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## 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

Title	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
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Publication Date	2019-11-04
Publication information	Barry, Keelin , Darcy, Shane, Kehoe, Helen , Mullineaux-Roddy, Cassie , Mullally, Siobhán , O'Rourke, Maeve , Villena Rodo, Judit, Wrenn, Stacy (2019). 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: Irish Centre for Human Rights, School of Law, National University of Ireland Galway.
Publisher	Irish Centre for Human Rights, School of Law, National University of Ireland Galway
Link to publisher's version	<a href="https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_NGO_IRL_38607_E.pdf">https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_NGO_IRL_38607_E.pdf</a>
Item record	<a href="http://hdl.handle.net/10379/15838">http://hdl.handle.net/10379/15838</a>



## Shadow Report

submitted in response to Ireland's Joint 5<sup>th</sup> to 9<sup>th</sup> Periodic Report to the  
United Nations Committee on the International Convention on the  
Elimination of All Forms of Racial Discrimination.

4 November 2019

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*The ICHR would like to thank all those who contributed to the research contained in this Report.*

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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 centre. 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 Shadow Report for the purpose of Ireland's 5th to 9th Periodic Review by the United Nations Committee on the Elimination of Racial Discrimination (CERD). This Report provides selected research and analysis from the ICHR's staff and researcher community; it is not a comprehensive account of all relevant issues arising under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and should be read in conjunction with the reports of all groups that have made submissions to CERD for Ireland's Periodic Review.<sup>1</sup>

This Report focuses on the following areas of concern:

- Continuing problems in Ireland's International Protection System, particularly regarding access to work, the segregated nature of Direct Provision centres, and the experiences of people with disabilities;
- Racism and discrimination in public discourse;
- The need for effective remedies for migrant women in the context of domestic abuse;
- Access to justice and redress for the 'historical' abuses of mixed-race children in institutional residential settings;
- Discrimination against Traveller communities;
- Business and human rights, particularly the potential for Irish business enterprises to contribute to and further racial discrimination;
- Ireland's inaction on climate change and its contribution to racial discrimination;
- Migrant workers' rights; and
- The rights of victims of trafficking.

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<sup>1</sup> Available here:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1338&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1338&Lang=en)

## **1. Suggested Questions for the Irish State**

### **Ireland's International Protection System**

#### General

- Will Ireland adopt all necessary measures to ensure effective access to early and comprehensive legal assistance and high quality, appropriately regulated interpretation services for people seeking international protection?
- Will Ireland ensure sufficient resources and staffing are dedicated to the protection determination system, to avoid lengthy delays waiting for decisions?

#### Statelessness

- Will Ireland establish a formal statelessness determination system to comply with its international legal obligations to avoid and reduce statelessness, including in relation to the rights of the child?

#### Direct Provision

- 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?
- Will Ireland strengthen its efforts to develop an alternative to Direct Provision accommodation centres, in order to ensure respect for the rights of people seeking international protection, in particular for families with children?
- Will the National Archives Act 1986 be expanded to cover the records of social service providers, including Direct Provision operators?
- Will Ireland review the adequacy of coroners' functions and procedures as they relate to deaths in Direct Provision?
- Will Ireland immediately institute a system of independent inspection of Direct Provision that is sufficient to protect against torture and ill-treatment and other violations of human rights?
- Will Ireland ratify the Optional Protocol to the Convention Against Torture and establish without delay a National Preventive Mechanism?

#### Disability in Direct Provision

- Will Ireland develop and implement a vulnerability assessment tool as required by the Recast Conditions Directive 2013/33/EU (RCD) (2013/33/EU)?
- Will this vulnerability assessment 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?
- 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?

### **Racism and discrimination in public discourse**

- When will Ireland introduce hate crime legislation?
- What other measures will the Irish government take to effectively address and eliminate racial discrimination promoted by alt-right organisations in Ireland?

#### **Domestic violence against migrant women**

- Will Ireland ensure that An Garda Síochána – Ireland’s police force - receives specialist training on engaging with minority and migrant communities, including, in particular, persons in an irregular migration situation?
- What steps will Ireland take to ensure effective remedies and preventive mechanisms are practically available for women victims of violence, regardless of immigration status?
- What additional steps is Ireland taking to ensure that the principle of non-refoulement is complied with, and that ‘victims of domestic violence ... in need of protection’ are not returned to their country of origin ‘regardless of their status or residence’, where susceptible from being subjected to ‘torture or inhuman or degrading treatment or punishment’?

#### **‘Historical’ abuses of mixed-race children in institutional residential settings**

- Will Ireland address and rectify shortcomings in the scope and operation of the Mother and Baby Homes Commission of Investigation?
- Will Ireland consider the issue of intersectionality and multiple discrimination in historical abuse cases in the aforementioned investigation and in future investigations?
- Does Ireland intend that a transitional justice approach will be applied to the work of the Mother and Baby Homes Commission, or is it intended that such an approach will apply to an alternative public forum or entity established to address all historic abuses of women and children in Ireland in the 20th century?

