

Irish Human Rights and
Equality Commission Report

Ireland and the International Covenant on Economic, Social and Cultural Rights

Executive Summary



**Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas**

Irish Human Rights and Equality Commission

Preface

The Irish Human Rights and Equality Commission is pleased to make its first submission as a new legal entity to the United Nations Committee on Economic, Social and Cultural Rights. The Commission is acutely aware that since the State was last examined by this particular Committee in 2002, Ireland has experienced a financial, banking and economic crisis on a scale unseen in post-war times. The impact of a seven-year austerity drive on people's standard of living has been enormous, and in all regions the effects of the crisis have impacted on the realisation of human rights and equality. It is the Commission's view that the burden of the crisis and dominant responses to it has fallen disproportionately on those least able to bear its impacts.

The Commission's report informs the UN Committee's examination of the State's progress in upholding the International Covenant on Economic, Social and Cultural Rights in Geneva. The Commission notes that fiscal consolidation has significantly diminished access to public services, particularly in the areas of health, education and social services. The evidence shows that poverty and deprivation rates have risen for both adults and children, and austerity policies have impacted, in particular, on marginalised, vulnerable and migrant groups.

The economic constraints of a Troika programme of fiscal consolidation are noted, nonetheless the Commission believes budgetary choices are always open to decision-makers to ensure that economic, social and cultural rights of the most vulnerable groups are protected.

Progress has been made to support and enhance the State's accountability in respect of human rights infrastructure, for example extending the remit of the Ombudsman, the appointment of a Minister for Children and Youth Affairs and the creation of a dedicated children and family state agency, Tusla.

The Commission welcomes commitments made by the Minister for Justice and Equality to introduce reformed domestic violence legislation and to ratify the Council of Europe's 'Istanbul Convention' on preventing and combating violence against women and domestic violence by the end of 2015. The State has drawn up strategies to address discrimination and inequalities, however it is important to see these strategies implemented to improve the lives of those most impacted by inequality.

The Constitutional rights of LGBT groups have been enhanced by the Marriage Equality referendum and its recent passage should support further progress specifically to address permitted discrimination under Section 37 of Employment Equality Acts. Indeed, the Commission believes that heightened public consciousness of equality issues in the aftermath of the referendum can build a foundation to widen and deepen awareness of discrimination and indignities suffered by other minority groups. The Commission believes that Article 13 of the Covenant has specific relevance in this regard, and recommends that human rights education form a key component of Civic, Social and Political Education (CPSE) and Social and Personal Health Education (SPHE) to embed human rights education at post-primary level.

Additionally, the public sector duty to promote human rights, prevent discrimination and protect human

dignity is highly significant for the health care sector, but has particular bearing on maternity care, intellectual disability and direct provision services.

The Commission further wishes to see legislative and administrative measures in respect of the rights of adults and children with physical and intellectual disabilities, and policies to address discrimination and exclusion experienced by migrant groups and Travellers.

As the State moves to economic recovery, the Commission highlights budgetary tools which are available to set minimum standards to be achieved for the realisation of economic, social and cultural rights. The cost of a rapid fiscal adjustment to the country's budget deficit from 14.4 per cent of Gross Domestic Product (GDP) to a target of 3 per cent of GDP has had adverse societal implications.

The Commission echoes the view of former UN Special Rapporteur Magdalena Sepúlveda Carmona, in respect of the importance of adopting taxation policies that will avoid measures that might further endanger the enjoyment of human rights by those most at risk.

Forthcoming budgetary choices will be an indicator of the State's commitment to harness all available resources towards the fulfilment of its economic, social, and cultural rights obligations.

A handwritten signature in black ink that reads "Emily Logan". The signature is written in a cursive, flowing style.

Emily Logan
Chief Commissioner of the Irish Human Rights and Equality Commission

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Introduction

The Irish Human Rights and Equality Commission ('the Commission' or 'the IHREC') is Ireland's National Human Rights Institution ('NHRI'), as established by the Irish Human Rights and Equality Commission Act 2014 ('2014 Act').¹ The Commission has a statutory remit to protect and promote human rights and equality in Ireland, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, and to work towards the elimination of human rights abuses and discrimination.² The Commission is tasked with reviewing the adequacy and effectiveness of law, policy and practice relating to the protection of human rights and equality in Ireland, and with making recommendations to Government on measures to strengthen, protect and uphold human rights and equality accordingly.³ In accordance with section 10(2)(h) of the 2014 Act, the Commission is mandated to consult with international bodies or agencies with a knowledge or expertise in human rights or equality. The IHREC welcomes the 2014 Act which underpins its establishment and which includes key provisions to enhance and ensure the institutional independence of the new Commission in full conformity with the *UN Paris Principles*.⁴

The Commission welcomes the opportunity to provide this, its first Submission to a UN Committee as a new legal entity, to the United Nations Committee on Economic Social and Cultural Rights ('the Committee') in advance of its forthcoming examination of Ireland's compliance with the International Covenant on Economic, Social and Cultural Rights ('ICESCR').⁵ This will be Ireland's third examination since it ratified ICESCR in 1989. The IHREC notes that 13 years have passed since the State was last examined by the Committee.

The IHREC notes that the State has taken a number of steps to strengthen its engagement with the UN Treaty Body monitoring process. In this context, the Commission welcomes the establishment of an Inter-Departmental Committee on Human Rights⁶ as a useful tool in reviewing the State's obligations under the international reporting mechanisms.⁷ It also welcomes the newly established Sub-Committee on Human

¹ The Irish Human Rights and Equality Commission Act 2014 merged the former Irish Human Rights Commission and the former Equality Authority into a single enhanced body.

² Section 10(1)(a)–(e) of the 2014 Act.

³ Section 10(2)(b) and section 10(2)(d) of the 2014 Act.

⁴ United Nations, *Principles relating to the Status of National Institutions (The Paris Principles)*, adopted by General Assembly Resolution 48134 of 20 December 1993. The Paris Principles provide 'The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence'.

⁵ The information contained in this Submission covers the period up to 1 May 2015.

⁶ Department of Foreign Affairs (DFA), '[Minister Sherlock chairs First Meeting of the Inter-Departmental Committee on Human Rights](#)', [press release], 25 March 2015. The Committee comprises representatives from the Department of Justice and Equality, the Department of Social Protection, the Department of Finance, the Department of Jobs, Enterprise and Innovation, the Department of Transport, Tourism and Sport, the Department of Communications, Energy and Natural Resources, the Department of Arts, Heritage and the Gaeltacht and the Office of the Attorney General.

⁷ The establishment of the Committee reflects the recommendation by former UN High Commissioner for Human Rights, Navi Pillay who encouraged States 'to establish or reinforce a standing national reporting and coordination mechanism' which she stated 'should aim at facilitating both timely reporting and improved coordination in follow-up to treaty bodies' recommendations and decisions'. See N. Pillay (2012) [Strengthening the United Nations human rights treaty body system: A report by the UN High Commissioner for Human Rights](#), Geneva: OHCHR, p. 85.

