



Submission to the United Nations Human Rights Committee for the List of Issues Prior to Reporting

in respect of

IRELAND

for the 130th Session (October - November 2020)

Contributors: Dr Stefano Angeleri (Postdoctoral researcher, ICHR); Keelin Barry (Government of Ireland Irish Research Council PhD scholar, ICHR); Prof Shane Darcy (Professor of Human Rights, ICHR); Maelle Noir (PhD scholar, ICHR); Dr Maeve O'Rourke (Lecturer, ICHR); Judit Villena Rodo (PhD scholar, ICHR).

Email for correspondence: maeve.orourke@nuigalway.ie

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Introduction

The Irish Centre for Human Rights (ICHR) at the School of Law, National University of Ireland, Galway is Ireland’s principal academic human rights institute. The ICHR undertakes human rights teaching, research, publications and training, and contributes to human rights policy development nationally and internationally.

The ICHR has prepared this submission for the purpose of informing the United Nations Human Rights Committee’s (the Committee) List of Issues Prior to Reporting (LOIPR) for Ireland’s fifth periodic review. This submission provides selected research and analysis from the ICHR’s staff and researcher community. It is not a comprehensive account of all relevant issues in Ireland

arising under the International Covenant on Civil and Political Rights (ICCPR) and should be read alongside the reports of other civil society organisations. It is supplemented by our recent report to the Committee against Torture (CAT) in advance of its next LOIPR for Ireland,¹ and a report submitted by our Human Rights Law Clinic students to the Committee on the Rights of the Child (CRC) for its upcoming LOIPR for Ireland.²

This Report focuses on the following areas of concern:

1. Non-Ratification of the Optional Protocol to the Convention Against Torture
2. Direct Provision
3. Human Rights Protections in Residential Care Contexts
4. ‘Historical’ Institutional and Adoption-related Abuses
5. Traveller Housing and Institutional Racism
6. Undocumented Migrants’ Access to Basic Services to Enjoy the Right to Life in Dignity
7. Denial of Leave to Enter the State
8. Human Trafficking
9. Hate Crime Legislation
10. Domestic, Sexual and Gender-Based Violence
11. Discrimination against Persons with Disabilities
12. Business and Human Rights

Recommended questions are highlighted in bold at the end of each section.

¹ Samantha Aglae, Keelin Barry, Lauren Burke, Sien Crivits, Kelly Dalton, Siobhán Mullally, Maeve O’Rourke, Angelica Shilova, Judit Villena Rodo, Eesh Wadhwa, Stacy Wrenn, ‘Submission to the United Nations Committee Against Torture for the List of Issues Prior to Reporting in Respect of Ireland for the 69th Session’ (ICHR, January 2020). Available at:

https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_IC_S_IRL_41344_E.pdf ² Róisín Dunbar, Lauren Burke, Neasa Candon, Meghan Reid, Sien Crivits, Stacy Wrenn, Angelica Shilova, ‘Direct Provision’s Impact on Children: A Human Rights Analysis: A Submission to the United Nations Committee on the Rights of the Child’ (ICHR, July 2020). Available at [ohchr.org](https://www.ohchr.org)

1. Non-Ratification of the Optional Protocol to the United Nations Convention Against Torture (OPCAT)

Ireland still has not ratified the Optional Protocol to the Convention Against Torture (OPCAT). It has failed to establish a National Preventive Mechanism designed to prevent and respond to torture or ill-treatment in all places of involuntary confinement in Ireland. This situation is all the more troubling in light of Ireland’s well-known history, throughout the 20th century, of grave and systematic abuse of children, women and people in need of care by institutionalising them and failing to monitor or regulate their treatment in order to protect their human dignity.

This submission draws attention below to continuing practices of institutionalisation in Ireland in the health and social care arena, and as a response to the needs of people seeking international protection. It is imperative that Ireland's National Preventive Mechanism includes places of health and social care, and Direct Provision Centres and emergency accommodation for asylum seekers, given the powerlessness of many people in these settings to remove themselves, and their dependence on the personnel in control for the resources they require to meet their basic needs.

In a report in 2017 for the Irish Human Rights and Equality Commission (IHREC) on *Ireland and OPCAT*, Rachel Murray and Elina Steinerte noted that there have been many 'discussions around the possible establishment of a criminal justice inspectorate'. These experts stated that a criminal justice inspectorate would not be sufficient to meet Ireland's obligations under OPCAT because OPCAT 'encompasses not only the more 'traditional' places of detention such as prisons, police cells, but also immigration detention facilities, psychiatric hospitals, care homes, secure accommodation for children, nursing homes, etc.'¹

We note that the CAT's 2017 Concluding Observations recommended that Ireland '[e]nsure that the Inspection of Places of Detention Bill provides for independent monitoring of residential and congregated care centres for older people and people with disabilities within the national preventive mechanism, and that people residing in such facilities can submit complaints, including regarding clinical judgments, to these independent monitors' (para 36).

In accordance with Ireland's obligations under the CRPD, the design and functioning of Ireland's NPM must be determined in close consultation with people with disabilities. People with disabilities in Ireland and older people are frequently subjected to detention and restraint in care contexts. The Irish Council for Civil Liberties has previously recommended² that legislation

establishing an NPM in Ireland should designate all relevant inspection and monitoring bodies collectively as the NPM and establish the Irish Human Rights and Equality Commission (IHREC) as the coordinating body. The IHREC has 'A status' as Ireland's National Human Rights Institution. It is also Ireland's independent monitoring mechanism for the UNCRPD.

¹ Rachel Murray and Elina Steinerte, *Ireland and the Optional Protocol to the UN Convention against Torture* (Irish Human Rights and Equality Commission 2017) 7.

² Irish Council for Civil Liberties, 'NGO Submission to the United Nations Committee Against Torture', 23 November 2018, <https://www.iccl.ie/wp-content/uploads/2018/11/ICCL-Follow-up-report-to-UNCAT-final23.11.18.pdf>

Recommended Questions:

- **When will Ireland ratify the OPCAT and when will it establish an NPM?**
- **Will the NPM include health and social care settings within its remit, as recommended in 2017 by the UNCAT's Concluding Observations, and accommodation for people seeking international protection?**
- **How will the Government enable people with disabilities to take a leading role in the design and functioning of the NPM, as required by the UNCRPD?**

2. Direct Provision

Updated Statistics

As of 31 December 2019 there were 4,781 new applications for international protection submitted in Ireland, representing an increase of 30.2% compared to the same time period in 2018.³ According to details provided by the Department of Justice and Equality in May 2020 there were 7,700 individuals in the Irish asylum system, and a further 250 people with refugee status who were living in Emergency Reception and Orientation Centres (EROCs).⁴ In May 2020 it was also confirmed that there were 84 centre locations, including 47 Direct Provision centres, 33 emergency accommodation facilities which included four self-isolating centres, as well as five other facilities for density reduction.⁷

People living in Direct Provision are often housed in centres that are far from towns and cities, with limited public transport links. This restricts residents' opportunities to socialise, study, work or do any of the things that help people to make connections necessary for meaningful living in a new community. Conditions in Direct Provision have been described by some as amounting to *de*

*facto*⁵ detention because of these restrictions.⁸ The impact of Direct Provision on the human dignity of those seeking international protection in Ireland must not be ignored. It is a system which

³ European Commission, 'Ireland: EMN Country Factsheet' (2019) 2. Available at:

https://ec.europa.eu/homeaffairs/sites/homeaffairs/files/14_ireland_country_factsheet_2019_en.pdf

⁴ Statement of Oonagh Buckley, Oireachtas Joint and Select Committees, Tuesday 26th May 2020: Special <https://www.rte.ie/news/2020/0730/1156474-asylum-seeker-drivers-licence-court/> Committee on Covid-19

Responses Congregated Settings: Direct Provision Centres. Page 9, Para 10. Access

at: <https://www.kildarestreet.com/committees/?id=2020-05-26a.725> ⁷ *Ibid* para 6.

⁵ Irish Human Rights and Equality Commission, Ireland and the Optional Protocol to the UN Convention against Torture (September 2017) 32, <https://www.ihrec.ie/app/uploads/2017/09/Ireland-and-the-Optional-Protocol-to-the-UN-Convention-against-Torture.pdf>. See also Irish Council for Civil Liberties & Maeve O'Rourke, Submission

segregates people from the rest of Irish society on the basis of their race or ethnicity. Many international protection applicants living in Direct Provision face ongoing denials of the constitutional right to work (which right has been determined by the Irish Supreme Court to derive from human dignity)⁶ due to barriers such as the type of permits provided, ineligibility for driving licenses and frequently also denial of access to a bank account.⁷

Families and Children in Direct Provision

The Committee stated in its 2014 Concluding Observations that Direct Provision is not conducive to family life (para 19). Families are often forced to live in the system for years while waiting for their international protection applications to be assessed and processed, with a negative cumulative impact on mental and physical health which cannot be underestimated. Direct Provision centres often accommodate families in one room in crowded conditions restricting privacy for adults, children and teenagers. Single-headed families in some instances have been forced to share rooms with other non-related strangers having no say in these living arrangements.

In addition, parents do not have agency in Direct Provision to make family decisions to alter the ongoing situations of disempowerment and entrenched insecurity faced by their families. This includes having to navigate the realities of life in protracted situations of poverty and stress on a very small weekly stipend of €38.80 per adult and €29.80 per child. This poverty also limits parental agency, for example, with regard to children's activities and inclusion in after-school and community activities, or being unable to afford back to school costs. The enforced institutionalisation of asylum seeker families living in Direct Provision arguably amounts to cruel, inhumane and degrading treatment with potential negative implications for these family members' life trajectories.

With regard to children's lives in Direct Provision, the previous Government-appointed Special Rapporteur on Child Protection, Dr Geoffrey Shannon, has highlighted the negative impact of

to the Oireachtas Joint Committee on Justice and Equality for its Consultation on Direct Provision, 31 May 2019, available at: <https://www.iccl.ie/wp-content/uploads/2019/06/190531-ICCL-ORourke-Submission-On-DirectProvision-System.pdf>

⁶ See *NVH v Minister for Justice & Equality and ors* [2017] IESC 35 paras. 13, 15, 17.

⁷ Oireachtas Joint Committee on Justice and Equality, 2019 hearings on 'Direct Provision and the International Protection Application Process' 29 May 2019 (Representatives of the Movement of Asylum Seekers in Ireland, and the Irish Refugee Council),

https://www.oireachtas.ie/en/debates/debate/joint_committee_on_justice_and_equality/2019-05-29/3/ 'Ban on learner driver permits for asylum seekers 'not racial discrimination' *RTE News* (30 Jul 2020)

<https://www.rte.ie/news/2020/0730/1156474-asylum-seeker-drivers-licence-court/>

Direct Provision on rights to private and family life and the rights of the child and has called on Ireland to abolish Direct Provision.⁸ Many centres' locations are remote with no access to public transport or child friendly activities or services. In addition, some Direct Provision centres have no play and recreation areas suitable for children and teenagers,⁹ including a lack of space to complete homework and other academic activities which disadvantage children in Direct Provision regarding their education.

According to a 2017 Department of Child and Youth Affairs (DCYA) qualitative study, children and young people in Direct Provision reported that 'their personal wellbeing, family life, private life and social life is adversely affected by long stays in Direct Provision centres'.¹⁰ Due to the institutional nature of Direct Provision, children are in regular close contact with adults including non-family members who may be experiencing mental health issues and may witness adults in acute stress responses. They may also have to face adults and family members trying to negotiate conflicts in the Direct Provision centres causing them distress.¹¹ Some children are also negatively impacted by witnessing the protracted situation of worry and disempowerment of parental figure(s) not being able to have agency over family decisions and the family situation-often for many years. The DCYA study found that the children and young people interviewed expressed worry particularly for their mothers having to manage the many problems of living in Direct Provision.¹²

Recommended Questions:

- **When and how will Ireland provide an alternative to Direct Provision accommodation centres, in order to ensure respect for the rights of people seeking international protection, including families with children?**
- **Will Ireland provide the right to work to all international protection applicants, without time restrictions and from the outset of submission of a claim for international protection?**

Religious Practice and Expression in Direct Provision Centres

⁸ Geoffrey Shannon, *Eleventh Report of the Special Rapporteur for Children*, 2018, 35-36, 45-47, 62
<https://assets.gov.ie/27444/92175b78d19a47abb4d500f8da2d90b7.pdf>.

⁹ Child Law Clinic UCC, 'DCYA consultations with children and young people living in Direct Provision' (2017) 20. Access at:
http://www.justice.ie/en/JELR/Report_of_DCYA_consultations_with_children_and_young_people_living_in_Direct_Provision.pdf/Files/Report_of_DCYA_consultations_with_children_and_young_people_living_in_Direct_Provision.pdf

¹⁰ *Ibid* 6.

¹¹ *Ibid* 25.

¹² *Ibid* 24.

Many international protection applicants living in Direct Provision do not have access to selfcatering facilities to prepare food, and they receive prepared food in canteens having no input to

ingredients or types of food available. This restricts some individuals and families from practising cultural and religious food rites. Thus, it directly limits the ability of some asylum seekers to practice and express their religion while living in Direct Provision, as well as limiting the passing on of religious food rites as part of family food traditions to children.

Research undertaken by Nasc¹³ regarding asylum seekers' experiences of food in Direct Provision has indicated that a variety of religious asylum seekers (for example of Hindu, Orthodox Christian, and Muslim faiths) feel unable to adequately practise their religious food traditions while living in Direct Provision. Barriers include lack of access to kitchens and the inflexibility of Direct Provision rules,¹⁷ a lack of adequate vegetarian meal options for those of the Hindu faith, and that Muslim asylum seekers are not able to be confident that meat prepared in canteens is actually Halal. The research found that people adopted vegetarianism as a coping strategy to be sure people are 'religiously safe' and are not eating non Halal meat products.¹⁸ Taking Ramadan as an example: it is very difficult for Muslim asylum seekers in Direct Provision to be able to fast for a month in Ireland during long summer days and evenings, and to be able to have access to enough food as well as access to kitchens to prepare food to break the Ramadan fast as per religious rites and traditions.¹⁴The Nasc research also highlighted that in some centres particular chefs try to be flexible and provide some options during Ramadan but that this is very dependent on these certain individuals, and is done on an 'ad hoc', inconsistent basis.

