

CHILDREN'S
RIGHTS
ALLIANCE

Uniting Voices For Children



Are We There Yet?

Parallel Report to Ireland's Third and Fourth Combined Report
under the UN Convention on the Rights of the Child

September 2015

Children's Rights Alliance Members

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Alcohol Action Ireland
Alliance Against Cutbacks in Education
Amnesty International Ireland
Arc Adoption
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Association of Secondary Teachers Ireland (ASTI)
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Healthy Food for All
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Institute of Community Health Nursing
Institute of Guidance Counsellors
International Adoption Association
Irish Association for Infant Mental Health
Irish Association of Social Care Workers (IASCW)
Irish Association of Social Workers
Irish Association of Suicidology
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Parentline
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Saoirse Housing Association
SAOL Beag Children's Centre
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Society of St. Vincent de Paul
Sonas Housing Association
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St. Nicholas Montessori Teachers Association
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St. Patrick's Mental Health Services
Start Strong
Step by Step Child & Family Project
Suas Educational Development
Sugradh
Teacher's Union of Ireland
The UNESCO Child and Family Research Centre, NUI Galway
The Guardian Children's Project
The Prevention and Early Intervention Network
Treoir
UNICEF Ireland
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Youth Advocate Programme Ireland (YAP)
Youth Work Ireland

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Preface

Are We There Yet? is the Children's Rights Alliance's Third and Fourth combined Parallel Report to the United Nations Committee on the Rights of the Child. It is the culmination of a major civil society consultation with over one hundred of our members and stakeholders who work at the coalface with children and families in Ireland.

A lot has happened since Ireland was last reviewed in 2006. To be fair, there has been lots of positive change. The Constitution of Ireland has been amended to strengthen children's rights, we now have a Minister for Children and Youth Affairs with full Cabinet status and a dedicated agency has been established for children and families. These are very significant milestones and lay the foundation for an Ireland where children can flourish. And the happy reality is that many children growing up in Ireland have their rights respected, protected and fulfilled.

Sadly, some large and very dark clouds hang over this happy picture.

For a substantial minority of children, life is tough. These children, through no fault of their own, are living on the margins and are being failed by the State. This report highlights the plight of these children. The happy picture fades when you learn that there are 1,500 asylum seeking children growing up in sometimes inappropriate direct provision accommodation. Traveller children have an infant mortality rate that is three and a half times higher than the national average. There are gaps in our law so that children are not fully protected - so, inexplicably it's still legal to hit your child, or indeed another child, if you are their minder.

We have the highest EU rate of youth suicide amongst girls and the second highest rate amongst boys. Other stark realities are that one third of LGBT young people have seriously thought about ending their lives and 20 per cent have attempted suicide. Shamefully, Ireland ranks second of 194 countries for binge drinking of alcohol amongst those aged 15 and over. We also spotlight the fact that in 2013 only one in three children detained on remand was later detained upon conviction - raising a serious question on whether detention is being used as a measure of last resort.

Add to this shocking landscape a backlog of over 7,000 child protection cases and 3,000 children on waiting lists for mental health support and thousands more waiting for other essential health care and special needs services. There are serious delays in sexual offences cases being heard in court and very long waiting lists for sexual abuse counselling. It gets even more unfair when you consider that waiting times vary massively from county to county resulting in a geographical lottery dictating the speed at which a child will be supported. This is very far from utopia. The bottom line is that public services and the courts must be better resourced to provide essential supports and uphold children's rights.

The second dark cloud is poverty. The child poverty rate is soaring due to the recession as well as austerity decisions chosen over the last few years. As a result, one in eight children is now living in consistent poverty, a staggering figure that has nearly doubled in five years. 1,500 children are living in emergency homeless accommodation, a number that is rapidly rising by the day as our housing crisis snowballs. Families are struggling to feed their children and to keep up with the costs of sending them to school. For some, they face the added challenge of ensuring a child with special needs or mental health difficulties is supported to reach their full potential.

In a nutshell, the Irish State must improve children's access to the healthcare and education services to which they are entitled. They must address child poverty. They must take the necessary steps to improve the lives of marginalised children. Filling the children's rights gap and creating a happy picture for all children is dependent on smart decisions and political will. It is possible and it must now happen.

Tanya Ward
Chief Executive



Introduction

1. Ireland ratified without reservation the UN Convention on the Rights of the Child in 1992,¹ the Optional Protocol on the Involvement of Children in Armed Conflict in 2002² and the Optional Protocol on a Communications Procedure in 2014.³ Ireland was examined by the UN Committee on the Rights of the Child under the Convention in 1998 and 2006. Ireland's third and fourth combined examination is scheduled to take place in January 2016.
2. Ireland consulted with civil society on the development of its Third and Fourth Combined Report under the Convention,⁴ which it lodged with the UN Committee on the Rights of the Child on 2 August 2013.⁵ Although the State Report is welcome, it should be noted that it was submitted over four years after the submission date set by the Committee – 27 April 2009 – had passed.
3. In 2011, there were 1,148,687 children under 18 years living in Ireland.⁶ This represented 25 per cent of the total population and was the highest percentage of children among the then 27 European Union Member States, where the average child population was 19 per cent.⁷ Between 2002 and 2011, the population of children in Ireland grew by 13.4 per cent.⁸
4. Many children growing up in Ireland are experiencing a happy childhood where their rights are respected, protected and fulfilled. The Government has prioritised children with the appointment of a Minister for Children and Youth Affairs with full Cabinet status, an amendment to the Constitution of Ireland on children, and the establishment of a dedicated agency for children and families. But despite these and other positive initiatives, for a sizeable minority of children another story exists. These children continue to be marginalised within society and failed by inadequate and overstretched services and supports.
5. During the nearly ten years since the Committee's last examination, much has changed for children in Ireland. Following years of unprecedented economic growth, in 2008 Ireland experienced an economic crisis followed by a recession which brought poverty, hunger, debt, unemployment, emigration, homelessness and anxiety about the future to the lives of many families and their children. Through a series of austerity budgets and policy decisions, the State did not adequately protect children and vital public services from the impact of the recession.
6. This Report has been prepared by the Children's Rights Alliance on behalf of its members. A UNCRC Project Steering Group was convened comprising member organisations and other stakeholders to guide the project and help shape a national consultation involving civil society. The consultation on the Parallel Report commenced in November 2014 with a meeting held in Dublin attended by over 40 groups and individuals. Four regional consultative events were held in different parts of the country – Carlow, Galway, Cork and Limerick – attended by local and regional organisations, academics and interested individuals. Written inputs were also sought from members and other stakeholders and 36 submissions were received. A final consultation was held in April 2015.

1 Office of the High Commissioner for Human Rights, *Ratification Status for CRC*, https://treaties.un.org/PagesViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en#EndDec [accessed 5 May 2015].

2 Office of the High Commissioner for Human Rights, *Ratification Status for CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child*, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en [accessed 2 April 2015].

3 *Ibid.*

4 Department of Children and Youth Affairs (2013) *Ireland's Consolidated Third and Fourth Reports to the UN Committee on the Rights of the Child*, Dublin: Department of Children and Youth Affairs. The State Report is required under Article 44 of the Convention.

5 The Department of Children and Youth Affairs consulted with civil society, through the Children's Rights Alliance, in late 2012 and early 2013.

6 Central Statistics Office (2012) *This is Ireland: Highlights from Census 2011, Part 1*, Dublin: Stationery Office, p. 72 <http://www.cso.ie/en/media/csoie/census/documents/census2011pdr/Census,2011,Highlights,Part,1,web,72dpi.pdf> [accessed 28 September 2015].

7 Department of Children and Youth Affairs (2012) *State of the Nation's Children: Ireland 2012*, Dublin: Government Publications, p. 12.

8 *Ibid.*, p. 10.

CHAPTER 1: GENERAL MEASURES OF IMPLEMENTATION

7. Article 4 of the UN Convention on the Rights of the Child obliges States to undertake all [m]easures necessary for the implementation of the rights set out under the Convention, and [to] do so to the maximum extent of available resources with regard to economic, social and cultural rights.⁹

> PREVIOUS RECOMMENDATIONS FROM THE COMMITTEE

8. The UN Committee on the Rights of the Child has examined Ireland's progress on implementing the UN Convention on the Rights of the Child on two occasions, in 1998 and 2006. Following each examination, the Committee issued a set of *Concluding Observations*, comprising observations and recommendations outlining necessary steps to be taken by the State to further the implementation of the Convention in Ireland.¹⁰ The assessment of progress made on these recommendations should bear in mind that there has been a seventeen-year interval since the first examination and a nine-year interval since the second examination.
9. Since the last examination in 2006, the State has made progress on a number of the Committee's recommendations. The most significant advances include the amendment to the Constitution of Ireland to strengthen children's rights; an improvement in the care of separated children seeking asylum; the raising of the minimum age of recruitment into the armed forces to 18 years; the prohibition of the practice of female genital mutilation; and an increased investment in school buildings.
10. Unfortunately, the State's progress on implementing the remaining Committee's recommendations varied. On some issues, steps were taken by the Government but more action is needed to impact on children's lives – for example increasing access to non-denominational education; reforming adoption laws; and ending the practice of detaining children in an adult prison. In other areas, limited or little progress has been made to date. Examples include implementing the commitments to prohibit corporal punishment; ratifying the Optional Protocol on the Sale of Children, Child Pornography and Child Prostitution; addressing child poverty; ensuring all reported cases of abuse and neglect are adequately investigated and victims are supported; adopting a rights-based legal framework for meeting the needs of children with disabilities and for children's healthcare needs; taking steps to improve the lives of Traveller children; addressing alcohol misuse; and supporting children with mental health needs.



> INCORPORATION OF THE CONVENTION INTO LAW

11. In 2006, the Committee reiterated its earlier recommendation¹¹ that the State should undertake further action to incorporate the Convention into domestic law.¹²
12. Ireland operates a dualist legal system meaning that international conventions must be given further effect in domestic law to be justiciable before the Courts. Since 2006, elements of the Convention have been given legal effect, albeit in limited circumstances and settings, such as the constitutional amendment on children and through the Adoption Act 2010, the Child and Family Agency Act 2013, and the Children and Family Relationships Act 2015. While these developments are laudable, there are still significant gaps in the protection of children's rights in Irish law. For example, corporal punishment is permissible and there is no legal framework on the child's right to healthcare.
13. **Recommendation:** The Committee is urged to recommend that the State conducts an audit of its laws and judicial and administrative practices to determine where these fail to comply with the Convention and its Optional Protocols. The identified gaps should be addressed through a consolidated Children's Rights Bill.
14. **Constitutional Law:** In 2006, the Committee drew attention to its outstanding 1998 recommendation¹³ where it called on the State to: 'take all appropriate measures to accelerate the implementation of the recommendations of the Constitutional Review Group for the inclusion of all the principles and provisions of the Convention [...], thereby reinforcing the status of the child as a full subject of rights.'¹⁴
15. In November 2012, a national referendum was held and 58 per cent of voters supported the Thirty-first Amendment to the Constitution.¹⁵ Article 42A.1 of the Constitution now provides that: 'The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights'.¹⁶ It is hoped that this provision will open up a new line of jurisprudence on children's rights from the Superior Courts.
16. Article 42A also clarifies how and when the State can step in to protect children and provides, for the first time, the same threshold of protection to all children, regardless of the parents' marital status.¹⁷ It also commits the Oireachtas (Parliament) to bring in legislative reform in the area of adoption to allow a child, the opportunity of being adopted in circumstances where there has been a continuous failure on the part of the parents towards their child, and this situation is likely to continue; and to allow parents, either married or unmarried, to voluntarily place their child for adoption and to consent to the adoption of their child.¹⁸



9 UN General Assembly, Convention on the Rights of the Child, A/RES/44/25 of 20 November 1989, 1577 UNTS 3.
 10 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2 and Committee on the Rights of the Child (1998) *Concluding Observations: Ireland*, CRC/C/15/Add.85.
 11 UN Committee on the Rights of the Child (1998) *Concluding Observations: Ireland*, CRC/C/15/Add.85, para. 25.
 12 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, para. 9.
 13 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, paras 6 and 7.

14 UN Committee on the Rights of the Child (1998) *Concluding Observations: Ireland*, CRC/C/15/Add.85, para. 24.
 15 The Thirty-First Amendment to the Constitution was passed by 58 per cent of voters. Department of the Environment, Community and Local Government, *Referendum Results 1937-2015*, p.82 <http://www.environ.ie/en/LocalGovernment/Voting/Referenda/PublicationsDocuments/FileDownload,1894,en.pdf> [accessed 1 September 2015].
 16 *Constitution of Ireland - Bunreacht na hÉireann*, Article 42A.1. <http://www.irishstatutebook.ie/en/constitution/> [accessed 29 September 2015].
 17 *Ibid.*, Article 42A.2.1°.
 18 *Ibid.*, Article 42A.2.2° and Article 42A.3.

> NATIONAL POLICY

17. In addition, Article 42A commits the Oireachtas (Parliament) to legislate to ensure that the best interests of the child will be ‘the paramount consideration’, in child protection and care proceedings brought by the State, and in proceedings concerning adoption, guardianship or custody of, or access to, any child.¹⁹ In such cases, the views of the child will be heard and taken into account in the proceedings²⁰ While the provisions on the best interests and views of the child are welcome, it is disappointing that they are restricted to certain circumstances and only apply in judicial settings. Also, the framing of the constitutional amendment places the development of these rights in the hands of the legislature, rather than empowering the judiciary to develop jurisprudence on these issues.
18. The signing into law of the constitutional amendment was delayed for over two and a half years by a legal challenge as to whether or not Government-funded referendum material, which had been found to be unconstitutional,²¹ impacted the referendum outcome.²² On 24 April 2015, the Supreme Court upheld the judgment of the High Court and dismissed the appeal.²³
19. Immediate action is now needed to ensure compliance of legislation and practice with Article 42A of the Constitution.
20. **Recommendation:** The Committee is urged to recommend that the State takes immediate action to vindicate children’s constitutional rights; including enacting legislation to satisfy Article 42A provisions on the best interests of the child, views of the child, and adoption. In addition, the judiciary and the legal profession should be supported to undertake studies on the interpretation of Article 42A of the Constitution in line with international best practice.
21. **Economic, Social and Cultural Rights:** In Ireland, the legislature and the judiciary have traditionally taken a conservative position on the justiciability of economic, social and cultural rights, arguing that they may have cost implications for the Exchequer, and that judicial enforceability may represent a breach of the principle of the separation of powers.²⁴ In 2013, the Constitutional Convention recommended that economic, social and cultural rights be given enhanced protection in the Constitution.²⁵ The Government has not yet responded to this recommendation, despite a general commitment to respond to the recommendations of the Constitutional Convention within four months.²⁶
22. **Recommendation:** The Committee is urged to recommend that the State accepts the Constitutional Convention’s recommendation on enhancing the protection of economic, social and cultural rights in the Constitution, and holds a referendum to amend the Constitution accordingly.
23. On 22 May 2015, the People of Ireland voted in favour of an amendment to the Constitution of Ireland to provide for marriage equality for same-sex couples.²⁷ The first same-sex marriages are expected to take place in Ireland by the end of 2015.²⁸



24. In 2006, the Committee called on the State to evaluate and assess the achievements of the National Children Strategy to ensure that a rights-based approach to all the activities is taken; and to establish specific timeframes and budget allocations for its implementation.²⁹
25. *The National Children’s Strategy, Our Children – Their Lives*,³⁰ was independently reviewed at its mid-way point in 2006 and changes were made on foot of this review.³¹ The Children’s Rights Alliance carried out the only evaluation of the National Children’s Strategy at the conclusion of the ten-year period the Strategy was originally intended to cover.³² The evaluation found that progress on the first two goals (child participation and research on children) was impressive but progress on the third goal (quality services and supports for vulnerable children) was limited. The Strategy was due to end in December 2010 but was extended until the publication (in 2014) of a follow-on strategy – *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020*.³³
26. *Better Outcomes, Brighter Futures* sets out an ambitious road map for achieving five national outcomes for all children and young people up to the age of 24 years.³⁴ The Framework contains a positive vision which reflects the language of the Convention and adopts an outcomes focus.³⁵ Seventeen of its commitments promote the implementation of outstanding Concluding Observations. However, there are also some important omissions – for example, the Framework does not contain a commitment to prohibit corporal punishment. The Framework contains a commitment to ensure that Ireland’s laws, policies and practice are compliant with the Convention and its Optional Protocols (Commitment 5.8); that children will have access to a remedy if their rights are breached (Commitment 5.9); and that the ethos, policies and practices of Government institutions and State-funded services (including schools) promote equal treatment and interculturalism, and incorporate measures to protect against and remedy all forms of discrimination (Commitment 5.7). Following the publication of the Framework in April 2014, an Advisory Council comprising non-governmental and independent representatives was established in October 2014.
27. **Recommendation:** The Committee is urged to recommend that the State provides adequate resources to ensure the full implementation of *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020*, including the development of a rights-based implementation plan that has cross-departmental support and contains an allocated budget and clearly assigned timelines.



19 *Ibid.*, Article 42A.4.1°.
 20 *Ibid.*, Article 42A.4.2°.
 21 *McCrystal v Minister for Children and Youth Affairs, the Government of Ireland, Ireland & the Attorney General* [2012] IESC 53 (8 November 2012) found that an aspect of Government information material to be unconstitutional as the Government used public monies to espouse a particular perspective in the referendum, in breach of the McKenna principles (set out in *McKenna v An Taoiseach* (No. 2) [1995] 2 IR 10) and also contained a misstatement as to the effect of the referendum.
 22 The petitioner, Jordan, claimed that the Government booklet, website and advertising had a material effect on the referendum outcome and interfered with the democratic process. *Jordan v Minister for Children and Youth Affairs & Others* [2013] IEHC 625.
 23 *Jordan v Minister for Children and Youth Affairs & Others* [2013] IEHC 625.
 24 Amnesty International Ireland (2014) *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*, Dublin: Amnesty International Ireland, pp. 30–42.
 25 The Convention on the Constitution is a forum of 100 people representative of Irish society and parliamentarians from the island of Ireland. It was established in 2012 to consider and make recommendations on certain topics as possible future amendments to the Constitution. For more see: <https://www.constitution.ie/Convention.aspx> [accessed 1 September 2015].
 26 The Terms of Reference of the Convention on the Constitution are detailed in *Resolution of the Houses of the Oireachtas of July, 2012* https://www.constitution.ie/Documents/Terms_of_Reference.pdf [accessed 28 April 2015].
 27 The Thirty-Fourth Amendment to the Constitution was passed by 62.07 per cent of voters. Department of the Environment, Community and Local Government, *Referendum Results 1937–2015*, p.96 <http://www.environ.ie/en/LocalGovernment/Voting/Referenda/PublicationsDocuments/FileDownload,1894,en.pdf> [accessed 1 September 2015].
 28 Department of Justice and Equality, ‘Minister Fitzgerald publishes Marriage Bill 2015’ [press release], 16 September 2015, <http://www.justice.ie/en/JELR/Pages/PR15000470> [accessed 20 September 2015].

29 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland, CRC/C/IRL/CO/2*, para. 11.
 30 Department of Health and Children (2000) *The National Children’s Strategy: Our Children – Their Lives*, Dublin: Stationery Office.
 31 National Children’s Advisory Council (2006) *Mid-term Review of the National Children’s Strategy 2000–2010*, http://www.most.ie/webreports/appendix/24.%20NCAC_Mid_Term_Review_of_the_NCS%202006.pdf [accessed 23 April 2015].
 32 Children’s Rights Alliance (2011) *Ten Years On: Did the National Children’s Strategy Deliver on its Promises?*, Dublin: Children’s Rights Alliance.
 33 Department of Children and Youth Affairs (2014) *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020*, Dublin: Stationery Office.
 34 The five national outcomes are that children will be: active and healthy; achieving in all areas of learning and development; safe and protected from hard; economic security and opportunity; and connected, respected and contributing.
 35 The vision of the Policy Framework is ‘Our vision is for Ireland to be one of the best small countries in the world in which to grow up and raise a family, and where the rights of all children and young people are respected, protected and fulfilled; where their voices are heard and where they are supported to realise their maximum potential now and in the future.’

> COORDINATION

28. Two positive developments have taken place since 2006 to strengthen the national coordinating infrastructure in relation to children. Firstly, in 2011 the Government developed the post of Minister for Children and Youth Affairs to carry full Cabinet status,³⁶ and established a Department of Children and Youth Affairs. The Department focuses on harmonising policy issues that affect children in areas such as early childhood care and education, youth justice, child welfare and protection, participation, research, youth work and cross-cutting initiatives for children.³⁷
29. Secondly, in 2014 a dedicated agency, Tusla – Child and Family Agency, was established with responsibility for improving wellbeing and outcomes for children.³⁸ The Agency is directly accountable to the Minister for Children and Youth Affairs and brings together child welfare and protection services,³⁹ family support, educational welfare, pre-school inspections, some services relating to the psychological welfare of children, and services relating to domestic, sexual and gender-based violence.⁴⁰
30. The Chief Executive of Tusla – Child and Family Agency has expressed concern that the Agency's budget is insufficient to meet increasing demand for its services as well as demographic pressures.⁴¹ There is a danger that budgetary pressures will force the Agency to make cuts to key services, a development that could not be considered to be in the best interests of children, and that it will remain focused on crisis intervention rather than moving towards greater investment in early intervention and prevention services.
31. **Recommendation:** The Committee is urged to recommend that the State continues to support the work of the Department of Children and Youth Affairs and takes the necessary budgetary and policy decisions to ensure that Tusla – Child and Family Agency is adequately equipped and resourced to fulfil its legal obligations to children.

> ALLOCATION OF RESOURCES

32. The Committee has made clear that a financial crisis should not be used as a reason to postpone action to fulfil the State's obligations to tackle child poverty.⁴² The Committee has also recommended that the potential impact on children be made visible in budgets, pointing out that: "No State can tell whether it is fulfilling children's economic, social and cultural rights "to the maximum extent of ... available resources" ... unless it can identify the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly."⁴³

36 The post of Minister for Children and Youth Affairs was a 'super junior' post from 2002 to 2011, entitling the Minister to attend Cabinet meetings but he or she did not have a vote on Cabinet decisions. The Cabinet is a committee of senior ministers responsible for controlling government policy.

37 Department of Children and Youth Affairs, <http://dcya.gov.ie> [accessed 18 May 2015].

38 Child and Family Agency Act 2013, enacted on 1 January 2014.

39 These services comprise child welfare and protection services; foster and residential care and aftercare; and adoption services.

40 The Health Service Executive will retain responsibility for Sexual Assault Treatment Units, which are located in acute hospitals, and other medical services.

41 S. Wayman, 'Child protection chief on walking the talk', *The Irish Times* [online], 30 December 2014, <http://www.irishtimes.com/life-and-style/health-family/parenting/child-protection-chief-on-walking-the-talk-1.2040970> [accessed 4 February 2015].

42 UN Committee on the Rights of the Child (2007) *Day of General Discussion on 'Resources for the Rights of the Child – Responsibility of States'* <http://www.ohchr.org/EN/HRBodies/CRC/Pages/DiscussionDays.aspx> [accessed 1 May 2015].

43 UN Committee on the Rights of the Child (2003) *General Comment No. 5 (2003) General Measures of Implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5, para. 51.

33. The national Budget in Ireland is not disaggregated to show the proportion of the budget devoted to expenditure on children. In 2014, the Government committed to explore the development of a mechanism to track and analyse expenditure on children across departments, agencies and non-governmental organisations.⁴⁴ In addition, the Department of Social Protection has begun to carry out social impact assessments following the introduction of the national Budget.⁴⁵
34. **Recommendation:** The Committee is urged to recommend that the State disaggregates the national Budget to show the proportion of expenditure devoted to children; and puts in place measures to ensure that budgetary decisions are made with the best interests of children as a primary consideration. Relevant government departments should provide an analysis of the potential impact on their budgetary proposals on children's rights, with a particular focus on child poverty.

> LEGAL AND JUDICIAL INFRASTRUCTURE

35. Ireland's legal and judicial infrastructure is inadequate to support the roll-out of legislation in compliance with the Convention and its General Comments. Ireland has an adversarial child and family law system, which often pits family members against each other or against the State unnecessarily. A commitment in the Programme for Government 2011-2016 to establish a distinct and separate system of family courts to streamline family law court processes has yet to be implemented.⁴⁶
36. There are serious deficiencies in the current child and family court system, where parties endure long delays and proceedings are expensive.⁴⁷ There is geographical disparity in how child care and family proceedings are heard. In Dublin, cases are heard in a special court under the direction of six dedicated judges.⁴⁸ Outside Dublin, child care and family proceedings are heard as routine matters by the sitting judge.⁴⁹ This has led to inconsistencies in approaches to cases and in thresholds applied.⁵⁰ There is no training required before judges can hear child and family cases.⁵¹ Delays are a persistent feature of the system, in particular for families accessing legal aid.⁵² Reform is urgently needed to ensure the rights of children and their families are protected and family law is administered with due regard to the dignity of all parties.
37. In a welcome step, the Courts and Civil Law (Miscellaneous Provisions) Act 2013 amended the *in camera* rule,⁵³ to allow the media to report on family law and child care proceedings according to strict conditions.⁵⁴

44 Department of Children and Youth Affairs (2014) *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020*, Dublin: Stationery Office, p. 113.

45 Department of Social Protection (2014) *Social Impact Assessment of the Main Welfare and Tax Measures for 2014*, Dublin: Department of Social Protection.

46 The Government commitment states that as soon as resources permit, 'we will introduce a constitutional amendment to allow for the establishment of a distinct and separate system of family courts to streamline family law court processes and make them more efficient and less costly.' Department of the Taoiseach (2011) *Programme for Government*, http://www.taoiseach.gov.ie/eng/Work_of_The_Department/Programme_for_Government/Programme_for_Government_2011-2016.pdf [accessed 12 May 2015]. In 2015, the Government pledged capital funds to deliver a dedicated and integrated Family Law and Children's Courts building in Dublin. Department of Justice and Equality, 'Minister Fitzgerald announces unprecedented Capital Investment in Justice Sector' [press release] 29 September 2015, <http://www.justice.ie/en/JELR/Pages/PR15000498> [accessed 29 September 2015].

47 For further discussion see C. Coulter (2009) *Family Law in Practice: A Study of Cases in the Circuit Court*, Clarus Press, Dublin.

48 Law Society of Ireland, *Submission to the Department of Justice, Equality and Defence, Family Law – the Future*, <http://www.lawsociety.ie/Documents/committees/Family/FamilyLawsubmission2014.pdf> [accessed 1 May 2015].

49 *Ibid.*

50 *Ibid.*, p. 8.

51 *Ibid.*

52 *Ibid.*, p. 9.

53 The *in camera* rule allowed for a closed court in family law and child care proceedings.

54 See for example, the work of the Child Care Law Reporting Project at www.childlawproject.ie.

38. Recommendation: The Committee is urged to recommend that the State establishes a family court division, based on a network of regional courts and operating in compliance with the Council of Europe Guidelines on Child Friendly Justice.⁵⁵

> INDEPENDENT NATIONAL HUMAN RIGHTS INSTITUTIONS

39. Ombudsman for Children: In 2006, in order to ensure the independent functioning of the Ombudsman for Children, the Committee called on the State to provide the Office with financial resources directly through the Oireachtas (Parliament) and the Department of Finance.⁵⁶ This recommendation has not been acted upon. The Ombudsman for Children's Office is funded through the Department of Children and Youth Affairs.

40. In 2006, the Committee also recommended that the Ombudsman for Children Act 2002 be reviewed and amended where necessary to strengthen the investigative powers under the Act.⁵⁷ In 2012, these powers were expanded to include any public body that comes within the scope of the general Ombudsman,⁵⁸ and children detained in adult prisons.⁵⁹ While these developments are warmly welcomed, certain vulnerable children still cannot make a complaint to the Ombudsman for Children as the Office is precluded from hearing complaints on decisions taken in 'the administration of the law relating to asylum, immigration, naturalisation or citizenship'.⁶⁰ In addition, unlike other Ombudsmen for Children and the Irish Human Rights and Equality Commission, the Ombudsman for Children does not have a statutory function to act as *amicus curiae*.⁶¹

41. Recommendation: The Committee is urged to recommend that the State retains the Ombudsman for Children as an independent separate office to ensure a visible and dedicated focus on children. In addition, the State should transfer responsibility for the Office's budget to the Oireachtas (Parliament); amend the Ombudsman for Children Act 2002 to provide a statutory function to act as *amicus curiae*; and clarify that the exclusion relating to asylum, immigration, naturalisation or citizenship relates solely to decisions on immigration status.

42. Equality and Human Rights Infrastructure: In 2008, the Government significantly reduced the capacity and scope for action of the State's human rights and equality bodies by discontinuing or reducing their funding. While austerity measures were endured across state departments and agencies, this sector suffered disproportionately.⁶² The Combat Poverty Agency was subsumed into the Department of Social Protection and funding for the National Consultative Committee on Racism and Interculturalism was ended and the body ceased to exist. Funding to the Equality Authority and the Irish Human Rights Commission was drastically reduced (by 43 per cent in the case of the former and 24 per cent in that of the latter⁶³) and the two bodies were merged in 2014 to form the Irish Human Rights and Equality Commission.⁶⁴

> DATA COLLECTION AND ANALYSIS

43. In 2006, the Committee echoed its earlier recommendation⁶⁵ calling on the State to undertake further measures to develop a systematic and comprehensive collection of disaggregated data in compliance with the Convention, for use in the creation, implementation and monitoring of policies and programmes for children.⁶⁶

44. Much progress has been made since 2006, including the commencement of the National Longitudinal Study of Children, *Growing Up in Ireland*,⁶⁷ publication of biennial *State of the Nation's Children* reports,⁶⁸ and a *National Strategy for Research and Data on Children's Lives*⁶⁹ and the introduction a Children's Funded Research Programme,⁷⁰ a National Child Care Information System (NCCIS),⁷¹ and an *Inventory of Data Sources on Children's Lives*.⁷²

45. In 2015, a universal ethnic identifier was introduced in primary schools.⁷³ This is a positive development which should be extended to post-primary schools. At present, only Traveller children are asked to identify their ethnicity at post-primary level. In addition, legislation was enacted in 2014 (but has not yet been commenced) to allow for the introduction of a unique health identifier.⁷⁴

55 Committee of Ministers of the Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies)* http://www.coe.int/t/dghl/standardsetting/childjustice/default_en.asp [accessed 1 May 2015].

56 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland, CRC/C/CO/2*, para. 15.

57 *Ibid.*, para. 14.

58 Ombudsman (Amendment) Act 2012, s. 4 and s. 22. The Office of the Ombudsman was established under the Ombudsman Act 1980 with the function of investigating complaints from members of the public who believe that they have been unfairly treated by certain public bodies. Currently, its remit covers all government departments, the Health Service Executive (HSE), public hospitals and health agencies providing services on behalf of the HSE, and local authorities. See: www.ombudsman.gov.ie for further details.

59 Ombudsman for Children Act 2002 Order 2012, S.I. No. 210/2012, s. 11(2)(a) and S.I. No. 341/2013.

60 *Ibid.*, s. 11(1)(e)(i).

61 An *amicus curiae* or 'friend of the court' is a person or body not directly engaged in a case who has the role of advising the court in a case.

62 See: Department of Finance (2009) *Estimates for Public Services and Summary Capital Programme*.

63 D. de Bréadún, 'Human rights groups criticise savage cuts', *The Irish Times*, 10 October 2008.

64 D. de Bréadún, 'Equality, data protection and human rights bodies to merge', *The Irish Times*, 7 July 2008.

65 UN Committee on the Rights of the Child (1998) *Concluding Observations: Ireland, CRC/C/15/Add.85*, para. 31.

66 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland, CRC/C/IRL/CO/2*, para. 17.

67 Launched in 2007, 'Growing Up in Ireland' is a national longitudinal study of children. See www.growingup.ie.

68 See the website of the Department of Children and Youth Affairs to access *The State of the Nation's Children* reports: http://www.dcy.gov.ie/docs/The_State_of_the_Nations_Children_Report/1990.htm [accessed 1 September 2015].

69 Department of Children and Youth Affairs (2011) *National Strategy for Research and Data on Children's Lives 2011-2016*, Dublin: Government Publications.

70 Department of Children and Youth Affairs, *Children's Funded Research Programme*, <http://www.dcy.gov.ie/viewdoc.aspx?fn=%2Fdocuments%2FResearch%2FChildrenFundedResearcProg.htm> [accessed 1 May 2015].

71 Health Service Executive, *National Child Care Information System*, <http://www.hse.ie/eng/services/Publications/Children/nccis.html> [accessed 1 May 2015].

72 Department of Children and Youth Affairs, *Inventory of Data Sources on Children's Lives*, www.dcy.gov.ie/inventory-of-data-sources-on-childrens-lives [accessed 1 May 2015].

73 Department of Education and Skills (2014) Circular 0017/2014, *Fair Processing Notice to explain how some of the personal data of pupils in primary and special schools will be recorded on the proposed Primary Online Database (POD) and how this data will be processed by the Department of Education and Skills, in compliance with the Data Protection Act 1988 and the Data Protection (Amendment) Act 2003*, p. 5.

74 Health Identifiers Act 2014. The Act is not yet commenced: it requires commencement order under s. 1(2).

46. Despite positive initiatives, gaps remain in up-to-date disaggregated data. In some cases, data is only available for adults or households.⁷⁵ There is also a dearth of data evaluating the effectiveness of policies and services and their outcomes for children. For example, there is no comprehensive data on outcomes for young people who leave the care system. The establishment of a national longitudinal study of care leavers is an outstanding commitment under the Ryan Report Implementation Plan.⁷⁶ The commitment to develop a set of progress indicators under *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020* is welcome and should address some critical data gaps.⁷⁷
47. **Recommendation:** The Committee is urged to recommend that the State takes further measures to provide disaggregated and rights-related data on children to inform evidence-based practice and policy-making.

