



Submission to the Human Rights Council for the Universal Periodic Review

in respect of

IRELAND

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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 Human Rights Council (HRC) Universal Periodic Review (UPR) of Ireland's third national report. 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 arising in Ireland and should be read alongside the reports of other civil society organisations.

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. 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. It is also particularly alarming in the context of the Covid-19 pandemic; those who are detained or confined in institutional settings are more dependent than ever on others for the resources and means to survive and to live with dignity during this time.

The Department of Justice has stated that it will publish legislation to ratify and implement OPCAT in the third quarter of 2021.¹ It is imperative that Ireland's future National Preventive Mechanism includes all 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. This submission draws attention below to the Irish State's reliance on (mostly privatised, i.e. state-funded but commercially operated) institutionalisation as a means of social care and as a response to the needs of people seeking international protection.

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.'²

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).

¹ Department of Justice, *Justice Plan 2021*, 35, http://www.justice.ie/en/JELR/Department_of_Justice_Action_Plan_2021.pdf/Files/Department_of_Justice_Action_Plan_2021.pdf.

² Rachel Murray and Elina Steinerte, *Ireland and the Optional Protocol to the UN Convention against Torture* (Irish Human Rights and Equality Commission 2017) 7.

IHREC’s recent submission to the Oireachtas (parliamentary) Special Committee on Covid-19 Response states, in a similar vein: ‘The Commission has repeatedly expressed its concern that accountability mechanisms can be weakened where the State delivers its functions through private, non-State actors, such as in the area of health and social care. The State must put in place robust independent inspection mechanisms that are human-rights based and that incorporate all public, voluntary and private health and social care providers.’³

In accordance with Ireland’s obligations under the Convention on the Rights of Persons with Disabilities (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 recommended⁴ that legislation establishing an NPM in Ireland should designate all relevant inspection and monitoring bodies collectively as the NPM and establish the 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 CRPD.

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?**

³ Irish Human Rights and Equality Commission, *The Impact of Covid-19 on People with Disabilities: Submission by the Irish Human Rights and Equality Commission to the Oireachtas Special Committee on Covid-19 Response* (June 2020), para 47, <https://www.ihrec.ie/app/uploads/2020/07/IHREC-Submission-The-Impact-of-COVID-19-on-People-with-Disabilites.pdf>.

⁴ 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-final-23.11.18.pdf>

2. Direct Provision

Background

Direct Provision is the system which has been in place for the past twenty-one years to accommodate individuals applying for international protection in Ireland. Direct Provision provides largely institutional, communal accommodation and access to some ancillary services, as well as a small weekly supplementary allowance of €38.80 per adult and €29.80 per child.⁵ As of 31 December 2020, there were 6,996 people in International Protection accommodation, of whom 1,010 individuals had status or leave to remain.⁶

In May 2020 there were 44 Direct Provision centres in operation, as well as 33 emergency accommodation facilities in place to house international protection applicants.⁷ There is one reception centre - the Baleskin Reception centre located in Dublin, where the majority of people initially stay for two to four weeks before they are dispersed (without a choice over their destination) to one of the 44 Direct Provision centres.

Direct Provision centres are located around Ireland, including in some remote rural locations far from towns and cities with limited public transport links. This restricts residents of these Direct Provision centres from being able to socialise, study, work or do any of the things that help people to make connections necessary for meaningful living in a new community. Direct Provision is a system which acts to segregate people seeking international protection (often for multiple years) from the rest of Irish society.

There has been ongoing criticism and concern about human rights violations occurring since the inception of the Direct Provision system in 1999, and the negative impacts of Direct Provision on the human dignity of those seeking international protection in Ireland. Particular concern exists about the disproportionately negative impact that living for protracted periods of time in Direct Provision has on child and adult asylum seekers' psychosocial wellbeing. According to Doras

⁵ Asylum Information Database, Country Report: Ireland, ECRE & Irish Refugee Council, (2020), 62.

Available at: <https://irishrefugeecouncil.eu.rit.org.uk/Handlers/Download.ashx?IDMF=2f4bf900-e938-48a1-a5a3-550f13db9d1f>

⁶ Government of Ireland 'A White Paper to End Direct Provision and to Establish a New International Protection Support Service', Department of Children, Equality, Disability, Integration and Youth, (2021),109. Available at: <https://www.gov.ie/en/publication/7aad0-minister-ogorman-publishes-the-white-paper-on-ending-direct-provision/>

⁷ Government of Ireland, Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process, (2020),19. Available at: <https://www.gov.ie/en/publication/634ad-report-of-the-advisory-group-on-the-provision-of-support-including-accommodation-to-persons-in-the-international-protection-process/>

“(p)re-existing conditions and mental health difficulties are exacerbated by the negative mental health impact of living in Direct Provision centres”.⁸

Catherine Day Report and the White Paper on Ending Direct Provision

In June 2020, the Irish Government (Government) made a commitment to ‘end the Direct Provision system during the lifetime of the current Government, and to replace it with a new international protection accommodation policy under a ‘not for profit’ approach by 2023’.⁹ In the latter part of 2020 the ‘Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process’¹⁰ (commonly referred to as the ‘Day Report’) was published and recommended that the current system of Direct Provision be dismantled. The ‘Day Report’ recommended that international protection applicants should be moved out of State-run reception accommodation after three months and enabled to live in own-door accommodation.¹¹

In February 2021, the Government published ‘A White Paper to End Direct Provision and to Establish a new International Protection Support Service’.¹² This ‘White Paper’ represents a monumentally positive shift in the Government’s plan for accommodating and providing services in the future to international protection applicants. The White Paper adopted many of the ‘Day Report’ recommendations and set out an ambitious plan for a comprehensive new model framed to be ‘centred on a human rights approach’.¹³ This plan aims to abolish the current system of Direct Provision by the end of 2024, with the new system being introduced to be ‘based on a not for profit approach’.¹⁴

The central focus of the ‘White Paper’ plan is on access to immediate systems to encourage integration in the community with regard to health, housing, education and employment.¹⁵ People who come to Ireland seeking international protection will under Phase One of the plan stay in one of a number of new Government-run Reception and Integration Centres for up to a maximum period of four months. They will then be moved to own-door or own-room accommodation in the community under a number of models and have access to social welfare supports such as child

⁸ Doras, Mental Health and Direct Provision: Recommendations for Addressing Urgent Concerns, November 2020, 1. Available at: <http://doras.org/wp-content/uploads/2020/03/Doras-Report.-Mental-Health-Direct-Provision.-Recommendations-for-Addressing-Urgent-Concerns.pdf>

⁹ *Ibid*, 21.

¹⁰ *Ibid*.

¹¹ *Ibid*, 62.

¹² Government of Ireland ‘A White Paper to End Direct Provision and to Establish a New International Protection Support Service’, Department of Children, Equality, Disability, Integration and Youth, (2021). Available at: <https://www.gov.ie/en/publication/7aad0-minister-ogorman-publishes-the-white-paper-on-ending-direct-provision/>

¹³ *Ibid*, 7.

¹⁴ *Ibid*, 11

¹⁵ *Ibid*.

welfare and a comparable social welfare payment to the Supplementary Welfare allowance and will be able to work after six months.¹⁶

Other positive aspects of the ‘White Paper’ include access to banking and the application process for drivers’ licences in Phase one, the cessation of the practise of transferring unaccompanied minors to Direct Provision when they turn eighteen years of age, access to free sanitary products, and the introduction and (current piloting) of the vulnerability assessment process—which will be expanded on in the next section of this submission. While the far-reaching and positive scope of the Government’s ‘White Paper’ plan is commendable, we are also very much aware that for current International Protection applicants living in Direct Provision, the year 2024 as the set date for the system of Direct Provision to end must seem very far away, and that many reports on Direct Provision have been previously published with little impact on the realities of life in Direct Provision. In addition, the ‘Day Report’ had recommended that all of the current residents in the Direct Provision system be granted leave to remain so as to be able to free accommodation capacity in the new system. The ‘White Paper’ fails to take up this recommendation, which is a disappointing omission and missed opportunity.

This submission now progresses to focusing on the issues that are still relevant to international protection applicants currently living in the system of Direct Provision in March 2021.

Families and Children in Direct Provision

Particular attention is drawn to the issues faced by families and children living in Direct Provision who are often forced to live in the institutional system for years while waiting for their international protection applications to be processed. Forcing children and families to live in the institutionalised and congregated setting of Direct Provision has a significant and negative cumulative impact on mental and physical health. In some Direct Provision centres families are accommodated 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. The Human Rights Committee stated in its 2014 Concluding Observations that Direct Provision is not conducive to family life.¹⁷

¹⁶ Government of Ireland, Press Release: Minister O’Gorman publishes White Paper on Ending Direct Provision, February 26th 2021. Available at: <https://www.gov.ie/en/press-release/affd6-minister-ogorman-publishes-the-white-paper-on-ending-direct-provision/>

¹⁷ 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 19.