Recommended Questions:

- **By when will a country-wide religious needs assessment of all Direct Provision and Emergency Accommodation Centres be undertaken to assess the needs of asylum seekers in relation to religious food traditions and other accommodations needed for asylum seekers of various faiths to be able to freely express and practice their religion while in Direct Provision?**
- **By when will uniform accommodations in all Direct Provision centres be provided to allow religious asylum seekers access to adequate food and cooking facilities to be able to adhere to their religious rites.**

¹³ Keelin Barry, 'What's food got to Do with it? Food experiences of asylum seekers in Direct Provision' (Nasc, 2014) Access at <https://nascireland.org/sites/default/files/WhatsFoodFINAL.pdf> ¹⁷ *Ibid* 37. ¹⁸ *Ibid*.

¹⁴ *Ibid* 46.

Recast Reception Conditions Directive: Building a Vulnerability Assessment Tool

The EU (recast) Reception Conditions Directive (2013/33/EU) (RCD) provides standards for the material reception conditions of asylum seekers in Europe.¹⁵ Transposition of the Recast Reception Conditions Directive to Irish legislation occurred in July 2018.

Article 21 of the RCD sets out the specific list of vulnerable persons (which includes disabled people) and the general principle regarding vulnerability as follows:

...Member States shall take into account the specific situations of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders, and persons who have been subjected to torture, rape or other forms of psychological, physical or sexual violence, such as victims of female genital mutilation, in the National Law implementing this Directive...²¹

To date there is still no formal mechanism for the identification of vulnerable persons (as listed above) except for unaccompanied children under the International Protection Act.¹⁶ A report released by the Irish Refugee Council analysing the transposition of the RCD a year after its transposition highlighted concerns about the continued absence of vulnerability assessments.²³ According to the Irish Refugee Council despite the transposition of the RCD in 2018, ‘the practice which preceded the regulations continues to govern the approach to reception for persons seeking asylum’.¹⁷

This lack of implementation of a vulnerability assessment tool, which is a legal requirement under the transposition of the RCD to Irish legislation requires urgent action to be taken by the Irish Government. In response to questions raised about the vulnerability assessment by the CERD Committee in December 2019, the Irish Government stated in their verbal response that the vulnerability assessment tool would be rolled out by March 2020. This has still not been implemented as August 2020. The implementation of a robust person-specific vulnerability

¹⁵ ‘Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)’, *available at*:

<https://www.refworld.org/docid/51d29db54.html> ²¹

Ibid. Article 21, Para 17

¹⁶ Asylum Information Database, ‘Country Report: Republic of Ireland, ECRE & Irish Refugee Council’ (2020) 46. Available at: <https://www.asylumineurope.org/reports/country/republic-ireland> ²³ *Ibid* 56.

¹⁷ *Ibid.*

assessment tool would have greatly assisted authorities during the current COVID 19 outbreak. It would have enabled access to quality data from the vulnerability assessments undertaken to ascertain which asylum seekers with specific vulnerabilities might have been at heightened risk

to COVID 19 infection allowing for speedy action to isolate these individuals. Notably, on 19 July 2020 the Irish Refugee Council was granted leave in the High Court to challenge the lack of implementation of the vulnerability assessment tool under the RCD.¹⁸

Recommended Questions:

- **When will Ireland develop and implement a vulnerability assessment tool as required by the Recast Conditions Directive 2013/33/EU (RCD) (2013/33/EU)?**
- **Will Ireland provide full and immediate access to a vulnerability assessment for asylum seekers on arrival in Ireland and will the vulnerability assessments be available on an ongoing individual basis?**

Disability in Direct Provision and the EU (recast) Reception Conditions Directive (2013/33/EU) (RCD): Importance of Building the Vulnerability Assessment Tool

Disabled child and adult asylum seekers experience the same vulnerabilities as non-disabled asylum seekers living in Direct Provision, but may also face additional disability-related barriers and challenges currently not considered or reasonably accommodated by the institutional processes of the Reception and Integration Agency (RIA) and other disability-related Irish government departments. For example, many Direct Provision centres are located in old hotels, convents, and former holiday centres, the majority of which are not purpose-built to house asylum seekers, especially taking into account the diverse needs of disabled child and adult asylum seekers. Some examples of physical access issues faced by disabled asylum seekers in Direct Provision include buildings without ramps or lifts, inaccessible paths, poor building access, lack of disabled accessible bathrooms, lack of appropriate physical space and accessible bedrooms for disabled asylum seekers including those with mobility aids.

As discussed above, the EU (recast) Reception Conditions Directive (2013/33/EU) (RCD), provides standards for the material reception conditions of asylum seekers in Europe.¹⁹ In 2018 Ireland transposed the RCD, which importantly includes the legal requirement by the Irish State to

¹⁸ For information please see: <https://twitter.com/IrishRefugeeCo/status/1281484801825013760>

¹⁹ ‘Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)’. Available at: <https://www.refworld.org/docid/51d29db54.html>

develop a formal asylum vulnerability assessment process for certain groups of potentially vulnerable asylum seekers, *such as disabled asylum seekers*.²⁰[*Emphasis added*]. Ireland has not

developed or implemented the vulnerability assessment tool, two years after the RCD was transposed to Irish legislation, despite this being a clear legal requirement of the RCD.²¹

In its Concluding Observations on Ireland’s periodic report in January 2020, the CERD Committee specifically recommended to the State Party to: “Introduce a comprehensive vulnerability assessment mechanism for early identification of asylum seekers with special needs.”²²

Also relevant to disabled asylum seekers in Direct Provision is the recent Irish ratification of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) on 7 March 2018.²³ The CRPD provides a wide mandate of human rights protection to disabled people across all sections of society and has been described as the most complex human rights treaty ever drafted.³¹ Disabled child and adult asylum seekers being accommodated in the Direct Provision System, should have equal access to the human rights protections set out in the CRPD when compared to non-asylum seekers disabled individuals living in Ireland outside of the direct provision system.

Recommended Question:

- **Will the vulnerability assessment, once introduced, take into account and purposely apply a disability lens to the particular needs of disabled asylum seekers, as one of the listed vulnerable groups living in the Direct Provision system?**

Brief Situation Overview of the COVID 19 Pandemic and Direct Provision

²⁰ European Communities (Reception Conditions) Regulations 2018, SI 2018/230. Available at:

<http://www.irishstatutebook.ie/eli/2018/si/230/made/en/pdf>

²¹ Irish Refugee Council, *Irish Refugee Council report warns that Ireland is in breach of EU Law* (12 July 2019).

Available at:

<https://www.irishrefugeecouncil.ie/news/irish-refugee-council-report-warns-that-ireland-is-in-breach-of-eulaw/7175>

²² United Nations Committee on the Elimination of Racial Discrimination, ‘Concluding Observations on the Combined fifth to Ninth Reports of Ireland’ (23rd January 2020) UN Doc CERD/C/IRL/CO/5-9 para 19, section 36 (C). Available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/IRL/CO/59&Lang=En

²³ Convention on the Rights of Persons with Disabilities and Optional Protocol, available at:

<https://www.un.org/development/desa/disabilities/about-us/sustainable-development-goals-sdgs-and-disability.html>

³¹ Conte C. (2016) ‘What about refugees with disabilities? The interplay between EU Asylum law and the UN Convention of Persons with Disabilities’, *European Journal of Migration and Law* 18(3) 331.

During the COVID 19 pandemic, the ongoing inequalities and problems in Direct Provision have become more pronounced. As early as in March 2020, an open letter signed by 932 experts in health systems, public health, social policy, law, human rights, migration and racism was sent to the Government expressing concern regarding the inability of direct provision centres to permit

social distancing.²⁴ On 31 March 2020 an extra capacity of 650 beds were sourced in outside hotels and emergency accommodation, with the aim of reducing the numbers of people sharing rooms in Direct Provision.²⁵ The Department of Justice and Equality verified that they had access to four self-isolating centres and five other facilities for density reduction during the COVID 19 Pandemic.²⁶ However, people who had tested positive for COVID 19 were not necessarily moved out of Direct Provision, with some being required to self-isolate within the Direct Provision centres. Overall it has been confirmed that 600 people who were living in Direct Provision were moved out.²⁷ According to the Irish Refugee Council in May 2020, approximately 22% of people living in Direct Provision continued to share a bedroom with a non- family member.²⁸

The reality of living in Direct Provision in crowded spaces during a pandemic causes obvious and extreme stress and worry to people who have no agency to change their personal situation or that of their families. Concerns about infection, use of communal bathrooms, lifts, laundries and canteen spaces, lack of room to isolate in often crowded shared room facilities, and a lack of clear guidelines have all added to worry and distress for asylum seekers in Direct provision during this time. The Irish Refugee Council has stated ‘that as Direct Provision is a congregated setting social or physical distancing is not possible in the context of many Direct Provision locations’.³⁷ However the Department of Justice and Equality considered those who shared rooms as being in a similar situation to a family situation and deemed it appropriate for people sharing rooms to isolate as groups together. The number of people permitted to sharing a room was reduced to three people per room sharing.²⁹ They also pointed out that other congregated settings such as nursing homes, student accommodations and homeless services were in a similar situation.³⁹

²⁴ ‘Social Distancing and Direct Provision’ (31 March 2020). Available at:

<<https://www.masi.ie/2020/04/08/openletter-to-government-re-social-distancing-and-direct-provision/>>

²⁵ Asylum Information Database, ‘Country Report: Republic of Ireland, ECRE & Irish Refugee Council’ (2020) 12.

Available at: <https://www.asylumineurope.org/reports/country/republic-ireland>

²⁶ Statement of Oonagh Buckley Oireachtas Joint and Select Committees, Tuesday 26th May 2020: Special Committee on Covid- 19 Responses Congregated Settings: Direct Provision Centres. Page 9 Para 6.

<https://www.kildarestreet.com/committees/?id=2020-05-26a.725>

²⁷ *Ibid* pg 10, para 1. <https://www.kildarestreet.com/committees/?id=2020-05-26a.725>

²⁸ Asylum Information Database, ‘Country Report: Republic of Ireland, ECRE & Irish Refugee Council’ (2020) 12.

Available at: <https://www.asylumineurope.org/reports/country/republic-ireland> ³⁷ *Ibid*.

²⁹ Statement of Oonagh Buckley Oireachtas Joint and Select Committees, Tuesday 26th May 2020: Special Committee on Covid- 19 Responses Congregated Settings: Direct Provision Centres. Page 8, Para 1 ³⁹

Ibid pg 2, para 2.

Certain Direct Provision centres such as the Skellig Star Hotel in Cahersiveen, Co Kerry gave rise to prominent stories covered in the media during the pandemic. The Skellig Star Hotel was opened in haste to increase Direct Provision capacity and had people transferred during the beginning of the pandemic from different parts of the country. Since opening, concerns were raised about the suitability of the Skellig Star Hotel as an appropriate setting for a Direct Provision centre. Issues raised included the poor condition of the building, lack of Garda vetting of staff, problems with

heating and a lack of running water at times, the continued sharing of rooms despite a confirmed outbreak of 23 infection of asylum seekers with COVID 19 at the Direct Provision centre.³⁰

Once the COVID 19 outbreak was confirmed there were worrying pictures in the media of the gates of the Skellig Star Hotel being padlocked, and reports that residents were not able to leave.³¹ People were reportedly in lockdown in their rooms all day in cramped conditions (including children), and complaints were made that there was no deep cleaning undertaken of the Direct Provision centre despite an outbreak of COVID 19 being present.³² From an early stage the local community in Cahersiveen supported the protests to close the Skellig Star Hotel. In July 2020, residents began a hunger strike to protest at the conditions of the Skellig Star Hotel which included a recent ‘no drink- boil water notice’. After two days of negotiations it was confirmed that the international protection applicants would be moved from the Skellig Star and that it would be closed down, which saw the end of the hunger strike.

Also of note is that there appears to be a two-tier quarantine standard that is applied on an ad hoc basis to Direct Provision in relation to quarantining and social distancing. This is evident in that the non-asylum seeker Irish community has freedom to move in a relatively free choice manner since Phase 3 of the restrictions were lifted. However as of July 2020 it is alleged that people in Direct Provision have been told that if a person stays away from Direct Provision for more than one night that they need to quarantine outside of Direct Provision for a period of two weeks.³³ This obviously has impacts on asylum seekers who work.

³⁰ Colin Gleeson, ‘Asylum seekers appeal for safe housing after Covid-19 outbreak at Co Kerry centre’ *Irish Times* (6th May 2020) <https://www.irishtimes.com/news/social-affairs/asylum-seekers-appeal-for-safe-housing-after-covid19-outbreak-at-co-kerry-centre-1.4246829>

Olivia Moore, ‘Hunger Strikes in Skellig Star – How Could We Let It Come to This’ *The Stand* (31st July 2020) <https://www.stand.ie/hunger-strikes-in-skellig-star/>

³¹ Asylum Information Database, ‘Country Report: Republic of Ireland, ECRE & Irish Refugee Council’ (2020) 12. Available at: <https://www.asylumineurope.org/reports/country/republic-ireland>.

³² Asylum Information Database, ‘Country Report: Republic of Ireland, ECRE & Irish Refugee Council’ (2020) 12. Available at: <https://www.asylumineurope.org/reports/country/republic-ireland>

³³ Shamim Malekmian, ‘Restrictive New Measures Introduced For Asylum Seekers in Direct Provision’ Hot Press (19 July 2020) <https://www.hotpress.com/culture/restrictive-new-measures-introduced-for-asylum-seekers-in-directprovision-22822765>

See IPAS’ letter here: International Protection Accommodation Services (IPAS), ‘Notice to residents who left their

Recommended Question:

- **What steps is the state undertaking to move Direct Provision residents to suitable accommodation where each individual and family unit has own-door accommodation and individualized access to sanitation and eating facilities?**

3. Human Rights Protections in Residential Care Contexts

The CAT's 2017 Concluding Observations expressed concern 'at reports that older persons and other vulnerable adults are being held in public and privately operated residential care settings in situations of de facto detention, and at reports of cases in which such persons were subjected to conditions that may amount to inhuman or degrading treatment, including the improper use of chemical restraints' (para 35). The CAT further expressed regret that the law on capacity in Ireland remained the Lunacy Regulations (Ireland) Act 1871. Unfortunately, major problems remain in this area.

