to women in such situations.

### 7.4 Right to Travel

Irish law guarantees women the right to travel to access abortion in another state. However, the severe regulation of abortion within Ireland perpetuates the disproportionate impact that faces vulnerable groups of women—minors, undocumented women, migrant women and women living in poverty, as noted by the Council of Europe Human Rights Commissioner. It means that women who seek abortions for reasons other than a risk to their life must travel to other jurisdictions to avail of these services and incur the consequent psychological, financial and health burdens, which could have potentially the cumulative effect of reaching the threshold of cruel, inhuman and degrading treatment.

For many women, the need to raise funds to cover fees for a health service denied within the state and to travel to avail of such a service elsewhere means that they experience significant delay in accessing services. This places some women at risk or in serious hardship including in relation to delays and obstacles should she choose to exercise her right. Delayed access to services and lack of public awareness are strongly associated with subsequent adverse health outcomes and can make the difference between a minor procedure and a more invasive procedure that would involve more risk for a woman whose health is already compromised.

The Committee should ask the State party to outline in detail the measures open to a woman whose pregnancy endangers her health as distinct from her life, and who is unable to travel to another state to access abortion.

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140 Application No. 57375/08, Judgment of 30 October 2012.
142 Report by the Commissioner for Human Rights, Mr. Thomas Hammarberg, on his Visit to Ireland, 26 - 30 November 2007, adopted Strasbourg, April 30, 2008, CommDH (2008) and his visit to Ireland, 1- 2 June 2011, adopted Strasbourg, September 30, 2011, CommDH (2011). This point was also raised by the UN Committee against Torture, see UN Committee against Torture, *Concluding Observations of the UN Committee against Torture*, op cit, para 26.
Section 8: Extraordinary Rendition

ICCPR: Articles 7, 9, 14

8.1 Reports of Extraordinary Rendition

The State Report describes the complaints that have been received by An Garda Síochána (Irish police) regarding alleged rendition flights to/from Shannon Airport. It notes that all of the allegations have been investigated by senior police officers and that “two investigations resulted in files being forwarded to the Director of Public Prosecutions”; however, “no prosecutions have been directed by [the DPP] as no evidence was available to support such a prosecution”. Although a positive development, it is submitted that this falls short of the requirement on the State party “establish a regime for the control of suspicious flights and ensure that all allegations of so-called renditions are publicly investigated”, as recommended by the Committee in 2008.

In his most recent Parliamentary comment on Ireland’s responsibilities with respect to the prevention of rendition, the Tánaiste (Deputy Prime minister) and Minister for Foreign Affairs and Trade, Eamonn Gilmore TD, stated that the “Government is completely opposed to the practice of extraordinary rendition” and that the,

[Current Government has made a clear commitment in the programme for Government to enounce the prohibition of the use of Irish airports and related facilities for purposes that are not in line with the dictates of international law. Where overflights are concerned and where prisoners are being transported through Irish airports, there is a requirement to seek our permission. If, at any time, we receive evidence that there is a breach of this requirement, we will have our law enforcement officials take action on it.]

In response to a question specifically addressing the question of inspections, the Tánaiste replied that “there is no evidence to suggest that any of these aircraft were carrying prisoners at any time when they transited through Irish airports, including Shannon Airport”. Furthermore, with respect to steps to ensure that such cases are prevented, the Tánaiste stated that the “permission of the Irish Government must be sought and obtained for the transport of prisoners through Irish airports”. He continued that "under no circumstances will we grant permission for the transport of prisoners who are subject to extraordinary rendition".

As reported to the Committee against Torture in 2008, documents brought into the public domain in 2010 revealed that Irish Government Ministers were concerned that rendition flights were landing in Ireland. The materials documented an exchange which took place in 2007 between the previous

144 Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, Supplementary Information Document, p. 76.
146 Ibid.
147 Ibid.
US Ambassador Foley and previous Irish Minister for Foreign Affairs, Mr. Dermot Ahern TD, where Mr. Ahern appeared to be “quite convinced that at least three flights involving renditions had refuelled at Shannon airport before or after conducting renditions elsewhere.”\textsuperscript{149} This conversation is also recorded in a 2013 report by the Open Society Justice Initiative which includes further evidence on Ireland’s involvement in rendition. The report sets out the dates, flight numbers, airline operators and, in some cases, passenger names (known to be victims of rendition detention), obtained from pleadings and official court records in lawsuits against commercial aviation companies in the US.\textsuperscript{150}

Nevertheless, in contrast to the advice received from the Irish Human Rights Commission (IHRC),\textsuperscript{151} the State maintains the argument that it is entitled to rely on diplomatic assurances from the United States Government to the effect that Irish airports are not being used to facilitate rendition. The State Report refers to “assurances at the highest level” by the United States that “it would not transport prisoners through Irish airspace without seeking the permission of the Government.”\textsuperscript{152} Furthermore, in the Oireachtas (Irish Parliament), the Tánaiste reaffirmed the Government’s satisfaction with diplomatic assurances from the US authorities that prisoners had not been transferred through Irish territory, stating that they “were confirmed at the highest political level. They are of a clear and categoric nature, relating to facts and circumstances within the full control of the United States Government”.\textsuperscript{153} However, in 2008, the Committee recommended that the State party “should exercise the utmost care in relying on official assurances” and it is submitted that the continued reliance on diplomatic assurances from the US government is not sufficient to discharge Ireland’s obligations under the Convention. In addition, the Committee should note that in 2011 the Committee against Torture sought:

> [F]urther information on specific measures taken to investigate allegations of the State party’s involvement in rendition programmes and the use of the State party’s airports and airspace by flights involved in “extraordinary rendition” [and provide] clarification on such measures and the outcome of the investigations, and take steps to ensure that such cases are prevented.

The Committee is urged to ask the State to provide details, including the procedural format, of the operational preventative steps (such as unannounced inspections) that Ireland is taking to ensure prisoners who are subject to rendition are not passing through Irish territory.


\textsuperscript{151} Irish Human Rights Commission, (23 December 2005), Resolution in Relation to Claims of US Aircraft carrying Detainees. According to the IHRC, diplomatic assurances are not adequate to discharge Ireland’s positive obligations to actively ensure that torture, inhuman or degrading treatment or punishment is not facilitated by the State (under Article 7 and paragraph 9 of Human Rights Committee General Comment 20 concerning prohibition on torture, inhuman and degrading treatment or punishment, 10 March 1992 and Section 4(1) Criminal Justice (United Nations Convention Against Torture) Act 2000 No. 11 of 2000). Having conveyed their concerns to the State in late 2005, on 5 April 2006, the IHRC received a letter from the (former) Minister for Foreign Affairs stating that he rejected their advice regarding the impermissibility of diplomatic assurances in this context and failing to address the Commission’s concerns with regard to the State’s obligation to investigate allegations of rendition. See Irish Human Rights Commission, Submission to the European Parliament’s Temporary Committee on Rendition, 28 November 2006, page. 2, available at http://www.ihrc.ie/_fileupload/banners/Submission-to-European-Temporary-Committee-on-Rendition-of-the-European-Parliament.doc [accessed 23/07/2013].

\textsuperscript{152} Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Right (ICCPR), op cit, paragraph 230.

\textsuperscript{153} Dáil Debates, (20 February 2013), op cit.
### Section 9: Police Complaints Mechanism

**ICCPR: Articles 7, 9, 10, 14**

9.1 Garda Síochána Ombudsman Commission (GSOC)

The Garda Síochána Ombudsman Commission (GSOC) is Ireland’s independent police complaints body. In 2011, GSOC received 2,275 complaints and in 2012, this number fell slightly to 2,089. The budget of the Commission in 2011 was €9,242,000 which fell to €8,731,000 (adjusted to €8,381,000) in 2012. In a 2013 Report on Ireland, the UN Special Rapporteur on human rights defenders, expressed concern at the “serious constraints” faced by GSOC, including financial and resource limitations, and the reported limited public awareness of its activities and responsibilities.

Previously, GSOC has proposed to increase the “leaseback” procedure of certain complaints for investigation by the Garda Síochána (Irish police). In this respect, the Committee expressed its regret in 2008 regarding “the backlog of cases before the Garda Síochána Ombudsman Commission and the ensuing reassignment of the investigation of a number of complaints involving the potentially criminal conduct of Gardaí (police) to the Garda Commissioner”. However, the State Report suggests a referral mechanism for cases only where it is clear that the matter is an “alleged minor infraction, such as discourtesy, and not involving any criminal act on the part of the Garda officer concerned”. Furthermore, in their Five-Year Report 2012 and Annual Report 2012, GSOC has suggested that any “leaseback arrangement” would only include a “service complaint” which could be investigated by Gardaí themselves. The State Report indicates that GSOC intends to submit a paper to the Minister for Justice, Equality and Defence “including legislative proposals to update the

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155 The 2012 Annual Report of An Garda Síochana reports that 169 members were found in breach of discipline during that year. Members received a combination of monetary sanctions, cautions, warnings and reprimands with some €62,517.30 in monetary penalties imposed. Two members of An Garda Síochana were dismissed and one reserve member was dispensed. It is further reported that 19 members were on suspension with 15 subject to investigations carried out by GSOC. During 2012, over 1,200 files were opened by the complaints section and 75 incidents were referred to the Ombudsman. See “169 gardaí found in breach of discipline last year”, (31 July 2013), *The Journal*. Available at [http://www.thejournal.ie/garda-discipline-1016922-Jul2013/](http://www.thejournal.ie/garda-discipline-1016922-Jul2013/) (accessed 8/8/2013).