> DISSEMINATION, TRAINING AND AWARENESS-RAISING

48. Article 42 obliges States to 'make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike' and Article 44(6) obliges States to 'make their reports widely available to the public in their own countries'.
49. In 2006, the Committee echoing its early recommendation,⁷⁸ called on the State 'to further strengthen its efforts to ensure that the provisions of the Convention are widely known and understood by both adults and children', including through public awareness-raising campaigns and training for professionals working with children.⁷⁹
50. Since 2006 some key initiatives have taken place to promote awareness of the Convention, including ongoing education work with children undertaken by the Office of the Ombudsman for Children.⁸⁰ However, given the lack of data in this area, it is difficult to gauge the level of awareness, or use, of the Convention among children, parents, practitioners and decision-makers, and whether relevant professional training and accredited programmes include a focus on children's rights.
51. **Recommendation:** The Committee is urged to recommend that the State undertakes a needs assessment in relation to the training of professionals working with children on children's rights and child-friendly practices, in particular for staff of Tusla – Child and Family Agency, health service professionals, teachers, school board members, early childhood workers, social workers, legal professionals, the judiciary and members of An Garda Síochána (Police Service).

75 E. Fitzgerald (2004) *Counting Our Children: An Analysis of Official Data Sources on Children and Childhood in Ireland*, Dublin: The Children's Research Centre, Trinity College Dublin.

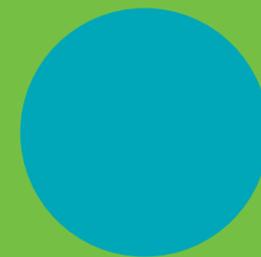
76 Department of Children and Youth Affairs (2014) *Ryan Report Implementation Plan Fourth Progress Report*, Dublin: Department of Children and Youth Affairs, p. 40.

77 Department of Children and Youth Affairs (2014) *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020*, Dublin: Stationery Office, p. 9.

78 UN Committee on the Rights of the Child (1998) *Concluding Observations: Ireland*, CRC/C/15/Add.85, para. 33.

79 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, para. 19.

80 See for example, the Ombudsman for Children's website www.itsyourright.ie and the Department of Children and Youth Affairs, 'Young people to celebrate 25 years of children's rights and vote on having a stronger voice in decision-making' [press release], 20 November 2014, <http://www.dcy.gov.ie/viewdoc.asp?DocID=3345> [accessed 2 April 2015].



52. Article 1 defines a child as anyone below the age of 18 years unless majority is attained earlier under the law.

> AGE OF CRIMINAL RESPONSIBILITY

53. In 2006, the Committee reiterated its 1998 criticism of the low age of criminal responsibility in Ireland.⁸¹
54. The Criminal Justice Act 2006 raised the age of criminal responsibility from seven to 12 years for most criminal offences, but also provided that, in the case of allegations of serious offences such as murder, manslaughter, rape or aggravated sexual assault, a child aged 10 and 11 years may be prosecuted.⁸² The Criminal Justice Act 2006 also repealed Article 52(2) of the Children Act 2001 which had provided for a rebuttable presumption that children between the ages of 12 and 14 years were incapable of committing an offence.⁸³ In the 2006 Act the rebuttable presumption was replaced with a requirement that a child under 14 years may not be prosecuted without the consent of the Director of Public Prosecutions.⁸⁴ It appears that since the commencement of the 2006 Act in 2007 no child under 12 years has been convicted of a criminal offence.
55. In its 2006 examination, the Committee recommended that the provisions regarding the age of criminal responsibility which had been provided for in the Children Act 2001 should be re-instated.⁸⁵
56. **Recommendation:** The Committee is urged to recommend that the State increases the age of criminal responsibility to 14 years for all criminal offences.



81 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, paras. 66–67 and Committee on the Rights of the Child (1998) *Concluding Observations: Ireland*, CRC/C/15/Add.85, para. 23.

82 Section 129 of Criminal Justice Act 2006 amended Section 52 of the Children Act 2001.

83 Children Act 2001, s. 52(2).

84 Criminal Justice Act 2006, s. 129 (4).

85 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, paras. 66–67.

86 UN Committee on the Rights of the Child (2003) *General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, CRC/GC/2003/4, para. 32. See also Committee on the Rights of the Child (2013) *General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, CRC/C/GC/15, para. 31.

87 Non-Fatal Offences Against the Person Act 1997, s. 23 (1).

> AGE OF CONSENT TO HEALTHCARE

57. The UN Committee on the Rights of the Child has commented that in the context of health care, '[b]efore parents give their consent, adolescents need to have a chance to express their views freely and their views should be given due weight [...]. However, if the adolescent is of sufficient maturity, informed consent shall be obtained from the adolescent her/himself, while informing the parents if that is in the "best interest of the child".⁸⁶
58. The age at which a child can consent without the agreement of their parents to surgical, medical and dental procedures is set at 16 years under the Non-Fatal Offences Against the Person Act 1997.⁸⁷ However, this Act only applies in the context of criminal law as a defence and is very limited in its scope – for example, it does not provide guidance on whether a child under 16 years can provide consent or whether a child aged 16 or 17 years can refuse medical treatment or social care interventions.
59. Practice across the country varies in relation to consent by those under 16 years, with some health care practitioners adopting the 'mature minor' test set out in the UK Gillick case, in particular in relation to prescribing contraception.⁸⁸ However, this test has not been confirmed by the Irish courts. A *National Consent Policy*, which sets out best practice principles, was published in 2013.⁸⁹ The *National Consent Policy* notes that only in exceptional circumstances should a health and social care intervention be provided to a child under 16 years without the knowledge or consent of their parent or guardian, following an assessment of the rights and best interests of the child.⁹⁰ However, the *National Consent Policy* has no legal basis. The lack of clarity in this area may hinder a child's right to healthcare and to their ability to seek confidential advice. The legal vacuum also leaves the actions of health professionals who do not seek, or who ignore, parental consent open to legal challenge.
60. The Mental Health Act 2001 sets the age of consent for mental health treatment at 18 years.⁹¹ This appears to create a distinction between the age at which a child has capacity to consent to mental health treatment as opposed to physical health treatment.⁹² The Law Reform Commission⁹³ and the Mental Health Commission⁹⁴ have called for clarity on this issue. The *Report of the Expert Group Review on the Mental Health Act 2001* recommended that 16 and 17 year olds be presumed to have capacity to consent to or refuse treatment.⁹⁵
61. **Recommendation:** The Committee is urged to recommend that the State puts in place a comprehensive and coherent legal framework for the child's right to consent to, or refuse treatment, in physical and mental health and social care settings, taking into account the child's capacity to understand the nature and consequences of treatment, and addressing issues of confidentiality.

88 *Gillick v West Norfolk and Wisbeck Area Health Authority* (1985) All ER 402 (HL). In his judgment Lord Fraser proposed that the doctor will be justified in proceeding without parental consent if the girl who is under 16 understands the medical advice given; the doctor cannot persuade her to inform her parents; the girl is very likely to begin or continue sexual intercourse without contraception; unless she receives contraception, her physical or mental health are likely to suffer; and her best interests require the doctor to give such contraception.

89 National Consent Advisory Group (2013) *National Consent Policy*, p. 53, http://www.hse.ie/eng/about/Who/qualityandpatientsafety/National_Consent_Policy/consenttrainerresource/trainerfiles/NationalConsentPolicyM2014.pdf [accessed 20 March 2015].

90 *Ibid.*

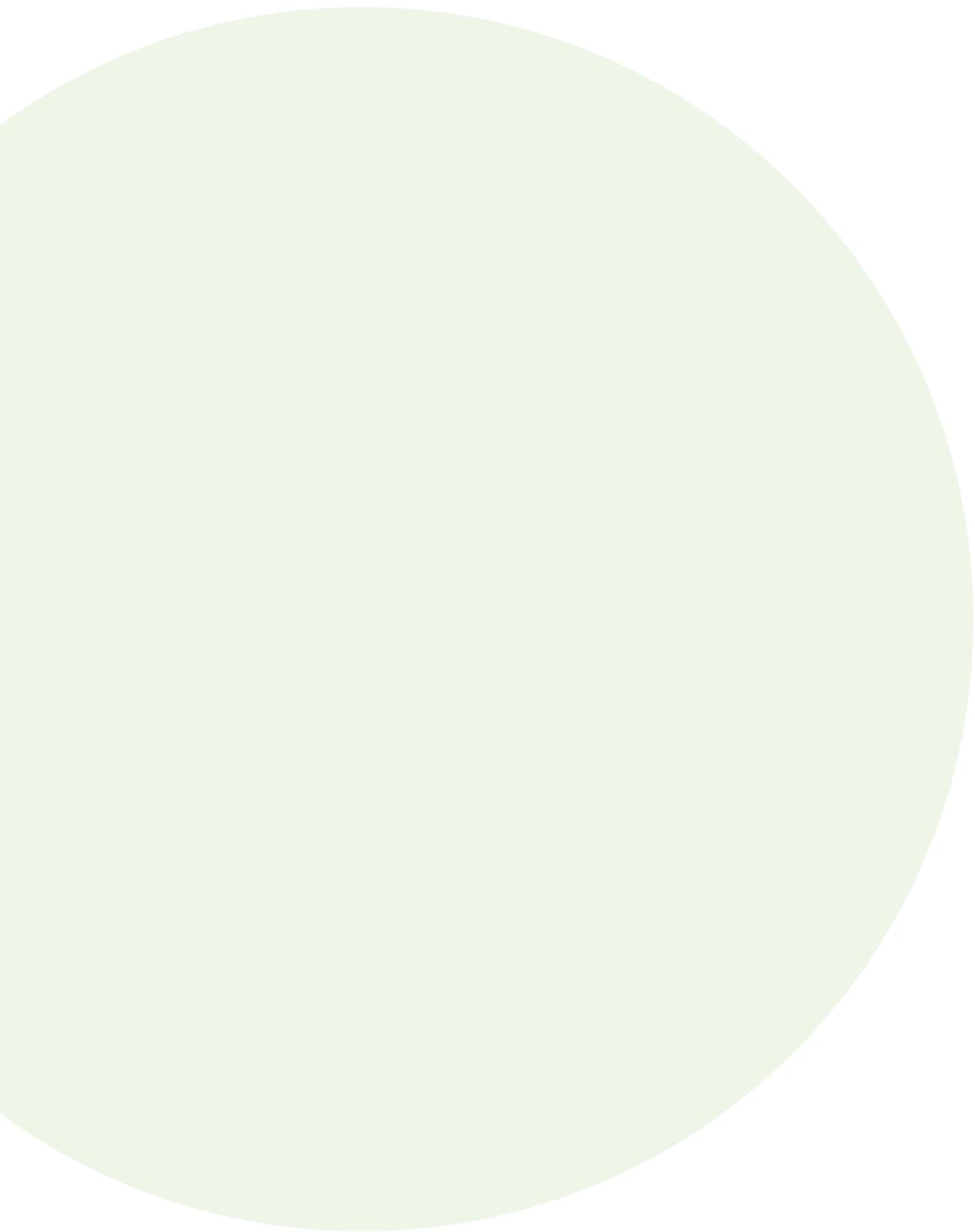
91 Mental Health Act 2001, s. 2.

92 See *Health Service Executive v J.M.* [2013] IEHC. 12 (16 January 2013).

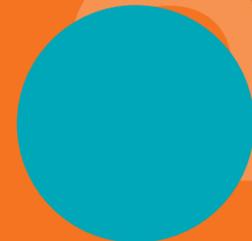
93 Law Reform Commission (2009) *Children and the Law: Medical Treatment*, Dublin: Law Reform Commission, para. 3.40.

94 Mental Health Commission (2011) *Submission on the Review of the Mental Health Act 2001*, Dublin: Mental Health Commission, p. 32.

95 Department of Health (2015) *Report of the Expert Group on the Review of the Mental Health Act 2001*, Dublin: Department of Health, p. 71.

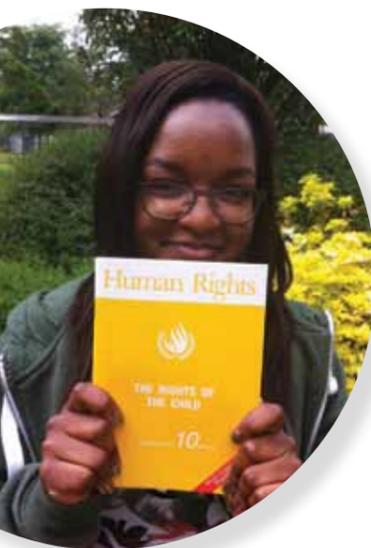


CHAPTER 3: GENERAL PRINCIPLES



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> NON-DISCRIMINATION



- 62.** Under Article 2, States must ensure the rights set out in the Convention apply to each child 'without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.' States are obliged to 'take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.'
- 63.** Article 40.1 of the Constitution of Ireland provides for equality before the law for all. However, the Constitution only protects against direct discrimination and the provision is under-developed by the Courts.⁹⁶ The Equal Status Acts 2000–2012 prohibits direct and indirect discrimination in accessing goods and services under nine grounds – gender, race, religion, family status, civil status, membership of the Traveller Community, sexual orientation, disability and age.
- 64.** The Equal Status Acts 2000–2012 falls short of the standard required under Article 2 of the Convention. To ensure its compliance the legislation should be amended to include all of the discrimination grounds under Article 2, protect the child from discrimination based on his or her parent's or guardian's status, and allow for discrimination on the grounds of 'age' to be applicable to children.⁹⁷
- 65.** In addition, the equality legislation only covers government functions that fall under the remit of 'goods' and 'services', leaving key functions outside its remit. This issue was raised by the UN Committee on the Elimination of Racial Discrimination in 2005 who recommended that the State expand the Equal Status Act to cover the whole range of government functions including controlling duties.⁹⁸
- 66. Recommendation:** The Committee is urged to recommend that the State considers reform of Article 40.1 of the Constitution of Ireland to specifically include an express prohibition of direct and indirect discrimination on named grounds, and amends the Equal Status Acts 2000–2012 to bring them in line with Article 2 of the Convention.
- 67. Racism:** In 2006, the Committee called on the State to ensure the full implementation of the National Action Plan against Racism with a specific focus on addressing racism, prejudice, stereotyping and xenophobia amongst children, particularly in education.⁹⁹
- 68.** On completion of the National Action Plan Against Racism 2005–2008, no follow-up policy was introduced. In 2014, a Cross Departmental Group on Integration was mandated to review Government activities on migrant integration and draft an Integration Strategy.¹⁰⁰ It is expected that anti-racism measures will be addressed in this Strategy.¹⁰¹ While this proposal is welcome, racism is not just experienced by migrants so a wider approach must be taken to address this issue. A high level of civil society consultation, including with children, in the development and implementation of such a plan will also be required.

- 69.** In 2011, the UN Committee on the Elimination of All Forms of Racial Discrimination recommended that racist motivation be consistently taken into account as an aggravating factor in sentencing practice for criminal offences.¹⁰² Racist behaviour, homophobia, xenophobia and offences directed at a person, either an adult or child, on the basis of his or her religion or disability are not explicitly criminalised in Irish law – except under incitement to hatred legislation.¹⁰³
- 70. Recommendation:** The Committee is urged to recommend that the State delivers and implements a suite of measures to tackle racism, including measures focused on children. An education and awareness raising initiative should be rolled out nationally, with a view to preventing racist incidents and informing children of opportunities to report and seek support. In addition, the State should enact legislation to allow the judiciary to consider a racist motive as an aggravating factor in sentencing.
- 71. Habitual Residence Condition:** With regard to accessing social welfare benefits, the State Report makes no reference to the Habitual Residence Condition. Introduced in 2005,¹⁰⁴ the Condition restricts access to certain social welfare payments¹⁰⁵ to those who can prove a close link to Ireland.¹⁰⁶ This has resulted in certain children being denied access to the Child Benefit payment – a monthly cash payment and the State's key mechanism to support children. This amounts to indirect discrimination against approximately 10,000 children as they are denied the payment due to their parents' immigration status or migration history.¹⁰⁷ The Habitual Residence Condition has a disproportionate impact on particular groups of children,¹⁰⁸ including Traveller children,¹⁰⁹ Roma children,¹¹⁰ and asylum seekers.¹¹¹
- 72. Recommendation:** The Committee is urged to recommend that the State reviews the Habitual Residence Condition to assess its impact on children; and to remove the Child Benefit payment from the ambit of the Habitual Residence Condition as its inclusion is inappropriate, given that it is intended to be a universal payment, access to which is not dependent on either social insurance contributions or means testing.
- 73. Denominational Education:** In 2006, the Committee called on the State to encourage the establishment of non-denominational or multid denominational schools.¹¹² This recommendation was echoed by the UN Committee on the Elimination of All Forms of Racial Discrimination in 2011¹¹³ and by the UN Human Rights Committee in 2014.¹¹⁴

96 Constitution of Ireland - Bunreacht na hÉireann, Article 40.1 states: 'All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.'

97 Equal Status Acts 2000–2012, s 3(3).

98 UN Committee on the Elimination of All Forms of Racial Discrimination (2005) *Concluding Observations: Ireland*, CERD/C/IRL/CO/2, para. 19.

99 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, para. 21.

100 Minister of State for Equality, New Communities and Culture, Aodhán Ó Riordán TD, *Migrant Integration*, [10378/15], Dáil Debates, 10 March 2015.

101 Minister for Justice and Equality, Frances Fitzgerald TD, *Legislative Measures*, [10939/15], Dáil Debates, 12 March 2015.

102 UN Committee on the Elimination of All Forms of Racial Discrimination (2011) *Concluding Observations: Ireland*, CERD/C/IRL/CO/3-4, para. 19; European Commission Against Racism and Intolerance (2007) *Third Report on Ireland*, para. 26 http://hudoc.ecri.coe.int/XML/ENGLISH/Cycle_03/03_CbC_eng/IRL-CbC-III-2007-24-ENG.pdf [accessed 20 May 2015].

103 Existing legislation cited to prosecute racist acts include Criminal Justice (Public Order) Act 1994, s. 6 on offensive speech and the Non-Fatal Offences against the Person Act 1997, s. 2 (assault), s. 3 (assault causing harm), s. 10 (harassment).

104 Social Welfare (Consolidation) Act 2005 as amended, s. 246. The 'habitual residence' condition was reinforced in 2009 when section 246 of the Social Welfare (Consolidation) Act 2005 was amended by section 15 of the Social Welfare and Pensions (No. 2) Act 2009 which introduced a 'right to reside' test. The amended legislation 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.

105 These include Child Benefit, Jobseeker's Allowance, Disability Allowance and Carer's Allowance. For a full list see, Citizen's Information Board, Citizens Information, *Residence requirements for social assistance in Ireland*, http://www.citizensinformation.ie/en/social_welfare/irish_social_welfare_system/social_assistance_payments/residency_requirements_for_social_assistance_in_ireland.html [accessed 25 March 2015].

106 The Social Welfare and Pensions Act 2007 sets out five criteria to determine habitual residence: 1) the length and continuity of living in the State or another country, 2) the length and reason for any absence from the State, 3) the nature and pattern of the person's employment, 4) the person's main centre of interest and 5) the future intentions of the person applying for the social welfare payment.

107 Minister for Social Protection, Joan Burton TD, *Social Welfare Eligibility*, [41995/14], Dáil Debates, 4 November 2014.

108 Minister for Social Protection, Joan Burton TD, *Social Welfare Benefits*, [5458/11], Dáil Debates, 23 March 2011. Crosscare, Doras Luimni and Nasc (2012) *Person or Number? Issues Faced by Immigrants Accessing Social Protection*, Limerick: Crosscare, Doras Luimni and Nasc; Immigrant Council of Ireland (2014) *ICI Response to FLAC Questionnaire for Shadow Report under the International Covenant on Economic, Social and Cultural Rights*, Dublin: ICI; Barnardos (2014) *Submission to Shadow Report for Ireland on the International Covenant on Economic, Social and Cultural Rights*, Dublin: Barnardos.

109 Pavee Point (2011) *Irish Travellers and Roma Shadow Report: Response to Ireland's Third and Fourth Combined Report under the International Covenant on the Elimination of All Forms of Racial Discrimination (CERD)*, Dublin: Pavee Point, p. 4; Pavee Point (2011) *Position Paper: The Impact of the Habitual Residence Condition on Travellers and Roma*, Dublin: Pavee Point; End Child Poverty Coalition (2014) *Pre-Budget Submission 2015*, Dublin: ECP.

110 Pavee Point (2014) *Roma Seminar Series, Theme Three, Roma and Education*, Dublin: Pavee Point, p. 6.

111 Department of Social Protection, *Guidance for Deciding Officers on the Determination of Habitual Residence*, <http://www.welfare.ie/en/Pages/Habitual-Residence-Condition--Guidelines-for-Deciding-Offic.aspx#sect5>, section 5 and section 7 [accessed 20 May 2015]; S. Arnold (2012) *State Sanctioned Child Poverty and Exclusion: The Case of Children in Accommodation for Asylum- Seekers*, Dublin: Irish Refugee Council.

112 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, para. 61.

113 UN Committee on the Elimination of All Forms of Racial Discrimination (2011) *Concluding Observations: Ireland*, CERD/C/IRL/CO/3-4, para. 26.

114 UN Human Rights Committee (2014) *Concluding Observations: Ireland*, para. 21. See also UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Ireland, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 6 March 2012, A/HRC/19/9/Add.1, paras 37, 60, 61.

- 74.** Census 2011 showed an increase in the number of people identifying as of 'No Religion' between 2006¹¹⁵ and 2011, as well as an increase in the number of people of religions other than the Catholic faith.¹¹⁶ Ninety-six per cent of primary schools in Ireland have a religious patron and 89.6 per cent are under the patronage of the Catholic Church.¹¹⁷ The denominational structure of the education system has led to difficulties for families who wish for their child to be educated in a multi- or non-denominational environment. These families may find themselves unable to do so as there is no option available in their geographical area, other than a denominational publicly funded school.¹¹⁸ In six of the 26 counties of Ireland, there is no alternative to denominational primary school provision.¹¹⁹
- 75.** Since 2006, there has been some progress in providing greater choice in the school system, with a number of both primary and post-primary multi-denominational schools being opened under the patronage of Educate Together, which now has a network of 74 primary schools and three second-level schools nationwide.¹²⁰ As of 2011, there were also nine primary schools of other patrons such as the Education and Training Boards.¹²¹
- 76.** In addition, negotiations on divestment of primary school properties between the Catholic Church and the then Department of Education and Science began in 2008.¹²² A process of phased divestment of school properties from religious bodies was set out in 2012 by the Forum on Patronage and Pluralism in the Primary Sector.¹²³ However, the divestment process has been very slow: to date one school has transitioned from the Church of Ireland to a multi-denominational patronage and two Catholic schools were merged.¹²⁴
- 77.** The second issue of concern is that under Irish law, a child can be denied access to a publicly funded school due to his or her religious or non-religious belief. The Equal Status Acts 2000-2012, which prohibits discrimination including on religious grounds, provides an exemption that allows schools of a particular religious ethos to give preference to students of that religious denomination, or refuse admission to students of other or no religion in order to preserve the school's ethos.¹²⁵ Proposed legislation in this area does not address this discrimination.¹²⁶
- 78. Recommendation:** The Committee is urged to recommend that the State accelerates efforts to create a national network of schools that guarantees equality of access to children irrespective of their religious or non-religious beliefs, and to encourage diversity and tolerance of other faiths and beliefs in the education system by monitoring incidents of discrimination in school admissions on the basis of belief.

- 79. Discrimination in School Admissions:** Some schools indirectly discriminate by giving preference in school admission to the children of past pupils.¹²⁷ This particularly impacts on access to education for Travellers, Roma, children in the care system and migrant children whose parents may not have attended school to second level or may not have attended school in Ireland.¹²⁸ The Education (Admission to Schools) Bill 2015 aims to prohibit discrimination in admissions based on the nine grounds set out in the Equal Status Acts 2002-2012. Under the Bill, the ability to give preference to children of past pupils is preserved, although this ability is expected to be limited by regulation.¹²⁹
- 80. Recommendation:** The Committee is urged to recommend that the State removes the ability of publicly-funded schools to give preference to the children of past pupils under the Education (Admission to Schools) Bill 2015.
- 81. Discrimination Against Boys:** The Criminal Law (Sexual Offences) Act 2006 provides for offences on the defilement of a child under 15 years and under 17 years. The offence of defilement of a child under 15 years carries a maximum sanction of life imprisonment, and consent is not considered a defence to this offence.¹³⁰
- 82.** The Criminal Law (Sexual Offences) Act 2006 differentiates between boys and girls, as only boys are liable for prosecution under its provisions. Section 5 of the 2006 Act provides that a girl under 17 years 'shall not be guilty of an offence under this Act by reason only of her engaging in an act of sexual intercourse'. The intention of this provision was to prevent the stigmatisation of young mothers and remove any potential barrier to a girl seeking medical care for fear of prosecution.¹³¹ In July 2013, the Supreme Court upheld the law in a case taken by a young man prosecuted under the 2006 Act, citing that the Courts have previously upheld the different treatment of the sexes on the basis that girls who have underage sex risk pregnancy, while boys do not.¹³²
- 83. Recommendation:** The Committee is urged to recommend that the State reconsiders Section 5 of the Criminal Law (Sexual Offences) Act 2006 to ensure that boys and girls are treated equally under the law and the principle of the best interests of the child is applied.

> BEST INTERESTS OF THE CHILD

- 84.** Article 3 provides that the best interests of the child shall be a primary consideration in all actions concerning children, as a self-executing substantive right, as an interpretative legal principle and as a rule of procedure.¹³³
- 85.** In 2006, the Committee called on the State to ensure that the best interests principle is a primary consideration without distinction and is fully integrated into relevant legislation, and to ensure that the principle is applied across all political, judicial, administrative decisions, projects, programmes and services impacting on children.¹³⁴

115 Central Statistics Office, *Census 2006, Actual Change and Percentage Change in Population 2002 and 2006 by Religion, Statistical Indicator and Year*, <http://www.cso.ie/px/pxeirestat/Statire/SelectVarVal/saveselections.asp> [accessed 12 May 2015].

116 Central Statistics Office, *Population Usually Resident and Present in the State by Religion and Nationality, 2011*, <http://www.cso.ie/en/statistics/population/populationclassifiedbyreligionandnationality2011/> [accessed 12 May 2015].

117 The Forum on Patronage and Pluralism in the Primary Sector (2012) *Report of the Forum's Advisory Group*, p. 29 <https://www.education.ie/en/Press-Events/Conferences/Patronage-and-Pluralism-in-the-Primary-Sector/The-Forum-on-Patronage-and-Pluralism-in-the-Primary-Sector-Report-of-the-Forums-Advisory-Group.pdf>, [accessed 12 May 2015].

118 *Ibid.*, p. 42.

119 Educate Together, *Schools and Start-Up Groups*, <http://www.educatetogether.ie/schools> [accessed 1 May 2015]. The six counties are Cavan, Leitrim, Longford, Monaghan, Roscommon and Tipperary.

120 Educate Together, *Our Network, Schools and StartUp Groups*, www.educatetogether.ie/schools [accessed 1 May 2015]. Department of Education and Skills, 'Minister Quinn announces patronage of 43 new post-primary schools to be established in Dublin in 2014' [press release], 12 March 2014, <http://www.education.ie/en/Press-Events/Press-Releases/2014-Press-Releases/PR2014-03-12.html> [accessed 1 April 2015].

121 Community National Schools, *Who we are*, <http://www.cns.ie/index.php/design-and-features/who-we-are-item> [accessed 19 May 2015].

122 The Forum on Patronage and Pluralism in the Primary Sector (2012) *Report of the Forum's Advisory Group*, <https://www.education.ie/en/Press-Events/Conferences/Patronage-and-Pluralism-in-the-Primary-Sector/The-Forum-on-Patronage-and-Pluralism-in-the-Primary-Sector-Report-of-the-Forums-Advisory-Group.pdf>, p. 25 [accessed 12 May 2015].

123 *Ibid.* The Forum was established to examine how the education system could better cater to the increasing diversity among its pupils.

124 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 11 November 2014.

125 Equal Status Acts 2000-2012, s. 7(3)(c).

126 Education (Admission to Schools) Bill 2015.

127 The selection and enrolment of pupils in schools is the responsibility of the authorities of the individual school. Under Section 15(2)(d) of the Education Act 1998, each school is legally obliged to disclose its enrolment policy and to ensure that within the policy the principles of equality and the right of parents to send their children to a school of the parents' choice are respected.

128 See for example *Stokes v Christian Brothers High School Clonmel & anor* [2015] IESC 13.

129 Education (Admission to Schools) Bill 2015, s. 64 (3)(f).

130 It should be noted that the Criminal Law (Sexual Offences) Bill 2015 proposes to amend the Criminal Law (Sexual Offences) Act 2006. Under Section 17(8) of the Bill it shall be a defence for a person charged with an offence against a child (between the ages of 15 and 17) that the child consented to the activity and (i) the accused is younger than or less than 2 years older than the child, (ii) the accused is not considered to be a person in authority and (iii) there is no exploitative element to the relationship.

131 Explanatory Memorandum to the Criminal Law (Sexual Offences) Bill 2006, para. 8.

132 *M.D. (a minor) v Ireland & Ors* [2012] IESC 10. At the time of the offence the boy was 15 years and the girl was 14 years of age.

133 UN Committee on the Rights of the Child (2013) *General Comment No. 14: The right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, CRC/C/GC/14, para. 6.

134 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, para. 23.

- 86.** Welcome steps have been taken to incorporate the best interests principle into Irish law. Article 42A.4.1° of the Constitution now states that provision shall be made by law for the best interests of the child to be ‘the paramount consideration’, in child protection and care proceedings brought by the State, and to judicial proceedings concerning adoption, guardianship or custody of, or access to, any child.¹³⁵
- 87.** The Children and Family Relationships Act 2015 provides, for the first time, comprehensive guidance to the Courts on what elements to consider when making a determination on the child’s best interests in relation to guardianship, custody or upbringing of, or access to, a child.¹³⁶ The definition of the best interests of the child provided in the Children and Family Relationships Act 2015 is limited to family law settings; a similar definition should be developed to guide child care proceedings, in line with the Convention and General Comment No. 14.¹³⁷
- 88.** Under its founding legislation, Tusla – Child and Family Agency must also have regard to the best interests of the child when making decisions and performing its functions in respect of an individual child.¹³⁸
- 89.** However, in many other areas, the principle does not have legal status. For example, the principle is absent from the Education Act 1998 which governs the education system. Nor does the principle inform decision-making on immigration. In 2014, the High Court held that the Minister for Justice and Equality, when making a deportation order, was not bound to consider the ‘best interests of the child’ under Article 3 of the UN Convention on the Rights of the Child as the Convention did not form part of Irish domestic law.¹³⁹ Instead, the Judge found that consideration by the Minister of the ‘welfare of the child’ under Section 3 of the Immigration Act 1999 was sufficient.¹⁴⁰ In addition, a significant amount of decision-making affecting children’s lives takes place at an administrative level outside legislation or judicial oversight. A research study published by the Ombudsman for Children found that the best interests principle was ‘not used to guide administrative actions or decision-making to any great extent if at all’.¹⁴¹
- 90. Recommendation:** The Committee is urged to recommend that the State provides in law for a comprehensive definition of the best interests of the child principle that will apply across all relevant areas of law, in line with the Convention and General Comment No. 14. The Committee is also urged to recommend that the State conducts an audit of its laws, judicial and administrative practices and policies to identify gaps in the implementation of the best interests principle and to address these gaps without delay.

> RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT

- 91.** Article 6 obliges States to ‘recognize that every child has the inherent right to life’ and to ‘ensure to the maximum extent possible the survival and development of the child.’

135 *Constitution of Ireland - Bunreacht na hÉireann*, Article 42A.4.1° states that: ‘Provision shall be made by law that in the resolution of all proceedings i) brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or ii) concerning the adoption, guardianship or custody of, or access to, any child, the best interests of the child shall be the paramount consideration.’

136 Children and Family Relationships Act 2015, s. 41(3)(1) and also Part V which sets out that the court shall have regard to all of the factors or circumstances that it regards as relevant to the child concerned and his or her family including: the child’s age and any special characteristics and the ascertainable views of the child.

137 UN Committee on the Rights of the Child (2013) *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, CRC/C/GC/14, (art. 3, para. 1).

138 Child and Family Agency Act 2013, s. 9.

139 *Dos Santos & Ors v Minister for Justice* [2014] IEHC 559, paras. 47 and 59.

140 *Ibid.*, para. 47.

