

***Submission to the UN Committee on the  
Elimination of Racial Discrimination on  
the List of Themes for the Examination of  
Ireland on its Combined 5th to 9th Report***

*July 2019*



**Coimisiún na hÉireann um Chearta  
an Duine agus Comhionannas**  
Irish Human Rights and Equality Commission



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Irish Human Rights and Equality Commission

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## 1. Introduction

1. The Irish Human Rights and Equality Commission (“the Commission”) exercises a dual capacity as the “A” Status National Human Rights Institution (“NHRI”) and the National Equality Body for Ireland. Under the *Irish Human Rights and Equality Commission Act 2014*, the Commission is mandated to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality and to consult with international bodies having a knowledge or expertise in the field of human rights or equality as it sees fit.<sup>1</sup>
2. The purpose of this submission is to provide the CERD Committee with information to inform its preparation of a List of Themes for the examination of Ireland on its combined 5<sup>th</sup> to 9<sup>th</sup> report to the CERD Committee under the Convention (hereafter “the State Report”), during the Committee’s 100<sup>th</sup> Session, scheduled from 25 November – 13 December 2019.
3. The Commission remains at the disposal of the CERD Secretariat and Committee to further discuss the material presented in this submission.

### Domestic incorporation and reservations (Article 20.3)

4. In its 2011 Concluding Observations the CERD Committee recommended that Ireland incorporate the Convention into its legal system to ‘ensure its application before the Irish Courts’.<sup>2</sup> However, the Convention has not been incorporated<sup>3</sup> and the State Report indicates that ‘because all the Convention’s obligations are provided for in domestic legislation, it is not necessary to incorporate the Convention into domestic law’.<sup>4</sup> The Commission notes, however, that non-incorporation in domestic law means that rights holders remain unable to rely directly on the provisions of the Convention before the Irish courts.<sup>5</sup>
5. **The Commission recommends that the State incorporate the Convention into domestic law.**

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<sup>1</sup> See Section 10(2) of the [Irish Human Rights and Equality Commission Act 2014](#).

<sup>2</sup> UN Committee on the Elimination of Racial Discrimination, concluding observations on Ireland (April 2011) UN Doc No: CERD/C/IRL/CO/3-4, at para. 16, hereafter ‘2011 Concluding Observations’. This recommendation is a reiteration of previous concluding observations (Un Doc No: CERD/C/IRL/CO2).

<sup>3</sup> This is consistent with what has been the State’s general approach to domestic incorporation of international treaties, rooted in its dualist legal system. Article 29.6 of the Constitution of Ireland provides that ‘no international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas’. This provision has been interpreted as precluding the Irish courts from giving effect to an international agreement if it is contrary to domestic law or grants rights or imposes obligations additional to those of domestic law.

<sup>4</sup> Combined fifth to ninth periodic reports submitted by Ireland under article 9 of the Convention, due in 2014, UN Doc no: CERD/C/IRL/5-9, para. 71. Hereafter ‘State Report’.

<sup>5</sup> For example in *Olaniran & Others v Minister for Justice, Equality and Law Reform* [2010] IEHC 83, Clarke J clearly stated that ratification of international human rights treaties, such as the UN Convention on the Rights of the Child, is of no effect in Irish courts.

6. The State Report has further indicated that ‘there are no immediate plans to propose withdrawing Ireland’s reservation/interpretive declaration on Article 4 of the Convention’.<sup>6</sup> Noting the clarity provided in General Recommendation Nos. 4 and 35 on the compatibility of Article 4 of CERD with the rights to freedom of expression, opinion and association, the Commission is of the view that the State’s interpretive declaration is unnecessary and should be withdrawn.
7. **The Commission recommends that, per paragraph 23 of General Recommendation No. 35, the State “provide information as to why such a reservation is considered necessary, the nature and scope of the reservation, its precise effects in terms of national law and policy, and any plans to limit or withdraw the reservation within a specified time frame.”<sup>7</sup>**

## 2. Everyday Reality of Racism and Discrimination (Articles 2, 5, 7)

8. Ireland in the 21<sup>st</sup> century is a diverse multi-ethnic and multi-national society. In the 2016 Census, 82% of the usually resident population of 4.689 million people reported that they were of ‘White Irish’ ethnicity, 0.7% were ‘Irish Travellers’, 9.5% were of ‘Any other White background’, 2.1% were of ‘Asian background’, 1.4% were of African ethnicity or ‘any other Black background’, 1.5% were ‘Other (including mixed background)’ and ethnicity was not stated for 2.6%.<sup>8</sup> In 2016, there were 535,475 persons whose nationality was other than Irish (11.6% of the population) originating from 200 different countries and, as the ESRI has identified, a significant number of migrants have become Irish citizens.<sup>9</sup> A growing population of young Irish people have parents and grandparents of different nationalities.<sup>10</sup>
9. An extensive body of research demonstrates significant levels of discrimination against ethnic and national minorities in the labour market and in accessing services, as well as troubling attitudes to particular groups in society.<sup>11</sup>

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<sup>6</sup> State Report, para. 74, per 2011 Concluding Observations recommendation at para.17.

<sup>7</sup> CERD General Recommendation No. 35, para. 23. As adapted from General Recommendation No. 32, para. 38.

<sup>8</sup> Central Statistics Office, [Census of Population 2016 – Profile 8: Irish Travellers, Ethnicity and Religion](#).

<sup>9</sup> McGinnity, Fahey, Quinn, Arnold, Maître and O’Connell (2018) [Monitoring Report on Integration 2018](#), ESRI, Nov 2018, at pp. 63-64.

<sup>10</sup> McGinnity, Fahey, Quinn, Arnold, Maître and O’Connell (2018) [Monitoring Report on Integration 2018](#), ESRI, Nov 2018, and A. Röder, M. Ward, C. Frese and E. Sánchez, [New Irish Families: A Profile of Second Generation Children and their Families](#) (Dublin: Trinity College Dublin, 2014).

<sup>11</sup> The Commission has funded the ESRI to carry out a Human Rights and Equality Research Programme which has produced a series of reports that contribute to the evidence base about the integration of minority ethnic groups and nationalities in Ireland. These include: *Who Experiences Discrimination in Ireland* (2017); *Attitudes to Diversity in Ireland* (2018); *Discrimination and Inequality in Housing in Ireland* (2018); and *Nationality and Ethnicity in the Irish Labour Market* (2018).

10. Our 2017 research report on *Who Experiences Discrimination in Ireland?*, found that compared to White Irish respondents, Irish Travellers are almost 10 times more likely to experience discrimination in seeking work and 22 times more likely in access to private services.<sup>12</sup> Black respondents are three times more likely to experience discrimination in access to public services and almost five times more likely to experience discrimination in access to private services, such as shops, banks and housing. Another Commission research report found that Black people of other than Irish nationality ‘experience the largest barriers in accessing employment’,<sup>13</sup> in spite of having a high concentration of third level qualifications in the labour force.<sup>14</sup> Asian respondents also report more discrimination than the ‘White Irish’ group in private services.<sup>15</sup>
11. Our recent research study on *Attitudes to Diversity in Ireland*,<sup>16</sup> reported that “Just under half of adults born in Ireland believe some cultures to be superior to others, and 45 per cent that some races/ethnic groups were born harder working.”<sup>17</sup> This attitude is more common in Ireland than across a ten-country sample of the EU (40 per cent).<sup>18</sup> The report also found that 17 per cent of adults born in Ireland believe that “some races were born less intelligent.”<sup>19</sup> Again, this belief is more prevalent than in Ireland than across the EU average (14 per cent).<sup>20</sup> With regard to the construction of such ‘ethnic hierarchies’, the report demonstrated particular prejudices towards the Muslim and Roma communities.<sup>21</sup>
12. The State has not renewed the *National Action Plan Against Racism* which lapsed in 2008. In 2017 the State published a *Migrant Integration Strategy*, which contains action plans on “Promoting Intercultural Awareness and Combating Racism and Xenophobia.”<sup>22</sup> However the challenge of overcoming racial discrimination and building a successful intercultural society necessarily goes beyond migrant integration and must take account of ethnic and national diversity in all spheres of contemporary Irish society.
13. **The Commission recommends that the State should put in place a new National Action Plan Against Racism and adequately fund its implementation, and should clarify its plans to promote intercultural awareness, combat racism and xenophobia and monitor impacts.**

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<sup>12</sup> McGinnity, Grotti, Kenny & Russell (2017) [Who experiences discrimination in Ireland?](#) IHREC/ESRI, Nov 2017, at p. iv.

<sup>13</sup> McGinnity, Grotti, Groarke & Coughlan (2018) [Nationality and Ethnicity in the Irish Labour Market](#), IHREC/ESRI (2018), at p. 36.

<sup>14</sup> McGinnity, Grotti, Groarke & Coughlan (2018) [Nationality and Ethnicity in the Irish Labour Market](#), IHREC/ESRI, at p. 56.