Recommended Questions:

- **When will the children and families currently living in Direct Provision be relocated to own-door accommodation in the community that is suitable for families?**
- **Will the Government consider fast tracking the applications and granting of status to those children and families currently in the Direct Provision system while the new system as detailed in the ‘White Paper to end Direct Provision’ is being built and implemented?**
- **What measures, if any, have been taken to ensure eligible minors can access the work force equitably to their Irish counterparts? Will Ireland ensure the right to work is also accessible to minors of working age in accordance with Irish legislation?**

Religious Practice and Expression in Direct Provision Centres

Many international protection applicants living in Direct Provision do not have access to self-catering 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 practicing 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 Nasc¹⁸ regarding asylum seekers’ experiences of food in Direct Provision has indicated that a many feel unable to adequately practice their religious food traditions while living in Direct Provision. Barriers include lack of access to kitchens and the inflexibility of Direct Provision rules,¹⁹ 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 Halal. The research found that vegetarianism was adopted as a coping strategy, so that people could be sure of being ‘religiously safe’ and not eating non-Halal meat products.²⁰ 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 especially if it falls during summer with Ireland’s long bright evenings. It is difficult not to be able to have access to enough food, as well as lacking access to kitchens to prepare food to break the Ramadan fast as per religious rites and traditions.²¹ The Nasc research

¹⁸ Keelin Barry, ‘What’s food got to Do with it? Food experiences of asylum seekers in Direct Provision’ (Nasc, 2014) Available at: <https://nascireland.org/sites/default/files/WhatsFoodFINAL.pdf>

¹⁹ *Ibid*, 37.

²⁰ *Ibid*.

²¹ *Ibid*, 46.

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 those currently accommodated in the Direct Provision system be moved to own door or own room accommodation in the community (as set out in the White Paper on Ending Direct Provision) with access to full cooking facilities to be able to practice religious expression through cooking and food religious rites?**

Recast Reception Conditions Directive: Building a Vulnerability Assessment Tool

The EU (recast) Reception Conditions Directive (2013/33/EU) (RCD) establishes standards for the material reception conditions of asylum seekers in Europe²² and was transposed into Irish law via the European Communities (Reception Conditions) Regulations 2018 (SI No 230/2018)²³ in 2018. However, there has been a significant delay of over two and a half years in the introduction of the legally mandated vulnerability assessment tool. It is welcome progress that, as outlined above in discussion of the “White Paper”,²⁴ a vulnerability assessment tool is currently being piloted.

A ‘vulnerable person’ is defined in the European Communities (Reception Conditions) Regulations 2018 as

*“ a person who is a minor, an unaccompanied minor, **a person with a disability [emphasis added]**, an elderly person, a pregnant woman, a single parent of a minor, a victim of human trafficking, a person with a serious illness, a person with a mental disorder, and a person*

²² ‘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>

²³ Government of Ireland, Statutory Instrument No. 230 of 2018 European Communities (Reception Conditions) Regulations 2018.

²⁴ Government of Ireland ‘A White Paper to End Direct Provision and to Establish a New International Protection Support Service’, Department of Children, Equality, Disability, Integration and Youth, (2021). Available at: <https://www.gov.ie/en/publication/7aad0-minister-ogorman-publishes-the-white-paper-on-ending-direct-provision/>

*who has been subjected to torture, rape or other form of serious psychological, physical or sexual violence”.*²⁵

The vulnerability assessment tool must be accessible to all of the groups listed within 30 days of application of the international protection application. It is also critical that vulnerable asylum seekers are able to access the vulnerability assessment beyond the first reception stage of 30 days, and on an ongoing basis, as individuals from the listed ‘vulnerable groups’ needs are not homogenous, and these needs do not remain static.

The vulnerability assessment tool is currently being piloted in Baleskin Reception Centre but to date very little information is available about any aspect of the actual process despite being referenced in the ‘White Paper’ in general terms.²⁶ We look forward to the Government providing information about the specific details of the vulnerability assessment tool’s processes, and especially regarding the specifics of the varied expertise needed in relation to assessing and accommodating the different needs of these vulnerable groups. The listed vulnerable groups in the legislation are diverse and include: minors, unaccompanied minors, persons with disabilities, the elderly, pregnant women, single parents, victims of human trafficking, people with serious illness, people with mental disorders, people who have been subjected to torture, rape or other form of serious psychological, physical or sexual violence.

Recommended Questions:

- **By what date will details of the specific processes of how the vulnerability assessment is to be operated be made public?**
- **By what date will the vulnerability assessment tool be available retroactively to those currently in Direct Provision who have not had access to the vulnerability assessment process to date?**
- **Is there an appeals system built into the vulnerability assessment tool and can an independent to IPAS vulnerability assessor be requested?**
- **Are there any independent professional vulnerability assessors being employed to undertake the vulnerability assessments separate to IPAS staff?**

²⁵ Government of Ireland, Statutory Instrument No. 230 of 2018 European Communities (Reception Conditions) Regulations 2018, s, 2, (5).

²⁶ Government of Ireland ‘A White Paper to End Direct Provision and to Establish a New International Protection Support Service’, Department of Children, Equality, Disability, Integration and Youth, (2021), 60. Available at: <https://www.gov.ie/en/publication/7aad0-minister-ogorman-publishes-the-white-paper-on-ending-direct-provision/>

Disability in Direct Provision: Importance of Applying a ‘Disability Lens’ in the Development of the Vulnerability Assessment Tool

In a recent joint submission by the Irish Centre for Human Rights (ICHR) and the Centre for Disability Law and Policy (CDLP) at NUI Galway²⁷ to the Government regarding disability in Direct Provision we stressed the importance of taking the specific needs of asylum seekers with disabilities into account when the vulnerability assessment tool is being developed. We highlighted the need for a specific ‘disability lens’ to be applied to the vulnerability tool to ensure the *particular* barriers faced by disabled asylum seekers are included in all aspects of 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. 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 considering 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.

In its Concluding Observations on Ireland’s Periodic Report in January 2020, the CERD Committee specifically recommended to the State Party to: “(i)ntroduce a comprehensive vulnerability assessment mechanism for early identification of asylum seekers with special needs.”²⁸ The joint CDLP/ICHR submission²⁹ to the Government in February 2021 highlighted the need to map and be aware of the particular barriers that some asylum seekers with disabilities in Direct Provision face, which may act to exclude them for equally participating in the vulnerability assessment process as is their legal right. The submission stated:

“The vulnerability assessment tool needs to build in awareness of the potential barriers to asylum seekers ‘self-disclosing’ disability. Some non-exhaustive examples of these barriers

²⁷ Barry, K. The vulnerability assessment tool and disability in Direct Provision: Submission to Minister O’Gorman and Minister Rabbitte, CDLP & ICHR, 2021.

Available at: <https://drive.google.com/file/d/1MnRMILG6POVC7-T9cr3QsR-bs9QV-fKa/view>

²⁸ 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/5-9&Lang=En

²⁹ Barry, K. The vulnerability assessment tool and disability in Direct Provision: Submission to Minister O’Gorman and Minister Rabbitte, CDLP & ICHR, 2021.

Available at: <https://drive.google.com/file/d/1MnRMILG6POVC7-T9cr3QsR-bs9QV-fKa/view>

include fear that identifying as a person with a disability may have negative implications for a person's asylum claim. There may be socio-cultural stigmas and negative lived experiences attached to the concept of 'disability', and a person may be worried about disclosing disability in case of not being seen as a 'productive' future citizen. Further issues that can cause disability to remain 'hidden' and need to be accounted for in the development of the vulnerability assessment tool are: Gender and Sexual Based Violence (GSBV) related disabilities, torture related disabilities, and mental health disabilities. Individuals may have recently acquired their disability (ies) on their transit journey, or as part of the reason for displacement such as during violence and conflict, or on the transit journey to seek international protection itself. Disability may have been a cause of persecution and stigma in a person's country of origin and indeed be an issue of stigma within the person's lived experience in Direct Provision".³⁰

Also relevant to disabled asylum seekers in Direct Provision is Ireland's ratification of the CRPD on 7 March 2018.³¹ 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.³² 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.³³ In Ireland's 'Initial Draft Report under the Convention on the Rights of Persons with Disabilities'³⁴ there is no mention at all of asylum seeker children or adults with disabilities who live in Direct Provision. Disabled asylum seekers in the Irish international protection system need to be included in all actions taken to implement the CRPD, including in the reporting process to the UN CRPD Committee.³⁵ We are concerned that while the White Paper mentions disabled people as one of the 'vulnerable groups' with other listed groups who will have access to a vulnerability assessment undertaken by a case worker, there is very little detail present on how this process is currently being piloted. This also includes very little detail on the plan for NGOs to be contracted to provide services to certain vulnerable groups in regards to

³⁰ *Ibid*, 5.

Available at: <https://drive.google.com/file/d/1MnRMILG6PQVC7-T9cr3QsR-bs9QV-fKa/view>

³¹ Convention on the Rights of Persons with Disabilities and Optional Protocol, United Nations, (2006) available at: <https://www.un.org/development/desa/disabilities/about-us/sustainable-development-goals-sdgs-and-disability.html>

³² Conte C. '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* (2016),18(3) 331.

³³ Barry, K. Invisible: disabled child and adult asylum seekers living in Direct Provision, (2020), 284.

³⁴ Government of Ireland. Draft Initial Report under the Convention on the Rights of Persons with Disabilities, (2020). Available at: <https://www.gov.ie/en/publication/dafb9-draft-initial-report-under-the-convention-on-the-rights-of-persons-with-disabilities/>

³⁵ Barry, K. The vulnerability assessment tool and disability in Direct Provision: Submission to Minister O'Gorman and Minister Rabbitte, CDLP & ICHR, 2021, .7.