141 U. Kilkelly (2011) *A Children’s Rights Analysis of Investigations*, Dublin: Ombudsman for Children, p. 5.

- 92. Infant Mortality:** The rate of infant mortality in Ireland is below the European average.¹⁴² However a certain cohort of children has a much higher rate of infant mortality than that of the general population. The mortality rate of Travellers infants is 3.6 times the rate of the general population.¹⁴³
- 93. Recommendation:** The Committee is urged to recommend that the State develops and implements a new National Traveller and Roma Health Strategy with a clear focus on infant mortality and access to maternal health care services.
- 94. Child Deaths:** Ireland has the ninth highest rate of injury related child deaths in the European Union.¹⁴⁴ From 2007 to 2012, a total of 645 children died as a result of external injuries, such as falls,¹⁴⁵ poisonings,¹⁴⁶ drowning,¹⁴⁷ farm deaths¹⁴⁸ and road traffic accidents. Road traffic accidents are the leading cause of child mortality in Ireland, accounting for over 36 per cent of all child deaths.¹⁴⁹ In the period 1997 to 2012, child deaths on Irish roads totalled 262, while a further 1,115 children were seriously injured.¹⁵⁰ The current default speed limit for built-up areas in Ireland is 50 kilometres per hour (km/h). Reducing speed limits within built-up areas, and residential areas in particular, is a proven method of reducing child death and injury.¹⁵¹ The Government has committed to produce legislation that will allow local authorities to reduce speed limits to 30km/h within residential areas. While this commitment is welcome, the legislation needs to be recast so as to make 30km/h the default speed limit for built-up areas, with local authorities empowered to designate particular roads as having a higher speed limit on the basis of the outcome of safety assessments.¹⁵²
- 95. Recommendation:** The Committee is urged to recommend that the State introduces a comprehensive Child Injury Prevention Action Plan and ensures that the safety strategies, including the *Road Safety Strategy 2013–2020*,¹⁵³ the *National Cycle Policy Framework 2009–2020*¹⁵⁴ and the *Farm Safety Action Plan 2013–2015*¹⁵⁵ are fully resourced and implemented; and it enacts legislation to introduce a default 30km/h speed limit for built-up areas, and enforces safer road speeds.
- 96. Suicide:** In 2006, the Committee reiterated its earlier concern about the incidence of teenage suicide,¹⁵⁶ particularly among boys, and the apparent link between underage substance abuse and the suicide rate.¹⁵⁷ The Committee recommended that Ireland implement the National Strategy for Action on Suicide Prevention and the recommendations of the second report of the Strategic Task Force on Alcohol.

142 The infant mortality rate, which was 3.6 per 1,000 births in 2010, decreased to 3.5 in 2011. Central Statistics Office, *Infant Mortality, Stillbirths and Maternal Mortality 2011*, <http://www.cso.ie/en/media/csoie/releasespublications/documents/vitalstats/2011/chapter42011.pdf> [accessed 25 March 2015]. The European average was 11 deaths per 1,000 births in 2013 – see: World Health Organisation, *Global Health Observatory Data, Infant Mortality*, http://www.who.int/gho/child_health/mortality/neonatal_infant_text/en/ [accessed 25 March 2015].

143 C. Kelleher et al. (2010) *Our Geels, All Ireland Traveller Health Study*, Dublin: University College Dublin, Department of Health and Children, p. 87.

144 World Health Organisation, European Detailed Mortality Database (EDMD) for 2010 as quoted in European Child Safety Alliance (2012) *Child Safety Report Cards: Inconsistency in Policy Adoption Across 31 Countries*, Birmingham: European Child Safety Alliance, p. 3.

145 Central Statistics Office, *Births, Deaths and Marriages 2007–2012*, <http://www.cso.ie/px/pxeirestat/Statire/SelectVarVal/saveselections.asp> [accessed 31 March 2015].

146 Ireland has the third highest rates of poisonings for boys in the EU. European Child Safety Alliance (2012) *Child Safety Report Cards: Inconsistency in Policy Adoption Across 31 Countries*, Birmingham: European Child Safety Alliance, p. 31.

147 Central Statistics Office, *Births, Deaths and Marriages 2007–2012*, <http://www.cso.ie/px/pxeirestat/Statire/SelectVarVal/saveselections.asp> [accessed 31 March 2015].

148 Between the years 2005–2014, 22 children died in farming related accidents. Health and Safety Authority, ‘*Children on Farms*’, http://www.hsa.ie/eng/Your_Industry/Agriculture_Forestry/Young_Elderly_on_Farms/Children_on_Farms/ [accessed 30 March 2015].

149 Road Safety Authority, ‘*Traffic Collisions Leading Cause of Child Mortality In Ireland*’ [press release], 2 April 2015 <http://www.rsa.ie/ga-IE/Utility/Nuacht/2015/TRAFFIC-COLLISIONS-LEADING-CAUSE-OF-CHILD-MORTALITY-IN-IRELAND/> [accessed 22 April 2015].

150 *Ibid.*

151 C. Grundy et al. found that the introduction of 20mph zones (32 kph) over a twenty year period (from 1986 to 2006) significantly improved road safety for people of all ages and users of all modes of transport. In the case of children under the age of 15 years, the number of deaths and serious injuries was halved where the speed limit was reduced to 20mph (32kph). C. Grundy et al. (2009) ‘Effect of 20 mph traffic speed zones on road injuries in London, 1986–2006: controlled interrupted time series analysis’, *BMJ*, 339.

152 C. Finn, ‘Reducing speed limits to 30 km/h in built-up areas – would you be in favour?’, *The Irish Times*, 14 October 2014; Irishcycle.com, *Ireland should adopt 30km/h as its default urban speed limit says expert*, 2 April 2015 <http://irishcycle.com/2015/04/02/ireland-should-adopt-default-30kmh-urban-speed-limit-says-expert/> [accessed 1 May 2015].

153 Road Safety Authority (2013) *Road Safety Strategy 2013 – 2020*, Ballina: RSA.

154 Department of Transport (2009) *National Cycle Policy Framework*, Dublin, Ireland <http://smartertravel.ie/content/national-cycle-policy> [accessed 26 March 2015].

155 Health and Safety Authority (2013) *Farm Safety Action Plan 2013–2015*, http://www.hsa.ie/eng/Publications_and_Forms/Publications/Agriculture_and_Forestry/farm_safety_action_plan_2013-2015.pdf [accessed 22 April 2015].

156 UN Committee on the Rights of the Child (1998) *Concluding Observations: Ireland*, CRC/C/IRL/15, para. 19.

157 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, para. 50.

97. On average from 2009 to 2011, Ireland had the highest rate of female youth suicide and the second highest rate of male youth suicide in the European Union.¹⁵⁸ Between 2007 and 2012, 213 children and young people under the age of 19 years died by suicide.¹⁵⁹ Over a thirteen-year period from 2001 to 2013, there were 19 incidents of murder-suicide (dyadic) deaths which claimed 46 lives. More than half of the victims of such deaths were children killed by a parent.¹⁶⁰
98. The national strategy on suicide, *Reach Out: The National Strategy for Action on Suicide Prevention 2005 – 2014*, ended in 2014.¹⁶¹ While much progress was made, a weakness was that the Strategy was implemented in a fragmented way, with services being rolled out in an *ad hoc* manner across certain areas of Ireland rather than adopting a strategic approach.¹⁶² In June 2015, the Government launched a follow-on national strategy, *Connecting for Life – Ireland's National Strategy to Reduce Suicide 2015-2020*.¹⁶³ The Strategy contains a range of commitments dedicated to children and young people. Key commitments include the implementation of relevant guidelines for mental health promotion and suicide prevention in schools; and a commitment to train those working in child protection services to deliver suicide prevention.¹⁶⁴
99. **Recommendation:** The Committee is urged to recommend that the State implements the new *National Strategy to Reduce Suicide* and ensures that it is implemented in a standardised way, and that particular attention is paid to marginalised groups of young people who have a high rate of suicide – for example, Travellers, asylum seekers and lesbian, gay, bisexual, transgender and intersex young people.

> RESPECT FOR THE VIEWS OF THE CHILD

100. Article 12 obliges States to 'assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child'.
101. In 2006, the Committee called on the State to strengthen efforts, including through constitutional provisions, to ensure children have the right to express their views in all matters affecting them and to have those views given due weight in family, education, health and community matters, including through the use of a Guardian *ad Litem*, in particular in cases where children are separated from their parents.¹⁶⁵

102. Over the past decade, much progress has been made to strengthen child participation mechanisms, with the Participation, Play and Recreation and Culture Unit of the Department of Children and Youth Affairs being an innovative and key driver of activity in this area.¹⁶⁶ The Unit supports initiatives such as Dáil na nÓg (Youth Parliament), Comhairle na nÓg (Youth Council)¹⁶⁷ and Student Councils.¹⁶⁸ In July 2015, the Government published a *National Strategy on Children and Young People's Participation in Decision-Making* and a series of supporting documentation.¹⁶⁹ The national strategy sets out a clear roadmap including a detailed action plan to ensure children are heard 'in decisions made about their individual and collective lives in their communities, in education, on their health and wellbeing and in legal settings'.¹⁷⁰
103. Since 2006, the principle of hearing the views of the child has been provided for in the Adoption Act 2010, the Child and Family Agency Act 2013 and the Children and Family Relationships Act 2015. The Child and Family Agency Act 2013 places an obligation on its staff to consult and listen to children in the planning and functioning of the Agency and in their work with individual children and families.¹⁷¹
104. Despite these positive initiatives, Irish law is still not fully compliant with Article 12 of the Convention and General Comment No. 12.¹⁷² A child has no legal entitlement to have their views heard in decision-making within the education or health sectors. For example, although post-primary schools are required under law to support the establishment of a Student Council, children in school do not have an automatic entitlement to have their views heard in decisions that affect them, including in cases of suspension or expulsion. In addition, a child has no right to complain to their school's Board of Management as this right is restricted to persons over the age of 18 years. In relation to healthcare, there is no duty on professionals to consult with a child in relation to their health care and treatment, and there is no independent advocacy service for children with mental health difficulties.¹⁷³ In addition, a child cannot independently initiate legal proceedings.¹⁷⁴
105. In a very positive development, Article 42A.4.2° of the Constitution now states that provision shall be made by law for the views of the child to be 'ascertained and given due weight' in care, protection, adoption and family law court proceedings.¹⁷⁵ The right of a child to have his or her views heard in these settings is still not adequately provided for in Irish law. Two key gaps remain.

158 World Health Organisation Europe, *European Detailed Mortality Database*, <http://data.euro.who.int/dmdb/> [accessed 1 May 2015].
 159 Central Statistics Office, *Births, Deaths and Marriages 2007–2012*, <http://www.cso.ie/px/pxeirestat/Statire/SelectVarVal/saveselections.asp> [accessed 22 April 2015].
 160 G. O'Halloran, 'Children the victim in 50% of murder suicides', *Irish Examiner* [online], 5 August 2013 <http://www.irishexaminer.com/text/ireland/cwmhididkfkf/> [accessed 1 May 2015].
 161 National Office for Suicide Prevention (2005) *Reach Out: National Strategy for Action on Suicide Prevention 2005–2014*, Dublin: Health Service Executive.
 162 S. Mitchell, 'Government accused of 'paying lip service' to suicide prevention', *The Sunday Business Post* [online], 22 September 2013 <http://www.3ts.ie/news/government-accused-of-paying-lip-service-to-suicide-prevention/> [accessed 22 April 2015].
 163 Healthy Ireland, Department of Health, Health Service Executive and the National Office for Suicide Prevention (2015) *Connecting for Life – Ireland's National Strategy to Reduce Suicide 2015–2020*, Dublin: Department of Health, <http://health.gov.ie/blog/publications/connecting-for-life-irelands-national-strategy-to-reduce-suicide-2015-2020/> [accessed 1 September 2015].
 164 *Ibid.*, p. 114 and p. 120.
 165 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, para. 25.
 166 For further information see Department of Children and Youth Affairs, *Child and Youth Participation*, <http://www.dcy.gov.ie/viewdoc.asp?fn=%2Fdocuments%2FChildYouthParticipation%2Faboutus.htm&mn=chiv&nID=1> [accessed 1 May 2015].

167 It has supported the strengthening and expansion of structures at local and national level for involving children in decision-making and conducting consultations and dialogues with children and young people on national policy development and recruitment practices. For more information on Dáil na nÓg and Comhairle na nÓg, visit <http://www.comhairlenanog.ie/>.
 168 For further information see the website of the Student Council Support: <http://www.studentcouncil.ie/>.
 169 Department of Children and Youth Affairs (2015) *National Strategy on Children and Young People's Participation in Decision-making, 2015 – 2020*, Dublin: Government Publications.
 170 *Ibid.*, p. v.
 171 Child and Family Agency Act 2013, s. 9(3) and 9(4).
 172 UN Committee on the Rights of the Child (2009) *General Comment No. 12: The right of the child to be heard*, CRC/C/GC/12.
 173 An independent advocacy and information service exists for adults with mental health difficulties, the Irish Advocacy Network <http://irishadvocacynetwork.com/wp/>.
 174 Pursuant to Order 15 rule 16 of the Rules of the Superior Court with similar rules in the lower courts.
 175 *Constitution of Ireland - Bunreacht na hÉireann*, Article 42A.4.2° states that: 'Provision shall be made by law for securing, as far as practicable, that in all proceedings referred to in subsection 1° of this section in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child. Thirty-First Amendment of the Constitution (Children) Act 2015.'

CHAPTER 4: CIVIL RIGHTS AND FREEDOMS

- 106.** First, a child has no automatic entitlement to have their voice heard in family law proceedings affecting them, such as guardianship, custody and access decisions. The legislative provision enacted in 1997 recognising this right was never commenced and practice has been *ad hoc*.¹⁷⁶ New legislative provisions in the Children and Family Relationships Act 2015 are yet to be commenced. While the 2015 Act is welcome it does not fully satisfy the constitutional provision. The Act provides, at the discretion of the Court, to procure from an expert a report in writing on any question affecting the welfare of the child or to appoint an expert to determine the views of the child and convey these to the Court.¹⁷⁷ The cost of the expert must be borne by the parties to the cases, in effect the parent or guardian.¹⁷⁸ This provision is likely to impact negatively on children in low income families who will face an additional barrier to having their voices heard.
- 107.** Secondly, the right of a child to have his or her views heard in child care proceedings is not adequately provided for nor supported. In child care proceedings, the Child Care Act 1991 provides for the views of the child to be heard through a Guardian *ad Litem*.¹⁷⁹ However, the appointment of the Guardian *ad Litem* is at the judge's discretion if he or she is satisfied that it is necessary in the interests of the child and in the interests of justice to do so.¹⁸⁰ If a child is made a party to the proceedings the entitlement to a Guardian *ad Litem* ceases.¹⁸¹ The Guardian *ad Litem* service is unregulated, availability is patchy,¹⁸² and there is no statutory guidance on the eligibility criteria, role, functions or payment structures.¹⁸³
- 108. Right to Vote:** The right to vote is restricted to those over the age of 18 years. In 2012, the Convention on the Constitution considered whether there should be a constitutional amendment to reduce the voting age.¹⁸⁴ A majority of the Convention voted in favour of lowering the voting age – 48 per cent of those were in favour of lowering the age to 16 years and 38 per cent were in favour of lowering it to 17 years. In spite of a commitment to hold a referendum on the issue, the Taoiseach (Prime Minister) confirmed that additional referenda will not go ahead in the lifetime of the current government.¹⁸⁵
- 109. Recommendation:** The Committee is urged to recommend that the State ensures the full implementation of the National Strategy on Participation and addresses any gaps in the implementation of Article 12 and General Comment No. 12. Measures must be taken to ensure children have access to a range of mechanisms to have their voice heard in judicial settings, including, but not limited to, a reformed Guardian *ad Litem* service.



176 Children Act 1997, s. 52.
 177 Children and Family Relationships Act 2015, s. 32. (1) (a) and (b).
 178 *Ibid.*, s. 63.
 179 A Guardian *ad Litem* is a person appointed by a court under s. 26(1) of the Child Care Act 1991 to represent the interests and wishes of a child who is the subject of proceedings under parts IV, IVA or VI of the Act.
 180 Child Care Act 1991, s. 26(1).
 181 *Ibid.*, s. 26(4).
 182 Department of Children and Youth Affairs (2014), *Seventh Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas*, <http://www.dcy.gov.ie/documents/publications/SeventhSpecialRapReport2014.pdf> [accessed 12 May 2015].
 183 In 2009, the Children Acts Advisory Board produced guidelines in the area but these remain unimplemented to date. Children Acts Advisory Board (2009) *Giving a Voice to Children's Wishes, Feelings and Interests: Guidance on the Role, Criteria for Appointment, Qualifications and Training of Guardians ad Litem Appointed for Children in Proceedings under the Child Care Act, 1991*, <http://www.caab.ie/Publications/PDFs--Publications/Giving-a-Voice-to-Childrens-Wishes,-Feelings-and-Interests.aspx> [accessed 1 May 2015].
 184 The Convention on the Constitution was established by Resolution of the Houses of the Oireachtas in July 2012. It was a forum of 100 people, representative of Irish society and parliamentarians from the island of Ireland, with an independent chairman. For more see <https://www.constitution.ie/Convention.aspx>.
 185 National Youth Council of Ireland, 'No referendum on voting age Youth Council expresses disappointment but says campaign will go on' [press release], 15 January 2015, <http://www.youth.ie/nyci/No-referendum-voting-age-Youth-Council-expresses-disappointment-says-campaign-will-go> [accessed 25 March 2015].

> BIRTH REGISTRATION, NAME AND NATIONALITY

- 110.** Article 7 provides that a child must be 'registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents'.
- 111.** In 1998 the Committee expressed concern 'about the disadvantaged situation of children born of unmarried parents due to the lack of appropriate procedures to name the father in the birth registration of the child'.¹⁸⁶
- 112.** At present, a child of parents who are not married to each other is registered at birth under the mother's name with the registration of the father's name being optional. However, this situation will be changed once the Civil Registration (Amendment) Act 2014 is commenced in full. The 2014 Act introduces compulsory registration of a father's name on a birth certificate, where the parents of a child are not married to each other, except in some exceptional circumstances.¹⁸⁷ This is a positive development that will further the implementation of the Convention.
- 113.** Section 9 of the Civil Registration (Amendment) Act 2014 provides that where parents fail to agree on a child's surname to be registered, a registrar may still complete the registration even though the surname field is left blank. In cases where a surname is already registered, the registrar may leave that surname in place. The legislation provides for the registering of a surname when the child attains the age of 18, but this still means that a child may not have a surname until the age of 18 years. This is contrary to Article 7(1) which requires that registration take place immediately after birth, and gives rise to obvious practical difficulties.
- 114. Recommendation:** The Committee is urged to recommend that the State amends the Civil Registration (Amendment) Act 2014 to stipulate a timeframe for the resolution of a disagreement regarding the child's surname; and that it commences in full the Civil Registration (Amendment) Act 2014.

> PRESERVATION OF IDENTITY

- 115.** Article 8 obliges States to 'undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations', and to 'provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity' in cases where a child is illegally deprived of some or all of the elements of his or her identity.

- 116. Adoption:** An adopted person currently has no legal entitlement to know the identity of his or her birth parents.¹⁸⁸ An adoption certificate replaces the child's original birth certificate and is issued in the name of the child's adoptive family. In 1998, the Supreme Court held that the mother's right to privacy took precedence over the child's unenumerated constitutional right to know his or her mother.¹⁸⁹ On reaching adulthood, those who were adopted experience difficulties in tracing their biological parents. A National Adoption Contact Preference Register exists, which facilitates contact between adopted people and their birth families.¹⁹⁰ However, participation in the Register is voluntary and contact through the register is only initiated where both parties register.
- 117.** There is no legal basis for open or semi-open adoptions that would enable contact between the adopted child or adoptive family and the child's birth family.
- 118.** In July 2015, the Government published the General Scheme and Heads of the Adoption (Information and Tracing) Bill 2015.¹⁹¹ The draft legislation establishes an Adoption Information Register of Ireland, providing a statutory basis for the provision of information related to prospective and retrospective adoptions, and including access for persons over 18 years to their original birth certificate. The Scheme contains safeguards to protect the rights of the birth parent/s but also includes a presumption in favour of the sharing of information and contains a very high threshold for withholding this information.¹⁹² It also provides that the best interests of the child is to be the deciding factor in the sharing of information on anyone under 18 years.¹⁹³
- 119. Recommendation:** The Committee is urged to recommend that the State enacts the Adoption (Information and Tracing) Bill 2015 to provide in legislation for a statutory adoption information and tracing service, including retrospective application; and to legislate for the introduction of open or semi-open adoptions in appropriate circumstances.
- 120. Gender Recognition:** Gender identity is defined by the Yogyakarta Principles as 'each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth'.¹⁹⁴
- 121.** Up until 2015, Ireland was the only country in the European Union that has no mechanism – either legislative or administrative – for recognising the preferred gender of transgender and intersex individuals. This position was criticised by the UN Human Rights Committee,¹⁹⁵ the Ombudsman for Children,¹⁹⁶ and was found to be a breach of the European Convention on Human Rights.¹⁹⁷ The Gender Recognition Act 2015 was enacted in July 2015 but is not yet commenced.
- 122.** The 2015 Act fails to adequately address the position of children. Under the Act, 16 or 17 year olds are entitled to apply to the Minister for Social Protection for a gender recognition certificate. The application process is complex, involving the intervention of a court, two medical officers and the applicant's parents or guardians. The Bill does not include a mechanism for an application to be made on behalf of a child under 16 years in circumstances where there is consent from the child's parents or guardian. More information is needed to understand the difficulties faced by transgender, intersex or gender non-conforming children in accessing schools, health care, and social services.

¹⁸⁶ Committee on the Rights of the Child (1998) *Concluding Observations: Ireland, CRC/C/15/Add.85*, paras. 17 and 36.
¹⁸⁷ The exemptions are: a) if the mother does not know the identity of the child's father, b) she does not know the whereabouts of the father or c) where the mother believes that providing the information is not in the best interests of the child's safety. Civil Registration (Amendment) Act 2014, s. 6(1)(D).

¹⁸⁸ Proposals to reform the law were put forward a 2003 consultation paper, see G. Shannon, *Adoption Legislation Consultation Discussion Paper*, p. 23 <http://health.gov.ie/wp-content/uploads/2014/03/Adoption-Legislation-Consultation-Discussion-Paper.pdf> [accessed 1 May 2015].
¹⁸⁹ *OT v B* [1998] 2 IR 321; See also *Godelli v Italy* (Application no.33783/09).
¹⁹⁰ The National Adoption Contact Preference Register is maintained by the Adoption Authority of Ireland. For more information see <http://www.aai.gov.ie/index.php/tracing/contact-preference-register.html> [accessed 3 September 2015].
¹⁹¹ Department of Children and Youth Affairs, 'Minister Reilly publishes Adoption Information and Tracing legislation' [press release] 27th July 2015, <http://www.dca.gov.ie/viewdoc.aspx?DocID=3498> [accessed 28 September 2015].
¹⁹² The General Scheme and Heads of the Adoption (Information and Tracing) Bill 2015, p. 55, <http://www.dca.gov.ie/documents/legislation/20150727AdoptonInfoandTracingHeadsofBill.pdf> [accessed 3 September 2015].
¹⁹³ *Ibid.*, see pages 85, 92 and 177.
¹⁹⁴ The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity can be accessed at <http://www.yogyakartaprinciples.org/> [accessed 5 May 2015].
¹⁹⁵ UN Human Rights Committee (2014) *Concluding Observations for Ireland*, CCPR/C/IRL/CO/4, para. 7.
¹⁹⁶ Ombudsman for Children, *Advice of the Ombudsman for Children on the General Scheme of the Gender Recognition Bill 2013*, <http://www.oco.ie/wp-content/uploads/2014/03/OCOAdviceonGenderRecognitionBill2013.pdf> [accessed 1 May 2015].
¹⁹⁷ *Foy v An t-Ard Chláraitheoir & Ors* [2007] IEHC 470.

123. Recommendation: The Committee is urged to recommend that the State undertakes research on the needs of transgender and intersex children and to reconsider how their needs can be met within the State's regime to obtain legal gender recognition. Any process must provide for the child's right to be heard, for decisions to be made in the best interests of the child and for relevant safeguards to apply.

> FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

124. Article 14 obliges States to 'respect the right of the child to freedom of thought, conscience and religion' and the rights and duties of the parents or guardians, 'to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child'.

125. A child's right to freedom of thought, conscience and religion is protected under Article 42.2.1 of the Constitution of Ireland.¹⁹⁸ The Constitution provides for parents or guardians to provide direction on the exercise of this right: it does not provide any qualification to take account of the child's evolving capacities¹⁹⁹ and so is inconsistent with Article 14 of the Convention.

126. In 2014, the UN Human Rights Committee expressed concern about the integrated curriculum within the Irish school system and the slow progress in phasing it out in schools accommodating minority or non-faith children.²⁰⁰ Ninety-six per cent of primary schools in Ireland have a religious patron and 89.6 per cent are under the patronage of the Catholic Church.²⁰¹ Given the lack of choice of schools, parents and guardians are often forced to send their children to denominational schools,²⁰² contrary to their own religious belief or non-belief and in breach of their constitutional rights.²⁰³ In addition, as denominational schools are legally entitled to give preference in admission to children of that religious denomination, there have been reports that some parents are baptising their child in the Catholic faith solely to secure a school place for their child.²⁰⁴

127. Section 30 of the Education Act 1998 provides that a student shall not be required to attend instruction in any subject which is contrary to the conscience of his or her parent.²⁰⁵ Two difficulties arise in relation to opting out of religious instruction. Firstly, it is often difficult in practice for schools to uphold this right as the school must provide alternative supervision for the child in place of religious education without any alternative subject-matter being taught. Opt-out measures tend to be *ad hoc* in nature and inconsistently applied across schools.²⁰⁶

128. In addition, the provision of an opt-out is undermined by the fact that religion is not just taught at specified times: it is integrated into and permeates the whole curriculum and ethos of the school.²⁰⁷ Section 15-2(b) of the Education Act 1998 obliges schools to uphold the religious ethos of the patron often resulting in religious practices being integrated into all aspects of the school day.²⁰⁸

129. Recommendation: The Committee is urged to recommend that the State takes steps to ensure that all schools offer a clear and practical opt-out facility for children not participating in religious education within the school; continues efforts to provide choice within the education system through the establishment of multi- and non-denominational schools; and reviews the impact of integrated religious curricula on the rights of children.

> PROTECTION OF PRIVACY AND PROTECTION OF IMAGE

130. Article 16 provides that '[n]o child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.' It also grants the child the right to 'the protection of the law against such interference or attacks.'

131. Children in Court: In 2006, the Committee expressed concern 'that children prosecuted in higher courts are not provided with the same protection as those in the Children Court' and called on Ireland to 'take necessary measures to extend the protection of privacy to all legal proceedings involving children.'²⁰⁹

198 *Constitution of Ireland - Bunreacht na hÉireann*, Article 44.2.1 provides that: 'Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.'

199 *Ibid.* Article 42.1 provides that: 'The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children'. Article 42.2 provides that: 'Parents shall be free to provide this education in their homes or in private schools or in schools recognised or established by the State', Article 42.3.1 provides that: 'The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.'

200 The UN Human Rights Committee went on to recommend that diverse school types and curriculum options are available throughout the State party. UN Human Rights Committee (2014) *Concluding Observations: Ireland* CCPR/C/IRL/CO/4, para 21.

201 The Forum on Patronage and Pluralism in the Primary Sector (2012) *Report of the Forum's Advisory Group*, p. 29 <https://www.education.ie/en/Press-Events/Conferences/Patronage-and-Pluralism-in-the-Primary-Sector/The-Forum-on-Patronage-and-Pluralism-in-the-Primary-Sector-Report-of-the-Forums-Advisory-Group.pdf>, [accessed 20 May 2015].

202 Department of Education and Skills, *Diversity Of Patronage*, <https://www.education.ie/en/Schools-Colleges/Information/Diversity-of-Patronage/Diversity-of-Patronage-Survey-of-Parents.html> [accessed 5 May 2015].

203 Article 42.1 of the Constitution of Ireland acknowledges that the primary and natural educator of the child is the family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children. Article 42.2 states that parents shall be free to provide this education in their homes or in private schools or in schools recognised or established by the State. Subsection 3 adds that the State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.

204 Mick Wallace TD, *School Enrolments* [15480/15], *Dáil Debates*, 25 April 2015, and K. Blake Knox, 'Parents getting kids baptised just to get them into state-funded schools', *Irish Independent* [online], 2 May 2015 <http://www.independent.ie/irish-news/news/parents-getting-children-baptised-just-to-get-them-into-statefunded-schools-31189405.html> [accessed 1 May 2015].

205 This appears to reflect Article 44.2.4 of the Constitution of Ireland which provides that: 'Legislation providing State aid for schools shall not [...] be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.' *Constitution of Ireland - Bunreacht na hÉireann*.

206 See for example, Catholic Schools Partnership (2015) *Catholic Primary Schools in a Changing Ireland - Sharing Good Practices on the Inclusion of All Pupils*, Maynooth: Catholic Schools Partnership; RTÉ, 'New church guidelines for schools 'disappointing'', RTÉ News [online], 12 March 2015 <http://www.rte.ie/news/2015/0312/686510-church-school-guidelines/> [accessed 12 March 2015]; A. Mawhinney (2007) 'Freedom of Religion in the Irish Primary School System: A Failure to Protect Human Rights?', *Legal Studies*, Vol. 27, No. 3, p. 393; Department of Education and Skills (2014) *Forum on Patronage and Pluralism in the Primary Sector: Progress to Date and Future Directions*, Dublin: Department of Education and Skills, p. 23.

207 The Integrated Curriculum is based on Rule 68 of the 1965 *Rules for National School*, which states: 'Of all the parts of a school curriculum Religious Instruction is by far the most important, as its subject-matter, God's honour and service, includes the proper use of all man's faculties, and affords the most powerful inducements to their proper use. Religious instruction is, therefore, a fundamental part of the school course, and a religious spirit should inform and vivify the whole work of the school.' Department of Education (1965) *Rules for National Schools*, Dublin: Stationery Office, p. 38. The Rules have been accepted as binding by the Courts and are adhered to by every primary school in the country as a result.

208 A. Mawhinney (2007) 'Freedom of Religion in the Irish Primary School System: A Failure to Protect Human Rights?', *Legal Studies*, Vol 27, No. 3, pp. 389-390.

209 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, paras. 26-27.

- 132.** Section 93 of the Children Act 2001 provides protection for the identity of children in the Children Court. However, the 2001 Act does not extend beyond the Children Court. The Government addressed the Committee's concern through Section 139 of the Criminal Justice Act 2006 which imposes restrictions on the identification of the child in all courts.²¹⁰ However, these restrictions can be dispensed with if the Court is satisfied that it is necessary for example, to apprehend a child who is unlawfully at large or in the public interest.
- 133. Garda PULSE System:** In 2014, a review by the Garda Inspectorate of crime investigation practices within the Gardai Síochána (Police Service) found that the details of children, including infants, had been recorded on the Garda intelligence database (PULSE).²¹¹ The Inspectorate called for an urgent review of this practice. In some cases, it seems that the children involved were from the Traveller community.²¹² For example, in a case reported in the media, two Traveller children seeking passports for a family holiday were assigned criminal intelligence numbers.²¹³ It was not clear why this information was contained on PULSE or why children were assigned criminal intelligence numbers.
- 134. Recommendation:** The Committee is urged to recommend that the State commissions an independent review of the PULSE system as it operates in relation to children, and puts in place safeguards for the regulation of the gathering and storing of, and access to, information on children on the PULSE system.



²¹⁰ The Criminal Justice Act 2006 s. 139 amends the Children Act 2001.

²¹¹ Garda Inspectorate (2014) *Crime Investigation Report*, Dublin: Garda Inspectorate p. 24.

²¹² Pavee Point, 'Remove these children from the Garda PULSE database' [press release] 27 March 2014, <http://www.paveepoint.ie/tag/pulse/> [accessed 20 March 2015].