<sup>15</sup> McGinnity, Grotti, Kenny & Russell (2017) [Who experiences discrimination in Ireland?](#) IHREC/ESRI, Nov 2017, at p. 36.

<sup>16</sup> McGinnity, Grotti, Russell, Fahey (2018) [Attitudes to Diversity in Ireland](#), IHREC/ESRI, Mar 2018.

<sup>17</sup> *Ibid.* at p. 50.

<sup>18</sup> *Ibid.* p. 27.

<sup>19</sup> *Ibid.* at p. 50.

<sup>20</sup> *Ibid.* at p. 27.

<sup>21</sup> *Ibid.* at pp. vii-viii.

<sup>22</sup> Department of Justice (2017) [The Migrant Integration Strategy: A Blueprint for the Future](#), Feb 2017.

### 3. Participation in Public Life (Article 1)

14. The Commission notes the CERD Committee’s Concluding Observations regarding the participation of minority groups in Irish public life,<sup>23</sup> and wishes to alert the Committee to its concerns about political discourse in Ireland that may serve to exclude minority groups from public life.<sup>24</sup> We note in this regard the use of discriminatory language that referenced the Traveller community in particular, in the 2018 Irish presidential election campaign.<sup>25</sup> The Commission is of the view that while political debates should be free and open, they should not be characterized by political discourse that is of a discriminatory nature, or which amounts to hate speech.<sup>26</sup>
15. The Commission is of the view that the use of discriminatory rhetoric in political discourse can be addressed by the development and promotion of guidance on standards in this regard. The Commission has recommended that in Ireland, the planned new Electoral Commission should have a mandate to address the use of discriminatory rhetoric and hate speech in political campaigning by developing and promoting standards in political discourse during elections and referendums.<sup>27</sup>
16. The Commission recognises that several current Government policies aim to increase the participation of minority groups in political processes at the local<sup>28</sup> and national level, and in public life generally.<sup>29</sup> However, it is concerning that these policies do not list specific, measurable outcomes.

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<sup>23</sup> Concluding Observations 2011, para.14. The CERD Committee noted that “members of the Traveller community are not adequately represented in the State party’s political institutions and do not effectively participate in the conduct of public affairs” and recommended the State “adopt affirmative action programmes that seek to improve the representation of Travellers in political institutions, particularly at the level of Dáil Éireann (Lower House of Parliament) and/or Seanad Éireann (Upper House of Parliament)” and further “adopt measures aimed at encouraging the Traveller community to participate in the conduct of public affairs”

<sup>24</sup> CERD General Recommendation No. 35, at para.28.

<sup>25</sup> See Harry McGee, Conor Gallagher and Paul Cullen, ‘[Pavee Point ‘let down’ Travelling community, says Casey](#)’, *Irish Times*, 17 October 2018. See also Irish Human Rights and Equality Commission (17 October 2018), ‘[Statement on the recognition of Traveller ethnicity](#)’.

<sup>26</sup> The Committee of Ministers of the Council of Europe defines hate speech as “all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin”. See Council of Europe, [Recommendation No. R\(97\) 20 of the Committee of Ministers to Member States on ‘Hate Speech’](#), 1997.

<sup>27</sup> Irish Human Rights and Equality Commission (2019), [Recommendations on the Establishment of an Electoral Commission](#), Mar 2019.

<sup>28</sup> In Ireland, the eligibility to vote in local elections is extended to EU and non-EU citizens, see the Local Elections Regulations 1995 (S.I. No. 297/1995). This is rare in the European Union; see Hassan Boussetta, *The political rights of non-nationals in the European Union*, lecture paper presented at the European Doctorate on Migration, Identity and Diversity, IP1 Padova, Italy, September 2005, and Africa Centre on the Civic Participation of the African Community in Ireland (2006) [Inclusive Citizenship in 21<sup>st</sup> Century Ireland: What Prospects for the African Immigrant Community](#), Jul 2006.

<sup>29</sup> The *National Traveller and Roma Integration Strategy 2017 – 2021* sets the objective that “Traveller and Roma people should be supported to participate in political processes at local and national levels”, with the Department of Housing, Planning, Community and Local Government (DHPCLG) assigned the responsibility to “support the work of Traveller and Roma organisations on voter education and voter registration initiatives for the Traveller and Roma communities” to

17. **The Commission recommends that the State clarify how it intends to uphold standards in political discourse, in line with Articles 4, 5 and 7 of the Convention.**
18. **The Commission recommends that the State clarify how it intends to assess the effectiveness of current policy measures that aim to increase the political participation of minority groups.**

## 4. Hate Crime and Hate Speech (Articles 2, 4, 5, 7)

19. The Commission notes the State Report's reference to the *Prohibition of Incitement to Hatred Act 1989*, in particular its indication that "since 2010 there have been 12 cases prosecuted ... resulting in two sentences of imprisonment."<sup>30</sup> The Commission has previously expressed concerns about the low rate of prosecutions under this Act, which "calls into question the effectiveness and accessibility of these sanctions."<sup>31</sup>
20. More generally, the Commission has recommended that "a revision of the existing legal framework on racially motivated crime should be undertaken to ensure an effective law capable of deterring and prosecuting racially motivated offences."<sup>32</sup> The State Report refers to the ability of trial judges to take aggravating factors, including racist motivation, into account at sentencing for offences including assault, criminal damage and public order offences.<sup>33</sup> However while current practice in sentencing in Ireland allows for prejudice motivations to be taken into account by the sentencing court, the court is under no obligation to do so. Recent research has highlighted the tendency for the 'hate' element of the crime to disappear from the Irish criminal justice process at several stages, including during police incident recording, investigation, prosecution and sentencing.<sup>34</sup> Research has further stressed the need for a more robust legal framework, in terms of enabling effective

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progress this objective. See Department of Justice and Equality, [National Traveller and Roma Inclusion Strategy 2017–2021](#), action 132, p. 42. The *National Strategy for Women and Girls 2017-2020* aims to secure "Greater levels of participation by Traveller and Roma women in public life" in conjunction with this strategy by "continuing to fund and support the National Traveller Women's Forum, Mincéirs Whiden, and relevant local community Traveller and Roma projects". See Department of Justice and Equality, [National Strategy for Women and Girls 2017-2020](#), action 3.11, p. 54. Further, *The Migrant Integration Strategy* makes the commitment that "migrants will be supported and encouraged to register to vote and to exercise their franchise". See Department of Justice and Equality, [The Migrant Integration Strategy](#), action 59, p. 32.

<sup>30</sup> State Report, at para. 65.

<sup>31</sup> Irish Human Rights and Equality Commission (June 2014), Submission to the UN Human Rights Committee on the Examination of Ireland's Fourth Periodic Report under the International Covenant on Civil and Political Rights, at para 188.

<sup>32</sup> Irish Human Rights and Equality Commission (September 2015), Submission to the Second Universal Periodic Review Cycle for Ireland, section 8.

<sup>33</sup> State Report, at para. 66.

<sup>34</sup> Amanda Hayes and Jennifer Schweppe (2017), *Lifecycle of a Hate Crime: Country Report for Ireland*. Dublin: ICCL.

investigation of offences, and in terms of reflecting the contemporary challenges of online hate speech.<sup>35</sup>

21. The State Report also indicates that “the Department of Justice and Equality is undertaking a review of the legislation relating to hate crime and incitement to hatred” for completion by the end of 2018.<sup>36</sup> However, the State’s promised review remains incomplete, and has not been the subject of clear terms of reference, nor to a detailed timeframe for delivery.<sup>37</sup>
22. **The Commission recommends that the State develop and commit to a clear, time-bound action plan for review and modernisation of hate crime law and practice, including:**
  - **modernisation of the *Prohibition of Incitement to Hatred Act 1989*, including to address online incitement to hatred.**
  - **the development of means to ensure that hate motivation is consistently reflected throughout the criminal justice system, including in the criminal law, police incident recording and monitoring, investigation, prosecution, trial and sentencing.**
  - **improvements in the reporting and monitoring of hate crime in line with international obligations and good practice.**

## 5. Access to Justice (Articles 2.1(c), 2.2, 5, 6)

### Commission on the Future of Policing in Ireland

23. The Government established the Commission on the Future of Policing in Ireland in May 2017 to review the role, structures, leadership, management, ethos and culture of policing.<sup>38</sup>
24. In February 2018, the Commission made a submission to the Commission on the Future of Policing calling for human rights and equality standards to be embedded in every aspect of policing, including the delivery of services and the operation of the oversight and

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<sup>35</sup> Amanda Hayes and Jennifer Schweppe (2017), *Lifecycle of a Hate Crime: Country Report for Ireland*. Dublin: ICCL, pp. 23, 211-212; see also recent research funded by the Irish Human Rights and Equality Commission and the Irish Research Council which has demonstrated the prevalence of ‘racially loaded’ speech online in Ireland. See Eugenia Siapera, Elena Moreo, Jiang Zhou (2018) *Hate Track: Tracking and Monitoring Racist Speech Online*, Dublin City University. The project used insights from civil society and experts in the field of race, racism and hate speech to build a computational tool that harvests and classifies Facebook and Twitter posts in terms of their probability to contain racially-loaded toxic contents, generating a dataset which was subsequently analysed in terms of the toxic repertoires it contained, the communities targeted, the kinds of people posting, and the events that trigger racially-toxic contents.