Rights and Equality.⁸ **In light of these developments, the IHREC encourages the State to strengthen its engagement with the Treaty Body monitoring process by submitting its periodic reports on time to ensure that the Committee has the most up-to-date information available to it. The IHREC recommends the State takes steps to promote awareness of its obligations under ICESCR at Departmental level, as well as at Parliamentary level, including through the newly established Oireachtas (Irish Parliament) Sub-Committee on Human Rights and Equality.**

Part I – General Information

The ICESCR and the Domestic Legal Framework

Incorporation of the Covenant: The IHREC notes that despite previous Concluding Observations of the Committee⁹ calling on the State to incorporate the ICESCR, it has not yet taken steps to incorporate the Covenant. The Law Reform Commission is currently engaged in an examination of the application of international obligations in domestic law, with specific reference to Article 29.6 of the Constitution of Ireland in this context.¹⁰ **The IHREC awaits the Law Reform Commission’s recommendations in this regard to determine how best to ensure all relevant articles of ICESCR are adequately and fully incorporated into Irish law. [IHREC Submission: Section 2.1]**¹¹

In February 2014, the Convention on the Constitution¹² strongly recommended amending the Constitution of Ireland to provide ‘that the State shall progressively realise economic, social and cultural rights, subject to maximum available resources and that this duty is cognisable by the Courts’¹³ using language reflective of the Covenant. The IHREC notes that the Government has not yet responded to the Convention’s recommendation,¹⁴ and it is unlikely that another referendum will be held in the lifetime of the current Government.¹⁵ **The IHREC recommends the State considers the relevance of the recommendation of the**

⁸ See http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/jde-committee/Sub-CommitteeonHumanRights/ for more details. The Sub-Committee will examine how issues, themes and proposals take account of human rights provisions. The focused membership of the Committee intends to work to ensure that any new legislation is human rights ‘proofed’. The sub-Committee will report back to the Joint Oireachtas Committee on Justice, Defence and Equality on such topics and the extent to which compliance with the human rights of persons within the State is enhanced.

⁹ UN Committee on Economic, Social and Cultural Rights (1999) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: Office of the High Commissioner for Human Rights, para.9; UN Committee on Economic, Social and Cultural Rights (2002) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: Office of the High Commissioner for Human Rights, para.12.

¹⁰ See the website of the Law Reform Commission, <http://www.lawreform.ie/welcome/6-international-law.383.html>.

¹¹ References in brackets refers to the relevant corresponding section in the full IHREC Submission to the Committee on Economic, Social and Cultural Rights on the Examination of Ireland’s Third Periodic Report under the International Covenant on Economic, Social and Cultural Rights.

¹² The Convention on the Constitution was established in 2012 to consider eight key constitutional issues as determined by the Oireachtas including the reduction of the Presidential term of office to five years; lowering the voting age to 17 years; review of the Dáil electoral system; extending the right to vote in Presidential elections to citizens resident outside the State; provision for same-sex marriage; amending the clause on the role of women in the home and encouraging greater participation of women in public life; increasing the participation of women in politics; and the removal of the offence of blasphemy from the Constitution. Following completion of these mandated considerations, the Convention also considered two additional issues: Dáil reform and constitutional protection for economic, social and cultural rights. It comprised 100 members: 33 elected representatives, 66 citizens randomly selected from the electoral register and an independent Chairperson.

¹³ The Convention on the Constitution, ‘*Convention on the Constitution chooses (i) Dáil Reform and (ii) Economic, Social and Cultural rights for discussion at their final two meetings in February 2014*’, [press release], 17 December 2013. The Convention on the Constitution (2014) *Eighth Report of the Convention on the Constitution: Economic, Social and Cultural (ESC) Rights*, p.6. This option was favoured by 85 per cent of Convention members.

¹⁴ The Terms of Reference of the Convention stated that the Government would respond to a recommendation of the Convention within four months of it being submitted. The Convention on the Constitution (2012) *Terms of Reference of the Constitutional Convention are detailed in the Resolution of the Houses of the Oireachtas of July 2012*.

¹⁵ An Taoiseach, Enda Kenny TD, Dáil Debates: Order of Business, 14 January 2015.

Convention on the Constitution in its approach to the legal status of economic, social and cultural rights under Irish Law. [IHREC Submission: Section 2.1]

Ratification of OP-CESCR: The IHREC welcomes Ireland’s signature of the Optional Protocol (OP-CESCR) in 2012¹⁶ but notes that it has not yet ratified the Protocol which could provide a potential alternative remedy for people subject to violations of their economic, social and cultural rights. **The IHREC recommends the State takes steps to complete its ratification at the earliest opportunity. [IHREC Submission: Section 2.3]**

Justiciability of ESC Rights: Although the Committee has given clear direction on the domestic application of the Covenant,¹⁷ the Irish Superior Courts continue to express reluctance to rule in cases related to economic, social and cultural rights which could result in a cost to the State.¹⁸ However, the IHREC notes that the Courts have indicated that in exceptional cases where there has been a violation of a person’s human rights they have authority to make such an order.¹⁹ The Irish Government asserts that it meets its obligations to implement the Covenant ‘through policies aimed at improving the enjoyment of economic, social and cultural rights’ as in its view ‘this differentiated approach affords the best means of implementing Ireland’s obligations under the Covenant’.²⁰ **[IHREC Submission: Section 2.4]**

Accountability in the Context of Economic, Social and Cultural Rights: Since the State’s last examination by the Committee in 2002, Ireland’s national human rights and equality framework has been subject to significant change. The IHREC regrets that the State’s response to the financial crisis, resulting in the 2010 European Union (EU) – International Monetary Fund (IMF) financial assistance programme of €85 billion, did not encompass a human rights or equality assessment in advance of introducing a programme of austerity measures.²¹ The IHREC is concerned at the State’s continued implementation of austerity measures, in the context of a regressive budget for 2015,²² despite the State’s exit of the bailout in December 2013. The Commission notes that existing Social Impact Assessments guidelines²³ provide a useful mechanism to assess the likely impact of budgetary decisions on groups already susceptible to poverty and social exclusion. **The IHREC recommends the State to invest in, develop and promote the wider use and publication of Social Impact Assessments as an effective monitoring tool for the impact of budgetary decision-making on the socio-economic status of people living in poverty in a range of policy areas. [IHREC Submission: Section 3]**

Additional Issues under Article 2: *National human rights and equality infrastructure [IHREC Submission: Section 3.1]; Ombudsman bodies and the regulation of ESC rights [IHREC Submission: Section 3.2]; access to justice and the scope of Legal Aid [IHREC Submission: Section 3.2]; regulatory processes and ESC rights [IHREC Submission: Section 3.4]; and the National Action Plan on Business and Human Rights [IHREC Submission: Section 3.5].*

¹⁶ Department of Foreign Affairs, ‘Ireland to Sign the Optional Protocol to the International Covenant’, [press release], 6 March 2012.