²¹³ *Ibid.*

CHAPTER 5: VIOLENCE AGAINST CHILDREN

> ABUSE AND NEGLECT

- 135.** Article 19 obliges States to 'take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse'.
- 136.** Since 2006, a series of damning investigations, inquiries and reports have detailed the State's failure to protect children from abuse and neglect. These include the Ryan Report,²¹⁴ Magdalene Laundries Report,²¹⁵ the Mother and Baby Homes Investigation,²¹⁶ the Ferns Report,²¹⁷ the Murphy Report,²¹⁸ the Child Death Review²¹⁹ and the Roscommon Child Care Investigation²²⁰.
- 137.** Of particular note is the 2009 report of the Commission to Inquire into Child Abuse (referred to as the Ryan Report) which revealed horrific wrongdoings perpetrated against children living in institutions throughout Ireland mainly in the period from the 1930s to 1970, including physical, emotional and sexual abuse and gross neglect. These offences against children were not effectively reported, investigated or prosecuted.²²¹
- 138.** In 2006, the Government appointed Geoffrey Shannon as the Special Rapporteur on Child Protection. Professor Shannon has to date produced seven annual reports, which audit legal developments relating to the protection of children and assess what impact, if any, litigation in national and international courts may have.²²² These reports provide an invaluable analysis of the gaps in Irish law and practice in relation to the child's right to protection from harm.
- 139. Response to Child Protection Referrals:** In 2006, the Committee echoed its earlier recommendation²²³ in calling on Ireland to '[e]nsure that all reported cases of abuse and neglect are adequately investigated and prosecuted [...]'.²²⁴
- 140.** The delay in responding to child abuse referrals continues to be of serious concern. In May 2015, of the 28,194 child protection cases 'open' to social work teams across the country, more than a quarter (7,455 cases) had not been allocated a social worker.²²⁵ This backlog included 1,731 cases deemed 'high priority'.²²⁶

- 141.** The Minister for Children and Youth Affairs,²²⁷ the Ombudsman for Children²²⁸ and the Health Information and Quality Authority (HIQA)²²⁹ have each raised concerns about the failure to allocate a social worker to child protection and welfare referral cases, or to give them timely access to child protection and welfare interventions.
- 142. Recommendation:** The Committee is urged to recommend that the State ensures that Tusla – Child and Family Agency is adequately funded and staffed to assess child protection referrals in a timely and appropriate manner, assign each case a social worker, and take the necessary steps to protect the child from abuse or neglect.
- 143. 24-Hour Social Work Service:** In 2006, the Committee called on Ireland to '[e]xtend the social work services provided to families and children at risk to a seven day, 24-hour service'.²³⁰ There is no national out-of-hours social work service in Ireland. However, there is a national emergency place of safety service, comprising two services operated by Tusla – Child and Family Agency.²³¹ These services are not directly accessible by members of the public: access is organised through the Gardaí Síochána (police service). Tusla – Child and Family Agency has developed a business case for a national Emergency Out of Hours Social Work Service but a service has yet to be developed,²³² and it is understood it would continue the model of being only accessible through the Gardaí Síochána.
- 144. Recommendation:** The Committee is urged to recommend that the State ensures that Tusla – Child and Family Agency operates a national seven day, 24-hour social work service for children and families at risk.
- 145. Vetting:** In 2006, the Committee called on Ireland to '[e]nsure that evaluation of all employees and volunteers working with children is undertaken prior to recruitment [...]'.²³³ The National Vetting Bureau (Children and Vulnerable Persons) Act 2012 places the National Vetting Bureau on a statutory footing and permits the Bureau to collect and exchange 'relevant' or 'soft' non-criminal information that indicates that there is a reason to believe that a person may harm or attempt to cause harm to children or vulnerable adults. The legislation was enacted in December 2012, but has yet to be commenced.²³⁴ This means that the vetting of staff working with children and vulnerable adults is confined to 'hard' information relating to criminal convictions. Concern exists that the weak level of vetting in Ireland is placing children at risk and may also attract people who wish to commit offences against children or vulnerable adults from jurisdictions that operate a more robust vetting system.²³⁵
- 146.** The National Vetting Bureau (Children and Vulnerable Persons) Act 2012 does not cover all those working with children. For example, the vetting of teachers is not retrospective and certain childminders, including those caring for fewer than four children, are not required to be vetted under the legislation.²³⁶



214 The Commission to Inquire into Child Abuse (2009) *Report of the Commission to Inquire into Child Abuse*, Dublin: Stationery Office.
 215 Department of Justice and Equality, *Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalene Laundries*, <http://www.justice.ie/en/JELR/Pages/MagdalenRpt2013> [accessed 6 May 2015].
 216 Department of Children and Youth Affairs (2014) *Report of the Inter-Departmental Group on Mother and Baby Homes*, Dublin: Department of Children and Youth Affairs, p. 2 and 6. and Commission of Investigation (Mother and Baby Homes and Certain Related Matters) Order 2015, SI no. 57.
 217 Department of Health and Children (2005) *The Ferns Report: presented to the Minister for Health and Children*, Dublin: Department of Health and Children.
 218 Commission of Investigation (2009) *Report of the Commission of Investigation into the Catholic Archdiocese of Dublin*.
 219 G. Shannon and N. Gibbons (2012) *Report of the Independent Child Death Review Group*, Dublin: Government Publications.
 220 *Roscommon Child Care Case Report of the Inquiry Team to the Health Service Executive* [2010] <http://www.oneinfour.ie/content/resources/RoscommonChildCareCase.pdf> [accessed 12 March 2015].
 221 The Commission to Inquire into Child Abuse (2009) *Report of the Commission to Inquire into Child Abuse*, Dublin: Stationery Office.
 222 See for example, G. Shannon (2014) *Seventh Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas*, Dr G. Shannon, <http://www.dcy.gov.ie/documents/publications/SeventhSpecialRapReport2014.pdf> [accessed 15 January 2015].
 223 UN Committee on the Rights of the Child (1998) *Concluding Observations: Ireland*, CRC/C/15/Add.85, para. 39.
 224 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, para. 37(b).
 225 Tusla, *Monthly Management Data Activity Report May 2015*, pp. 11–12 http://www.tusla.ie/uploads/content/Final_Version_Tusla_Management_Data_Report_Mayv1.pdf [accessed 28 September 2015].
 226 *Ibid.*, p. 12.

227 Department of Children and Youth Affairs, 'Press statement by Dr. James Reilly TD, Minister for Children and Youth Affairs, regarding child protection issues in the Laois/Offaly area brought to his attention by Tusla – the Child and Family Agency' [press release] 30 April 2015, <http://www.justice.ie/en/JELR/Pages/PR15000487> [accessed 30 April 2015].
 228 Ombudsman for Children (2013) *Report on the investigation of HSE Social Work Service Provision in North Lee*, Dublin: OCO.
 229 Health Information and Quality Authority, *Health Information and Quality Authority Regulation Directorate Monitoring Inspection report—Child Protection and Welfare Services under the National Standards for the Protection and Welfare of Children under Section 8(1) (c) of the Health Act 2007*, <https://static.rasset.ie/documents/news/hiqa-report-cork.pdf> [accessed 1 April 2015].
 230 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, para. 29(b).
 231 This comprises two services: the Crisis Intervention Service which operates in Dublin, Wicklow and Kildare providing an out-of-hours emergency social work service to any child in a crisis situation; in the rest of the country, an Emergency Place of Safety Service provides a service to children who require an emergency care placement.
 232 Ryan Report Monitoring Group (2014) *Ryan Report Implementation Plan Fourth Progress Report*, p. 58, <http://www.dcy.gov.ie/documents/publication/s/20150324RyanRepFourthProgressDec2014.pdf> [accessed 2 September 2015]. The Emergency Out of Hours Social Work Service would operate alongside the Emergency Place of Safety Service only as a similar service already exists under Crisis Intervention Service.
 233 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, para. 37(d).
 234 Elements of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 relating to the disclosure of convictions require amendment before it can be commenced following a Court judgment, UK Court of Appeal (T and others v Chief Constable of Greater Manchester, 2013).
 235 P. Hosford, 'Is Ireland becoming a "safe haven" for sex offenders?' *TheJournal.ie* [online], 12 February 2015, <http://www.thejournal.ie/sex-offenders-loophole-1934369-Feb2015/> [accessed 1 May 2015].
 236 Childminders caring for fewer than four pre-school children are excluded from regulation under the Child Care Act 1991 and are thereby not included under section 1(a) of Schedule 1 of the National Vetting Bureau Act 2012.

147. Recommendation: The Committee is urged to recommend that the State commences the National Vetting Bureau Act 2012 as a matter of urgency to address the weak system of vetting currently in place. The 2012 Act should be amended to ensure it covers all those working directly with children, including all teachers and childminders.

148. Identification and Reporting of Abuse: In 2006, the Committee built on its earlier recommendation²³⁷ by calling on Ireland to '[c]ontinue reviewing the Children First Guidelines and consider their establishment on a statutory basis'.²³⁸ In 2011, a revised and expanded edition of the 1999 *Children First: National Guidelines for the Protection and Welfare of Children* was issued.²³⁹

149. A 2008 national review of compliance with Children First²⁴⁰ and 2010 investigation by the Ombudsman for Children²⁴¹ found that the Children First guidelines were being applied in an *ad hoc* manner across the country leading to incidences of non-reporting of child abuse concerns. These findings highlighted the inadequacy of a voluntary set of guidelines to ensure a consistent and standardised approach to the reporting of child protection concerns and lack of sanctions for those who failed to report concerns.²⁴²

150. The Children First Bill 2014, currently being debated in the Oireachtas (Parliament), places aspects of the 2011 *Children First: National Guidance for the Protection and Welfare of Children* on a statutory footing. The proposed legislation places a legal duty on organisations providing specified services for children to carry out a risk assessment and prepare an organisation-specific Child Safeguarding Statement.²⁴³ It also requires 'mandated persons' to report child protection concerns which meet a defined threshold.²⁴⁴ Although the Bill is welcome, the sanctions for those who fail to comply with its provisions are weak. The only new sanction introduced under the Bill is the establishment of a non-compliance register to 'name and shame' organisations which do not have a child safeguarding statement.²⁴⁵ The Bill provides no sanction to address a breach of its provisions by a mandated individual. A failure by a mandated person to report a child protection concern will therefore need to be addressed through existing employment legislation or a sanction by a professional body.

151. Recommendation: The Committee is urged to recommend that the State strengthens the Children First Bill 2014 and enacts it as a matter of urgency; and continues to invest in education, training and support for stakeholders to promote compliance with *Children First: National Guidelines for the Protection and Welfare of Children*. An independent review of the operation of Children First legislation should be undertaken two years after its commencement.

152. Domestic Violence: Children in Ireland continue to be affected by domestic violence. In 2013, over 8,000 women and just under 3,500 children sought support from domestic violence services in Ireland.²⁴⁶ There is a chronic shortage of refuge accommodation. In 2013, requests for access to emergency refuge accommodation were denied on 3,494 occasions, because refuges were full.²⁴⁷ One service, Sonas operating in the greater Dublin area, reported that in 2013 it was able to provide refuge in only one-fifth of the cases where women sought refuge for themselves and their children.²⁴⁸ Despite the dearth of refuge accommodation, domestic violence services have experienced significant funding cuts,²⁴⁹ leading to the closure of a number of services.²⁵⁰ Difficulties also persist within some refuges in terms of non-availability of play facilities²⁵¹ and non-admission of teenage boys.

153. The lack of a definition of 'domestic violence' within housing legislation means that a woman who is forced to leave her home due to violence is not categorised as 'homeless' and so can't seek housing support.²⁵² Reductions in support to access private rental accommodation, a lack of affordable private rental accommodation, and increased legal fees are also significant barriers for women to escape domestic violence.²⁵³

154. The effect of the current housing crisis on women and children experiencing domestic abuse is three-fold: women and children are remaining in abusive situations due to a lack of housing options; women and children are leaving refuges and returning to abusive situations; women and children are leaving refuges and entering homeless services exacerbating an already difficult situation and potentially exposing them to additional risks to their safety, welfare and wellbeing.²⁵⁴

155. It is also of concern that when a Court grants a legal order under the Domestic Violence Act 2006 to protect an applicant from an abusive partner, there is often no assessment process looking at the safety and well-being of the children of the relationship.²⁵⁵ In many cases, the perpetrator may be barred from the house or contact with an ex-partner, but still has unsupervised access to the children and there may be a delay before legal proceedings in relation to custody and access arrangements are heard.²⁵⁶

156. Recommendation: The Committee is urged to recommend that the State strengthens its supports to ensure victims of domestic violence can access safe emergency accommodation that is family friendly; and introduces a multi-agency risk assessment, risk management framework and infrastructure for victims of domestic violence and their children. The definition of homelessness in housing legislation should be expanded to include victims of domestic violence who have been forced to leave their homes.

237 UN Committee on the Rights of the Child (1998) *Concluding Observations: Ireland*, CRC/C/15/Add.85, para. 16.
 238 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, para. 37(a).
 239 Department of Health and Children (1999) *Children First: National Guideline for the Protection and Welfare of Children*, Dublin: Stationary Office; Department of Children and Youth Affairs (2011) *Children First: National Guidance for the Protection and Welfare of Children*, Dublin: Government Publications. The Guidance was also accompanied by a practitioner handbook: Health Service Executive (2011) *Child Protection and Welfare Practice Handbook*, Dublin: Health Service Executive.
 240 Office of the Minister for Children and Youth Affairs (2008) *National Review of Compliance with Children First: National Guidelines for the Protection and Welfare of Children* Dublin: Department of Health and Children.
 241 Office of the Ombudsman for Children (2010) *A Report Based on an Investigation into the Implementation of Children First: National Guidelines for the Protection and Welfare of Children*, Dublin: Ombudsman for Children's Office.
 242 See also G. Shannon (2009) *Third Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas*, Geoffrey Shannon, http://www.dcy.gov.ie/documents/publications/Child_Protection_Rapporteur_Report.pdf [accessed 12 May 2015]; H. Buckley, S. Whelan, N. Carr and C. Murphy (2008) *Service Users' Perceptions of the Irish Child Protection System*, Dublin: Stationary Office.
 243 Children First Bill 2014, Part 2.
 244 Schedule 2 of the Children First Bill 2014 specifies the classes of persons who are deemed to be mandated persons. They include social workers, teachers and certain health professionals including doctors and nurses.
 245 Children's Rights Alliance, 'Saving Childhood Group welcomes the publication of the Children's First Bill 2014 and highlights areas of concern' [press release], 14 April 2014, <http://www.childrensrights.ie/resources/saving-childhood-group-welcomes> [accessed 9 February 2015].

246 Safe Ireland (2015) *A Framework for Domestic Violence Service Provision to Women and Children in Ireland*, Athlone: Safe Ireland, p. 7.
 247 'Domestic Violence Special Investigation', *Irish Examiner* [online], 18 and 19 April 2013 <http://www.irishexaminer.com/ireland/domestic-violence-special-investigation-lindas-story-228712.html> [accessed 1 May 2015].
 248 Sonas, *Annual Report 2013: Working for Women and Children Experiencing Domestic Violence*, p. 4 <http://www.domesticabuse.ie/wp-content/uploads/2014/04/Sonas-Annual-Report-2013.pdf> [accessed 1 May 2015].
 249 Core funding to domestic violence services from the Health Service Executive was cut by 14 per cent since 2008, and services are now operating at almost €2 million less in core State funding. While some services have received small increases in funding, others have seen reductions of up to 37 per cent. Safe Ireland (2014) *Safety in a Time of Crisis, Priorities for Protecting Woman and Children impacted by Domestic Violence*, Athlone: Safe Ireland, p. 4.
 250 See for example, C. Healy, 'Women's Refuge to Close Doors due to lack of funding', *TheJournal.ie* [online] 1 October 2015 <http://www.thejournal.ie/domestic-violence-victims-tallaght-refuge-cuan-alainn-2360603-Oct2015/> [accessed 1 October 2015].
 251 Office of the Minister for Children (2007) *Listening to Children: Children's Stories of Domestic Violence*, Dublin: Office of the Minister for Children, Department of Health and Children, p. 3.
 252 Safe Ireland (2014) *Safety in a Time of Crisis, Priorities for Protecting Woman and Children impacted by Domestic Violence*, Athlone: Safe Ireland, p. 10.
 253 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. 8.
 254 Sonas, *Annual Report 2013: Working for Women and Children Experiencing Domestic Violence*, p. 4, <http://www.domesticabuse.ie/wp-content/uploads/2014/04/Sonas-Annual-Report-2013.pdf> [accessed 1 May 2015]; S. Pollak, 'Domestic violence leaving up to 700 women and children homeless every day', *The Irish Times* [online], 10 June 2014 <http://www.irishtimes.com/news/social-affairs/domestic-violence-leaving-up-to-700-women-and-children-homeless-1.1827156> [accessed 1 May 2015].
 255 Women's Aid, *Submission to the Joint Oireachtas Committee on Justice, Defence and Equality on Domestic Violence May 2013*, http://www.womensaid.ie/download/pdf/womens_aid_submission_to_the_joint_oireachtas_committee_may_2013.pdf [accessed 1 September 2015].
 256 *Ibid.*

> MEASURES TO PROHIBIT AND ELIMINATE ALL FORMS OF HARMFUL TRADITIONAL PRACTICES

- 157.** Article 24(3) obliges States to 'take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.'
- 158. Female Genital Mutilation:** In 2006, the Committee expressed concern 'that some immigrant communities continue to practice female genital mutilation (FGM) in Ireland' and recommended that the State prohibit FGM by law; implement targeted programmes to sensitise the population about its extremely harmful effects, and mobilise relevant partners to prevent the practice of FGM.²⁵⁷
- 159.** In a very welcome development, the Criminal Justice (Female Genital Mutilation) Act 2012 provides for the first time in Irish law an offence of performing or attempting to perform the act of FGM²⁵⁸ and creates an offence of removing or attempting to remove a girl or woman from the State for the purposes of undergoing FGM.²⁵⁹ Other progress includes the production of State-funded guidelines for schools in 2014²⁶⁰ and the opening of a specialist health clinic in 2014.²⁶¹ However, research has shown that knowledge among healthcare workers of the referral procedure for FGM is low.²⁶²
- 160. Recommendation:** The Committee is urged to recommend that the State implements targeted programmes to raise awareness of female genital mutilation (FGM), in particular among health care workers, and that it ensures support for victims of FGM through the provision of specialist health services.
- 161. Early and Forced Marriage:** The Committee has commented that States that permit children under 18 years to marry, and thus be considered an adult in law, deprive the child of the special protection measures to which he or she is entitled under the Convention. It recommends that States increase the minimum age for marriage to 18 years.²⁶³ The UN has also acknowledged that as a matter of respecting the child's evolving capacities and autonomy in making decisions that affect her or his life, in exceptional circumstances, a marriage of a mature, capable child below the age of 18 may be allowed. It notes that in such cases the child must be at least 16 years old and that such decisions be made by a judge based on legitimate exceptional grounds defined by law, and on the evidence of maturity without deference to cultures and traditions.²⁶⁴

162. The age of majority (the age of which a person normally becomes an adult in law) is attained at 18 years in Ireland.²⁶⁵ The Family Law Act 1995 defines the legal age at which a person can marry as 18 years.²⁶⁶ However, in special circumstances, a Court Exemption Order may allow a marriage to proceed if one or both parties are under the age of 18.²⁶⁷ There is no minimum age set in law below which a marriage cannot take place. It should be noted that the age of sexual consent is set at 17 years irrespective of the individual's gender or sexual orientation under the Criminal Law (Sexual Offences) Act 2006.²⁶⁸

163. In 2013, a case involving the alleged forced marriage of a 16 year old girl came before the Irish High Court.²⁶⁹ This case highlighted the fact that Irish law does not define, penalise or address the issue of forced marriage.²⁷⁰ Legal reform is needed to address this gap, with a particular focus on circumstances where one or both parties are under 18 years.

164. Recommendation: The Committee is urged to recommend that the State amends Section 33 of the Family Law Act 1995 to ensure that a marriage cannot proceed if either party is under 18 years. In addition, legislation should be enacted to define and penalise instances of forced marriage, with more severe penalties in circumstances when either party is under 18 years.

> SEXUAL EXPLOITATION AND SEXUAL ABUSE

165. Article 34 provides that the State must protect children from all forms of sexual exploitation and sexual abuse.

166. In 2006, the Committee called on the State to 'collect information and undertake research on child prostitution, pornography and other forms of sexual exploitation and sexual abuse of children with a view to developing targeted measures, and requests the State party to provide detailed information in that respect in its next report.'²⁷¹ Research and data gaps persist in relation to child prostitution, pornography and other forms of sexual exploitation and abuse.

257 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, para. 54.

258 Criminal Justice (Female Genital Mutilation) Act 2012, Section 2(1).

259 *Ibid.*, s. 3(1).

260 AkiDwA (2014) *Female Genital Mutilation: Information Guide for Education Professionals in Ireland*, Dublin: AkiDwA.

261 Irish Family Planning Association, *Opening of Specialist Treatment Service for FGM*, <https://www.ifpa.ie/node/563> [accessed 14 May 2015].

262 E. Dhala, *Knowledge and Understanding of FGM by GPs in Ireland, Integration Challenges for Young Migrant Women*, p. 2 <http://akidwa.ie/publications/Knowledge-of-General-Practitioners-in-Ireland-on-FGM.pdf> [accessed 1 May 2015].

263 UN Committee on the Rights of the Child (2003) *General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child* CRC/GC/2003/4.

264 UN Committee on the Elimination of Discrimination against Women and UN Committee on the Rights of the Child (2014) *Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women and General Comment No. 18 of the Committee on the Rights of the Child on harmful practices*, CEDAW/C/GC/31-CRC/C/GC/18.

265 Age of Majority Act 1985.

266 Family Law Act 1995, s. 31 (3)(b).

267 *Ibid.*, s. 33.

268 Criminal Law (Sexual Offences) Act 2006, s. 2(5) and s. 3(7) provide that it shall not be a defence to an offence under the Act to prove that the child consented to the sexual act in question.

269 M. Carolan, 'Judge says new laws may be needed to protect young people from forced marriages', *The Irish Times* [online], 18 June 2013 <http://www.irishtimes.com/news/crime-and-law/judge-says-new-laws-may-be-needed-to-protect-young-people-from-forced-marriages-1.1433344> [accessed 1 May 2015].

270 G. Shannon (2014) *Seventh Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas*, p. 144 <http://www.dca.gov.ie/documents/publications/SeventhSpecialRapReport2014.pdf> [accessed 15 January 2015].

271 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, para. 75.

> RIGHT NOT TO BE SUBJECTED TO TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

167. Since 2006, a number of legislative provisions have been introduced to provide greater protection to children from sexual abuse.²⁷² Despite these legal reforms, gaps remain. Ireland has not yet ratified the Optional Protocol on the Sale of Children, Child Pornography and Child Prostitution (see Chapter 10). In addition, Ireland signed the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention) in 2007,²⁷³ and signed the Council of Europe Convention on Cybercrime (the Budapest Convention) in 2002. However, it has failed to ratify either Convention.²⁷⁴ In addition, Ireland has yet to fully transpose the EU Directive on Combatting the Sexual Abuse and Sexual Exploitation of Children and Child Pornography into national law.²⁷⁵

168. In September 2015, the Government published the Criminal Law (Sexual Offences) Bill 2015.²⁷⁶ The Bill introduces a number of new offences with severe sanctions to protect children from sexual exploitation. It creates new offences in relation to obtaining or providing a child for the purpose of sexual exploitation (s. 3); an invitation to sexual touching (s. 4); sexual activity in the presence of a child (s. 5); causing a child to watch sexual activity (s. 6); meeting a child to groom them for sexual exploitation (s. 7); use of information and communication technology to facilitate exploitation (s. 8). It also strengthens the law combatting child prostitution, child pornography and incest.²⁷⁷ Part 6 of the Bill extends the criminal law of Ireland to sexual acts involving children done outside this jurisdiction by Irish citizens or persons ordinarily resident in Ireland. These are welcome developments which will significantly strengthen the protection of children within criminal law from sexual exploitation.

169. Recommendation: The Committee is urged to recommend that the State enacts the Criminal Law (Sexual Offences) Bill 2015 and adequately resource the Garda Síochána (Police Service) to implement its provisions; and ratifies the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention); and the Council of Europe Convention on Cybercrime (the Budapest Convention).



170. Article 37 obliges States to ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

171. Corporal Punishment: In 2006, the Committee reiterated its previous recommendation²⁷⁸ and called on Ireland to ban corporal punishment outright in all settings; to sensitise and educate parents and the general public about the unacceptability of corporal punishment; to promote positive, non-violent forms of discipline as an alternative to corporal punishment; and to take into account the Committee's General Comment No. 8.²⁷⁹ The Committee's recommendation was reiterated by the UN Committee against Torture in 2011²⁸⁰ and the UN Human Rights Committee in 2014.²⁸¹ In 2011, Ireland partially accepted a recommendation at the UN Human Rights Council Universal Periodic Review to end corporal punishment for all children.²⁸²

172. In 2015, Ireland was found to be in breach of Article 17 of the European Social Charter, given its failure to explicitly prohibit corporal punishment in the home.²⁸³ This follows an initial finding against Ireland by the European Committee of Social Rights in 2003.²⁸⁴

173. In Ireland, corporal punishment is prohibited as a disciplinary measure in a range of settings,²⁸⁵ and the Children Act 2001 provides for a broadly framed offence of child abuse.²⁸⁶ However, the defence of 'reasonable chastisement' still exists in common law so it remains permissible for parents and others in the home as well as childminders who are caring for fewer than four children at home, to use corporal punishment.²⁸⁷ *The National Standards for Foster Care* provide that corporal punishment is unacceptable and prohibited.²⁸⁸ However, these Standards do not have the force of law and are not justiciable. The law in Ireland is thus in breach of Article 19 and the Committee's General Comment No. 8.²⁸⁹

272 These include the Criminal Law (Sexual Offences) Act 2006, the Criminal Law (Sexual Offences) (Amendment) Act 2007 and the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012.

273 Ireland is one of six of the 28 European Union Member States which have not ratified the Lanzarote Convention. The Convention takes the UN and Council of Europe standards and extends them to all possible categories of sexual abuse against children and criminalises such activities. The Convention can be found at: http://www.coe.int/t/dghl/standardsetting/children/Text_Convention_en.asp [accessed 1 April 2015].

274 The Budapest Convention is the first international treaty dealing with crimes, including child pornography, committed online and on other computer networks. It aims to increase international cooperation in detecting and responding to such crime and it contains powers and procedures in respect of searching computer networks and the lawful interception of illegal materials. Council of Europe, Convention on Cybercrime, CETS: No. 185.

275 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32011L0093&from=EN> [accessed 5 May 2015].

276 Department of Justice and Equality, 'Minister Fitzgerald publishes the Criminal Law (Sexual Offences) Bill 2015' [press release] 23 September 2015, <http://www.justice.ie/en/JELR/Pages/PR15000487> [accessed 28 September 2015].

277 Criminal Law (Sexual Offences) Bill 2015, s. 20. Under this section, the person offering sexual acts does not commit any offence.

278 UN Committee on the Rights of the Child (1998) *Concluding Observations: Ireland*, CRC/C/15/Add.85, paras. 16 and 39.

279 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, para. 40.

280 UN Committee against Torture (2011) *Concluding Observations: Ireland*, CAT/C/IRL/CO/1, para. 24.

281 Human Rights Committee (2014) *Concluding Observations: Ireland*, CCPR/C/IRL/CO/4, para. 14.

282 UN Human Rights Council, *Report of the working group: Addendum 6 March 2012*, A/HRC/19/9/Add.1, para. 53.

283 Council of Europe, *Resolution CM/ResChS(2015)9, Association for the Protection of All Children (APPROACH) Ltd v. Ireland*, Complaint No. 93/2013, 17 June 2015, <https://wcd.coe.int/ViewDoc.jsp?id=2336121&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383> [accessed 1 September 2015].

284 European Committee of Social Rights, *World Organisation against Torture (OMCT) v. Ireland*, Complaint no. 18/2003.

285 Corporal punishment is prohibited in penal institutions (Section 12(2) of the Criminal Law Act 1997, and children detention schools (under Section 201 of the Children Act 2001, as amended in 2007); in sentencing for crimes (Section 12(1) of the Criminal Law Act 1997); in schools (removal of teachers' immunity from criminal prosecution under Article 24 of the Non-Fatal Offences Against the Person Act 1997); and in the Special Care residential settings (The Child Care (Special Care) Regulations 2004).

286 Section 246 of the Children Act 2001 states: 'It shall be an offence for any person who has the custody, charge or care of a child wilfully to assault, ill-treat neglect, abandon or expose the child, or cause or procure or allow the child to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause unnecessary suffering or injury to the child's health or seriously to affect his or her well-being'.

287 Childminders caring for the children of relatives, children of the same family and not more than three children of different families are exempt from the Child Care (Pre-school services) Regulations 1996 and (Amendment) Regulations 1997 under Section 58 of the Child Care Act 1991 and so are not covered by the prohibition of corporal punishment in these Regulations.

288 Department of Health and Children (2003) *National Standards for Foster Care*, Dublin: Stationary Office), p. 22.

289 UN Committee on the Rights of the Child (2006) *General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)*.

> MEASURES TO PROMOTE THE PHYSICAL AND PSYCHOLOGICAL RECOVERY AND SOCIAL REINTEGRATION OF CHILD VICTIMS

- 174.** The State Report comments that '[a] wide variety of parenting courses are provided throughout Ireland'.²⁹⁰ However, a 2013 survey found that two-thirds of those surveyed did not believe that there was enough information available to parents and guardians on alternative methods of discipline.²⁹¹ The survey also found that 73 per cent of participating adults believed that slapping was not an effective way to discipline a child.²⁹² The National Longitudinal Study, *Growing Up In Ireland*, found that 43 per cent of mothers had smacked their child as a discipline strategy – 32 per cent saying they did so 'rarely' and 11 per cent 'now and again' – with the frequency level increasing in lower income households.²⁹³
- 175.** The lack of progress on prohibiting corporal punishment is unacceptable. The current legal position undermines progress made in other areas, and is at odds with Article 42A of the Constitution of Ireland.
- 176. Recommendation:** The Committee is urged to again recommend that the State bans corporal punishment outright in all settings; sensitises and educates parents and the general public about the unacceptability of corporal punishment; and promotes positive, non-violent alternative forms of discipline.
- 177. School Discipline:** Article 28(2) obliges States to take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
- 178.** 'Safe spaces'²⁹⁴ are used in schools for short periods of time to provide support to the child or to manage pupil behaviour.²⁹⁵ In 2014, a media source documented a number of incidents of inappropriate use of such spaces in schools with Autism Spectrum Disorder Units, where children as young as eight were locked into 'safe spaces'.²⁹⁶ In one reported instance, a child was locked alone in such a space without supervision for up to five hours on two consecutive days and injured himself when trying to escape.²⁹⁷ A teachers' union in Ireland has recommended that training in the use of such spaces be part of professional development for teachers and Special Needs Assistants.²⁹⁸
- 179. Recommendation:** The Committee is urged to recommend that the State introduces regulations on the appropriate use of 'safe spaces' within educational settings; and undertakes research on children's experience of school discipline.

- 180.** Article 39 obliges States to take all appropriate measures to promote physical and psychological recovery and social reintegration of child victims of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment that fosters the health, self-respect and dignity of the child.
- 181.** In 2006, the Committee called on Ireland to '[e]nsure [...] that victims of abuse and neglect have access to counselling and assistance with physical recovery and social reintegration'.²⁹⁹
- 182.** Ireland continues to be the only European Union Member State that has not yet ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.³⁰⁰
- 183.** Ireland is intending to opt into the EU Directive on Victims which must be transposed into law by 16 November 2015.³⁰¹ In July 2015, the Government published the General Scheme of the Criminal Justice (Victims of Crime) Bill 2015, placing the rights of victims on a statutory footing for the first time in Irish law. The Scheme contains many positive provisions, including the presumption that all child victims need special protection measures.³⁰² However, the Bill is not fully compliant with the rights afforded by the Directive. Significantly, the Bill fails to address the requirement under Article 8 of the Directive for the mandatory provision of confidential victim support services free of charge both before, during and for an appropriate time after criminal proceedings.
- 184.** In addition, the inclusion of the principle of the best interest of the child within the General Scheme is weak. The Scheme includes two references. The Preamble provides that the best interests of a child victim will be regarded 'as a primary consideration by the criminal justice system', and Head 17(2) provides that the special protection measures required by a child victims will be determined in the best interests of the child. However, the Preamble does not itself prescribe binding principles; rather it is a frame of reference by which the provision are to be interpreted. Hence, the best interests of the child principle should be incorporated into the legislation in its own right. Other areas of concern are that the Scheme fails to include measures on the appointment of a special representative where parents are excluded from representing the child as a victim;³⁰³ and there is no requirement to train members of the legal profession.³⁰⁴

290 Department of Children and Youth Affairs (2013) *Ireland's Consolidated Third and Fourth Reports to the UN Committee on the Rights of the Child*, Dublin: Department of Children and Youth Affairs, para. 351.

291 Behaviours & Attitudes (2013) *Attitudes to Child Discipline*, Dublin: ISPC, p. 11.

292 *Ibid.*, pp. 5–7.

293 Mothers in low income households were mostly likely to report smacking a child 'now and again'. J. Williams et al. (2009) *Growing up in Ireland, National Longitudinal Study of Children, The Lives of 9-year-olds*. Dublin: Stationery Office, pp. 45–47.

294 Also referred to as 'time-out rooms', 'withdrawal rooms', 'quiet rooms', 'seclusion rooms' or 'isolation rooms'.

295 Minister for Education and Skills, Ruairi Quinn TD, *Special Educational Needs Services Provision*, [9161/14], Dáil Debates, 25 February 2014.

296 N. Ryan, 'Lack of isolation room regulation puts children with autism at risk of "serious abuse"', *TheJournal.ie* [online], 13 January 2014, <http://www.thejournal.ie/isolation-room-autism-groups-society-inclusion-ireland-sinn-fein-1262386-Jan2014/> [accessed 1 April 2015].

297 N. Ryan, 'Revealed: Autistic children locked in unsupervised 'isolation rooms' for hours', *TheJournal.ie* [online], 13 January 2014, <http://www.thejournal.ie/withdrawal-room-seclusion-isolation-autism-ireland-1255870-Jan2014/> [accessed 1 April 2015].

298 Irish National Teachers' Organisation, *The Education of Children with Autism, Submission on behalf of INTO to NSCE*, p. 11 https://www.into.ie/ROI/Publications/INTOSubmissions/TheEducationofChildrenwithAutism_INTOSubmission.pdf [accessed 1 April 2015].

299 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland, CRC/C/IRL/CO/2*, para. 37(b).

300 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography A/RES/54/263 of 25 May 2000, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx> [accessed 28 September 2015].

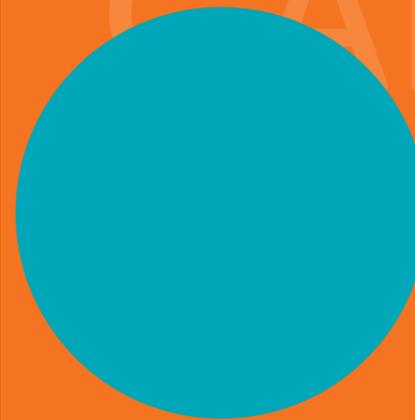
301 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

302 General Scheme of the Criminal Justice (Victims of Crime) Bill 2015, Head 17.

303 Article 24 of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

304 *Ibid.*, Article 25.