161 This would not be a complaint of either criminal misconduct or of a breach of discipline. It would not necessarily seek to form a complaint of misconduct against any individual member of the gardaí. A “service complaint” would arise where a person is dissatisfied with the standard or level of service provided by the gardaí. Garda Síochána Ombudsman Commission, *Five-Year Report 2012*, *op cit*, section 3.3, page 24.
complaints mechanism”; however, details of this are as yet unforthcoming.162 As the Committee stated in 2008, “immediate measures” are required “to ensure the effective functioning of the Garda Síochána Ombudsman Commission.”163 In line with the recommendation of the Committee against Torture in 2011, sufficient funds should be allocated to the Commission “so as to enable it to carry out its duties promptly and impartially and to deal with the backlog of complaints and investigations which has accumulated”.164

Since its inception in 2007 until January 2013, GSOC received 13,673 complaints of which, 7,718 were deemed admissible, yet only 149 cases were referred to the Office of the Director of Public Prosecutions and prosecutions have been directed in only 41 of these cases.165 Regarding information on the types of complaints filed with GSOC, the State Report sets out that, “an analysis of cases received shows that about 47% relate to allegations of abuse of authority, 26% relate to discourtesy and about 24% are allegations of neglect of duty”. In its Five-Year Report 2012, GSOC defines four types of allegations as “most prevalent”, including non-fatal offences (which effectively translates as an allegation of assault).166 In its Annual Report 2012, GSOC notes the top four allegation types are abuse of authority (34%), neglect of duty (27%), and falsehood or prevarication and non-fatal offences (11%). These figures point to an unexplained disparity between the complaints alleged, for example, non-fatal offences, and the extremely low levels of prosecution (averaging at fewer than 7 prosecutions per annum).

Delays continue to be an issue in the discharge of the Commission’s functions (in relation to minor and more serious complaints) and, in May 2013, the Minister for Justice, Equality and Defence, expressed concern that “it took an inordinate amount of time” for an investigation [including in relation to allegations of collusion by members of An Garda Síochána with an individual in the movement and supply of controlled drugs] to be concluded.167 He further noted that “GSOC attribute the main reason for this long delay to difficulties encountered by the investigation team in obtaining evidence from the Garda Síochána”.168 This has been confirmed by GSOC at the Oireachtas (Parliamentary) Committee on Public Service Oversight and Petitions, where Commissioners stated,

[M]any of our investigations were open for far too long. We firmly believed that this situation was not satisfactory in giving redress to the people complaining to us, nor to the gardaí [sic] being complained about. The main reason for delays has been the difficulties encountered in the collection of information and evidence. Requests to the Garda Síochána for information necessary to advance investigations were not being completed within a timeframe of 30 days agreed in protocols concluded under the Garda Síochána Act 2005. In one case we waited 542 days for a request to be completed and the vast majority were well over the agreed time limits, often by excessive periods.169

162 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), Supplementary Information Document, page 1.
163 UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, op cit, para 14.
164 Committee against Torture, Concluding Observations of the UN Committee against Torture, op cit, para 19.
168 Ibid.
In the same appearance GSOC pointed to another “very worrying trend in our interactions with the Garda Síochána”, namely that, “when requesting information, we were being asked to state why it was relevant to our inquiry”. 170

The Minister has indicated his intention to convene a meeting between the parties in order to resolve the matter in order to ensure that “where allegations are made against members of An Garda Síochána that the matter is resolved quickly”.171

The Committee is urged to ask the State party to confirm that any legislative proposals to update the GSOC complaints mechanism will not include the “leaseback” to the Gardaí of complaints involving allegations of criminal or potentially criminal conduct by a Garda member.

The Committee is urged to ask the State party for more detailed information (1) regarding the types of complaints filed with GSOC, including in relation to non-fatal offences (which effectively translate as allegations of assault) and (2) on the final outcome of complaints processed by GSOC.

170 *Ibid*.

Section 10: Access to Justice

ICCPR: Articles 7, 9, 10, 14

10.1 Human Rights Training

The State Report makes extensive reference to Garda Human Rights training as part of the professional development of members.\(^{172}\) It further refers to initiatives at operational level including anti-racism training, LGBT education and the Garda Racial and Intercultural Diversity Office. However, it is silent on whether training is provided to members on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), as recommended by the UN Committee against Torture to Ireland in 2011.\(^{173}\)

Despite these ongoing developments (including *An Garda Síochána Training and Development Review Group Report*), it is unclear the extent to which lessons learnt are being applied in practice as no impact assessment or evaluation framework is available.

The Committee is urged to ask the State party to provide details on the impact and effectiveness of Garda human rights training on operations.

The Committee is urged to ask the State party to confirm that training is provided to all members of *An Garda Síochána* on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

10.2 Right of Access to Lawyer

Ireland continues to allow inferences to be drawn from the silence of a suspect or accused person.\(^{174}\) This situation persists although the Garda (police) caution still has not been amended in line with the change to the law which took place in 2007.\(^{175}\)

The State Report provides that an “inference may not be drawn unless the person was informed before the failure/refusal occurred that they had the right to consult a solicitor and, other than where they waived that right was afforded an opportunity to so consult”.\(^{176}\) Although the Report states that these amendments were prompted by recent jurisprudence of the European Court of Human Rights, it fails to explain why the State has yet to fully implement that jurisprudence, which provides that “access to a lawyer should be provided from the first interrogation of the suspect by the police unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right.”\(^{177}\) These necessary amendments have not taken place despite the Committee’s recommendation in 2008 that Ireland “should also give full effect to the rights of criminal suspects to contact counsel before, and to have counsel present during, interrogation”.\(^{178}\)

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173 Committee against Torture, *Concluding Observations of the UN Committee against Torture, op cit*, para 30.
175 *Criminal Justice Act 2007.*
176 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), *Op cit*, paragraph 323.
177 *Salduz v Turkey* (2009) 49 EHRR 421.
The European Court of Human Rights has also held that the systematic denial of legal assistance to accused/suspected persons while in custody amounts to a breach of Article 6(1). 179 People who are held in detention in police custody in Ireland do not have the right to have a legal representative present while being questioned by the Gardaí. 180 Although the Government established a Standing Committee to advise on Garda interviewing of suspects in 2010, 181 Ireland has not officially ‘opted into’ the EU Proposal for a Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest, 182 the provisions of which would assist Ireland in addressing concerns regarding access to legal representation.

The Committee is urged to ask the State party to provide information on the current Garda caution and the reasons why this has not been amended to reflect changes in criminal law allowing for inferences from silence, despite the provision of Ministerial Regulations providing for same.

The Committee is urged to ask the State party whether it considers its law is in compliance with the European Court of Human Rights jurisprudence on the right of access to a lawyer (cases of Salduz et al) and, if not, how the State party plans to bring about compliance.

The Committee is urged to ask the State party to indicate whether it intends to opt in on the Proposal for a Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest, and re-instate Ireland’s commitment to develop common minimum safeguards in the European Union for suspects and accused persons.

10.3 Right to Silence

In 2008, the Committee recommended that Ireland should “amend its legislation to ensure that inferences from the failure to answer questions by an accused person may not be drawn, at least where the accused has not had prior consultations with counsel”. 183 In fact, the Criminal Justice (Amendment) Act 2009 further chipped away at the right to silence through the extension of inference-drawing provisions to cover certain organised crimes. Inference drawing provisions have now been extended across a range of offences; however, no new form of Garda caution has been given on foot of these amendments (despite the fact that the Criminal Justice Act 2007 makes provision for Executive Regulations in this respect). As a result, people held in Garda custody are not being informed, in a consistent fashion, of the consequence of remaining silent when questioned. This has created difficult working conditions for the Gardaí, exacerbated the risk of confusion and uncertainty by detained persons and impedes their legal representatives from advising them effectively and ultimately, could lead to miscarriages of justice. 184

179 Dayanan v Turkey, App No. 7377/03, 13 October 2009.
180 Despite concerns expressed by the HRC in 2008, that “access to counsel during interrogation at Garda stations is not prescribed by law” CCPR/C/IRL/CO/3, para. 14.
181 This committee comprises individuals from State agencies and the legal representative bodies whose purpose is to produce recommendations to the Minister for Justice, Equality and Defence; however, no clear timetable has been published with regards to the Committee’s work. See http://www.inis.gov.ie/en/JELR/Pages/Minister%20Ahern%20establishes%20Advisory%20Committee%20on%20Garda%20Interviewing%20of%20suspects (accessed 24/07/2013).
182 11497/11 DROIPEN 61 COPEN 152 CODEC 1018.
183 UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, op cit, para 14.
The Committee is urged to ask the State party to amend Irish law to include appropriate safeguards where inferences are drawn from silence.

10.4 Access to Legal Aid

Despite the State’s assertion that the budget of the Legal Aid Board has remained “relatively stable”, there has been a 10% decrease in the budget of the Board during the two year period from 2008 – 2010, in addition to the allocation of additional responsibility to the Board, for example in relation to the Family Mediation Service. Since 2007, demand for civil legal aid has risen by approximately 97 per cent without any change in the rules under which people can apply. For example, exclusions continue to apply in relation to housing rights, representation before tribunals including the Social Welfare Appeals Office, the Equality Tribunal and the Employment Appeals Tribunal and defamation.

As a result of increased demand, a reduced budget and a recruitment ban in the public service, the pressure on the Legal aid Board is such that in May 2013 there were 5271 people waiting for a first appointment. Furthermore, some 25 of the State’s 31 law centres had a waiting time of five months or more for qualified applicants to meet a lawyer and one centre had a waiting time of 18 months. This is despite the fact that the Legal Aid Board itself designates a period of between two and four months as an acceptable waiting time.

The Committee is urged to ask the State how it ensures that all people who are entitled to legal aid can access legal services in a timely manner.

The Committee is urged to ask the State how it fulfils its obligations under Article 14 when certain areas of legal dispute are excluded automatically from the legal aid scheme.