Lack of funding from Government for commencement of Assisted Decision-Making (Capacity) Act

Most parts of the Assisted Decision-Making (Capacity) Act 2015 still have not been commenced. The Chair of the Decision Support Service (DSS) under the Act was appointed in 2017, however the Government has not provided enough funding to the Service for it to begin operating. The Irish Times reported on 27 January 2020 that the Mental Health Commission (under whose auspices the DSS lies) sought €10.3 million from the Department of Justice in 2018, to establish the DSS, but was allocated €3.5 million. In 2019, €9.1 million was sought but the Department of Justice allocated €3.5 million.³⁴

The Irish Times reported in January 2020 that, according to minutes of meetings of the Mental Health Commission, the Decision Support Service will not open in 2020 'and there is no opening date in sight.' The newspaper report quoted the Mental Health Commission as stating that 'the repeated failure to open the service puts Ireland in breach of international human rights obligations, raises safeguarding issues and denies thousands of vulnerable adults a say in basic aspects of their lives.' The Irish Times further reported that more than 3,000 adults in Ireland are wards under the 1871 Lunacy Regulations (Ireland) Act 1871 and that the Mental Health Commission finds the number of new wards 'to be on the increase'. Meanwhile, it was stated, Department of Justice

accommodation centre to live temporarily in private accommodation during COVID-19'

<https://departmentofjusticeandequalityipassupport.newsweaver.com/kggzzg4f76/iv1dnw12soq>

³⁴ Kitty Holland, 'Mental Health Commission has "serious concerns" over delays in opening services' *Irish Times* (27 January 2020), <https://www.irishtimes.com/news/social-affairs/mental-health-commission-has-serious-concerns-over-delays-in-opening-service-1.4152109#.Xi8K0dATYJQ.twitter>

figures suggest that over 200,000 adults could benefit from the implementation of the Decision Support Service under the 2015 Act.³⁵

Recommended Questions:

- **Why has the Government failed to provide sufficient funding to allow the Decision Support Service to become operational and the Assisted Decision-making (Capacity) Act 2015 to be commenced in full?**
- **When will the 2015 Act be commenced in full?**
- **What data can the Government provide to demonstrate the implications of the continued lack of modern legislation on supported decision-making which is CRPD-compliant?**

Lack of Deprivation of Liberty / Safeguarding of Liberty regulations

It was recognised by the CAT in 2017 that people are frequently detained and restrained in care settings in Ireland without legal authority, the risks of which are compounded by the fact that the Assisted Decision-Making (Capacity) Act 2015 is not yet operational.³⁶ In early 2018, the Department of Health held a public consultation on its Preliminary Draft Heads of Bill on deprivation of liberty,³⁷ intended to form Part 13 of the Assisted Decision-Making (Capacity) Act 2015 in due course. The Department published a 261-page report on the public consultation on 12 December 2019, which summarises and analyses the responses received.³⁸ Revised draft legislation is not yet available.

³⁵ *Ibid.*

³⁶ See for example, Caroline O’Doherty, ‘Review of 25,000 in care required as law on consent changes’ *Irish Examiner* (8 January 2018), <https://www.irishexaminer.com/ireland/review-of-25000-in-care-required-as-law-onconsent-changes-465461.html>.

³⁷ These are no longer available on the Department of Health website.

³⁸ Department of Health, *The Deprivation of Liberty Safeguard Proposals: Report on the Public Consultation* (12 December 2019), <https://www.gov.ie/en/publication/3f88c4-the-deprivation-of-liberty-safeguard-proposals-reporton-the-public-/?referrer=/wp-content/uploads/2017/12/deprivation-of-liberty-safeguard-heads-draft-for-publicconsultation.pdf/> ⁴⁹ *Ibid* Head 1.

The Preliminary Draft Heads of Bill, as published in 2018, appear to be insufficient to meet the State's obligations under numerous human rights instruments including the Irish Constitution, the European Convention on Human Rights (ECHR), and the CRPD. Some of the problems are as follows:

- The draft legislation applies only to 'relevant facilities', which are explained to be nursing homes and care/residential accommodation in addition to approved centres under the Mental Health Act 2001.⁴⁹ The draft Heads of Bill explicitly exclude institutions in which 'the majority of persons being cared for and maintained are being treated for acute illness or provided with palliative care' and institutions 'primarily used for the provision of

educational, cultural, recreational, leisure, social or physical activities'.³⁹ There is, however, a need to recognise and protect against arbitrary deprivations of liberty in hospitals, step-down facilities, respite facilities, supported living accommodation and community/voluntary housing associations.

- In applying only to people deemed to lack capacity to make a decision about where to live, the draft Heads of Bill offer no protection from arbitrary detention to people who are deemed capable of making care-related decisions. There are no requirements in the draft legislation for care providers to obtain informed consent (with supported decision-making where necessary) to all restricting forms of care.
- There are wholesale exemptions from the requirement for deprivations of liberty to be authorised by law, including for wards of court and where the person in charge of an institution 'reasonably believes' that a person's capacity is 'fluctuating' or that the person will die within a 'short period'.
- There is no statutory right to the alternatives to institutional care or restraint which are required in order to avoid unnecessary (and therefore arbitrary) deprivations of liberty. These alternatives include home care, community-based services and psychology services.
- There is no statutory right to the independent advocacy services which are necessary to ensure that the procedures intended to prevent arbitrary detention are in fact accessible to people who require care and effective.⁴⁰

³⁹ *Ibid* Head 1.

⁴⁰ These concerns are elaborated in Maeve O'Rourke, 'Submission to the Department of Health for its Consultation on the Deprivation of Liberty Safeguards' (16 March 2018), <https://www.iccl.ie/wp-content/uploads/2018/05/ICCLsubmission-on-deprivation-of-liberty-safeguards-web-version.pdf>

Recommended Questions:

- **When will the Government publish legislation to safeguard liberty in all care settings?**
- **How will Ireland ensure that the right to informed consent in care settings is adequately protected by law?**
- **Will Ireland introduce statutory rights to care in the community, in order to avoid unnecessary institutionalisation?**
- **When will statutory rights to independent advocacy services in care settings be provided for in law and made operational?**

Failure to regulate home care

The Law Reform Commission (LRC) of Ireland recommended in 2012 that professional home care should be regulated and monitored by the Health Information and Quality Authority (HIQA). The LRC's Report, entitled *Legal Aspects of Professional Home Care*,⁴¹ contained 29 recommendations and a draft Health (Professional Home Care) Bill to implement them. To date, no legislation has been introduced to regulate the home care sector.

On 29 January 2020, the LRC published an Issues Paper on *A Regulatory Framework for Adult Safeguarding*, which provided the following summary of the current situation regarding the regulation of home care:

In its 2011 *Report on the Legal Aspects of Professional Home Care* the Commission recommended that the *Health Act 2007* should be amended to extend the functions of HIQA to include the regulation and monitoring of professional home care services. The *Health (Amendment) (Professional Home Care) Bill 2016*, which is currently before the Seanad having completed the second stage of the legislative process in October 2016, would provide for the amendment of the legislation to extend the functions of HIQA. However, the Commission understands that the Department of Health is currently working on a statutory home care scheme that may include provisions for the powers of HIQA to be extended to home care services...⁴²

⁴¹ Law Reform Commission, *Legal Aspects of Professional Home Care*, 2011, <https://www.lawreform.ie/fileupload/Reports/r105Carers.pdf>

⁴² Law Reform Commission, *Issues Paper: A Regulatory Framework for Adult Safeguarding*, 2019, p 100, <https://www.lawreform.ie/fileupload/Issues%20Papers/LRC%20IP%2018-2020%20A%20Regulatory%20Framework%20for%20Adult%20Safeguarding%2028%20Jan%202020.pdf> .

Meanwhile, many home care workers in Ireland are in a precarious and vulnerable situation due to the fact that the Department of Business, Enterprise and Innovation's 'Ineligible List of Occupations for Employment Permits'⁴³ excludes from eligibility 'care workers and home carers (with the exception of a carer in a private home)'; 'senior care workers'; 'care escorts' and 'childcare and related personal services'. The Migrant Rights Centre Ireland (MRCI) has highlighted that 'migrants are over-represented in care and domestic work' and that 'labour market demand will continue to draw on migrant workers to meet Ireland's home care needs into the future'.⁴⁴ The MRCI states that it is 'deeply concerned about the vulnerability of this cohort of

workers whose voices are absent from the ongoing debate about the provision of quality care in Ireland and who constitute an invisible home care workforce'.⁴⁵

Recommended Questions:

- **When will Ireland regulate the home care sector and what form will such regulation take?**
- **Will Ireland remove from the 'Ineligible List of Occupations for Employment Permits' the following occupations in order to protect carers from exploitation: care workers and home carers; senior care workers, care escorts and childcare and related personal services?**

Adult Safeguarding Legislation

On 29 January 2020 the Law Reform Commission (LRC) published an Issues Paper on *A Regulatory Framework for Adult Safeguarding*⁴⁶ and launched a public consultation on the matter. The Issues Paper notes that the Assisted Decision-Making (Capacity) Act 2015 will provide important human rights protection, when fully commenced,⁴⁷ and that the Health Information and

⁴³ See <https://dbei.gov.ie/en/What-We-Do/Workplace-and-Skills/Employment-Permits/Employment-Permit-Eligibility/Ineligible-Categories-of-Employment/>

⁴⁴ Migrant Rights Centre Ireland, *Preparing for the Elder Boom in Ireland*, 2015, available at: <http://www.mrci.ie/wp-content/uploads/2015/09/Migrant-Workers-in-the-Home-Care-Sector-Preparing-for-theElder-Boom-in-Ireland.pdf>

⁴⁵ *Ibid.*

⁴⁶ Law Reform Commission, *Issues Paper: A Regulatory Framework for Adult Safeguarding*, 2020, <https://www.lawreform.ie/fileupload/Issues%20Papers/LRC%20IP%2018-2020%20A%20Regulatory%20Framework%20for%20Adult%20Safeguarding%2028%20Jan%202020.pdf>

⁴⁷ *Ibid.*, para 7.

Quality Authority (HIQA) and Mental Health Commission have recently jointly published National Standards for Adult Safeguarding.⁴⁸ However, the LRC Issues Paper states:

While there has been significant recent progress, it has occurred against a backdrop of shortcomings in adult safeguarding. The introduction of a statutory regulatory framework would therefore provide legislative certainty and ensure greater protections for at risk adults. The establishment of a regulatory framework, including powers to set and enforce standards in all areas of adult safeguarding, would help to place the focus on proactive practice rather than reactionary practice. The existence of a rights focused regulatory framework would also help to ensure a focus on positive, preventative action in ensuring that the rights of at risk adults are protected. A preventative, rights- based approach is not something that can be achieved by one body in isolation and the existence of a regulatory framework would therefore facilitate coordination of the relevant powers and roles of

existing bodies with a remit in adult safeguarding, and facilitate cooperation between the various bodies to ensure a cross cutting, whole-of- government approach.⁴⁹

Recommended Question:

- **When and how will Ireland introduce a statutory framework for adult safeguarding which will respect, protect and fulfil human rights including rights to autonomy and respect for legal capacity?**

HIQA Guidance on a Human Rights-based Approach to Health and Social Care

In an important step, in November 2019, Safeguarding Ireland and HIQA jointly produced *Guidance on a Human Rights- based Approach in Health and Social Care Services*.⁵⁰ The Guidance aims to educate all health and social services and staff in Ireland, to assist them to uphold

⁴⁸ Health Information and Quality Authority, National Standards for Adult Safeguarding (4 December 2019), <https://www.hiqa.ie/reports-and-publications/standard/national-standards-adult-safeguarding>

⁴⁹ Law Reform Commission, *Issues Paper: A Regulatory Framework for Adult Safeguarding*, 2020, para 17, https://www.lawreform.ie/_fileupload/Issues%20Papers/LRC%20IP%2018-2020%20A%20Regulatory%20Framework%20for%20Adult%20Safeguarding%2028%20Jan%202020.pdf

⁵⁰ Safeguarding Ireland and the Health Information and Quality Authority, *Guidance on a Human Rights-based Approach in Health and Social Care Services*, November 2019,

<https://www.hiqa.ie/sites/default/files/201911/Human-Rights-Based-Approach-Guide.PDF>

human rights in their practice. It explains that a human rights-based approach is (1) helpful to delivering ‘person-centred care and support’, (2) a professional obligation under a variety of national standards, and (3) legally required by instruments such as the Irish Constitution, the European Convention on Human Rights, the EU Charter, the Equal Status Acts 2000-2015, and the public sector duty in the Irish Human Rights and Equality Duty 2014. The Guidance also refers to the CRPD in depth.

The Guidance uses the FREDA principles (Fairness, Respect, Equality, Dignity, Autonomy) to explain—including through case studies—how a human rights-based approach can be implemented in practice, on a daily basis, in any situation.

While the Guidance is significant and welcome, it appears not to address chemical restraint sufficiently. Chemical restraint is not named in the Guidance (although ‘restraint’ and ‘restrictive practice’ generally are discussed), and chemical restraint is not explicitly discussed or covered in the case study section(s). This seems a problematic omission, bearing in mind its inordinate impact on human dignity and the Health Service Executive’s current Guidance that administering drugs

with the intention to sedate a person for convenience or disciplinary purposes is never permissible.⁵¹

It is concerning that HIQA’s recent 2019 ‘Guidance on promoting a care environment that is free from restrictive practices’⁵² and related thematic inspection programme emphatically do not address chemical restraint (without clarification as to the reason for this major exclusion). Notably, according to a 2012 survey by Drennan et al of 1,316 healthcare professionals working in residential care settings for older people in Ireland, 5.6% of staff had observed staff giving a resident too much medication in order to keep them sedated or quiet.⁵³

⁵¹ Health Information and Quality Authority, *Guidance for Designated Centres: Restraint Procedures* (April 2016), <https://www.hiqa.ie/sites/default/files/2017-01/Guidance-on-restraint-procedures.pdf>

⁵² Health Information and Quality Authority, *Guidance on promoting a care environment that is free from restrictive practice: Disability Services* (March 2019), https://www.hiqa.ie/sites/default/files/2019-03/Restrictive-PracticeGuidance_DCD.pdf

⁵³ Drennan J, Lafferty A, Treacy MP, Fealy G, Phelan A, Lyons I, Hall P (2012) *Older People in Residential Care Settings: Results of a National Survey of Staff-Resident Interactions and Conflicts*. NCPOP, University College Dublin, p4.