CHAPTER 6: FAMILY ENVIRONMENT AND ALTERNATIVE CARE



CHAPTER 6: FAMILY ENVIRONMENT AND ALTERNATIVE CARE

- 185.** Within the criminal justice system, supports for child victims of abuse, neglect and other crimes have in many cases been inadequate. While there have been positive changes in Garda (police) investigative practices, a 2014 Garda Inspectorate Report found delays of up to six months in the interviewing of child victims or witnesses of sexual or physical abuse or serious neglect.³⁰⁵ The courts have also been found to be ill-equipped to deal with this special category of victim, in terms of long delays, inadequate facilities and the lack of training for lawyers and judges.³⁰⁶ Long delays in bringing cases forward³⁰⁷ can also affect a child's ability to recall events.³⁰⁸
- 186.** Child victims continue to experience delays in obtaining counselling support and assistance because services are underfunded. For example, in 2015, a media report highlighted the case of a child who had waited for two years to access counselling.³⁰⁹ The only counseling service for child victims of sexual abuse in Dublin, the CARI centre, had a waiting list of 30 families in January 2015.³¹⁰ For victims of sexual assault under 14 years, there is limited access to specialist services, with just one State service, located in Galway.³¹¹ Victims over 14 years are entitled to access specialist integrated Sexual Assault Treatment Units (SATU), but these are unavailable in most parts of Ireland.³¹²
- 187.** In September 2015, the Government published the Criminal Law (Sexual Offences) Bill 2015 which contains a number of amendments to the Criminal Evidence Act 1992 on child victims giving evidence and on the circumstances in which an accused can personally cross examine a child witness. The Scheme also regulates the disclosure of third part counselling or therapy records in sexual offence trials. These provisions are welcome, but further investment in court facilities and training for the legal profession will be needed. For example, although video link evidence is admissible, the availability of technology in all courts across the country has been restricted by financial constraints.³¹³
- 188. Recommendation:** The Committee is urged to recommend that the State enacts the Criminal Justice (Victims of Crime) Bill 2015 and amends the Criminal Evidence Act 1992 to put in place robust legal protection for child victims. The State should also conduct a review of how the Gardaí Síochána (Police), Director of Public Prosecutions, courts and health services respond to the needs of child victims, and ensure that it devotes the additional resources needed to ensure a prompt, appropriate and comprehensive response to the needs of child victims.



305 Garda Inspectorate (2014) *Crime Investigation Report*, Dublin: Garda Inspectorate, part 6, p. 50.
 306 Rape Crisis Network Ireland (2014) *Submission on the National Strategy on Gender Based Violence 2015–2020*, p. 16.
 307 Ú. Ni Raifeartaigh (2009) 'Child sexual abuse cases: the need for cultural change within the criminal justice system', *The Bar Review* (2009) 14 (5) BR 103.
 308 D. A. Segovia and A. M. Crossman (2012) 'Cognition and the Child Witness: Understanding the Impact of Cognitive Development in Forensic Contexts', in H. Kloos et al. (eds.) *Current Topics in Children's Learning and Cognition*, pp. 86–104, Rijeka: Croatia, I. Intech, ISBN: 978-953-51-0855-9.
 309 RTÉ Morning Ireland (March 2015) and K. O'Brien, 'Abused Boys Wait Two Years for Counselling', *Irish Examiner*, 21 March 2015.
 310 Communication received by the Children's Rights Alliance from CARI on the 27 January 2015.
 311 Health Service Executive, *Child and Adolescent Sexual Assault Treatment Services*, https://www.google.ie/?gws_rd=cr,ssl&ei=ogwJVoPINqa4ygO-4KTQBA#q=http:%2F%2Fwww.hse.ie%2Feng%2Fservices%2Flist%2F5%2Fsexhealth%2Fsatu%2FChild%2520Adolescent%2520Sexual%2520Assault%2520Treatment%2F/ [accessed 28 September 2015].
 312 There are only six SATU clinics in Ireland (Cork, Dublin, Galway, Mullingar, Donegal and Waterford). Source: Health Service Executive, Sexual Assault Treatment Unit, <http://www.hse.ie/satu/> [accessed 6 May 2015].
 313 Eilis Barry, BL (2015) 'Non-Discrimination and Equality' in Children's Rights Alliance and Law Centre for Children and Young People, *Making Rights Real for Children: A Children's Rights Audit of Irish Law*, p. 37.

> FAMILY ENVIRONMENT

- 189.** Article 5 obliges States to 'respect the responsibilities, rights and duties of parents' or 'persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention'.
- 190.** In 2006, the Committee welcomed the phased extension of paid maternity leave.³¹⁴ In Ireland, mothers who are employed or self-employed are entitled to statutory paid Maternity Benefit, provided they have the required number of social insurance contributions. The payment was extended in 2007 to 26 weeks (or 24 weeks for adoptive leave); mothers can also avail of a further 16 weeks of unpaid maternity or adoptive leave. However, the taxation of Maternity Benefit introduced in 2013³¹⁵ and the reduction in the rate for some mothers from 2014³¹⁶ have led to fears that mothers will be forced to return to work early due to financial pressure.³¹⁷
- 191.** Unpaid parental leave is provided for in law;³¹⁸ each parent in employment is entitled to avail of 18 weeks of unpaid parental leave for each of their children.³¹⁹ Total parental leave (comprising paid Maternity Benefit, unpaid maternity leave and unpaid parental leave) is below the European Union average of parental leave entitlements.³²⁰ Furthermore, Ireland is one of only nine EU countries that have no provision for statutory paid paternity leave.
- 192.** In July 2015, an Interdepartmental Working Group recommended that the State provide for an incremental expansion of paid parental leave for the first year of a child's life through extra weeks of paid leave and benefits for mothers or fathers immediately after existing maternity entitlements.³²¹
- 193. Recommendation:** The Committee is urged to recommend that the State enacts comprehensive legislation on family leave entitlements providing at least a period of two weeks' paid paternity leave, and a new entitlement to six months' paid Family Leave to be taken at the end of maternity leave, available to either parent, thus providing parents with 12 months' paid leave after the birth of their child. In addition, the right to request flexible working arrangements should be extended to all parents with children under six years, not just parents returning to work after parental leave.

314 UN Committee on the Rights of the Child (2006) *Concluding Observations Ireland*, CRC/C/IRL/CO/2, para. 28.
 315 Budget 2013 introduced the taxation of Maternity Benefit. Department of Finance (2012) *Summary of 2013 Budget Measures: Policy Changes*, Dublin: Department of Finance.
 316 Budget 2014 saw the maximum rate of Maternity Benefit cut from €262 per week to €230 per week, effective from January 2014.
 317 National Women's Council, 'Cut to maternity benefit is anti-women and anti-families' [press release], 15 October 2013 http://www.nwci.ie/?/news/article/cut_to_maternity_benefit_is_anti_women_and_anti_families [accessed 28 September 2015].
 318 The Parental Leave Act 1998, as amended by the Parental Leave (Amendment) Act 2006 and the European Union (Parental Leave) Regulations 2013.
 319 If both parents work for the same employer, parental leave entitlements may be transferred between parents with the employer's agreement.
 320 Irish Congress of Trade Unions, National Women's Council of Ireland and Start Strong, 'Families and Work – A Chance for Change' [press release] 25 September 2014, http://www.familyleave.net/uploads/3/8/7/3/38732173/family_leave_briefing_note_for_25_september_pack.pdf [accessed 1 May 2015].
 321 Interdepartmental Working Group (2015) *Report of the Inter-Departmental Working Group: Future Investment in Childcare in Ireland To identify and assess policies and future options for increasing the quality, accessibility (including supply) and affordability of early years and school-age care and education services in Ireland*, <http://www.dcy.gov.ie/documents/earlyyears/20150722IDGReportonEarlyYrsInvestmentReport.pdf> [accessed 1 September 2015].

> PARENTAL SUPPORT AND THE PROVISION OF CHILDCARE SERVICES

- 194.** Article 18 obliges States to give appropriate assistance to parents in the performance of their child-rearing responsibilities and ensure the development of institutions, facilities and services for the care of children. The State should 'take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible'.
- 195.** Childcare costs for parents in Ireland are among the highest in the OECD.³²² Depending on the income level and composition of a household, full-time childcare can account for over 40 per cent of household income.³²³ The high cost of childcare is acting as a barrier to employment and training for some parents, and preventing parents from exiting poverty.³²⁴
- 196.** The majority of childcare services are run by private providers. The State gives capital grants and regulates these providers; it also offers a free one-year sessional placement of early education for all children of pre-school age – the Early Childhood Care and Education (ECCE) Scheme. Centre based early years settings are regulated and inspected.³²⁵ Certain childminders are not covered by regulations – those who look after fewer than four pre-school children, including those who provide after-school care to an unspecified number of children.³²⁶ In addition, there are no regulation or inspections of afterschool services.³²⁷
- 197.** Low income families face barriers in accessing subsidised childcare and after-school care.³²⁸ The largest subsidy scheme,³²⁹ the Community Childcare Subvention, is only available on an *ad hoc* basis through some community-based (not-for-profit) childcare services; furthermore, places can generally only be accessed in September/October of a given year.³³⁰
- 198. Recommendation:** The Committee is urged to recommend that the State extends the Community Childcare Subvention Programme to all early-years' services; reforms the administrative procedures so that families can take up subsidised places at any time of the year; and ensures all paid childminders are regulated.

322 Start Strong, *The Double Dividend*, http://www.startstrong.ie/files/Double_Dividend_Policy_Brief_Web2.pdf [accessed 19 May 2015].
 323 Vincentian Partnership for Social Justice, *Minimum Income Standard and the Cost of Childcare*, p.29 http://www.budgeting.ie/images/stories/Publications/Papers/VPSJ_2015_MIS_-_Cost_of_Childcare.pdf [accessed 28 September 2015].
 324 European Commission, *Country Report Ireland 2015, Commission Staff Working Document*, Brussels, pp. 59–61 http://ec.europa.eu/europe2020/pdf/csr2015/cr2015_ireland_en.pdf [accessed 19 May 2015].
 325 See for example, S. Hanafin (2014) *Report on the Quality of Pre-school Services Analysis of Pre-school Inspection Reports*, Dublin: Tusla – Child and Family Agency.
 326 Childminders caring for the children of relatives, children of the same family, not more than three children of different families are exempt from the Child Care (Pre-school services) Regulations 1996 and (Amendment) Regulations, 1997 under Section 58 of the Child Care Act 1991.
 327 QDOSS, *Celebrating Childhood Beyond the School Bell: Framing Policy and Practice for Quality Out of School Services*, <https://www.spd.dcu.ie/site/edc/documents/JohnCarrQDOSSApril2013.pdf> [accessed 28 September 2015].
 328 Government of Ireland (2015) *Report of Inter-Departmental Working Group: Future Investment in Childcare in Ireland*, pp.73-77.
 329 Applicants can apply for subsidised places through the Community Childcare Subvention (CCS) Programme, the After-School Child Care Scheme, the Childcare Education and Training Support Programme (CETS) or the Community Employment Childcare programme.
 330 The scheme operates on an annual basis starting in September each year, with the number of places on the scheme normally fixed in October. There may be some changes during the year for example if a child leaves a service another child can often take that subsidised place, but the number of overall places in each service is fixed in October.

> SEPARATION FROM PARENTS

199. Family Supports: In 2006, the Committee welcomed a number of developments regarding family support structures, but expressed concern that these structures lack a broad-based and child-centred approach and that the responsibility for support programmes and the delivery of support services is allocated to different governmental authorities.³³¹ The Committee called on the State to '[u]ndertake an extensive review of the support services provided under the different governmental departments to assess the quality and outreach of these services and to identify and address possible shortcomings'.³³²

200. In 2014, the Family Support Agency was transferred to Tusla – Child and Family Agency. The statutory functions of the new Agency include ensuring the 'effective functioning of families', and the delivery of 'preventative family support services'.³³³ Another major development is the establishment of Children and Young People's Services Committees (CYPSC) to coordinate relevant services in every county in Ireland.³³⁴ Major investments have also been made in prevention and early intervention initiatives by Government and through philanthropic funding for families experiencing difficulties.³³⁵

201. The *National Policy Framework for Children and Young People* includes a cross-cutting transformational goal obliging Government to support 'parents to parent confidently and positively, and see this as one of the primary, universal and most effective supports that the State can provide along the continuum of family support'.³³⁶ To implement this goal, the Government developed a *High Level Policy Statement on Parenting and Family Support* to guide the provision of universal evidence-informed parenting supports.³³⁷ The Statement provides the policy context for considerable work in the area being undertaken by Tusla – Child and Family Agency.

202. These developments are very welcome and important steps in implementing the Committee's previous recommendations. However, the Children and Young People's Services Committees lack a legislative basis. Furthermore, the *High Level Policy Statement on Parenting and Family Support* does not have an accountability or enforcement mechanism. Without such an accountability mechanism, there is a danger that family support will not receive the same weighting as child protection by designated agencies. The *High Level Policy Statement* could be used to develop a set of metrics to be monitored by the Department of Children and Youth Affairs.

203. Recommendation: The Committee is urged to recommend that an accountability mechanism be put in place by the State for the implementation of the *High Level Policy Statement on Parenting and Family Support*. The State should also invest in universal and targeted parenting supports and adopt a 'whole of government' commitment to incrementally realign resources to prioritise proven prevention and early intervention approaches rather than crisis-driven services.

204. Article 9 obliges States to 'ensure that a child shall not be separated from his or her parents against their will', except where 'such separation is necessary for the best interests of the child', and to provide 'an opportunity for all interested to participate in the proceedings and make their views known'. Article 9(3) also obliges State to 'respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.'

205. In line with Article 42A.4.1° of the Constitution of Ireland, the Children and Family Relationships Act 2015 provides for the best interest of the child to be paramount in any decisions on guardianship, custody or upbringing of, or access to, a child.³³⁸ The 2015 Act provides comprehensive guidance to the Courts on the best interest principle.³³⁹ It also makes provisions in relation to hearing the views of the child.³⁴⁰ These are positive developments. However, the provisions on the voice of the child do not go far enough to comply with Article 42A of the Constitution and under Article 12 of the Convention. For further discussion of this issue, see Chapter 3 of this report.

206. There is no dedicated family court division and families experience long delays, inadequate facilities and poor case management and there is also a lack of specialist family law judicial training.³⁴¹ Reform has been advocated for many years.³⁴² To support the implementation of the Children and Family Relationships Act 2015 a court welfare service is needed to provide a mechanism appropriate for the carrying out of assessments of the child's welfare and best interests, and ascertaining his or her views, as well as carrying out family and risk assessments, as required. Additional services are also needed to support children and families, such as mediation services and child contact centres.³⁴³

207. The Children and Family Relationships Act 2015 provides for six types of guardianship,³⁴⁴ either assigned by court or by statutory declaration.³⁴⁵ The Act did not establish a register to collate the existence of a guardianship arrangement and what level of guardianship rights have been assigned to an individual. The absence of such a register means that, for example, in circumstances where guardianship is achieved through the parties voluntarily signing a statutory declaration, if the statutory declaration document is lost, withheld or destroyed, then no official record of the existence of the guardianship agreement is available.³⁴⁶

208. Recommendation: The Committee is urged to recommend that the State commence the Children and Family Relationships Act 2015 and takes steps to support its roll out by establishing a specific family court system, a comprehensive court welfare service and a guardianship register.



331 UN Committee on the Rights of the Child (2006) *Concluding Observations Ireland*, CRC/C/IRL/CO/2, para. 28.

332 *Ibid.*, para. 29.

333 Child and Family Agency Act 2013, s. 8.

334 The Children and Young People's Services Committees aim to improve outcomes for children and young people, under 24 years, through local and national interagency working. They provide a forum for joint planning to ensure that children, young people and their families receive improved and accessible services.

335 See: Prevention and Early Intervention Network, www.pein.ie and Department of Children and Youth Affairs, Area-Based Childhood Programmes at http://www.dcyia.gov.ie/viewdoc.aspx?fn=%2Fdocuments%2FNational_Childrens_Advisory_Council_.htm [accessed 28 September 2015]; S. Rochford, N. Doherty and S. Owens (2014) *Prevention and Early Intervention in Children and Young People's Services: Ten years of Learning*, Dublin: Centre for Effective Services.

336 Department of Children and Youth Affairs (2014) *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020*, Dublin: Stationery Office, p. 7.

337 Department of Children and Youth Affairs (2015) *High-Level Policy Statement on Supporting Parents and Families*, Dublin: Department of Children and Youth Affairs.

338 Children and Family Relationships Act 2015, s. 45(3)(1).

339 *Ibid.*, Part V.

340 *Ibid.*, s. 32. (1).

341 A Week in the Family Court, *TheJournal.ie* [online] 16–19 September 19 2014, <http://www.thejournal.ie/family-courts-series/news/> [accessed 3 September 2015].

342 See: Law Reform Commission (1996) *Report on Family Court*, LRC 52–1996, Dublin, The Law Reform Commission.

343 Child contact centres are for children whose parents are separated and are unable to agree safe and appropriate arrangements for the child/children to have contact with the parent they do not live with and for children who are in the care who need support to have contact with their parent(s). These are time-limited services so families need to engage with family supports so that they can move to self-arranged contact over time. See: One Family (2010) *Supporting Child Contact: the Need for Child Contact Centres in Ireland* (researched and written by Candy Murphy and Louise Caffrey), Dublin: One Family.

344 The six types are: 1) parental guardianship assigned by court order; 2) parental guardianship assigned through a statutory declaration to civil partner and eligible cohabitant; 3) non parental guardianship assigned by court order; 4) foreign guardianship order (Brussels II bis and the Hague Convention); 5) temporary guardian (due to serious illness or injury); and 6) testamentary guardian.

345 A statutory declaration must be made before either a notary public; a commissioner for oaths; a peace commissioner or a practising solicitor.

346 See: Treoir (2015) *Children and Family Relationships Bill 2015 Submission to the Minister for Justice and Equality*, <http://www.treoir.ie/cms-assets/documents/201849-942392.cfrbsubmar15.pdf> [accessed September 4 2015] p. 63; see more generally chapters 4 and 5. 44.

> FAMILY REUNIFICATION

- 209.** Article 10 obliges States to deal in ‘a positive, humane and expeditious manner’ with family reunification applications and that such applications should ‘entail no adverse consequences for the applicants and for the members of their family’.
- 210.** In 2006, the Committee called on Ireland to consider reviewing the definition of family in the Refugee Act 1996; to consider establishing a legal framework for family reunification outside situations under the Refugee Act; and to ensure that the principle of the best interests of the child is always a primary consideration when making decisions involving children.
- 211.** There has been no progress on family reunification since 2006. The provisions of the Refugee Act 1996 relating to this issue have not been reviewed or amended and there is no legal framework for family reunification outside situations under the Refugee Act. Hence, family reunification is still confined to four categories – the refugee’s spouse; parents of an unmarried refugee who is under the age of 18; the child of a refugee where that child is under 18 and unmarried; and, at the discretion of the Minister for Justice and Equality, a ‘dependent member of the family of a refugee’.³⁴⁷ Applications for family reunification for migrants are made to the Irish Naturalisation and Immigration Service (INIS) and the decision is made at the discretion of the Minister for Justice and Equality. The time-frame for processing a migrant family reunification visa and residence applications can be up to a year.³⁴⁸
- 212.** There is no independent appeals mechanism for those whose application has been refused. The only redress mechanism is to apply to the High Court for a judicial review of the decision. This is an inadequate appeals mechanism as a judicial review is restricted to examining the lawfulness of the decision-making process: it cannot examine the merits of the decision made. Furthermore, an application to the High Court is an expensive process and civil legal aid is not routinely available for these proceedings.³⁴⁹
- 213. Recommendation:** The Committee is urged to recommend that the State enacts rights-based legislation on family reunification to provide wide protection for migrant and refugee families to reunite; ensures the best interests of the child is a primary consideration in such decisions; and establishes an independent appeals mechanism to provide an inexpensive and effective process for applicants.

> CHILDREN DEPRIVED OF FAMILY ENVIRONMENT

- 214.** Article 20 provides that ‘[a] child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.’

- 215.** There were 6,411 children in care as of May 2015.³⁵⁰ Of all children in care, 5,943 (93 per cent) were in a foster care placement, 1,833 of which were in the foster care of a relative.³⁵¹ Of the 468 children in care but not in foster care, 343 were in residential care, 105 were in ‘Other Care placements’, 16 were in Special Care, and four were in residential ‘Out of State Secure Placements’.³⁵²
- 216. National Standards:** In 2006, the Committee called on Ireland to ‘[c]onsider measures to create a statutory basis for the Social Services Inspectorate to function and extend its mandate to all children without parental care, irrespective of the care required’.³⁵³ The Health Act 2007 placed the Social Services Inspectorate (SSI) on a statutory footing within the Health Information and Quality Authority (HIQA). HIQA inspections continue to have a positive impact on improving compliance with national standards through its transparent reporting processes. HIQA inspects children’s foster care homes,³⁵⁴ children’s residential centres,³⁵⁵ child protection services teams,³⁵⁶ residential services for children with disabilities³⁵⁷ and Children Detention Schools.³⁵⁸ However, HIQA do not inspect all residential care settings for children: it inspects all State run residential centres. Tusla – Child and Family Agency inspects, registers and monitors non-statutory children’s centres.³⁵⁹ It is an outstanding recommendation of the Ryan Report Implementation Plan that HIQA would undertake independent inspections of all children’s residential centres and foster care.³⁶⁰
- 217. Recommendation:** The Committee is urged to recommend that the State commences the relevant provisions of the Health Act 2007 to enable the Health Information and Quality Authority to inspect all residential services for children to ensure all services are independently inspected.
- 218.** Ireland has no national strategy on the prevention of child abuse. Evidence points to the need to strengthen our prevention, early intervention and family support services to either better support children to remain at home or to remove children into care earlier for safety or welfare.³⁶¹ For example, a report into the deaths of 196 children in care, aftercare or known to the social services which revealed a litany of State failures, found that in 12 of 36 cases where a child in care had died there was evidence of a delay in taking the child into care.³⁶² There also appears to be geographical differences in the use of Supervision Orders (where the child remains at home).³⁶³
- 219.** The Child Care Law Reporting Project has highlighted that a disproportionately high number of the child care proceedings coming before the courts are in respect of children from Traveller and ethnic minority communities and children with special needs.³⁶⁴ It has also noted that there is a significant regional disparity in the numbers of children taken into care under care orders.³⁶⁵ The Project also noted that a high proportion of parents (one in six), coming before the courts on child care proceedings were identified as suffering from cognitive impairment or mental illness.³⁶⁶

347 Refugee Act 1996.
348 Immigrant Council of Ireland (2013) *Family Reunification: A Barrier or Facilitator of Integration? Ireland Country Report*, Brussels: European Commission, p. 56; see more generally chapters 4 and 5. 44.
349 *Ibid.*, p. 44.

350 Tusla, *Monthly Management Data Activity Report May 2015*, p. 1 http://www.tusla.ie/uploads/content/Final_Version_Tusla_Management_Data_Report_Mayv1.pdf, [accessed 28 September 2015].
351 *Ibid.*, p. 2.
352 *Ibid.*, pp. 1–3.
353 UN Committee on the Rights of the Child (2006) *Concluding Observations Ireland*, CRC/C/IRL/CO/2, para. 33.
354 Department of Health and Children (2003) *National Standards for Foster Care*, Dublin: Stationery Office.
355 Department of Health and Children (2001) *National Standards Children’s Residential Centres*, Dublin: Stationery Office. HIQA has developed specific standards on Special Care but has yet to commenced inspections under these Standards, See: Health Information and Quality Authority (2014) *National Standards for Special Care Units*, Health Information and Quality Authority.
356 Health Information and Quality Authority (2012) *National Standards for the Protection and Welfare of Children, for Health Service Executive Children and Family Services*, Health Information and Quality Authority.
357 Health Information and Quality Authority (2013) *National Standards for Residential Services for Children and Adults with Disabilities*, Dublin: HIQA.
358 Irish Youth Justice Service (2008) *Standards and Criteria for Children Detention Schools*, Dublin: Department of Justice, Equality and Law Reform.
359 There are approximately 100 private and voluntary children’s residential centres in Ireland, catering for 341 children (at May 2014). Ombudsman for 360 children Children’s Ombudsman Highlights Gaps in the Oversight of Children’s Residential Centres, 7 August 2015 [press release] <http://www.oco.ie/2015/08/childrens-ombudsman-highlights-gaps-in-the-oversight-of-childrens-residential-centres/> [accessed 2 September 2015].
360 Department of Children and Youth Affairs (2014) *Ryan Report Implementation Plan Fourth Progress Report*, Dublin: Department of Children and Youth Affairs, p. 26.
361 See for example, G. Shannon and N. Gibbons (2012) *Report of the Independent Child Death Review Group*, Dublin: Government Publications; The reports of the Child Care Law Reporting Project can be accessed at <http://www.childlawproject.ie/>; U. Kilkelly (2011) *A Children’s Rights Analysis of Investigations*, Dublin: Ombudsman for Children, p. 5.
362 G. Shannon and N. Gibbons (2012) *Report of the Independent Child Death Review Group*, Dublin: Government Publications.
363 *Ibid.*
364 C. Coulter (2014) *Second Interim Report, Child Care Law Reporting Project*, Dublin, p. 20.
365 *Ibid.*, p. 26.
366 *Ibid.*, p. 25.

220. Recommendation: The Committee is urged to recommend that the State reviews the use of supervision orders; and invests in intensive child and family support programme aimed at children at high risk of placement in care.

221. There are significant gaps in the provision of supports to children in care. Regulations require that all children in care should have an allocated social worker.³⁶⁷ Of the 6,441 children in care at the end of May 2015, however, 551 (9 per cent) did not have an allocated social worker.³⁶⁸ The high turn-over of social work staff means that children in care may experience a succession of social workers which hinders the possibility of their benefiting fully from the social work service and may result in a lack of continuity in their care. For example, one child had 18 social workers over a ten-year period and another had four over a five month period.³⁶⁹

222. A child in care has a right to have access to his or her parents.³⁷⁰ In practice, the level of access is influenced by available resources within Tusla – Child and Family Agency. Anecdotal evidence points to a reduction in access visits for some children in care.³⁷¹ The Child Care Law Reporting Project has argued that practice in relation to children in care is not sufficiently orientated towards reuniting the child and their family.³⁷²

223. A 2014 HIQA report on foster care services in Carlow, Kilkenny and South Tipperary found 45 children – the majority with complex needs – were waiting on psychology and mental health services, with some waiting for up to one year.³⁷³ There appears to be a gap in care options for a child in circumstances where either the home environment becomes untenable due to the child's emotional or behavioural needs or a residential or foster placement breaks down. In 2013, a high-support unit, which had been established to cater for a child with a high level of need and behavioural challenge, was closed down because of safety concerns.³⁷⁴ Following this closure, there appears to be a lack of suitable residential care other than Special Care Units – an intervention where the child is denied his or her liberty.

224. Recommendation: The Committee is urged to recommend that the State continues to take steps to ensure that every child in care has an allocated social worker, a written care plan, adequate mental health supports and access with his or her family.

225. Special Care: Article 37(d) obliges States to ensure that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

226. A child can be detained in a Special Care Unit in circumstances where '(a) the behaviour of the child is such that it poses a real and substantial risk to his or her health, safety, development or welfare, and (b) the child requires special care or protection which he or she is unlikely to receive unless the court makes such an order'.³⁷⁵ There are three Special Care Units in Ireland, which aim to provide a child with a short-term, stabilising intervention in a secure, therapeutic environment.³⁷⁶ Special Care Units are locked residential units for children aged between 11 and 17 years.

227. Currently, children are placed in Special Care Units under the High Court's inherent jurisdiction.³⁷⁷ The Child Care (Amendment) Act 2011 creates a statutory framework for Special Care, but relevant provisions of this Act have yet to be commenced.³⁷⁸

228. HIQA has raised concerns about the inappropriate use of 'cool off' (single isolation) rooms within Special Care Units, with the rooms being used as a punishment rather than for the child's safety.³⁷⁹ In September 2015, a HIQA inspection identified serious breaches of children's rights due to inappropriate practice in relation to use of single separation room.³⁸⁰ The report concluded that '[s]ome of the experiences described by children and reflected in records could be deemed as humiliating or degrading treatment'.³⁸¹ Two children had urinated on the floor of the safe room as they were not permitted access to a toilet on the basis of risk; and a child did not have access to a shower until day four of a five day period of continuous single separation: the child was instead provided with baby wipes.³⁸² The report also found that three children while in single separation had slept without a mattress or blankets on numerous occasions in the past two months and three children were locked in a room for periods of over 24 hours and did not leave the room in that time.³⁸³ Following publication of this report, the Minister for Children and Youth Affairs announced a review of single separation policies in use in special care, children's residential centres and in Children Detention Schools.³⁸⁴

229. When specialist services are not available in Ireland, the State sends children abroad for therapeutic residential care to secure facilities, such as Oakview Hospital in Kent; St. Mary's in Scotland and Boystown in Nebraska.³⁸⁵ As of May 2015, four children were in residential out-of-state secure placements.³⁸⁶ Concern has been raised that in some cases, the child had not received adequate follow-on support on returning home from Special Care abroad.³⁸⁷ There is also concern that Article 8 of the European Convention on Human Rights (private and family life) may be engaged if children are removed from the jurisdiction for a significant period of time.

230. Recommendation: The Committee is urged to recommend that the State commences the relevant provisions of the Child Care (Amendment) Act 2011 to create a statutory framework for Special Care, and undertakes a review of services to identify ways to better support children with emotional or behavioural difficulties and so reduce the use of Special Care.

231. Homeless Children: This section focused on children or young people under 18 years who present as homeless are who are without the care of their families.³⁸⁸ Chapter 7 of this report addresses the issue of homeless families with children.

367 The requirement that all children in care have an allocated social worker is set out in regulations and national standards, including the Child Care Act 1991, the Child Care (Placement of Children in Foster Care) Regulations, 1995, and the Child Care (Placement of Children in Residential Care) Regulations, 1995.

368 Tusla, *Monthly Management Data Activity Report May 2015*, p. 1 and p. 3, http://www.tusla.ie/uploads/content/Final_Version_Tusla_Management_Data_Report_Mayv1.pdf [accessed 28 September 2015].

369 H. Buckley, *National Review Panel Reports Published March 2015: Thematic Overview*, http://www.tusla.ie/uploads/content/NRP_2015_Thematic_Overview.pdf [accessed 1 May 2015].

370 Child Care Act 1991, s. 37.

371 Communication received by the Children's Rights Alliance in consultation with EPIC, April 2015.

372 C. Coulter (2014) *Second Interim Report, Child Care Law Reporting Project*, Dublin, p. 28.

373 HIQA, *Inspection (ID 683) of the HSE Children Fostering Care Services in the Carlow, Kilkenny, South Tipperary Service Area 25 May to 30 May 2014*, <http://www.hiqa.ie/social-care/find-a-centre/childrens-foster-care> [accessed 9 February 2015].

374 Department of Children and Youth Affairs, 'Minister Fitzgerald confirms closure of HSE High Support Unit following HIQA inspection' [press release] 8 October 2013, http://www.dcy.gov.ie/docs/08.10.2013_Minister_Fitzgerald_confirms_closure_of_HSE_High_/2988.htm [accessed 1 May 2015].

375 Children Act 2001, s. 23(B).

376 Health Information and Quality Authority (2014) *National Standards for Special Care Units*, file:///C:/Users/Maria.Corbett/Downloads/National-Standards_Special-Care-Units-2015%20(1).pdf [accessed 28 September 2015]

377 See the website of the Department of Children and Youth Affairs, *Special Care and High Support*, http://www.dcy.gov.ie/docs/Special_Care_and_High_Support/1914.htm [accessed 6 March 2015].

378 Child Care (Amendment) Act 2011.

379 HIQA, *Ballydowd Special Care Unit in the Health Service Executive Dublin Mid-Leinster*, <http://hiqa.ie/social-care/find-a-centre/childrens-special-care> [accessed 1 May 2015], p. 9. See also HIQA, *Monitoring Inspection Report- Special Care Centres under Section 69(2) of the Child Care Act 1991 as amended by the Child Care (Amendment) Act 2011*, p. 6 <http://hiqa.ie/social-care/find-a-centre/childrens-special-care> [accessed 1 May 2015].

380 HIQA, *Focused Inspection Report – Special Care Units under Section 69(2) of the Child Care Act 1991 as amended by the Child Care (Amendment) Act 2011, Inspection ID 731*, <https://static.rasset.ie/documents/news/ballydowd-hiqa-report.pdf> [accessed 1 September 2015].

381 *Ibid.*, p. 13.

382 *Ibid.*, p. 13.

383 *Ibid.*, p. 14.

384 Department of Children and Youth Affairs, 'Minister Reilly requests review of the operation of 'single separation' policies across the range of children's residential care settings' [press release], 1 September 2015, <http://www.dcy.gov.ie/viewdoc.asp?DocID=3527> [accessed 1 September 2015].

385 S. Phelan, 'Children sent abroad as our care system fails to cope', *The Irish Independent*, 21st May 2014.

386 Tusla, *Monthly Management Data Activity Report May 2015*, p. 1 http://www.tusla.ie/uploads/content/Final_Version_Tusla_Management_Data_Report_Mayv1.pdf, [accessed 28 September 2015].

387 M. Carolan 'Cost of bid to keep ill woman in UK would fund unit – judge', *The Irish Times* [online], 19 June 2015, <http://www.irishtimes.com/news/crime-and-law/courts/high-court/cost-of-bid-to-keep-ill-woman-in-uk-would-fund-unit-judge-1.2256247> [accessed September 4 2015].

388 Department of Children and Youth Affairs (2013) *Every Child a Home: A Review of the Implementation of the Youth Homelessness Strategy*, Dublin: Government Publications, p. 44.

232. Much progress has been made in the area of youth homelessness over the past number of years. On foot of the 2013 review of the *Youth Homelessness Strategy*, the policy response to youth homelessness is now integrated into the child protection and welfare service, rather than set out in a standalone strategy.³⁸⁹ However, the lack of a national out-of-hours social work service in Ireland means that some newly homeless children still access emergency accommodation through the Garda Síochána (police).³⁹⁰

233. However, the law in relation to youth homelessness is still inadequate. Section 5 of the Child Care Act 1991 places a duty on Tusla – Child and Family Agency to accommodate a homeless child but under this provision the child is not considered to be ‘in care’, limiting the child’s access to a social worker, a written care plan and aftercare services.