10.5 Victims of Crime with a Disability

Data published by the Central Statistics Office in 2012 reports that sexual offences involving ‘mentally impaired persons’ is now at the rate of one crime per fortnight. However, Irish laws governing sexual offences do not adequately protect people with disabilities who are victims of sexual assault. For example, in 2007, a woman with an intellectual disability was prohibited from giving evidence about her alleged sexual assault by a judge who deemed she did not have the “capacity” to testify in court. The case was dismissed. Furthermore, in 2010, a jury was directed to return a verdict of not guilty in the case of the alleged oral rape of a 23 year old woman with an intellectual disability. Some of the difficulties in trying this case stemmed from the legislation

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185 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), Op cit, para 585.
186 The Legal Aid Board’s Annual Reports 2008-2010 indicate a reduction in budget from €26.998m in 2008 to €24.225m in 2010. The annual reports are available online at: http://www.legalaidboard.ie/lab/publishing.nsf/Content/Annual_Reports (accessed 8/8/2013).
187 Ibid. The time limit was introduced following the judgment in O'Donohue v Legal Aid Board, the Minister for Justice Equality and Law Reform, Ireland and the Attorney General [2004] IEHC 413.
governing the alleged offence: the Criminal Law Rape (Amendment) Act, 1990 does not have regard to any mental impairment a complainant may have.

The Committee is urged to ask the State party when it will introduce amending legislation to provide clarity regarding the capacity to testify of people with intellectual disabilities.

10.6 Special Criminal Court

Although the Committee has made consistent calls for the abolition of the non-jury Special Criminal Court, its remit has in fact expanded since 2008 to include additional offences relating to organised crime. Despite the Committee’s finding in the Kavanagh case that Irish law was in breach of Article 26(1) of the Covenant, the DPP retains her discretion in assigning cases to the Court and is not required to make her reasons public (or demonstrate decision-making based on reasonable and objective criteria as stated by the Committee in Kavanagh).

The Committee is urged to ask the State party the reasons for the retention of a non-jury court and is further urged to ask the State party whether it intends (and how) to comply with the Committee’s 2001 decision in Kavanagh v. Ireland.

192 Section 8 of the Criminal Justice (Amendment) Act 2009 which deemed that offences under Part 7 of the Criminal Justice Act 2006 (organised crime offences) could be tried without a jury at the Special Criminal Court as the ordinary courts were declared “inadequate to secure the effective administration of justice and the preservation of public peace and order in relation to an offence”.
194 Section 47 of the Offences against the State Act.
Section 11: Right to Life

ICCPR: Articles 6, 7

11.1 Reform of the Inquest System

The State has procedural obligations in cases involving deaths or serious injuries in places of detention such as prisons or Garda custody, and places of organised state care. This includes the carrying out of an independent, prompt and effective investigation of incidents.\(^\text{195}\)

The Coroner is an independent official with responsibility for the investigation of sudden and unexplained deaths under the Coroner’s Act 1962, as amended by the Coroner’s (Amendment) Act 2005. The role of the Coroner is to enquire into the circumstances of sudden, unexplained, violent and unnatural deaths. The Coroner establishes the facts of an unexplained death and is not empowered to assign accountability nor to consider civil or criminal liability. However, as submitted to the Committee in 2008, the legislation and framework is out-dated and requires reform. The Coroner’s Bill 2007,\(^\text{196}\) referred to at paragraph 192 of the State Report provided for the reform of the Coroner’s Service; however, it lapsed with the previous Government. In its observations on the Scheme of the Bill, the Irish Human Rights Commission recommended a number of amendments including the establishment of categories of deaths which would be regarded as reportable to the coroner and the disclosure of witness statements to victims’ families and legal representatives.\(^\text{197}\)

The deficiencies in the current inquest system in fulfilling the State obligations under Article 6 of the Convention and Article 2 (Rights to freedom from torture and inhuman or degrading treatment or punishment) European Convention on Human Rights (ECHR) were brought into sharp focus by the death of Mrs. Savita Halappanavar on 28 October following a miscarriage at an Irish hospital.\(^\text{198}\)

In addition to the inquest, where a unanimous verdict of death by misadventure was pronounced,\(^\text{199}\) an investigation into her death was initiated by the Health Service Executive (HSE) and the Health and Information Quality Authority (HIQA). However, as set out above, the Coroner’s remit is limited and neither the HSE not the HIQA investigations were fully independent.\(^\text{200}\) The Committee should

\(^{195}\) McCann and Ors v. United Kingdom (1996) 21 EHRR 97; Jordan and Ors v. United Kingdom (2001) 37 EHRR 52.


\(^{197}\) Irish Human Rights Commission, (19 September 2006), Observations of the IHRC on the General Scheme of the Coroner’s Bill 2005, at p. 20, available at [http://www.ihr.ie/publications/list/submission-on-scheme-of-coroners-bill/(last accessed 2 April 2011).](http://www.ihr.ie/publications/list/submission-on-scheme-of-coroners-bill/(last accessed 2 April 2011). The Commission also recommended at p. 16 of its submission that, in the case of deaths which occur in Garda custody or as a result of Garda operations, the Coroner should have the assistance of coroner’s officers who are not members of An Garda Síochána in order to break the institutional connection between those investigating and those being investigated.


also note that originally, it was envisaged that her death would be investigated by an internal hospital review team only and that this situation has come about mainly due to the persistence of her husband who was unsatisfied with the investigation originally commenced. However, none of these inquiries is a fully effective independent official investigation in line with the standards of Article 2 ECHR.

The Committee is urged to ask the State party when it will introduce legislation to reform the current inquest system.

The Committee is urged to ask the State party whether it will introduce a suitable legal framework in order to satisfy the State’s procedural obligation to investigate deaths in State care.


202 It has been reported that Mr Halappanavar is taking a claim in negligence to the Irish High Court in relation to the death of his wife. See http://www.irishtimes.com/news/health/halappanavar-to-sue-hse-for-negligence-over-savita-death-1.1452048 (accessed 8/8/2013).
Section 12: Freedom of Thought, Conscience and Religion

ICCPR: Articles 2, 18, 19, 24 and 26

12.1 Religious Oaths

In its Concluding Observations on Ireland’s Third Periodic Report, the Committee urged the State party to amend the constitutional provision requiring a religious oath from judges to allow for a choice of a non-religious declaration. The State Report indicates that the Government wishes to follow the 2001 recommendation of the Constitutional Review Group to provide both a religious and non-religious oath as optional. In this respect, a constitutional referendum would be required in order to amend the Constitution. The Committee should note that there are currently no publicly reported plans to hold a referendum to amend the Constitution on this matter.

The State Report notes that it is intended that the issue be referred to the Constitutional Convention for consideration. The Committee should note that the current programme of work of the Convention on the Constitution does not include the issue of judicial oaths.

The Committee is urged to ask the State party when it plans to hold a constitutional referendum to allow reform of the current system of judicial oaths.

12.2 Law on Blasphemy

Part V of the Defamation Act 2009 has, for the first time, introduced an offence of blasphemous libel into Irish law which, the then Government stated, was required under the provisions of the Constitution. Under Section 36 of the Act, “a person who publishes or utters blasphemous matter shall be guilty of an offence and shall be liable upon conviction on indictment to a fine not exceeding €25,000”. To date, there have been no convictions under this provision.

In General Comment No. 34, the Committee has stated that prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in Article 20, paragraph 2, of the Covenant (such as incitement to hatred).

The State has pledged to put the question of amending the Constitutional clause of blasphemy (Art 40.6.1) to the Convention on the Constitution. The question is scheduled to be debated by the Convention at its forthcoming meeting on 2/3 November 2013.

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203 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit, para 21.
204 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit, para 611.
208 Defamation Act 2009, op cit, section 36.
210 Constitutional Convention – Calendar for 2013. Available at: https://www.constitution.ie/AttachmentDownload.ashx?mid=873ff73a-11c9-e211-a5a0-005056a32ee4
The Committee is urged to ask the State party whether and, if so, when it will consider repealing section 36 of the Defamation Act 2013 to remove the offence of publication or utterance of blasphemous matter.

The Committee is urged to ask the State party whether, notwithstanding the outcome of the Convention on the Constitution, it will consider proposing an amendment to the Constitution to remove the clause on blasphemy.

12.3 School Patronage

In its Concluding Observations on Ireland’s Third Periodic Report, the Committee recommended that Ireland take steps to ensure that non-denominational education is widely available in the State.\(^\text{211}\) This call is echoed in recommendations from other UN treaty bodies. In 2006, the Committee on the Rights of the Child (CRC) urged the government to take,

“[f]ully into consideration the recommendations made by the Committee on the Elimination of Racial Discrimination (CERD) which encourages the promotion of the establishment of non-denominational or multidenominational schools and to amend the existing legislative framework to eliminate discrimination in school admissions”.\(^\text{212}\)

In March 2011, CERD recommended that Ireland accelerate its efforts

“[t]o establish alternative non-denominational or multi-denominational schools and to amend the existing legislation that inhibits students from enrolling into a school because of their faith or belief”.\(^\text{213}\)

The State Report provides a detailed account of the steps taken by the State to ensure greater diversity in the education system including efforts to divest some primary schools of religious patronage. The Government has tendered for and received applications for new patronage in 23 separate areas. However, the State Report notes that of the 3,169 primary schools in Ireland, over 94 percent remain under religious patronage with 90 percent of those under the patronage of the Roman Catholic Church.\(^\text{214}\) The report also notes that in relation to approximately 1,700 (dtand alone) schools in areas where it is considered not feasible to divest patronage, choices for parents and children will be limited to developing school policies promoting greater inclusion of children of other denominational and non denominations beliefs within the denominational environment.\(^\text{215}\) In such cases the choices of parents and children will continue to be severely limited for the foreseeable future and in most cases there will be no choice but to enrol children in denominational education.