¹⁷ UN Committee on Economic, Social and Cultural Rights (1998) *General Comment No. 9: The domestic application of the Covenant, 3 December 1998*, E/C.12/1998/24, para.10.

¹⁸ *Sinnott v. Minister for Education* [2001] 2 I.R. 545; *O’Donnell (a minor) & Others v. South Dublin County Council* [2007] 1 IEHC 2014; *Jama v. Minister for Social Protection* [2011] IEHC 379.

¹⁹ *Sinnott v. Minister for Education* [2001] 2 I.R. 545, p. 710;

²⁰ *O’Donnell (a minor) & Others v. South Dublin County Council* [2007] 1 IEHC 2014.

²¹ IHRC (2013) *Address by Des Hogan, Acting Chief Executive of the IHRC – Human Rights and Austerity in Ireland: response to CESR paper*, 12-13 June 2013, Berlin/Brussels.

²² C. Keane, T. Callan, M. Savage et al (2014) *Special Article - Distributional Impact of Tax, Welfare and Public Service Pay Policies: Budget 2015 and Budgets 2009-2015*, Dublin: ESRI, p.7.

²³ Office for Social Inclusion (2008) *Guidelines for Poverty Impact Assessments*, Dublin: Department of Social Protection.

Part II - Issues Related to the General Provisions of ICESCR

Non-Discrimination and Equality (Article 2)

Equality Impact of Austerity: One of the defining features of the recession in Ireland has been the introduction of austerity measures which have had a detrimental impact on a range of societal groups who are traditionally recognised as being disadvantaged. In fact, the IHREC notes that some of these groups have been the worst affected or may have become even more susceptible to unemployment, lower incomes, or poorer living standards.²⁴ In particular, the significant growth in the youth unemployment rate and the gender dimension in the form of the 'levelling down' of the employment gap between men and women²⁵ are direct outcomes of the downturn. A stagnation in labour market participation by women, the increase in the gender pay gap as well as the lack of adequate and affordable childcare options all contribute to the concern that 'austerity policies will undermine hard-won progress on gender equality and will aggravate gender differences in employment'.²⁶ At the same time, the higher unemployment level for immigrants than for Irish citizens, is attributed to the persistence of 'pre-recession disadvantages' rather than a direct cause of the recession.²⁷ **The IHREC urges the State to take concrete measures to address the high youth unemployment rate and ensure that any of its measures do not impact disproportionately on this already disadvantaged societal group. Moreover, due to the fall in employment rates generally and the drop in female participation rates specifically, the IHREC recommends the State to adopt measures to equalise the participation of women and men in the labour force. The State should also take steps to close the gender pay gap and ensure that women receive equal pay for equal work. [IHREC Submission: Section 4.5]**

National Mechanisms to Combat Racism and Discrimination against Ethnic Minorities: The IHREC regrets the failure of the State to renew the *National Action Plan Against Racism* (NPAR) which concluded in 2008²⁸ and notes the loss of expertise following the closure of the National Consultative Committee on Racism and Interculturalism (NCCRI) in 2008.²⁹ Although the IHREC is responsible for promoting interculturalism under the 2014 Act, as well as ensuring equal treatment under EU equality law,³⁰ it does not consider itself to be the appropriate body to monitor racist incidents. The development of a new Integration Strategy is welcome but it must be accompanied by a clear strategy to successfully combat racism and xenophobia. **In this context, the IHREC urges the State to ensure that the new Integration Strategy incorporates elements of both the NPAR and the previous Integration Strategy, in particular promoting positive social inclusion measures to combat racism, intolerance and xenophobia while at the same time nominating an appropriate body to monitor such incidents when they occur in order to formulate an evidence-based response. [IHREC Submission: Section 4.3]**

²⁴ F. McGinnity, H. Russell, D. Watson, G. Kingston & E. Kelly (2014) *Winners and Losers? The Equality Impact of the Great Recession in Ireland*, Dublin: Equality Authority & Economic and Social Research Institute.

²⁵ *Ibid.*, p. 17.

²⁶ H. Russell, F. McGinnity and G. Kingston (2014) *Gender and the Quality of Work: From Boom to Recession*, Dublin: Equality Authority & the Economic and Social Research Institute, p.54.

²⁷ F. McGinnity, H. Russell, D. Watson, G. Kingston & E. Kelly (2014) *Winners and Losers? The Equality Impact of the Great Recession in Ireland*, Dublin: Equality Authority & Economic and Social Research Institute, p.13.

²⁸ Steering Committee of the National Action Plan Against Racism (2009) *National Action Plan Against Racism (NPAR) 2005-2008: Not an End – Just a Beginning*, Dublin: Department of Justice, Equality and Law Reform.

²⁹ The NCCRI was an independent expert body established in 1998. It sought to provide advice and to develop initiatives to combat racism and to work towards a more inclusive, intercultural society in Ireland. It closed at the end of 2008 following a cut to its budget.

³⁰ Section 10(1), Irish Human Rights and Equality Act 2014 sets out that the IHREC is the 'body designated for the purposes of Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers'.

The Equal Right of Men and Women to the Enjoyment of Economic and Social Rights (Article 3)

Gender Equality: The IHREC acknowledges that while some limited progress has been made to further advance gender equality, Article 41.2 of the Irish Constitution continues to perpetuate stereotypical attitudes towards the role of women in Irish society despite repeated calls at both the national and international level to amend or remove it.³¹ Despite recommendations by the Convention on the Constitution and a subsequent report by a dedicated Departmental Task Force within the Department of Justice and Equality established to consider their implementation, it is unlikely that a referendum will take place on this issue in the lifetime of the current Government. **The IHREC urges the State to publish the report of the Departmental Task Force as soon as possible to prevent further delay in progressing the repeated recommendations at the national and international level to amend or remove Article 41.2 of the Constitution. [IHREC Submission: Section 5.1]**

Additional Issues under Article 3: *The reduction in funding for gender equality initiatives [IHREC Submission: Section 5.2]; the lack of women in leadership positions [IHREC Submission: Section 5.4]; historical abuse experienced by women and girls sent to the Magdalene Laundries [IHREC Submission: Section 5.5]; Mother and Baby Homes [IHREC Submission: Section 5.5]; survivors of symphysiotomy [IHREC Submission: Section 5.5]; and the current repercussions of the Marriage Bar for women's social security entitlements [IHREC Submission: Section 5.5].*