Recommended Questions:

- **When and how will Ireland ensure that the regulation and inspection of care contexts is capable of prohibiting, preventing and redressing the use of medication in any manner that violates a person’s human rights?**
- **To what extent is the State consulting with disabled persons and other people affected by chemical restraint practices in order to ensure effective human rights protection in care settings?**

COVID 19 and Institutional Care Settings

Many deaths of people living in institutional care settings have occurred during the COVID 19 pandemic, and the gaps in human rights protections (including all of those mentioned above) have come into sharp relief. In May 2020, academics in NUI Galway and other universities and a former Senator, all with extensive experience of the institutional care sector in Ireland, wrote to the parliamentary committee on the State’s response to COVID 19 imploring the committee to take a human rights-based approach to examining the experiences of people living and working in care institutions and the lessons to be learned from those.⁵⁴ The joint submission proposed a 6-pillared

framework to guide the invitation of witnesses and their questioning, and was drafted with a view to setting a comprehensive human rights-based agenda for public discussion of the necessary reforms to health and social care in Ireland. The submission is attached to this report as an **Appendix**; we hope that it will prove useful to the Committee in formulating the LOIPR.

4. ‘Historical’ Institutional and Adoption-related Abuses

The Committee’s 2014 Concluding Observations referred to the ongoing human rights violations experienced by survivors of, and others affected by, ‘historical’ systematic abuses in Ireland. These include abuse in Magdalene Laundries, Industrial and Reformatory Schools, Mother and Baby Homes and related institutions, and through the system of forced and illegal adoptions, and the practice of symphysiotomy.⁶⁶ The Committee has previously recommended independent and thorough investigations, prosecutions, access to justice, and comprehensive redress and reparation, regarding these abuses.

⁵⁴ Colette Kelleher, Kieran Walsh, Desmond O’Neill, Eilionóir Flynn, Sarah Donnelly and Maeve O’Rourke, ‘Submission to Oireachtas Special Committee on Covid-19 Response: Nursing Homes and Other Institutional Care Settings: A Framework for Examining the State’s Response to the Covid-19 Pandemic’ (27 May 2020). Available at <https://researchrepository.ucd.ie/bitstream/10197/11390/2/Letter%20to%20Covid%2019%20Committee%20re%20ines%20of%20inquiry%2027.5.20.pdf>

Other UN human rights bodies have made similar recommendations, including the CAT in 2011 and 2017,⁵⁵ the Committee on Economic, Social and Cultural Rights in 2015,⁵⁶ the Committee on the Elimination of Discrimination Against Women in 2017,⁵⁷ the Committee on the Elimination of Racial Discrimination in 2019,⁷⁰ and the Special Rapporteur on the Sale and Sexual Exploitation of Children in 2019.⁵⁸

Magdalene Laundries

We note the detailed submissions from Justice for Magdalenes Research⁷² and the Irish Council for Civil Liberties⁷³ for the purpose of informing the CAT's Follow-up Procedure in 2018. Since then, the issues unfortunately remain the same and are addressed by the suggested questions below.

⁶⁶ United Nations Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Ireland, UN Doc CCPR/C/IRL/CO/4 (19 August 2014), paras 10, 25.

The one major change since the above-mentioned submissions relates to the site of the former Magdalene Laundry at Sean McDermott Street in Dublin City Centre. Civil society momentum is now growing in support of the idea of a national Site of Conscience, concerning all forms of so-called 'historical' institutional, gender-related and adoption-related abuses, being established at the site of the last Magdalene Laundry to close (in 1996), on Sean McDermott Street.

This derelict site is currently in the possession of Dublin City Council following a land swap with the religious Sisters of Charity. In 2018, survivors, activists and local politicians successfully rallied to prevent the planned sale of the 2.4 acre site by Dublin City Council to a budget hotel chain for €14 million.⁵⁹ In January 2020 it was reported that Dublin City Councillors and officials

⁵⁵ United Nations Committee against Torture, Concluding Observations on the initial report of Ireland, UN Doc CAT/C/IRL/CO/1 (17 June 2011), para 21; United Nations Committee against Torture, Concluding Observations on the second periodic report of Ireland, UN Doc CAT/C/IRL/CO/2 (31 August 2017), paras 23-30.

⁵⁶ United Nations Committee on Economic, Social and Cultural Rights, Concluding Observations on the Third Periodic Report of Ireland, UN Doc E/C.12/IRL/CO/3 (19 June 2015), para 18.

⁵⁷ United Nations Committee on the Elimination of Discrimination against Women, Concluding observations on the combined sixth and seventh periodic reports of Ireland, UN Doc CEDAW/C/IRL/CO/6-7 (3 March 2017) ⁷⁰ United Nations Committee on the Elimination of Racial Discrimination, Concluding Observations on the combined fifth to ninth reports of Ireland, UN Doc CERD/C/IRL/CO/5-9 (12 December 2019).

⁵⁸ Human Rights Council, Report of the Special Rapporteur on the sale and sexual exploitation of children on her visit to Ireland, UN Doc A/HRC/40/51/Add.2 (15 November 2019), p.18, <https://undocs.org/A/HRC/40/51/Add.2> ⁷² Ciara Landy and Anna O'Duffy, Justice for Magdalenes Research Follow-Up Report to the UN Committee Against Torture (August 2018),

https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_NGS_IRL_33112_E.pdf ⁷³

Irish Council for Civil Liberties, NGO Submission to the United Nations Committee Against Torture (23 November 2018), <https://www.iccl.ie/wp-content/uploads/2018/11/ICCL-Follow-up-report-to-UNCAT-final23.11.18.pdf>.

⁵⁹ See Christina McSorley, 'Attempts to block sale of Magdalene Laundry building' *BBC News NI* (3 September 2018), <https://www.bbc.com/news/world-europe-45388377>.

had agreed to a new plan for the site that would include a third-level college, housing for older people, and a substantial memorial.⁶⁰ Such plans for a memorial will be subject to consultation with survivors and the broader community during 2020. In order for any significant memorialisation process or measure to be implemented at this site or anywhere else, financial support from central Government will be required (and has not yet been promised).

Recommended Questions:

- **When and how will the Government provide the full range of promised healthcare, including complementary therapies, to Magdalene survivors in Ireland and abroad under the ‘ex gratia’ scheme?**
- **When will the Government back-date the pension payments received under the ‘ex gratia’ scheme to the date that an applicant reached retirement age, rather than simply to the scheme’s start date, in order to fulfil Judge Quirke’s recommendation that the women should be put in the position they would have occupied had they paid sufficient stamps?**
- **When will the Government ensure that all survivors have effective access to independent advocacy assistance?**
- **When will the Government ensure access to justice and accountability for the Magdalene Laundries through the establishment of an independent, thorough investigation and truth telling process; the amendment of the Statute of Limitations to enable civil claims to be brought ‘in the interests of justice’; and the education of State officials, including An Garda Síochána, regarding the treatment of girls and women in Magdalene Laundries?**

- **How will the Government ensure those responsible for the Magdalene Laundries abuse will be held to account?**
- **When will the Government release to the public (using technology to anonymise records where appropriate) the archive of State records gathered by the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries?**
- **When will the Government fund a substantial memorial which provides national education and access to information regarding the Magdalene Laundries?**

⁶⁰ Laoise Neylon, ‘New Plan for Sean McDermott Street Laundry Site Includes a College Campus’ *Dublin Inquirer* (22 January 2020), <https://www.dublininquirer.com/2020/01/22/new-plan-for-sean-mcdermott-street-laundry-siteincludes-a-college-campus>.

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How will the Government ensure that the fate and burial place of all women who died in the Magdalene Laundries are identified?

Truth-telling regarding ‘historical’ institutional and adoption-related abuses generally

Truth-telling and accountability regarding Ireland’s so-called ‘historical’ abuses have been gravely hampered by a lack of access to both State-held and privately held archives, and the censoring of survivors’ testimonies.

As reported by the Clann Project in 2018,⁶¹ the ongoing **Commission of Investigation into Mother and Baby Homes** is proceeding entirely in private despite numerous requests by survivors for a public hearing. The Commission is gathering all evidence in private and is not giving those affected the opportunity to comment on any of it. The Commission refuses to provide witnesses with a transcript of the evidence that they have provided to the Commission. It appears to be operating a blanket policy of refusing to disclose to victims or survivors of the institutions, or anyone affected by adoption, the personal data that it holds on them.⁶² It is also refusing to provide personal information about the deceased to their next of kin.⁶³ Furthermore, the Commission’s grounding legislation states that all evidence that it gathers in private is inadmissible in civil or

criminal proceedings.⁷⁹ The legislation also indicates that the Commission’s archives will be closed to the public following the conclusion of its work.⁸⁰

As for the evidence gathered by the **Inter-departmental Committee to establish the facts of State involvement with the Magdalen Laundries**,⁶⁴ which proceeded between 2011 and 2013, the Department of the Taoiseach (Prime Minister) is currently asserting confidentiality over the State’s entire archive of records concerning the Magdalene Laundries, stating in response to

⁶¹ Clann: Ireland’s Unmarried Mothers and their Children: Gathering the Data, Press Release, ‘Clann Publishes Findings of Three-Year Project on Adoption and Mother and Baby Homes’, 15 October 2018, <http://clannproject.org/2018/10/>; see also Maeve O’Rourke, ‘10 ways institutional abuse details are still being kept secret’, *RTE Brainstorm* (5 September 2019), <https://www.rte.ie/brainstorm/2019/0503/1047282-10-waysinstitutional-abuse-details-are-still-being-kept-secret/>.

⁶² *Ibid.*

⁶³ Conall Ó Fátharta, ‘Commission says they are prohibited from telling surviving family members about burial locations’ *Irish Examiner* (19 April 2019), https://www.irishexaminer.com/breakingnews/ireland/commission-saysthey-are-prohibited-from-telling-surviving-family-members-about-burial-locations918869.html#.XLSuOdZB_M.twitter

⁶⁴ Ireland, *Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries* (Department of Justice, February 2013), <http://www.justice.ie/en/JELR/Pages/MagdalenRpt2013>

Freedom of Information requests: ‘these records are stored in this Department for the purpose of safe keeping in a central location and are not held nor within the control of the Department for the purposes of the FOI Act. They cannot therefore be released by this Department’.⁶⁵ In 2018 the Government informed the CAT that records relating to Magdalene Laundries ‘are in the ownership of the religious congregations and held in their private archives [and] the State does not have the authority to instruct them on their operation.’⁶⁶

Regarding the records gathered by the **Commission to Inquire into Child Abuse** and the **Residential Institutions Redress Board**, both of which concerned abuse in residential schools, in 2019 the Department of Education published draft legislation proposing to prohibit all access to every document contained in the archives of these two bodies for at least the next 75 years. The written submissions of numerous survivors, practitioners and academics resisting this Retention of Records Bill 2019 are available online at <http://jfmresearch.com/retention-of-records-bill-2019/> and merit reading in full. Since the establishment of the Residential Institutions Redress Board in 2002, section 28 of its underpinning legislation has prohibited survivors (on pain of criminal

⁷⁹ Commissions of Investigation Act 2014, section 19.

⁸⁰ [Section 11\(3\)](#) of the Commissions of Investigation Act 2004 prohibits disclosure or publication of the evidence or contents of any documents produced by a witness while giving evidence in private. The High Court has held that this section of the Act creates statutory privilege over the archives of Commissions of Investigation (*O’Neill and Others v An Taoiseach and Others* [2009] IEHC 119, Murphy J, 18 March 2009; *Byrne and Others v An Taoiseach and Others* [2010] IEHC 353, Laffoy J, 9 September 2010).

[Section 19](#) of the Commissions of Investigation Act 2004 states that statements or admissions made to the Commission, documents given or sent to the Commission, and documents specified in an affidavit and given to the Commission are not admissible as evidence against a person in any criminal or other proceedings.

[Section 43](#) and [Section 45](#) of the Commissions of Investigation Act state that all evidence and all documents received or created by a Commission of Investigation will be deposited with the ‘specified Minister’ upon the conclusion of the investigation, only to be released to any subsequent Tribunal of Investigation that may be established to inquire into matters that fell within the Commission of Investigation’s terms of reference.

prosecution) from publishing any information about their financial payment or application that could lead to the identification of any person or institution involved in their abuse.⁶⁷

In Ireland at present, there is no explicit statutory scheme of access for adopted people, or women whose children were taken, or family members of those who died while institutionalised, or survivors of institutional abuse more broadly, to their personal information.

⁶⁵ Maeve O’Rourke, ‘Justice for Magdalenes Research, NGO Submission to the UN Committee against Torture’ (Justice for Magdalenes Research 2017), pp 15-16,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fCSS%2fIRL%2f27974&Lang=en.

⁶⁶ Ireland, Information on follow-up to the Concluding Observations of the Committee against Torture, UN Doc CAT/C/IRL/CO/2/Add.1 (28 August 2018) para 28.

⁶⁷ Residential Institutions Redress Act 2002, section 28(6).

The Government has argued for many years that the Irish Constitution prohibits the enactment of legislation entitling all adopted people to receive the information (their birth name) that would enable them to retrieve their publicly registered birth certificate from the General Register Office. This view has been contradicted by a significant number of Irish legal scholars and practitioners,⁶⁸ and the Adoption Rights Alliance group is actively campaigning for (and has published a draft Bill that would establish) a system of access to birth records that emulates Northern Ireland, England, Scotland and Wales where identifying information is provided to adopted people (in some cases following the provision of advice from a State agency) and they and their family members can then decide whether and how to pursue contact by withholding or providing their contact details through a voluntary tracing register.⁸⁶

The recently enacted Data Protection Act 2018 and EU General Data Protection Regulation are being interpreted in an *ad hoc* fashion by the various data State, Church and private data controllers that hold files relating to ‘historical’ institutional and adoption-related abuses. It appears that some of these data controllers have interpreted new data protection laws to mean that they should release even less information to survivors or anyone affected by adoption than they might have previously.