Available at: <https://drive.google.com/file/d/1MnRMILG6PQVC7-T9cr3QsR-bs9QV-fKa/view>

accommodation and supports.³⁶ It does not appear that the very significant additional barriers disabled asylum seekers may face in accessing a vulnerability assessment, including the many issues discussed in the 2021 joint CDLP/ICHR submission to the Government have been considered.

Recommended Question:

- **Does the 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?**
- **Has there been any focus on the particular barriers some disabled individuals may have engaging with the vulnerability assessment process?**
- **Does the vulnerability tool have processes to ensure the inclusion of disabled people in the vulnerability assessment who may have invisible, less visible and/or multiple disabilities?**
- **Does the Government intend to undertake a country wide disability audit of all Direct Provision and emergency accommodation in use?**
- **What disability training and wider vulnerability assessment training is available regarding the very diverse groups of vulnerable people listed in the legislation and their particular needs?**
- **Does the vulnerability assessment include trauma informed processes for dealing with individuals with trauma related psychosocial disabilities?**
- **Does the Government intend to establish accurate, best practice disaggregated disability data collection (including visible, invisible, and multiple disabilities), in Direct Provision?**
- **What monitoring process is planned for the vulnerability assessment tool and is there an appeals process built into the vulnerability assessment tool?**

³⁶ Government of Ireland ‘A White Paper to End Direct Provision and to Establish a New International Protection Support Service’, Department of Children, Equality, Disability, Integration and Youth, (2021), 60. Available at: <https://www.gov.ie/en/publication/7aad0-minister-ogorman-publishes-the-white-paper-on-ending-direct-provision/>

Previous assessments of Direct Provision by UN Treaty Bodies

In 2019 the Committee on the Elimination of Racial Discrimination (CERD) expressed concern about the Direct Provision system, particularly the ‘lengthy stay, under inadequate living conditions in direct provision centres and its significant impact on the mental health and family life of asylum seekers’.³⁷ CERD urged Ireland to develop an alternative model and take concrete steps to phase out the Direct Provision system in addition to improving living conditions Direct Provision centres and halting emergency accommodation.³⁸

In 2019 the UN Special Rapporteur on the sale and sexual exploitation of children recommended that the Government analyse the vulnerabilities of, inter alia, children in Direct Provision and implement strategies to reduce factors that may put them at risk of sexual exploitation and abuse.³⁹

In 2016 the Committee on the Rights of the Child (CRC) expressed concern regarding the lack of independent oversight and an inaccessible complaints mechanism for children.⁴⁰ In addition the CRC has expressed concern regarding the lack of protection services and access to education for children living in Direct Provision.⁴¹

In 2015 the UN Committee on Economic, Social and Cultural Rights (CESCR) expressed its concern at ‘the restrictions asylum seekers face in accessing employment, social security benefits, health-care services and education.’⁴² CESCR also expressed its concern at ‘the poor living conditions and the lengthy stay of asylum seekers in Direct Provision centres.’⁴³

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

³⁷ Committee on the Elimination of Racial Discrimination (CERD), ‘Concluding Observations on the Combined Fifth to Ninth Report of Ireland’ (23 January 2020) UN Doc CERD/C/IRL/CO/5-9, para 37.

³⁸ *Ibid*, para 38.

³⁹ OHCHR Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material: Visit to Ireland’ (15 November 2019) UN Doc A/HRC/40/51/Add.2, para 77(b).

⁴⁰ Committee on the Rights of the Child (CRC), ‘Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland’ (1 March 2016) UN Doc CRC/C/IRL/CO/3-4, para 65.

⁴¹ *Ibid*.

⁴² CESCR, Concluding observations on the third periodic report of Ireland (2015), available at: https://www.ihrec.ie/app/uploads/download/pdf/un_committee_on_economic_social_and_cultural_rights_concluding_observations_on_the_third_periodic_report_of_ireland_8_july_2015.pdf.

⁴³ *Ibid*.

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 and there is every reason to believe that they are compounding suffering during the Covid-19 pandemic.

Lack of funding from the 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 lack of adequate funding from the Government has prevented the service beginning to operate. 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.⁴⁴ The latest statement from the Decision Support Service regarding its funding is that, as of October 2020, sufficient funding has been allocated for the Service to begin operating in 2022.⁴⁵

The Irish Times report of January 2020 stated that more than 3,000 adults in Ireland were at that time Wards of Court under the 1871 Lunacy Regulations (Ireland) Act 1871 and that the Mental Health Commission was finding the number of Wardship applications ‘to be on the increase’. It was further reported that Department of Justice figures suggest that over 200,000 adults could benefit from the implementation of the Decision Support Service under the 2015 Act.⁴⁶

⁴⁴ 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>

⁴⁵ Decision Support Service, ‘Confirmation of budget allocation allows for launch of Decision Support Service in 2022’, 16 October 2020, <https://decisionsupportservice.ie/news-events/confirmation-budget-allocation-allows-launch-decision-support-service-2022>.

⁴⁶ *Ibid.*

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.⁴⁷ In early 2018, the Department of Health held a public consultation on its Preliminary Draft Heads of Bill on deprivation of liberty,⁴⁸ 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.⁴⁹ Revised draft legislation is not yet available.

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 2001.⁵⁰ 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

⁴⁷ 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-on-consent-changes-465461.html>.

⁴⁸ These are no longer available on the Department of Health website.

⁴⁹ 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-report-on-the-public-/?referrer=/wp-content/uploads/2017/12/deprivation-of-liberty-safeguard-heads-draft-for-public-consultation.pdf/>

⁵⁰ *Ibid* Head 1.

or provided with palliative care’ and institutions ‘primarily used for the provision of educational, cultural, recreational, leisure, social or physical activities’.⁵¹ 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.⁵²

⁵¹ *Ibid* Head 1.

⁵² 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/ICCL-submission-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*,⁵³ 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...⁵⁴

⁵³ Law Reform Commission, *Legal Aspects of Professional Home Care*, 2011, <https://www.lawreform.ie/fileupload/Reports/r105Carers.pdf>

⁵⁴ 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'⁵⁵ 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'.⁵⁶ 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'.⁵⁷

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*⁵⁸ 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,⁵⁹ and that the Health Information and Quality Authority (HIQA) and Mental Health Commission have recently jointly published National Standards for Adult Safeguarding.⁶⁰ However, the LRC Issues Paper states:

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

⁵⁶ 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>

⁵⁷ *Ibid.*

⁵⁸ 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>

⁵⁹ *Ibid.*, para 7.

⁶⁰ 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>

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.⁶¹

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*.⁶² The Guidance aims to educate all health and social services and staff in Ireland, to assist them to uphold 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.

⁶¹ 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>

⁶² 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/2019-11/Human-Rights-Based-Approach-Guide.PDF>

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.⁶³

It is concerning that HIQA’s recent 2019 ‘Guidance on promoting a care environment that is free from restrictive practices’⁶⁴ 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.⁶⁵

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

The organisation Age Action has called for an independent human rights-based inquiry into deaths in Ireland’s nursing homes during the Covid-19 pandemic, noting that as of July 2020 the deaths

⁶³ 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>

⁶⁴ 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-Practice-Guidance_DCD.pdf

⁶⁵ 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.

of people living in nursing homes accounted for an estimated 56% of all deaths in Ireland from Covid-19.⁶⁶ Similar calls for public inquiries have been made in the UK. Amnesty International has called for a full independent public inquiry to be carried out in the UK without further delay, with urgent priority given to the commencement of an immediate interim phase to (i) expeditiously produce all relevant records, policies, documents, minutes and other material retained by institutions, organisations and officials; (ii) summon witnesses to give evidence under oath as to decisions and actions taken and their reasoning and appropriateness; and (iii) make key recommendations on an urgent and expedited basis.⁶⁷ The Scottish Government has already agreed to conduct a public inquiry. The First Minister confirmed to the Scottish Parliament on 27 May 2020 that there will be a public inquiry into the handling of all aspects of the pandemic, including what has happened in care homes.⁶⁸

In light of the extremely high numbers of deaths in Ireland's nursing homes and given that the Irish State funds and has responsibility for regulating institutional care settings, Article 2 of the European Convention on Human Rights (ECHR) appears to require an effective investigation into deaths in institutional care during the pandemic. Such an investigation should be fully compliant with ECHR law standards.

An effective investigation compliant with Article 3 ECHR further appears to be necessary on the grounds that unlawful interferences with the right to respect for private and family life which may reach the threshold of degrading treatment, at least, are alleged to have occurred in nursing homes.

The voluntary organisation Care Champions,⁶⁹ while recognising the huge efforts that individual care providers have been making and that many institutional settings have provided high quality care during the pandemic, has been advocating publicly in Ireland on behalf of numerous families who have reported that in certain settings:

- their family members resident in nursing homes experienced a range of physical, mental and emotional effects due to periods of prolonged isolation including depression, weight loss, sadness and mental deterioration; and that their dignity was not respected.

⁶⁶ Age Action, 'Submission to the Oireachtas Special Committee on Covid-19 Response: recent reports published by HIQA and the Nursing Homes Expert Panel in the context of the impact of Covid-19 on nursing homes' (September 2020), 4, https://www.ageaction.ie/sites/default/files/080920_age_action_oireachtas_special_committee_submission_08_sep_t_submitted.pdf citing Dr David Nabarro WHO evidence at Special Oireachtas Committee on COVID-19 Response. Oireachtas Special Committee on COVID-19 Response (2020) *Interim Report on Covid-19 in Nursing Homes Special Committee on Covid-19 Response July 2020*.

