



## **Submission to the United Nations Committee Against Torture for the List of Issues Prior to Reporting**

in respect of

**IRELAND**

**for the 69th Session (April – May 2020)**

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## Introduction

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

The ICHR has prepared this submission for the purpose of informing the United Nations Committee Against Torture's List of Issues Prior to Reporting (LOIPR) for Ireland's third periodic review. This submission provides selected research and analysis from the ICHR's staff and researcher community, including LLM Candidates participating in the ICHR's International Human Rights Law Clinic.

This submission is not a comprehensive account of all relevant issues in Ireland arising under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). It should be read alongside the reports of other civil society organisations and groups for the LOIPR, including the submission by the Centre for Disability Law and Policy at NUI Galway, focusing on violence against disabled persons.

This Report focuses on the following areas of concern:

1. Ratification of the Optional Protocol to the Convention Against Torture (OPCAT)
2. Domestic, Sexual and Gender-Based Violence
3. Human Trafficking
4. Protection from Torture or Ill-treatment in Care Contexts
5. Direct Provision
6. Denial of Leave to Enter
7. Systematic Institutional and Adoption-related Abuses

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

## 1. 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 20<sup>th</sup> 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.

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

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

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

In accordance with Ireland's obligations under the United Nations Convention on the Rights of Persons (UNCRPD), 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, as highlighted before the Committee in 2017. The Irish Council for Civil Liberties has previously recommended<sup>2</sup> that legislation establishing an NPM in Ireland should designate all relevant inspection and monitoring bodies collectively as the NPM and establish the Irish Human Rights and Equality Commission (IHREC) as the coordinating body. The IHREC has 'A status' as Ireland's National Human Rights Institution. It is also Ireland's independent monitoring mechanism for the UNCRPD.

### **Recommended Questions:**

- **When will Ireland ratify the OPCAT and when will it establish an NPM?**

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

<sup>2</sup> 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>

- **Will the NPM include health and social care settings within its remit, as recommended previously by the Committee, and accommodation for people seeking international protection?**
- **How will the Government enable people with disabilities to take a leading role in the design and functioning of the NPM, as required by the UNCRPD?**

## 2. Domestic, Sexual and Gender-based Violence

The Committee's Concluding Observations in 2017 recommended (at para 32) that the State:

- (b) Ensure the full implementation of the National Strategy on Domestic, Sexual and Gender-based Violence 2016-2021, including by gathering data on the extent of such violence;
- (c) Ensure that all allegations of violence against women, including domestic and sexual violence, are registered by the police and promptly, impartially and effectively investigated and the perpetrators prosecuted and punished in accordance with the gravity of the crime; and
- (d) Ensure that State funding for domestic and gender-based violence services is sufficient to ensure that all victims of these offences, including migrants and the indigent, have access to medical and legal services, counselling, safe emergency accommodation and shelters.

### *Homicide reviews*

Since 1996, 230 women have died violently in the Republic of Ireland. 61% were killed in their own homes.<sup>3</sup> In the resolved cases 56% of women were murdered by a partner or ex-partner.<sup>4</sup> The Irish Observatory on Violence against Women has called for the establishment of multi-agency domestic homicide reviews, on a legislative basis, to improve risk assessment and to manage and identify gaps in policy and practice, following the killing of women in domestic violence situations.

### **Recommended Question:**

- **Will the Government establish a multi-agency domestic homicide review to improve its risk assessment practices, and to strengthen policy and practice on prevention and protection in domestic violence situations?**

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<sup>3</sup> Women's Aid Femicide Watch, November 2019, <https://www.womensaid.ie/about/campaigns/femicide-in-ireland.html>

<sup>4</sup> Ibid.

## *Data*

In its December 2019 monthly report to the Policing Authority, An Garda Síochána (the Irish police service) notes that sexual offences have been increasing since early 2015 and are up 4% in the past 12 months as compared with the 12 months prior to this.<sup>5</sup>

The most recent study seeking to establish the prevalence of sexual violence in Ireland was the 2002 Sexual Abuse and Violence in Ireland (SAVI) report. In 2018, the Government announced that the Central Statistics Office (CSO) will undertake a new study. However, it will take up to five years to complete, and is not due for publication until 2022/23. Concern has been expressed that the study may not include disaggregated data on minority communities or hard to reach groups.

The Dublin Rape Crisis Centre has called on the State to take interim steps to ensure that its data collection improves, including resources to allow CSO to remove the status of ‘under reservation’ in its Garda figures (i.e. statistics that do not meet the standards required of official statistics published by the CSO).

In a 2019 Report, *Women, Domestic Abuse and the Irish Criminal Justice System* published by Women’s Aid, the absence of data on how many victims of crime had offences committed against them in a domestic violence context. In addition, it was noted that the absence of such disaggregated data on prosecutions of crimes occurring in a domestic violence context or the outcomes or sentences imposed in such cases, prevents analysis of how the criminal justice system responds to domestic violence offenders.