In January 2020, a coalition of 72 abuse survivors and individuals affected by adoption, along with academic and practising archivists, historians, psychologists, sociologists and lawyers, issued a **public statement calling for the establishment of an Annex to the National Archives of Ireland** to hold and make available historical institutional and care-related records.⁶⁹ This coalition’s statement calls for an independent archive that would provide at a minimum:

- Access to full personal files for institutional abuse survivors and those affected by adoption, including women whose children were unlawfully taken from them;

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- Access for family members of those who died while in custody or care to information about their relative’s fate and whereabouts;
 - An opportunity for survivors and others to deposit testimony and other information for public access now or in the future;

⁶⁸ Opinion on the application of the Irish Constitution and EU General Data Protection Regulation to the Adoption (Information and Tracing) Bill 2016 and the Government’s ‘Options for Consideration’ dated 5th November 2019, http://adoption.ie/wp-content/uploads/2019/11/OMahoney_Logue_ORourke-Opinion.pdf.⁸⁶ See Adoption Rights Alliance, General Election 2020, <http://adoption.ie/general-election-2020/>

⁶⁹ Justice for Magdalenes Research, ‘Survivors, academics and practitioners call on every election candidate and political party to commit to a National Archive of Historical Institutional and Care-Related Records’, 22 January, http://jfmresearch.com/retention-of-records-bill-2019/archive_election2020/

- Public access to the (appropriately anonymised) administrative records of the systems of institutionalisation and adoption in 20th century Ireland, whether currently held by private or State bodies; and
- The extra staffing, training and records management infrastructure (physical and digital) required at the National Archives or appointed body in order to achieve the above.

Recommended Questions:

- **How and when will the Irish State ensure that the personal data access rights of all people who suffered abuse through the adoption system and in institutions are respected?**
- **How and when will the Government ensure that records gathered by previous investigations into ‘historical’ abuse and otherwise held by State and private bodies are released to the maximum extent possible, ensuring that individuals affected have full access to their personal data and that the public has access to as much administrative information as possible, anonymised as necessary?**
- **When will the State repeal the ‘gagging’ clause in the Residential Institutions Redress Act 2002 and ensure that survivors’ freedom of expression is respected and protected?**
- **How and when will the Irish State invite survivors who wish to deposit their testimony for the national historical record and the education of younger generations to do so?**

5. Traveller Housing and Institutional Racism

The Traveller community is an Indigenous Ethnic Minority group in Ireland that continues to face severe discrimination in Irish society, including systemic institutional racism. Despite the fact that the community is now a recognised ethnic group, the State continues to fail to redress longstanding situations of inequality faced by the community, as raised in the Ireland’s 2014 Concluding Observations (para 23).⁷⁰ This is especially evident in the lack of appropriate housing options available to Travellers in Ireland for decades with no signs of improvement. In its 2020 Concluding Observations, the CERD Committee expressed concern at the current housing crisis

⁷⁰ United Nations Human Rights Committee, ‘Concluding Observations on the Fourth Periodic Report of Ireland’ UN Doc CCPR/C/IRL/CO/4 (19 August 2014), para 23.

impact on Travellers, and called for increased provision of Social Housing options for Travellers, and also to take measures against discrimination towards Travellers in the private rental market.⁷¹

A continued issue that perpetuates this negative cycle of a lack of available Traveller housing provision over the years is that Local Authorities (such as City and County Councils) each have a Government allocated budget for Traveller housing provision and services. However, some of these Councils have continually failed to draw down this budget⁷² to use for Traveller housing and services, and the annual budget is then returned unspent to the Government with no new options created for local Traveller housing and services. The ongoing discrimination and institutional racism have obvious knock on intergenerational negative impacts on all aspects of the rights of Travellers to Civil and Political Rights including on the right to adequate housing.

Child and adult Travellers with disabilities face additional challenges. Further attention is required in relation to the intersectionality of racism, gender and disability and how it impacts disabled Travellers, particularly in relation to accommodation discrimination.

Recommended Questions:

- **Will Ireland prioritise and allocate additional long term and sustainable funding to Traveller led organisations who are working to combat racism and discrimination towards Travellers in Ireland?**
- **By when will the government introduce specified financial sanctions on City and County Councils that do not draw down and use the annual Traveller accommodation budgets that are allocated from central Government?**

6. Undocumented Migrants' Access to Basic Services to Enjoy the Right to Life in Dignity

The exclusion of undocumented migrants from the bare minimum enjoyment of social assistance and health care in Ireland raises concerns in relation to the enjoyment of the right to life in dignity under article 6 ICCPR. For the purposes of this submission, irregular or undocumented migrants are people who do not have a regular migratory status in the country and are therefore deportable.⁷³ There are around 17,000 undocumented people in Ireland.

⁷¹ *Ibid* pg 6, Para 4, section 28(b).

⁷² For example see: www.thejournal.ie/ten-local-authorities-spent-nothing-on-traveller-accommodation-last-year-new-figures-show-4503701-Feb2019/ or see: <https://kilkennynow.ie/carlow-councillor-accuses-kilkenny-council-of-neglecting-travellers-housing-needs/>

⁷³ Ireland, Houses of the Oireachtas, Immigration Act 1999, No. 22/1999.

In this country of less than 5 million inhabitants and an advanced economy, access to social benefits and free-of-charge health care is based on an assessment of a series of eligibility criteria, including having the right to reside in the country and fulfilling a condition of ‘habitual’ or ‘ordinary’ residence, with wide margins of administrative discretion.⁷⁴ As the habitual or ordinary residence conditions are difficult to fulfil for migrants in irregular situation who avoid contacts with public authorities for fear of deportation, they can only receive emergency treatment in hospital (where they may be charged),⁷⁵ but are essentially prevented from accessing any social benefits, though some charitable initiatives offer them free healthcare and some social services.⁷⁶

For instance, applying to the highly discretionary emergency one-off payments targeting exceptional situations of destitution (‘urgent needs payment’ and ‘exceptional needs payment’) with the Department of Employment Affairs and Social Protection (DEASP) would expose people to potential data sharing between government departments (including immigration authorities). At the time of writing (during the Covid-19 Pandemic), the DEASP have made hardship payments accessible to irregular migrants, ensuring that data is not shared with immigration authorities.⁷⁷ However, to apply for these payments, it is necessary to have a PPS number (a public service numbered card): only people who already have this public services identifier can access these emergency social protection schemes.

The levels of health care that irregular migrants can access in Ireland – *emergency and pro bono medical care* – are very similar to those that the Human Rights Committee found not to be in consistency with the right to life with dignity (article 6 ICCPR), in *Toussaint v. Canada*.⁷⁸ Indeed, emergency care falls short in preventing foreseeable harm to people life and health.⁷⁹ Accordingly, State positive obligations under article 6 ICCPR would require Ireland to adopt any measure that

⁷⁴ Emma Quinn, Egle Gusciute, Alan Barrett, Corona Joyce, ‘Migrant Access to Social Security and Healthcare: Policies and Practice in Ireland’ (European Migration Network / Economic and Social Research Institute, July 2014). Available at: https://emn.ie/files/p_201407170618162014_Migrant%20Access%20to%20Social%20Security.pdf .

⁷⁵ European Network to Reduce Vulnerabilities in Health / Médecins du Monde, ‘2017 Legal Report – Access to Healthcare in 16 European Countries’ (ENRVH /Mdm, 2017). Available at: <https://mdmeuroblog.wordpress.com/resources/publications/>.

⁷⁶ Capuchin Day Centre: https://www.capuchindaycentre.ie/Capuchin_Day_Centre_2013/Capuchin_Day_Centre_Services.html; Safety-Net Ireland: <https://www.primarycaresafetynet.ie/services> .

⁷⁷ Migrant Rights Centre Ireland, ‘Rights of undocumented workers to access social welfare supports during COVID-19’ (MRCI News 22 April 2020). Available at: <https://www.mrci.ie/2020/04/22/rights-of-undocumentedworkers-to-access-social-welfare-supports-during-covid-19/> .

⁷⁸ United Nations Human Rights Committee, *Nell Toussaint v. Canada*, Views (CCPR/C/123/D/2348/2014, 7 august 2018).

⁷⁹ *Ibid*, § 11.4.

ensure all necessary health care to prevent ‘loss of life or [...] irreversible negative consequences for [...] health’, for everyone regardless of migratory status.⁸⁰ In particular, children’s health care

and access to sexual and reproductive health care,⁸¹ considering the particularly severe consequences of the lack thereof, should be made available regardless of migration status.

The health care-related findings of *Toussaint*, together with the authoritative arguments in General Comment no. 36, provide authority for holding that States have positive obligations to guarantee access to ‘essential goods and services such as food, water, shelter, health care [...] designed to promote and facilitate adequate general conditions’⁸² for protecting the right to life of everyone from irreparable harm, also via essential or emergency social assistance measures. This duty requires Ireland to avoid all types of discrimination while guaranteeing the right to life, including indirect discrimination based on the possession of certain public services identifiers (PPS number) which is a condition that irregular migrants would hardly meet.

Recommended Questions:

- **How and when will Ireland adopt measures (in law and policy) that guarantee essential goods and services to protect the right to life regardless of migration status?**
- **How and when will Ireland guarantee the right to health care of irregular migrants beyond emergency care, as an element of the scope of the right to prevent foreseeable risk to life (and health)?**
- **Will the state genuinely extend the personal scope of urgent and essential social protection mechanism to prevent irreparable harm to the life in dignity of irregular migrants?**

7. Denial of Leave to Enter the State

7,455 individuals were refused permission to enter Ireland at a port of entry in 2019,⁸³ increasing from a number of 4,776 in 2018.⁸⁴ Concern has been raised by civil society about the high numbers

⁸⁰ Ibid, § 11.8.

⁸¹ United Nations Human Rights Committee, *General Comment no. 36: Article 6: right to life* (CCPR/C/GC/36, 3 September 2019), § 8.

⁸² Ibid., § 26.

⁸³ Luke Butterly, ‘Number refused entry to State by immigration authorities increases’ *The Irish Times* (20 August 2020), <https://www.irishtimes.com/news/ireland/irish-news/number-refused-entry-to-state-by-immigrationauthorities-increases-1.4334342>

⁸⁴ Irish Naturalisation and Immigration Service, *Immigration in Ireland: Annual Review 2018*, <http://www.inis.gov.ie/en/INIS/Immigration-in-Ireland-Annual-Review-2018.pdf/Files/Immigration-in-IrelandAnnual-Review-2018.pdf>.

of refusals, and the level of discretion enjoyed by immigration officers in denying leave to enter. Permission to enter the state can be refused by an immigration officer under the grounds set out under section 4(3) of the Immigration Act 2004.

Concerns have been raised by civil society and lawyers concerning effective access to asylum and the right to seek international protection, following remarks by the Minister for Justice and the Taoiseach, concerning asylum applications from Georgia and Albania. The numbers of asylum applications from both countries fell significantly towards the end of 2019, with both jurisdictions categorised as safe countries of origin.

Concerns have further been raised about the routine, unregulated use of prison detention for the purpose of immigration detention, without guaranteed access to legal representation or a clear appeals route for those so detained.⁸⁵ Irish Prison Service figures show that 477 people were detained in 2019 for suspected immigration offences. By way of illustration, it was reported in in July 2020 that a Chilean engineer had been detained in solitary confinement for almost two weeks in Dublin’s women’s prison, without access to her telephone, after she landed in Dublin airport from Denmark during Covid restrictions and was refused permission to enter.⁸⁶ A lawyer contacted by her family in Chile brought habeas corpus proceedings in the High Court, which led to her release.¹⁰⁵

Recommended Questions:

- **What safeguards are in place at ports of entry to ensure that persons being denied leave to enter are not being placed at risk of *refoulement* including those arriving from jurisdictions categorised as safe countries of origin?**
- **Are quality interpretation services and legal assistance available at ports of entry?**
- **What steps are being taken to ensure that individualised assessment of asylum claims take place prior to return?**

⁸⁵ Ibid.

⁸⁶ SORCHA POLLAK, “‘Everyone keeps asking why I’m staying but I don’t want to strike out Ireland,’” says jailed student’ *The Irish Times* (18 July 2020), <https://www.irishtimes.com/news/social-affairs/everyone-keeps-askingwhy-i-m-staying-but-i-don-t-want-to-strike-out-ireland-says-jailed-student-1.4307129> ¹⁰⁵ RTE News, ‘Justice Minister to review Chilean student’s case’, 14 July 2020, <https://www.rte.ie/news/courts/2020/0714/1153254-estefany-carolina-alquinta-gonzalez-court/>

8. Human Trafficking

The UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment has noted that ‘whenever States fail to exercise due diligence to protect trafficking victims from the actions of private actors, punish perpetrators or provide remedies, they are acquiescent or complicit in torture or ill-treatment (A/HRC/26/18).’⁸⁷

In 2018, Ireland was downgraded to Tier 2 status in the US State Department Report on Trafficking in Persons. In 2019, the UN Committee on the Elimination of Racial Discrimination expressed concern at the absence of convictions for the crime of human trafficking and at the inadequate victim identification and referral mechanism, as well as the absence of statutory provision for victim assistance. In its recommendations (at para 42), the Committee called on the State to intensify its efforts to prevent and combat human trafficking and in particular to:

- (a) Fully enforce the Criminal Law (Human Trafficking) Act 2008 with a view to facilitating the reporting of human trafficking, bringing perpetrators to justice and punishing them with sanctions commensurate with the gravity of their crime;
- (b) Improve the victim identification process and referral mechanism; and
- (c) Enact legislation to provide victims of trafficking with rights to specialized assistance and legal protection regardless of their nationality or immigration status.

Recommended Question:

- **What steps are being taken by the State to ensure the full implementation of the CERD recommendations in relation to trafficking in persons, and the recommendations of the Council of Europe Group of Experts on Action against Trafficking in Persons – second country evaluation of Ireland (2017) – including rights to specialised services, ending accommodation of victims of trafficking in Direct Provision centres, early identification and protection?**

9. Hate Crime Legislation

The CERD Concluding Observations in January 2020⁸⁸ highlighted that Committee’s concern that the ‘Prohibition of the Incitement to Hatred Act’ (1989) has been ineffective combatting racist hate

⁸⁷ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (5 January 2016) UN Doc. A/HRC/31/57, para 41.