Part III – Issues Related to Specific Provisions of ICESCR

The Right to Work and Just and Favourable Conditions of Work (Articles 6 – 8)

Zero Hour Contracts: Under ICESCR, the State is obliged to ensure that everyone has the right to 'just and favourable conditions of work', including 'fair wages and equal remuneration for work of equal value' which will allow them 'a decent living for themselves and their families'.³² However, employment contracts with unspecified hours of work, more commonly referred to as 'zero hour' contracts, have become a feature of work for many individuals without a permanent or fixed-term work contract that stipulates the number of hours they will be working per week.³³ The IHREC is concerned that the lack of specified and secure hours of work is leading to insecurity of income and uncertain employment situations for many employees working

³¹ Recommendations have been made by the following bodies: Commission on the Status of Women (1993) *Report of the Second Commission on the Status of Women*, Dublin: Government Publications, p.27; Constitution Review Group (1996) *Report of the Constitution Review Group* Dublin: Government Publications, pp.333-334; The All-Party Oireachtas Committee on the Constitution (2006) *Tenth Progress Report: The Family*, Dublin: Government Publications, p.127; UN Human Rights Committee, *Concluding Observations on Ireland's Third Periodic Report*, CCPR/C/IRL/CO/3, 2008, para.10; UN Human Rights Committee (2014) *Concluding Observations on Ireland's Fourth Periodic Report*, CCPR/C/IRL/CO/4, para.7; Committee on the Elimination of Discrimination against Women (2005) *Concluding Comments: Ireland*, CEDAW/C/IRL/CO/4-5, 2005, paras 24–25; IHRC (2005) *Report to the UN Committee on the Elimination of Discrimination Against Women (CEDAW)*, Dublin: IHRC, p.2; IHRC (2014) *Submission to the UN Universal Periodic Review Mid-Term Report*, Dublin: IHRC, p.3; IHREC Designate (2014) *Submission to the UN Human Rights Committee on the Examination of Ireland's Fourth Periodic Review under the International Covenant on Civil and Political Rights*, Dublin: IHREC Designate, paras. 36 – 37.

³² A recent strike of up to 6,000 workers in 109 Dunnes Stores outlets attracted significant media and political attention due to a campaign organised by Mandate Trade Union calling on the company to provide decent working conditions for its employees. In particular the Trade Union and its members called for 'secure hours and earnings; job security; fair pay for all Dunnes workers; and the right to trade union representation'. Minister for State with Responsibility for Small Businesses and Collective Bargaining, Gerald Nash TD, gave a commitment to the workers that collective bargaining legislation would be introduced in 2015. Mandate Trade Union, '[Minister gives Dunnes workers collective bargaining commitment](#)', [press release], 3 April 2015.

³³ Section 18(1) of the Organisation of Working Time Act 1997 allows for zero hour contracts, requiring a person to make himself or herself available to work for the employer for a certain number of hours per week, as and when the employer requires him or her to do so, or both a certain number of hours and otherwise as and when the employer requires him or her to do so.

under these conditions.³⁴ In the absence of comprehensive and up-to-date information on the prevalence and impact of zero hour contracts in Ireland, the Commission welcomes the State's appointment of a research team to study the use of zero hours and low hours contracts in consultation with key stakeholders including employees, employers, Government Departments and Trade Unions.³⁵ **The IHREC recommends that in examining the legislative provisions and policy surrounding these types of contracts, it should be ensured that all workers receive fair wages and can earn a decent living for themselves and their families. [IHREC Submission: Section 6.1]**

Employment for Persons with Disabilities: The IHREC notes with concern that people with disabilities are much more likely to be unemployed or if they are in employment, to work part-time.³⁶ This situation has deteriorated since 2004 as the unemployment rate for persons with disabilities rose from 8 per cent to 22 per cent in 2010.³⁷ Given that the cost of living for people with disabilities is almost one-third higher than that of the general population, and disability-related social security payments do not reflect additional expenses,³⁸ it is essential that the proposed *Comprehensive Employment Strategy for People with a Disability* addresses the issue of an adequate income for people falling within its remit. **The IHREC recommends that the State publish the *Comprehensive Employment Strategy for People with a Disability* at the earliest opportunity. The strategy must take account of and reflect the higher cost of living for persons with disabilities. [IHREC Submission: Section 6.2]**

Forced labour and trafficking: Although Irish law prohibits forced labour,³⁹ the IHREC notes that a recent High Court decision concerning the protection of an alleged victim of human trafficking in which the IHREC assisted the High Court as amicus curiae,⁴⁰ determined that the current administrative scheme for identifying and protecting victims of human trafficking is 'inadequate' in the context of the State's obligations under European Union (EU) law.⁴¹ Furthermore, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) has recommended that the Irish Government should place the protection of victims of trafficking on a statutory footing.⁴² Both GRETA and the UN Human Rights Committee have expressed concern at the placement of suspected victims of trafficking in Direct Provision

³⁴ Mandate Trade Union which represents over 40,000 workers in the bar, retail and administrative work sector found in a 2012 behaviour and attitudes survey that only one third of respondents had stable working hours. Mandate Trade Union (2012) *Decent Work? The Impact of the Recession on Low-Paid Workers*, Mandate, p.4. In the Third Quarter of 2014, Ireland had the third highest rate of underemployed part-time workers of the EU Member States, at 5.7 per cent (EU average in the 28 Member States was 4 per cent). Eurostat, *Underemployment and potential additional labour force statistics, data from January 2015*.

³⁵ Department of Jobs, Innovation and Enterprise, 'Minister Nash appoints University of Limerick to carry out study on Zero Hours Contracts', [press release], 9 February 2015.

³⁶ F. McGinnity, H. Russell, D. Watson et al (2014) *Winners and Losers? The Equality Impact of the Great Recession in Ireland*, Equality Authority and ESRI, p.35.

³⁷ D. Watson, G. Kingston and F. McGinnity (2013) *Disability in the Irish Labour Market: Evidence from the QHNS Equality Module 2010*, Dublin: Equality Authority and ESRI, p. 19.

³⁸ The additional cost of living with a disability in 2010 was calculated to be 30 to 33 per cent of a person's average weekly income based on 2001 social security rates. J. Cullinan, B. Gannon and S. Lyons (2010) 'Estimating the Extra Cost of Living for People with Disabilities', Health Economics published online June 2010: doi: 10.1002/hec.1619 cited in D. Watson & B. Nolan (2011) *A Social Portrait of People with Disabilities*, Dublin: ESRI and Department of Social Protection, p. 28.

³⁹ Section 1, Criminal Law (Human Trafficking) Act 2008 as amended by the 2013 Act defines 'forced labour' as 'work or service which is exacted from a person under the menace of any penalty and for which the person has not offered himself or herself voluntarily' but includes a number of exemptions such as military service.