At the time of submission, the planned White Paper on Patronage and Pluralism in Primary Education highlighted in the State report has yet to be published.

\(^\text{211}\) UN Human Rights Committee, \textit{Concluding Observations of the UN Human Rights Committee, op cit}, , para 22
\(^\text{214}\) \textit{Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit},, para 612.
\(^\text{215}\) \textit{Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit}, page 642.
The Committee is urged to ask the State party whether and how it plans to accelerate the divestment of schools at both primary and post primary level of denominational patronage to ensure that children and parents have available choices in the education of their children.

The Committee is urged to ask the State party when it plans to publish the White Paper on Patronage and Pluralism in Primary Education.

The Committee is urged to ask the State party what legislative measures it intends to adopt to ensure that children are never denied enrolment on the basis of religious belief or affiliation.

12.4 Religious-Controlled Public Services

The Protection of Life During Pregnancy Act 2013 provides for the right of conscientious objection for individual health professionals in relation to the carrying out of abortion under the provisions of the Act.\textsuperscript{216} Certain medical institutions are listed under the Schedule of the Act as appropriate institutions in which terminations may be conducted.\textsuperscript{217} While earlier versions of the Protection of Life During Pregnancy Bill explicitly prohibited hospitals from refusing to carry out terminations where they had been designated as appropriate facilities, this clause was removed during its Parliamentary passage and the Act is silent on this issue.

In a recent media report, a board member of one of the hospitals listed in the schedule, the Mater Misericordiae Hospital in Dublin, indicated that it may not be possible to conduct terminations at the hospital under the provisions of the Act as this would go against the ethos of the hospital.\textsuperscript{218} The hospital is one of two privately managed voluntary hospitals (i.e. not under the management of the Health Services Executive) in the Schedule and is also one of the largest hospitals in the country.\textsuperscript{219}

The Committee is urged to ask the State to provide clarity in relation to any legal obligations arising from the provisions of the Act for institutions named in the Act and whether and to what extent issues of conscientious objection may be employed to prevent an institution from carrying out termination where a woman is entitled to such a procedure under law.

\begin{itemize}
\item \textsuperscript{216} Protection of Life during Pregnancy Act 2013, Section 17
\item \textsuperscript{217} Ibid, refer to section 7.
\item \textsuperscript{219} See http://www.mater.ie/about-us/about-mmuh/ (accessed 8/8/2013). The Mater has 600 beds and the population of its local catchment area is approximately 185,000. It has provides specialist and tertiary services across the country.
\end{itemize}
Section 13: Rights of Travellers

ICCPR: Articles 2, 14, 24, 26, 27

13.1 Recognition of Travellers as an Ethnic Group

In 2008 the Committee recommended that the State party take steps to recognise Travellers as an ethnic group. The State Report indicates that in response to a recommendation by one delegation during Ireland’s UPR examination in 2011 to explicitly recognise Travellers as an ethnic group, the Minister for Justice stated that serious consideration is being given to the proposal which, the Report notes, remains ongoing. The Report also notes that the term national minority is not legally defined in Irish law and that, further, the special position of Travellers is catered for by several legislative, administrative and policy measures. However, the State Report explicitly denies that Irish Travellers constitute a distinct group from the population as a whole in terms of race, colour, descent or national or ethnic origin.

In addition to the UPR process, recommendations to acknowledge Travellers as an ethnic group have been made by a number of International Treaty Monitoring bodies including the Committee for the Elimination of Racial Discrimination (CERD) and the Committee on the Rights of the Child (CRC). In 2011, the Independent Expert on Human Rights and Extreme Poverty, Magdalena Sepúlveda Carmona, added her voice to the call for recognition. Furthermore, the Council of Europe (CoE) Advisory Committee on the Framework Convention on the Protection of National Minorities (ACFCNM) recommended a “finalised conclusion” to the Government’s consideration of recognition. Domestically, calls for recognition of Travellers as an ethnic group have been made by statutory bodies including the Equality Authority the Irish Human Rights Commission and the now defunct National Consultative Commission on Racism and Interculturalism (NCCRI).

The Committee should also note that, Travellers have been recognised as fulfilling the criteria of an ethnic group (as distinct from Irish nationals) in the neighbouring UK jurisdiction, including in Northern Ireland, leading to the disparity that nomadic Travellers living and moving across the border may be legally recognised as a separate and distinct ethnic group in one jurisdiction but not in the other.

220 UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, op cit para 23
222 Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, para 795
223 UN Committee on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination, CERD/C/IRL/CO/3-4, at para12
224 Committee on the Rights of the Child, Concluding Observations: Ireland CRC/C/IRL/CO/2 at para 79
The Committee is urged to ask the State party to take immediate steps to recognise Travellers as an ethnic group in line with previous recommendations by UN Treaty bodies and under the UPR. The State party should outline a timeframe when this will be achieved.

13.2 Direct and Indirect Discrimination

Direct Discrimination

Travellers continue to suffer high degree of racism and intolerance with many documented incidents of discrimination directed towards Travellers including in access to justice. Cases formerly taken under equality legislation in relation to access to and provision of goods and services in licensed premises were moved from the quasi-judicial Equality Tribunal to the District (lowest) Courts following the enactment of the Intoxicating Liquor Act 2003. As the State has noted in its report under the Framework Convention on the Protection of National Minorities, the Equality Authority has previously raised concern about the potential negative impacts of transferring jurisdiction for alleged discrimination on licensed premises from the Equality Tribunal to the District Courts.

Figures provided by the State party in 2011 indicate that a significant number of cases have been referred to the courts on a variety of grounds with those alleging discrimination on the Traveller ground continuing to make up an appreciable number. Statistics produced by the Courts Services regarding the throughput of cases before the District Court under the provisions of Section 19 of the 2003 Act note that, of the 54 applications lodged alleging discrimination by licensees in 2010, 50 applications were lodged on behalf of Travellers. Of the 54 applications, 49 were eventually struck out, withdrawn or adjourned, leaving five cases finding in favour of the applicant. This represents a nine per cent rate of success for claimants, down from 14.5 percent the previous year (2009).

Indirect Discrimination

Irish equality law protects against indirect discrimination, which may occur where an apparently neutral provision puts a person (who is listed in the legislation, including Travellers) at a particular disadvantage compared with other persons. A difference in treatment may be justified if objectively justified by a legitimate aim, and the means of achieving that aim are proportionate and necessary.

In Stokes v Christian Brothers High School (2011) case, a Catholic boys-only secondary school successfully appealed a decision by the Equality Tribunal which found that a Traveller student had been unfairly discriminated against under the school’s admissions policy. The Tribunal had found that a “parental rule” operated by the school for admissions under which preference was afforded

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231 Insert section – section 197.


233 Ibid, at pp 45-46.

234 Ibid Note: Data in the report from 2009 indicates that 55 cases were lodged, all alleging discrimination on the Traveller Ground. 44 cases were struck out with three on hand at year’s end, with eight cases finding for the applicant (14.5 per cent).

235 Section 3(2).


237 Christian Brothers’ High School Clonmel v Stokes (3 Feb 2012), McCarthy J, unreported HC (2011) IECC.
to the sons of past pupils, unfairly discriminated against Travellers who, through historical educational disadvantage, prejudice and social exclusion, would be far less likely to meet the criteria for admission. However, the High Court\(^{238}\) found that the school did not operate a policy that discriminates ‘in particular’ against Travellers but rather against any class of person who was not the son of a past pupil.

In its fourth report on Ireland the European Commission on Racism and Intolerance (ECRI) found that a preferential admission policy favouring children whose parents attended the particular school can have indirect discriminatory effects on children of immigrant background, or from other disadvantaged groups like Travellers, whether they share the schools ethos or not.

The Committee is urged to ask the State party how it will ensure that Travellers are not unfairly disadvantaged by direct and indirect discrimination in accessing justice or in access to employment, goods and services.

### 13.3 Accommodation, Health and Education

In its Concluding Observations on Ireland’s Third Periodic Report, the Committee urged the State party to amend the Housing (Miscellaneous Provisions) Act 2002 to meet the specific accommodation requirements of Traveller families.\(^{239}\) To date, the legislation, which criminalises trespass on public or private land and has a disproportionate effect on nomadic Travellers, has not been amended.

In its Fourth Report on Ireland (ECRI) noted that Travellers continue to face significant challenges in relation to adequate accommodation and that despite recent positive developments, there is still a shortage of Traveller specific accommodation.\(^{240}\) Under the Housing (Traveller Accommodation) Act 1998, local authorities are obliged to prepare and implement Traveller accommodation programmes including assessment of local need and the provision of transient sites.\(^{241}\) These obligations were reiterated in the recent National Traveller / Roma Integration Strategy developed by the Department of Justice and Equality.\(^{242}\) ECRI has noted that further efforts are required to involve local authorities in the implementation of the National Traveller / Roma Integration Strategy pertaining to housing to meet the needs of Travellers.\(^{243}\)

Despite the measures described in the State Report,\(^{244}\) continuing challenges are faced by Travellers in relation to health and education outcomes and the impact of recent budgetary cuts. The findings of the All Ireland Traveller Health Study\(^{245}\) published in 2010 highlights a number of disturbing trends

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\(^{238}\) In upholding the decision of the Circuit court which had overturned the Tribunals decision.