#### **Discrimination against Traveller communities**

- 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?
- Will Ireland actively involve Traveller representatives in all aspects of consultation about and the development of new Hate Crime legislation?
- Will Ireland develop a new National Action Plan against Racism that proactively includes Travellers and their specific experiences of racism, hate crimes, and all forms of discrimination?
- Will Ireland ensure that local authorities are accountable through imposition of appropriate sanctions if allocated ring-fenced government funds for Traveller Accommodation and other Traveller support projects are not appropriately allocated in each financial year?
- Will Ireland fund a second follow-on study to the 2010 ‘All Ireland Traveller Health Study’ to ensure that the most up to date information and socio-demographic data regarding the situation of Irish Travellers is available, to inform best practice and policy development?

#### **Business and Human Rights**

- What measures are being taken by Ireland to ensure that Irish business enterprises are aware of their responsibility to respect human rights, including the prohibition of racial discrimination?
- Will Ireland adopt legislation to ensure the availability of remedies for victims of business activities which harm human rights, including by Irish companies operating or engaging in business activities abroad?

#### **Climate Justice**

- Will Ireland take immediate, necessary and urgent action to reduce its greenhouse gas emissions and meet its emissions targets in order to alleviate climate change impacts on vulnerable and marginalised groups both domestically and internationally?

#### **Migrant Workers' Rights**

- Will Ireland remove from the 'Ineligible List of Occupations for Employment Permits' the following occupations in order to ensure the protection of their labour rights: care workers and home carers; senior care workers, care escorts and childcare and related personal services?

#### **Victims of Trafficking**

- Will Ireland place the rights to assistance of all victims of trafficking on a statutory footing (including non EEA nationals and asylum seekers)?
- Will Ireland establish a victim identification process that is separate from law enforcement functions with multi-agency involvement, as required under the Council of European Convention on Action against Trafficking in Human Beings and recommendations of GRETA?

## 2. Ireland's International Protection System

### Statelessness

At present, Ireland does not have legislative provision for the determination of statelessness or the grant of residence for stateless persons. Concerns have been raised also in relation to the risks of statelessness for children, contrary to the State's obligations under the CRC.

#### *Recommendation:*

The State should establish without further delay a formal statelessness determination system to comply with its international legal obligations to avoid and reduce statelessness, including in relation to the rights of the child. Granting residence to persons deemed stateless would ensure compliance with the object and the purpose of the 1954 Convention Relating to the Status of Stateless Persons (ratified by Ireland).

### Direct Provision

Direct Provision centres, through their spatial othering and dispersal in underdeveloped rural areas, have contributed to segregation of asylum seeking communities, fuelling division and racism in public discourse. 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. The Government-appointed Special Rapporteur on Child Protection has previously highlighted the negative impact of Direct Provision on rights to private and family life and the rights of the child.<sup>2</sup>

With the recent increase in placements of people seeking international protection in emergency accommodation centres that concurrently function as hotels and B+B's, civil society actors have witnessed the explicit separation in dining and communal areas for paying guests and protection applicants, and in the quality of food and services provided to them.

The Movement of Asylum Seekers in Ireland (MASI) has described<sup>3</sup> treatment that indicates widespread human rights violations including:

- Dignity violations (such as the race- and ethnicity- based discrimination that the overall Direct Provision system constitutes; and the ongoing denial of the constitutional right to work<sup>4</sup> for

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<sup>2</sup> Geoffrey Shannon, *Eleventh Report of the Special Rapporteur for Children*, 2018, pp. 35-36, 45-47  
<https://assets.gov.ie/27444/92175b78d19a47abb4d500f8da2d90b7.pdf>

<sup>3</sup> 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/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_justice_and_equality/2019-05-29/3/)

<sup>4</sup> See *NVH v Minister for Justice & Equality and ors* [2017] IESC 35 paras. 13, 15, 17.



many international protection applicants due to barriers such as the type of permits provided, lack of access to driving licenses and frequently to a bank account, and major exclusions from the right as provided for by Government);

- Denials of the right to education (notably for children who are in ‘emergency’ settings, as highlighted by the Irish Refugee Council (IRC) during the Joint Oireachtas Committee on Justice and Equality hearing on 29<sup>th</sup> May 2019);
- Cruel, inhuman or degrading treatment (for example, as a result of long-term institutionalisation or an accumulation of conditions in Direct Provision, or by way of abusive incidents by staff or by individuals from whom people living in Direct Provision are inadequately protected);
- Denial of the right to health (due to enforced conditions of living that impair mental health; and lack of access to adequate healthcare for both physical and mental illness);
- Violations of the right to respect for private and family life (including overcrowding; denial of recreational areas for children and adults; stringent limitations on access to food and cooking facilities; unnecessary and unauthorised requirements to produce identity documents; discriminatory or humiliating treatment in legal or employment processes related to certain markers as a person living in Direct Provision or otherwise as an international protection applicant);
- Denials of the right to effective access to the international protection system (for example, due to excessive delays in the application process; lack of access to appropriate and necessary legal assistance, including inadequate legal aid provision; denial of effective access to interpretation and translation; and a lack of monitoring or transparency of certain interviews);
- Denials of the right to access justice and a remedy for rights violations experienced while living in Direct Provision (for example, due to a lack of access to legal aid for European human rights-based or constitutional rights-based claims)
- Limitations on the right to work for people seeking international protection,<sup>5</sup> resulting in further socio-economic segregation within Direct Provision centres, between those who are deemed eligible to work and those not.