⁴⁰ *P. v. The Chief Superintendent of the Garda National Immigration Bureau, the DPP, Ireland and the Attorney General* [2015] IEHC 222.

⁴¹ The EU Directive referred to is *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims*.

⁴² GRETA (2013) *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: First Evaluation Round*, Strasbourg: Council of Europe, pp.52-3.

accommodation where they may be placed at further risk of harm.⁴³ Moreover, the IHREC notes its concern at the low number of victims of labour exploitation identified since the relevant law was first enacted in 2008, as well as the failure on the part of the State to prosecute or convict any traffickers under this legislation as outlined in the State's response to the Committee's List of Issues.⁴⁴ **The IHREC calls on the State to take immediate action to rectify the inadequacies in the administrative system and put in place a statutory scheme for the identification and protection of alleged victims of trafficking in line with the relevant EU law. The IHREC also recommends the State consider and implement the recommendations of GRETA. [IHREC Submission: Section 6.3]**

The Right to Social Security (Article 9)

Conditionality of Social Security Payments: Since 2011, unemployed jobseekers, lone parents and young people have all been subject to stricter social security controls. Sanctions in the form of weekly reductions of payments; payments suspended for up to nine weeks; or recipients being completely disqualified, have been introduced for recipients of jobseekers payments who are not deemed to have co-operated or engaged with the social welfare system. The use of sanctions has increased tenfold since these changes were first introduced in 2011; they have increased from fewer than 400 at that time to more than 4000 in 2014.⁴⁵ Changes to the eligibility criteria for the One Parent Family Payment (OPFP),⁴⁶ which is designed to support single parents on low incomes, has significantly affected lone parents, the majority of whom are women.⁴⁷ Despite the clear absence of adequate and affordable childcare, from July 2015, lone parents whose youngest child is seven years or over, will be allowed to seek part-time work while those with children aged 14 years or older will be required to seek and accept full-time work under the same condition and rules that apply to single people with no children. The final group to be disproportionately impacted by additional conditions are young jobseekers under the age of 26 years as they have been subject to a number of age-related payment reductions. Moreover, the 2014 Youth Guarantee will increase sanctions for young people under 26 years who are not considered to have engaged with the system. **The IHREC recommends that the State implement social security sanctions in a transparent and accountable manner and regularly review their use to ensure that they are not causing increased poverty and exclusion for vulnerable groups. [IHREC Submission: Section 7.3]**

⁴³ *Ibid.*, p. 46; UN Human Rights Committee (2014) *Concluding Observations on Ireland's Fourth Periodic Report*, CCPR/C/IRL/CO/4, at para. 20. Note that Ireland has obligations of prevention and obligations to provide support services to victims under the Council of Europe Convention on Action against Trafficking and *EU Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims*.

⁴⁴ Government of Ireland (2015) *CESCR: Reply of Ireland to the List of Issues in relation to its third periodic report*, Geneva: OHCHR, para. 40.

⁴⁵ M.P. Murphy (2015) *JobBridge Time to Start Again: A proposal to reframe, restrict and resize Irish Internship Policy*, Dublin: Mandate Trade Union, p. 26.

⁴⁶ OPFP is a means-tested payment for men and women under the age of 66 who are bringing up children without the support of a partner. Prior to the introduction of changes in 2012, a lone parent could qualify for the payment up until his or her youngest child reached the age of 18. Since the introduction of the amendments to the scheme, the age threshold for the youngest child of new applicants reduced from 18 to 14 years in 2012, 12 years in 2013, 10 years in 2014 and it is due to fall to 7 years in July 2015. At the end of January 2015 there were approximately 69,700 OPFP recipients and it is expected that 30,200 will lose entitlement to the payment in July 2015 although it is expected that the majority of them will transition onto another payment such as Family Income Supplement (FIS) paid to low income families or Jobseekers Allowance. For details see Minister for Social Protection, Joan Burton TD, Parliamentary Questions: Written Answers, [9291/15], 5 March 2015.

⁴⁷ Government of Ireland (2012) *Census 2011 Profile 5: Households and Families*, Dublin Stationery Office, p.22. Census 2011 recorded 215,315 single-parent families of which 186,284 were headed by mothers and 29,031 were headed by fathers.

The Right to Protection of the Family, Mothers and Children (Article 10)

Protection against Domestic and Gender-Based Violence: While some civil remedies exist for victims of domestic violence, there continues to be no specific criminal code dealing with the crime of domestic violence and no statutory definition of domestic violence in the Irish legal framework.⁴⁸ The IHREC is concerned that despite the prevalence of domestic violence in Ireland,⁴⁹ the 2014 *Garda Inspectorate Report* found that crimes of domestic violence are recorded incorrectly as non-crimes and that there was a 'high number of calls to domestic incidents with low volume of arrests recorded'.⁵⁰ Funding for domestic violence support services has been severely reduced during the recession with refugees reporting a lack of spaces despite an increase in demand.⁵¹ Affordability of legal assistance⁵² and a lack of consistency in legal proceedings⁵³ remain live issues. The IHREC welcomes the commitments made by the Minister for Justice and Equality to introduce consolidated and reformed domestic violence legislation; to ratify the Council of Europe's Convention on preventing and combating violence against women and domestic violence (the 'Istanbul Convention'); to finalise a second *National Strategy for Tackling Domestic, Sexual And Gender-Based Violence*; and to transpose and implement EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (the 'Victims' Directive').⁵⁴ **The IHREC recommends that the State prioritise the consolidation and reform of domestic violence legislation and put in place the updated *National Strategy for Tackling Domestic, Sexual and Gender-based violence* with the appropriate necessary supports in the form of the recommended number of spaces in refuges for victims of domestic violence. The Commission also recommends that the State ratify the Istanbul Convention as a matter of priority. [IHREC Submission: Section 8.2]**

The Right to an Adequate Standard of Living (Article 11)

The Right to Adequate Housing: There is no comprehensive right to housing enshrined in Irish law, but specific entitlements to social housing and housing supports are set out in legislation and regulations.⁵⁵

⁴⁸ Safe Ireland (2014) *'The lawlessness of the home': Women's experiences of seeking legal remedies to domestic violence and abuse in the Irish legal system*, Athlone: Safe Ireland, p. 74. Safe Ireland is the national network of women's refuges.

⁴⁹ The EU Fundamental Rights Agency (FRA) in an EU-wide survey found that in Ireland 26 per cent of women over 15 indicated that they had experienced physical or sexual abuse by a partner or ex-partner and 12 per cent had been subject to stalking. In Ireland only 28 per cent of serious incidents involving violence perpetrated by a current partner came to the attention of the police while only 24 per cent of these cases perpetrated by a non-partner received police attention. EU FRA (2014) *Violence against women: an EU-wide survey, Main Results*, Vienna: EUFRA, pp.28, 61 and 83.