⁶⁷ Amnesty International, *As if Expendable, The UK Government's Failure to Protect Older People in Care Homes During the Covid-19 Pandemic*, <https://www.amnesty.org.uk/files/2020-10/Care%20Homes%20Report.pdf?kd5Z8eWzj8Q6ryzHkcaUnxfCtqe5Ddg6=>.

⁶⁸ Scottish Human Rights Commission COVID-19: Care homes and human Rights (14 July 2020), 2. (https://www.scottishhumanrights.com/media/2054/coronavirus-care-homes-briefing-140720_vfinaldocx.pdf).

⁶⁹ Care Champions is an Irish family advocacy group for all people who need care support in the community including for residents and their families in care homes.

- residents of nursing homes gave up on life, stopped eating and passed away alone without their families becoming aware of the true state of their health condition prior to their death.
- Family members were unable to gain access to vital information from nursing homes in respect of their loved ones and noted that phones remained unanswered or where they did receive information, such information was false. In some cases, Care Champions received information that property of residents who passed away in care homes was disposed of and not returned to family members.
- poor, substandard care was provided to residents of care homes including poor personal and dental hygiene, dehydration, lack of air and denial of visits of family members.
- family members who expressed concerns about their loved ones in care homes were told not to share these concerns publicly and, in some cases, told that if they were not satisfied with the level of care being provided they could take their loved ones home.
- residents of nursing homes were sent back prematurely from hospitals without receiving proper care and faced ‘appalling’ deaths alone where, in some cases, loved ones had to watch their family members pass away through a window.⁷⁰

Aside from an investigation into human rights violations that have happened, there is a need for urgent state resourcing of all institutional care settings to ensure that reasonable adjustments can be made and sufficient staffing provided to allow for maximum safe visiting and all possible communication between family members. There appears, further, to be a need for immediate legislation to provide: (1) statutory footing for visitation requirements and entitlements; (2) a right of entry for adult safeguarding social workers to privately operated nursing homes and other social care institutions; (3) a statutory right to independent advocacy assistance for all those who are in a social care setting; and (4) a mandate for the Health Information and Quality Authority to investigate individual complaints regarding the treatment of individuals in institutional care.⁷¹

⁷⁰ Care Champions, Presentation at Irish Association of Social Workers / University College Dublin Seminar: Protecting Nursing Home Residents’ Rights to Family Life: Lessons for Ireland, 24 March 2021, <https://www.youtube.com/watch?v=TAIbXtKtgvs>.

⁷¹ *Ibid.* See also *COVID-19 Nursing Homes Expert Panel Examination of Measures to 2021 Report to the Minister for Health* (file:///C:/Users/miche/Downloads/84889_b636c7a7-a553-47c0-88a5-235750b7625e.pdf) and Houses of the Oireachtas, *Final Report Special Committee on Covid Response* (October 2020) https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/special_committee_on_covid_19_response/reports/2020/20-10-09_final-report-of-the-special-committee-on-covid-19-response-sccr004_en.pdf.

Recommended Questions:

- **How and by when will the Irish State ensure that all nursing homes are fully implementing the Health Service Executive’s visiting guidelines and have sufficient resources to do so?**
- **Will the Irish State commit to a statutory, independent, public inquiry into the treatment of individuals and the families of individuals who resided in nursing homes and other institutional settings during the Covid-19 pandemic, and will the Government consult openly with the individuals and families affected in order to determine the inquiry’s terms of reference?**
- **By when will the Irish State give statutory footing to the rights of those in nursing homes and other institutional care settings to visiting and communication with family members?**
- **By when will the Irish State establish a statutory safeguarding framework which provides social workers with powers to enter nursing homes and other institutional care settings and to respond in a human rights-based manner to alleged or apparent mistreatment?**
- **Why when and how will the Irish State ensure a statutory right to independent advocacy assistance for every person dependent on the State for care or resident in an institutional setting; and statutory powers for independent advocates?**
- **By when and how will the Irish State provide effective legal powers to the Health Information and Quality Authority to respond individual complaints of mistreatment in institutional settings?**

4. ‘Historical’ Institutional and Adoption-related Abuses

The Human Rights Committee’s (HRC) 2014 Concluding Observations referred to the ongoing human rights violations experienced by survivors of, and others affected by, so-called ‘historical’ systematic abuses in Ireland. These include abuses 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.⁷² The HRC has previously recommended independent and thorough investigations, prosecutions, access to justice, and

⁷² 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.

comprehensive redress and reparation, regarding these abuses. Since Ireland's response to the Committee in September 2019⁷³, the Committee has again raised its previous recommendations, including requesting that further information and discussion be provided in Ireland's next periodic report on how these and related issues are being addressed.⁷⁴

Other UN human rights bodies have made similar recommendations, including the CAT in 2011 and 2017,⁷⁵ the Committee on Economic, Social and Cultural Rights in 2015,⁷⁶ the Committee on the Elimination of Discrimination Against Women in 2017,⁷⁷ the Committee on the Elimination of Racial Discrimination in 2019,⁷⁸ and the Special Rapporteur on the Sale and Sexual Exploitation of Children in 2019.⁷⁹ Noting the UN Special Rapporteur's findings, the Annual Report of Ireland's Special Rapporteur on Child Protection (2020) points to Ireland's disparity of approach to current and historical issues. It finds that when it comes to historical cases, the Government does not evidence a sufficient willingness to respond to documented human rights violations related to child protection.⁸⁰

Magdalene Laundries

We note the detailed submissions from Justice for Magdalenes Research⁸¹ and the Irish Council for Civil Liberties⁸² 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.

⁷³ United Nations Human Rights Committee, Fifth periodic report submitted by Ireland under article 40 of the Covenant, due in 2019, UN Doc CCPR/C/IRL/5 (31 January 2020)

⁷⁴ United Nations Human Rights Committee, List of issues in relation to the Fifth Periodic Report of Ireland, UN Doc CCPR/C/IRL/Q/5 (14 January 2021), paras 4-5.

⁷⁵ 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.

⁷⁶ 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.

⁷⁷ 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)

⁷⁸ 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).

⁷⁹ 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>

⁸⁰ Department of Children, Equality, Disability, Integration and Youth, Special Rapporteur on Child Protection 13th Report (16 December 2020) para 1.8.6, <https://www.gov.ie/en/publication/cfbc8-special-rapporteur-on-child-protection-13th-report/>.

⁸¹ 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

⁸² 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-final-23.11.18.pdf>.

Civil society momentum continues to grow 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.⁸³ In January 2020 it was reported that Dublin City Councilors and officials had agreed to a new plan for the site that would include a third-level college, housing for older people, and a substantial memorial.⁸⁴ Such plans for a memorial are subject to ongoing consultation with survivors and the broader community and stakeholders. The Government has committed to delivering a National Memorial and Records Centre related to institutional trauma in Ireland in the 20th century and to developing an all-Ireland memorial in consultation with former residents and other key stakeholders, as well as local memorials.⁸⁵

⁸³ 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>.

⁸⁴ 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-site-includes-a-college-campus>.

⁸⁵ Government Statement on the Final Report of the Commission of Investigation (Mother and Baby Homes and certain related matters) (12 January 2021), <https://www.gov.ie/en/press-release/4f64f-Government-statement-on-the-final-report-of-the-commission-of-investigation-mother-and-baby-homes-and-certain-related-matters/>.

Recommended Questions:

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

Mother and Baby Homes, County Homes and the Adoption System

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 2018,⁸⁶ the **Commission of Investigation into Mother and Baby Homes** proceeded entirely in private despite numerous requests by survivors for a public hearing. The Commission gathered all evidence in private and did not give those affected the opportunity to comment on any of it. The Commission refused to provide witnesses with a transcript of the evidence that they have provided to the Commission. It appeared 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 held on them.⁸⁷ It also refused to provide personal information

⁸⁶ 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-ways-institutional-abuse-details-are-still-being-kept-secret/>.

⁸⁷ *Ibid.*

about the deceased to their next of kin.⁸⁸ Furthermore, the Commission’s grounding legislation stated that all evidence that it gathered in private is inadmissible in civil or criminal proceedings.⁸⁹

In January 2021, the Commission’s final report was published.⁹⁰ It transpired from page 11 of the Confidential Committee Report Chapter of the final report that the Commission had deleted the audio recordings of approximately 550 survivors’ and adopted people’s testimony. The Commission did so without creating a full transcript of each person’s evidence,⁹¹ and without providing written warning in advance.⁹² It also did so in apparent contravention of section 43 of the Commissions of Investigation Act 2004, which requires every Commission of Investigation at the end of its work to ‘deposit with the specified Minister all evidence received by and all documents created by or for the commission’, ‘documents’ being expressly defined to include ‘records of interviews’.

After much campaigning by survivors and their advocates, back-up audio files of this personal information and historical record were recovered and will now be protected. The Government has sought to assure survivors that from March 2021, they will be able access their information held by the Government in accordance with personal data protection laws (a ‘GDPR right of access to Commission records’, under the Government response action plan).