A joint submission by Dr Maeve O’Rourke of the ICHR and the Irish Council for Civil Liberties in May 2019 to the Oireachtas Joint Committee on Justice and Equality recommended the expansion of the National Archives Act 1986 to cover the records of social service providers, including Direct Provision operators. It further recommended that Ireland review the adequacy of coroners’ functions and procedures as they relate to deaths in Direct Provision, that Ireland immediately institute a system of independent inspection of Direct Provision that is sufficient to protect against ill-treatment and other violations of human rights, and that Ireland ratify the Optional Protocol to the Convention Against Torture.<sup>6</sup>

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<sup>5</sup> Department of Justice and Equality, *Permission to access the labour market*, accessed: 31 October 2019, available at: <http://www.inis.gov.ie/en/INIS/Pages/labour-market-access#eligibility>

<sup>6</sup> Irish Council for Civil Liberties & Maeve O’Rourke, Submission 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-Direct-Provision-System.pdf>

### *Recommendations:*

The most important source of information about the human rights violations that are occurring in the entire international protection system in Ireland, including in Direct Provision, and recommendations for how to prevent these violations, are the people who are experiencing it themselves. It is with this in mind that we recommend the following actions by the State:

- Ensure early and comprehensive legal assistance for all protection applicants, with high quality, regulated interpretation services.
- Ensure sufficient resources and staffing are dedicated to the protection determination system, to avoid lengthy delays waiting for decisions.
- Provide the right to work for all protection applicants, without time restrictions and from the outset of submission of a claim for international protection.
- Ensure effective access to education and training at all levels, removing restrictions that currently hinder access to third level education and training opportunities.
- Reception centres must only be considered as temporary accommodation, lasting no longer than 12 weeks, after which people seeking international protection should be supported in accessing housing and accommodation within communities.
- Expand the National Archives Act 1986 to cover the records of social service providers, including Direct Provision operators.
- Review the adequacy of coroners' functions and procedures as they relate to deaths in Direct Provision.
- Ensure a system of independent inspection of Direct Provision that is sufficient to protect against ill-treatment and other violations of human rights.
- Ratify the Optional Protocol to the Convention Against Torture, and establish a National Preventive Mechanism without delay.

### **The rights of international protection applicants with disabilities**

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.

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, and those experiencing mental health issues.

*The Recast Conditions Directive 2013/33/EU (RCD)* (2013/33/EU), provides standards for the material reception conditions of asylum seekers in Europe.<sup>7</sup> In 2018, Ireland transposed the RCD, which importantly includes the legal requirement by the Irish State to develop a formal asylum vulnerability assessment process for certain groups of potentially vulnerable asylum seekers, such as disabled asylum seekers.<sup>8</sup> However, the Irish Refugee Council has reported that Ireland has not developed or implemented the vulnerability assessment tool, over a year after the RCD was transposed to Irish legislation, despite this being a clear legal requirement of the RCD.<sup>9</sup>

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)*, (United Nations 2006), on the 7<sup>th</sup> March 2018.<sup>10</sup> 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.<sup>11</sup> 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.

#### *Recommendations:*

- There should be a development and rollout by the Irish Government of a vulnerability assessment tool as is stipulated in the Recast Conditions Directive 2013/33/EU (RCD) (2013/33/EU). This vulnerability assessment needs to 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.
- There should be full and immediate access to a vulnerability assessment for vulnerable asylum seekers upon their arrival in Ireland, and vulnerability assessments should be available on an ongoing individual basis for the duration of time that a person is housed by the Irish State in the Direct Provision system.

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<sup>7</sup> ‘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>

<sup>8</sup> European Communities (Reception Conditions) Regulations 2018, SI 2018/230, available at: <http://www.irishstatutebook.ie/eli/2018/si/230/made/en/pdf>

<sup>9</sup> 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-eu-law/7175>

<sup>10</sup> *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>

<sup>11</sup> 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.

### **3. Racism and discrimination in public discourse**

In acknowledgement of the shadow report submitted by the European Network Against Racism, this submission wishes to draw further attention to the role of the Direct Provision and Dispersal system in facilitating an increase in racism in public discourse, and the lack of effective measures in place in eliminating it.

There has been increased activity of far-right organisations in Ireland since 2018, with social media and other online platforms such as YouTube seeing the popularisation of such rhetoric from Irish-based accounts. In both the European Parliament and local council elections in May 2019, election candidates from minority ethnic communities reported experiencing racism.<sup>12</sup> People seeking international protection face substantial risks with the normalisation of this increasingly discriminatory public discourse.

#### *Recommendation:*

- Given repeated incidents of racism in public discourse, including by political representatives and electoral candidates, targeted at Traveller communities, minority ethnic and migrant and asylum seeking communities, urgent consideration should be given to reviewing the effectiveness of incitement to hatred legislation and to the introduction of hate-crime legislation.
- Given the particular importance afforded by the CERD Committee to the role of public representatives, Ireland should be required to task the proposed Electoral Commission with providing guidance on racist speech or actions by election candidates, in all elections and referendum processes.