⁵⁰ Garda Síochána Inspectorate (2014) *Report of the Garda Síochána Inspectorate: Crime Investigation Report*, Dublin Garda Síochána Inspectorate, p.17.

⁵¹ Safe Ireland (2014) *Safety in a time of crisis: Priorities for protection women and children impacted by domestic violence*, Athlone: Safe Ireland, p.6. Demand for services in 2012 increased by 36 per cent since the onset of the recession in 2008 while State funding was reduced by 14 per cent overall.

⁵² Civil legal aid is available on a means-tested basis and in cases of domestic violence this is prioritised. However, long waiting lists for law centres may cause delays in relation to other family-related proceedings. See Safe Ireland (2014) *'The lawlessness of the home': Women's experiences of seeking legal remedies to domestic violence and abuse in the Irish legal system*, Athlone: Safe Ireland, p.85.

⁵³ *Ibid.*, Chapter 3.

⁵⁴ These commitments were all made by the Minister for Justice and Equality, Frances Fitzgerald TD, in a [Dáil Statement on opposing domestic violence](#), 18 December 2014.

⁵⁵ For example: Section 10 of Housing Act 1988 provides for the provision of accommodation by housing authorities for those who are homeless and Part 4 of the Housing (Miscellaneous Provisions) Act 2014 provides for the administration of the Housing Assistance Payment (HAP). In February 2014, the Convention on the Constitution recommended that the right to housing be inserted into the Constitution of Ireland. See Convention on the Constitution (2014) *Eighth Report of the Convention on the Constitution: Economic, Social and Cultural Rights*, Dublin: Convention on the Constitution, p.6. Also the State has opted-out of the right to housing provision of the Revised European Social Charter, see Department of the European Social Charter Directorate General Human rights and the Rule of Law, *'Ireland and the European Social Charter: Factsheet'*, January 2015, Strasbourg: Council of Europe.

Reduced incomes,⁵⁶ over-indebtedness,⁵⁷ increased housing costs⁵⁸ and housing shortages,⁵⁹ have all led to an increase in homelessness and in particular, family homelessness.⁶⁰ Rent Supplement, a social security payment, has become a default long-term housing support in the absence of adequate social housing to accommodate the significant households in need of assistance.⁶¹ The IHREC considers that the introduction of a Housing Assistance Payment (HAP)⁶² to provide a more sustainable housing support for people on low incomes will go some way to addressing the affordability issue, but in a climate of rising rents and house prices, more must be done to address the lack of available housing in both the social housing and private rented sectors.⁶³ Another housing issue noted by the IHREC is the lack of culturally appropriate housing for the Traveller community which under ICESCR, should be progressively realised by the State. Furthermore, Travellers continue to experience difficulties with eviction and criminalisation in relation to accommodation.⁶⁴ **The IHREC recommends that the State monitor the efficacy of the Housing Assistance Payment and ensure that it is achieving its objective in ensuring that people on low incomes can access appropriate housing in the longer-term. The IHREC recommends that the State take measures to ensure that affordable housing is available and is of sufficient quality in order to fully comply with its obligations under the ICESCR. The IHREC also recommends that the State should take further steps to progressively realise the right to culturally appropriate housing for Traveller families in consultation with each individual family. [IHREC Submission: Sections 9.2 and 9.3]**

Direct Provision: The system of ‘Direct Provision’ was established in the year 2000 to provide direct support to asylum seekers by way of accommodation, food and a weekly allowance while their applications for protection are processed.⁶⁵ While the Government originally envisaged that a person would remain in the Direct Provision system on ‘a short-term basis’, it has instead turned into a protracted process for those awaiting a decision on their asylum claim who can often wait for years before a decision is made.⁶⁶ The

⁵⁶ Central Statistics Office (CSO) (2013) *Quarterly National Household Survey: Effect on Households of the Economic Downturn, Quarter 3 2012*, Dublin and Cork: CSO, p.2; B. Maître, H. Russell and C.T. Whelan (2014) *Trends in Economic Stress and the Great Recession in Ireland – An Analysis of the CSO Survey on Living and Income Conditions, Social Inclusion Technical Paper No. 5*, Dublin: Department of Social Protection, pp.1–2.

⁵⁷ B. Maître, H. Russell and C.T. Whelan (2014) *Trends in Economic Stress and the Great Recession in Ireland – An Analysis of the CSO Survey on Living and Income Conditions, Social Inclusion Technical Paper No. 5*, Dublin: Department of Social Protection, pp.4-5.

⁵⁸ Private Residential and Tenancies Board (PRTB) (2014) *The PRTB Rent Index – Quarter 4 2014*, Dublin: PRTB. The report shows that there was an annual 5.8 per cent increase in rents nationally between 2013 and 2014 while rents in Dublin rose by 9.6 per cent in the same period. B. Maître, H. Russell and C.T. Whelan (2014) *Trends in Economic Stress and the Great Recession in Ireland – An Analysis of the CSO Survey on Living and Income Conditions, Social Inclusion Technical Paper No. 5*, Dublin: Department of Social Protection, p. 14. In 2004, 23 per cent of people considered ‘housing costs a heavy burden’ but by 2011, this had risen to almost 35 per cent.

⁵⁹ Housing Agency (2014) *Housing Supply Requirements in Ireland’s Urban Settlements 2014 – 2018: Overview*, Dublin: Housing Agency & Future Analytics, p.3. This report estimates that between 2014 and 2018, almost 80,000 residential units in total will be required to meet demand.

⁶⁰ Minister for the Environment, Community and Local Government, Alan Kelly TD, Parliamentary Questions: Written Answers, [12382/15], 26 March 2015. In March 2015, official statistics recorded that there were 371 families living in emergency accommodation in the Dublin region alone. The Homeless Agency has estimated that 32 families become homeless each month.

⁶¹ Department of Social Protection (DSP) (2015) *Maximum Rent Limit Analysis and Findings Report: February 2015*, Dublin: DSP, p.2. Out of 71,500 Rent Supplement recipients, 48,000 were long-term recipients.

⁶² Part 4, Housing (Miscellaneous Provisions) Act 2014.

⁶³ Department of Social Protection (DSP) (2015) *Maximum Rent Limit Analysis and Findings Report: February 2015*, Dublin: DSP.

⁶⁴ The criminalisation of trespassing on land in the Housing (Miscellaneous Provisions) Act 2002 continues to disproportionately affect Travellers.

⁶⁵ For the purposes of this report an asylum seeker is a person who seeks refugee status, subsidiary protection or leave to remain. See IHREC (2014) *Policy Statement on the System of Direct Provision in Ireland*, Dublin: IHREC.