⁸⁸ UN CERD, ‘Concluding Observations on the Combined fifth to Ninth Reports of Ireland’ (23rd January 2020) UN Doc CERD/C/IRL/CO/5-9 para 19, section 36 (C). Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/IRL/CO/59&Lang=En

speech and online racist hate speech.⁸⁹ There is an urgent need for Hate Crime Legislation to be introduced in Ireland. The CERD Committee recommended in 2020 that Ireland “[s]trengthen its legislation on racist hate speech with a view to effectively combatting racist hate speech in all forms of expression and means of communication”.⁹⁰

Recommended Questions:

- **By when will new Hate Crime Legislation be introduced in Ireland to combat racist hate speech (in person and online)?**
- **Will Ireland actively involve Traveller representatives in all aspects of consultation about and the development of new Hate Crime legislation?**

10. Domestic, Sexual and Gender-based Violence

The Committee in its 2014 Concluding Observations recommended (at para 8) that the State:

‘should take further legislative as well as policy measures to ensure that all women, particularly women from vulnerable and marginalized groups, have equal access to protection against perpetrators of violence. It should also establish a systematic data collection system to inform current and future policies and priorities, and provide in its next periodic report, disaggregated statistics on complaints, prosecutions and sentences regarding violence against women’.⁹¹

Domestic and sexual and gender-based violence against women (GBVAW) remains a prevalent and serious issue in Ireland, which amounts to human rights violations, including *inter alia* of article 3, article 6 and article 23 of the ICCPR. The State has yet to take meaningful steps to address the issues presented in the Committee’s last evaluation.

Availability, Accessibility and Quality of Services for victims of domestic, sexual and genderbased violence

⁸⁹ *Ibid* pg 4, Para 7, section 19.

⁹⁰ *Ibid* pg 4, Para 18, section 20 (a) and pg 6, Para 3, section 28 (a, c).

⁹¹ United Nations Human Rights Committee, ‘Concluding Observations on the Fourth Periodic Report of Ireland’ UN Doc CCPR/C/IRL/CO/4 (19 August 2014), para 8.

Safe Ireland Domestic Violence Services National Statistics show that, in 2018, there were 3256 unmet requests for refuge because services were full or there was no refuge in the area. In 2018, the Women’s Aid National Freephone Helpline made a total of 244 calls to Refuges and on 126 occasions the refuges said they were full (52%).

The Sexual Assault Treatment Unit (SATU) at Dublin’s Rotunda Hospital was closed on a number of occasions in the first nine months of 2018 due to staffing difficulties. Sexual assault victims were redirected to other treatment units, adding to the trauma they had to endure. Moreover, the Annual Report of the Dublin Rape Crisis Centre (2018) notes that the 65% increase in demand for

its crisis services over the 2-year period 2016- 2018 meant that some people had to wait longer for appointments in 2018.

The rise of domestic, sexual and gender-based violence against women during Covid-19 restrictions is observed worldwide.⁹² In Ireland, An Garda Síochána has reported a 25% increase in domestic violence incidents since the outbreak of Covid-19. Regrettably, there is no CSO data regarding GBVAW during the pandemic despite the existence of a well-documented “Covid-19 information hub” that contains statistics on, *inter alia*, the pandemics’ employment and life effects, its social impact including on women and men. Regarding the State’s response to GBVAW, the pandemic has highlighted, as Safe Ireland has commented on the ‘fragility of the sector and the deep fault lines that have existed for decades in the State response for domestic violence’.⁹³

Recommended Question:

- **What steps are being taken to improve the provision of services in rural areas, and what budgetary resources are allocated for the expansion of services?**

Lack of emergency funding during Covid 19

Women’s organisations play a crucial role in survivors’ recovery, as they offer victim-centered, gender-sensitive services to survivors, which focus on their human rights and safety. Consequently, it is of utmost importance that NGOs providing services to survivors have adequate funding, able

⁹² Jessica Doyle, ‘L&RS Note: Domestic Violence and COVID-19 in Ireland’ Oireachtas Library and Research Service (9 June 2020) Available at: https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2020/2020-06-09_1-rsnote-domestic-violence-and-covid-19-in-ireland_en.pdf

⁹³ Safe Ireland, ‘Domestic violence services preparing for increase in need as the country opens’ (18 May 2020) <<https://www.safeireland.ie/domestic-violence-services-preparing-for-increase-in-need-as-the-country-opens/>> accessed 20 May 2020.

to sustain their long-term operations, and can access emergency funding for exceptional situations such as the Covid-19 pandemic.

The third sector's precarious funding state of affairs continue to be reported, and negatively impacts women's rights organisations' funding and long-term operations.⁹⁴ In its 2020 Programme for Government Submission, Safe Ireland identified 5 critical priorities with regards to domestic violence, including emergency funding seeking €1.6 million to adequately answer the needs of women survivors.⁹⁵ As per June 2020, only an extra €160,000 had been allocated to domestic violence organisations, which expressed their concern about the inadequacy of such funding to counter the pressures exercised on their resources.

Recommended Questions:

- **What steps is the State taking to ensure funding allocated to women's rights organisations is long-term and sustainable?**
- **Does the State plan to allocate €1.6 million to organisations providing services to survivors of GBVAW, as required to fund their operations during this urgent time?**

Unequal access to services, exacerbated during Covid-19

⁹⁴ Sorcha Pollock, 'Charities facing 'increasing precarious funding arrangements' *Irish Times* (Dublin, 22 Jan 2020) Available at: <<https://www.irishtimes.com/news/social-affairs/charities-facing-increasingly-precarious-fundingarrangements-1.4148280>>

United Nations Committee on the Elimination of Discrimination Against Women, 'Concluding observations on the combined sixth and seventh periodic reports of Ireland' (9 March 2017) UN CEDAW/C/IRL/CO/6-7

⁹⁵ Safe Ireland, 'Global Pandemic - National Epidemic. Working to End Domestic Abuse and Coercive Control. Safe Ireland 2020 Programme for Government Submission' (April 2020). Available here: <https://www.safeireland.ie/policy-publications/>

Overall, a concerning lack of attention to intersecting forms of GBVAW is to be noted in Ireland. The Second National Strategy on Domestic, Sexual and Gender-based Violence 2016 - 2021 mentions ‘women’ as a homogenous group, failing to address the specificities and diversity of experiences of victims including women who belong to minority groups. The Covid-19 pandemic has further exacerbated inequalities regarding the access to services for women survivors of GBVAW. Whilst the Irish National Emergency Response has taken into account the needs of some groups of women, such as survivors under 18 or people with disabilities, it has not accounted for other groups, such as migrant women living in precarious conditions, or those who have insecure immigration status.

Safe Ireland identified access to courts and support for survivors of domestic violence as one of the five priorities during Covid-19 restrictions. The government reacted promptly in giving priority to domestic violence applications seeking to obtain protection or interim barring order by

guaranteeing a remote access to Court. Parallely, and in collaboration with Women’s Aid, Operation Faoisimh has been implemented since April 2020, with Gardaí calling women who already reported domestic abuse incidents, including coercive control in the past and providing follow up calls as well as welfare checks within 7 days. Despite these promising government’s measures to prevent and respond to GBVAW, their lack of adequacy to the context of migrant women or asylum seekers living in direct provision must be stressed.

Overall, the #stillhere campaign left out women who may avoid contact with public authorities (for example, for fear of deportation). This increases existing concerns that women with insecure immigration status face barriers when accessing protection for gender-based violence.⁹⁶ Whilst the Department of Employment and Social affairs put in place a ‘firewall’ with the Department of Justice and pledged not to share data of ‘undocumented people seeking healthcare or social welfare support’, no such reassurance was given to survivors in seeking protection from police or the courts. Thus, the #stillhere campaign provided no alternatives to ‘mainstream’ routes to safety, leaving some migrant survivors in uncertain and increased vulnerability to harm. Similarly, the campaign provided no information on how international protection applicants living in Direct Provision could access protection from GBVAW in the pandemic context, including the possibility of obtaining alternative accommodation. Furthermore, the campaign focused too narrowly on domestic violence and sexual violence, practically disregarding survivors of other forms of GBVAW.

Despite the generally alarming lack of coverage and data collection regarding GBVAW in Direct Provision, a case of sexual violence was reported to have happened in a Direct Provision centre

⁹⁶ ICHR, ‘Shadow report submitted in response to Ireland's Joint 5th to 9th Periodic Report to the United Nations Committee on the Elimination of All Forms of Racial Discrimination’ (November 2019) Available at: <https://aran.library.nuigalway.ie/handle/10379/15838>.

during lockdown. The survivor was not given privacy to recover, being moved into an alternative emergency accommodation centre, and was forced to share a room, triggering further trauma. She was not provided access to judicial services and, three months later as per early July, the woman had not heard from the Department of Justice.⁹⁷

⁹⁷ Sorcha Pollak, 'Garda investigate allegation of rape in direct provision centre' *Irish Times* (Dublin, 10 July 2020) Available at: <https://www.irishtimes.com/news/ireland/irish-news/garda%C3%AD-investigate-allegation-of-rape-indirect-provision-centre-1.4300353>

Recommended Questions:

- **Will the Irish Government design a National Emergency Response for GBVAW that considers the needs of all women, and that accounts for GBVAW beyond domestic violence and sexual violence?**
- **What steps are being taken to ensure that all appropriate medical and legal services, counselling and safe accommodation, including quality interpretation services, are available and accessible to refugee and asylum seeking women, migrant women and women from minority communities?**
- **What steps are being taken by the Irish Government to implement the recommendations of the UN CERD Committee in relation to migrant women who are victims of domestic, sexual and gender-based violence and female genital mutilation, specifically to:**
 - (a) **guarantee a legal stay regardless their residence status until they recover and have the option to remain in the country if they so wish;**
 - (b) **Provide victims with necessary assistance and services, including shelters, and access to justice; and**
 - (d) **Provide training police officers and immigration officers to be well equipped to deal with intersectional nature of domestic violence and sexual and gender based violence experienced by migrant women.**

Data Gathering

The data currently being recorded and published by the Central Statistics Office (CSO) in relation to GBVAW is marked Under Reservation, indicating that the CSO has found quality concerns in relation to it. The data published on the CSO website is extracted from An Garda Síochána's (Ireland's Police Force) database PULSE, with concern expressed that it does not meet the CSO's standards for completeness and accuracy. As the PULSE system remains the only source of recorded crime data, "the long-term absence of timely, impartial and transparently produced Recorded Crime statistics creates a vacuum for policy decision makers and for all interested citizens".

In a 2019 Report, *Women, Domestic Abuse and the Irish Criminal Justice System* published by Women's Aid, highlighted the absence of data on how many victims of crime had offences committed against them in a domestic violence context.⁹⁸ It was noted that the absence of such

disaggregated data on prosecutions of crimes occurring in a domestic violence context or the outcomes or sentences imposed in such cases, prevents analysis of how the criminal justice system responds to domestic violence offenders.

⁹⁸ Women's Aid and Monica Mazzone, 'Unheard and Uncounted. Women, Domestic Abuse and the Irish Criminal Justice System' (2019). Available at: <https://www.womensaid.ie/assets/files/pdf/unheard_and_uncounted_women_domestic_abuse_and_the_irish_criminal_justice_system_full_report.pdf>

The CSO's new study on sexual violence, announced in 2018, is expected to take up to five years to complete, and will not be published before 2022. Concern has been expressed that the study may not include disaggregated data on minority communities or hard to reach groups. Despite the existence of a National Action Plan, the Second National Strategy on Domestic, and Gender-Based Violence 2016-2021, the mid-term review which had to take place in 2019 was not published, highlighting the need to conduct and publish further research on the effects of the practical implementation of actions and policies.

Recommended Questions:

- **Will the Irish Government undertake research into the prevalence of sexual violence in minority and hard-to-reach groups e.g. LGBTIQ, Travellers & Roma, children and migrant and refugee communities?**
- **What steps are being taken prior to completion of the CSO study (2022-23) to improve the collection and disaggregation of data relating to domestic, sexual and gender-based violence in Ireland?**
- **What steps are being taken to collect and analyse data on police responses to complaints of domestic, sexual and gender-based violence and timeliness of responses?**

Change of competencies

The Irish Government is considering a potential change of competencies regarding GBVAW from the Department of Justice to the Department of Children, Disability, Equality and Integration.⁹⁹ First, this highlights the inadequacy of the current state of affairs, and suggests a worrying lack of capacity in the Department of Justice. Second, national women's rights NGOs, such as National Women's Council of Ireland and Women's Aid have expressed their concern regarding a transfer of competencies concerned that this will remove the phenomenon of its criminal justice dimension, thereby "downgrading" it. Third, although the Department of Children affirms that it falls under

its mandate as department of equality, a shift of competencies can appear to situate women's right to be free from GBV within a discourse of disempowerment and vulnerability, assimilating women to children. Thus, attributing the issue of GBVAW to the department of Children, Disability,

⁹⁹ Kitty Holland, 'Moving domestic violence brief from Justice a 'downgrade'' *Irish Times* (Dublin, 25 Jul 2020). Available at: <https://www.irishtimes.com/news/social-affairs/moving-domestic-violence-brief-from-justice-downgrade-1.4312961>

Equality and Integration might contribute to a shift in the public policy narrative, affecting the way Irish society perceives GBVAW and thus, negatively impacting the government's response.

Recommended Question:

- **How will the risks and implications of a change of competencies regarding GBVAW from the Department of Justice to the Department of Children, Disability, Equality be assessed?**

11. Discrimination against Persons with Disabilities

Lack of Community Housing for Young People and Adults with Disabilities Placed in Nursing Homes

The Disability Federation of Ireland (DFI) has stated that in 2018 there were approximately 1,500 people aged between 18-64 years with disabilities who are placed to live in nursing home facilities.¹⁰⁰ A July 2020 news story described the experience of Julia Thuman, a woman who had lived in a nursing home for the previous 12 years. She sustained an acquired disability from an illness at the age 33, and was finally enabled to live in an appropriate house independently in the community in July 2020.¹⁰¹ According to the DFI disabled people like Julia are not able to live their lives in a way they choose independently because supports are 'underdeveloped, unplanned and often not sufficient to meet their needs'.¹²¹ The needs of the 1500 people with disabilities aged 18-64 currently inappropriately housed in nursing homes need to be placed on the top of the agenda for government action in the context of the recent 2018 Irish ratification of the CRPD.