<sup>36</sup> State Report, at para. 68. This aligns with the State’s Commitment under the *Migrant Integration Strategy*, to review current legislation ‘with a view to strengthening the law against hate crime, including in the area of online hate speech – see Department of Justice (2017), *Migrant Integration Strategy: A Blueprint for the Future*, at action 65, p. 33.

<sup>37</sup> While the Minister for Justice indicated in 2018 his intention to bring forward proposals to address the other gaps that have been highlighted in Ireland’s legislative and procedural infrastructure for combatting hate crime, the Department’s recently-published research tender for an evidence review of hate crime legislation appears to be the first public indication of action in this area.

<sup>38</sup> [Press Release by Minister Frances Fitzgerald](#) (16 May 2017).

accountability structures in place. In line with the Concluding Observations of the Committee in 2011,<sup>39</sup> the Commission recommended further targeted actions to ensure that the police service reflects the diversity of Irish society<sup>40</sup>; the integration of human rights and equality issues into the training provided to all police staff; and the strengthening of existing reporting and complaints mechanisms.<sup>41</sup> The Commission also raised concerns about the extent to which the police service in Ireland is responsive and sensitive to the needs of minority communities. It recommended appropriate measures to address racial profiling in any form and the provision of cultural competence training to all law enforcement personnel.<sup>42</sup>

25. The report of the Commission on the Future of Policing was published in September 2018 and recognises, as a first principle, that ‘human rights are the foundation and purpose of policing’.<sup>43</sup> The Commission has specifically welcomed the comprehensive approach to human rights set out in the report, which recommends the creation within the police service of a dedicated high-level human rights unit and the appointment of an independent human rights adviser to a proposed new Policing and Community Safety Oversight Commission.<sup>44</sup>
26. The Government has accepted all of the recommendations in full and a four-year implementation plan, *A Policing Service for the Future*, was published in December 2018.<sup>45</sup> A Programme Office has also been established in the Department of An Taoiseach to oversee and report on progress.<sup>46</sup>
27. **The Commission recommends that the State engage with the Committee on its implementation of the recommendations issued by the Commission on the Future of Policing and on progress made in promoting diversity within the service; addressing racial profiling; improving cultural competence; and improving reporting, data and monitoring systems.**

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<sup>39</sup> Committee on the Elimination of Racial Discrimination, [Concluding observations of the Committee on the Elimination of Racial Discrimination: Ireland](#) (2011) at paras. 18, 24.

<sup>40</sup> An Garda Síochána has recently launched a new recruitment campaign targeting applicants from diverse backgrounds and experience, and has lifted its restrictions on headwear in its uniform policy, permitting the wearing of religious head coverings.

<sup>41</sup> Irish Human Rights and Equality Commission, [Submission to the Commission on the Future of Policing](#) (February 2018).

<sup>42</sup> *Ibid.* at pp. 10-13.

<sup>43</sup> Irish Human Rights and Equality Commission, [Primacy of Human Rights in the Future of Policing in Ireland Welcomed by Human Rights and Equality Commission](#) (September 2018) and The Commission on the Future of Policing in Ireland, [The Future of Policing in Ireland](#) (September 2018) at p. IX.

<sup>44</sup> The Commission on the Future of Policing in Ireland, [The Future of Policing in Ireland](#) (September 2018) at p. 11.

<sup>45</sup> Department of Justice and Equality, [Commission on the Future of Policing in Ireland](#).

<sup>46</sup> Department of Justice and Equality, [Written Answers – Juvenile Offenders](#) (27 February 2019).

## Practice Direction

28. A recent High Court Practice Direction<sup>47</sup> places an obligation on applicants involved in asylum, immigration, citizenship and EU Treaty Rights cases to provide a very significant amount of information to the Court regarding their case,<sup>48</sup> and also requires the applicant to arrange for the translation of all exhibited documents into Irish or English in specified circumstances.<sup>49</sup> The Commission notes that concerns have been raised by legal practitioners about the burden the Practice Direction places on their clients and the extent to which it acts a barrier for migrants and their families seeking to access justice.<sup>50</sup>
29. **The Commission recommends that the State address the implications of Practice Direction 81 on migrants' access to justice with the State.**

## Interpretation services

30. There are no accredited training, quality assurance mechanisms, or regulations pertaining to interpretation services. This has resulted in the lack of availability of appropriately trained interpreters with technical expertise for legal proceedings,<sup>51</sup> as well as variations in the standard of interpretation services.<sup>52</sup> The availability of legal documentation in accessible formats and different languages has also been identified as a barrier to accessing justice.<sup>53</sup>
31. **The Commission recommends that the State take measures to improve the availability and quality of interpretation services.**

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<sup>47</sup> Practice Direction 81 came into force in the High Court in Ireland on 1 January 2019, with an Explanatory Note issuing later that month.

<sup>48</sup> This includes: full details of any potentially relevant previous civil or criminal proceedings they have been involved in, whether in the State or elsewhere; all protection or immigration applications previously made, whether in the State or elsewhere, and the outcomes and dates of each; and their complete immigration history since leaving their country of origin.

<sup>49</sup> Courts Service of Ireland, [HC81 – Asylum, Immigration and Citizenship List](#). See para. 5(3) of the Practice Direction. Para. 17 of the Explanatory Note states that the requirement to provide translations will only apply if such translation pre-existed the proceedings, if the parties producing the document is relying on such document, or if directed by the court.

<sup>50</sup> Bloomsbury Professional, [Irish Immigration and Asylum Law Briefing](#) (24 January 2019) and Law Society Gazette, [Judge tells solicitors his door open on asylum ruling](#) (22 January 2019). Irish Times (21 January 2019) High Court clarifies practice direction for immigration and asylum cases. <https://www.irishtimes.com/news/crime-and-law/high-court-clarifies-practice-direction-for-immigration-and-asylum-cases-1.3764472>

<sup>51</sup> In addition to issues in accessing justice, the lack of appropriate qualified and skilled interpreters also impedes access to healthcare services. Family members and friends of victims can be used to informally interpret in health care contexts, raising privacy, accuracy and consent issues. In 2018, the Commission invited the Health Service Executive to carry out an Equality Review in relation to the provision of interpretation services when accessing General Practitioner services, see Irish Human Rights and Equality Commission (2018), [Annual Report 2018](#), p. 27.

<sup>52</sup> Law Society Gazette, [A matter of interpretation: Legal interpretation in Ireland](#) (2017) and Joint Committee on Justice and Equality, [Reform of Family Law System: Discussion \(Resumed\)](#) (13 March 2019). The *Irish Sign Language Act 2017* is due to come into operation by December 2020, three years after its enactment. It requires Irish Sign Language interpretation and translation services to be available in legal proceedings, as required.

<sup>53</sup> Joint Oireachtas Committee on Justice, Defence and Equality, [Reform of Family Law System: Discussion \(Resumed\)](#) (13 March 2019).

## Intoxicating Liquor Act

32. Currently, access to remedy for discriminatory refusal of entry to a licensed premises hotel/bar is governed by of section 19 of the *Intoxicating Liquor Act 2003*, rather than by the *Equal Status Acts*. Therefore, these cases must be taken in the District Court, rather than the equality-specialist Workplace Relations Commission. In contrast to the Workplace Relations Commission, bringing a case under section 19 of the *Intoxicating Liquor Act 2003* is complex, and entails cost risk, court fees and an adversarial public forum. This represents a barrier to access to remedy for those who experience discrimination in licensed premises. While such discrimination can be on any of the protected grounds under the Equality Acts, in practice Irish Travellers are most at risk.
33. **The Commission recommends that the State return complaints of discrimination in licensed premises to the purview of the Equal Status Acts, and to the jurisdiction of the Workplace Relations Commission.**

## Commission of Investigation into Mother and Baby Homes<sup>54</sup>

34. The Commission has previously expressed its concern about the limited scope of the State's investigation into mother and baby homes, particularly as the operation of a number of similar institutions were not included in the original Terms of Reference.<sup>55</sup> The Commission regrets that, despite its recommendations, the investigation remains limited in scope. It also notes the testimony that women and children were subjected to additional trauma, abuse, discrimination and stigma in the institutions on the basis of their race and ethnicity.<sup>56</sup>
35. **The Commission recommends that the State ensure that investigations into abuses are sufficiently comprehensive to encompass all persons potentially affected, and that the Commission of Investigation's final reports adequately address the experiences of minority ethnic groups.**

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<sup>54</sup> The Commission of Investigation is examining practices surrounding the births, deaths and burials of children in institutions called 'Mother and Baby Homes'. From the 1920s until the 1990s, Mother and Baby Homes, which were institutions managed by Catholic orders, were established to house pregnant, unmarried women and girls. The women and girls stayed in these homes for at least the first year of their child's life, with the intention being that the child could be fostered or adopted (often without the consent of the mother). See Department of Children and Youth Affairs (July 2014), [Report of the Inter-Departmental Group on Mother and Baby Homes](#), p. 6.