234. Some children access homeless services as a route out of an abusive family home and into care, or as a result of a care placement breakdown.³⁹¹ A small number of children access emergency accommodation over an extended period of time. They often have ongoing and complex care needs, arising from personal or family problems which may have existed before they became homeless, added to which is the destabilising impact of being homeless. The number of children receiving accommodation under this Section 5 of the 1991 Act must be tracked carefully to ensure the provision is only used as an emergency measure.

235. Recommendation: The Committee is urged to recommend that the State amend the Child Care Act 1991 to provide greater protections for the rights of children who experience homelessness; and extends the supports available to homeless children, including by providing an outreach health service offering medical, sexual health, mental health and psychiatric supports.

236. Aftercare: In 2006, the Committee called on Ireland to ‘[s]trengthen its efforts to ensure and provide for follow-up and aftercare to young persons leaving care centers’.³⁹² At the end of March 2015, 1,720 young adults aged between 18 and 22 years were receiving an aftercare service.³⁹³ The Government has taken steps to strengthen aftercare provisions, including the adoption by the HSE of the *Leaving and Aftercare Services: National Policy and Procedure* in 2011, which is monitored by the Aftercare Implementation Group; a 2011 audit of aftercare service provision; and the adoption in 2014 of a Protocol on Young People Leaving State Care to prevent homelessness for young people leaving State care.³⁹⁴ Despite these initiatives, there continues to be inconsistencies in the provision of aftercare throughout the country.³⁹⁵



237. Children continue to have no statutory entitlement to aftercare supports. The Heads and General Scheme of the Aftercare Bill 2014, under consideration by the Oireachtas (Parliament), places a statutory duty on Tusla – Child and Family Agency to prepare an aftercare plan for each eligible child and sets the grounds for eligibility based on the length of time a child has been in care.³⁹⁶ While the Bill’s provisions represent significant improvement on the existing legislative situation, they do not provide the young person with an entitlement to access services, only an entitlement to have a plan drawn up. In addition, the eligibility criteria set out in the Bill exclude children leaving Children Detention Schools and children who are using emergency homeless services and may exclude some vulnerable young people who are in care for less than one year.³⁹⁷

238. Media reports have highlighted that some young care leavers are finding accessing private rental accommodation extremely difficult, given the housing crisis, and so are at risk of homelessness.³⁹⁸

239. Recommendation: The Committee is urged to recommend that the State enacts an amended Aftercare Bill 2014 which would widen the eligibility criteria and provide an entitlement to aftercare services to a young care leaver deemed to be in need of such support; and increases its efforts to support young care leavers to access accommodation.

> ADOPTION (NATIONAL AND INTER-COUNTRY)

240. Article 21 obliges States to operate their adoption systems in line with a set of criteria and ensure ‘that the best interests of the child shall be the paramount consideration’.

241. In 2006, the Committee called on Ireland to ‘expedite its efforts to enact and implement the legislative reforms, ensure that all relevant legislation is in conformity with international standards, and that the best interests of the child are a primary consideration’.³⁹⁹

242. Much progress has been made in the area of adoption since 2006. The Adoption Act 2010 provided a standardised framework for all adoptions, addressing the disparity in standards between domestic and inter-country adoptions. The Act also provided for the incorporation into Ireland’s domestic law of the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Inter-country Adoption.⁴⁰⁰

390 The Nightlight Project, based in Lefroy House in Dublin’s city centre, is the primary centre providing accommodation for homeless children between the ages of 12 to 17 years: children known to the service can access it directly during specific hours.

391 For example, of 173 children who accessed Crisis Intervention Service emergency accommodation, 76 returned home and 75 were placed in residential or foster care (including relative foster care), five were placed in supported lodgings, two were placed in semi-independent living, six stayed with friends, three were placed in Secure Care and one was referred to adult services. Crisis Intervention Service, 2014 Powerpoint presentation, supplied by the Department of Children and Youth Affairs, February 2014.

392 UN Committee on the Rights of the Child (2006) *Concluding Observations Ireland*, CRC/C/IRL/CO/2, para. 33.

393 Tusla, *Quarterly Management Data Activity Report, Quarter 1 2015*, p. 8 http://www.tusla.ie/uploads/content/Tusla_Quarterly_Management_Data_Activity_Report_Quarter_1_2015_Final.pdf [accessed 20 September 2015].

394 Department for the Environment, Community and Local Government, *Circular Housing 46/201428 Protocol on Young People Leaving State Care*, <http://www.environ.ie/en/Publications/DevelopmentandHousing/Housing/FileDownload,39388,en.pdf> [accessed 9 February 2015].

395 EPIC, *Briefing Document: Aftercare*, <http://www.epiconline.ie/categories/publications/briefing-documents.html> [accessed 1 May 2015].

396 Department of Children and Youth Affairs ‘Cabinet approves Heads of Bill of Aftercare Bill 2014’ [press release], 25th February 2014, <http://www.dcy.gov.ie/viewdoc.asp?DocID=3104> [accessed 9 February 2015].

397 Children’s Rights Alliance, *Submission to the Joint Committee on Health and Children on the General Scheme and Heads of Aftercare Bill 2014*, http://www.childrensrights.ie/sites/default/files/submissions_reports/files/Children%27s%20Rights%20Alliance%20Submission%20on%20the%20Heads%20of%20Aftercare%20Bill%202014.pdf [accessed 1 September 2015]. See also Joint Committee on Health and Children, Report on General Scheme of the Aftercare Bill 2014, p. 12 <http://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2014/Aftercare-Report.pdf> [accessed 9 February 2015].

398 K. Holland ‘Homeless crisis among young people leaving State care growing’, *The Irish Times* [online], 23 June 2014, <http://www.irishtimes.com/news/social-affairs/homeless-crisis-among-young-people-leaving-state-care-growing-1.1874994> [accessed 14 January 2015]; Focus Ireland, ‘Focus Ireland Press Release April 1st 2014’ [press release] <https://www.focusireland.ie/about-homelessness/resource-centre/press/press-releases/876-pr-02apr> [accessed 7 May 2015].

399 UN Committee on the Rights of the Child (2006) *Concluding Observations Ireland*, CRC/C/IRL/CO/2, para. 35.

400 Hague Conference on Private International Law, Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. As a result of the provisions of the Adoption Act 2010, from 1 November 2010, intercountry adoptions can be effected only with countries that have ratified the Hague Convention or with which Ireland has a bilateral agreement.

- 243.** Article 42A of the Constitution of Ireland requires that provision be made in law for a child to be adopted, where his or her parents have met a high threshold of failure towards their child for a specified period of time.⁴⁰¹ Such adoptions can only take place where it is in the best interests of the child and where all other options have been explored and failed. This will allow some of the estimated 2,000 children in long-term foster care who have been effectively abandoned by their parents to be eligible for adoption and be given a 'second chance' for a stable and permanent family life with their foster families. The relevant legislation to give effect to Article 42A 2.1 has not been progressed so the law remains unaltered.
- 244.** Other gaps in our adoption legislation still exist. For example, reform of the 2010 Act is needed to allow the appointment of a Guardian *ad Litem* to represent the interests of the child in all cases where there is a conflict between the rights of the birth mother and the wishes of adoptive parents. In addition, there is no statutory right to access post-adoption support services.
- 245.** The Children and Family Relationships Act 2015 provides for guardianship rights to be granted to step parents. However, there is also no provision in Irish law for second-parent adoption. Under current adoption law, to enable a spouse who is not the child's biological parent to adopt the child, the mother or father must give their child up for adoption and then adopt the child jointly with her or his new spouse.
- 246. Recommendation:** The Committee is urged to recommend that the State enacts legislation as a matter of urgency to satisfy the provisions of Article 42A of the Constitution of Ireland; provides in law for the appointment of a Guardian *ad Litem* in contentious adoption proceedings and provides for second-parent adoption.

> MEASURES TO ENSURE THE PROTECTION OF CHILDREN WITH INCARCERATED PARENTS

- 247.** Article 9 stipulates that children have a right to regular contact with their parents and Article 18 obliges States to give appropriate assistance to parents in the performance of their child-rearing responsibilities.
- 248.** There are no figures available regarding the number of children in Ireland who have a parent or primary care giver who is incarcerated or the number of children who have been placed in care due to the imprisonment of a parent. Under the Irish Prison Rules, 2007, a child can be admitted to the prison to remain with his or her mother up until the age of 12 months.⁴⁰² Provision for mothers with babies is available in the Dóchas Centre women's prison in Dublin, but no facilities exist in Limerick's female prison.⁴⁰³

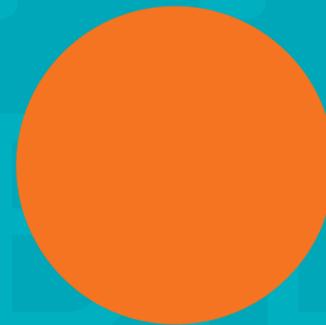
- 249.** The Irish Prison Service has estimated that 80,000 child visits per annum take place across the Irish prison estate.⁴⁰⁴ Research by the Irish Penal Reform Trust raised concerns that prison visiting conditions are not conducive to visits by children. Their concerns include security issues associated with visits, the use of dogs as part of the security regime, the frightening nature of searches for children, non-contact visits despite heavy security, and poor visiting conditions.⁴⁰⁵ The research found that some families chose not to inform the children that their parent was in prison; even if families did tell the children about the imprisonment they were, in many cases, reluctant to take children to visit a parent because of the frightening nature of visits.⁴⁰⁶ Conditions vary across the prison estate: some but not all prisons have a Visitors' Centre and in two prisons visiting facilities are 'screened' meaning there is a glass window between the prisoner and the visitor. The Inspector of Prisons has raised concern about the denial of family visits being used as part of discipline punishment for prisoners.⁴⁰⁷
- 250.** Some positive developments have taken place such as the training of prison officers and the development of the Parenting in Prison Project in Limerick Prison: these initiatives should be rolled out nationwide.
- 251. Recommendation:** The Committee is urged to recommend that the State undertakes a review of its prison visiting facilities and implements reforms to ensure child friendly and child sensitive facilities and practices, including the provision of modern, appropriately equipped visitors' centres in each prison; in line with the standards set out in the *European Prison Rules*, issued by the Council of Europe.⁴⁰⁸



401 Thirty-First Amendment of the Constitution (Children) Act 2015, Article 42A 2.1.
 402 Section 17(2) Irish Prison Rules, 2007.
 403 Irish Penal Reform Trust (2012) *Picking Up the Pieces: The Rights and Needs of Children and Families Affected by Parental Imprisonment*, Dublin: IPRT, p. 36.

404 *Ibid.*, p. 9.
 405 *Ibid.*, p. 20.
 406 *Ibid.*
 407 Judge M. Reilly (2012) *Report on an Inspection of St. Patrick's Institution by the Inspector of Prisons*, Tipperary: Office of the Inspector of Prisons.
 408 Council of Europe: Committee of Ministers, Recommendation Rec (2006)2 on the *European Prison Rules*.

CHAPTER 7:



CHAPTER 7: DISABILITY, BASIC HEALTH AND WELFARE

ALD
SIC HEALTH
D WELFARE

> CHILDREN WITH DISABILITIES

- 252.** Article 23 obliges States to recognise that a child with a disability 'should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community' and that he or she has a right 'to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child'.
- 253.** In March 2007, Ireland signed the UN Convention on the Rights of Persons with Disabilities (CRPD) but it has yet to ratify this Convention.⁴⁰⁹ The State has committed to the ratification of CRPD following the enactment of the Assisted Decision-Making (Capacity) Bill 2013.⁴¹⁰ Various drafts of this Bill have been published since 2007 but legislation has yet to be enacted.
- 254.** In 2006, the Committee called on the State to adopt an inclusive and rights-based legal framework that addresses the specific needs of children with disabilities and to implement all relevant provisions of existing legislation related to children with disabilities; to 'undertake awareness-raising campaigns with the involvement of children which focus on prevention and inclusion, available support and services for children with disabilities, as well as combating negative societal attitudes towards children with disabilities'.⁴¹¹ In 1998, the Committee noted its concern about the lack of a national policy to protect the rights of children with disabilities.⁴¹²
- 255.** Since 2006, the State has not undertaken any initiatives to target negative societal attitudes towards children with disabilities. The National Disability Authority of Ireland has conducted a series of surveys at regular intervals on public attitudes towards people with disabilities (2001, 2006 and 2011). The 2011 survey found that public attitudes towards people with disabilities had deteriorated from previous years.⁴¹³
- 256.** There have been no new legislative developments since 2006. The Disability Act 2005 provides that children are eligible for an assessment of their health and education needs arising from their disability. The needs assessment sets out what services the child shall receive. However, the assessment may not result in access to services, since there may be insufficient resources to provide these on a scale that meets demand; in some cases, services may not be available at all in particular locations.⁴¹⁴ This means, in effect, that the provisions of the Disability Act do not necessarily deliver a legal entitlement to a service. The operation of the Education for Persons with Special Educational Needs Act 2004 is covered in Chapter 8.
- 257.** Disability health services for children are organised and delivered very differently across the country because of the way they have been initiated and developed over many years. In 2009, the Health Service Executive acknowledged this and adopted the Progressing Disability Services for Children programme to create a national unified approach to delivering disability health services.⁴¹⁵

409 UN General Assembly (2007) Convention on the Rights of Persons with Disabilities, A/RES/61/106.
 410 UN Human Rights Committee, *Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR)*, UN Doc CCPR/C/IRL/4, (25 July 2012), para. 38.
 411 UN Committee on the Rights of the Child (2006) *Concluding Observations Ireland*, CRC/C/IRL/CO/2, para. 42.
 412 UN Committee on the Rights of the Child (1998) *Concluding Observations: Ireland*, CRC/C/15/Add.85, para. 20.
 413 National Disability Authority (2011) *Public Attitudes to Disability in Ireland Survey 2011*, Dublin: NDA.
 414 Health Service Executive, *Progressing Disability Services for Children and Young People*, <http://www.hse.ie/progressingdisabilityservices/> [accessed 1 May 2015].
 415 The programme's objectives are based on the recommendations of the Report of the Reference Group on Multidisciplinary Services for Children aged 5 to 18 Years. For further information see the website of the Health Service Executive <http://www.hse.ie/progressingdisabilityservices/> [accessed 7 September 2015].

- 258.** Children with disabilities may face challenges in accessing early years education. About 200 children with special needs avail of mechanisms to support their attendance in the Free Pre-School Year, including spreading their attendance over two years on a pro-rata basis.⁴¹⁶ There is evidence that children with special needs and disabilities do not receive adequate supports to allow their full participation in the scheme.⁴¹⁷ In a survey, 11 per cent of early years services admitted that they had to refuse a child with additional needs, with most reporting the reason for refusal as the service being unable to meet the needs of the child.⁴¹⁸
- 259.** In a positive development, HIQA commenced inspections of residential services for children with disabilities in 2013.⁴¹⁹
- 260. Recommendation:** The Committee is urged to recommend that the State ratifies the UN Convention on the Rights of Persons with Disabilities as a matter of priority; that it implements in full the Disability Act 2005 and that it makes available, and properly resources, all necessary services for children with disabilities; and that it adequately supports children with disabilities to access the Free Pre-School Year.

> HEALTH AND HEALTH SERVICES, IN PARTICULAR PRIMARY CARE

- 261.** Article 24(1) obliges States to 'recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.' Article 24(2)(d) obliges States to take appropriate measures to 'ensure appropriate pre-natal and post-natal health care for mothers'.
- 262.** In 2006, the Committee called on the State to:
- Adopt all-inclusive legislation that addresses the health needs of children;
 - ensure that availability and quality of healthcare services are maintained throughout the country by providing targeted resources and by establishing statutory guidelines for the quality of these services;
 - ensure that the resources used for existing health care services for children are used in a strategic and coordinated manner...;
 - pay special attention to needs of refugee and asylum-seeking children, and children belonging to the Traveller community, *inter alia*, by implementing the existing National Strategy for Traveller Health.⁴²⁰
- 263.** There have been some positive developments generally in the area of health, such as the publication of *Healthy Ireland: A Framework for Improved Health and Wellbeing 2013–2025*,⁴²¹ and the development of a new primary care structure. Primary care delivers health and social care services in the community outside of hospital settings, and ideally is comprised of the services of general practitioners, nurses and therapeutic staff such as speech and language therapists, physiotherapists and social workers.

416 Minister for Children and Youth Affairs, Dr. James Reilly TD, *Special Educational Needs Data*, [32659/14], Dáil Debates, 17 July 2014.
 417 Early Childhood Ireland, *Supporting Children with Additional Needs Survey 2013*, <http://www.earlychildhoodireland.ie/policy-research-and-media/research/surveys/results-of-the-special-needs-survey/> [accessed 13 May 2015].
 418 *Ibid.*
 419 Health Information and Quality Authority (2013) *National Standards for Residential Services for Children and Adults with Disabilities*, Dublin: HIQA.
 420 UN Committee on the Rights of the Child (2006) *Concluding Observations Ireland*, CRC/C/IRL/CO/2, para. 45.
 421 Department of Health (2013) *Healthy Ireland: A Framework for Improved Health and Wellbeing 2013–2025*, Dublin: Department of Health.

- 264.** However, there remains no overarching statutory basis or national policy on children's access to healthcare services. Such a framework is needed to guide the development and delivery of services to children and instil a respect for children's rights across healthcare settings.⁴²²
- 265. Recommendation:** The Committee is urged to recommend that the State introduces comprehensive, rights-based legislation for addressing children's health needs, which provides for the child's right to participation and specifies that decisions be made in the best interests of the child; and continues its efforts to develop an effective national primary care service.
- 266. Discrimination in Access to Healthcare:** Indications of poorer health status among children from less well-off areas are obvious from a very early age.⁴²³ Compounding the problem of health status differentials is the fact that in Ireland access to healthcare is severely undermined by an entrenched two-tier healthcare system. Those on low incomes who are reliant on the public health system may have to wait for extended periods for tests and procedures, while those who can afford to purchase private health insurance,⁴²⁴ can receive a much faster service through the private system.⁴²⁵ The proportion of the population taking out private health insurance fell during the recession from 51 per cent in 2008 to 45 per cent in 2013, with cost being a key factor.⁴²⁶ The infrastructure for the public and private systems is often the same, as doctors can use public healthcare facilities to run their private clinics.
- 267.** Under the public health system, thousands of children face long waiting lists to access health care, including some surgeries, such as spinal surgery for scoliosis,⁴²⁷ as well as for therapeutic services, such as speech and language therapy,⁴²⁸ and for orthodontics treatment.⁴²⁹ Such delays infringe the right of children from low income families to access vital services. This is a very serious issue given that early intervention, in particular for children with disabilities, is critical to help a child reach their full potential.⁴³⁰
- 268.** In its *Programme for Government*, agreed in 2011, the Government gave a commitment to introduce a universal healthcare system and this commitment was re-iterated in November 2012 when the Government published a policy document outlining its proposals for the reform of the health service.⁴³¹ In 2014, the Government took an important step towards this goal by enacting legislation to allow for the extension of free GP care to all children under the age of six years.⁴³² This measure will benefit a quarter of a million children *additional* to those already entitled to free GP care because they qualify for a medical card.⁴³³

- 269.** A medical card entitles individuals and families on low incomes, and children with a long-term illness or disability, not just to GP services, but to prescribed medicines and hospital services free of charge. Eligibility for a medical card is based on income, but a medical card may also be granted in cases where there is a serious medical condition requiring long-term care.⁴³⁴ Despite this provision, the reality is that there are cohorts of children with high-level health needs – including serious health conditions, disabilities and severe developmental delays – who do not have access to a medical card because their parents do not meet the income eligibility criteria, and their application under the discretionary grounds has not been successful.⁴³⁵
- 270.** A 'probity review' undertaken by the Government of medical cards resulted in the withdrawal of cards from people who were no longer deemed eligible; this review was suspended in May 2014 following widespread public criticism, and the withdrawn 'discretionary' cards were restored.⁴³⁶ From January to April 2014, approximately 97,000 medical cards were withdrawn,⁴³⁷ causing widespread upset. Accessing medical cards was, and in some cases continues to be, a hugely stressful experience for many families.⁴³⁸
- 271.** On foot of this, the Government established an Expert Panel to review medical card eligibility. The Expert Panel acknowledged that the eligibility criteria and the application process had evolved over time in a fragmented manner and had become complex and poorly understood by patients, medical staff and administrators.⁴³⁹ The Panel concluded that a person's means should remain the main qualifier for a medical card but recommended other reforms.⁴⁴⁰ In response to the report of the Expert Panel, the Government announced a ten point action plan to reform the medical card system, including an enhanced assessment process for discretionary cards. A clinical advisory group is to be established by the HSE to develop guidelines on assessing applications involving significant medical conditions.⁴⁴¹
- 272. Recommendation:** The Committee is urged to recommend that the State intensifies its efforts to introduce a universal healthcare system, addresses waiting lists for children to access health care, and ensures the reformed eligibility criteria for a medical card includes extending access to children with serious health conditions, profound disabilities and severe developmental delays.

422 U. Kilkelly and E. Savage (2013) *Child-Friendly Healthcare: A Report Commissioned by the Ombudsman for Children*, Dublin: Ombudsman for Children.

423 J. Williams et al. (2013) *Growing Up in Ireland, National Longitudinal Study: Infant Cohort, Development from Birth to Three Years*, Dublin: Stationery Office, pp. 40–42.

424 A. Nolan and B. Nolan (2005) *Ireland's Health Care System: Some Issues and Challenges*, Dublin: Economic and Social Research Institution, p. 83.

425 B. Harvey (2007) *Evolution of Health Services and Health Policy in Ireland*, Dublin: Combat Poverty Agency, p. 14.

426 Health Insurance Authority (2014) *Market Statistics: February 2014*, Dublin: HIQA.

427 A spokesperson for Our Lady's Children's Hospital, Crumlin has said that there are currently 174 children on their spinal surgery list. L. Kelly, 'Desperate mother begs Health Minister for life-changing spinal surgery for daughter (13)', *Irish Independent* [online], 30 April 2015, [online] <http://www.independent.ie/irish-news/news/desperate-mother-begs-health-minister-for-lifechanging-spinal-surgery-for-daughter-13-31185135.html> [accessed 1 May 2015].

428 P. Conroy, *The Case for Speech and Language Therapy: A Working Paper Prepared for and by Inclusion Ireland*, <http://www.inclusionireland.ie/sites/default/files/attach/article/1158/thecaseofspeechandlanguageotherapy1.pdf> [accessed 1 May 2015].

429 17,601 children were waiting for orthodontic treatment at the end of 2014 compared to 15,697 at the end of 2013 – an increase of 12%. These figures were provided by the Minister of State with special responsibility for Primary Care, Social Care (Disabilities and Older People) and Mental Health, Kathleen Lynch TD, in response to a question from Billy Kelleher TD, Fianna Fáil spokesperson on health. See: P. Cullen, 'Teenagers awaiting orthodontic treatment up 12%', *The Irish Times* [online], 9 March 2015 <http://www.irishtimes.com/news/health/teenagers-awaiting-orthodontic-treatment-up-12-1.2131284> [accessed 1 May 2015].

430 Amnesty International, *Right to Health*, <http://www.amnesty.ie/righttohealth> [accessed 7 May 2015].

431 Department of Health, 'Health Ministers Publish Future Health: A Strategic Framework for Reform of the Health Service 2012–2015' [press release], 15 November 2012.

432 Health (General Practitioner Service) Act 2014.

433 Communication received by the Children's Rights Alliance from the Department of Health, 27 January 2013.

434 See the Citizens Information website http://www.citizensinformation.ie/en/health/entitlement_to_health_services/medical_card.html [accessed 28 September 2015].

435 For example, see Jack and Jill Foundation, 'Medical Cards for Children with Life Limiting Conditions' [press release] 13 April 2015, <http://www.jackandjill.ie/tag/medical-cards/> [accessed 7 May 2015]; Our Children's Health, *Louise's Story*, http://www.ourchildrenshealth.ie/?page_id=191 [accessed 6 January 2015] and Christine Bohan, 'It is only a matter of time before a stressed out parent is pushed over the edge', *The Journal.ie* [online], 9 May 2014, <http://www.thejournal.ie/nurses-jack-and-jill-foundation-medical-cards-1456270-May2014/> [accessed 10 February 2015].

436 Department of Health, 'Suspension of Medical Card Reviews' [press release], 29 May 2014.

437 Joint Oireachtas Committee of Public Accounts, Debate on Eligibility for Medical Cards, 12 June 2014, <http://bit.ly/MedicalCardsPAC> [accessed 22 July 2014].

438 C. Bohan, 'It is only a matter of time before a stressed out parent is pushed over the edge', *The Journal.ie*, 9 May 2014, <http://www.thejournal.ie/nurses-jack-and-jill-foundation-medical-cards-1456270-May2014/> [accessed 10 February 2015].

439 Health Service Executive (2014) *Report of the Expert Panel on Medical Need for Medical Card Eligibility*, p. 7 <http://www.hse.ie/eng/services/publications/corporate/expertpanelmedicalneed.pdf> [accessed 1 September 2015].

440 *Ibid.*

441 Department of Health, 'Lynch & Varadkar announce ten key actions for Medical Card System' [press release], 25 November 2014 <http://health.gov.ie/blog/press-release/lynch-varadkar-announce-ten-key-actions-for-medical-card-system/> [accessed 25 November 2014].

273. Children's Hospital: The Government is committed to building a new national children's hospital to replace the existing three children's hospitals.⁴⁴² The building of the hospital has been delayed due to a range of factors, including a change of location following a failed planning application.⁴⁴³ The current completion date is estimated as mid-2019: 13 years on from the initial recommendation that the hospital should be built.⁴⁴⁴ The cut-off age for treatment at the new hospital will be 16 years of age, although children already within the hospital system will be treated up to the age of 18.⁴⁴⁵ This policy is not in line with the Convention or with the European Charter for Children in Hospital which defines a child as a person under the age of 18 years of age.⁴⁴⁶

274. Recommendation: The Committee is urged to recommend that the State completes the building of the new children's hospital as a matter of priority, and sets the age limit for treatment in the hospital at 18 years, consistent with the requirements of the Convention.

275. Breastfeeding: Article 24(2)(e) obliges States to ensure that all segments of society, in particular parents, are 'informed, have access to education and are supported in [...] the advantages of breastfeeding...'. In 1998, the Committee expressed its concern 'about the low rate of breastfeeding' in Ireland and 'the lack of awareness of its positive impact on children's health'.⁴⁴⁷ The Committee's *General Comment No. 15* provides that States should 'ensure full protection and promotion of breastfeeding practices' to help combat child mortality and that that States should implement the 'protect, promote and support' framework, adopted by the World Health Assembly.⁴⁴⁸

276. Breastfeeding policy guidelines are in place in Ireland since 2006 and some hospitals in the State have participated in the World Health Organization Baby-Friendly Hospitals Initiative since 1998.⁴⁴⁹ Despite these initiatives, breastfeeding rates among Irish women are still low.⁴⁵⁰ Research has found that just over half of mothers (56 per cent) initiate breastfeeding in hospital compared with over 90 per cent in Scandinavian countries.⁴⁵¹ The figure for breastfeeding falls to 70 per cent within a month of leaving hospital and six months after giving birth just a quarter of mothers who had initiated breastfeeding continue the practice.⁴⁵²

277. Advertising of milk formula products in Ireland is subject to EU regulations which include restrictions on the advertising of infant formula (for those under six months) and 'follow-on' formulas (for those under 12 months).⁴⁵³ However, the regulations do not apply to the full range of products covered by the World Health Organization's International Code of Marketing of Breast-milk Substitutes, such as all breast-milk substitutes, bottles, teats and bottle-fed complementary foods.⁴⁵⁴ Furthermore, the Special Rapporteur on Child Protection has called on advertising to be prohibited rather than restricted, given its effects on breastfeeding rates.⁴⁵⁵

278. Recommendation: The Committee is urged to recommend that the State promotes increased public understanding of breastfeeding and its benefits; takes measures to support women on their return to work to allow them to continue to breastfeed beyond 26 weeks; and ensures stringent enforcement, backed up by persuasive penalties, of the EU regulations on the advertising of breast milk substitutes.

279. Obesity: The UN Committee has set out measures which State parties should take to meet their obligations under Article 24 (right to health) in relation to addressing obesity in children.⁴⁵⁶

280. Despite some progress on implementation of the recommendations of the 2005 National Taskforce on Obesity,⁴⁵⁷ childhood obesity remains a serious concern. A 2011 survey of 5 to 12 year-olds found that one girl in four and one boy in five in Ireland is overweight or obese.⁴⁵⁸ Another study of children aged nine found that children from disadvantaged backgrounds are more likely to be obese.⁴⁵⁹

281. In Ireland, there are three State-run obesity prevention programmes for children identified at risk of becoming obese,⁴⁶⁰ and two group treatment programmes for obese children.⁴⁶¹ One of the State's three dedicated children's hospitals has a specific intervention programme for children with obesity,⁴⁶² this programme has a waiting list of six months.⁴⁶³

282. Research shows that calories from healthy foods such as fruit, vegetables and lean meat are up to 10 times more expensive than those from foods high in fat, sugar and salt.⁴⁶⁴ There is no State intervention to subsidise healthy food.

442 McKinsey & Company, Inc. (2006) *Children's Health First*, http://www.hse.ie/eng/services/publications/Hospitals/Childrens_Health_First_McKinsey_Report_2006_.pdf [accessed 1 September 2015].

443 M. Wall, '€35 million lost in move of site of new children's hospital', *The Irish Times* [online], 24 October 2014, <http://www.irishtimes.com/news/health/35-million-lost-in-move-of-site-of-new-children-s-hospital-1.1974989> [accessed 8 December 2014].

444 McKinsey & Company, Inc. (2006) *Children's Health First*, p. 61 http://www.hse.ie/eng/services/publications/Hospitals/Childrens_Health_First_McKinsey_Report_2006_.pdf [accessed 1 September 2015].

445 Department of Health, *Project Brief for the New Children's Hospital: Summary*, p. 2 <http://health.gov.ie/wp-content/uploads/2014/03/Project-Brief-for-the-New-Children-Summary-Document-for-Media-Release.docx.pdf> [accessed 6 January 2015]. This decision is, presumably, based on the recommendations in: Clinical Strategy and Programmes Directorate, HSE and Royal College of Physicians of Ireland, *Review of Paediatric and Neonatology Services and Framework for Future Development* <http://www.hse.ie/eng/about/Who/clinical/natclinprog/paediatricsandneonatology/revframe13.pdf> [accessed 28 September 2015].

446 See: European Association for Children in Hospital, *The EACH Charter* <http://www.each-for-sick-children.org/each-charter.html> [accessed 20 September 2015].

447 UN Committee on the Rights of the Child (1998) *Concluding Observations: Ireland, CRC/C/15/Add.85*, paras. 18 and 37.

448 UN Committee on the Rights of the Child, *General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24) CRC/C/GC/15*; World Health Organization and United Nations Children's Fund (UNICEF) (2003) *Global Strategy for Infant and Young Child Feeding*, Geneva: World Health Organization.

449 R. Layte and C. McCrory (2014) *Growing up in Ireland, National Longitudinal Survey on Children, Maternal Health Behaviours and Child Growth in Infancy, Analysis of the Infant Cohort of the Growing Up in Ireland Study*, Dublin: Stationery Office, p. 7 and p. 41; Department of Health and Children and the National Committee on Breastfeeding (2005) *Breastfeeding in Ireland: A Five-Year Strategic Action Plan*, Dublin: Department of Health and Children; World Health Organization and UNICEF (2009) *Baby-Friendly Hospital Initiative: Revised, Updated and Expanded for Integrated Care*, Geneva: WHO and UNICEF.

450 R. Layte and C. McCrory (2014) *Growing up in Ireland, National Longitudinal Survey on Children, Maternal Health Behaviours and Child Growth in Infancy, Analysis of the Infant Cohort of the Growing Up in Ireland Study*, Dublin: Stationery Office, p. 48. This study showed that women from EU12 Member States (i.e., the states which joined the EU in the fifth enlargement) and African countries are four and 10 times more likely, respectively, to be breastfeeding at discharge from hospital compared to an Irish woman.

451 Economic and Social Research Institute and HSE National Office of Health Promotion, 'Breastfeeding in Ireland 2012: Consequences and Policy Response' [press release], 1 October 2012, https://www.esri.ie/news_events/latest_press_releases/breastfeeding_in_ireland_/index.xml [accessed 7 May 2015].

452 R. Layte and C. McCrory (2014) *Growing up in Ireland, National Longitudinal Survey on Children, Maternal Health Behaviours and Child Growth in Infancy, Analysis of the Infant Cohort of the Growing Up in Ireland Study*, Dublin: Stationery Office, p. 45.

453 The most recent is Regulation (EU) No 609/2013 of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control.

454 World Health Organization, International Code of Marketing of Breast-milk Substitutes, <http://www.who.int/nutrition/publications/infantfeeding/9241541601/en/> [accessed 1 September 2015].

455 G. Shannon, *Seventh Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas*, Dublin, p. 55, <http://www.dca.gov.ie/documents/publications/SeventhSpecialRapReport2014.pdf> [accessed 15 January 2015].

456 UN Committee on the Rights of the Child, *General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24) CRC/C/GC/15*.