Inaccuracies in data have been highlighted by the Central Statistics Office (CSO), with concern expressed that the incidence of domestic violence related offences was being under-recorded. In January 2019 the CSO reported that Gardaí recorded sexual offences and assaults in official crime figures but had not recorded the fact that they were domestic violence offences.<sup>6</sup> A review of a sample of 100 sexual crime cases by the CSO found that 19 cases should have been recorded as domestic violence but only one was recorded as such. In a further sample of 100 assault cases reviewed, the CSO found that 41 cases should have been described as domestic violence but only 19 were recorded as such.

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<sup>5</sup> An Garda Síochána, Monthly Report to the Policing Authority (December 2019), p 16, <https://www.garda.ie/en/about-us/publications/general-reports/commissioner-s-monthly-reports-to-policing-authority/commissioners-monthly-report-to-the-policing-authority-december-20191.pdf>

<sup>6</sup> Review of the Quality of Recorded Crime Statistics, p. 25, CSO, 2018, [https://www.cso.ie/en/media/csoie/releasespublications/documents/crimejustice/2017/Review\\_of\\_Quality\\_Crime\\_2017.pdf](https://www.cso.ie/en/media/csoie/releasespublications/documents/crimejustice/2017/Review_of_Quality_Crime_2017.pdf)

### **Recommended Questions:**

- **Will the Irish Government undertake research into the prevalence of sexual violence in minority and hard-to-reach groups e.g. LGBTIQ, Travellers & Roma, children and migrant and refugee communities?**
- **What steps will be 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?**

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

The Sexual Assault Treatment Unit (SATU) at Dublin's Rotunda Hospital was closed on a number of occasions in the first nine months of 2018 due to staffing difficulties. Sexual assault victims were redirected to other treatment units, adding to the trauma they had to endure.

The Annual Report of the Dublin Rape Crisis Centre (2018) notes that the 65% increase in demand for its crisis services over the 2 year period 2016- 2018 meant that some people had to wait longer for appointments in 2018.

Safe Ireland Domestic Violence Services National Statistics show that, in 2018, there were 3256 unmet requests for refuge because services were full or there was no refuge in the area. In 2018, the Women's Aid National Freephone Helpline made a total of 244 calls to Refuges and on 126 occasions the refuges said they were full (52%).<sup>7</sup>

### **Recommended Questions:**

- **What steps are being taken to ensure full implementation of the recommendation of the CAT in 2017 to ensure that State funding for domestic and gender-based violence services is sufficient to ensure that all victims of these offences, including migrants and the indigent, have access to medical and legal services, counselling, safe emergency accommodation and shelters?**

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<sup>7</sup> Women's Aid Impact Report (2018) p 13,  
[https://www.womensaid.ie/assets/files/pdf/womens\\_aid\\_impact\\_report\\_2018.pdf](https://www.womensaid.ie/assets/files/pdf/womens_aid_impact_report_2018.pdf)

- **What steps are being taken to improve the provision of services in rural areas, and what budgetary resources are allocated for the expansion of services?**
- **What steps are being taken to ensure that all appropriate medical and legal services, counselling and safe accommodation, including quality interpretation services, are available and accessible to refugee and asylum seeking women, migrant women and women from minority communities?**
- **What steps are being taken by the Irish Government to implement the recommendations of the UN CERD Committee<sup>8</sup> in relation to migrant women who are victims of domestic, sexual and gender-based violence and female genital mutilation, specifically to:**
  - (a) guarantee a legal stay regardless their residence status until they recover and have the option to remain in the country if they so wish;**
  - (b) Provide victims with necessary assistance and services, including shelters, and access to justice; and**
  - (d) Provide training police officers and immigration officers to be well equipped to deal with intersectional nature of domestic violence and sexual and gender based violence experienced by migrant women.**

### *Sexual Exploitation of Children*

The Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material on her visit to Ireland, published in November 2019, called for: ‘the development of a methodology for collecting uniform and reliable data on the scale and different forms of sexual abuse and exploitation of children, including data on the outcome of efforts to combat them.’<sup>9</sup>

The Special Rapporteur also called on the Government to: ‘Analyse the vulnerabilities of children belonging to minority, Roma and Traveller communities, children in social care, children with disabilities and children in the direct provision system and devise strategies to reduce factors that may put them at risk of sexual exploitation and abuse.’<sup>10</sup>

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<sup>8</sup> 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, para 30.

<sup>9</sup> 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>

<sup>10</sup> Ibid.



### Recommended Questions:

- **Will the Government take all necessary measures to ensure the collection of uniform and reliable and comprehensive data on the scale and different forms of sexual abuse and exploitation of children?**
- **What steps are being taken by the Government to implement the Report of the Special Rapporteur on the Sale and Sexual Exploitation of Children and in particular the recommendation to: ‘Analyse the vulnerabilities of children belonging to minority, Roma and Traveller communities, children in social care, children with disabilities and children in the direct provision system and devise strategies to reduce factors that may put them at risk of sexual exploitation and abuse.’**

### 3. 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).’<sup>11</sup>

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

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

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<sup>11</sup> 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.