<sup>55</sup> Irish Human Rights and Equality Commission (January 2017), [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women: Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's combined sixth and seventh periodic report](#), p. 45.

<sup>56</sup> M. O'Rourke, C. McGettrick, R. Baker and R. Hill *et al* (15 October 2018), [CLANN: Ireland's Unmarried Mothers and their Children: Gathering the Data: Principal Submission to the Commission of Investigation into Mother and Baby Homes](#), p110; and Dáil Éireann debate (9 March 2017), [Commission of Investigation](#).

## 6. Traveller and Roma Communities (Articles 2, 5, 6, 7)

36. The Commission welcomed the Irish Government's recognition of Travellers as an ethnic minority on 1<sup>st</sup> March 2017.<sup>57</sup> Further, a *National Traveller and Roma Integration Strategy 2017-2021* was published in 2016.<sup>58</sup> This is an expansive strategy with ambitious commitments.
37. Travellers continue to experience significant barriers to the enjoyment of the rights to healthcare,<sup>59</sup> adequate and culturally appropriate housing,<sup>60</sup> education,<sup>61</sup> and decent work.<sup>62</sup> There are extremely high levels of mental ill health in the Traveller community, with suicide being the cause of 11% of all Traveller deaths. The suicide rate for Traveller women is 6 times higher than settled women and the rate is 7 times higher for Traveller men.<sup>63</sup> The negative stereotypes of Travellers in public discourse reinforces barriers to public services, and exacerbates the disadvantages.<sup>64</sup> Notwithstanding the evident need, there are continuing issues relating to draw-down of Traveller accommodation funding by local authorities.<sup>65</sup> In 2018, local authorities underspent 48% in Traveller accommodation budget.<sup>66</sup>
38. The Commission has engaged in extensive legal work on Traveller accommodation. In particular, it has assisted in five cases where the requirement to have a fixed address for a period of time in order to access social housing leads to indirect discrimination against Travellers.<sup>67</sup> In 2017, the Commission represented a Donegal Traveller family, living without

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<sup>57</sup> An Taoiseach Enda Kenny TD (1 March 2017), Statement to Dáil Éireann on the recognition of Travellers as an ethnic groups. At <https://www.oireachtas.ie/en/debates/debate/dail/2017-03-01/speech/417/>; Irish Human Rights and Equality Commission (Press Release, 1 March 2017), 'Historic Step as Traveller Ethnicity Recognised by State'.

<sup>58</sup> Department of Justice and Equality (2016) *National Traveller and Roma Inclusion Strategy 2017 – 2021*.

<sup>59</sup> Watson, Kenny, McGinnity (2017) *A Social Portrait of Travellers in Ireland*, IHREC/ESRI (2017), see chapter 5.

<sup>60</sup> Travellers have a high risk of being homeless; while they make up less than 1% of the population, they represent 9% of the homeless population. Travellers are almost 10 times more likely to report discrimination in access to housing. The proportion of Travellers lacking heating and sanitary facilities is higher than it is for the general population, with 2% of Travellers having no piped water and 3% not having a sewerage connection. See Grotti, Russell, Fahey, Maître (2018) *Discrimination and Inequality in Housing in Ireland*, IHREC/ESRI (2018). See also Watson, Kenny, McGinnity (2017) *A Social Portrait of Travellers in Ireland*, ESRI (2017).

<sup>61</sup> 78% of Travellers had completed no more than primary education compared to 10% of non-Travellers. Only 1% of Travellers had a degree or higher, compared to 30% of non-Travellers. The odds of leaving school without having completed second level were 33 times higher for Travellers than for non-Travellers. See Watson, Kenny, McGinnity (2017) *A Social Portrait of Travellers in Ireland*, IHREC/ESRI (2017), at p. 21.

<sup>62</sup> An IHREC-commissioned study (McGinnity, Grotti, Kenny Russell (2017) *Who experiences discrimination in Ireland?* IHREC/ESRI, at. P. iv) found that Travellers are almost ten times more likely than the "White Irish" group to experience discrimination in seeking work. The 2016 Census showed an unemployment rate of 80% in the Travelling community, compared to a 12.9% rate in the general population.

<sup>63</sup> Joint Committee on the Future of Mental Health Care (October 2018), *Final Report*, p. 13.

<sup>64</sup> Travellers in Prison Initiative (2017) *National Conference Report*, Oct 2017, at pp. 11-12.

<sup>65</sup> Irish Human Rights and Equality Commission (May 2018), Comments on Ireland's 15<sup>th</sup> National Report on the implementation of the European Social Charter.

<sup>66</sup> Dáil Éireann Debate, *Traveller Accommodation*, 7 Nov 2018; Dáil Éireann Debate, *Traveller Accommodation*, 20 Nov 2018.

<sup>67</sup> Irish Human Rights and Equality Commission (2018) *County Council Criterion for Traveller Family Access to Services Discriminatory*, 10 May 2018; See *A member of the Travelling Community v A County council (CC)* Workplace Relations

basic facilities, including running water. Following the launch of a High Court challenge, Donegal County Council agreed to reconsider the family's social housing application.<sup>68</sup> In June 2019, the Commission invited all city and county councils in the country to carry out an equality review<sup>69</sup> of their provision of Traveller Accommodation.<sup>70</sup>

39. In 2014, a Special Inquiry into the circumstances surrounding the removal of two Roma children from their families ('Logan Report') recommended that an assessment of need be undertaken by a nominated Government Department to establish how best to improve State agencies' interaction with, and provision of support to, the Roma community.<sup>71</sup> Subsequently, a *National Roma Needs Assessment*, commissioned by the Department of Justice and Equality in line with the Logan Report, was published in 2018. It identified significant issues with regard to housing for the Roma community, including discrimination in accessing accommodation; severe overcrowding; poor quality accommodation; a lack of security of tenure; homelessness; and a lack of access to social housing and rent supplement.<sup>72</sup>
40. On education, the CRC Committee highlighted in 2016 that it is 'deeply concerned about the structural discrimination against Traveller and Roma children, including as regards their access to education' and it called on the State to undertake concrete and comprehensive measures to address this.<sup>73</sup> The Commission notes that the new *National Traveller and Roma Inclusion Strategy 2017-2021* and the *DEIS Plan 2017* include a number of specific

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Commission, Adjudication Reference: ADJ-00008050, 26th April 2018; [A member of the Travelling Community v A County council \(CC\)](#), Workplace Relations Commission, Adjudication Reference: ADJ-00008033, 26th April 2018; [A member of the Travelling Community v A County council](#), Workplace Relations Commission, Adjudication Reference: ADJ-00008034, 26th April 2018; [A member of the Travelling Community A County council \(CC\)](#), Workplace Relations Commission, Adjudication Reference: ADJ-00008030, 26th April 2018; [A member of the Travelling Community v A County council \(CC\)](#), Workplace Relations Commission, Adjudication Reference: ADJ-00008032, 26th April 2018.

<sup>68</sup> Irish Human Rights and Equality Commission (Press Release, 20 September 2017), "Donegal County Council Agrees to Reconsider Housing Application for Traveller Family Following High Court Challenge." See also Irish Human Rights and Equality Commission (May 2018), *Comments on Ireland's 15<sup>th</sup> National Report on the implementation of the European Social Charter*, at p. 8.

<sup>69</sup> Section 32 of the *Irish Human Rights and Equality Commission Act (2014)* empowers the Commission to invite public or private organisations to carry out a review of equality of opportunity generally, or a particular aspect of discrimination under the Equality Acts.

<sup>70</sup> Irish Human Rights and Equality Commission (Press Release, 28 June 2019), "Human Rights and Equality Commission Launches National Review into Council Traveller Accommodation Provision".

<sup>71</sup> Report of Ms Emily Logan, [Garda Síochána Act 2005 \(Section 42\) \(Special Inquiries relating to Garda Síochána\) Order 2013](#) (July 2014) at p. 106 (recommendation 4.2.3).