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<sup>12</sup> Jack Power, 'Racism on the campaign trail: 'One guy said all migrants are cancer'', *The Irish Times*, 2019, available at: <https://www.irishtimes.com/news/politics/racism-on-the-campaign-trail-one-guy-said-all-migrants-are-cancer-1.3901011>

#### **4. Domestic violence and effective access to justice for migrant women..**

Ireland's new domestic violence legislation – the Domestic Violence Act 2018 – entered into force on the 1<sup>st</sup> of January 2019. According to AkiDwa, approximately 19% of women accessing domestic violence services in Ireland are migrant women.<sup>13</sup>

Migrant women in Ireland can face different barriers in accessing effective remedies in the context of domestic violence, notably where:

- There are concerns regarding their immigration status, especially if the victim's immigration status is dependent upon an abusive partner or relatives.
- Living in Direct Provision. Given the diversity of difficulties faced by residents of Direct Provision centres, women can face various degrees of barriers such as fear of reporting, social and spatial isolation, poverty and inability to move, etc.

There is no legislative basis for victims whose immigration/legal status depends on their relationship with their abusers, to request independent immigration status.<sup>14</sup> According to a General Immigration Section of Irish Naturalization and Immigration Service (INIS) policy, victims may apply for 'independent status as a victim of domestic violence'- if in possession of a 'valid immigration permission' dependent upon a family member. The application needs to be in writing to INIS, and decisions are taken 'at the Minister's discretion'.<sup>15</sup>

The aforementioned policy does not apply to undocumented victims or victims who are 'unlawfully present', whose ability to access remedies is likely to be hindered because of a fear of deportation. The INIS policy indicates that victims may present evidence of domestic violence 'for consideration in any immigration determination including a leave to remain application made on foot of a notification to deport'.<sup>16</sup> AkiDwa explains that women victims of domestic violence living in direct provision 'face additional barriers' to access support and remedies including 'language barriers, cultural norms and stigma, knowledge of services'<sup>17</sup> among others.

#### *Recommendations:*

- An Garda Síochána – Ireland's police force – should receive specialist training on the new domestic violence legislation, including on the concept of coercive control and the particular relevance of migration status. Training and reporting systems should highlight the importance of equal respect, due diligence, non-stereotyping and non-prejudice, especially challenging

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<sup>13</sup> AkiDwa Ireland, Submission to the Joint Committee on Justice & Equality, 31<sup>st</sup> May 2019, available at: <https://www.akidwa.ie/wp-content/uploads/2019/06/190531-AkiDwA-Direct-Provision-submission-web-version.pdf>

<sup>14</sup> INIS, 'Victims of Domestic Violence Immigration Guidelines', 2012.

Council of Europe convention on preventing and combating violence against women and domestic violence (Istanbul Convention) 210 CETS (entered into force 1 August 2014, Ireland ratified 1 July 2019). Article 59.

<sup>15</sup> INIS, 'Victims of Domestic Violence Immigration Guidelines' (2012), para. 5.

<sup>16</sup> Ibid.

<sup>17</sup> AkiDwa Ireland, Submission to the Joint Committee on Justice & Equality, 31<sup>st</sup> May 2019, available at: <https://www.akidwa.ie/wp-content/uploads/2019/06/190531-AkiDwA-Direct-Provision-submission-web-version.pdf>

cultural stereotypes 'concerning gender-based discrimination and violence', and the State's positive obligations of due diligence to ensure effective protection, including for women in an irregular migration situation;

- Ensure effective remedies and help-seeking avenues are practically available for women victims of violence, regardless of immigration status, and that a legislative basis is established to apply for independent immigration status for all victims of domestic violence, including those in an irregular migration situation;
- Ensure the principle of non-refoulement is complied with, and that 'victims of domestic violence ... in need of protection' are not returned to their country of origin 'regardless of their status or residence', where there is a real risk of 'torture or inhuman or degrading treatment or punishment', including from non-state actors.<sup>18</sup>

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<sup>18</sup> Council of Europe (CoE), Convention on Preventing and Combating Violence against Women and Domestic Violence ('Istanbul Convention') (adopted 11 May 2011, entered into force 1 August 2014) CETS 210, art 61.

## 5. 'Historical' abuses of mixed-race children in institutional residential settings

The so-called 'historical' abuses of women and children in the institutions of the Magdalene Laundries, and the Mother and Baby Homes, along with the widespread practice of non-consensual symphysiotomy in childbirth, have provoked repeated citations of violations of its international human rights law obligations by the Irish State (e.g. Committee against Torture 2011<sup>19</sup>, 2013<sup>20</sup>, 2017<sup>21</sup>, Human Rights Committee 2014<sup>22</sup>, Committee for Economic, Social and Cultural Rights 2015<sup>23</sup>, Committee for the Elimination of Discrimination Against Women 2017<sup>24</sup>).

The abuses cited encompass involuntary detention, forced labour, ill-treatment, breach of a right to education<sup>25</sup>, as well as forced adoption, involuntary medical experimentation, and interference with the rights to private and family life (i.e. issues arising from the absence or withholding of private information and records, e.g. records relating to parental identity).<sup>26</sup>

The tendency is to address these violations discreetly, as distinct issues for consideration, with each mechanism carefully excluding one or other sets of potentially related violations:

- the Ryan Commission (2000 – 2009); a statutory commission of inquiry established to inquire into child abuse in institutional residential settings;<sup>27</sup>
- the Murphy Reports into Dublin Archdiocese (2006 – 2009);<sup>28</sup> a statutory commission of investigation concerning child abuse in the Dublin Archdiocese and the Diocese of Cloyne (2009 – 2010);<sup>29</sup>

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<sup>19</sup> Committee against Torture, Concluding Observations, Ireland, CAT/C/IRL/CO/1, 17 June 2011, at para. 21.