457 Department of Health and Children (2009) *Report of Inter-sectoral Group on the Implementation of the Recommendations of the National Task Force on Obesity*, <http://www.safefood.eu/SafeFood/media/SafeFoodLibrary/Documents/Professional/All-island%20Obesity%20Action%20Forum/intersectoral.pdf> [accessed 1 May 2015].

458 Health Service Executive and Safe Food (2011) *Body Weight and Eating Habits in 5-12 Year Old Irish Children: The National Children's Food Survey, Summary Report*, p. 16. <https://www.safefood.eu/SafeFood/media/SafeFoodLibrary/Documents/Publications/Research%20Reports/Bodyweight-pdf.pdf> [accessed 19 May 2015].

459 R. Layte, and C. McCrory (2011) *Growing up in Ireland, National Longitudinal Survey on Children: Overweight and Obesity Among 9-year-olds*, Dublin: Stationery Office.

460 The 'Lifestyle' programme in Longford and Westmeath, Offaly and Laois (for children aged 5-10 years), The 'Cool Dude' Food Programme in Dublin South East/Wicklow (for children aged 8-12 years), The 'Bounce - Built to Move' programme in Galway (for children aged 9-12 years).

461 *Ibid.*

462 Temple Street Children's University Hospital, W82GO Physical Activity Programme, <http://www.cuh.ie/w82go-physical-activity-programme-children-families/> [accessed 16 April 2015].

463 Communication received by the Children's Rights Alliance from W82GO Programme, 16 April 2015.

464 Food Safety Authority of Ireland (2011) *Scientific Recommendations for Healthy Eating in Ireland*, Dublin: FSAI, p. 16.



- 283.** There is a strong link between physical activity and being overweight.⁴⁶⁵ Over half of primary school children do not meet the Government's Physical Activity Guidelines which recommend 60 minutes of moderate physical activity per day for children.⁴⁶⁶ Ireland has fewer hours of compulsory physical education classes than other EU Member State.⁴⁶⁷ For example, Irish primary school pupils have 37 hours of physical education throughout the school year, in contrast to France which has 107 hours. Figures for secondary schools are slightly higher with students having 45 hours physical education over the school year.⁴⁶⁸
- 284.** A study of 13 year olds showed that children from a higher social class and from families with higher levels of parental education had higher levels of exercise.⁴⁶⁹ Just 39 per cent of those surveyed had participated in exercise in nine of the previous 14 days.⁴⁷⁰ Over one-third (37 per cent) of children in the lowest social group had never participated in organised sports.⁴⁷¹
- 285.** There has been a steady decline in the numbers of children walking and cycling to school.⁴⁷² In 1986, almost a half (45 per cent) of children aged from 5 and 12 years walked to school; by 2011 this figure had dropped to below a quarter (24 per cent). The corresponding figures for cycling show a drop from 4 per cent to just over 1 per cent of children.⁴⁷³ A sharp decline in walking and cycling is also evident for children aged 13 to 18 years. Whereas in 1986 almost one-third (31 per cent) of this age group walked to school, by 2011 the figure had fallen to 23 per cent, and the figures for cycling dropped from 15 per cent to 2 per cent.⁴⁷⁴
- 286. Recommendation:** The Committee is urged to recommend that the State adopts comprehensive policies on food poverty, obesity and physical activity. In addition, planning regulations should be amended to restrict the number of fast food outlets, in particular in locations adjacent to schools, and measures should be taken to subsidise healthy food.
- 287.** The UN Committee has called for the regulation of marketing and availability of foods that have high levels of sugar, salt and fat to children and for the control of their availability in schools.⁴⁷⁵ Research with children aged between three and five years found that they recognised more unhealthy brands than healthy brands.⁴⁷⁶
- 288. Recommendation:** The Committee is urged to recommend that the State strengthens legislation and regulations in relation to the broadcast and online digital marketing of food that is high in sugar, salt and fat, including the introduction of a complete ban on television advertising and sponsorship from 6 a.m. to 9 p.m.; and develops national nutrition standards for all publicly funded education and health settings.

> EFFORTS TO ADDRESS THE MOST PREVALENT HEALTH CHALLENGES, INCLUDING MENTAL HEALTH

- 289. Mental Health:** In 2006, the Committee reiterated its previous recommendation⁴⁷⁷ and called on the State to implement recommendations of the Expert Group on Mental Health Policy in 2003 including to undertake awareness-raising and sensitisation measures to prevent stigmatisation and ensure that focus is given to early intervention programmes. It also recommended that the State continue its efforts to ensure that children with mental health difficulties benefit from specific services designed for children under 18 years of age.⁴⁷⁸
- 290.** Since 2006, there has been much focus and some progress on child and adolescent mental health as set out in the State Report.⁴⁷⁹ However, there is still no clear legal entitlement to mental health care for children in Ireland. In March 2015, an Expert Group appointed by the Government recommended that the Mental Health Act, 2001 be amended to bring it into line with international human rights standards including on issues of capacity for decision-making and involuntary admissions.⁴⁸⁰ The Expert Group also recommended that the legislation should be amended to include a separate section on children, with its own set of guiding principles.⁴⁸¹
- 291. Recommendation:** The Committee is urged to recommend that the State amends the Mental Health Act, 2001 to ensure it is fully compliant with international human rights standards and includes a separate section on children under 18 years, with its own set of guiding principles, including the best interests of the child and the voice of the child.⁴⁸²
- 292. Community Mental Health Services for Children:** In Ireland, primary care for children's mental health is delivered through the Child and Adolescent Mental Health Services (CAMHS).⁴⁸³ This service, located within the Health Service Executive, is underdeveloped. Of the estimated 107 specialist teams needed for CAMHS to operate effectively,⁴⁸⁴ only 63 are currently in operation.⁴⁸⁵ There are significant staff shortages within CAMHS as well as delays in filling allocated posts and a lack of adequate training and development of staff.⁴⁸⁶ There are no national standards guiding the operation of CAMHS; furthermore, there is no national policy to guide the process of transition from child to adult mental health services when a young person reaches the age of 18 years.⁴⁸⁷

465 Department of Children and Youth Affairs, Trinity College Dublin, Economic and Social Research Institute, *Growing up in Ireland, National Longitudinal Study of Children, Key Findings, 13-Year-Olds, No. 2, Physical Activity and Obesity Among 13-Year-Olds*, p. 1 and p. 5 http://www.growingup.ie/fileadmin/user_upload/Conference_2012/GUI_KF_A4_2_obesity.pdf [accessed 1 September 2015].

466 Department of Health and Children and Health Service Executive (2009) *The National Guidelines on Physical Activity for Ireland*. Dublin: Department of Health and Children and Health Service Executive, p. 6; C.B. Woods, D. Tannehill, A. Quinlan, N. Moyna and J. Walsh (2010) *The Children's Sport Participation and Physical Activity Study (CSPPA)*. Dublin: School of Health and Human Performance, DCU and The Irish Sports Council (Research Report No. 1), p. 2.

467 European Commission/EACEA/Eurydice (2013) *Eurydice Report: Physical Education and Sport at School in Europe*, Luxembourg: Publications Office of the European Union.

468 *Ibid.*

469 Department of Children and Youth Affairs, Trinity College Dublin, Economic and Social Research Institute, *Growing up in Ireland, National Longitudinal Study of Children, Key Findings, 13-Year-Olds, No. 2, Physical Activity and Obesity Among 13-Year-Olds*, p. 3 http://www.growingup.ie/fileadmin/user_upload/Conference_2012/GUI_KF_A4_2_obesity.pdf [accessed 1 September 2015].

470 *Ibid.*, p. 2.

471 *Ibid.*, p. 3.

472 Central Statistics Office, *Census 2006 – Travel to Work, School and College (Volume 12)* Dublin: Stationery Office; Central Statistics Office, *Census 2011, Profile 10: Door to Door – Commuting in Ireland: Statistical Tables and Appendices*, Dublin: Stationery Office.

473 *Ibid.*

474 *Ibid.*

475 UN Committee on the Rights of the Child, *General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)* CRC/C/GC/15, 17 April 2013.

476 Safe Food, 'New research highlights links between advertising and preschoolers' food brand knowledge' [press release] 2 June 2014, <http://www.safefood.eu/News/2014/New-research-highlights-links-between-advertising.aspx> [accessed 1 September 2015].

477 UN Committee on the Rights of the Child (1998) *Concluding Observation: Ireland*, CRC/C/15/Add.85, paras. 20 and 38.

478 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, para. 47.

479 See Department of Children and Youth Affairs (2013) *Ireland's Consolidated Third and Fourth Reports to the UN Committee on the Rights of the Child*, Dublin: Department of Children and Youth Affairs, paras. 491–497.

480 *Expert Group on the Review of the Mental Health Act 2001 (2015)* Dublin: Department of Health, p. 7.

481 *Ibid.*, p. 73.

482 Department of Health (2015) *Report of the Expert Group on the Review of the Mental Health Act 2001*, Dublin, p. 73.

483 This service is located within the Health Service Executive.

484 Health Service Executive (2012) *Fourth Annual Child and Adolescent Mental Health Service Report 2011–2012*, Dublin: Health Service Executive, p. 9.

485 Minister of State for Disability, Equality, Mental Health and Older People, Kathleen Lynch TD, *Mental Health Services [14649/15] Dáil Debates*, 15 April 2015.

486 Children's Mental Health Coalition (2015) *Meeting the Mental Health Support Needs of Children and Adolescents*, Dublin: CMHC, pgs. 10–11.

487 *Ibid.*

- 293.** The demand for CAMHS is rising: referrals increased by 49% between June 2014 and May 2015.⁴⁸⁸ In May 2015, 3,110 children were waiting to receive a CAMHS appointment, of whom 1,729 had been waiting for longer than three months, and 383 had been waiting for more than a year.⁴⁸⁹ In some areas, non-acute cases have waited for up to two years.⁴⁹⁰ a challenge also exists in that there is no one person or agency responsible for caring for children while they are on a waiting list.⁴⁹¹
- 294.** Vulnerable children, such as children in the care and youth justice systems, and homeless children, may experience additional difficulties in accessing mental health supports.⁴⁹² Of particular concern is the mental health of lesbian, gay, bisexual and transgender (LGBT) young people. A study of LGBT young people under the age of 25 years found that 27 per cent of those interviewed had self-harmed; one third had seriously thought of ending their lives in the past year; and 18 per cent had attempted suicide.⁴⁹³
- 295. Recommendation:** The Committee is urged to recommend that the State takes steps to address the unacceptable waiting lists for children to access mental health services, and that it develops quality standards and guidelines to govern the operation of the Child and Adolescent Mental Health Services (CAMHS).
- 296 In-Patient Admissions:** On admission to an in-patient mental health unit, a child is categorised as either a 'voluntary' or 'involuntary' patient.⁴⁹⁴ The term 'voluntary' refers to the fact that the child's parent or legal guardian has provided consent on their behalf.⁴⁹⁵ As a 'voluntary' patient, a child has fewer protections and safeguards than a child or adult classified as an 'involuntary' patient.⁴⁹⁶ The Law Reform Commission recommended the introduction of a new category of 'informal admission' for children admitted under the Mental Health Act, 2001 by parental consent.⁴⁹⁷ The admission and treatment of this intermediate category of patients would be subject to regular review, in the same manner as for involuntary patients.⁴⁹⁸
- 297. Recommendation:** The Committee is urged to recommend that the State amends the Mental Health Act, 2001 to provide for a new category of 'informal admission' so that the same level of protections and safeguards is afforded to all children admitted to in-patient mental health units, and that all admissions be reviewed by the Mental Health Tribunal.⁴⁹⁹

- 298.** The UN Committee on the Rights of the Child has stated that, where placement in a psychiatric unit is necessary, adolescents should be separated from adults, where appropriate; and any decision on their care should be made in accordance with their best interests.⁵⁰⁰ Annual inspections of in-patient facilities are carried out by the Inspector of Mental Health Services.⁵⁰¹ The Inspector has found some incidences where children have not been consulted on their care plan⁵⁰² and the continuing lack of availability of beds in child units,⁵⁰³ has resulted in children being placed inappropriately in adult settings.⁵⁰⁴
- 299.** The Mental Health Act, 2001 does not require that children be admitted to age-appropriate mental health facilities nor does it prohibit the admission of children to adult in-patient facilities. The Mental Health Commission's *Code of Practice Relating to the Admission of Children under the Mental Health Act 2001*, which was published in 2006, sought to end the placement of children in inappropriate settings including adult units by 2011, except in exceptional circumstances.⁵⁰⁵ Despite the operation of the Code, children continue to be detained inappropriately in adult in-patient mental health facilities. In 2014, almost one-third of child and adolescent in-patient admissions (89 admissions) were to adult facilities. A 2014 inspection by the Mental Health Commission found that the Department of Psychiatry in Connolly Hospital (an adult unit in Dublin) had been obliged to admit acutely ill children on numerous occasions because no bed was available in a child and adolescent approved centre. It found that the department was not a suitable environment for a child nor could it 'deliver optimal care and treatment'.⁵⁰⁶ Given the continued placement of children in adult in-patient wards, it is clear that the non-legally binding Code has not been effective.⁵⁰⁷
- 300. Recommendation:** The Committee is urged to recommend that the State takes steps to end the practice of placing children in adult mental health facilities, other than in exceptional circumstances where it would be in the best interests of the child to do so, and to ensure adequate provision of children and adolescent mental health in-patient units, as recommended in *A Vision for Change, Report of the Expert Group on Mental Health Policy*.

488 Health Service Executive, *Performance Assurance Report*, May 2015, p. 91. <http://www.hse.ie/eng/services/publications/corporate/performance/may15pr.pdf>

489 *Ibid.*

490 Children's Mental Health Coalition, *Meeting the Mental Health Support Needs of Children and Adolescents*, Dublin: CMHC, p. 10 https://www.iasw.ie/attachments/Childrens-Mental-Health-Coalition-support_needs_children_&_Adolescents.pdf [accessed 1 September 2015].

491 *Ibid.*

492 Children's Mental Health Coalition (2013) *Someone to Care: The Mental Health Needs of Children and Young People with Experience of the Care and Youth Justice Systems*, Dublin: Children's Mental Health Coalition.

493 P. Mayock et al. (2009) *Supporting LGBT Lives: A Study of the Mental Health and Well-Being of Lesbian, Gay, Bisexual and Transgender People*, Dublin: Gay and Lesbian Equality Network (GLEN) and BeLonG To, p. 19.

494 A very small number of 'involuntary' admissions occur under Section 25 of the Mental Health Act, 2001.

495 Under Section 2 of the Mental Health Act, 2001, a child under 18 years cannot consent to mental health treatment.

496 The failure to provide safeguards for 'voluntary' child patients in Ireland has been observed by the Council of Europe's Committee for the Prevention of Torture (CPT). Council of Europe (2011) *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*, (10 February 2011) CPT/Inf (2011) 3, 60. Involuntary patients are entitled to have their treatment and detention reviewed by a Mental Health Tribunal whereas the care of 'voluntary' child patients is reviewed by the District Court, which does not have specialist expertise in the area of mental health. The District Court is a court of local and summary jurisdiction. It deals with criminal, civil, family law and licensing cases.

497 Law Reform Commission (2009) *Children and the Law: Medical Treatment*, Dublin: Law Reform Commission.

498 *Ibid.*

499 Mental Health Act, 2001, s. 25. Mental Health Tribunals are established by the Mental Health Commission. Their role is to either revoke or affirm an admission order to a mental health facility or a renewal order for the continuance of the admission. For more information visit http://www.mhcirl.ie/for_H_Prof/Mental_Health_Tribunals/ [accessed 1 April 2015].

500 UN Committee on the Rights of the Child (2003) General Comment No. 4: Adolescent Health, CRC/GC/2003/4.

501 The Mental Health Commission is an independent body, established under the Mental Health Act, 2001. The Commission is responsible for appointing the Inspector. See: <http://www.mhcirl.ie/#sthash.JsmtV3N3.dpuf> [accessed 1 September 2015].

502 Mental Health Commission, *Report of the Inspector of Mental Health Services 2013, Child and Adolescent Mental Health Inpatient Unit, Merlin Park, 26 February 2013*, http://www.mhcirl.ie/File/IRs/CAMHS_Merlin_IR_2013.pdf [accessed 2 December 2013].

503 Health Service Executive, *Performance Assurance Report*, September 2014, <http://hse.ie/eng/services/news/media/focus/2014performanceassurancereport.694225.shortcut.html> [accessed 1 September 2015].

504 Mental Health Commission, *2014 Summary of Inspection Reports*, 9 October 2014. http://www.mhcirl.ie/Inspectorate_of_Mental_Health_Services/Summary_of_Inspection_Reports/ [accessed 13 January 2015].

505 Mental Health Commission (2006) *Code of Practice Relating to the Admission of Children under the Mental Health Act 2001*. http://www.mhcirl.ie/File/IRs/COP_Admission_2006.pdf and a 2009 Addendum http://www.mhcirl.ie/File/Addendum_to_child_COP_Dec_2011.pdf.

506 See: Mental Health Commission, *Inspector of Mental Health Services 2014 Reports*, 9 October 2014 http://www.mhcirl.ie/Inspectorate_of_Mental_Health_Services/Summary_of_Inspection_Reports/ [accessed 1 September 2015].

507 Health Service Executive (2013) *Health Service Management Data Report, September 2013*, Dublin: Health Service Executive, p. 76.

> REPRODUCTIVE HEALTH RIGHTS OF ADOLESCENTS AND MEASURES TO PROMOTE A HEALTHY LIFESTYLE

- 301.** In 2006, the Committee expressed concern 'that adolescents have insufficient access to necessary information on reproductive health [and that t]he education is optional and parents can exempt their children from such education.'⁵⁰⁸ The Committee called on Ireland to 'strengthen its efforts to enhance access to adolescent-specific reproductive and sexual health information and services'.⁵⁰⁹
- 302.** There has been a significant fall in the number of births to teenage mothers in Ireland over the past decade – the number in 2014 was less than half that for 2004.⁵¹⁰ A National Sexual Health Strategy is expected to be published shortly and is long overdue.⁵¹¹
- 303.** Currently sexual and reproductive health education is taught through the schools' curricula and is supported by programmes which take place in non-formal education sites by youth organisations. Section 4 of the Rules and Programme for Secondary Schools requires schools to have an agreed policy for Relationships and Sexuality Education (RSE) and a suitable RSE programme in place for all students in post-primary schools. It is the responsibility of individual schools to ensure that an RSE programme is made available to all students in accordance with its own ethos;⁵¹² this means that the curriculum in respect of this issue varies, depending on the school. In addition, parents may exempt their child from 'instruction in any subject which is contrary to the conscience of the parent'.⁵¹³ The Department of Education and Skills has been criticised for a lack of monitoring and evaluation, resulting in 'poor and inconsistent implementation of a comprehensive sexuality education'.⁵¹⁴
- 304.** A study on teenage sexuality commissioned by the Crisis Pregnancy Agency found only half of young people (18–25 years) who had received sex education reported that they had been given information on sexual feelings, relationships and emotions; 66 per cent on safer sex and STIs; and 70 per cent on contraception. Parents' and teachers' discomfort in talking about these topics may mean young people lack knowledge about these issues.⁵¹⁵ In 2013, more than one tenth (12 per cent) of those who were newly diagnosed as having HIV were young people, aged 15 to 24 years.⁵¹⁶
- 305. Recommendation:** The Committee is urged to again recommend that the State strengthens its efforts to enhance access to adolescent-specific reproductive and sexual health information and services, and to ensure the Relationships and Sexuality Education (RSE) programme is rolled out in full, and completes and implements a National Sexual Health Strategy, with a focus on young people.

508 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, para. 52.
 509 *Ibid.*, para. 53.
 510 Central Statistics Office, *Vital Statistic: Yearly Summary 2014*, Dublin: Central Statistics Office, <http://www.cso.ie/en/releasesandpublications/ep/p-vs/vitalstatisticsyearlysummary2014/>
 511 Department of Health, *Sexual Health*, <http://health.gov.ie/healthy-ireland/health-protection/sexual-health/> [accessed 1 May 2015].
 512 Department of Education and Science Circular M4/95.
 513 Education Act, 1998, s. 30(2)(e). This also applies to students who are over the age of 18.
 514 Irish Family Planning Association (2012) *Compendium on Sexuality Education*, Dublin: IFPA, p. 51.
 515 Crisis Pregnancy Agency, *Research on Teenage Sexuality*, p. 2 <http://www.crisispregnancy.ie/wp-content/uploads/2012/10/Research-on-teenage-sexuality-2012-SEPARATE-PAGES.pdf> [accessed 31 March 2015].
 516 HSE-Health Protection Surveillance Centre (2014) *HIV in Ireland: 2013 Report*, Dublin: HPSC, p. 8.

> MEASURES TO PROTECT CHILDREN FROM SUBSTANCE ABUSE

- 306.** Article 33 obliges States to 'take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances'.
- 307.** The nature of drug use is continually changing. Research points to concern that children and others in the community are engaged in polydrug use, involving the consumption of a number of substances at the same time, most commonly alcohol, cannabis and prescription drugs, such as benzodiazepines and antidepressants, but also psychoactive substances, such as cocaine, heroin and methadone.⁵¹⁷
- 308. Alcohol:** In 2006, the Committee reiterated its earlier concern⁵¹⁸ 'about the high level of alcohol consumption by adolescents' and called on Ireland to 'strengthen its efforts to address alcohol consumption by children, by, *inter alia*, developing and implementing a comprehensive strategy which should include awareness-raising, the prohibition of alcohol consumption by children and advertising that targets children'.⁵¹⁹ The Committee also urged implementation of the recommendations from the second report of the Strategic Task Force on Alcohol.
- 309.** Since 2006, successive Governments have failed to adequately address the Committee's recommendations. In 2012, eight years after the publication of the second report of the Strategic Task Force on Alcohol, the *Report of the National Substance Misuse Strategy Steering Group* was published, setting out a similar set of core recommendations.⁵²⁰ The following year, the Government adopted a package of measures in line with the Steering Group's report.
- 310.** In 2015, the Government published the General Scheme of the Public Health (Alcohol) Bill 2015.⁵²¹ The legislation proposes to tackle alcohol-related harm as a public health measure by providing for health labelling of alcohol products; introducing minimum unit pricing for retailing of alcohol products; and regulating the marketing and advertising of alcohol. The provisions of the General Scheme are to be welcomed. However, the proposal under Head 9 of the Bill to place the existing voluntary code on marketing⁵²² on a statutory footing through regulation is inadequate as the Code's provisions on children are weak and it lacks a robust enforcement mechanism with associated penalties. In 2007, the World Health Organization Expert Committee on Problems Related to Alcohol Consumption argued against reliance on voluntary codes and self-regulation in relation to alcohol marketing and pointed out that 'governments may find that allowing self-regulation by industry results in loss of policy control' of the marketing of alcohol.⁵²³

517 CityWide Drugs Crisis Campaign, *The Drugs Crisis in Ireland: A New Agenda for Action*, CityWide Policy Statement, Dublin, February 2012, http://www.drugsandalcohol.ie/17145/1/Citywide_the_drugs_crisis_in_ireland_a_new_agenda_for_action.pdf [accessed 13 January 2015].
 518 UN Committee on the Rights of the Child (1998) *Concluding Observations: Ireland*, CRC/C/15/Add.85, para. 19.
 519 *Ibid.*, paragraph 49.
 520 These included an increase in the price of alcohol; commencement of Section 9 of the Intoxicating Liquor Act 2008 (which included, for example, structural separation of alcohol from other products in supermarkets); more stringent controls placed on the advertising of alcohol in places and times that children are likely to see them; and the phasing-out of sponsorship of sport and other large public events by the drinks industry by 2016.
 521 General Scheme of the Public Health (Alcohol) Bill 2015.
 522 Department of Health and Children *Alcohol Marketing, Communications and Sponsorship Codes of Practice*, <http://www.aai.ie/resources/uploads/1232368309.pdf?phpMyAdmin=53yr8Ej-y2jMMsxiB1sDXHs6wC0> [accessed 1 May 2015].
 523 World Health Organisation (2007) *Expert Committee on Problems Related to Alcohol Consumption*, 2nd Report, Geneva: WHO, p. 30.

- 311.** The Bill should be strengthened to include the phasing out and banning of alcohol sponsorship of sports events and other large public events, and should include also measures to reduce the number of outlets selling alcohol and cut back on the number of hours during which alcohol can be purchased.⁵²⁴
- 312.** The level of alcohol misuse by adolescents remains a serious concern in Ireland⁵²⁵ A study of consumption patterns in 2013 showed that 39 per cent of all people aged 15 years and over had engaged in binge drinking, or 'heavy episodic drinking', in the previous 30 days.⁵²⁶ This puts Ireland second at the top of the 194 countries studied.⁵²⁷ Over 60 per cent of girls and over 62 percent of boys aged 12 to 14 years had consumed alcohol in the previous 12 months.⁵²⁸
- 313.** Research also demonstrates that many children's lives are blighted by alcohol misuse within their families. One-tenth of Irish parents or guardians reported that children had experienced at least one or more harmful incidents in the previous 12 months as a result of someone else's drinking, including verbal abuse, being left in unsafe situations, witnessing serious violence in the home or physical abuse.⁵²⁹ In one study, alcohol abuse was found to be the reason for an application to take a child into care in over 12.3 per cent of cases documented.⁵³⁰
- 314. Recommendation:** The Committee is urged to recommend that the State enacts a comprehensive and ambitious Public Health (Alcohol) Bill to address alcohol misuse as a matter of urgency. In addition, measures are needed to ban below-cost selling of alcohol; eliminate alcohol sponsorship of sports and other public event events; reduce the availability of alcohol; regulate alcohol marketing; and tackle the link between alcohol misuse and instances of child abuse and neglect.
- 315. Tobacco:** Since 2004, the Government has continued to make commendable efforts to reduce smoking among children and adults, including publication in 2013 of a national policy on smoking, *Tobacco Free Ireland*,⁵³¹ the extension of the ban on smoking in work places to cover smoking in cars and other vehicles where a child is present;⁵³² and the enactment of the Public Health (Standardised Packaging of Tobacco) Act 2015, which will require standardised packaging for tobacco products.⁵³³
- 316.** Despite these positive steps, the most recently published survey found that 12 per cent of children smoke.⁵³⁴ This is a serious issue not just in terms of the short-term impact on children's health but in terms of long-term health consequences: the majority of those who die from tobacco-related diseases are people who started smoking while still a child.⁵³⁵ In Ireland, 5,200 people die each year from smoking-related diseases and the treatment of tobacco-related disease costs the health services €1 billion annually.⁵³⁶

524 See Alcohol Action Ireland, *Alcohol Marketing – Children under the Influence*, <http://alcoholireland.ie/policy/marketing-alcohol-children-under-the-influence/> [accessed 1 May 2015]; Alcohol Action Ireland, *Strong state alcohol policies reduce likelihood of binge drinking*, http://alcoholireland.ie/world_news/strong-state-alcohol-policies-reduce-likelihood-of-binge-drinking/ [accessed 1 May 2015].

525 Health Research Board, *Alcohol: Public Knowledge, Attitudes and Behaviours*, http://www.hrb.ie/uploads/tx_hrbpublications/Alcohol_-_Public_Knowledge_Attitudes_and_Behaviours_Report.pdf [accessed 8 January 2013]; ESPAD (2012) *The 2011 ESPAD Report: Substance Use Among Students in 36 European Countries*, Stockholm: The Swedish Council for Information on Alcohol and other Drugs, http://www.espad.org/Uploads/ESPAD_reports/2011/The_2011_ESPAD_Report_FULL_2012_10_29.pdf [accessed 8 January 2013].

526 Alcohol Action Ireland, *Alcohol News May 2014*, http://alcoholireland.ie/media_releases/irelands-high-levels-of-harmful-binge-drinking-highlighted-by-world-health-organisation-who/

527 *Ibid.*

528 Health Promotion Research Centre, *Health Behaviour in School-aged Children (HBSC) Ireland Study 2010, HBSC 2010 Full Variable Report: Socio-demographic patterns in the health behaviours, risk behaviours, health outcomes and social contexts of young people's lives*, Galway: National University of Ireland, Galway, p. 341. http://www.nuigalway.ie/hbhc/documents/2010__nat_rep_hbhc__full_variable_report__appendix_1.pdf p. 341 [accessed 8 January 2013].

529 A. Hope (2014) *Alcohol's Harm to Others in Ireland*, Dublin: Health Service Executive, p. 19 and p. 26.

530 C. Coultter (2014) *Second Interim Report, Child Care Law Reporting Project*, p. 4, <http://www.childlawproject.ie/wp-content/uploads/2014/10/Interim-report-2-Web.pdf> [accessed 1 September 2015].

531 The policy sets a target of 2025 to have a 'tobacco free' Ireland – in other words, to have a smoking prevalence rate of less than 5 per cent of the population. Two key themes underlie the policy: protecting children and the de-normalisation of tobacco use. See: Department of Health (2013) *Tobacco Free Ireland: Report of the Tobacco Policy Review Group*, Dublin: Department of Health, p. 42.

532 Protection of Children's Health (Tobacco Smoke in Mechanically Propelled Vehicles) Act 2014.

533 The Bill will also give effect, in part, to the revised European Council Tobacco Products Directive 2014/40/EU of 3 April 2014.

534 C. Kelly, A. Gavin, M. Molcho and S. Nic Gabhainn (2012) *The Irish Health Behaviour in School-aged Children (HBSC) Study 2010*, Galway: Department of Health and National University of Ireland, Galway.

535 Department of Health and Children (2013), *Tobacco Free Ireland*, Dublin: Department of Health and Children, p. 53.

536 Health Service Executive (2013) *National Service Plan 2014*, Dublin: Health Service Executive, p. 2.

- 317. Recommendation:** The Committee is urged to recommend that the State commences, as a matter of priority, the legislation banning smoking in cars where children are present and introducing standardised packaging of tobacco; that non-medicinal nicotine delivery systems (NMNDS), including e-cigarettes, are regulated by law and that a public awareness campaign, including high-profile TV advertisements, is rolled out to discourage children from experimenting with tobacco.

> SOCIAL SECURITY AND CHILDCARE SERVICES AND FACILITIES

- 318.** Article 26(1) obliges States to 'recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law'. Article 18(3) obliges the State to 'take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible'.
- 319.** There are more than 215,000 lone parent families living in Ireland.⁵³⁷ Over 31 per cent of lone parent households are at risk of poverty, 23 per cent are living in consistent poverty and over 63 per cent are experiencing two or more types of deprivation.⁵³⁸ The rate of poverty among lone parent households is disproportionately higher than other family types.⁵³⁹ This level of inequality is unacceptable. The European Commission has noted that Ireland has one of the highest proportions of people living in 'low work-intensity' households in the EU and that low-work intensity is 'particularly severe' among lone parent families. In Ireland, the proportion of children living in such households was nearly three times the EU average in 2014.⁵⁴⁰
- 320.** The One Parent Family Payment is a means-tested social welfare payment for a lone-parent on a low income.⁵⁴¹ Until 2012, the payment was available to any lone-parent who satisfied the qualifying criteria until their youngest child reached 18 years of age.⁵⁴² New measures were then introduced with the stated aim of encouraging lone parents back to the workforce. The age threshold of the youngest child has been reduced for new recipients to seven years.⁵⁴³ The earnings disregard has been reduced from €146.50 per week in 2011 to €90 in 2014. It is planned to reduce it to €60 per week in 2016 for both new and existing recipients. Changes to the means-tested One Parent Family Payment since 2012 have led to about 60,000 recipients losing the payment.

537 Central Statistics Office (2012) *Census 2011: Profile 5 – Households and Families*, Dublin: Stationery Office, p. 22.

538 Central Statistics Office (2015) *Survey on Income and Living Conditions (SILC) 2013 Results*, Dublin: CSO, p. 18, <http://www.cso.ie/en/releasesandpublications/er/silc/surveyonincomeandlivingconditions2013/> [accessed 29 September 2015]; Vincentian Partnership for Social Justice (2015) *Minimum Essential Standard of Living 2015*, Dublin: VPSJ, http://www.budgeting.ie/images/stories/Publications/MESL_Update_Paper/VPSJ_2015_Minimum_Essential_Standard_of_Living.pdf [accessed 30 September 2015].

539 F. McGinnity et al. (2014) *Winners and Losers? The Equality Impact of the Great Recession in Ireland*, Dublin: Equality Authority and ESRI.

540 European Commission, *Recommendation for a Council Recommendation on the 2015 National Reform Programme of Ireland and Delivering a Council Opinion on the 2015 Stability Programme of Ireland*, Brussels: European Commission, 13.5.2015 COM(2015) 258 final, http://ec.europa.eu/europe2020/pdf/csr2015/csr2015_ireland_en.pdf [accessed 1 September 2015].

541 Department of Social Protection, *One Parent Family Payment*, <http://www.welfare.ie/en/Pages/One-Parent-Family-Payment.aspx> [accessed 1 May 2015].

542 *Ibid.*

543 *Ibid.*

321. Under the reforms, a key difficulty for many claimants moving to a new payment is that they no longer qualify for the same level of support. For example, for many, while they are working part time, they are not working the full 19 hours a week needed to qualify for the Family Income Supplement. There is also concern that the reduction in the earnings disregard is acting as a work disincentive.⁵⁴⁴ In 2012, 60 per cent of lone parents receiving the One Parent Family payment were working at least part time outside the home. This figure has fallen to just 36 per cent.⁵⁴⁵ Structural barriers also persist which are preventing the reforms from having the desired effect of moving parents from welfare-dependence to employment. Key among these barriers is access to affordable high-quality childcare and after-school supports, affordable housing and well paid family-friendly employment opportunities.⁵⁴⁶

322. There is grave concern that the reforms are contributing to the rising incidence of child poverty in Ireland.⁵⁴⁷

323. Recommendation: The Committee is urged to recommend that the State undertakes a review to assess the impact to date of the reforms on poverty rates and work activation; and takes other steps necessary to ensure that lone parents are adequately supported to effectively care for their children and to access quality, affordable childcare and after-school care to enable them to take up employment, training or education.