<sup>72</sup> Pavee Point Traveller and Roma Centre and Department of Justice and Equality, [Roma in Ireland – A National Needs Assessment](#) (2018) at pp. 87-92. Of the 108 respondents interviewed as part of this research, 36.6% did not have a tenancy agreement. The average length of time in Ireland for those without tenancy agreements was 5.6 years. The research documented reports of Roma living in unsafe abandoned buildings and accommodation without basic facilities, including light and heat. 12.4% of the respondents did not have a kitchen, 13.5% did not have a fridge and 14.4% did not have a bathroom in their house or apartment. 44.8% of respondents said they did not have enough beds in their accommodation. Rat infestation also emerged as a regular theme in this research.

<sup>73</sup> Committee on the Rights of the Child, [Concluding observations on the combined third and fourth periodic reports of Ireland](#) (2016) at p. 16.

actions relating to improving educational outcomes of Traveller and Roma children.<sup>74</sup> However, separate achievement data is not collected for Traveller and Roma pupils so it is not possible to establish the impact of the measures adopted.<sup>75</sup>

41. **The Commission recommends that the State detail the measures that it has taken to address persistent institutional barriers to the provision of culturally appropriate accommodation to Travellers, including actions to ensure that Local Authorities draw down money allocated to Traveller housing, in order to progressively realize the right to culturally appropriate housing.**
42. **The Commission recommends that the State detail how it is improving outcomes for Traveller and Roma Communities including in the areas of education, employment, and health.**

## 7. International Protection (Articles 2, 5)

### Direct Provision

43. It is the Commission's view that the system of Direct Provision is not in the best interests of children, has a significant impact on the wellbeing and mental health of residents and has failed to adequately protect the rights of those seeking protection in Ireland. The system and its impact on family life has been criticised at both a national and international level.<sup>76</sup> The government-appointed Special Rapporteur for Children, Dr Geoffrey Shannon, also expressed concerns that children living in Direct Provision are growing up in "state-sanctioned poverty"<sup>7778</sup> It has also been documented that living in Direct Provision centres can have a particularly negative impact on children's educational attendance, engagement and experience.<sup>79</sup>

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<sup>74</sup> Department of Justice and Equality, [National Traveller and Roma Inclusion Strategy 2017-2021](#) (June 2017) and Department of Education and Skills, [DEIS Plan 2017 – Delivering Equal Opportunity in Schools](#) (2017).

<sup>75</sup> Government of Ireland, [16<sup>th</sup> National Report on the implementation of the European Social Charter](#) (30 October 2019) at pp. 95-96.

<sup>76</sup> For example, UN Committee on the Rights of the Child, *Concluding Observations on the combined third and fourth periodic reports of Ireland*, CRC/C/IRL/CO/3-4, para. 66; Committee on Economic Social and Cultural Rights (2015) *Concluding Observations on Ireland*, para. 14; Human Rights Committee (2014) *Concluding Observations on Ireland*, para. 19; Committee on the Elimination of Racial Discrimination (2011) *Concluding Observations on Ireland*, para. 20. The State has also committed to reforming the Direct Provision system during the second cycle of the Universal Periodic Review – see Human Rights Council (2016) *Report of the Working Group on the Universal Periodic Review: Ireland*, A/HRC/33/17/Add.1, para. 136.89.

<sup>77</sup> Shannon, G., Fifth Report of the Special Rapporteur for Children, 2011, pp. 31–32 and Shannon, G., Seventh Report of the Special Rapporteur for Children, pp. 56-60.

<sup>78</sup> Geoffrey Shannon (2018) [Eleventh Report of the Special Rapporteur on Child Protection. A Report Submitted to the Oireachtas](#)

<sup>79</sup> Irish Primary Principals Network, [Schools becoming a safe haven for Ireland's 4,000 homeless children](#) (21 February 2019).

44. The recent news that Ms Sylva Tukula, who died in a Direct Provision centre, was buried without ceremony or notice to friends also highlights a lack of transparency regarding deaths in Direct Provision.<sup>80</sup> The Department of Justice and Equality has not released records of the number of deaths in Direct Provision for two years.<sup>81</sup>
45. The Commission has expressed particular concerns in relation to the human rights implications of lengthy stays in direct provision centres.<sup>82</sup> While recent reforms<sup>83</sup> have been introduced with the intention of reducing delays in the asylum application process, there remain significant delays in processing applications.
46. In June 2015, the government published the report of the Working Group on the Protection Process including Direct Provision and Supports for Asylum Seekers (the Working Group) with wide ranging recommendations for reform of the protection process.<sup>84</sup> The government has claimed that 98% of the recommendations therein have been implemented, including the State's opt-in in 2018 to the EU recast Reception Conditions Directive.<sup>85</sup> The figure of 98% has, however, been questioned.<sup>86</sup>
47. Direct Provision centres are currently experiencing significant capacity issues.<sup>87</sup> Capacity issues are being exacerbated by the housing crisis, which has meant residents who have been granted with refugee status are unable to leave. There are currently approximately 700 people with refugee status still living in Direct Provision.<sup>88</sup> The current lack of available spaces in Direct Provision has led to a growing reliance on emergency accommodation in guesthouses and hotels, where persons are subject to relocation at short notice due to commercial bookings.<sup>89</sup> As of 11 July 2019, there were 988 persons living in emergency

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<sup>80</sup> Cónal Thomas (2019) [Woman who died in Direct Provision buried without ceremony before friends were told](#), The Journal, 5 Jun 2019.

<sup>81</sup> Cónal Thomas (2019) [Information about deaths in Direct Provision no longer released by department](#), The Journal, 6 Jun 2019.

<sup>82</sup> Irish Human Rights and Equality Commission (2014) *Policy Statement on the System of Direct Provision in Ireland* (available at: <https://www.ihrec.ie/documents/ihrec-policy-statement-on-direct-provision/>).

<sup>83</sup> See State Report at para. 98 regarding the provisions for international protection applications in the International Protection Act 2015.

<sup>84</sup> See [Department of Justice Progress Reports on Improvements to the Protection Process](#) and [Nasc Working Paper on the Progress of Implementation of the McMahon Report](#).

<sup>85</sup> State Report, "A 98% full or partial implementation rate". See Department of Justice, *Third and final Progress Report on the Implementation of the [McMahon] report's Recommendations*. The recast Reception Conditions Directive (2013/33/EU) makes wide-ranging provisions for reception and accommodation of asylum seekers that have significant human rights and equality implications, including in the area access to employment (see section 6 of this submission).

<sup>86</sup> Nasc (2017) [Nasc Working Paper on the Progress of Implementation of the McMahon Report](#), Dec 2017, at 5.

<sup>87</sup> Ombudsman (March 2019), *The Ombudsman and Direct Provision: Update for 2018 – A commentary by the Ombudsman*, p. 7. There was an increase in the number of people seeking asylum during 2018. The number in direct provision grew from 5,687 (of which 591 were in emergency accommodation) on 1 January 2018 to 6,148 (of which 442 were in emergency accommodation) on 1 January 2019.

<sup>88</sup> Nick Henderson 'What are the alternatives to our broken direct provision system?' Irish Times, Tue 12 Feb 2019.

<sup>89</sup> Cónal Thomas "Direct Provision: Nearly 100 people relocated from Monaghan hotel", The Journal, 12 Mar 2019.

Commission staff met with residents in emergency accommodation in guest houses and bed and breakfasts in Carrickmacross in County Monaghan on 26 February 2019. Chief amongst residents' concerns were their isolation, the lack of play facilities for children, children's lack of access to school and pre-school, and lack of access to information.

accommodation awaiting permanent accommodation.<sup>90</sup> In this current context the Commission is concerned that all those awaiting permanent accommodation receive the assessments, services and supports that must be provided within a reasonable period under the Reception Conditions Directive (Directive 2013/33/EU).

48. Measures are currently being taken to expand the Direct Provision centres.<sup>91</sup> However, the Commission is concerned at the number of arson attacks on newly designated centres in recent months.<sup>92</sup>

49. **The Commission recommends that the State engage with the Committee on the ongoing issues concerning Direct Provision, including the length of stays, the system’s effect on private and family life, the capacity and overcrowding crisis, the delivery of assessments, services and supports that must be provided within a reasonable period under the Reception Conditions Directive (Directive 2013/33/EU, and access to education.**

### Family reunification<sup>93</sup> (Articles 2, 5)

50. The Commission notes the CERD Committee’s Concluding Observation regarding a legal framework for family reunification,<sup>94</sup> and the State’s confirmation<sup>95</sup> that such a framework has been set out in the International Protection Act 2015 (the 2015 Act), which came into effect on 31 December 2016. The Commission has serious concerns regarding “retrogressive measures”<sup>96</sup> on family reunification introduced in the 2015 Act, and the impact of these changes on the rights of beneficiaries of international protection since the Act’s commencement. Similar concerns have been raised by various actors, including parliament,<sup>97</sup> civil society<sup>98</sup> and the Council of Europe’s Commissioner for Human Rights.<sup>99</sup>

51. The 2015 Act limits the statutory right to family reunification to members of the nuclear family and removes the (predecessor) 1996 Act’s “dependent family members” category. The Commission has recommended that the 2015 Act be amended to define a member of

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<sup>90</sup> Dáil Éireann debate (11 July 2019), [Direct Provision System](#).