### 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?**

## 4. Protection from Torture or Ill-treatment in Care Contexts

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

Unfortunately, major problems remain in this area.

### *Lack of funding from Department of Justice 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 Department of Justice has not provided enough funding to the Service for it to begin operating. The Irish Times reported on 27 January 2020 that the Mental Health Commission (under whose auspices the DSS lies) sought €10.3 million from the Department of Justice in 2018, to establish the DSS, but was allocated €3.5 million. In 2019, €9.1 million was sought but the Department of Justice allocated €3.5 million.<sup>12</sup>

The Irish Times reported in January 2020 that, according to minutes of meetings of the Mental Health Commission, the Decision Support Service will not open in 2020 ‘and there is no opening date in sight.’ The newspaper report quoted the Mental Health Commission as stating that ‘the repeated failure to open the service puts Ireland in breach of international human rights obligations,

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<sup>12</sup> 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>

raises safeguarding issues and denies thousands of vulnerable adults a say in basic aspects of their lives.’

The Irish Times further reported that more than 3,000 adults in Ireland are wards under the 1871 Lunacy Regulations (Ireland) Act 1871 and that the Mental Health Commission finds the number of new wards ‘to be on the increase’. Meanwhile, the Irish Times stated, Department of Justice figures suggest that over 200,000 adults could benefit from the implementation of the Decision Support Service under the 2015 Act.

### **Recommended Questions:**

- **Why has the Department of Justice 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 Committee 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.<sup>13</sup> In early 2018, the Department of Health held a public consultation on its Preliminary Draft Heads of Bill on deprivation of liberty,<sup>14</sup> 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.<sup>15</sup> 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

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<sup>13</sup> 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>.

<sup>14</sup> These are no longer available on the Department of Health website.

<sup>15</sup> 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/>

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.<sup>16</sup> The draft Heads of Bill explicitly exclude institutions in which ‘the majority of persons being cared for and maintained are being treated for acute illness or provided with palliative care’ and institutions ‘primarily used for the provision of educational, cultural, recreational, leisure, social or physical activities’.<sup>17</sup> 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.<sup>18</sup>

### **Recommended Questions:**

- **When will the Government publish legislation to safeguard liberty in all care settings?**

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<sup>16</sup> Head 1.

<sup>17</sup> Head 1.

<sup>18</sup> 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>

- **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*,<sup>19</sup> 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...<sup>20</sup>

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'<sup>21</sup> excludes from eligibility 'care workers and home carers

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<sup>19</sup> Law Reform Commission, *Legal Aspects of Professional Home Care*, 2011, <https://www.lawreform.ie/fileupload/Reports/r105Carers.pdf>

<sup>20</sup> 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>.

<sup>21</sup> See <https://dbei.gov.ie/en/What-We-Do/Workplace-and-Skills/Employment-Permits/Employment-Permit-Eligibility/Ineligible-Categories-of-Employment/>

(with the exception of a carer in a private home)'; 'senior care workers'; 'care escorts' and 'childcare and related personal services'. The Migrant Rights Centre Ireland (MRCI) has highlighted that 'migrants are over-represented in care and domestic work' and that 'labour market demand will continue to draw on migrant workers to meet Ireland's home care needs into the future'.<sup>22</sup> The MRCI states that it is 'deeply concerned about the vulnerability of this cohort of workers whose voices are absent from the ongoing debate about the provision of quality care in Ireland and who constitute an invisible home care workforce'.<sup>23</sup>

### **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*<sup>24</sup> 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,<sup>25</sup> and that the Health Information and Quality Authority (HIQA) and Mental Health Commission have recently jointly published National Standards for Adult Safeguarding.<sup>26</sup> However, the LRC Issues Paper states:

While there has been significant recent progress, it has occurred against a backdrop of shortcomings in adult safeguarding. The introduction of a statutory regulatory framework would therefore provide legislative certainty and ensure greater protections for at risk adults. The establishment of a regulatory framework, including powers to set and enforce standards in all areas of adult safeguarding, would help to place the focus on proactive

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<sup>22</sup> Migrant Rights Centre Ireland, *Preparing for the Elder Boom in Ireland*, 2015, available at: <http://www.mrci.ie/wp-content/uploads/2015/09/Migrant-Workers-in-the-Home-Care-Sector-Preparing-for-the-Elder-Boom-in-Ireland.pdf>

<sup>23</sup> Ibid.

<sup>24</sup> 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>

<sup>25</sup> Ibid, para 7.

<sup>26</sup> 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>

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.<sup>27</sup>

### **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*.<sup>28</sup> 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.