<sup>20</sup> 'Follow-up Letter sent to state party – request for further information', 22 May 2013 (from Ms. Felice Gaer, in her capacity as 'Rapporteur for the Follow-up on Concluding Observations of the United Nations Committee against Torture').

<sup>21</sup> Concluding observations of the Committee against Torture, Ireland, CAT/C/IRL/CO/2, 31 August 2017, at paras 25-30.

<sup>22</sup> Concluding observations of the Human Rights Committee, Ireland, CCPR/C/IRL/CO/4, 19 August 2014, at paras 10-11.

<sup>23</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights, Ireland, E/C.12/IRL/CO/3, 8 July 2015, at para 18.

<sup>24</sup> Concluding Observations of the Committee on the Elimination of Discrimination against Women, Ireland, CEDAW/C/IRL/CO/6-7 (3 March 2017), at paras 14-15.

<sup>25</sup> Justice for Magdalenes Research, Submission to the UN Committee on the Elimination of Discrimination Against Women in respect of Ireland', February 2017, para. 2.2 – 2.3. See also the IHRC Follow-Up Report on State Involvement with Magdalene Laundries, June 2013.

<sup>26</sup> Adoption Rights Alliance Ireland, Follow-up Submission to the UN Committee on the Elimination of Discrimination Against Women in respect of Ireland, January 2017, at sec 2 and 4.

<sup>27</sup> Final Report of the Commission to Inquire into Child Abuse, 20th May 2009, *available at*: <http://www.childabusecommission.ie/publications/index.html>

Established pursuant to the Commission to Inquire into Child Abuse (Amendment) Act 2005.

<sup>28</sup> Report by Commission of Investigation into Catholic Archdiocese of Dublin, 21 July 2009, *available at*: [http://www.justice.ie/en/JELR/Pages/Dublin\\_Archdiocese\\_Commission\\_of\\_Investigation](http://www.justice.ie/en/JELR/Pages/Dublin_Archdiocese_Commission_of_Investigation)

The Murphy Commission (considering Dublin Archdiocese and the Diocese of Cloyne) was established pursuant to the Commissions of Investigations Act 2004.

<sup>29</sup> Report by Commission of Investigation into Catholic Diocese of Cloyne, 23 December 2010, *available at*: <http://www.justice.ie/en/JELR/Pages/Cloyne-Rpt>

- the Inter-Departmental Committee (known as the McAleese Report) (2011–2013);<sup>30</sup> a non-statutory committee composed of six government department representatives, chaired by Senator McAleese, set up to establish “*the facts of State involvement with the Magdalene Laundries*”;
- the Mother and Baby Homes Commission of Investigation (2015);<sup>31</sup> a statutory commission of investigation established to consider a variety of issues arising from the operation of 14 Mother and Baby Homes and a representative sample of ‘County Homes’;<sup>32</sup> and
- three separate reports regarding the practice of symphysiotomy in Ireland (two separate expert reports by Professor Walsh and Judge Murphy in 2014<sup>33</sup>, and a report of Judge Harding Clark regarding the *ex gratia* payment scheme in 2016<sup>34</sup>).

### **The inclusion of race as a ground of discrimination in the Terms of Reference for the Mother and Baby Homes Commission**

Furthermore, there has never been any clear and substantive recognition by the State of the issue of race through its assorted legal responses to these related historic abuses, in terms of how mixed-race children and women in the various institutional, residential settings were treated.<sup>35</sup>

The statutory investigatory body of the Mother and Baby Homes Commission was established in 2015, consequent to the remains of approximately 800 young children and babies being found in an unmarked grave, thus unveiling new claims of serious child abuse in addition to the gendered abuses (i.e. the ill-treatment of women and girls) that had long been attributed to this institutional setting. Before this discovery, it seems that the allegations of gendered abuses were not perceived as being sufficiently serious to warrant any form of inquiry or expert report.

The Terms of Reference for this Mother and Baby Homes Commission include a reference to ‘race’; this is the first occasion on which the State has demonstrated that the issue of race will be considered

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<sup>30</sup> Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalene Laundries, 5 February 2013, *available at*: <http://www.justice.ie/en/JELR/Pages/MagdalenRpt2013>

<sup>31</sup> Commission of Investigation (Mother and Baby Homes and Certain Related Matters) Order 2015, S.I. No. 57 of 2015 (‘Terms of Reference’).

<sup>32</sup> See ‘Appendix 1 – Institutions’ of the Terms of Reference for the list of institutions included. The Government was criticised for excluding the Magdalene Laundries and other related institutional settings from the scope of the Commission, although there are clear connections between these institutions; e.g. Irish Human Rights and Equality Commission Designate, ‘Proposed Commission of Investigation to Inquire into Mother and Baby Homes, Submission on behalf of the Irish Human Rights and Equality Commission (Designate)’, June 2014, at para. 21.