<sup>91</sup> In January 2019, the Department of Justice invited expressions of interest from hotels and guesthouses interested in provided meals and accommodation for persons seeking international protection. See Reception and Integration Agency, Department of Justice and Equality (January 2019) [Expressions of Interest](#).

<sup>92</sup> Nasc Strongly Condemns Suspected Arson Attack At Proposed Direct Provision Centre In Rooskey. <http://www.nascireland.org/campaign-for-change/direct-provision/nasc-strongly-condemns-suspected-arson-attack-at-proposed-direct-provision-centre-in-rooskey/>

<sup>93</sup> While this section is limited to the issue of family reunification in the context of international protection cases, there is a wider body of law relevant to family reunification outside of the international protection framework where barriers to family reunification are also experienced.

<sup>94</sup> CERD Concluding Observations on Ireland, UN Doc No: CERD/C/IRL/CO/3-4, at para. 25.

<sup>95</sup> State Report, para. 131.

<sup>96</sup> Irish Human Rights and Equality Commission (June 2018), The right to family reunification for beneficiaries of international protection.

<sup>97</sup> Joint Oireachtas Committee on Justice and Equality (2017) *Report on Immigration, Asylum and the Refugee Crisis*.

<sup>98</sup> For example: <https://www.oxfamireland.org/sites/default/files/upload/pdfs/refugee-family-reunion-ireland.pdf>

<sup>99</sup> Council of Europe Commissioner for Human Rights (2017) Realising the right to family reunification of refugees in Europe.

family in sufficiently broad terms to reflect the understanding of family as articulated in international human rights law,<sup>100</sup> and to permit individuals in a customary marriage or long-term partnership to apply for family reunification.<sup>101</sup>

52. The 2015 Act, requires family reunification applications to be made within 12 months of the grant of refugee or subsidiary protection status. Meeting this time limit may prove impossible for many refugees due to difficulties tracing family members, collating documentation and arranging for family members to liaise with embassies.<sup>102</sup> The Commission has called for the repeal or amendment of this time limit, and provision for extension of time limits where warranted.
53. The Commission is further concerned that the 2015 Act denies family reunification to refugees who acquire citizenship by naturalization. The Commission is of the view that naturalised refugees should not be excluded from the statutory family reunification regime.<sup>103</sup>
54. **The Commission recommends that the State clarify how it intends to address the deficiencies in its statutory framework for family reunification.**

### Access to the labour market for asylum seekers (Articles 2, 5(e)(i))

55. In response to the 2017 Supreme Court judgment in *NHV v The Minister for Justice and Equality*,<sup>104</sup> the State introduced a new scheme for labour market access for international

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<sup>100</sup> Irish Human Rights and Equality Commission (June 2018), *The right to family reunification for beneficiaries of international protection*, pp. 17-18. The European Court of human Rights has held that the right to family life extends beyond the nuclear family to relationships between grandparents and grandchildren, uncle and aunts with nieces and nephews, and adult siblings. See *L. v. The Netherlands* (Application no. 45582/99), para 36; *Brauer v. Germany* (Application no. 3545/O4), para 30, *Marckx v Belgium* (Application no. 6833/74) 13 June 1979, para 45, *Nsona v the Netherlands* (Application no. 23366/94) 28 November 1996, *Boughenemi v France* (Application no. 16/1995/522/608), 27 March 1986.

<sup>101</sup> While it is possible for beneficiaries of international protection to apply for reunification with family members who do not fit the 2015 Act definition of “member of family” under the Policy Document on Non-EEA Family Reunification and, more recently, under the Irish Humanitarian Admissions Programme, such applications fall outside the statutory framework and are subject to Ministerial discretion. Refugees who meet the 2015 Act criteria are automatically entitled to family reunification under that Act as of right; refugees who must apply under the non-EEA policy document or IHAP scheme have no automatic entitlement or right to family reunification. See Irish Naturalisation and Immigration Service (December 2016), [Policy Document on Non-EEA Family Reunification](#).

<sup>102</sup> Council of Europe Commissioner for Human Rights (2017) *Realising the right to family reunification of refugees in Europe*, p. 41. The diverse challenges faced when tracing family members have been outlined in a study published by the Fundamental Rights Agency (FRA). See FRA (2016) *Monthly data collection on the current migration situation in the EU – Thematic focus: family tracing and family reunification, September 2016 monthly report, 1–31 August 2016*, p. 10.

<sup>103</sup> The Commission recently appeared as *Amicus Curiae* in court of appeal litigation seeking that the Refugee Act 1996, predecessor to the 2015 Act, be interpreted to apply to naturalized refugees. In its judgment of 29 March 2019 the Court found that the declarations of refugee status of the two people at the centre of the cases had been revoked by operation of law once they acquired Irish citizenship. See Irish Human Rights and Equality Commission (2018), [Amicus Curiae submission in case of MAM v Minister for Justice](#).

<sup>104</sup> *NHV* [2017] IESC 35. In that case, the Supreme Court held that, in circumstances where there is no time limit on the asylum process, the absolute ban on Asylum Seekers seeking employment is unconstitutional. The Commission, acted as *amicus curiae* in the case, and submitted that the right to work, guaranteed in Article 40.3.1 of the Irish Constitution, extended to applicants for international protection residing in Ireland.

protection applicants.<sup>105</sup> The Scheme makes provision for permits for employment and self-employment, valid for six months and renewable. In order to be eligible, international protection applicants must have been awaiting a first instance recommendation on their protection application for 9 months or more.<sup>106</sup> While the Commission welcomed<sup>107</sup> the launch of this scheme, the Commission is concerned at reports that international protection applicants are facing continuing barriers in effectively accessing employment. This includes barriers faced by asylum seekers due to lack of employer awareness of their entitlement to work; barriers to accessing banking services;<sup>108</sup> as well as exclusion from access to the driving license application process.<sup>109</sup>

56. The Commission is of the view that measures for access to the labour market for asylum seekers must be effective in practice, sufficient in their scope to provide effective or meaningful access to employment and to safeguard against potential exploitation and discrimination.<sup>110</sup>

57. **The Commission recommends that the State conduct a review of the scheme to identify the barriers to effective access to the labour market and to detail how these will be addressed.**

### Unaccompanied and separated children

58. The lack of consistent and comprehensive data on unaccompanied and separated children has been identified as a challenge to the development of appropriate policy responses.<sup>111</sup> The information that is available demonstrates that 175 unaccompanied children were referred to the Child and Family Agency in 2017, up from 97 in 2014. Of these 175 children, 111 were taken into care.<sup>112</sup> The Child and Family Agency has responsibility for making applications for international protection on behalf of unaccompanied and separated

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<sup>105</sup> See Department of Justice and Equality (2018), *Information Booklet: Labour Market Access for International Protection Applicants*. The Scheme's launch coincided with Ireland opting into the EU (recast) Reception Conditions Directive (2013/33/EU).

<sup>106</sup> Per Article 15, EU (recast) Reception Conditions Directive (2013/33/EU).

<sup>107</sup> Irish Human Rights and Equality Commission (Press Release 6 June 2018), 'Human Rights and Equality Commission welcomes scheme to grant access to the labour market for applicants for international protection'

<sup>108</sup> Sorcha Pollack, 'Employer doubts preventing asylum seekers from entering workforce', *Irish Times*, 17 September 2018. The Commission recently successfully represented a refugee from Syria at the Workplace Relations Commission (WRC) in a case against a bank for breach of the Equal Status Acts 2000-2015, alleging that they refused to open a bank account for him on the ground of his Syrian nationality. The WRC ordered the bank to pay compensation of €4,000 to the man. The Commission understands that this is not an isolated incident, with similar incidents being experienced by both refugees and asylum seekers. See Irish Human Rights and Equality Commission press release (9 April 2019), [Syrian Refugee Wins Equal Status Case for Refusal of Bank Account](#).

<sup>109</sup> The Commission is advising and representing several individuals at the Workplace Relations Commission with regard to the ongoing exclusion of asylum seekers from eligibility to apply for driving licences.

<sup>110</sup> Irish Human Rights and Equality Commission (2018), *Access to the labour market for applicants for international protection*, p. 10.

<sup>111</sup> ESRI and Office for the Promotion of Migrant Integration, [Data for Monitoring Integration: Gaps, challenges and opportunities](#) (March 2019) at pp. 29-30.