In March 2021, in response to the Commission’s final report, the Irish Council for Civil Liberties (ICCL) highlighted that the ‘key missing element’ of the Commission’s investigation and report is a comprehensive analysis of the abuses that occurred against human rights standards and obligations on the State of the time, including in the European Convention on Human Rights.⁹³ This resulted from a ‘fundamental flaw’ in the framework set by the Government for the Commission, contrary to the recommendation of Ireland’s national human rights institution (Irish Human Rights and Equality Commission (IHREC)). The Commission’s final report chapter on human rights notes this deliberate approach by the Government to the Commission’s mandate, acting against IHREC’s advice that ‘it is critically important that any such investigation should take place within a human rights and equality framework and, in particular, that it conforms with

⁸⁸ 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-says-they-are-prohibited-from-telling-surviving-family-members-about-burial-locations-918869.html#.XLsuOdZB_M.twitter

⁸⁹ Commissions of Investigation Act 2014, section 19.

⁹⁰ *Department of Children, Equality, Disability, Integration and Youth*, Final Report of the Commission of Investigation into Mother and Baby Homes (2020), <https://www.gov.ie/en/publication/d4b3d-final-report-of-the-commission-of-investigation-into-mother-and-baby-homes/>.

⁹¹ RTE Radio 1, Today with Claire Byrne, ‘Mother and Baby Homes’ (with Noelle Brown), 13 January 2021, <https://www.rte.ie/radio/radioplayer/html5/#/radio1/21892875>.

⁹² Commission of Investigation into Mother and Baby Homes and Related Matters, Information Note regarding the Confidential Committee, <http://clannproject.org/wp-content/uploads/Information-for-Witnesses-at-the-Confidential-Committee.pdf>

⁹³ *Irish Council for Civil Liberties*, ICCL press briefing on report of the Mother and Baby Homes Commission (March 2020), <https://www.iccl.ie/wp-content/uploads/2021/03/Press-briefing-ICCL-analysis-of-MBHC-report.pdf>.

the State’s human rights obligations under the Constitution and under international human rights law.’ Rather, the ‘Government did not opt for that approach in its mandate to the Commission.’⁹⁴ As a result of the absence of a human rights mandate, there has been no adequate recognition from the Government of numerous breaches of human rights law, although it has apologised for some of the human rights abuses that occurred.

The ICCL documents violations of human rights laws based on information in the Commission’s final report. These include evidence of gross human rights abuses including arbitrary detention, violations of the right to life, torture and ill treatment, modern slavery or servitude or forced labour, and enforced disappearance. The ICCL also suggests a pathway for Ireland to remedy these violations through recognised methods of transitional/restorative justice. Appropriate approaches recommended by advocacy groups such as the Clann Project are also noted through the human rights chapter of the final report. However, the Government is currently consulting on an alternative scheme labelled “Restorative Recognition”⁹⁵, which appears to be a lesser remedy than restorative justice. Neither this proposed scheme nor the Government’s overall response includes a framework for action to be taken against those legally responsible for human rights abuses suffered by women and children who were arbitrarily detained and/or separated in the institutions.⁹⁶

⁹⁴ *Department of Children, Equality, Disability, Integration and Youth*, Final Report of the Commission of Investigation into Mother and Baby Homes (2020) ch 36, paras 36.1-36.2, <https://www.gov.ie/en/publication/dda2c-chapter-36-human-rights/>.

Irish Human Rights and Equality Commission, ‘Proposed Commission of Investigation to Inquire into Mother and Baby Homes: Submission on behalf of the Irish Human Rights and Equality Commission (Designate)’ (July 2014), https://www.ihrec.ie/download/pdf/ihrec_designate_submission_on_mother_baby_commission_investigation_june_2014.pdf.

⁹⁵ *Department of Children, Equality, Disability, Integration and Youth*, Call for submissions on a Restorative Recognition Scheme for former residents of Mother and Baby Homes and County Homes (March 2021), <https://www.gov.ie/en/consultation/cc828-call-for-submissions-on-a-restorative-recognition-scheme-for-former-residents-of-mother-and-baby-homes-and-county-homes/>.

⁹⁶ One example is pharmaceutical companies responsible for illegal vaccine trials on children in Mother and Baby Homes. Colm Keena, ‘GSK urged to consider reparations over vaccine trials at mother and baby homes’ *The Irish Times* (21 March 2021), <https://www.irishtimes.com/news/social-affairs/gsk-urged-to-consider-reparations-over-vaccine-trials-at-mother-and-baby-homes-1.4516253>.

Recommended Questions:

- **Why did the Government refuse the Commission permission to carry out its investigations in the context of human rights violations?**
- **Why did the Government’s apology following the publication of the Commission’s final report not include an acknowledgement of violations of international human rights laws?**
- **Why are the remedies and reparations proposed by the Government not based on internationally recognised Restorative Justice or Transitional Justice principles?**

Access to information

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.

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,⁹⁷ and appears contradicted too by the judgment of the Irish Court of Appeal in *Habte v Minister for Justice and Equality* [2020] IECA 22 which recognised an unenumerated Constitutional rights ‘to have [one’s] identity correctly recognised by the State’. The Court of Appeal further approved of the High Court’s finding—which drew on Article 8 ECHR, Article 8 of the EU Charter of Fundamental Rights and Article 7 of the Convention on the Rights of the Child—that, ‘there is an implied constitutional onus on the State arising from the inherent dignity of the individual referred to in the Preamble and the personal rights of the citizen in Article 40.3 of the Constitution to accurately record and represent central aspects of personal identity’.⁹⁸

The Adoption Rights Alliance group is actively campaigning for (and has published a draft Bill that would establish) a system of access to birth and adoption records where unredacted, identifying information is provided to adopted people, and mothers are also provided with their

⁹⁷ 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.

⁹⁸ *Habte v Minister for Justice and Equality* [2020] IECA 22, Mr Justice Murray, para 31, <http://clanproject.org/wp-content/uploads/Habte-v-Minister-for-Justice-and-Equality.pdf>.

unredacted records, 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.⁹⁹

In March 2021, the Government announced plans for new adoption information and tracing legislation to be brought before Government imminently, including in relation to illegal birth registrations.¹⁰⁰ The Clann Project and Article 8 Advocacy have called on the Government to ensure that its proposed legislation complies fully with the EU General Data Protection Regulation (GDPR), which in turn must be interpreted compatibly with the EU Charter of Fundamental Rights and the ECHR such that any restriction on the right of access to one's personal data (which includes personal data that is mixed, belonging to more than one person at the same time) must be only such as is in accordance with clear and foreseeable law, and is strictly necessary and proportionate in a democratic society and respects the essence of the right.¹⁰¹

The recently enacted Data Protection Act 2018 and GDPR are at present 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 2021, the Government published an outline action plan in response to the Mother and Baby Homes Commission of Investigation final report that broadly covers access to personal information, archiving and databases, education and research, memorialization, restorative recognition and dignified burial.¹⁰² This envisages the creation of a central repository covering institutional records (or digitised copies of records) relating to Mother and Baby Homes, County Homes and Adoption Societies to which individuals can apply for their personal information. Expansion of this repository over time to encompass other relevant institutional records is to be "considered" by the Government. A National Memorial and Records Centre related to institutional trauma during the 20th century is also to be established, building on the commitment to a central

⁹⁹ See Adoption Rights Alliance, General Election 2020, <http://adoption.ie/general-election-2020/>

¹⁰⁰ 'Minister O'Gorman publishes independent review report into illegal birth registration, requests Special Rapporteur on Child Protection examine issue and propose next steps' *Irish Government News Service* (9 March 2021) https://merrionstreet.ie/en/news-room/news/minister_ogorman_publishes_independent_review_report_into_illegal_birth_registration_requests_special_rapporteur_on_child_protection_examine_issue_and_propose_next_steps.167745.shortcut.html. Tommy Meskill, 'Rights of access to personal information at centre of new law' *Rte.ie* (10 March 2021), <https://www.rte.ie/news/2021/0310/1203074-adoption-files/>.

¹⁰¹ See Maeve O'Rourke, Loughlin O'Nolan and Claire McGettrick, 'Joint Submission to the Oireachtas Joint Committee on Justice regarding the General Data Protection Regulation', 26 March 2021, <http://clannproject.org/wp-content/uploads/Submission-to-Oireachtas-Justice-Committee-Re-GDPR-MOR-CMG-LON-26.3.21.pdf>

¹⁰² *Department of Children, Equality, Disability, Integration and Youth*, Government Statement on the Final Report of the Commission of Investigation (Mother and Baby Homes and certain related matters) (12 January 2021), <https://www.gov.ie/en/press-release/4f64f-Government-statement-on-the-final-report-of-the-commission-of-investigation-mother-and-baby-homes-and-certain-related-matters/>.

repository of institutional records. It envisages archiving and presenting relevant records and witness testimony by victims and survivors and the historical and social context. Public access to original state files is also envisaged and the appointment of an archivist. As this response constitutes a general outline action plan, it remains to be seen if and how soon specific legislation and other actions required to implement the plans will be taken in the coming months and years.

As for the evidence gathered by the **Inter-departmental Committee to establish the facts of State involvement with the Magdalen Laundries (IDC)**,¹⁰³ which proceeded between 2011 and 2013, the Department of the Taoiseach (Prime Minister) has failed to make publicly available any of the State records contained in the IDC archive, which the Department of the Taoiseach holds. 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.’¹⁰⁴

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 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.¹⁰⁵

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.¹⁰⁶ 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;

¹⁰³ 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>

¹⁰⁴ 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.

¹⁰⁵ Residential Institutions Redress Act 2002, section 28(6).