\(^{239}\) Op cit, para.23


\(^{243}\) European Commission against Racism and Intolerance, ECRI Report on Ireland, Fourth Monitoring Cycle, op cit, p. 22

\(^{244}\) Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, paras 808-826

in relation to Traveller health including, inter alia, that Travellers have significantly higher levels of infant mortality, significantly shorter life expectancy among both males and females and significantly higher rates of suicide than the general population. Similarly, recent cuts to specific educational supports appear to disproportionately affect Travellers, as highlighted in the report of the Human Rights Council’s Independent Expert on Human Rights and Extreme Poverty following her visit to Ireland.  

The Committee is urged to ask the State party how it plans to ensure that legislation governing housing, education, participation in public life, healthcare and employment does have a disproportionately negative impact on Travellers.

The Committee is urged to ask the State party how it will ensure comparative health and educational outcomes for Travellers in line with those enjoyed by the majority population.

The Committee is urged to ask the State how it will ensure that cuts to public services do not disproportionately impact on the rights of Travellers.

Section 14: Prisoner’s Rights and Conditions of Detention

**ICCPR: Articles 10**

A lack of effective complaints and monitoring mechanisms, issues of overcrowding, the continued lack of in-cell sanitation in many prisons leading to practices such as ‘slopping out’ and the use of prisons for immigration detention purposes were among the serious human rights concerns raised during Ireland’s first UPR examination in 2011. 247

### 14.1 Prison Numbers and Overcrowding in Irish Prisons

Ireland’s prison population has doubled since 1997. 248 The most recently available statistics indicate that the current prison population is 4,180 (24 July 2013), or 95% of total available bed capacity. 249 In addition, some prisons continue to operate in excess of the specific bed capacity of that facility. 250 Despite the largest ever prison-building programme undertaken in Ireland in the last 30 years, overcrowding has worsened. 251 Since 1997, more than 900 new spaces have been added to the prison system, with planned new prisons in Ireland’s two largest cities, Dublin and Cork. 252 However new prison spaces have not matched the increase in prisoner numbers, 253 despite the Committee expressing its concern in 2008 regarding “increased incarceration”. 254

Overcrowding has a direct effect on increasing incidence of inter-prisoner violence. In 2010 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) reported dangerous levels of inter-prisoner violence in Irish prisons, observing that ‘stabblings, slashings and assaults with various objects’ are an almost daily occurrence. 255

The Committee is urged to ask the State Party to outline how it plans to permanently eliminate overcrowding in Irish prisons.

The Committee is also urged to ask the State to provide details on how it will ensure that imprisonment remains a ‘last resort’ option and whether and to what extent non-custodial options will replace custodial sentences where appropriate.

The Committee is urged to ask the State party to outline how its revised prison-building programme will ensure humane and safe conditions for all prisoners in line with Ireland’s obligations under the Covenant.

250 Ibid
251 Ibid
254 Ibid
256 Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *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, 2010* paragraph 32, p. 21.
The Committee is urged to ask the State party how it will reduce the incidence of violence in prisons and ensure effective remedies for prisoners who have been subjected to such incidents.

14.2 Cell Conditions, Sanitation and ‘Slopping-Out’ in Prison
In 2008, the Committee requested that the State prioritise overcrowding and the “slopping-out of human waste” as “priority issues.” While progress is being made, many prisoners continue to be detained in facilities without in-cell sanitation. Significantly, in Limerick, Cork and Mountjoy (Dublin) prisons the practice of ‘slopping-out’ exists in overcrowded cell conditions. In these prisons the practice of slopping out is combined with multi-cell occupancy, long lock-down periods and an impoverished regime, exacerbating the impact on prisoners. While the Minister for Justice has provided assurances that slopping-out as a practice will be eliminated by 2014, in a recent report (2013), the Inspector of Prisons noted that this is not expected to be achieved until mid 2016.

The CPT also has consistently called for an end to slopping out in Irish prisons and in 2011, the UN Committee against Torture recommended that the Irish State “strengthen its efforts to eliminate, without delay, the practice of “slopping-out”, starting with instances where prisoners have to share cells. The Committee further recommended that until such a time as all cells possess in-cell sanitation, concerted action should be taken by the State party to ensure that all prisoners are allowed to be released from their cells to use toilet facilities at all times.”

The Committee is urged to ask the State party how it intends to eliminate the practice of ‘slopping-out’ from all places of detention in Ireland and to provide a detailed timeline when this measure will be achieved.

The Committee is also urged to ask the State how the prison authorities intend to ensure that prisoners who do not have in-cell sanitation, will not be subject to continued inhuman or degrading treatment by being forced to ‘slop out’.

14.3 An Independent Complaints Mechanism for Prisoners
In its 2010 Report, the CPT expressed concerns about the inadequate investigation of complaints regarding allegations of ill-treatment of prisoners by staff, poor recording of alleged incidents, and deficient or no medical examination of prisoners who make complaints.

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256 Where no in-cell facilities exist, prisoners urinate and defecate in buckets or portable units in the cell during lock up, which varies but is generally from 7.30pm to 8.00am and mealtimes during the day. A small number of prisoners are under 23-hour lock-up with no in-cell sanitation.
259 Ibid
260 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, op cit paragraph 48, p. 29.
261 Ibid
262 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, op cit, paragraphs 31-34, pp. 20-22.
In 2011, the UN Committee against Torture recommended that the State party:

(a) Establish an independent and effective complaint and investigation mechanism to facilitate the submission of complaints by victims of torture and ill-treatment by prison staff and ensure that in practice complainants are protected against any intimidation or reprisals as a consequence of the complaints;
(b) Institute prompt, impartial and thorough investigations into all allegations of torture or ill-treatment by prison staff;
(c) Ensure that all officials who are allegedly involved in any violation of the Convention are suspended from their duties during the conduct of the investigations;
(d) Provide the Committee with information on the number of complaints made concerning allegations of torture and ill-treatment by prison staff, the number of investigations carried out and the number of prosecutions and convictions, as well as on the redress awarded to victims.  

There are currently no available statistics on the number of complaints made by prisoners with regard to allegations of ill-treatment by prison officers. In August 2012 the Minister for Justice and Equality accepted proposals by the Inspector of Prisons for a complaints mechanism whereby serious complaints from prisoners could be investigated by external investigators with an appeal to the Inspector. Since the 1 November 2012, some complaints are subject to this independent investigation process, namely Category "A" complaints, alleging serious ill treatment, use of excessive force, racial discrimination, intimidation or threats.

The deficiencies of the internal complaints systems were highlighted in a 2012 report by the Inspector of Prisons who revealed a completely deficient complaints system operating in the young offenders’ institution. He found that no complaint by a prisoner has been upheld, even where prison management had acknowledged that staff had behaved inappropriately.

The Committee is urged to ask the State party to clarify when the full complaints system proposed by the Inspector of Prisons will be in place and the type of training that will be provided to staff to deal with complaints.

14.4 Death of Gary Douche

On August 1st 2006, a 21 year old man, Mr Gary Douch, was unlawfully killed in Mountjoy Prison in a holding cell he shared with six others, one of whom was mentally ill. A commission of investigation was established in May 2007, headed by Ms Gráinne McMorrow, Senior Counsel, with its report expected by the end of that year. At the time of writing, the report of the Commission of Investigation into the death of Mr Douch at Mountjoy Prison in 2006 has still not been completed.

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263 UN Committee against Torture, Concluding Observations of the UN Committee against Torture, Op cit paragraph 18.
265 Ibid
The Committee should ask the State party when the report into the death of prisoner Gary Douche at Mountjoy Prison in 2006 will be published.

14.5 Pre-trial Detention
The State Report indicates that while the majority of accused persons held on remand are confined to purpose built segregated facilities at two prison sites, a significant minority continue to be held in non segregated facilities at three prison sites - Cork, Limerick and Midlands prisons. In its Concluding Observations on Ireland’s Third Periodic Report the Committee recommended that remand prisoners be kept in separate detention facilities.

The Committee is urged to ask the State party how it intends to ensure that all persons on remand are held in segregated accommodation.

14.6 Female Prisoners
The number of female prisoners in Irish prisons has increased dramatically in recent years. In 2010, 1,701 women were committed to prison in Ireland. This figure represents over 12% of the persons committed to prison in 2010. Between 2005 and 2010 there was an 87% increase in the number of women committed to prison.

Strategic Action 3 of the Irish Prison Service Three Year Strategic Plan 2012-2014 contains a commitment to develop a special strategy for women prisoners. Appendix 1 of the Strategic Plan states:

As part of its Strategic Plan 2012-2015 the Irish Prison Service, working in partnership with the Probation Service and other stakeholders in the statutory, community and voluntary sectors will seek to develop a strategy for dealing with women offenders. The overall aims of the strategy which will be delivered in conjunction with other stakeholders, including the Probation Service, will be to:

- Identify and divert those at risk of a custodial sentence through greater use of community support and interagency cooperation.
- Seek to ensure that sentences are managed in a way which seeks to address both the offending behaviour and its causes.

The Committee is urged to ask the State party how it will ensure that the imprisonment of women must only be used as a last resort when all other alternatives are deemed unsuitable.

The Committee is also urged to request that the State party provide detailed information on legislative and policy changes it intends to adopt to reduce the rate of women receiving custodial sentences for less-serious and non-violent crimes including through alternative sentencing options.

14.7 Detention of Children
In 2012, the Government committed that by April 2014 all detained people under 18 would be housed in the new National Children’s Detention facility (Oberstown campus).

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268 Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, para 393
From 1 May 2012, existing child detention facilities at Oberstown have also catered for all newly remanded or sentenced 16-year old boys. However, seventeen year-old boys are still detained at St Patrick’s Institution, which also houses adults up to 21 years of age with statistics showing the numbers have risen in recent years. Official figures show there were 31 17-year-olds in St Patrick’s Institution on 1st of August 2012, compared to 21 on the 1th of July 2011.