<sup>112</sup> S. Groarke and S. Arnold, [Approaches to Unaccompanied Minors Following Status Determination in Ireland](#) (December 2018) (ESRI Research Series Number 83) at p. 22.

children,<sup>113</sup> but the practice of such applications being delayed by social workers on a discretionary basis has been reported.<sup>114</sup> According to an ESRI report, most unaccompanied and separated children seeking international protection do not have an application submitted on their behalf until they are approaching the age of 18<sup>115</sup> with potential impacts on their right to access family reunification, employment, education and other services and supports.<sup>116</sup>

59. **The Commission recommends that the State clarify its plans to improve data collection and analysis of unaccompanied and separated children in order to develop appropriate policy responses.**

60. **The Commission recommends that the State clarify its plans to address delays in the submission of international protection applications for unaccompanied children.**

### **Violence against women and domestic violence**

61. The Commission has welcomed the Government's ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence ('Istanbul Convention') on 8 March 2019.<sup>117</sup> Overall, the protection of women from violence should be central to immigration reform. In particular, further legal measures are needed to ensure the full implementation of Article 59 of the Istanbul Convention, which requires victims, whose residence status depends on their spouse or partner, to be granted autonomous residence permits irrespective of the duration of the relationship.<sup>118</sup>

**The Commission recommends that the State introduce implementing legislation in order to ensure that victims of domestic violence are granted autonomous residence permits.**

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<sup>113</sup> 'Where it appears on the basis of information, including legal advice, available to it, that an application for international protection should be made on [the child's behalf]'. See Section 15(4) of the [International Protection Act 2015](#).

<sup>114</sup> S. Groarke and S. Arnold, [Approaches to Unaccompanied Minors Following Status Determination in Ireland](#) (December 2018) (ESRI Research Series Number 83) at p. 36.

<sup>115</sup> *Ibid.* p. 35.

<sup>116</sup> For research findings in this regard, see S. Groarke and S. Arnold, [Approaches to Unaccompanied Minors Following Status Determination in Ireland](#) (December 2018) (ESRI Research Series Number 83). See also, Immigrant Council of Ireland, [Child Migration Matters: Children and Young People's Experiences of Migration](#) (2016).

<sup>117</sup> Irish Human Rights and Equality Commission (July 2019), [Statement on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence](#).

<sup>118</sup> The Irish Naturalisation and Immigration Service (INIS) has published guidelines on how the Irish immigration system deals with cases of domestic violence. See [Victims of Domestic Violence Immigration Guidelines](#). Under these Guidelines, the Minister has discretion and the arrangements do not apply to victims who do not have permission to be in the State.

## 8. Human Trafficking (Articles 2, 5(b))

62. The Commission notes that Ireland ratified the *International Labour Organisation Forced Labour Protocol, 2014* on 4 February 2019.<sup>119</sup>
63. The Commission appeared as *amicus curiae* in the case of *P. v. The Chief Superintendent of the Garda National Immigration Bureau & Ors* in 2015, wherein the High Court found that the State's administrative scheme for the protection of victims of human trafficking is inadequate under EU law aimed at combating trafficking in human beings.<sup>120</sup>
64. The Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) has recommended that the State examine the possibility of establishing an independent National Rapporteur,<sup>121</sup> urged the State to review the victim identification procedure and decision-making process,<sup>122</sup> urged that protection and assistance measures for victims of trafficking be placed on a statutory basis,<sup>123</sup> and invited the State to continue developing the data collection and analysis system with a view to ensuring that it provides a comprehensive picture of the human trafficking situation in Ireland.<sup>124</sup>
65. The Commission notes the State's adoption of the *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland* in 2016, and the Government's commitment in this plan to 'carry out a fundamental review of our formal identification process for victims of human trafficking to ensure that we have in place a process that meets international best practice'.<sup>125</sup>
66. The Commission notes that the State's activities concerning its review of victim identification procedures were limited to engagement with the police, state bodies and civil society, and reviewing the administrative documents that guide identification procedures.<sup>126</sup> The Commission further notes the State's indication, in its follow-up report to GRETA in October 2018, that work continued on this review in 2017 and 2018, but that 'the review is

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<sup>119</sup> Merrion Street, [Ireland agrees to ratify the ILO Forced Labour Protocol](#) (28 January 2019).

<sup>120</sup> Irish Human Rights and Equality Commission, [IHREC calls for immediate action to protect victims of human trafficking following High Court judgment](#) (2015). The State system of recognition of suspected victims of trafficking, as found in this judgment and highlighted in the Commission's submissions as *amicus curiae*, is too adversarial and places too heavy a burden of proof on the alleged victim.

<sup>121</sup> *Ibid.*, para.31.

<sup>122</sup> GRETA (2017); [Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland](#), GRETA (2017)28, published on 20 September 2017, para.126.

<sup>123</sup> *Ibid.*, para.142.

<sup>124</sup> *Ibid.*, para.47

<sup>125</sup> Department of Justice and Equality, [Second National Action Plan to Prevent and Combat Human Trafficking in Ireland](#), 2016, p. 47.

<sup>126</sup> Anti-Human Trafficking Unit, Department of Justice and Equality, [Annual Report 2017](#), p. 14.

not complete'.<sup>127</sup> In 2018, the US State Department downgraded Ireland to Tier 2 status in its *Trafficking in Persons Report 2018* due to what it termed 'chronic deficiencies' in the victim identification process<sup>128</sup> and in its 2019 report Ireland is again classified as Tier 2.<sup>129</sup>

67. Regarding protection and assistance measures for victims, the State indicated in its follow up report to GRETA in 2018 that guidance for police and prosecutors has been put in place that 'provides for the separation of the criminal investigation and the trafficking identification procedure'.<sup>130</sup> The Commission welcomes such guidance but remains concerned that the non-punishment of victims of trafficking remains yet to be codified in Irish law.
68. The Commission notes that in 2017, State authorities participated in a United Nations Office of Drugs and Crime (UNODC) research project that aimed to understand the variance in numbers between victims who are known to the authorities and/or NGOs and the victims who are not.<sup>131</sup> The study found that the total number of victims may be twice the number of identified victims.<sup>132</sup> The Commission also notes the ongoing Human Trafficking and Exploitation Project which is focused on the collection and analysis of data on victims of trafficking across Ireland.<sup>133</sup>
69. **The Commission recommends that the State provide further information regarding its review of the formal victim identification process, particularly the timelines for when the new identification process will be in place, and what measures are to be applied in the interim.**<sup>134</sup>

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<sup>127</sup> Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings, [Report submitted by the Irish authorities on measures taken to comply with Committee of the Parties Recommendation CP\(2017\)29 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, Second evaluation round](#), 2018, p. 3.

<sup>128</sup> US State Department, [Trafficking in Persons Report 2018](#), p. 235.

<sup>129</sup> US State Department, [Trafficking in Persons Report 2019](#), p. 250.

<sup>130</sup> Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings, [Report submitted by the Irish authorities on measures taken to comply with Committee of the Parties Recommendation CP\(2017\)29 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, Second evaluation round](#), 2018, p. 9.

<sup>131</sup> UNODC, [Monitoring Target 16.2 of the United Nations Sustainable Development Goals: multiple systems estimation of the numbers of presumed victims of trafficking in persons Ireland](#), 2018.

<sup>132</sup> *Ibid.* p. 4.

<sup>133</sup> A. Jacques, [Limerick to lead human trafficking and exploitation project](#) (13 June 2018 – Limerick Post). This 'all-island' project involves engagement and information-sharing between An Garda Síochána, the Health Service Executive, the Department of Justice and Equality in Ireland, the Police Service of Northern Ireland and the Department of Justice in Northern Ireland, as well as academics working in the field of human trafficking.

<sup>134</sup> Irish Human Rights and Equality Commission, [Submission to GRETA in advance of its Second Evaluation Round of Ireland, 5 September 2016](#), p. 29.

70. **The Commission recommends that the State adopt legislation to ensure that statutory rights to assistance and protection is available to all potential victims of trafficking, regardless of the potential victim’s nationality or immigration status.**<sup>135</sup>
71. **The Commission recommends that the State provide information on its plans to improve data collection and analysis to ensure a comprehensive picture of the human trafficking situation in Ireland.**<sup>136</sup>

### Fishing industry and Atypical Working Scheme

72. The State noted in its report to the Committee its *Atypical Working Scheme for Seafarers* which permits ‘a lawful pathway for persons, previously with no immigration or employment permission, to work in the Irish Fishing Fleet.’<sup>137</sup>
73. In its 2017 report on Ireland, the Council of Europe group of Experts on Action against Trafficking in Human Beings (GRETA) recommended that the State review ‘the application of the Atypical Working Scheme in the fisheries industry with a view to ensuring that it contains sufficient safeguards against trafficking and exploitation of fishermen’.<sup>138</sup>
74. Similar concerns have been jointly raised by UN Special Rapporteurs in a joint letter to Ireland in February 2019, that the scheme “does not provide for effectively preventing and combating trafficking in persons for the purpose of forced labour and labour exploitation in the fishing industry, nor does it provide for adequate protection of the rights of migrant fishermen.”<sup>139</sup>
75. The International Transport Workers’ Federation (ITF) has taken action against the State on behalf of fishers affected and potentially affected by the operation of the Scheme alleging that the Scheme created a real and substantial risk of human trafficking and other forms of severe labour exploitation and in October 2018, the High Court granted the Commission leave to intervene as *amicus curiae* (“friend of the court”) in the case. In April 2019 a mediated settlement was agreed in the case, the terms of which included a number of changes to the Atypical Working Scheme.<sup>140</sup>

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<sup>135</sup> *Ibid.* p. 29.