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

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<sup>27</sup> 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>

<sup>28</sup> 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>

with the intention to sedate a person for convenience or disciplinary purposes is never permissible.<sup>29</sup>

It is concerning that HIQA's recent 2019 'Guidance on promoting a care environment that is free from restrictive practices'<sup>30</sup> 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.<sup>31</sup>

### **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?**

## **5. Direct Provision**

### *Overview*

As of June 2019 there were approximately 6,108 people living in Direct Provision centres across Ireland.<sup>32</sup> In July 2018 there were 196 people living in emergency accommodation, which has increased to 936 as of July 2019.<sup>33</sup> Due to the lack of housing and overcrowded centres, the number of people accommodated in emergency settings is likely to increase.

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<sup>29</sup> 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>

<sup>30</sup> 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](https://www.hiqa.ie/sites/default/files/2019-03/Restrictive-Practice-Guidance_DCD.pdf)

<sup>31</sup> 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.

<sup>32</sup> Irish Refugee Council, *The Reception Conditions Directive: One Year On* (July 2019) 4, <https://www.irishrefugeecouncil.ie/wp-content/uploads/2019/07/RCD-One-Year-On-11-July-2019-Final.pdf>.

<sup>33</sup> Ibid.



People living in Direct Provision are often housed in centres that are far from towns and cities, with limited public transport links. This restricts residents' opportunities to socialise, study, work or do any of the things that help people to make connections necessary for meaningful living in a new community. Conditions in Direct Provision have been described by some as amounting to *de facto* detention because of these restrictions.<sup>34</sup> Direct Provision centres, through their spatial othering and dispersal in underdeveloped rural areas, have contributed to segregation of asylum seeking communities, fueling division and racism in public discourse.

Members of the Movement of Asylum Seekers in Ireland (MASI) have described forms of mistreatment in the Direct Provision system such as: institutionalised living conditions which harm mental health; a lack of access to adequate healthcare for both physical and mental illness; and lack of respect for private and family life through overcrowding, denial of recreational areas for children and adults, stringent limitations on access to food and cooking facilities, unnecessary and unauthorised requirements to produce identity documents and constant surveillance);<sup>35</sup>

MASI has also highlighted the existence of barriers to the right to asylum, including excessive delays in the application and decision-making process; lack of access to appropriate and necessary legal assistance, including inadequate legal aid provision; denial of effective access to interpretation and translation; the non-regulation of interpretation and translation services; and a lack of monitoring or transparency of certain interviews.<sup>36</sup>

The impact of Direct Provision on the human dignity of those seeking international protection in Ireland must not be ignored. It is a system which segregates people from the rest of Irish society on the basis of their race or ethnicity, and international protection applicants face ongoing denials of the constitutional right to work (which right has been determined by the Irish Supreme Court to derive from human dignity)<sup>37</sup> due to barriers such as the type of permits provided, lack of access to driving licenses and frequently to a bank account, and major exclusions from the right as provided for by Government.<sup>38</sup>

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<sup>34</sup> Irish Human Rights and Equality Commission, Ireland and the Optional Protocol to the UN Convention against Torture (September 2017) 32, <https://www.ihrec.ie/app/uploads/2017/09/Ireland-and-the-Optional-Protocol-to-the-UN-Convention-against-Torture.pdf>. See also Irish Council for Civil Liberties & Maeve O'Rourke, Submission to the Oireachtas Joint Committee on Justice and Equality for its Consultation on Direct Provision, 31 May 2019, available at: <https://www.iccl.ie/wp-content/uploads/2019/06/190531-ICCL-ORourke-Submission-On-Direct-Provision-System.pdf>.

<sup>35</sup> Oireachtas Joint Committee on Justice and Equality, 2019 hearings on 'Direct Provision and the International Protection Application Process' 29 May 2019 (Representatives of the Movement of Asylum Seekers in Ireland, and the Irish Refugee Council), [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_justice\\_and\\_equality/2019-05-29/3/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_justice_and_equality/2019-05-29/3/)

<sup>36</sup> Ibid.

<sup>37</sup> See *NVH v Minister for Justice & Equality and ors* [2017] IESC 35 paras. 13, 15, 17.

<sup>38</sup> Oireachtas Joint Committee on Justice and Equality, 2019 hearings on 'Direct Provision and the International Protection Application Process' 29 May 2019 (Representatives of the Movement of Asylum Seekers in Ireland, and the Irish Refugee Council), [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_justice\\_and\\_equality/2019-05-29/3/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_justice_and_equality/2019-05-29/3/)

### *Previous recommendations*

Several recommendations regarding the situation of asylum seekers in Ireland made by the CAT in 2017<sup>39</sup> have not been fully implemented. These include:

- (a) Establish a formalized vulnerability screening mechanism for torture victims and other persons with special needs, provide them with care and protection to avoid re-traumatization, including during international protection procedures;
  
- (b) Provide adequate funding to ensure that all persons undergoing the single procedure under the International Protection Act have timely access to medicolegal documentation of torture, ensure that all refugees who have been tortured have access to specialized rehabilitation services that are accessible country-wide and to support and train personnel working with asylum-seekers with special needs.