¹⁰⁰ Maria Pierce, Sophia Kilcullen, Mel Duffy, 'The situation of younger people with disabilities living in nursing homes in Ireland: Phase 1.' (Disability Federation of Ireland, Dublin City University, 2018) pg. 11.

Access at: https://www.disability-federation.ie/assets/files/pdf/dfi_rr_2018_web.pdf

¹⁰¹ Ailbhe Conneely, 'Woman who spent 12 years in nursing home get keys for new home.' *RTE News* (1st July 2020)

To access video see: https://www.youtube.com/watch?v=et_AtImbw7c&list=UU8urSFTmQDxaPDEIZ2Fd63Q¹²¹

Maria Pierce, Sophia Kilcullen, Mel Duffy, 'The situation of younger people with disabilities living in nursing homes in Ireland: Phase 1.' (Disability Federation of Ireland, Dublin City University, 2018) pg. 11.

Access at: https://www.disability-federation.ie/assets/files/pdf/dfi_rr_2018_web.pdf

Recommended Questions:

- **By when will the government undertake a countywide disability needs assessment of the inappropriate care placements of young people and adults in nursing home facilities so as to strategically be able to deliver appropriate community housing and care supports to these people as a very time-sensitive matter of urgency?**
- **By when will the initial Irish State Report to the CRPD Committee be submitted?**

Need for Sustainable Funding for Disabled Organisations and Disabled Persons Organisations

Ireland ratified the CRPD in 2018 and will therefore be required to submit its initial State report to the CRPD Committee in 2020. A key premise of the CRPD is that Disabled Organisations (DOs) and especially Disabled People's Organisations (DPOs) are adequately funded and involved in CRPD national monitoring activities. Through a human rights and social model lens of disability, members of DPOs are equal and active participants in Civil and Political Rights and disability advocacy both individually and as collectives. In recent years, there has been increased concern about the situation of unsustainable funding to DOs and DPOs.¹⁰² An example of a DPO that has experienced such financial precarity¹⁰³ in 2019 is the *National Platform of Self Advocates* which is the only organisation of its kind in Ireland. This is an independent DPO that is 'run by people for intellectual disabilities for people with intellectual disabilities'.¹⁰⁴

It is imperative that sustainable funding streams are specifically allocated for DPOs. Furthermore, the social capital of DPO disability activism needs to be nurtured and actively valued, especially in relation to Ireland's ratification of the CRPD and subsequent shadow reporting that will require active and robust inclusion of both DOs and DPOs.

¹⁰² Martin Wall, 'HSE says provision of disability services by voluntary bodies not sustainable' Irish Times (3rd August 2020).

Access at: <https://www.irishtimes.com/news/health/hse-says-provision-of-disability-services-by-voluntary-bodies-not-sustainable-1.4320197>

¹⁰³ Ronan Mullen, 'Press release: Mullen secures funding commitment for National Platform for Self-Advocates' (2019). Access at: <https://www.ronanmullen.ie/3-12-19-news-release-mullen-secures-fundingcommitment-for-national-platform-for-self-advocates/>

¹⁰⁴ The National Platform for Self-Advocates, 'Who we are?' (2020).

Access at: <http://thenationalplatform.ie/who-we-are/>

Recommended Question:

- **By when will the government undertake a stakeholder needs analysis of all Disabled Person Organisations and Disability Organisations, and set out a sustainable targeted approach to their funding?**

12. Business and Human Rights

The ICHR wishes to raise its concerns with the Committee regarding compliance by Ireland with its obligations under the ICCPR with respect to the activities of Irish business enterprises. The following examples of domestic and overseas Irish business operations and relationships illustrate how the private sector in Ireland may contribute to violations of human rights protected under the Covenant:

- Private companies are responsible for the delivery of the **direct provision system** of accommodation for asylum seekers in Ireland.¹⁰⁵ Direct provision, as previously noted, is not conducive to family life,¹⁰⁶ and gives rise to serious risks to mental health and racial discrimination.¹⁰⁷
- In light of the Committee’s previous observations regarding the activities of transnational corporations **outside of the territory** of a State party,¹⁰⁸ the Centre submits the following illustrative examples in resource extraction, construction and digital tourism:
 - Prominent Irish companies have been implicated in the **mining activities** at Cerrejón mine in Colombia, which have had a negative impact on the rights of indigenous peoples and involve ongoing harmful impacts on the environment, both locally and globally. Civil society have identified how the majority of coal burned by the Irish State-owned company ESB at its

¹⁰⁵ See for example Gordon Deegan, ‘Payments to private Direct Provision firms rise to €72m after 18% increase in asylum seekers’, *The Journal* (22 March 2019) available at: <https://www.thejournal.ie/direct-provision-centre-e72million-4556693-Mar2019/>.

¹⁰⁶ United Nations Human Rights Committee, ‘Concluding Observations on the fourth periodic report of Ireland’ (19 August 2014) UN Doc CCPR/C/IRL/CO/4, paragraph 19.

¹⁰⁷ Committee on the Elimination of Racial Discrimination, ‘Concluding Observations’ (04 April 2011) UN Doc CERD/C/IRL/CO/3-4, para. 20; Committee on the Elimination of Racial Discrimination, ‘Concluding Observations on the combined fifth to ninth reports of Ireland’ (12 December 2019) UN Doc CERD/C/IRL/CO/5-9 paragraphs 37-38.

¹⁰⁸ See for example *Basem Ahmad Issa Yassin et. al. v. Canada*, Human Rights Committee, 7 December 2017, paragraphs 6.4.

Moneypoint power plant in Ireland is imported from the Cerrejón mine, while a Dublin-based company, CMC Coal Marketing, is the exclusive marketer of all coal extracted from this controversial mine.¹⁰⁹

- Irish construction companies have been active in the construction of facilities and infrastructure for World Cup 2022 in Qatar, which has involved the widespread **ill-treatment of migrant workers** and instances of **forced labour**.¹¹⁰ The Irish government has not taken any steps to ensure that Irish companies are not complicit in such abuses or to ensure remedies are provided to victims.
- Airbnb, which conducts much of its global business through a Dublin-based company, Airbnb Ireland, has been found to conduct its business activities of **property rentals** in the unlawful Israeli settlements in occupied Palestinian territory.¹¹¹ These settlements, as observed by the Committee, negatively impact “a wide range of their Covenant rights, including the right to self-determination (arts. 1, 2, 9, 12, 17, 18 and 26)”.¹¹²

The ICHR is concerned that the Irish Government has failed to take sufficient steps to ensure that business enterprises that operate or are domiciled in Ireland meet their responsibility to respect human rights, including under the ICCPR. The ICHR notes the observations by the Committee in General Comment 36 on the obligations of States parties towards corporate entities based in their territory or subject to their jurisdiction.

Although the Irish Government adopted a *National Plan on Business and Human Rights 2017/2020* for the purpose of implementing the UN Guiding Principles on Business and Human Rights, progress has been extremely slow to date, such that almost three years since the adoption of the national plan no guidance has yet been provided to business enterprises in this context. Moreover, the approach adopted by the Irish Government is one which favours encouraging companies to respect human rights, rather than developing legal obligations for companies to respect human rights, particularly in the context of overseas activities. While a number of countries are moving towards mandatory human rights due diligence for large or state-owned companies, Ireland has not made any commitment in this direction.

¹⁰⁹ Sorcha Pollak, ‘Coal ‘stained with Colombia blood’ is bought and sold in Dublin’, *Irish Times* (11 May 2019).

¹¹⁰ See ‘Irish company help Qatar to World Cup’, *RTE* (3 December 2010) available at:

https://www.rte.ie/sport/soccer/2010/1203/273825-qatar_2022/. See also Amnesty International, *Unpaid and Abandoned: the abuse of Mercury MENA workers*, 26 September 2018.

¹¹¹ Amnesty International, *Destination: Occupation*, 30 January 2019.

¹¹² United Nations Human Rights Committee, ‘Concluding observations on the fourth periodic report of Israel’ (21 November 2014) UN Doc CCPR/C/ISR/CO/4 paragraph 17.

Recommended Questions:

- **How does Ireland intend to take the necessary measures, including potential legislative measures, to ensure that Irish business enterprises are aware and abide by their responsibility to respect human rights?**
- **How will Ireland ensure the availability of remedies for victims of business activities which harm human rights, including by companies domiciled in Ireland but operating or engaging in business activities abroad?**

APPENDIX

Colette Kelleher, Kieran Walsh, Desmond O'Neill, Eilionóir Flynn, Sarah Donnelly and Maeve O'Rourke, 'Submission to Oireachtas Special Committee on Covid-19 Response: Nursing Homes and Other Institutional Care Settings: A Framework for Examining the State's Response to the Covid-19 Pandemic' (27 May 2020)

Oireachtas Special Committee on Covid-19 Response c/o
Ted McEnery, Clerk to the Committee
Leinster House
Kildare Street
Dublin 2

By email to covid19@oireachtas.ie

27 May 2020

RE: NURSING HOMES AND OTHER INSTITUTIONAL CARE SETTINGS: A FRAMEWORK FOR EXAMINING THE STATE'S RESPONSE TO THE COVID-19 PANDEMIC

Dear Committee members,

We write to propose a human rights-based framework for your examination of the State's response to the COVID-19 pandemic as it has concerned and continues to concern people in nursing homes and other institutional (or, 'congregated') care settings. Please see Appendix 1 for a suggested List of Questions to guide your inquiries.

We believe that a human rights-based approach, adequately informed by the knowledge base of gerontology and disability studies,¹¹³ to your inquiries is necessary and appropriate because:

- 1) It focuses intently on the lived experiences of those in need of state protection in order to understand the quality and impact of the State's actions or inaction. In so doing, this approach gives dignity and voice to people who have experienced harm – most importantly people living in institutional settings themselves, and also their family members and carers;
- 2) It requires wide-ranging consideration and appraisal of the structures (and structural gaps) that have contributed to these lived experiences. Most importantly, it focuses on the measures that the State could and/or should have in place to ensure that individuals' rights are protected and realised. It allows for recognition of best practice in addition to failings;
- 3) Through its situation of lived experience within its structural context, it encourages the identification of structural changes that would guarantee non-repetition of rights violations in the future; and

¹¹³ Doron I, Cox C, Spanier B. Comparing Older Persons' Human Rights: Exploratory Study of the International Older Persons' Human Rights Index (IOPHRI). *Gerontologist*. 2019;59(4):625-634. doi:10.1093/geront/gny080

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- 4) at a time when people's vulnerabilities (both embodied and situational) are exacerbated, it is all the more important that the State's constitutional and human rights law obligations are acknowledged and implemented.

We propose a **6-pillared framework for questioning** based on what we observe to be the most relevant State obligations under Irish Constitutional, European human rights and international human rights law in light of existing research on Ireland's institutional care system and recent coverage of the State's Covid-19 response. These State obligations are:

- to ensure dignity by preventing discrimination;¹¹⁴
- to protect and vindicate the right to life, including taking practical steps to prevent loss of life in specific situations where the State knows or ought to know that there is a real risk of death, and conducting effective investigations into deaths that occur in institutional settings;³
- to protect the right to exercise legal capacity;¹¹⁵
- to prevent and protect against inhuman or degrading treatment, including specific positive obligations to ensure respect for human dignity in places of *de facto* detention and in contexts of heightened vulnerability;¹¹⁶
- to protect the right to bodily integrity;¹¹⁷
- to protect the right to respect for private and family life;¹¹⁸
- to protect the right to liberty and freedom from arbitrary detention;¹¹⁹

¹¹⁴ Article 40.1 Constitution of Ireland (See *Quinn's Supermarket v. Attorney General* [1972] IR 1 p13); Article 14 ECHR; Article 5 CEDAW; Article 2 ICESCR; Articles 3, 5 CRPD. See also Article 11 CRPD: 'States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.' ³ Article 40.3.2 Constitution of Ireland (See for example *Devoy v Governor of Portlaoise Prison* [2009] IEHC 288);

Article 2 ECHR (See for example *Oneryildiz v Turkey* 2004-XII, 41 EHRR 325; *Osman v United Kingdom* 1998-VIII, 29 EHRR 245; *Opuz v Turkey* Hudoc (2009), 50 EHRR 695; *Calvelli and Cigliò v Italy* App No 32967/96); Article 10 CRPD.

¹¹⁵ Article 12 CRPD.

¹¹⁶ Article 40.3 Constitution of Ireland (See *Ryan v Attorney General* [1965] I.R. 345; *The State (C) v Frawley* [1976] IR 365; Hogan & White, *JM Kelly: The Irish Constitution* (4th ed., Tottel Publishing, 2003), para 7.3.76); Article 3 ECHR; Articles 15, 16 CRPD.

¹¹⁷ Article 40.3 Constitution of Ireland. Article 17 CRPD.

¹¹⁸ *McGee v Attorney General* [1974] IR 284; *Kennedy v Ireland* [1987] IR 587; Article 8 ECHR; Articles 19, 22, 23 CRPD

¹¹⁹ Article 40.4.1 Constitution of Ireland; Article 5 ECHR; Article 14 CRPD.

- under international human rights law, to protect the right of persons with disabilities to live independently and to be included in the community,¹²⁰ and to protect the right to the enjoyment of the highest attainable standard of health without discrimination.¹²¹

You will see at Appendix 1 that we suggest lines of inquiry that consider both (1) the lived experience of the State's response, and (2) the structural factors that have impacted the State's response under the following six headings:

1. **Social inclusion** (linked to the rights and equality and non-discrimination, respect for human dignity, and societal participation)
2. **Accountability mechanisms** (linked to all rights)
3. **Autonomy and choice** (linked to the rights to liberty, recognition of legal capacity, independence and inclusion in the community, non-discrimination, dignity, respect for private and family life)
4. **Standard of care** (linked to the rights to respect for private and family life, freedom from inhuman and degrading treatment, bodily integrity, life, health)
5. **Family and community life** (linked to the rights to equality and non-discrimination, dignity, respect for private and family life, societal participation)
6. **End of life** (linked to the rights to life, dignity, bodily integrity, respect for private and family life, respect for legal capacity)

We have suggested some issues at Appendix 1 that we can already see falling under the areas suggested for questioning (partly on the basis of the Bibliography at Appendix 3). We hope that others will emerge through taking this approach.