In July 2013, the Minister for Justice and Equality announced that St Patrick’s institution would be closed within six months and that all 17 year old prisoners would be transferred to a designated segregated section of Wheatfield prison in west Dublin while awaiting construction of new detention facility to be completed. This follows on from a report by the Inspector of Prisons in 2012 which detailed what it termed as the systematic violation of the human rights of children and young people in the prison, including:

- Forced stripping and clothes being cut from boys and young men when being held in Special Cells.
- Inappropriate and excessive use of Special Cells in violation of the Irish Prison Service’s own guidelines and rules.
- Excessive and unrecorded use of force by staff against prisoners, in violation of the Irish Prison Service’s own guidelines and rules;
- A disproportionate number of under-18s being relocated using control and restraint (C&R) techniques.
- Excessive and unauthorised punishment of prisoners, including denying children family visits or phone calls.
- Undocumented “isolation” of a number of prisoners in solitary confinement for 56 days following an incident at the prison.
- Bullying and intimidation of young and vulnerable inmates by some staff, and indifference to concerns of inmates, including emergency calls for help.
- A completely deficient complaints system where no complaint by a prisoner was upheld, even where prison management had acknowledged that staff had behaved inappropriately.

A new National Children’s Detention Facility will be located at Oberstown, Lusk, Co. Dublin. The building work of six new specialised units over 3 years is scheduled to be completed by April 2014. Existing facilities consist of three detention schools. Trinity House School operates as a self contained secure facility for boys aged up to 17 years at the time of their detention in relation to criminal matters. Oberstown Boys School and Oberstown Girls School operate a more open model of detention, sharing some resources, such as education, recreation, maintenance and making use of the wider grounds within the campus boundary. Oberstown Boys School accommodates boys up to the age of 17 years on admission and Oberstown Girls School accepts girls up to the age of 18 years old. There are two education centres on the campus catering for all the children being detained. This service comes under the remit of the County Dublin Vocational Educational Committee, as provided for in the Children Act 2001. See Irish Youth justice Service Website at http://www.iyjs.ie/en/IYJS/Pages/WP08000052

272  From 1 May 2012 - the last 16 year-old in St Patrick’s Institution was released in July 2012. See “‘Milestone’ as last 16-year-old freed from adult jail” The Examiner, 6 August 2012 at http://www.irishexaminer.com/ireland/icrime/milestone-as-last-16-year-old-freed-from-adult-jail-203196.html (accessed 8/8/2013)


• At a general level, the Inspector also found serious deficiencies in attendance at school, access to healthcare and the availability of training. He also found many parts of the prison cold and dirty.275

Following an inspection of St Patricks Institution conducted in March 2013, the Inspector of Prisons reported that he found ‘very disturbing incidents of non-compliance with best practice and breaches of the fundamental rights of prisoners’.276 Among the recommendations in the report was a recommendation that St Patrick’s Institution be closed down. In order to facilitate closure, the Inspector recommended that 18 to 20 year old prisoners should be removed to a ‘separate wing(s) of a general prison(s)’ for separate recreation and accommodation.277 The Inspector also stated that prison authorities should focus on providing rehabilitation through education, work and training for prisoners and that they could participate in education and work training with the general prison population.

The Committee is urged to ask the State party to provide detailed information on the establishment of the new Oberstown campus, to confirm that the project is on track and to confirm that 17 year olds will be housed there by April 2014.

The Committee is urged to ask the State party to provide details on how it will ensure that 18 to 20 years old prisoners will remain segregated from the greater prison population.

The Committee is urged to ask the State party whether and how it plans to implement the recommendations of the Inspector of Prisons on the closure of St Patrick’s Institution.

14.8 Detention of Migrants

Irish law provides for immigration-related detention in a number of circumstances.278 Persons detained for immigration-related reasons are held in ordinary prisons, on occasion, sharing accommodation with persons suspected or convicted of criminal offences.279

Ireland has yet to implement the 2008 recommendation of the Committee that the State should review its detention policies to give “priority to alternative forms of accommodation” and “take

278 See sections 9 and 10, Refugee Act, 1996 (as amended), section 3, Immigration Act 1999 (as amended) and Section 5 Immigration Act 2003.
immediate and effective measures to ensure that all persons detained for immigration-related reasons are held in facilities specifically designed for this purpose”. 280

During Ireland’s First UPR examination in 2011, Brazil recommended that Ireland take the “necessary measures to avoid detention of asylum seekers and to avoid situations which may equate the condition of immigrants to that of felons.” 281 In accepting this recommendation, Ireland stated that detention is “only used in circumstances where failed asylum seekers seek to evade deportation”. 282 The State Report justifies the detention of people for immigration-related reasons in prisons, stating that they “are housed with remand prisoners, reflecting the common status of both groups as being made up of persons not convicted of a criminal offence”. 283

The Committee is urged to ask the State party whether it will provide facilities specifically designed for immigration-related detention, should the exceptional circumstances arise where it is necessary to detain persons for that reason.

280 UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, op cit, para. 17.
283 Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, para. 355.
Section 15: Immigration and Asylum

ICCPR: Articles 7, 9, 10, 13 and 14

15.1 Immigration, Residence and Protection Bill 2010

The Committee should note that the Immigration, Residence and Protection Bill 2010 (which had its original incarnation in 2006) has, to date, not been enacted. At the time of submission, it is not known whether an amended or replacement bill will be introduced to address the concerns raised in 2008 by the Committee regarding summary removal, access to legal representation, and independent appeals for all immigration related decision.\(^{284}\)

15.2 Applications for Asylum

Ireland is the only EU Member State which does not have a single procedure to “examine all of the protection needs of an asylum seeker at the same time”.\(^{285}\)

The Committee is urged to ask the State party if it plans to introduce a single procedure for asylum applicants.

15.3 Direct Provision

The State’s statutory Reception and Integration Agency (RIA) operates a system of dispersal and direct provision for people seeking asylum or another form of protection (e.g. victims of human trafficking).\(^{286}\) It is provided on a full-board basis (all meals provided) and is accompanied by a single weekly social transfer payment of €19.10 for an adult and €9.60 for a child, a rate which has remained unchanged since its introduction in 1999. Currently, there are approximately 4,800 people living in direct provision accommodation (down from 5,400 at the end of 2011) in Ireland, approximately 60 per cent of whom have been there for three years or more. Almost a third of the total number of residents are children under the age of 18.\(^{287}\)

Applicants are precluded in law from taking up gainful employment and some of the documented effects of the system include institutional poverty and social exclusion. In 2013, the European Commission on Racism and Intolerance (ECRI) noted, “that residents of the direct provision centres have little control over their daily lives (cooking, cleaning, celebrating important events), which in many cases impacts negatively on family life."\(^{288}\) ECRI recommended that the authorities conduct a systematic review of the policy of direct provision and called for an alternative system that would promote independence and ensure adequate living conditions.\(^{289}\)

The Committee is urged to ask the State party to provide more detailed information on the policies and practices which govern the system of direct provision.

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\(^{284}\) UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, op cit, para 19.


\(^{288}\) ECRI, Fourth Report on Ireland, op cit p.26, para.115. See also

\(^{289}\) FLAC, One Size Doesn’t Fit All, 2009. Available at: http://www.flac.ie/publications/one-size-doesnt-fit-all/

\(^{290}\) Ibid para.116-117.
The Committee is urged to ask the State party whether and, if so, when it intends to end the system of direct provision for asylum seekers and to adopt alternative reception and integration policies to ensure that asylum seekers, including children, are not unfairly disadvantaged or segregated from the community.

15.4 Independent Complaints Mechanism: Asylum and Protection System

There is a lack of an independent complaints mechanism for residents in direct provision or access to effective remedies for individuals who have been aggrieved. Asylum seekers do not fall within the remit of the Office of the Ombudsman. In response to a recent parliamentary question (PQ) regarding the instituting of an independent complaints mechanism for asylum seekers living in direct provision the minister for Justice and Equality stated that:

“Section 5 (1) (e) of the Ombudsman Act, 1980 and section 11(1) (e) of the Ombudsman for Children’s Act, 2002 provide that either Ombudsman shall not investigate any action taken by or on behalf of a person in the administration of the law relating to, inter alia, asylum...[T]here are no plans to change those legislative provisions to give either Office the power to investigate asylum related matters...[.]”

The Ombudsman has recently expressed concern that the treatment of asylum seekers may entail breaches of Ireland’s obligations under the Constitution and international human rights law.

The Committee is urged to ask the State party if and, if so, when an independent complaints mechanism will be put in place to deal with issues arising in direct provision.

The Committee is also urged to ask the State party if it will consider granting autonomy to the Office of the Ombudsman and the Office of the Ombudsman for Children to deal with complaints received from asylum seekers and to advocate on their behalf.

The Committee is urged to ask the State party if, until such time as the practice ends, it will consider bringing direct provision centres under the remit of the Health Information and Quality Authority (HIQA) for the purposes of inspection.