Similar and further recommendations have been made by other UN Treaty Bodies, including the CERD (2019)<sup>40</sup>, the CRC (2016)<sup>41</sup> and the CESCR (2015).<sup>42</sup> These Committees have urged the Irish Government to improve the living conditions in Direct Provision centres<sup>43</sup> and access to work<sup>44</sup> for those which it accommodates, to speed up the processing of asylum applications,<sup>45</sup> to establish an independent monitoring system to which complaints can be made by those that live in Direct Provision Centres,<sup>46</sup> and to end the Emergency Accommodation.<sup>47</sup> The CERD urged the Irish government ‘to develop an alternative reception model and take concrete steps to phase out the Direct Provision system.’<sup>48</sup>

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<sup>39</sup> United Nations Committee against Torture, Concluding Observations on the initial report of Ireland, UN Doc CAT/C/IRL/CO/1 (17 June 2011) 12.

<sup>40</sup> 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).

<sup>41</sup> United Nations Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland, UN Doc CRC/C/IRL/CO/3-4 (1 March 2016).

<sup>42</sup> 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 (8 July 2015).

<sup>43</sup> 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) 37(a); 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 (8 July 2015) 14(b); United Nations Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland, UN Doc CRC/C/IRL/CO/3-4 (1 March 2016) para 65(a).

<sup>44</sup> CERD, *ibid*, para 36(f).

<sup>45</sup> CERD, *ibid*, paras 36(a), 37(a).

<sup>46</sup> CERD, *ibid*, para 37(b); Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland, UN Doc CRC/C/IRL/CO/3-4 (1 March 2016) 66.

<sup>47</sup> CERD, *ibid*, para 37(C).

<sup>48</sup> CERD, *ibid*, para 37.

A Working Group established by the Irish Government to recommend improvements to the protection process and Direct Provision issued the *McMahon Report* in 2015, which contained 173 recommendations to improve the Irish protection process and reception system.<sup>49</sup> The Irish Government subsequently issued three follow-up reports on the implementation of these recommendations, and in its final report concluded that 98% had been fully implemented or were in the process of implementation.<sup>50</sup> However, a later report from non-governmental organisation Nasc, estimated that only 51% of the McMahon recommendations had been partly or fully implemented. Nasc noted that the recommendations regarding the vulnerability assessment, backlogs, kitchen and living space and children's rights were slow in progress and that the accommodation system is in urgent need of reform.<sup>51</sup>

Irish Civil society organisations, including the Irish Refugee Council, Movement of Asylum Seekers in Ireland (MASI) and Nasc, have also pushed for the implementation of these recommendations and a reform of the accommodation system in general.<sup>52</sup> The Irish Human Rights and Equality Commission has also noted the slow rate of reform in regard to situations 'where individuals may be deprived of their liberty and may be subject to torture or ill-treatment, including in Direct Provision centres'.<sup>53</sup>

### ***Children in Direct Provision and emergency accommodation***

We wish to draw attention to the situation of children in Direct Provision centres. The previous Government-appointed Special Rapporteur on Child Protection, Dr Geoffrey Shannon, has highlighted the negative impact of Direct Provision on rights to private and family life and the rights of the child and has called on Ireland to abolish Direct Provision.<sup>54</sup> In its 2015 Concluding

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<sup>49</sup> Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final report ('McMahon report') (June 2015).

<sup>50</sup> Department of Justice and Equality, Third and Final Progress Report on the implementation of the Justice McMahon Report recommendations (June 2017).

<sup>51</sup> Nasc, Working Paper on the Progress of Implementation of the McMahon Report (December 2017), <https://nascireland.org/sites/default/files/Nasc-Working-Group-Report-Dec-2017.pdf>.

<sup>52</sup> Irish Refugee Council, 'The Receptions Condition Directive: One Year On' (July 2019), <https://www.irishrefugeecouncil.ie/wp-content/uploads/2019/07/RCD-One-Year-On-11-July-2019-Final.pdf>; MASI Movement of Asylum Seekers in Ireland, 'Submission to Justice and Equality Joint Commission' (27 May 2019), <http://www.masi.ie/wp-content/uploads/2019/09/MASI-SUBMISSION-final-original-copy-29.05.2019.pdf>; Nasc, Working Paper on the Progress of Implementation of the McMahon Report (December 2017), <https://nascireland.org/sites/default/files/Nasc-Working-Group-Report-Dec-2017.pdf>.

<sup>53</sup> Irish Human Rights and Equality Commission, 'Ireland and the Convention against Torture: Submission to the United Nations Committee against Torture on Ireland's Second Periodic Report' (July 2017), 2, <https://www.ihrec.ie/app/uploads/2017/07/Ireland-and-the-Convention-against-Torture.pdf>.