¹⁰⁶ 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/

- 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;
- 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?**

Institutional Burials

In January 2021, the Government finalised draft legislation concerning the exhumation, DNA testing and reintering of the remains of individuals who died in institutional settings (General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill¹⁰⁷). Burials were not properly recorded by many institutions where thousands of infants and children died, as evidenced in the final report of the Mother and Baby Homes Commission of Investigation¹⁰⁸ discussed above.

¹⁰⁷ Department of Children, Equality, Disability, Integration and Youth, General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill, <https://www.gov.ie/en/publication/51a535-general-scheme-of-a-certain-institutional-burials-authorized-interve/>

¹⁰⁸ *Department of Children, Equality, Disability, Integration and Youth*, Government Statement on the Final Report of the Commission of Investigation (Mother and Baby Homes and certain related matters) (12 January 2021), <https://www.gov.ie/en/press-release/4f64f-Government-statement-on-the-final-report-of-the-commission-of-investigation-mother-and-baby-homes-and-certain-related-matters/>.

The whereabouts of many who died are unaccounted for. Inappropriate burial practices include the burial of unidentified children's remains in a decommissioned sewage tank and in sites resembling unidentified mass graves.

The draft Bill creates a legal framework whereby a Government minister may, if a 5-part test is met, establish a temporary, site-specific agency for the purpose of exhuming, DNA testing and re-interring the remains of individuals who died in institutional settings. In February 2021, academics in NUI Galway and other universities, scholars and human rights lawyers wrote to the parliamentary committee concerned with the Bill, noting important changes that are required to the draft law. They highlighted that the Bill in its current form proposes to breach families' rights under Irish, European and international law by disapplying the existing mandate of the Irish coroner, despite the coroner system already providing for many of the proposed measures under the Bill. The overall effect of the current draft law may be to preclude burial interventions at many of the institutional burial sites.¹⁰⁹

Submissions were also made by survivor advocacy groups and by the IHREC,¹¹⁰ calling for changes to the draft law. Twenty-five specific recommendations were made by the IHREC, including that while significant difficulties in retrieving, identifying and returning remains to family members may arise, this does not diminish the obligation on the State to make best efforts to do so, and to ensure meaningful engagement with affected people in developing this law. The IHREC noted that the State is under a legal duty to investigate mass burials and to preserve and protect evidence at sites and any ongoing criminal investigations should not see any mass grave sites excluded from the remit of the law.

¹⁰⁹ Buckley, Conway, Enright, Fox, Gallen, Hayes, Harney, Mackin, McGettrick, Ó Fátharta, O'Rourke and Scraton, *Joint Submission to Oireachtas Committee on Children, Equality, Disability and Integration re: General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill*, 26 February 2021, http://jfmresearch.com/wp-content/uploads/2021/03/Institutional-Burials-Bill_Joint-Submission-26.2.21.pdf

¹¹⁰ Irish Human Rights and Equality Commission, *Dignified Burials Law Must Be Part of Transitional Justice for Mother and Baby Home Victims* (21 February 2021), <https://www.ihrec.ie/dignified-burials-law-must-be-part-of-transitional-justice-for-mother-and-baby-home-victims/>.

Recommended questions:

- **How will the Government ensure that survivors and the relatives of the deceased are heard in the institutional burials law, taking a “survivor-centred” approach promised in its response to the final report of the Mother and Baby Homes Commission of Investigation?**
- **How will the Government ensure that the existing coroner’s jurisdiction can function alongside the proposed law to ensure that necessary investigations into deaths are carried out?**
- **How will the Government address other concerns raised by the survivors and human rights advocates in operation of the final legislation?**

5. Traveller Housing and Institutional Racism

The Mincéir or Traveller community is an Indigenous ethnic minority group in Ireland that continues to face severe discrimination in Irish society, including systemic societal and institutional racism.¹¹¹ Despite the fact that the Mincéir community is now a recognised ethnic group in Ireland, the State continues to fail to address the long-standing situations of inequality faced by the community, as raised in the Ireland’s 2014 Concluding Observations.¹¹² 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 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.¹¹³

¹¹¹ For further information see Fundamental Rights Agency European Union, ‘Roma and Traveller Survey: Country Sheet Ireland’, (2020). Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-roma-and-travellers-survey-country-sheet-ireland_en.pdf

¹¹² 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.

¹¹³ *Ibid* pg 6, Para 4, section 28(b).

A continuing 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 budget¹¹⁴ 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. For example, recently in March 2021 in Waterford City, a proposal to construct bays at the Carrickphierish Road halting site was rejected, with only two Councilors voting in favour of the motion.¹¹⁵

Child and adult Travellers with disabilities face additional challenges all of which have obviously been heightened during the COVID-19 pandemic. 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.

Discrimination, poor housing and Travellers' poor mental health

The correlation between poor housing and perceived discrimination with feelings of hopelessness, stress, stigma, shame and depression has been widely reported¹¹⁶. Recent evidence from Ireland shows that Travellers perceive sub-standard accommodation, racism, and discrimination as crucial determinants of their poor mental health status¹¹⁷.

In particular, in their study Villani and Barry¹¹⁸ emphasise the devastating consequence of discrimination experienced by Travellers from an early age in all settings. Travellers perceive that these experiences are internalized and have a negative influence on the emotional and cognitive development of children, as well as on their self-esteem and self-worth throughout their lives. The study suggests that an improvement of Travellers' accommodation and a reduction on discrimination would therefore greatly improve Travellers' mental health, as well as contribute to their positive self-identity.

¹¹⁴ 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/>

¹¹⁵ Claire Quinn, 'Proposal for seven halting site bays defeated', Waterford News and Star, March 18, 2021. Available at: <https://waterford-news.ie/2021/03/18/proposal-for-seven-halting-site-bays-defeated/>

¹¹⁶ Williams D. R., Lawrence J. A., Davis B. A., Vu C., Understanding how Discrimination can affect Health. *Health Services Research*, 54, 2019. Smith K. E., 'In their own words: How do people in the UK understand the impacts of socioeconomic disadvantage on their mental health and risk factors for suicide?' In Platt, S., Stace, S. and Morrissey, J. (eds.), *Dying from Inequality: Socioeconomic Disadvantage and Suicidal Behaviour*. Samaritans, UK, 2017.

¹¹⁷ Villani J., Barry M. M., A Qualitative Study of the Perceptions of Mental Health among the Traveller Community in Ireland, *Health Promotion International*, 2021 DOI: <https://doi.org/10.1093/heapro/daab009>

¹¹⁸ Ibid.

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 specific 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.¹¹⁹ There are around 17,000 undocumented people in Ireland.

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.¹²⁰ 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),¹²¹ but are essentially prevented from accessing any social benefits, though some charitable initiatives offer them free healthcare and some social services.¹²²

¹¹⁹ Ireland, Houses of the Oireachtas, Immigration Act 1999, No. 22/1999.

¹²⁰ 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 .

¹²¹ 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/>.

¹²² Capuchin Day Centre: https://www.capuchindaycentre.ie/Capuchin_Day_Centre_2013/Capuchin_Day_Centre_-_Services.html; Safety-Net Ireland: <https://www.primarycaresafetynet.ie/services> .

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.¹²³ 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*.¹²⁴ Indeed, emergency care falls short in preventing foreseeable harm to people life and health.¹²⁵ Accordingly, State positive obligations under article 6 ICCPR would require Ireland to adopt any measure that ensure all necessary health care to prevent 'loss of life or [...] irreversible negative consequences for [...] health', for everyone regardless of migratory status.¹²⁶ In particular, children's health care and access to sexual and reproductive health care,¹²⁷ 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'¹²⁸ 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.

Making virtually accessible only emergency health care to irregular migrants would not comply with article 12 ICESCR either, according to which Ireland, as a member state of this treaty, is

¹²³ 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-undocumented-workers-to-access-social-welfare-supports-during-covid-19/>.

¹²⁴ United Nations Human Rights Committee, *Nell Toussaint v. Canada*, Views (CCPR/C/123/D/2348/2014, 7 august 2018).

¹²⁵ *Ibid.*, § 11.4.

¹²⁶ *Ibid.*, § 11.8.

¹²⁷ United Nations Human Rights Committee, *General Comment no. 36: Article 6: right to life* (CCPR/C/GC/36, 3 September 2019), § 8.

¹²⁸ *Ibid.*, § 26.

under the international duty to realize the right to the ‘highest attainable standard of physical and mental health’, through health care and socio-economic measures that target the determinants of health.¹²⁹ Health and social policies should progressively make services, facilities and conditions available, accessible, acceptable and of good quality.¹³⁰ In particular, regardless of the level of realization of social rights in a country, existing health care and measures targeting other social determinants should immediately avoid any discrimination.¹³¹ The Committee on ESCR, has interpreted that core obligations which are vulnerability-oriented should regard everyone regardless of migration status.¹³² As such, Ireland should take concrete steps to make essential primary health care, along with essential drugs, basic food and shelter, available and accessible to all everyone in its jurisdiction, including irregular migrants.¹³³

Among other UN treaties, CEDAW’s state obligations regarding ‘gender equality and health’ seem also difficult to be discharged in the context of national migration and social policies, like the Irish one, which jointly prevent ‘full’ and ‘affordable’ access to reproductive health care to irregular migrant women. Placing a gender perspective at the centre of health policies, programmes and service provision means considering that biological differences between men and women and structural inequalities or socioeconomic factors that disproportionately affect women health outcomes.¹³⁴ Accordingly, failure to adequately address health issues that specifically concerns women would constitute a form of gender-based discrimination, in violations of, inter alia, article 12 CEDAW. Building on the CEDAW Committee approach, the CESCR spell out the ‘core obligations’ that Article 12 ICESCR urges states to implement: ‘(a) To *repeal or eliminate laws, policies and practices that criminalize, obstruct or undermine access by individuals or a particular group to sexual and reproductive health facilities, services, goods and information [...] (c) To guarantee universal and equitable access to affordable, acceptable and quality sexual and reproductive health services, goods and facilities, in particular for women and disadvantaged and marginalized groups*’¹³⁵, including for irregular migrant women.