<sup>33</sup> Dept. of Health Press Release, ‘Report on Symphysiotomy in Ireland 1944-1984 — Professor Oonagh Walsh’, 1 July 2014. Dept. of Health, Press Release, ‘Independent Review of Issues relating to Symphysiotomy by Judge Yvonne Murphy’, 1 July 2014

<sup>34</sup> Judge Maureen Harding-Clarke, ‘Report on the Surgical Symphysiotomy Ex-gratia Payment Scheme’, 19 October 2016.

<sup>35</sup> There were references to mixed-race children in the Ryan Report (see no 9 above, at Vol. IV, para. 4.94) but no consideration of how these children were perhaps even more at risk in these abusive institutional settings due to their mixed-race.



as part of its legal response to historic human rights abuses. Its inclusion is arguably the result of extensive lobbying and work on the part of AMRI (the Association of Mixed-Race Irish), a civil society organisation that has campaigned for the recognition of the discriminatory treatment and abuse experienced by mixed-race children in varied institutional settings.

The Terms of Reference state that the Commission will consider a number of issues encompassing living conditions, “*the entry of single women*” and children to these institutions, the “*exit pathways*”, and the rate of mortality of women and children and children came to be admitted;<sup>36</sup> in examining these issues, the Commission must also “*identify ... the extent to which any group of residents may have systematically been treated differently on any grounds [religion, race, traveller identity or disability]*”.<sup>37</sup>

This is an important development in the setting of parameters, or scope of inquiry, for a statutory legal mechanism established by the State in response to historic abuse, and the State can be commended for broadening its approach. However, this action of simply broadening the scope of inquiry is not enough to ensure that the issue is dealt with comprehensively by the Mother and Baby Homes Commission, and care should be taken in this regard.

*Recommendations:*

- Ireland’s combined periodic report does not include any reference to this specific issue. Thus it is essential that ICERD seek clarification on how the ongoing consideration by a statutory body (the Mother and Baby Homes Commission of Investigation) of the issue of racial discrimination in the context of the human rights abuses that occurred in some of these institutional settings.
- The recommendations in the report submitted by the Association of Mixed Race Irish (AMRI) should be considered.

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<sup>36</sup> Commission of Investigation (Mother and Baby Homes and Certain Related Matters) Order 2015, S.I. No. 57 of 2015, Schedule, Terms of Reference, art (1)(I) – (VI).

<sup>37</sup> Ibid, art 1(VIII).

## 6. Discrimination against Traveller communities

Irish Travellers are an indigenous ethnic minority group in Ireland, who in the 2016 census were found to represent 0.7% of the Irish population or 30,987 individuals.<sup>38</sup> The history of endemic disadvantage, and the decades-long trajectory of systemic discrimination, exclusion, racism, and ‘othering’ of Travellers in Irish society and State practices, is highlighted in the stark disparities in Traveller life expectancies when compared to non-Travellers in Ireland. For example, the 2016 census found that there was only 3% of Travellers in the over 65 age bracket, compared to 13.3% for the same age bracket of the non-Traveller population.<sup>39</sup> Travellers also have higher infant mortality rates, poorer educational attainment, significantly higher unemployment rates, higher prevalence of suicide, higher numbers of Travellers incarcerated in prison, and higher numbers of Travellers experiencing homelessness<sup>40</sup> when compared to the non-Travellers population in Ireland.

The ongoing substandard provision of Traveller accommodation has a significant cross-cutting causal impact on all the disparities mentioned above in health and life outcomes experienced by Travellers. Overcrowding, poor sanitation, environmental and safety issues in halting sites, lack of access to Traveller specific housing or general social housing options, large families living together with extended families as a coping mechanism to avoid homelessness, lack of safe official transient halting sites, and difficulty for Travellers interacting with historically often hostile government service providers involved in Traveller housing provision, all add to the housing crisis facing Travellers in Ireland.

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.

Overall, systemic racism and discrimination are the causal factors for the continuation of the denial of the right of appropriate housing and accommodation to Travellers. This includes the long-entrenched institutionalised and societal racism towards Travellers, the indirect criminalisation of a nomadic way of life and the lack of political will to implement and allocate funding for Traveller accommodation action plans by local authorities.

Local Authorities consistently do not spend annual ring-fenced funding allocated for Traveller accommodation, instead returning funds. This is in a context of reduced annual budgets and government spending on Traveller accommodation in the past decade. For example, according to

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<sup>38</sup> Central Statistics Office, Census of Population: Profile 8 - Irish Travellers, Ethnicity and Religion, 2016, available at: <https://www.cso.ie/en/releasesandpublications/ep/p-cp8iter/p8iter/p8itd/>

<sup>39</sup> Ibid.

<sup>40</sup> House of the Oireachtas, Traveller Accommodation: the challenges of implementation, *Oireachtas Library Research Service*.

Pavee Point, the Traveller accommodation budget reduced from 40 million in 2008, to 4 million in 2013, and only 13 million has been allocated for 2019.<sup>41</sup>

*Recommendations:*

- Ireland should 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.
- Ireland should include and actively involve Traveller representatives in all aspects and scope of work in the process of consultation about, and the development of, new Hate Crime Legislation.
- Ireland should develop a new National Action Plan against Racism that proactively includes Travellers and their specific narrative and experiences of racism, hate crimes, and discrimination in all aspects and scope of the National Action Plan against Racism.
- Ireland should hold all Local Authorities to account (with financial fines and other legal ramifications), if 100% drawdown of allocated ring-fenced governments funds for Traveller Housing, and other Traveller projects are not spent in a particular Local Authorities' budget each financial year, as stipulated by the Irish Government.
- Ireland should fund a second follow on study of the 2010 'All Ireland Traveller Health Study' to ensure that the most up to date information and socio-demographic data regarding the situation of Irish Travellers is available, to inform best practice and policy development.