<sup>54</sup> Geoffrey Shannon, *Eleventh Report of the Special Rapporteur for Children*, 2018, 35-36, 45-47, 62 <https://assets.gov.ie/27444/92175b78d19a47abb4d500f8da2d90b7.pdf>.

Observations, the CRC noted that ‘numerous centres do not have adequate facilities for families with young children’<sup>55</sup> and that access to education is not guaranteed.<sup>56</sup>

The decision of the State to opt-in to the EU (recast) Reception Conditions Directive (2013/33/EU) (RCD) is a welcome development in respect to children’s rights. However, the state has resorted to accommodating asylum seekers in emergency accommodation due to the already overcrowded Direct Provision centres. This has resulted in a lack of access to education for children due to the temporary nature of the accommodation.<sup>57</sup> The Irish Refugee Council noted that children in Direct Provision are already restricted in their access to accommodation, particularly in comparison to more affluent communities.<sup>58</sup> This is further restricted in emergency accommodation with some children unable to access education. While the RCD provides that education shall not be postponed for longer than three months, the child’s right to education remains. With 86 children in emergency accommodation as of April 2019<sup>59</sup> the system needs urgent change to ensure the rights of the child are being guaranteed.

### ***Disability and Direct Provision***

Disabled child and adult asylum seekers experience the same vulnerabilities as non-disabled asylum seekers living in Direct Provision, but may also face additional disability-related barriers and challenges currently not considered or reasonably accommodated by the institutional processes of the Reception and Integration Agency (RIA) and other disability-related Irish government departments.

Many direct provision centres are located in old hotels, convents, and former holiday centres, the majority of which are not purpose-built to house asylum seekers, especially taking into account the diverse needs of disabled child and adult asylum seekers. Some examples of physical access issues faced by disabled asylum seekers in direct provision include buildings without ramps or lifts, inaccessible paths, poor building access, lack of disabled accessible bathrooms, lack of appropriate physical space and accessible bedrooms for disabled asylum seekers including those with mobility aids, and those experiencing mental health issues.

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<sup>55</sup> United Nations Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland, UN DOC CRC/C/IRL/CO/3-4 (1 March 2016) 65(a).

<sup>56</sup> United Nations Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland, UN DOC CRC/C/IRL/CO/3-4 (1 March 2016) 65(b).

<sup>57</sup> Irish Refugee Council, ‘The Receptions Condition Directive: One Year On’ (July 2019), 22, <https://www.irishrefugeecouncil.ie/wp-content/uploads/2019/07/RCD-One-Year-On-11-July-2019-Final.pdf>.

<sup>58</sup> Joint Committee on Education and Skills, ‘Report on Education Inequality Disadvantage and Barriers to Education’ (May 2019).

<sup>59</sup> Irish Refugee Council, ‘The Receptions Conditions Directive: One Year On’ (July 2019), <https://www.irishrefugeecouncil.ie/wp-content/uploads/2019/07/RCD-One-Year-On-11-July-2019-Final.pdf>.

The EU (recast) Reception Conditions Directive (2013/33/EU) (RCD), provides standards for the material reception conditions of asylum seekers in Europe.<sup>60</sup> In 2018, Ireland transposed the RCD, which importantly includes the legal requirement by the Irish State to develop a formal asylum vulnerability assessment process for certain groups of potentially vulnerable asylum seekers, such as disabled asylum seekers.<sup>61</sup> However, the Irish Refugee Council has reported that Ireland has not developed or implemented the vulnerability assessment tool, over a year after the RCD was transposed to Irish legislation, despite this being a clear legal requirement of the RCD.<sup>62</sup>

Also, relevant to disabled asylum seekers in direct provision is the recent Irish ratification of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), on 7 March 2018.<sup>63</sup> The CRPD provides a wide mandate of human rights protection to disabled people across all sections of society and has been described as the most complex human rights treaty ever drafted.<sup>64</sup> Disabled child and adult asylum seekers being accommodated in the direct provision system, should have equal access to the human rights protections set out in the CRPD when compared to non-asylum seekers disabled individuals living in Ireland outside of the direct provision system.

### ***Protective mechanisms***

A joint submission by Dr Maeve O'Rourke of the ICHR and the Irish Council for Civil Liberties in May 2019 to the Oireachtas Joint Committee on Justice and Equality's examination of Direct Provision recommended the expansion of the National Archives Act 1986 to cover the records of social service providers including Direct Provision operators. It further recommended that Ireland review the adequacy of coroners' functions and procedures as they relate to deaths in Direct Provision, that Ireland immediately institute a system of independent inspection of Direct Provision that is sufficient to protect against ill-treatment and other violations of human rights, and that Ireland ratify the Optional Protocol to the Convention Against Torture.<sup>65</sup>

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<sup>60</sup> 'Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)', available at:

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

<sup>61</sup> European Communities (Reception Conditions) Regulations 2018, SI 2018/230, available at:

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

<sup>62</sup> Irish Refugee Council, *Irish Refugee Council report warns that Ireland is in breach of EU Law*, 12 July 2019 available at:

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

<sup>63</sup> *Convention on the Rights of Persons with Disabilities and Optional Protocol*, available at:

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

<sup>64</sup> Conte C. (2016) 'What about refugees with disabilities? The interplay between EU Asylum law and the UN Convention of Persons with Disabilities', *European Journal of Migration and Law* 18(3) 331.