<sup>136</sup> *Ibid.* p. 46.

<sup>137</sup> State Report para 230

<sup>138</sup> GRETA (2017) Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland, at para. 79.

<sup>139</sup> Joint letter to Irish Government by UN Special Rapporteurs on the human rights of migrants; on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; on contemporary forms of slavery, including its causes and consequences; and on trafficking in persons, especially women and children. The letter, dated 12 February 2019, is available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24331>

<sup>140</sup> Changes included: Flexibility for non-EEA fishermen to move to another vessel within a defined time period without risk of visa cancellation and deportation. Such a move cannot be vetoed by employers; Streamlining of inter-agency collaboration between the Workplace Relations Commission (WRC), Marine Survey Office MSO and the Gardaí to combat exploitation on board fishing vessels; Greater promotion of awareness among non-EEA fishermen of their rights and

## 9. Human Rights Leadership

76. The Commission notes Ireland's express commitment to advancing its impact at an international level, including through the promotion of human rights, greater equality and justice and sustainable development.<sup>141</sup>

### Promotion of women's rights

77. The Commission notes that there is currently a pervasive pushback on core and well-established concepts of women's rights on the international stage. At both the Sixty-Third Session of the Commission on the Status of Women in March 2019 and a UN Security Council Debate in April 2019, the most difficult issues in the negotiations related to proposed language on access to sexual and reproductive health services for victims and survivors of gender-based violence.<sup>142</sup> There is also a current trend at an international level to roll back on legal protections against domestic violence and female genital mutilation.<sup>143</sup>
78. **The Commission recommends that the State build on its ratification of the Istanbul Convention by adopting a strong leadership role on the international stage in promoting the protection of women's rights.**

### Rescue and humanitarian missions

79. In a visit to Ireland in July 2019, Filippo Grandi, the UN High Commissioner for Refugees, criticised the European Union for winding down Operation Sophia, the migrant rescue operation in the Mediterranean Sea which included the Irish naval ship the LÉ Eithne. This operation was due to expire in March 2019 but has been extended until September 2019, although sea patrols have been suspended.<sup>144</sup> Reports indicate that Irish naval presence in the Mediterranean has rescued more than 18,000 people as of April 2019.<sup>145</sup>
80. **The Commission recommends that the State details its plans and arrangements to work with other Governments, in order to ensure ongoing rescue and humanitarian missions in the Mediterranean.**

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entitlements. See Irish Human Rights and Equality Commission Press Release, (30 April 2019) '[Changes to Atypical Work Permit Scheme for Migrant Fishers Welcomed by Human Rights and Equality Commission](#)'.

<sup>141</sup> Government of Ireland (June 2018), [Global Ireland: Ireland's Global Footprint to 2025](#).

<sup>142</sup> United Nations (22 March 2019), [Concluding Sixty-Third Session, Women's Commission Approves Text on Strengthening Social Protection Systems, Sustainable Infrastructure for Gender Equality](#) and [Women's International League for Peace and Freedom](#) (23 April 2019), [Security Council Open Debate: Sexual Violence in Conflict](#).

<sup>143</sup> United Nations Secretary-General (08 March 2019), [Secretary-General's remarks on International Women's Day 2019](#).

<sup>144</sup> S. Carswell (12 July 2019), '[Government too reliant on market in tackling housing crisis, says UNHCR chief](#)', *The Irish Times* and J. Rankin (27 March 2019), '[EU to stop Mediterranean migrant rescue boat patrols](#)' *The Guardian*.

<sup>145</sup> O. Ryan (1 April 2019), '[Decision to end migrant rescue operation labelled 'outrageous abdication of responsibilities'](#)', *The Journal* and Seanad Éireann debate (9 July 2019), [Defence Matters: Statements](#).

## Business and human rights: State purchasing of Colombian coal

81. The Commission wishes to note its concern regarding the heavy reliance of the State-owned Electricity Supply Board (ESB)<sup>146</sup> on coal mined from the Cerrejón mining complex in La Guajira, north-eastern Colombia. Recent reports have indicated that up to 90 per cent of the coal burned at the ESB's Moneypoint<sup>147</sup> power station in County Clare comes from Colombia, with two thirds of it purchased from the Cerrejón mine.<sup>148</sup> The operation of the Cerrejón mine has been linked with serious human rights abuses, including the forceful displacement of thousands of indigenous Wayúu, Afro Colombian and campesino populations, and contamination of farmland and drinking water.<sup>149</sup> The sales branch of the Cerrejón mine has headquarters in Dublin.<sup>150</sup>
82. The Commission notes the CERD Committee's clear articulation of applicability of Convention provisions to indigenous peoples.<sup>151</sup> The Commission further notes the UN's Guiding Principles on Business and Human Rights<sup>152</sup>, in particular their reference to States' role in reducing the risk of gross human rights abuses in regions affected by conflict.<sup>153</sup>
83. The Irish Government has signaled its commitment to the UN's Guiding Principles,<sup>154</sup> as well as having played a significant leadership role in the Colombian peace process.<sup>155</sup> The Government has also committed in its Climate Action plan to the "early and complete phase-out of coal- and peat-fired electricity generation" by 2030.<sup>156</sup>

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<sup>146</sup> The Electricity Supply Board was established in 1927 as a statutory corporation. The Irish Government has a 95% holding in the company, with the remaining 5% held by the trustees of an Employee Share Ownership Plan. See <https://www.esb.ie/who-we-are/about-esb/>

<sup>147</sup> Moneypoint is one of Ireland's largest power plants, with a capacity of around 7 million MW hours per year. It burns approximately two million tonnes of coal per annum. See Electricity Supply Board Station Portfolio at <https://esbarchives.ie/portfolio/moneypoint/>

<sup>148</sup> Noel Healy, (25 October 2018), '[Blood Coal: Ireland's dirty secret](#)', *The Guardian*. Sorcha Pollack, (11 May 2019), '[Coal "stained with Colombian blood" is bought and sold in Dublin](#)', *Irish Times*.

<sup>149</sup> Noel Healy, Jennie C. Stephens, Stephanie A. Malin, 'Embodied energy injustices: Unveiling and politicizing the transboundary harms of fossil fuel extractivism and fossil fuel supply chains', *Energy Research and Social Science*, Vol 48, pp. 219-234.

<sup>150</sup> CMC – Coal Marketing DAC, Fumbally Square, New Street, Dublin. Company website: <http://www.cmc-coal.ie/>.

<sup>151</sup> UN Committee on the Elimination of Racial Discrimination (1997) *General Recommendation No. 23: Indigenous Peoples*, A/52/18, annex V. IN particular, the Committee stresses the rights of indigenous peoples to own, develop, control and use their communal lands and resources; and has underscored the right of indigenous communities to restitution and compensation.

<sup>152</sup> United Nations Office of the High Commissioner for Human Rights (2011), [Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework](#).

<sup>153</sup> Guiding Principle 7: "Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses".

<sup>154</sup> Government of Ireland (2017), [National Plan on Business and Human Rights 2017 – 2020](#). The National Plan includes, *inter alia*, actions to "encourage and support awareness of effective human rights due diligence by state owned or controlled companies"; "encourage companies and NGOs funded by the state to carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risk of adverse human rights impacts"; and "encourage and facilitate the sharing of best practice on human rights due diligence, including effective supply chain audits".

<sup>155</sup> For an overview of Ireland's contribution, see Department of Foreign Affairs and Trade (2017), *Year in Review 2016* at <https://www.dfa.ie/annualreport/2016/our-influence/colombia-peace-agreement/>

<sup>156</sup> Government of Ireland (2019), [Climate Action Plan 2019](#), p. 53.

84. **The Commission recommends that the Irish Government raise concerns about human rights abuses in the Cerrejón mine with the Government of Colombia, and lend its support to the initiation of an independent inquiry into the operation of the mine, and restitution and compensation for victims of displacement and other human rights abuses.**
85. **The Commission further recommends that, in line with its National Plan on Business and Human Rights actions on Corporate Responsibility and Access to Remedy,<sup>157</sup> that the Government engage with companies domiciled in Ireland with links to the Cerrejón mine regarding human rights abuses occurring there.**

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<sup>157</sup> Government of Ireland (2017), [National Plan on Business and Human Rights 2017 – 2020](#), p. 18.



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