15.5 Independent Appeals Mechanism

In its Concluding Observations on Ireland’s Third Periodic Report, the Committee recommended that the State party adopt an independent appeals mechanism for immigration related decisions. The establishment of an independent appeals mechanism to deal with immigration decisions not falling within the remit of the Refugee Appeals Tribunal (RAT) is necessary to ensure access to fair procedures and effective remedies for migrants and their family members seeking to challenge decisions affecting their human rights. The 2011 Programme for Government contained a commitment to “introduce comprehensive reforms of the immigration, residency and asylum

291 Minister for Justice and Equality, Written Response to Parliamentary Question 919 16 April 2013, Available at: http://www.kildarestreet.com/wrans/?id=2013-04-16a.2162&s=%22no+plans+to+change+those+legislative+provisions+to+give+either+Office+%22#g2164.r (accessed 8/8/2013)


293 UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, Op cit. para 19
systems, which will include a statutory appeals system and set out rights and obligations in a
transparent way."294 Neither the Immigration, Residence and Protection legislation nor a separate
piece of legislation introducing such a mechanism is presently on the Government Legislation
Programme for the coming term.295

Currently, people seeking to challenge decisions refusing them permission to remain in the State or
permission to enter the State – for example for the purpose of family reunification or the
preservation of the family unit – must seek judicial review of that decision by the High Court.
However, as part of judicial review proceedings, the High Court is not in a position to review the
merits of a case and cannot deal with questions of fact. Unlike an expert administrative tribunal, the
High Court does not have the power to alter or vary an administrative decision and access to the
court is severely limited by the 14-day time limit contained in the Illegal Immigrants (Trafficking) Act,
2000296 as well as by the high financial risk applicants are taking as – in case of an unsuccessful
outcome of their application – may have to pay the legal costs of the State party.

The Committee is urged to ask the State party to provide details of any proposed independent
appeals mechanism, a timeframe for its establishment and how it will ensure the independence of
such a mechanism.

The Committee should ask the State party whether and how it intends to ensure that the costs
associated with proceedings before the High Court are not a prohibitive barrier for applicants who
wish to appeal a negative decision.

15.6 Legal Advice
Ireland’s Fourth Periodic Report does not address the Committees 2008 Concluding Observation that
the State party ensure that asylum-seekers have full access to early and free legal representation.297
There is no mention of early legal advice in recent versions of the Immigration, Residence and
Protection Bill.298

The Committee is urged to ask the State party to provide a response to the Committee’s
recommendation regarding full access to early and free legal representation for asylum seekers.

295 Government Legislative Programme, Available at:
(accessed 26/7/2013)
296 Section 5(2)(a) Illegal Immigrants (Trafficking) Act 2000. Available at:
297 UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, op cit, para 19
298 Immigration Residence and Protection Bill 2010. Available at:
Section 16: Victims of Trafficking

ICCPR: Articles 3, 8, 24 and 26


16.1 Protection and Rehabilitation of Victims of Trafficking

In 2008, the Committee urged Ireland to ensure the “protection and rehabilitation of victims of trafficking” and to ensure that “permission to remain in the State is not dependent on the cooperation of victims in the prosecution of alleged traffickers”.

The Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (the “Arrangements”) came into operation on 7 June 2008 and set out the applicable procedures where a person is identified as a suspected victim of human trafficking. Under the Arrangements, an individual must be formally identified as a victim of trafficking by a high ranking police officer.

The Arrangements provide for a 60 day recovery and reflection period during which there is no obligation on a suspected victim to cooperate with an investigation or prosecution. Furthermore, suspected victims of trafficking may also apply for a (renewable) six month temporary residence permission where it is necessary in order to assist with an investigation or prosecution of a human trafficking offence.

Suspected victims of trafficking who apply for asylum are excluded from the scope of the Arrangements and do not benefit from the recovery and reflection period or temporary residence permission. This has knock-on effects regarding the equal treatment of suspected victims of trafficking. For example, a person who has assisted the Gardaí (police) and has held a Temporary Residence Permit for three years can apply for a change of status and be granted permission to remain in the State on humanitarian grounds. However, asylum seeking victims of trafficking will not be able to accumulate this required three year period as they will not be entitled to apply for an initial Temporary Residence Permit until after their application for refugee status has been terminated.

299 Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, para 259
300 This Treaty entered into force on 1 November 2010.
301 UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, op cit para. 16
304 Pursuant to Section 21 Administrative Arrangements.
305 Section 21 Administrative Arrangements.
The Committee is urged to ask the State party how intends to ensure that victims of trafficking who have sought asylum are granted comparable protections in the context of administrative arrangements to those who have not sought asylum.

16.2 Data on Trafficking
The Annual Report of the AHTU also notes that the Unit does not collect specific details on reported victims, and advises against drawing inferences from the available statistics as to the estimated likely number of reported victims of trafficking.\(^{306}\) For example, in addition to statistical data on the number of referrals to Gardaí (police), the report also contains data on the number of referrals to non-governmental organisations (NGOs). However, the report notes that many of the referrals listed in both sections may refer to the same victims. The failure of the AHTU to collect information in a way which allows for more accurate estimation of the suspected number victims hampers efforts to determine the full extent of the problem of trafficking.

The Committee is urged to ask the State party to take steps to ensure that statistics collected by relevant agencies provide accurate data on the situation of suspected victims of trafficking in Ireland and related prosecutions on an annual basis.

16.3 Legal Representation of Victims of Trafficking in Ireland
According to the State Report\(^{307}\) legal aid and advice to victims of trafficking is provided by the Legal Aid Board. However, the Committee should note that the Legal Aid Board – through its Refugee Legal Service – only provides, legal services on certain matters to persons identified by the Garda National Immigration Bureau (GNIB) as “potential victims” of human trafficking under the Criminal Law (Human Trafficking) Act 2008\(^{308}\).

This means that a potential victim of trafficking is required to present herself/himself to the Gardaí (police) and provide at least basic details of their identity and situation before they are considered eligible for legal assistance. In addition, the services offered to potential victims of human trafficking are currently limited to advice and, in relation to regularisation of a victim’s stay in Ireland, information.

While the legal services currently provided to victims of trafficking appear to meet the minimum requirements of the UN Protocol, it is questionable whether they are in compliance with Article 15(2) of the Council of Europe Convention which provides for the right to free legal assistance and legal aid for victims in relation to compensation and legal redress.\(^{309}\) Moreover, it is likely that the current scheme in Ireland falls short of the services envisaged in the Council of Europe’s explanatory report on Article 12 of the Convention on Action against Trafficking in Human Beings.\(^{310}\)

\(^{306}\) Anti Human Trafficking Unit, Annual Report in Trafficking in Human Beings in Ireland, 2011, p. 7
\(^{307}\) Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, para 287
\(^{308}\) Legal Aid Board, Human Trafficking – Legal Advice and Aid. Available at http://www.legalaidboard.ie/lab/publishing.nsf/content/Human_Trafficking_Legal_Advice_and_Aid. (accessed 2/8/2013)
\(^{309}\) Council of Europe, Convention on Action Against Trafficking in Human Beings, CETS 197, Article 15 provides that Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law.
\(^{310}\) Ibid, Article 12 provides that information provided to victims should deal with “matters such as availability of protection and assistance arrangements, the various options open to the victim, the risks they run, the requirements for legalising their presence in the Party’s territory, the various possible forms of legal redress, how the criminal-law system operates (including the consequences of an investigation or trial, the length of a trial, witnesses’ duties, the possibilities of obtaining compensation from persons found guilty of offences or
The Committee is urged to ask the State party how it will ensure that all victims of trafficking are fully informed of their rights and obligations at the earliest possible opportunity and are able to make an informed choice regarding their immigration status.

The Committee is urged to ask the State party how it will ensure timely and adequate access to, and provision of, legal aid for victims of trafficking.

16.4 Compensation

Currently, the avenues for obtaining compensation or financial redress for victims of trafficking in Ireland are limited. While it is possible for victims to obtain an order from the courts for damages to be paid by the trafficker – post conviction, there is no evidence available for Ireland on the number of awards made. However, evidence from the UK suggests a low percentage of compensation orders are made through the courts.311

Critically, there is no State funded compensation fund for victims of human trafficking in Ireland at present and Government has indicated in its ‘Review of the National Action Plan To Prevent and Combat Trafficking in Human Beings 2009 – 2012’ that it is of the view that the:

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\text{[E]stablishment of a dedicated compensation fund for victims of human trafficking would be inappropriate given that no such fund exists for any other victims of crime. While there is no doubt that victims of human trafficking constitute an extremely vulnerable group it would be difficult to justify not also having a compensation fund for victims of other crimes such as rape, etc.}.\ 312
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As noted in the State Report, victims of crime may pursue compensation through the Criminal Justice Compensation Tribunal.313 The tribunal considers applications from people who suffer a personal injury or death as a result of crime of violence. Compensation may be awarded on the basis of any vouched out-of-pocket expenses, including loss of earnings, experienced by the victim or, if the victim has died as a result of the incident, by the dependants of the victim. An application must be made to the Tribunal as soon as possible but not later than three months after the incident; however, the tribunal may extend the time limit in circumstances where the applicant can show that

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311 Anti-Slavery International and Eaves Poppy Project, *A Guide to Legal Remedies for Trafficked Persons in the UK, April 2010*. The report notes that the compensation order is most effective in the UK as a remedy where the offender has readily identifiable assets which have been confiscated by the police and where the victim has suffered a readily quantifiable injury. Among human trafficking cases, however, the experiences of judges, prosecutors and police indicate that such a scenario is elusive. According to the report, UK Police have stated that traffickers often lack significant assets and, even where available, assets are difficult to confiscate. There is also no guarantee that a crime victim will receive a compensation order upon conviction of the offender, as an offender may default in payment of the order or may pay in irregular instalments. Available at [see: http://www.antislavery.org/includes/documents/cm_docs/2011/r/rights_and_recourse_report_final_pdf.pdf](http://www.antislavery.org/includes/documents/cm_docs/2011/r/rights_and_recourse_report_final_pdf.pdf)


the reason for the delay in submitting the application justifies exceptional treatment of the application. The time limits imposed by the legislation may lead to the exclusion from access to compensation of victims who are too traumatised to report their ordeals to the Gardaí (police) in a timely fashion.

The Committee is urged to ask the State party to provide detailed information on the number of awards for damages made under claims in relation to trafficking in the reporting period.