<sup>65</sup> Irish Council for Civil Liberties & Maeve O'Rourke, Submission to the Oireachtas Joint Committee on Justice and Equality for its Consultation on Direct Provision, 31 May 2019, available at: <https://www.iccl.ie/wp-content/uploads/2019/06/190531-ICCL-ORourke-Submission-On-Direct-Provision-System.pdf>.

### **Recommended questions:**

- **By when will Ireland ratify the Optional Protocol to the Convention Against Torture and establish an independent inspection system that is sufficient to protect against torture and ill-treatment, and other violations of human rights, in Direct Provision and emergency accommodation centres?**
- **By when will Ireland end the system of Direct Provision as it currently operates, ensuring that people seeking international protection are enabled to live independently and included in the community?**
- **By when will Ireland put an end to the emergency accommodation system which is unregulated and which is depriving many adults and children of the resources required to meet their basic needs (including education for children)?**
- **By when will Ireland provide the right to work to all international protection applicants, without time restrictions and from the outset of submission of a claim for international protection?**
- **How will Ireland ensure that the rights of the child are guaranteed for all children seeking international protection?**
- **By when and how will Ireland develop and implement a vulnerability assessment tool as required by the Recast Conditions Directive 2013/33/EU (RCD) (2013/33/EU)? Will this vulnerability assessment take into account and purposely apply a disability lens to the particular needs of disabled asylum seekers, as one of the listed vulnerable groups living in the Direct Provision system? Will Ireland provide full and immediate access to a vulnerability assessment for asylum seekers on arrival in Ireland and will the vulnerability assessments be available on an ongoing individual basis?**
- **How will Ireland improve the living conditions of individuals and families seeking international protection in Ireland, in line with the numerous expert recommendations that have been made?**
- **Will the National Archives Act 1986 be expanded to cover the records of social service providers, including Direct Provision operators?**
- **Will Ireland review the adequacy of coroners' functions and procedures as they relate to deaths in Direct Provision?**

- **Will Ireland immediately institute a system of independent inspection of Direct Provision that is sufficient to protect against torture and ill-treatment and other violations of human rights?**

## 6. Denial of Leave to Enter the State

4,776 individuals were refused permission to enter Ireland at a port of entry in 2018.<sup>66</sup> 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 as 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.

### 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?**

## 7. Systematic Institutional and Adoption-related Abuses

The Committee's 2017 Concluding Observations referred to the ongoing human rights violations experienced by survivors of, and others affected by, 'historical' systematic abuses in Magdalene Laundries, Industrial and Reformatory Schools, Mother and Baby Homes and related institutions,

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<sup>66</sup> 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>.

through the system of forced and illegal adoptions, and due to symphysiotomy. Since 2011, the Committee has repeatedly recommended effective investigations, prosecutions, the production of information, access to justice, and comprehensive redress and reparation, regarding these abuses.

Other UN human rights bodies have made similar recommendations, including the Human Rights Committee in 2014,<sup>67</sup> the Committee on Economic, Social and Cultural Rights in 2015,<sup>68</sup> the Committee on the Elimination of Discrimination Against Women in 2017,<sup>69</sup> the Committee on the Elimination of Racial Discrimination in 2019,<sup>70</sup> and the Special Rapporteur on the Sale and Sexual Exploitation of Children in 2019.<sup>71</sup>

### ***Magdalene Laundries***

We note the detailed submissions from Justice for Magdalenes Research<sup>72</sup> and the Irish Council for Civil Liberties<sup>73</sup> for the purpose of informing the Committee's Follow-up Procedure, in 2018. Since then, the issues unfortunately remain the same.

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

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.<sup>74</sup> In recent weeks, Dublin City Councillors and officials have agreed to a

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<sup>67</sup> 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.

<sup>68</sup> 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.

<sup>69</sup> 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)

<sup>70</sup> 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).

<sup>71</sup> 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>

<sup>72</sup> 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](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_NGS_IRL_33112_E.pdf)

<sup>73</sup> 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>

<sup>74</sup> 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>.



new plan for the site that would include a third-level college, housing for older people, and a substantial memorial.<sup>75</sup> Such plans for a memorial will be subject to consultation with survivors and the broader community during 2020. In order for any significant memorialisation process or measure to be implemented at this site or anywhere else, financial support from central Government will be required (and has not yet been promised).