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<sup>41</sup> Pavee Point (2019) Committee on the Elimination of All Forms of Racial Discrimination (CERD) 100<sup>th</sup> Session (25 November -13<sup>th</sup> December 2019). Suggested List of Themes and Questions for Ireland. Page 3.

## 7. Business and Human Rights

The following examples of domestic and overseas Irish business activities illustrate how the private sector in Ireland may contribute to and further instances of racial discrimination:

- Private companies are responsible for the delivery of the direct provision system for asylum seekers in Ireland.<sup>42</sup> The private sector is thus directly involved in a system which, as CERD has previously noted, involves inappropriate living conditions with potentially serious adverse social and health implications.<sup>43</sup>
- The overseas activities or business relationships of Irish domiciled companies have also often been directly at odds with the object and purpose of ICERD. In light of CERD's previous recommendations regarding the activities of transnational corporations outside of the territory of the State party,<sup>44</sup> the ICHR submits the following illustrative examples of Irish business involvement in potential violations of ICERD outside of Ireland in industries such as 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 has identified how the majority of coal burned by the State-owned company ESB at its 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.<sup>45</sup>
  - Irish construction companies have been active in the construction of facilities and infrastructure for the World Cup 2022 in Qatar, which has involved the widespread ill-treatment of migrant workers and instances of forced labour.<sup>46</sup> There is no evidence that the Irish government has taken any steps to ensure

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<sup>42</sup> 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-e72-million-4556693-Mar2019/>.

<sup>43</sup> 'Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland', CERD/C/IRL/CO/3-4, 4 April 2011, para. 20.

<sup>44</sup> 'Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada', CERD/C/CAN/CO/19-20, 4 April 2012, para. 14.

<sup>45</sup> Sorcha Pollak, 'Coal 'stained with Colombia blood' is bought and sold in Dublin', *Irish Times*, 11 May 2019, available at: <https://www.irishtimes.com/news/world/coal-stained-with-colombian-blood-is-bought-and-sold-in-dublin-1.3885023>.

<sup>46</sup> 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/](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.

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.<sup>47</sup> Such activities contribute to the perpetuation of a system of racial segregation which is at odds with Article 3 of ICERD.

The Irish Government has failed to take sufficient steps to ensure that business enterprises that operate in Ireland meet their responsibility to respect human rights, including under ICERD. 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 two 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 have moved towards mandatory human rights due diligence for large or state-owned companies, Ireland has not made any commitment in this direction. Insufficient attention has also been paid to the rights of victims and to the need of ensuring access to remedy.

*Recommendations:*

- Ireland should take the necessary and appropriate measures to ensure that Irish business enterprises are aware of their responsibility to respect human rights, including the prohibition of racial discrimination.
- Ireland should adopt legislation to ensure the availability of remedies for victims of business activities which harm human rights, including by Irish companies operating or engaging in business activities abroad.

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<sup>47</sup> Amnesty International, *Destination: Occupation*, 30 January 2019.

## 8. Climate Injustice

Ireland's failure to act to curb its emissions is at odds with human rights, the principles of climate justice, environmental justice and with ICERD itself. Specifically, Ireland's inaction on climate change implicates Articles 2 and 5 of ICERD and prejudices the Right to Health and Right to Property (amongst other rights) of vulnerable and marginalised groups and populations both at home and abroad.

The climate crisis makes for an exemplary illustration of inequality in the 21st century both in terms of emissions and impacts. While high-income countries like Ireland are responsible for the vast majority of greenhouse gas emissions, the people who contribute the least to global warming (and are least able to deal with the consequences of climate change) ultimately suffer the most. This distinction prevails both between countries and within countries.

A recent report by the Climate Advisory Council found that Ireland is "completely off course in terms of achieving its 2020 and 2030 emissions reduction targets"<sup>48</sup>. Ireland's contribution to climate change is disproportionate as evidenced by its per capita emissions which are the third highest in the EU<sup>49</sup>. Ireland's failure to act now on climate change is incompatible with its obligations under ICERD and can be considered a form of climate racism or "climate apartheid" (a term recently used by UN Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston<sup>50</sup>).

The approach taken by Ireland in failing to adequately act on climate change implicates the non-discrimination provisions (Articles 2 and 5) in ICERD in that it condemns populations in developing countries, Small Island Developing States (SIDS), and low-lying coastal areas to suffer the worst impacts of climate change, while the majority of Ireland's own population remain relatively well insulated from these impacts. This prejudices the ability of these populations to enjoy their right to property and right to health under Article 5 ICERD among other rights.