The Committee is urged to ask the State party how it will ensure that victims of trafficking are not unfairly disadvantaged in relation to rules pertaining to compensation.
Section 17: The Rights of the Child

ICCPR: Articles 6, 7, 24

17.1 Constitutional Recognition of the Rights of the Child

The Children’s Rights referendum was passed on 10 November 2012, resulting in the deletion of Article 42.5 and the insertion of a new Article 42A. The Thirty-First Amendment of the Constitution (Children) Bill 2012 has yet to be signed into law pending the result of ongoing legal challenges to the validity of the poll.

If written into law, Article 42A will have a positive impact on children’s rights including rights in relation to care, adoption and the recognition of the voice of the child in certain circumstances. The provision also dictates that the best interests of the child must be taken to be of paramount consideration in proceedings brought by the State, in relation to the safety and welfare of children, or concerning the adoption, guardianship or custody of, or access to, children.

Notwithstanding the increased recognition of the voice of the child, Article 42A.4.2° appears to restrict the right of child to have his / her voice heard in proceedings brought by the State party but potentially not in cases where proceedings are brought against the State party and its agencies.

The Committee should also note that a number of areas in relation to child welfare will remain outside of the parameters set out in the amendment, such as education and health.

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314 The referendum was passed by a margin of 58 percent to 42 percent of votes in favour of the proposed amendment to the Constitution.
315 Article 42.5(Deleted) “In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.”
316 Article 42A(Inserted) – 1. The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights. 2. 1° In exceptional cases, where the parents, regardless of their marital status, fail in their duty towards their children to such an extent that the safety or welfare of any of their children is likely to be prejudicially affected, the State as guardian of the common good shall, by proportionate means as provided by law, endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child. 2. 2° Provision shall be made by law for the adoption of any child where the parents have failed for such a period of time as may be prescribed by law in their duty towards the child and where the best interests of the child so require. 3 Provision shall be made by law for the voluntary placement for adoption and the adoption of any child. 4. 1° Provision shall be made by law that in the resolution of all proceedings—(i) brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or ( ii) concerning the adoption, guardianship or custody of, or access to, any child, the best interests of the child shall be the paramount consideration. 4. 2° Provision shall be made by law for securing, as far as practicable, that in all proceedings referred to in subsection 1° of this section in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child.
319 Children’s Rights Alliance, Recognising Children’s Rights in the Constitution: The Thirty-First Amendment to the Constitution (Children) October 2012, at p 8. Available at:
The Committee is urged to ask the State party how it plans to ensure that the voice of the child is heard in any proceedings taken by or against the State party and its agencies.

The Committee is also urged to ask the State party how it will ensure the rights of children are upheld in legal and administrative scenarios which fall may fall outside the parameters of the amendment, including in health and education.

17.2 Abuse of Children
Recent reports have highlighted previous failures in relation to the care and protection of children in Ireland. Reports on child abuse including The Commission to Report into Child Abuse or “Ryan Report”, 2009. The reports reveal the prevalence of physical, emotional and sexual abuse including clerical sexual abuse which took place in the past. The State Report refers to the work of the Implementation plan, published in 2009, in response to the Commission to Inquire into Child Abuse (Ryan Implementation Plan). The Monitoring Group for the Ryan Implementation Plan is reportedly due to conclude its work in 2013. The Children’s Rights Alliance (a coalition of more than 100 groups campaigning, inter alia, to secure the full implementation of the Convention on the Rights of the Child in Ireland) has recently stated that:

“It is imperative that a replacement mechanism is found to continue the monitoring and accountability which has been achieved through the publications of the Monitoring Group’s annual reports; that the outstanding commitments and learning from the Implementation Plan are brought into the programme of work of the Department of Children and Youth Affairs and the Child and Family Support Agency; and there is a method to incorporate relevant recommendations from other reports, including the reports of the Special Rapporteur on Child Protection, the National Review Panel for Serious Incidents and Child Deaths, the Health Information and Quality Authority and the Ombudsman for Children.”

The Committee is urged to ask the State party whether a suitable replacement mechanism to the Monitoring Group for the ‘Ryan Report Implementation Plan’ will be established to ensure the plan is fully implemented and to provide a timeframe for full implementation of the plan.

Corporal Punishment
Under the heading ‘Corporal Punishment’, the State Report provides no information on any plans for legislative measures to ban corporal punishment in the home. A common law defence of “reasonable and moderate chastisement” exists in relation to the discipline of children within the home.

The Committee should note that in its Concluding observations on Ireland’s Second Periodic Report, the Committee on the Rights of the Child concluded that while the prohibition of corporal punishment within the family remained under review in Ireland and that parental educational

http://www.childrensrights.ie/sites/default/files/submissions_reports/files/AnalysisChildrenAmendment1012.pdf


321 Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, para 747.

322 Under section 24 of the Non-Fatal Offences against the Person Act 1997, corporal punishment by teachers is a criminal offence. However, the ban on corporal punishment of children has not been extended to actions by parents or those in care settings.
programmes had been developed, the Committee was deeply concerned that corporal punishment within the family was still not prohibited by law.\footnote{Committee on the Rights of the Child, Concluding Observations on Ireland (CRC/C/IRL/CO/2), paras. 39-40}

In 2011, while partially accepting two UPR recommendations on the issue,\footnote{UPR recommendation to Ireland, Oct 2011, 107.41. Explicitly prohibit any form of corporal punishment in the family and continue developing awareness-raising campaigns and education for parents and for the public in general (Uruguay); and 107.42. Promote forms of discrimination and non-violent discipline as an alternative to corporal punishment, taking into consideration general comment No. 8 (2006) of the Committee on the Rights of the Child on the protection of children from corporal punishment and other cruel or degrading forms of punishment (Uruguay).} Ireland gave the following response:

This matter is under continuous review. A proposal to either prohibit the defence of reasonable chastisement or to further circumscribe the definitions of what constitutes reasonable chastisement would require careful consideration. Details of any possible future significant developments in this area will be communicated to the UN CRC.

The State report also makes reference to the publication of the guidance note for statutory and non statutory bodies working with children entitled Children First – National Guidance for the Protection and Welfare of Children. The State party has committed to placing the guidance on a statutory footing but despite the publication of the General Scheme of the Bill, it is not known when the legislation will be introduced to the Oireachtas (Irish Parliament).

The Committee is urged to reiterate the recommendation of the CRC in its 2006 Concluding Observations on Ireland’s Second Periodic Report under the Convention on the Rights of the Child to:

(a) Explicitly prohibit all forms of corporal punishment in the family;

(b) Sensitise and educate parents and the general public about the unacceptability of corporal punishment;

(c) Promote positive, non-violent forms of discipline as an alternative to corporal punishment;

(d) Take into account the Committee’s general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.

The Committee is also urged to ask the State party when legislation will be brought before the Oireachtas to place the Children First guidance on a statutory footing.

17.3 Deaths of Children in State Care

2000 and 2010. The report also notes that of this figure, a total of 112 died of non-natural causes. The report raises a number of concerns in relation to deaths in State care including lack of care planning, delays in taking vulnerable children into care, consistency and appointment of social workers, poor record keeping, failure to pursue appropriate services and adequate supervision.\footnote{Ibid, at pp xiii-xiv}

The Committee is urged to ask the State party to provide details of the steps it must take to reduce the number of deaths in State care and, where deaths occur from non-natural circumstances, whether provision will be made for effective and independent investigation in line with the rights of persons guaranteed under the Covenant.

\textbf{17.4 Age of Criminal Responsibility}

The general age of criminal responsibility is 12 years age.\footnote{Section 52 of the Children Act 2001 was inserted by the Criminal Justice Act 2006 and increased the general age of criminal responsibility from 7 to 12 years of age. If a child under 14 years of age is charged with an offence, the consent of the Director of Public Prosecutions is required before proceedings can be initiated.} However, for certain serious offences including murder or manslaughter, rape and aggravated sexual assault the age of criminal responsibility is lowered to 10 years.\footnote{Section 52, Children Act 2001 as amended by Section Criminal Justice Act 2006.} In its 2006 Concluding Observations on Ireland’s Second Periodic Report under the CRC, the Committee on the Rights of the Child expressed disappointed that the section in the Children’s Act 2001 allowing for the age of Criminal Responsibility to be raised from 7 years to 12 years with a rebuttable presumption up to 14 years was not brought into force and that provisions of the Criminal Justice Act 2006 subsequently lowered the age to 10 years for serious crimes.\footnote{Committee on the Rights of the Child, \textit{Concluding Observations: Ireland, op cit.} para 66}

The Committee is urged to ask the State party to ensure that the age of criminal responsibility for children is raised for all criminal offences in line with international human rights standards.
Section 18: Regulation of Charities

ICCPR: Articles 24

18.1 Charities Act 2009

The Charities Act 2009 provides for the regulation and supervision of the charitable sector. The Committee should note that the list of charitable purposes originally included in the Charities Bill 2007 included “advancement of human rights.” However, this phrase was eventually excluded from the final legislation. As a result, the removal of human rights as a charitable purpose may have a disproportionate effect on civil society organisations working in the area of human rights or who may seek to use human rights principles in the advancement of their work.

In March 2013, a Resolution adopted by the UN Human Rights Council on Protecting Human Rights Defenders called for national legislation to support the work of those working to advance and protect human rights rather than placing any restrictions on their legitimate activities. Following her country visit to Ireland in November 2012, the UN Special Rapporteur on Human Rights Defenders, Margaret Sekaggya, expressed concern that,

[...] the [Charities] Act fails to recognize the promotion of human rights as “a purpose that is beneficial to the community”, therefore, effectively excluding organizations that work on the protection and promotion of human rights from being able to register as charities.

The Committee is urged to ask the State party whether it plans to amend the Charities Act 2009 to include the “advancement of human rights” as a charitable purpose and, if so, whether this will be achieved during its five-year statutory review of the operation of the current legislation.