### **Recommended Questions:**

- **When and how will the Government provide the full range of promised healthcare, including complementary therapies, to Magdalene survivors in Ireland and abroad under the ‘ex gratia’ scheme?**
- **When will the Government back-date the pension payments received under the ‘ex gratia’ scheme to the date that an applicant reached retirement age, rather than simply to the scheme’s start date, in order to fulfil Judge Quirke’s recommendation that the women should be put in the position they would have occupied had they paid sufficient stamps?**
- **When will the Government ensure that all survivors have effective access to independent advocacy assistance?**
- **When will the Government ensure access to justice and accountability for the Magdalene Laundries through the establishment of an independent, thorough investigation and truth telling process; the amendment of the Statute of Limitations to enable civil claims to be brought ‘in the interests of justice’; and the education of State officials, including An Garda Síochána, regarding the treatment of girls and women in Magdalene Laundries?**
- **How will the Government ensure those responsible for the Magdalene Laundries abuse will be held to account?**
- **When will the Government release to the public (using technology to anonymise records where appropriate) the archive of State records gathered by the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries?**

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<sup>75</sup> 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>.

- **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?**

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

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

As reported by the Clann Project in 2018,<sup>76</sup> the ongoing **Commission of Investigation into Mother and Baby Homes** is proceeding entirely in private despite numerous requests by survivors for a public hearing. The Commission is gathering all evidence in private and is not giving those affected the opportunity to comment on any of it. The Commission refuses to provide witnesses with a transcript of the evidence that they have provided to the Commission. It appears to be operating a blanket policy of refusing to disclose to victims or survivors of the institutions, or anyone affected by adoption, the personal data that it holds on them.<sup>77</sup> It is also refusing to provide personal information about the deceased to their next of kin.<sup>78</sup> Furthermore, the Commission’s grounding legislation states that all evidence that it gathers in private is inadmissible in civil or criminal proceedings.<sup>79</sup> The legislation also indicates that the Commission’s archives will be closed to the public following the conclusion of its work.<sup>80</sup>

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<sup>76</sup> 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/>.

<sup>77</sup> Ibid.

<sup>78</sup> 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](https://www.irishexaminer.com/breakingnews/ireland/commission-says-they-are-prohibited-from-telling-surviving-family-members-about-burial-locations-918869.html#.XLsuOdZB_M.twitter)

<sup>79</sup> Commissions of Investigation Act 2014, section 19.

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

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

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

As for the evidence gathered by the **Inter-departmental Committee to establish the facts of State involvement with the Magdalen Laundries**,<sup>81</sup> which proceeded between 2011 and 2013, the Department of the Taoiseach (Prime Minister) is currently asserting confidentiality over the State's entire archive of records concerning the Magdalene Laundries, stating in response to Freedom of Information requests: 'these records are stored in this Department for the purpose of safe keeping in a central location and are not held nor within the control of the Department for the purposes of the FOI Act. They cannot therefore be released by this Department'.<sup>82</sup> 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.'<sup>83</sup>

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.<sup>84</sup>

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,<sup>85</sup>

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<sup>81</sup> 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>

<sup>82</sup> Maeve O'Rourke, 'Justice for Magdalenes Research, NGO Submission to the UN Committee against Torture' (Justice for Magdalenes Research 2017), pp 15-16, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fCSS%2fIRL%2f27974&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fCSS%2fIRL%2f27974&Lang=en).

<sup>83</sup> 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.

<sup>84</sup> Residential Institutions Redress Act 2002, section 28(6).

<sup>85</sup> 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 5<sup>th</sup> November 2019, [http://adoption.ie/wp-content/uploads/2019/11/OMahoney\\_Logue\\_ORourke-Opinion.pdf](http://adoption.ie/wp-content/uploads/2019/11/OMahoney_Logue_ORourke-Opinion.pdf).

and the Adoption Rights Alliance group is actively campaigning for (and has published a draft Bill that would establish) a system of access to birth records that emulates Northern Ireland, England, Scotland and Wales where identifying information is provided to adopted people (in some cases following the provision of advice from a State agency) and they and their family members can then decide whether and how to pursue contact by withholding or providing their contact details through a voluntary tracing register.<sup>86</sup>

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

In January 2020, a coalition of 72 abuse survivors and individuals affected by adoption, along with academic and practising archivists, historians, psychologists, sociologists and lawyers, issued a **public statement calling for the establishment of an Annex to the National Archives of Ireland** to hold and make available historical institutional and care-related records.<sup>87</sup> 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;
- 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 administrative records of the systems of institutionalisation and adoption in 20<sup>th</sup> 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?**

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<sup>86</sup> See Adoption Rights Alliance, General Election 2020, <http://adoption.ie/general-election-2020/>

<sup>87</sup> 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/](http://jfmresearch.com/retention-of-records-bill-2019/archive_election2020/)

- **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?**