These questions should be asked of people in all categories of experience (including those with best practice to share), with a view to ensuring that the Committee's work itself engages in a human rights-based approach of inclusion, non-discrimination and respect for dignity (equal worth). Evidence should be taken directly from people living in institutions, as well as from family members, staff, policy-makers and representative bodies. We include as Appendix 2 a list of categories of witness and some suggestions as to who might be called in particular.

We wish you the best with your work and are available to you at any time.

¹²⁰ Article 19 CRPD.

¹²¹ Article 25 CRPD; Article 12 ICESCR.

Yours sincerely,

Colette Kelleher, Former Senator and Former CEO, Alzheimer Society of Ireland

Prof Kieran Walsh, Professor of Ageing & Public Policy; Director, Irish Centre for Social Gerontology, National University of Ireland Galway

Prof Desmond O'Neill MA MD FRCPI AGSF FRCP(Glasg) FGSA FRCP FRCPEdin¹²²

Prof Eilionóir Flynn, Established Professor, School of Law and Centre for Disability Law and Policy, National University of Ireland Galway

Dr Sarah Donnelly, Assistant Professor of Social Work, School of Social Policy, Social Work & Social Justice, University College Dublin

Dr Maeve O'Rourke, Lecturer in Human Rights, Irish Centre for Human Rights, National University of Ireland Galway

¹²² Consultant Physician in Geriatric Medicine, Tallaght University Hospital; Professor in Medical Gerontology, Trinity College Dublin.; Senior Academic in Medical Gerontology, Tallaght University Hospital; Co-PI, Irish National Audits of

Stroke and Dementia Care; Co-Chair, Special Interest Group on Long-Term Care, European Geriatric Medicine Society; **Previously:** Chair, Government Working Group on Elder Abuse; President, Irish Gerontological Society and European Union Geriatric Medicine Society; Chair, Policy Group on Ageing, RCPI; Investigator, Leas Cross Report.

APPENDIX 1: QUESTIONS FOR COMMITTEE TO ASK & LINES OF INQUIRY

I. SOCIAL INCLUSION

What has been the lived experience during the Covid-19 pandemic?

- What has been the tone and content of public discussion, including media coverage?
- (How) have people affected been involved in discussion?
- What methods of communication have been employed to involve those affected?

- (How) have the lives of people in institutional care settings been recognised, both relating to and beyond the impact of COVID-19 been considered?
- (In what ways) have older people, people with disabilities and people with experience of mental health services experienced stigmatising / homogenising / paternalistic / devaluing / discriminatory discourse and decision-making?

What are the existing structures?

- How do the structures of the older adult health and social care sector (particularly the provision and quality of institutional care, and the provision and quality of home care, and the balance between the two) mediate exclusion and inclusion outcomes for older people, people with disabilities and people with experience of mental health services?
- Has institutional care been separated from the norms of healthcare provision available to those living in the community?
- (How) does institutional care in Ireland relate to social exclusion?
- To what extent has the representation of older people in official government policy and government-instigated forums such as the Citizen's Assembly¹²³ contributed to the homogenisation or problematisation of ageing and older people?
- What recommendations have been made regarding the structural changes required to ensure equality, dignity, and social inclusion of people with disabilities, older people and people with experience of mental health services through approaches to care in Ireland?

II. ACCOUNTABILITY MECHANISMS

(1) Policy / response formulation

What has been the lived experience during the Covid-19 pandemic?

- What decisions were made by NPHET & Government, and when, relating to people living in institutional care settings and what were the consequences of these decisions?
- How were people living in institutional care settings considered and heard from in the planning process? (How) is this happening now?

-
- Is it possible that ageism, ableism or other unconscious biases were factors in decisionmaking?
 - To what extent was there cross-sector collaboration and at what point (including with practitioners' representative organisations) regarding the required response?

What are the existing structures?

¹²³ O'Neill D. Careless talk costs lives – mind your language on ageing. Irish Times, 20 June 2017. <https://www.irishtimes.com/life-and-style/health-family/careless-talk-costs-lives-mind-your-language-on-ageing1.3116630>

- What is known, and what recommendations have been made, regarding ageism / ableism / exclusion/lack of participation in policy-making and decision-making for people living in institutional care settings in Ireland?
- What progress has been made in teasing out and responding to the challenges of advocacy for those with significant degrees of cognitive impairment? ¹²⁴
- Are there recommendations in the Citizens' Assembly Report on ageing which those with lived experience, and in practice and research wish to see implemented?

(2) Regulation and monitoring of sector

What has been the lived experience during the Covid-19 pandemic?

- What has been the role of HIQA regarding the Covid-19 response in institutional care settings, including from the perspective of people receiving care, family members and carers?

What are the existing structures?

- What relationship does the mix and balance of residential long-term care provision across private, public and voluntary sectors have with accountability and quality of care, including from the perspective of people receiving care, family members, and carers?
- What is known about the regulation and monitoring of care provision in the institutional care sector in Ireland and what, if any, recommendations have been made regarding its reform?
- What is the relevance to accountability through regulation and monitoring of legislative gaps such as (and not limited to): the non-ratification of the Optional Protocol to the Convention Against Torture and corresponding lack of a National Preventive Mechanism in Ireland; the lack of deprivation of liberty / protection of liberty safeguards; the noncommencement of the Assisted Decision-Making (Capacity) Act in full; the lack of adult safeguarding legislation; and the lack of statutory rights to advocacy?

(3) Adult safeguarding

What has been the lived experience during the Covid-19 pandemic?

- What have been the experiences of people receiving care, family members, carers, advocates and others regarding safeguarding during the Covid-19 pandemic?

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- What considerations were given to the need to safeguard people living in institutional care settings beyond the immediate health protections stemming from Covid10 pandemic?

What are the existing structures?

¹²⁴ Dixon J, Laing J, Valentine C. A human rights approach to advocacy for people with dementia: A review of current provision in England and Wales. *Dementia (London)*. 2020;19(2):221-236. doi:10.1177/1471301218770478

- What structural gaps exist and what recommendations for reform have been made regarding adult safeguarding in Ireland?
- What is the progress of the Adult Safeguarding Bill?
- What is the ability of HSE Safeguarding and Protection Teams to carry out safeguarding inquiries if a private care home provider refuses to cooperate/refuses entry?

(4) Advocacy and complaints¹²⁵

What has been the lived experience during the Covid-19 pandemic?

- What have been the experiences of people receiving care, family members, carers, advocates and others regarding safeguarding during the Covid-19 pandemic?
- What have been the experiences of people living in institutional care settings in accessing advocacy services during the Covid-19 pandemic?

What are the existing structures?

- What structural gaps exist and what recommendations for reform have been made regarding the right to independent advocacy in institutional care settings in Ireland?
- When will the Assisted Decision-Making (Capacity) Act be instrumentalised in a manner compatible with human rights and the current disability and gerontology knowledge base, and then fully commenced and how will effective access to independent advocacy services to support the Act's implementation be ensured for every person in institutional care?

(5) Access to information

What has been the lived experience during the Covid-19 pandemic?

- (How) have disaggregated data on the experiences of people in various institutional care settings been gathered and published?
- What have been the experiences of people receiving care, family members, carers and others regarding access to and provision of information?

What are the existing structures?

III. AUTONOMY & CHOICE

What has been the lived experience during the Covid-19 pandemic?

¹²⁵ Dixon J, Laing J, Valentine C. A human rights approach to advocacy for people with dementia: A review of current provision in England and Wales. *Dementia (London)*. 2020;19(2):221-236. doi:10.1177/1471301218770478

- How have decisions regarding Covid-19-related care been made?
- (How) have people with disabilities, people with experience of mental health services and older people been involved in decision-making regarding their own healthcare, including their place of residence and their end-of-life care?
- What role have Advance Care Planning and Advance Healthcare Directives and Do Not Attempt Resuscitation Orders played during the pandemic (including statistics and policies on their use)¹²⁶?
- To what extent have wardship applications, involuntary detention under the Mental Health Act and detention under the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 been used during the Covid-19 pandemic to restrict the liberty of older people, people with disabilities, and people with experience of mental health services?

What are the existing structures?

- What structural problems and recommendations for reform have been identified regarding older persons' and disabled persons' control over their healthcare in Ireland?
- What structural problems and recommendations for reform have been identified regarding reliance on institutional care, clarity on entitlement and investment in community-based care, and policy coherence and legislative bases for care (including choice of care) in Ireland?

IV. STANDARD OF CARE

(1) Prevention of infection

What has been the lived experience during the Covid-19 pandemic?

- Regarding testing, contact tracing and social distancing?
- Regarding access to personal protective equipment (PPE) and other workplace health and safety precautions?
- Regarding the provision of information to people receiving care, family members and carers?
- Regarding care management?
- Regarding staffing levels?
- Regarding integration of primary, secondary and public health care?

What are the existing structures?

(2) Care of Covid-19 patients and others in institutional care settings

What has been the lived experience during the Covid-19 pandemic?

¹²⁶ O'Neill D. Towards realistic and flexible advance care planning. *Ir Med J.* 2013;106(10):293-294.

- (How) has human dignity been protected, in relation to all aspects of care?
- What policies / practices were in place, including in relation to hospitalisation and the involvement of different levels of clinicians?
- (How) was equality and non-discrimination in clinical decision-making ensured?
- (How) have non-Covid-19-related health needs been met?
- What have been the conditions of work?
- How universal is training in gerontology, disability studies and dementia care?

What are the existing structures?

V. FAMILY AND COMMUNITY LIFE

What has been the lived experience during the Covid-19 pandemic?

- (How) have community links been recognised and impacted for people living in institutional care settings?
- What efforts were made to maintain contact and a right to a family life for family members of people living in institutional settings during Covid19 pandemic?
- To what extent has Covid-19 hampered the Government's implementation of the transition from congregated settings to community for people with disabilities?
- What psychosocial supports were offered and provided to people living in institutional settings and their family members during the Covid-19 pandemic?
- To what degree have there been spillover effects on carers?

What are the existing structures?

- Are people forced to live in institutions away from their family members? What guarantees of person-centred care and personal support options exist? What is the entitlement and access to Personal Assistance across the lifespan?

VI. END OF LIFE

What has been the lived experience during the Covid-19 pandemic?

- What policies / practices were in place in relation to end of life and palliative care?
- What efforts were made to facilitate end of life care conversations between people living in institutional settings and their family members/loved ones?
- What psychosocial, end of life, and bereavement support were offered and provided?
- Were bereaved families offered the opportunity to have a review of care meeting with the clinicians and relevant care staff who cared for their loved one at the end of life?
- How were funeral arrangements arranged and negotiated?

What are the existing structures?

- Regarding palliative care?
- Regarding the Coroner's involvement and procedures?

- Regarding case reviews?

APPENDIX 2: INDICATIVE LIST OF WITNESSES

People with direct experience of institutionalisation

National Platform of Self Advocates
Recovery Experts by Experience
Irish Dementia Working Group
Ár Guth Ár gCearta
Disability Federation of Ireland Group of young people living in Nursing Homes Aslam
Independent Living Movement in Ireland (Shelley Gaynor, James Cawley)

Families and other advocacy organisations

Inclusion Ireland
National Advocacy Service
SAGE
Irish Advocacy Network
Alzheimer Society of Ireland
Age Action
Mental Health Reform
LEAP
Inclusion Ireland
Third Age, Áine Brady
Family Carers Ireland
Dementia Carers Network
Nora Owen

Clinical practice

Prof Des O'Neill, TCD
Prof Rose Anne Kenny, TCD
Deirdre Lang, Director of Nursing / National Lead, Older Persons' Services, HSE
Georgina Bassett, Access Officer, South East Primary, Community & Continuing Care, HSE
Rachel Simmons, Acting Director HSE CHO 9; Director of Nursing, Lusk Community Unit for Older Persons
Irish Association of Directors of Nurses and Midwifery
Irish College of General Practitioners
Dr Cathal Morgan, HSE (disability)
Prof Diarmuid O'Shea, Consultant in Geriatric Medicine, St Vincent's University Hospital; former Clinical Lead, National Clinical Programme for Older People (until May 2019)
Dr Brendan O'Shea, Family Doctor and Adjunct Professor, Trinity College Dublin (end of life planning, health system design)
Prof Kate Irving, DCU (clinical nursing, person-centred dementia care)

Care practice cont'd

SIPTU / Care workers
Irish Association of Social Workers
Nursing Homes Ireland

Irish Hospice Foundation
All-Ireland Institute of Hospice and Palliative Care

Regulatory

Pheilm Quinn, HIQA
John Farrelly, Mental Health Commission
Peter Tyndall, Ombudsman
Irish Human Rights and Equality Commission

Policy-making

NPHE
Michael Fitzgerald, HSE (older people) (Fair Deal and National Dementia Strategy)
Dr Kathleen McLellan, Department of Health (social care infrastructure)
National Disability Authority
Dr Michael Kendrick (consultant on community living)
Irish Human Rights and Equality Commission
Judge Mary Laffoy
Safeguarding Ireland
Aine Fynn, Decision Support Service

Research / academia

Prof Suzanne Cahill, Trinity College Dublin (social work and social policy)
Prof Eilionóir Flynn, NUI Galway (disability law and policy)
Prof Gerard Quinn, University of Leeds / University of Lund (disability law and policy)
Prof Kieran Walsh, NUI Galway (social gerontology)
Dr Joan McCarthy, UCC (healthcare ethics)
Prof Eamon O'Shea, NUI Galway (economics of ageing, dementia and rural ageing)
Dr Sarah Donnelly, UCD (social work)
Dr Marita O'Brien, Independent Health Policy Analyst
Prof Mary Donnelly, UCC (medical / capacity law)
Prof Amanda Phelan, TCD (ageing and community nursing)

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