¹²⁹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) (ICESCR), UNGA Res 2200A (XXI), Article 12.

¹³⁰ General Comment No. 14: The right to the highest attainable standard of health (Art. 12), 11 August 2000, para 12.

¹³¹ ICESCR, article 2(2).

¹³² CESCR, Statement on the duties of states towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights, 13 March 2017.

¹³³ General Comment No. 14: The right to the highest attainable standard of health (Art. 12), 11 August 2000, para 43.

¹³⁴ CEDAW Committee, ‘General Recommendation No. 24: Article 12 of the Convention (women and health) (1999) para 6 and 12.

¹³⁵ CESCR, ‘General Comment No. 22 on the Right to Sexual and Reproductive Health – Article 12 of the ICESCR (2 May 2016) UN Doc E/C.12/GC/22, para 49. Emphasis added.

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 2019,¹³⁶ increasing from a number of 4,776 in 2018.¹³⁷ Concern has been raised by civil society about the high numbers 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.¹³⁸ 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

¹³⁶ 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-immigration-authorities-increases-1.4334342>

¹³⁷ 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-Ireland-Annual-Review-2018.pdf>.

¹³⁸ Ibid.

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.¹³⁹ A lawyer contacted by her family in Chile brought habeas corpus proceedings in the High Court, which led to her release.¹⁴⁰

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?**

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).’¹⁴¹

In 2018, Ireland was downgraded to Tier 2 status in the US State Department Report on Trafficking in Persons, and in 2020 downgraded further to Tier 2 Watch List status. 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;

¹³⁹ 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-asking-why-i-m-staying-but-i-don-t-want-to-strike-out-ireland-says-jailed-student-1.4307129>

¹⁴⁰ 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/>

¹⁴¹ 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.

- (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 2020¹⁴² highlighted the Committee’s concern that the ‘Prohibition of the Incitement to Hatred Act’ (1989) has been ineffective in combatting racist hate speech and online racist hate speech.¹⁴³ The CERD Committee recommended in January 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”.¹⁴⁴ Progress has been made in recent months with the Government having completed a public consultation process¹⁴⁵ and committing to legislating for hate speech and hate crime in Ireland.

Recommended Questions:

- **Will Ireland actively involve Traveller representatives in all aspects of consultation and development of new Hate Crime legislation to ensure that hate crime and hate speech against Travellers is specifically included in the legislation?**
- **By what exact date will new Hate Crime legislation be introduced in Ireland to cover incitement to hatred and hate crime (in person and online)?**

¹⁴² 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/5-9&Lang=En

¹⁴³ *Ibid* pg 4, Para 7, section 19.

¹⁴⁴ *Ibid* pg. 4, Para 18, section 20 (a) and pg. 6, Para 3, section 28 (a, c).

¹⁴⁵ Department of Justice, Legislation for Hate Speech and Hate Crime in Ireland: Report on the Public Consultation. (2020). Available at:

http://www.justice.ie/en/JELR/Legislating_for_Hate_Speech_and_Hate_Crime_in_Ireland_Web.pdf/Files/Legislating_for_Hate_Speech_and_Hate_Crime_in_Ireland_Web.pdf

10. Domestic, Sexual and Gender-based Violence

The most recent Concluding Observations by UN Treaty Bodies for Ireland have highlighted the prevalence of gender-based violence against women and girls (GBVAW) and the strides that the State still need to take to address this issue. In 2020, the UN Committee on the Elimination of Racial Discrimination showed its concern that migrant women with insecure or irregular migration status may remain in abusive relationships for fear of being deported.¹⁴⁶ In 2017, the UN Committee Against Torture highlighted the large number of Irish women who have suffered from GBVAW and the regular inappropriacy of punishments for perpetrators.¹⁴⁷ Also in 2017, the UN Committee on the Elimination of Discrimination Against Women raised concerns in relation to the lack of gender-disaggregated data on gender-based violence, lack of legal protection against some forms of gender-based violence or budgetary cuts to the third sector.¹⁴⁸ In 2014, the UN Human Rights Committee recommended Ireland to undertake further measures to ensure equal access to protection against perpetrators.¹⁴⁹ This section enumerates the meaningful steps that the State is yet to take to effectively realise women’s right to live a life free from violence.

Data Gathering

The data currently being recorded and published by the Central Statistics Office (CSO) in relation to GBVAW remains marked Under Reservation, indicating that the CSO has found quality concerns in relation to it. This data 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”.¹⁵⁰

A 2019 Women’s Aid report, titled *Unheard and Uncounted: Women, Domestic Abuse and the Irish Criminal Justice System* highlighted the absence of data on how many victims of crime had offences committed against them in a domestic violence context.¹⁵¹ It was noted that the absence

¹⁴⁶ 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 (23 January 2020) para 39.

¹⁴⁷ United Nations Committee Against Torture, ‘Concluding observations on the second periodic report of Ireland’ UN Doc CAT/C/IRL/CO/2 para 31.

¹⁴⁸ UN CEDAW Committee, ‘Concluding observations on the combined sixth and seventh periodic reports of Ireland, CEDAW/C/IRL/CO/6-7 (9 March 2017) para 26 and 27.

¹⁴⁹ 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.

¹⁵⁰ CSO, ‘Under Reservation Explained’ <https://www.cso.ie/en/releasesandpublications/ep/p-rc/recordedcrimeq12018/underreservationexplanation/>

¹⁵¹ Women’s Aid and Monica Mazzone, ‘Unheard and Uncounted. Women, Domestic Abuse and the Irish Criminal Justice System’ (2019). Available at:

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.

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. Therefore, there is a need to conduct and publish further research on the effects of the practical implementation of actions and policies. Moreover and regrettably, there is no CSO data on 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, and its social impact including on women and men.

Recommended Questions:

- **Will the 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?**
- **Will the Government collect and publish data with regards to GBVAW during the Covid-19 pandemic?**

Availability, Accessibility and Quality of Services for victims of domestic, sexual and gender-based violence

Safe Ireland has argued that the pandemic has highlighted the 'fragility of the sector and the deep fault lines that have existed for decades in the State response for domestic violence'.¹⁵² In the last

<https://www.womensaid.ie/assets/files/pdf/unheard_and_uncounted_-_women_domestic_abuse_and_the_irish_criminal_justice_system_full_report.pdf><https://www.womensaid.ie/assets/files/pdf/unheard_and_uncounted_-_women_domestic_abuse_and_the_irish_criminal_justice_system_full_report.pdf>

152 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.

trimester of 2020 (September-December 2020), 808 requests for refuge could not be met due to unavailable space.¹⁵³ Women’s Aid 2020 report, *When Home is Not Safe: Domestic Abuse During the Covid-19 Emergency*, published the following stark statistics: from late March to the end of June 2020, the 24h National Freephone Helpline supported 6561 calls, a 43% increase on the same period the year before.¹⁵⁴ During the same period, there was a 25% increase in calls to the police in relation to domestic violence, accompanied by a 23% drop in domestic violence court applications and a 25% decrease in emergency refuge and accommodation availability.¹⁵⁵ Additionally, the Dublin Rape Crisis Centre, at the forefront of supporting victim-survivors of sexual abuse and assault, states in its latest annual report that despite a funding increase in 2019, there is still a long waiting list for those needing to access their services.¹⁵⁶

Quality and accessibility of services also relate to supporting victims of GBVAW when they utilise the legal system. Barriers to accessing the legal system in pursuit of remedies remain, including for women living in rural areas and migrant women. In collaboration with Women’s Aid, Safe Ireland submitted a protocol to the office of the President of the District Court to apply remote technology to the filing and hearing of applications under Domestic Violence Act 2018. Doing so “would allow domestic violence support services with suitable spaces to be used as “virtual court-rooms” or “trusted intermediaries” to continue to improve limited access for certain groups of people, to the family law court system”.¹⁵⁷ The implementation of remote/online hearing has the potential to significantly increase access to the legal system for women. Such an online setting would also benefit women whose first language is not English through the systematic assistance of an interpreter.

In conformity with its obligations under international, regional and domestic law, Ireland adopted its Second National Strategy on Domestic, Sexual and Gender-Based Violence 2016-2021 and its accompanying Action Plan. The National Strategy welcomes the success of the in-court support and referral services, available in Dolphin house, Dublin and calls for the extension of such model to other courthouses around Ireland by 2021.¹⁵⁸ Thus far, such in-court support and referral services have only been extended to Limerick courthouse.

Safe Ireland has expressed concerns about the “lack of understanding about the individual journey any woman, and her children, will have to make in order to escape abuse and control and the need

¹⁵³ Safe Ireland, ‘Tracking the Shadow Pandemic - Lockdown 2. A report on women and children seeking support from Domestic Violence Services September 2020 - December 2020’ (February 2021).