⁶⁶ According to official statistics, in January 2015 of the 4382 residents in Direct Provision, more than half had lived in Direct Provision for more than three years with 28 per cent of all residents living in the system for more than six years. The average length of stay in Direct Provision was four years. Statistics Unit, Reception and Integration Agency (2015) *Monthly Statistics: January 2015*, Dublin: Department of Justice and Equality, p.19.

impact of Direct Provision on a resident's quality of life is an issue of concern given that they are denied the right to work;⁶⁷ and are prevented from accessing mainstream social security payments;⁶⁸ and concerns have also been raised about the adequacy of the accommodation provided.⁶⁹ Furthermore, residents of the Direct Provision centres have little control over their everyday life, which impacts negatively on their family life⁷⁰ and their mental health.⁷¹ In this context, the IHREC welcomes the establishment in October 2014 of a Working Group which has been tasked with identifying actions and making recommendations to improve existing arrangements for asylum seekers to ensure 'greater respect for the dignity of persons in the system and improving their quality of life by enhancing the support and services currently available'.⁷² **The IHREC welcomes and supports the publication of the General Scheme of the International Protection Bill 2015 which it hopes will address the delays in the asylum determination procedure by introducing a single procedure.**⁷³ However, while the system remains in place, the IHREC reiterates its recommendation that the basis for Direct Provision be placed on a statutory footing and recommends the introduction of a time limited period between 6 and 9 months after which any person who has not yet received a decision, on either first instance or appeal, should be able to leave Direct Provision, live independently, access relevant social security payments and employment. The Commission regrets the delay in the publication of the Working Group's report and calls for its immediate publication with a timeline for the implementation of its recommendations. The IHREC further recommends that families be moved out of Direct Provision centres and enabled to access self-catering accommodation at the earliest possible opportunity, and any new families not be accommodated in Direct Provision.

⁶⁷ Ireland opted out of both the EU Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers or the Recast Reception Conditions Directive 2013/33/EU. The Recast Reception Conditions Directive specifically requires that asylum seekers be granted a limited right to work where first-instance decisions have not been made within nine months.

⁶⁸ A 'right to reside' test was introduced in December 2009. S15 of the Social Welfare and Pensions (No. 2) Act 2009 amends Section 246 of the Social Welfare Consolidation Act 2005 by inserting s.246(5), which provides that a person who does not have a right to reside in the State shall not be regarded as being habitually resident in the State.

⁶⁹ E. Quinn and C. Joyce (2014) *The Organisation of Reception Centres for Asylum Seekers in Ireland*, Dublin: European Migration Network; G. Shannon (2012), *Fifth Report of the Rapporteur on Child Protection*, Dublin: Department of Children and Youth Affairs, pp. 31–32; Free Legal Advice Centres (FLAC) (2009) *One Size Doesn't Fit All: A legal analysis of the direct provision and dispersal system in Ireland, 10 years on*, Dublin: FLAC, pp. 89–92; Nasc, the Irish Immigrant Support Centre (2008) *Hidden Cork: The Perspectives of Asylum Seekers on Direct Provision and the Asylum Legal System*, Cork: Nasc, p.22; C. Breen (2008) 'The Policy of Direct Provision in Ireland: A Violation of Asylum Seekers' Right to an Adequate Standard of Housing', *International Journal of Refugee Law*, 20, no.4: 611–636.

⁷⁰ UN Office of the High Commissioner for Human Rights (OHCHR) (2011) *Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona: Mission to Ireland*, Geneva: OHCHR, para. 90. The independent expert reminds Ireland that asylum seekers and refugees must be guaranteed the enjoyment of all human rights, including the right to privacy and family life, an adequate standard of living, and adequate standards of physical and mental health rights that complement the provisions of the 1951 Convention relating to the Status of Refugees, at para. 91.

⁷¹ Council of Europe: European Commission Against Racism and Intolerance (ECRI) (2013) *ECRI Report on Ireland (fourth monitoring cycle)*, Strasbourg: Council of Europe, para. 115.

⁷² Department of Justice and Equality (2014) *Working Group to report to Government on improvements to the protection process, including Direct Provision and supports to asylum seekers: Terms of Reference*, Dublin: Department of Justice and Equality.

⁷³ Under the current arrangements, in order to gain international protection in Ireland a person has to make claim asylum under the Refugee Act 1996 and if that claim is unsuccessful, he or she has to apply for subsidiary protection afterwards. Ireland is the only EU Member State without a single procedure to determine claims for refugee status and subsidiary protection at the same time in order to issue one single decision on a person's claim for protection. See UNCHR Ireland, 'UNHCR welcomes Single Procedure Scheme' [press release], 25 March 2015.

The Right to Health (Article 12)

Adequate Quality and Oversight in relation to the Right to Health: The IHREC recognises the important work carried out by the Health Information and Quality Authority (HIQA) in providing oversight and guidance on standards for a range of healthcare services including public hospitals.⁷⁴ In particular, the Commission notes that HIQA's reports have uncovered shortfalls in the standards of hygiene and sanitation in certain hospitals and a specific concern has arisen in relation to a number of maternity services in the State, which has led to investigations by HIQA,⁷⁵ the Chief Medical Officer⁷⁶ and in some cases internal reviews by hospital management.⁷⁷ Since the IHREC made its full submission to the Committee at the beginning of May 2015, HIQA has published its report into one particular hospital which has experienced a relatively high rate of perinatal deaths since 2006.⁷⁸ The Ombudsman has also noted the relatively low number of complaints about public hospitals and launched an investigation into this in 2014.⁷⁹ **In this context, the Commission highlights the Committee's *General Comment No. 14* which outlines the obligation on the State to put in place measures to improve child and maternal health in line with Article 12(2) of the Covenant, which provides that the State should strive 'for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child'.⁸⁰ It welcomes steps taken by the State to improve the quality of healthcare, address deficiencies in the system and develop indicators to monitor the provision of adequate services and programmes. The IHREC is encouraged by the expressed intent by HIQA to use a rights-based approach in developing its guidelines and carrying out its inspections. [IHREC Submission: Section 10.4]**

The Right to the Highest Attainable Standard of Mental Health for Children: The IHREC acknowledges the significant reduction in the number of children and young people admitted to adult psychiatric wards in recent years and the Mental Health Commission's target that from the end of 2011, no individual under 18 should be treated in an adult facility.⁸¹ However, the IHREC regrets that in spite of an increase in the number of Child and Adolescent Mental Health Services (CAMHS) beds,⁸² the rising demand for services continues to be unmet⁸³ and the practice persists.⁸⁴ **In this context, the IHREC calls on the State**

⁷⁴ The Health and Information Quality Authority (HIQA) is an independent body responsible for 'quality, safety and accountability in residential services for children, older people and people with disabilities in Ireland' as well as 'driving improvements in the quality and safety of healthcare on behalf of patients'. For further information see www.hiqa.ie. The Authority develops standards of practice and monitors compliance with legislative obligations and agreed standards; it also has the power to carry out an investigation where it deems it necessary.