Ireland's lax approach to its climate obligations also places groups like Travellers and Roma in Ireland at risk from the climate-related impacts which are set to increasingly affect Ireland. Again, this implicates Articles 2 and 5 of ICERD (in particular prejudicing their rights to property and health). The effect of existing discrimination by the Irish state towards these groups is evident in factors such as their poorer health and inadequate housing. This has been well documented by groups such as Pavee Point and the European Network Against Racism in their submissions to CERD. Irish Travellers' relatively poor health status is directly attributable to the environmental impacts of poor accommodation and associated issues such as poor water quality and sanitation. Housing locations

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<sup>48</sup> Climate Change Advisory Council Annual Review 2019, *available at*: <http://www.climatecouncil.ie/media/Climate%20Change%20Advisory%20Council%20Annual%20Review%202019.pdf>

<sup>49</sup> Central Statistics Office, Environmental Indicators Ireland 2018, *available at*: <https://www.cso.ie/en/releasesandpublications/ep/p-eii/eii18/greenhousegasesandclimatechange/>

<sup>50</sup> 'Climate change and poverty', Report of the Special Rapporteur on extreme poverty and human rights (A/HRC/41/39) *available at*: <https://reliefweb.int/report/world/climate-change-and-poverty-report-special-rapporteur-extreme-poverty-and-human-rights>

are often situated with some form of environmental hazard nearby. The discrimination faced by the Roma community in Ireland bears striking similarities. Climate change will only serve to exacerbate these preexisting issues, and Ireland's failure to adequately act on climate change in spite of the likely consequences for these groups is an extension of its current policy of environmental racism and exclusion towards them.

Although ICERD does not specifically refer to the environment, the rights protected under Articles 2 and 5 provide a clear basis for the elaboration of concepts of environmental justice. CERD has previously explained obligations under ICERD relating to the enjoyment of a safe, clean, healthy and sustainable environment<sup>51</sup>, and has adopted statements recognising the interwoven nature of human rights and the environment<sup>52</sup> as well as the potential for negative aspects of globalisation to undermine efforts to combat racism nationally and internationally<sup>53</sup>. Climate risks do not respect national borders so CERD's recognition that the obligations of states can go beyond their territories<sup>54</sup> is also significant.

*Recommendation:*

- Ireland should take immediate, necessary and urgent action to reduce its greenhouse gas emissions and meet its emissions targets in order to alleviate climate change impacts on vulnerable and marginalised groups both domestically and internationally.

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<sup>51</sup> Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment. Individual Report on the International Convention on the Elimination of All Forms of Racial Discrimination, *available at:*

<https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/MappingReport.aspx>

<sup>52</sup> See, for example, Report of the Committee on the Convention on the Elimination of All Forms of Racial Discrimination for the Sixtieth and Sixty-first session, Decisions, Statements and General Recommendations: Statement by the Committee to the World Summit on Sustainable Development, 1 November 2002, U.N. Doc. A/57/18.

<sup>53</sup> Ibid.

<sup>54</sup> See, for example, General Recommendation 3 concerning reporting by States parties; CERD, Concluding Observations: Canada, UN Doc CERD/C/CAN/CO/18 (2007); CERD, Concluding Observations: Australia, UN Doc CERD/C/AUS/CO/15-17 (2010).

## 9. Rights of Migrant Workers

The Irish State is aware of the labour market participation and economic need for the services provided by many undocumented, non-European nationals in Ireland and is knowingly failing to arrange the work permit system to ensure the protection of those individuals' rights. The Department of Business, Enterprise and Innovation operates an 'Ineligible List of Occupations for Employment Permits',<sup>55</sup> and this list is extremely wide-ranging. For example, the List 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'.<sup>56</sup> 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'.<sup>57</sup>

### *Recommendations:*

- Ireland should remove from the 'Ineligible List of Occupations for Employment Permits' the following occupations in order to ensure the protection of their labour rights: care workers and home carers; senior care workers, care escorts and childcare and related personal services.

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<sup>55</sup> See <https://dbei.gov.ie/en/What-We-Do/Workplace-and-Skills/Employment-Permits/Employment-Permit-Eligibility/Ineligible-Categories-of-Employment/>

<sup>56</sup> 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-the-Elder-Boom-in-Ireland.pdf>

<sup>57</sup> Ibid.



## **10. Rights of Victims of Trafficking in Persons**

Ireland has been downgraded to Tier 2 status in the US State Department report on Trafficking in Persons for two successive years. 'Chronic deficiencies' in victim identification were cited by the US State Department, as were the absence of convictions for the crime of human trafficking, and the continuing accommodation of victims of trafficking in Direct Provision centres, without specialised assistance or services provided.

There is no statutory provision for specialised victim assistance and support in Ireland, as required by the Council of Europe Convention on Action against Trafficking in Human Beings. This gap has repeatedly been criticised by the Council of Europe treaty monitoring body, the Group of Experts on Action against Trafficking (GRETA).

There is no statutory provision to ensure compliance with the non-punishment principle concerning victims of trafficking, or to ensure separation of victim identification and assistance from law enforcement functions by An Garda Síochána. At present, there is no independent National Rapporteur on Trafficking in Persons, and there is limited engagement by the State in public awareness campaigns, or effective prevention activities, particularly in the field of trafficking for the purpose of labour exploitation.

### *Recommendations:*

- Ireland should place the rights of all victims (including non EEA nationals and asylum seekers) to assistance on a statutory footing, and should establish a victim identification process that is separate from law enforcement functions with multi-agency involvement, as required under the Council of European Convention on Action against Trafficking in Human Beings and recommendations of GRETA.