¹⁵⁴ Women’s Aid ‘When Home is Not Safe: Domestic Abuse During the Covid-19 Emergency’ (August 2020) 4.

¹⁵⁵ Ibid.

¹⁵⁶ Dublin Rape Crisis Centre, ‘Annual Report 2019’ page 30. Available at:

<https://www.drcc.ie/assets/files/pdf/drcc_annualreport_web.pdf>

¹⁵⁷ Safe Ireland, ‘Safe Ireland Submission to the Family Justice Oversight Group Consultation Topics Phase 1 Consultation’ (26 February 2021) page 6. <<https://www.safeireland.ie/policy-publications/>> accessed 18 March 2021.

¹⁵⁸ COSC, *Department of Justice and Equality, Second National Strategy on Domestic, Sexual and Gender-Based Violence 2016-2021* (2016), Action 2.700.

for a flexible integrated response at each stage in this journey”.¹⁵⁹An on-site support workers’ presence in the courthouse facilitates victims’ finding the emotional and technical assistance that they need while enhancing women’s capacity to navigate the legal system as a crucial part of their ability to protect themselves from further abuse. The role of support workers is key to ensure that victims of GBVAW have access to clear and comprehensive information with regards to both the procedure and the substance of their case. Specialised training can also be provided to legal practitioners by support workers with the view to building a common understanding of GBVAW, its structural nature and its impacts, based on a gender-sensitive and trauma-informed perspective.¹⁶⁰

Recommended question:

- **What steps are being taken to improve the provision of information and services, and what budgetary resources are allocated for the expansion of services?**
- **Is the state willing to implement remote technology to the filing and hearing of applications under Domestic Violence Act 2018 to ensure access to the legal system for all women ?**
- **What steps are being taken to increase the visibility of and the accessibility to specialised support services, including through the extension of the Dolphin House Support and Referral services to other court houses?**

Unequal access to services, exacerbated during Covid-19

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. Safe Ireland, as part of a proposal to reform the justice system, has recommended the development of specialist training for all legal practitioners covering the “additional vulnerability of women and children belonging to certain marginalised communities seeking protection from our courts, such as but not limited to: Roma, Travellers, those whose immigration status is temporary or irregular and/or who do not speak English as a first language, people with a disability or disabilities which may make it harder for them to access and participate fully in, formal civil and criminal proceedings”.¹⁶¹

¹⁵⁹ Safe Ireland, ‘Safe Ireland Summary Priorities Programme for Government 2020 - Tackling Domestic Violence and Coercive Control’ (2 May 2020) <<https://www.safeireland.ie/policy-publications/>> accessed 18 March 2021.

¹⁶⁰ Safe Ireland, ‘Submission to the Family Justice Oversight Group Consultation Topics Phase 1 Consultation’ (26 February 2021). <<https://www.safeireland.ie/policy-publications/>> accessed 18 March 2021.

¹⁶¹ Ibid.

The Covid-19 pandemic has further exacerbated inequalities regarding 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. In reaction to the first lockdown measures, the Government prioritised domestic violence applications seeking protection or interim barring orders by guaranteeing a remote access to Court. Parallely, and in collaboration with Women's Aid, Operation Faoisimh was implemented, 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.

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.¹⁶² 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.¹⁶³ 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.

Recommended Questions:

- **Will the 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 roll out a training programme to equip State authorities with expertise on equal provision to effective protection, due diligence obligations, non-**

162 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>.

¹⁶³ See further: Immigrant Council of Ireland, 'Migrant women seeking a greater inclusion in the state efforts of tackling domestic violence' (25 November 2020) <<https://www.immigrantcouncil.ie/news/migrant-women-seeking-greater-inclusion-state-efforts-tackling-domestic-violence>> accessed 19 March 2021.

stereotyping and gender sensitive approach to GBVAW?

- **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 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 the intersectional nature of domestic violence and sexual and gender based violence experienced by migrant women.**

11. Discrimination against Persons with Disabilities

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

In March 2021, a reported 1349 people under 65 years of age are living in nursing homes in Ireland.¹⁶⁴ 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 sustaining an acquired a disability from an illness at the age 33, and was finally facilitated to live in an appropriate house independently in the community in July 2020 after twelve years living in a nursing home.¹⁶⁵ According to the Disability Federation of Ireland (DFI) disabled people are not able to live their lives in a way they choose independently because supports are ‘underdeveloped, unplanned, and often not sufficient

¹⁶⁴ Eoghan Murphy, ‘Number of younger people living in nursing homes very concerning’, Newstalk, 19th March 2021. Available at: <https://www.newstalk.com/news/number-of-younger-people-living-in-irelands-nursing-homes-very-concerning-1167169>

¹⁶⁵ Ailbhe Conneely, ‘Woman who spent 12 years in nursing home get keys for new home.’ *RTE News* (1st July 2020)

Video available at: https://www.youtube.com/watch?v=et_At1mbw7c&list=UU8urSFTmQDxaPDEIZ2Fd63Q

to meet their needs'.¹⁶⁶ The needs of these 1349 people with disabilities under 65 years of age, currently inappropriately housed in nursing homes need to be placed on the top of the agenda, as a matter of urgency for Government action, especially in the context of the 2018 Irish ratification of the (CRPD)..

Recommended Questions:

- **By when will the Government undertake a countywide disability needs assessment of the inappropriate care placements of young people and adults under the age of 65 years in nursing homes, 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?**

12. Business and Human Rights

The ICHR would like to raise its concerns regarding Ireland's engagement with the business and human rights agenda and the shortcomings of its approach to date in light of its obligations under international human rights law and the UN Guiding Principles on Business and Human Rights. Although the Government adopted a *National Plan on Business and Human Rights 2017-2020* for the purpose of implementing the UN Guiding Principles, progress has been extremely slow to date, such that three years after the adoption of the national plan no firm guidance has been provided to business enterprises in this context setting out the State's expectation that Irish businesses respect human rights throughout their operations. The approach adopted by the Government is one which favours primarily 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 and the European Union are moving towards mandatory human rights due diligence for large or state-owned companies, Ireland has not made any commitment in this direction, despite the recommendation to do so in the baseline assessment report commissioned by the Government in furtherance of a commitment under the *National Plan*.¹⁶⁷

The following examples illustrate how the private sector in Ireland has been connected to violations of human rights guaranteed under international human rights treaties to which Ireland is a State Party. Such examples include both domestic and instances overseas where Irish business

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

¹⁶⁷ ReganStein / Leading Edge Group / Department of Foreign Affairs and Trade, *National Plan on Business and Human Rights; Baseline Assessment of Legislative and Regulatory Framework*, March 2019, p. 21.

conduct operations and are connected to negative human rights impacts through their business relationships:

- Private companies are responsible for the delivery of the **direct provision system** of accommodation for asylum seekers in Ireland.¹⁶⁸ Direct provision, as noted by the Human Rights Committee, is not conducive to family life,¹⁶⁹ and gives rise to serious risks to mental health and racial discrimination.¹⁷⁰ While a recent *White Paper* has signaled a move away from private provision,¹⁷¹ the continued role of private companies remains a concern.
- In light of the findings of various treaty bodies regarding the activities of transnational corporations **outside of the territory** of a State party,¹⁷² the ICHR submits the following illustrative examples in resource extraction, construction and digital tourism which raise concerns regarding the insufficiency of Ireland's approach to date:
 - 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 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.¹⁷³
 - Irish construction companies have been active in the construction of facilities and infrastructure for World Cup 2022 in Qatar, which has involved the

¹⁶⁸ 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/>.

¹⁶⁹ 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.

¹⁷⁰ 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.

¹⁷¹ Government of Ireland, *A White Paper to End Direct Provision and to Establish a New International Protection Support Service* (2021), p. 86.

¹⁷² See for example *Basem Ahmad Issa Yassin et. al. v. Canada*, Human Rights Committee, 7 December 2017, paragraphs 6.4; Committee on Economic, Social and Cultural Rights, General Comment 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, E/C.12/GC.24 (2107), paragraphs 25-37.

¹⁷³ Sorcha Pollak, 'Coal 'stained with Colombia blood' is bought and sold in Dublin', *Irish Times* (11 May 2019). See also Global Legal Action Network, *Non-Compliance with the OECD Guidelines for Multinational Enterprises: ESB* (2021), available at: https://e5e65ece-003b-4d73-aa76-854664da4e33.filesusr.com/ugd/14ee1a_4bcf9a3b9cb742df814a71d9919da287.pdf

widespread **ill-treatment of migrant workers** and instances of **forced labour**.¹⁷⁴ The 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.¹⁷⁵ These settlements, as observed by the Human Rights Committee, negatively impact a range of human rights.¹⁷⁶

The ICHR is concerned that the 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 as set out in the UN Guiding Principles, including throughout their supply chain and business activities. Moreover, there is no evidence of any significant effort to address the legal and practical barriers that may be faced by victims seeking a remedy in the context of Irish companies' involvement in harm to human rights outside of the jurisdiction.

Recommended Questions:

- **How does Ireland intend to take the necessary measures, including potential legislative measures concerning human rights due diligence, to ensure that Irish business enterprises are aware of and abide by their responsibility to respect human rights?**
- **How will Ireland address relevant legal and practical barriers to 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?**

¹⁷⁴ 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.

¹⁷⁵ Amnesty International, *Destination: Occupation*, 30 January 2019.

¹⁷⁶ 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.