⁷⁵ See HIQA (2013) *Investigation into the safety, quality and standards of services provided by the Health Service Executive to patients, including pregnant women, at risk of clinical deterioration, including those provided in University Hospital Galway, and as reflected in the care and treatment provided to Savita Halappanavar*, Dublin: HIQA. In the case of Savita Halappanavar she died from an infection while pregnant following failures in basic patient care provided to her.

⁷⁶ Dr T. Holohan, Chief Medical Officer (2014) *HSE Midland Regional Hospital, Portlaoise Perinatal Deaths (2006 to date): Report to Dr James Reilly TD*, Dublin: Department of Health.

⁷⁷ Saolta University Health Care Group 'Statement from Dr Patrick Nash, Clinical Director University Hospital Galway and Commissioner of the Enquiry into the Death of Ms Savita Halappanavar', 13 June 2013.

⁷⁸ Health Information and Quality Authority (HIQA) (2015) *Report of the investigation into the safety, quality and standard of services by the Health Service Executive to patients in the Midland Regional Hospital Portlaoise*, Dublin: HIQA.

⁷⁹ Office of the Ombudsman, 'Ombudsman to investigate how public hospitals handle complaints', [press release], 13 June 2014.

⁸⁰ UN Committee on Economic, Social and Cultural Rights (CESCR) (2000) *General Comment 14: the right to the highest attainable standard of health*, E/C.12/2000/4, Geneva: OHCHR, para. 14.

⁸¹ Mental Health Commission (2009) *Code of Practice Relating to Admission of Children under the Mental Health Act 2001: Addendum*, Dublin: Mental Health Commission, p.3.

⁸² While the State has committed to put in place a total of 106 publicly funded beds, many of these are still at the planning stage and will not be available for a number of years.

⁸³ HSE (2014) *December 2014 National Performance Assurance Report*, Dublin: HSE, p.12.

⁸⁴ Twenty of these spaces are planned as part of the National Paediatric Hospital due to be completed in 2019.

to ensure that individuals under the age of 18 are placed in age-appropriate facilities. The completion of the full cohort of CAMHS beds must be prioritised. [IHREC Submission: Section 10.5.1]

The Right to Education (Articles 13 – 14)

Discrimination in Education: The IHREC notes the Committee’s clear statement that ‘education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds’.⁸⁵ The IHREC notes that while the Equal Status Acts provide for a general prohibition on discrimination in education, a number of issues continue to arise in this regard. The State’s commitment to divest patronage from Roman Catholic schools to multi-denominational schools is welcome but progress has been described as ‘slow’ to date.⁸⁶ It is also noted that the proposed Education (Admission to Schools) Bill, approved by the Government in 2014, aims to put in place a legislative and regulatory framework to guide school admission criteria and policies which could improve equality of access for a number of groups of children. In particular, Traveller children continue to experience difficulties in accessing certain schools while children with disabilities or special educational needs are often excluded from some schools on the basis of criteria contained in the school’s admissions policy. The IHREC notes that the Education for Persons with Special Educational Needs (EPSEN) Act 2004 has not been fully commenced due to resource constraints despite a 2011 Programme for Government commitment to put in place an implementation plan.⁸⁷ Both Traveller children and children with special educational needs are over-represented in Delivering Equality of Opportunity in Schools (DEIS) schools which are targeted at children from disadvantaged communities.⁸⁸ **The IHREC recommends the State consider the recommendation of the Joint Oireachtas Committee on Education and provide for effective equality of access to schools across the nine equality grounds in the Education (Admission to Schools) Bill 2015. The IHREC calls on the State to put in place a regulatory framework to ensure that pupils with special educational needs can access mainstream schools and are allocated the necessary resources, as recommended by the National Council for Special Education (NCSE), to ensure that they can fulfil their full right to education. [IHREC Submission: Section 11.1]**

The Right to Enjoyment of Culture (Article 15)

Traveller Ethnicity: The IHREC welcomes the State’s intention to formally recognise Irish Travellers as an ethnic minority to ensure ‘that the Traveller community is covered by the international human rights protections against discrimination, including under EU law, which apply to such an ethnic group’.⁸⁹ **The Commission recommends the Government formally recognise Irish Travellers as an ethnic minority as a matter of priority and ensure greater legal protection for this vulnerable group. [IHREC Submission: Section 12.1]**

⁸⁵ UN Committee on Economic, Social and Cultural Rights (CESCR) (1999) *General comment No. 13: The right to education (article 13 of the Covenant)*, (8 December 1999), E/C.12/1999/10, para.6.

⁸⁶ UN Human Rights Committee (2014) *Concluding Observations on Ireland’s Fourth Periodic Report*, CCPR/C/IRL/CO/4, Geneva: OHCHR, para. 21.

⁸⁷ Government of Ireland (2011) *Programme for Government 2011-2016: Statement of Common Purpose*, Dublin: Government of Ireland, p.41.

⁸⁸ E. Smyth, S. McCoy and G. Kingston (2015) *Learning from the Evaluation of DEIS*, Dublin: Economic and Social Research Institute, p. vii.

⁸⁹ IHRC & Equality Authority, ‘[IHRC and Equality Authority call for recognition of Traveller Ethnicity by the State in presentations to Oireachtas Joint Committee on Justice, Defence and Equality](#)’, [press release], 13 November 2013.

Additional issues under specific provisions of ICESCR: the National Minimum wage [IHREC Submission: Section 6.1]; barriers to the right to work for specific groups [IHREC Submission: Section 6.2]; the effect of the Habitual Residence Condition and the 'Right to Reside' requirement on vulnerable groups [IHREC Submission: Section 7.1]; adequacy of social security for groups experiencing multiple discrimination [IHREC Submission: Section 7.2]; social welfare appeals [IHREC Submission: Section 7.4]; Constitutional position of the family and diverse family forms [IHREC Submission: Section 8.1]; adequacy of maternity and parental leave [IHREC Submission: Section 8.3]; corporal punishment [Section 8.4]; children in the care of the State [IHREC Submission: Section 8.5]; adequacy of strategies to reduce consistent poverty and deprivation [IHREC Submission: Section 9.1]; appropriate housing for persons with disabilities [IHREC Submission: Section 9.4]; the right to the highest attainable standard of physical and mental health including availability, accessibility and acceptability of healthcare [IHREC Submission: Sections 10.1, 10.2 and 10.3]; health inequalities and underlying determinants of health [IHREC Submission: Section 10.7]; the right to adequate reproductive health [IHREC Submission: Section 10.8]; education for Traveller children [IHREC Submission: Section 11.2], children with a disability [IHREC Submission: Section 11.3]; ethnic minority children [IHREC Submission: Section 11.4]; and human rights education [IHREC Submission: Section 11.5].