> STANDARD OF LIVING, INCLUDING MATERIAL ASSISTANCE AND SUPPORT PROGRAMMES

324. Article 27 obliges States to 'recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development' and that States 'shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.'

325. Ireland signed the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in 2012⁵⁴⁸ but has yet to ratify it.⁵⁴⁹



326. In 2006, the Committee called on the State to:

(a) Effectively implement its National Anti-Poverty Strategy and strengthen its support to families living in economic hardship in order to ensure that poverty is reduced and children are protected against the negative impact of economic hardship on their development;

(b) Introduce a supplement to the existing universal child benefit payments as an additional and targeted allowance to assist the families which experience highest levels of poverty;

(c) Implement fully existing policies and strategies and increase budgetary allocations for and subsidization of services, including childcare, healthcare and housing, for families with children who are particularly vulnerable; and

(d) Increase investments in social and affordable housing for low-income families.⁵⁵⁰

327. In 2006, Ireland was still experiencing a period of unprecedented economic growth. By the end of 2008, however, the country began to suffer a serious decline in its economic position and it soon entered recession, experiencing a sharp fall in income and a dramatic increase in unemployment. In December 2010, the country entered a European Commission/International Monetary Fund (IMF)/European Central Bank (ECB) Troika economic adjustment programme. The State exited from this programme in December 2013. Since 2014, Ireland's economic situation has improved considerably; growth has been above the EU average and unemployment has been falling (it has declined from a peak of almost 15 per cent to 9.6 per cent in Quarter 2 of 2015).⁵⁵¹

328. Austerity measures imposed from 2008 onwards in Ireland have had severe and negative impacts on children, young people and their families.⁵⁵² Budget adjustments over these years led to significant cuts to social welfare payments and public services. A link can be drawn between the cuts to social welfare payments and the Child Benefit payment and the increase in child poverty rates.⁵⁵³ A 2014 UNICEF report found Irish families with children lost the equivalent of ten years of income progress as a result of the economic crisis and an OECD study, which presented a league table measuring relative changes in child poverty during the recession, showed Ireland ranking as 37th of 41 countries.⁵⁵⁴

329. The level of child poverty is unacceptably high, and reflects a significant deterioration that was allowed to occur from the start of the economic crisis. The child poverty rate climbed from 6.3 per cent in 2008 to 11.7 per cent in 2013 (the most recent year for which figures are available).⁵⁵⁵ In that year, 11.7 per cent of children were living in consistent poverty while 17.9 per cent of children were 'at risk of poverty'.⁵⁵⁶ Children are 1.4 times more likely than adults to live in consistent poverty,⁵⁵⁷ and one child in three in Ireland is deprived of basic necessities.⁵⁵⁸ Children living in lone parent households suffer the highest rates of consistent poverty and deprivation. Families and their children seeking asylum and living in direct provision constitute another group deeply affected by poverty.⁵⁵⁹

544 One Family (2014) *One-Parent Family Payment & Income Disregards*, Dublin: One Family, http://www.onefamily.ie/wp-content/uploads/One-Family-Survey-Results-Feb-2014_Income-Disregards.pdf

545 See F. O'Toole, 'Poorest will be hardest hit by lone-parent cut', *The Irish Times*, 23 June 2015, [online], <http://www.irishtimes.com/opinion/fintan-o-toole-poorest-will-be-hardest-hit-by-lone-parent-cut-1.2258968> [accessed 29 June 2015].

546 See: Start Strong (2014) *The Double Dividend: Childcare that's Affordable and High Quality* [online], http://www.startstrong.ie/files/Double_Dividend_Policy_Brief_Web2.pdf [accessed 19 May 2015]. Full OECD data is available at: http://www.oecd.org/els/soc/Childcare_2012_EN_20141212.xlsx; Vincentian Partnership for Social Justice (2015) *Minimum Income Standard and the Cost of Childcare*, Dublin: VPSJ, http://www.budgeting.ie/images/stories/Publications/Papers/VPSJ_2015_MIS_-_Cost_of_Childcare.pdf, p.29 [accessed 19 May 2015].

547 *Ibid.*

548 Department of Justice and Equality, 'Ireland to Sign the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights' [press release], 5 March 2011, <http://www.justice.ie/en/JELR/Pages/PR12000050> [accessed 1 September 2015].

549 Amnesty International Ireland (2014) *Bringing ESC Rights Home: Ireland and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, Dublin: Amnesty International Ireland, p. 3.

550 UN Committee on the Rights of the Child (2006), *Concluding Observations of the Committee on the Rights of the Child, Ireland*, 29 September 2006, CRC/C/0/2, para. 57. In 1998, the Committee emphasised the need to take immediate steps to tackle child poverty and ensure that families have adequate resources and facilities. It also recommended that the State strengthen its efforts to ensure that children in poverty benefit from access to housing, education and health. See: UN Committee on the Rights of the Child (1998) *Concluding Observations of the Committee on the Rights of the Child: Ireland* CRC/C/15/Add.85, paras. 27 and 34.

551 Central Statistics Office, *Quarterly National Household Survey Quarter 2 2015*, Dublin: CSO Statistical Release, 26 August 2015, <http://www.cso.ie/en/releasesandpublications/er/qnhs/quarterlynationalhouseholdsurveyquarter22015/> [accessed 30 September 2015].

552 See Children's Rights Alliance series of 'Post Budget Analyses' from 2008 to 2014 available at www.childrensrightrights.ie.

553 B. Harvey (2014) *Universalism – The Preferred and Most Effective Option*, Dublin: Barnardos, p. 5.

554 UNICEF Office of Research (2014) *Children of the Recession: The Impact of the Economic Crisis on Child Well-Being in Rich Countries*, Innocenti Report Card 12, Florence: UNICEF Office of Research.

555 Central Statistics Office, Ireland: *At risk of poverty and consistent poverty rates by age group*, <http://www.cso.ie/en/releasesandpublications/ep/p-mip/measuringirelandsprogress2013/society/society-socialcohesion/#VUpn0fVhBc> [accessed 6 May 2015].

556 Central Statistics Office, *Survey on Income and Living Conditions (SILC)*, 2013 Results, <http://www.cso.ie/en/releasesandpublications/er/silc/surveyonincomeandlivingconditions2013/#VMpOnV0kvOF> [accessed 29 January 2015]. 2013 is the latest year for which results of SILC have been published.

557 Department of Social Protection (2014) *Social Inclusion Monitor 2012*, Dublin: Department of Social Protection, p. 15.

558 *Ibid.*

559 S. K. Arnold (2012) *State Sanctioned Child Poverty and Exclusion*, Dublin: Irish Refugee Council.



330. Under the EU 2020 Strategy, Ireland has committed to lift 200,000 people out of poverty by 2020.⁵⁶⁰ In 2014, a new national child-specific social target was introduced in the *National Policy Framework for Children and Young People 2014–2020*.⁵⁶¹ The target commits ‘to lift over 70,000 children out of consistent poverty by 2020, a reduction of at least two-thirds on the 2011 level’.⁵⁶² This target will need to be adjusted upwards to take account of the recent increases in child poverty.⁵⁶³ An Implementation Plan to achieve this target has yet to be published.

331. The social welfare system does provide a vital safety net⁵⁶⁴ but cuts during the recessions meant it was not able to fully protect many families from being pushed into poverty. A key challenge for families on low wages is the cost of healthcare, housing, education and childcare. The plan to address the target must include a focus on improving the affordability of key public services for families with children.

332. Recommendation: The Committee is urged to recommend that the State adopts a multidimensional rights-based plan to achieve the Child Poverty Target, in line with the EU *Recommendation on Investing in Children and the Convention*,⁵⁶⁵ with a specific focus on investment in public services.

333. Food Poverty: Since 2008, the prevalence of food poverty has increased dramatically, with nearly 10 per cent of the population unable to afford food at some stage in 2014.⁵⁶⁶ Teachers have reported an increase in the number of children coming to school hungry, and it has been suggested that pupils may lose the equivalent of six weeks of learning as a result of hunger.⁵⁶⁷

334. The relatively high cost of good quality, nutritious food is a key contributor to food poverty.⁵⁶⁸ Families from lower income backgrounds are priced out of having a healthy diet and are forced to rely on cheaper, energy-dense and micronutrient-poor foods. Research found that rates of social welfare payments and levels of earnings based on the minimum wage in Ireland are such as to make eating a healthy diet almost impossible.⁵⁶⁹ As a result, children living in lower-income families are more likely to suffer from poor health and to experience obesity.⁵⁷⁰

335. The risk of families on low incomes experiencing food poverty is related to the age of their children, with expenditure greatest when there are infants (who have specific dietary requirements) or teenagers (who need to consume more food) in the household.⁵⁷¹ Ireland has in place a School Meals Programme with almost 207,000 children benefiting from the programme in 2014. However, the programme does not cover the cost of kitchen equipment, facilities or salaries, training for staff or repurposing of space within the school to provide food in a safe and social way. This forces schools to take from their core budget or charge students to implement the programme.⁵⁷² There are no mechanisms to support non-formal education and early-years settings to address the issue of food poverty.

336. Recommendation: The Committee is urged to recommend that the State develops a national strategy on school food provision, reforms the School Meals Programme and extends the programme to non-formal education and early years settings, and also engages in food price monitoring in relation to the minimum wage and to social welfare payments.

337. Housing and Homelessness among Families with Children: Ireland is experiencing a housing and homelessness crisis. The number of families with children becoming homeless increased dramatically in 2014, with on average over 40 families becoming homeless each month, twice the number per month in 2013.⁵⁷³ Since the beginning of 2015, this upward trend has accelerated: in January, the number of families newly-presenting as homeless was 47; by August, the figure had risen to 78. In August 2015, there were 707 family units, with 1,496 children, living in emergency accommodation.⁵⁷⁴ The great majority of these homeless families were in Dublin, where there were 607 families with 1,275 children, in emergency accommodation. A stark indication of the worsening situation in Dublin is that in the period between December 2014 and August 2015, the number of families with children in emergency accommodation rose by 83 per cent (increasing from 331 to 607).

338. A factor contributing to the increasing number of families becoming homeless is the setting of Rent Supplement at levels substantially below market rents in a context of rising rents, particularly in urban areas. Other factors include increased demand for rental accommodation, landlords refusing to accept tenants reliant on Rent Supplement, lack of availability of social housing and personal indebtedness.⁵⁷⁵ In 2014, the Government published a *Social Housing Strategy* for the period up to 2020 which provides the basis for an enhanced approach to social housing provision and outlines actions to be taken to increase supply and reduce the number of people on waiting lists.⁵⁷⁶ The rise in homelessness is set against the backdrop of a very large number of households on the social housing waiting list – 89,872 households in 2013, with 47 per cent of these waiting seven years or more.⁵⁷⁷

339. The quality of emergency accommodation being offered to families – in hotel rooms and bed and breakfast (B&B) accommodation – is sometimes inappropriate for family life as such accommodation often means whole families living in one room with no kitchen facilities.⁵⁷⁸ Long-term living in emergency accommodation is costly, unsustainable and not conducive to childhood development. Children’s right to play and education are affected as there is little space for them to play or do homework; in some instances, children may have to travel long distances to remain in the school which they were attending prior to their family becoming homeless. Child welfare and protection issues arise where families are living in shared accommodation with people and staff who are not vetted and the service is not inspected. The lack of available accommodation means that families have become stuck in emergency accommodation, some living in hotels for one year. Alternative emergency accommodation is urgently required, such as modular housing.

340. Recommendation: The Committee is urged to recommend that the State provides appropriate, family-friendly emergency accommodation; enacts legislation to prohibit the placement of families with children in inappropriate emergency accommodation; and increases area-based Rent Supplement limits to realistic levels to prevent homelessness, as a temporary measure pending sufficient increases in housing stock.

560 Department of Social Protection (2012) *National Social Target for Poverty Reduction: Policy Briefing on the Review of the National Poverty Target*, Dublin: Department of Social Protection, p. 3. The Irish figure is based on the 2010 baseline rate of 6.3 per cent. The EU will be tracking the ‘at risk of poverty’ measure.

561 Government of Ireland (2014) *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020*, Dublin: Stationery Office.

562 *Ibid.*, commitment 4.2, p. 93.

563 Department of Social Protection (2014) *Social Inclusion Monitor 2012*, Dublin: Department of Social Protection, p. 15.

564 D. Watson and B. Maître (2013) *Social Transfers and Poverty Alleviation in Ireland: An Analysis of the Survey on Income and Living Conditions 2004–201*, Dublin: Department of Social Protection and the Economic and Social Research Institute, (Social Inclusion Report No. 4).

565 European Commission (2013) *Investing in Children: Breaking the Cycle of Disadvantage, Commission Recommendation of 20.2.2013*, Brussels: European Commission, C(2013) 778 final, p. 4.

566 Organisation for Economic Development and Co-operation (2014) *Society at a Glance 2014, Highlights: Ireland – The Crisis and its Aftermath*, Paris: OECD, p. 3. See also: C. Kelly, A. Gavin, M. Molcho and S. Nic Gabhainn (2012) *The Irish Health Behaviour in School-aged Children (HSBC) Study 2010*, Dublin: Department of Health and National University of Ireland, Galway.

567 D. MacGuil, ‘Teachers see a worrying rise in Irish children coming to school hungry’, *The Journal.ie* [online], 25 August 2014, <http://www.thejournal.ie/kids-going-to-school-hungry-ireland-1636952-Au-g2014> [accessed 20 April 2015].

568 Food Safety Authority of Ireland (2011) *Scientific Recommendations for Healthy Eating Guidelines in Ireland*, Dublin: FSAI.

569 B. MacMahon, and G. Weld, (2015) *The cost of a minimum essential food basket in the Republic of Ireland: Study for six household types*. Dublin: safefood <http://www.safefood.eu/SafeFood/media/SafeFoodLibrary/Documents/Publications/Research%20Reports/The-Cost-of-a-Minimum-Essential-Food-Basket-in-ROI-Pilot-Study-FINAL.pdf> p.15 [accessed 30 September 2015]. E.A. Dowler and D. O’Connor (2012) ‘Rights based approaches to addressing food poverty and food insecurity in Ireland’, *Social Science and Medicine*, Vol. 74 (No. 1), pp. 44–51.

570 J. Kearney et al. (2008) *Food and Nutrient Intake and Attitudes among Disadvantaged Group on the Island of Ireland*, Summary Report, Cork: Safefood.

571 See: B. MacMahon, G. Weld, R. Thornton and M. Collins (2012) *The Cost of a Child: A Consensual Budget Standards Study Examining the Direct Cost of a Child Across Childhood*, Dublin: Vincentian Partnership for Social Justice, p. 32, <http://www.budgeting.ie/images/stories/Publications/cost%20of%20a%20child%20-%20full%20report.pdf> [accessed 20 April 2015].

572 Correspondence received by the Children’s Rights Alliance from the Irish Heart Foundation, 20 April 2015.

573 P. Duncan, ‘Family Home Lost Every Day, says Focus’, *The Irish Times* [online], 5 August 2014, <http://www.irishtimes.com/news/social-affairs/family-home-lost-every-day-says-focus-1.1888185> [accessed 9 February 2015].

574 Department of the Environment, Community and Local Government, *Homeless Persons*, August 2015, <http://www.envron.ie/en/Publications/DevelopmentandHousing/Housing/FileDownload,42742,en,xlsx?> [accessed 29 September 2015].

575 K. Holland, ‘Homeless Crisis in Need of Urgent Action’, *The Irish Times* [online], 26 April 2014, <http://www.irishtimes.com/news/social-affairs/homeless-crisis-in-need-of-urgent-action-1.1774572> [accessed 9 February 2015].

576 Department of Environment, Community and Local Government, *Social Housing Strategy 2020: Support, Supply and Reform*, Dublin, November 2014, <http://www.envron.ie/en/PublicationsDocuments/FileDownload,39622,en.pdf> [accessed 9 February 2015].

577 Housing Agency (2013) *Summary of Social Housing Assessments 2013: Key Findings*, Dublin: The Housing Agency, Table A1.1: Net Household Need 1993–2013.

578 ISPC (2015) *Investing in Childhood: ISPC Childline Pre-2016 Budget Submission*, <http://www.ispc.ie/news-media/news/investing-in-childhood/13134> [accessed 30 September 2015]; Focus Ireland, Briefing Note: Family Homelessness <http://www.focusireland.ie/files/focus%20ireland%20family%20homelessness%20briefing%201.pdf> [accessed 30 September 2015].

- 341. Traveller Accommodation:** Due to a lack of data, exact figures for Traveller children living in inappropriate accommodation are not available. However, it is clear that many Traveller children continue to live in conditions that are far below the minimum required for healthy child development and this is reflected in their health outcomes. Some Traveller families continue to live on the side of the road with no access to basic amenities including running water or sewage facilities.⁵⁷⁹ Adequate and culturally appropriate accommodation is a serious and ongoing issue for the Traveller community and has a direct impact on both the education and health outcomes of Traveller children.
- 342.** The Traveller Accommodation Act 1998, which places an obligation on local authorities to provide accommodation plans for Travellers, has not been adequately implemented.⁵⁸⁰ In 2000, it was calculated that over 3,500 units of accommodation were needed for the Traveller population. By 2013 – and despite the provision in the interim – over 1,600 Traveller households were assessed as being in ‘housing need’.⁵⁸¹ Very few units of ‘transient accommodation’ (intended for short-term use as families are moving from place to place) have been provided and this is sometimes used as emergency accommodation rather than serving a transient function. Funding for Traveller accommodation was reduced by 85 per cent between 2008 and 2012.⁵⁸² Critically, during that period, significant amounts of allocated funding for Traveller accommodation were not drawn down by local authorities.⁵⁸³
- 343.** Legislation introduced in 2002 criminalises the act of entering public or private land without consent, which had previously been a civil offence, effectively criminalising the nomadic aspect of Traveller culture and history.⁵⁸⁴
- 344. Recommendation:** The Committee is urged to recommend that the State ensures appropriate Traveller accommodation, including transient accommodation, is provided by local authorities; ensures that such accommodation is culturally appropriate for Travellers and repeals the Housing (Miscellaneous Provisions) Act, 2002.



579 Brian Harvey Social Research (2013) *‘Travelling with Austerity’: Impacts of Cuts on Travellers, Traveller Projects and Services*, Dublin: Pavee Point, p. 19.
 580 Traveller Accommodation Act, 1998.
 581 Housing Agency (2013) *Summary of Housing Assessments 2013: Key Findings*, Dublin: Housing Agency, Table A18, p. 10.
 582 From €40 million in 2008 to €6 million in 2012.
 583 Brian Harvey Social Research (2013) *‘Travelling with Austerity’: Impacts of Cuts on Travellers, Traveller Projects and Services*, Dublin: Pavee Point, p. 25.
 584 Housing (Miscellaneous Provisions) Act, 2002.

CHAPTER 8: EDUCATION, LEISURE AND CULTURE

> RIGHT TO EDUCATION, INCLUDING VOCATIONAL TRAINING AND GUIDANCE

- 345.** Article 28 provides for the right of the child to education. It obliges States to make primary education compulsory and free to all; to encourage different forms of post-primary education, and take measures to enable participation in this, such as free education and financial assistance in cases of need. It further provides that States should make higher education accessible to all on the basis of capacity; make information and guidance relating to education accessible and take steps to ensure school attendance and retention of pupils. It obliges States to ensure that school discipline is administered in a manner consistent with a child's human dignity.
- 346.** Ireland has the third highest investment in education per student in the OECD.⁵⁸⁵ The majority of primary and post-primary schools in Ireland are publicly funded private schools run by religious organisations.⁵⁸⁶ There have been a number of positive developments in education since the previous review of Ireland by the Committee, particularly in the areas of school buildings⁵⁸⁷ and literacy and numeracy.⁵⁸⁸
- 347.** However, many areas of concern remain. Irish primary school⁵⁸⁹ classes are the second most overcrowded in the EU,⁵⁹⁰ with one child in five at primary school level in a class of more than 30 students – 10 higher than the EU average.⁵⁹¹ Expulsion data for the year 2010–2011 show 16 expulsions from primary schools and 136 from post-primary schools.⁵⁹² School suspensions were recorded mostly in post-primary schools with less than five per cent of post-primary students being suspended in 2010–2011, the lowest of the previous five years.⁵⁹³

- 348. Early Childhood Care and Education:** Almost 10 per cent of Ireland's population is under six years of age compared to the EU average of 6.3 per cent.⁵⁹⁴ Childcare in Ireland is among the most expensive in the world.⁵⁹⁵ At just 0.2 per cent of Gross Domestic Product (GDP), Ireland invests considerably less in early childhood care and education than the average for OECD countries as a whole, which is 0.8 per cent of GDP.⁵⁹⁶
- 349.** All children, in the year before they enter formal education, can avail of the 'Free Pre-School Year', a part-time, 38-week scheme, which is free of charge.⁵⁹⁷ While take-up of the scheme is very high, access rates are lower amongst marginalised groups such as Traveller and Roma children, and children with disabilities.⁵⁹⁸
- 350.** The quality of early years care and education services is difficult to assess given the lack of official data on these services.⁵⁹⁹ Evidence from centre-based services suggests that quality is variable.⁶⁰⁰ In addition, due to the exclusion of childminders from regulation, there is no data on the quality of those services at all.⁶⁰¹ An Early Years Quality Agenda was launched in May 2015. A number of its aims have been pursued to date,⁶⁰² national quality and curriculum frameworks, including the Diversity and Equality Guidelines,⁶⁰³ have not been fully rolled out nationally and the impact for children on the ground has been limited.⁶⁰⁴ Qualification levels among staff are low by international standards.⁶⁰⁵ While a national strategy on early years is expected, it has not yet been published.⁶⁰⁶ Such a strategy should contain a clear and ambitious vision for early years policy and comprehensive measures to improve the quality of early years services.
- 351.** In June 2015, the Minister for Children and Youth Affairs launched a report setting out options and recommendations for Government to enhance affordability of childcare, improve the quality of services and outcomes for children, and promote greater accessibility in the sector.⁶⁰⁷ This requires a detailed implementation plan in order to ensure that these recommendations become a reality.

585 OECD, *Education at a Glance*, Country Note <http://www.oecd.org/edu/Ireland-EAG2014-Country-Note.pdf> [1 September 2015].

586 The Forum on Patronage and Pluralism in the Primary Sector, *Report of the Forum's Advisory Group*, p. 29 <https://www.education.ie/en/Press-Events/Conferences/Patronage-and-Pluralism-in-the-Primary-Sector/The-Forum-on-Patronage-and-Pluralism-in-the-Primary-Sector-Report-of-the-Forums-Advisory-Group.pdf> [accessed 13 May 2015].

587 This includes a substantial five year capital investment programme was announced in March 2012 in which €2 billion was made available for over 275 new major school projects nationwide. Department of Education and Skills, 'Minister Quinn announces details of 275 major school building project – More than 15,000 jobs to be created over five years' [press release], 12 March 2012, <http://www.education.ie/en/Press-Events/Press-Releases/2012-Press-Releases/PR12-03-12.html> [accessed 1 September 2015].

588 The 2014 National Assessments highlighted positive results in literacy. It showed an improvement in the literacy and numeracy skills of primary school children – the first significant improvement since 1980 and a reduction in the proportion of low achieving pupils, Educational Research Centre, 'Improved Performance among Primary School Pupils in National Assessments of English Reading and Mathematics' [press release], 12 January 2015, http://www.erc.ie/documents/na14perf_pressrelease.pdf [accessed 1 April 2015].

589 Primary education consists of an eight year cycle including junior infants, senior infants and first to sixth class with children usually over the age of four until the age of twelve when they transfer to post-primary education. Post-primary education comprises of the Junior Cycle generally for children aged 12 to 14 followed by the Senior Cycle for children in the 15 to 18 year old age group. For more information, see Department of Education and Skills, *Primary Education*, <http://www.education.ie/en/The-Education-System/Primary/> and *Post-Primary Education*, <http://www.education.ie/en/The-Education-System/Post-Primary/> [accessed 1 May 2015].

590 OECD, *Education at a Glance 2014: OECD Indicators*, p. 450 <http://dx.doi.org/10.1787/eag-2014-en> [accessed 13 May 2015].

591 Irish National Teachers' Organisation, 'ESRI Report on Growing Up in Ireland Study' [press release], 18 January 2012. <http://www.into.ie/ROI/NewsEvents/PressReleases/PressReleases2012/GrowingUpinIrelandStudy180112/Title,21564,en.php> [accessed 1 May 2015].

592 National Education Welfare Board (2013) *Analysis of School Attendance Data in Primary and Post-Primary Schools, 2010/11*, Dublin: National Educational Welfare Board, p. v.

593 Less than 0.2 per cent of primary pupils were suspended in 2010/2011. National Education Welfare Board (2013) *Analysis of School Attendance Data in Primary and Post-Primary Schools, 2010/11*, Dublin: National Educational Welfare Board, p. v. Department of Children and Youth Affairs, p. 7.

594 9.6 per cent of Ireland's population is under six. European Commission/EACEA/Eurydice/Eurostat (2014) *Key Data on Early Childhood Education and Care in Europe. 2014 Edition*. Eurydice and Eurostat Report. Luxembourg: Publications Office of the European Union.

595 Start Strong (2014) *The Double Dividend*, Dublin: Start Strong.

596 The Organisation of Economic Co-operation and Development (OECD) found Ireland's investment in early care and education to be well below the OECD average of 0.8 per cent, coming in at 0.5 per cent of GDP in 2014. To reflect the early school starting age in Ireland, the OECD figure for Ireland includes spending on four and five year old children in primary schools. When primary school spending is excluded, the percentage of GDP spent on pre-school education in Ireland amounts to less than 0.2 per cent. OECD (2014) OECD Family Database, OECD, Paris, PF3.1.A. *Public expenditure on childcare and early education services, per cent of GDP, 2011*, www.oecd.org/social/family/database.htm [accessed 26 January 2015]. Key Data on Early Childhood Education and Care in Europe. 2014 Edition. Eurydice and Eurostat Report. Luxembourg: Publications Office of the European Union, p. 80; Department of Children and Youth Affairs (2013) *Right from the Start, Report of the Expert Advisory Group on the Early Years Strategy*, Dublin: Department of Children and Youth Affairs, p. 7.

597 The Free Pre-School Year is administered by the Department of Children and Youth Affairs and is available to all children between the ages of three years and two months and four years and seven months in September of the relevant year, entitling them to programme-based activities in the year preceding primary school. It is delivered over 38 weeks from September to June and was attended by 67,000 pre-school children (94 per cent of eligible children) in 2013/14 within 4,200 services. The scheme cost €173.8 million in 2014 – representing 18 per cent of the Department of Children and Youth Affairs overall budget for that year. Communications to the Children's Rights Alliance from the Department of Children and Youth Affairs, 6 February 2015.

598 See further information under Chapter 7. Department of Children and Youth Affairs (2013) *Right from the Start: Report of the Expert Advisory Group on the Early Years Strategy*, Dublin: Government Publications, p. 15.

599 International rating scales – such as the Early Childhood Environmental Rating Scales and Infant/Toddler Environmental Rating Scale – provide comparative standards and tested methodologies but no data from such scales is available for Ireland. See [www.http://ers.fpg.unc.edu/](http://ers.fpg.unc.edu/) for further information.

600 Start Strong (2014) *Childcare – Business or Profession?* Dublin: Start Strong, p. 81.

601 It is estimated that nearly 50,000 young children are cared for by some 19,000 child-minders; Childminders and afterschool services continue to be excluded from quality structures as well as regulations and Garda (police) vetting. Start Strong (2012) Policy Brief – *Child-minding: Regulation and Recognition*, Dublin: Start Strong, p. 1; Start Strong (2014) *Childcare – Business or Profession?* Dublin: Start Strong, p. 81. After School Care is also unregulated in Ireland.

602 For example, *Better Start, The National Early Years Quality Development Service* was launched in May 2015 with the aim of promoting and enhancing the quality of early childhood care and education. For more information on the initiative, see www.betterstart.ie. For further information on the Early Years Quality Agenda, see Children's Rights Alliance (2015) Report Card 2015, Dublin: Children's Rights Alliance, pp. 22–24.

603 Office of the Minister for Children (2006) *National Childcare Strategy 2006-2010, diversity and equality guidelines for childcare providers*, Dublin: Office of the Minister for Children.

604 Siolta, the National Quality Framework for Early Childhood Education (2006) remains a pilot and limited in its roll-out. While providers must adhere to its principles and accept visits from officials, providers are not under an obligation to undergo the twelve-step Siolta Quality Assurance Programme. Support for Aistear, the Early Childhood Curriculum Framework (2009), is similarly limited.

605 Pobal, *Annual Early Years Sector Survey 2013*, p. 50 <https://www.pobal.ie/Publications/Documents/Pobal%20Annual%20Early%20Years%20Sector%20Survey%202013%20Report.pdf>, [accessed 13 May 2015].

606 The development of the National Early Years Strategy was first announced in 2012 and an Expert Advisory Group published its recommendations in October 2013.

607 Interdepartmental Working Group (2015) *Report of the Inter-Departmental Working Group: Future Investment in Childcare in Ireland To identify and assess policies and future options for increasing the quality, accessibility (including supply) and affordability of early years and school-age care and education services in Ireland*, <http://www.dcy.gov.ie/documents/earlyyears/20150722IDGReportonEarlyYrsInvestmentReport.pdf> [accessed 1 September 2015].

352. Recommendation: The Committee is urged to recommend that the State:

- > Increases investment in early childhood care and education to at least the current OECD average of 0.8 per cent of GDP and links public funding to the achievement of quality standards in services.
- > Publishes a rights-based National Early Years Strategy, accompanied by an adequately resourced implementation plan which addresses the inclusion in early years services of children with disabilities and children from minority groups, such as Traveller and Roma children.
- > Implements in full the roll-out of the national quality and curriculum frameworks for early years – Aistear and Siolta – and the Diversity and Equality Guidelines for Childcare Providers.

353. Cost of School: Article 28 provides that primary education shall be free to all. In 2006, the Committee expressed concern that the *de facto* cost of education and materials in public primary schools in Ireland is in some instances the responsibility of parents.

354. Austerity measures targeted a plethora of education supports that were designed to assist the most disadvantaged. In one year alone, 2011, school transport costs were increased for parents, capitation grants for schools were reduced by 5%, and a cap was placed on the number of educational psychologists.⁶⁰⁸ Furthermore, resource teachers for Traveller pupils were cut, language support teachers were withdrawn on a phased basis, and positions such as DEIS rural school coordinators were abolished.⁶⁰⁹

355. Officially, there are no school fees in publicly-funded schools. However, there are significant 'hidden' costs associated with sending a child to school. In 2015, the Barnardos' annual school costs survey found that parents in 65 per cent of primary and 73 per cent of post-primary schools were asked to pay a 'voluntary contribution' to the school with a wide variation in the amount being requested.⁶¹⁰ In some cases, parents who do not pay are sent reminders by letter, text, email or via their children, and children have been denied access to school lockers or journals until the payment is received.⁶¹¹ The survey showed that 86 per cent of primary schools and 99 per cent of secondary school parents reported that their school required crested uniforms, which are more expensive than plain, non-crested uniforms.⁶¹² The only targeted social welfare payment aimed at supporting parents with the cost of schooling, the Back to School Clothing and Footwear Allowance, was reduced significantly between 2012 and 2015, including a 50 per cent reduction in the payment for children aged four to 11 years.⁶¹³

356. In addition, the cost of school books is not covered by schools or by the State. While there has been an increase in the availability of School Book Rental Schemes in primary schools, there is a wide variation in what is covered by such schemes.⁶¹⁴ School transport costs have also increased.⁶¹⁵ There is some evidence that the State and schools are beginning to acknowledge the pressure of school costs on parents, though the necessary policy changes at national level have not yet occurred.⁶¹⁶

357. Recommendation: The Committee is urged to recommend that the State increases the capitation grant investment in primary and post-primary schools, eliminates the need for voluntary contributions from parents to schools and increases supports for school costs to low income families including by reinstating the Back to School Clothing and Footwear Allowance to its 2012 value.

358. Educational Disadvantage: In 2006, the Committee recommended that the State publish and disseminate the Traveller Education Strategy which had been prepared, and that it undertake training activities for teachers in order to sensitise them to Traveller issues and inter-cultural approaches.⁶¹⁷ In 1998, the Committee expressed its concern at the difficulties faced by vulnerable children in accessing a range of rights, including education.⁶¹⁸

359. Census 2011 shows that there were 10,500 Traveller children enrolled in primary and post-primary schools. However, 55 per cent had left school by the age of 15, an average of 4.7 years earlier than the general population.⁶¹⁹ Among Travellers, the completion rate at second level is only 13 per cent compared to 90 per cent for the general population.⁶²⁰ For many Travellers their traditional lifestyle, combined with the prejudice they often encounter, creates severe problems in acquiring basic levels of educational qualifications and this constitutes a major barrier to moving out of poor living circumstances.⁶²¹ A five-year *Intercultural Education Strategy* was launched in 2010 with the aim of providing all students with an education that respects diversity and of assisting all education providers in ensuring inclusive education.⁶²²

360. While the *Report and Recommendations for a Traveller Education Strategy* was published in 2006, an implementation plan with a timeline was never developed, in spite of numerous calls from representative groups. Implementation has, as a result, been extremely limited.⁶²³ Dedicated education supports included in the Strategy – such as the Visiting Teachers for Travellers Programme, with which there were 42 associated posts – were abolished in 2011.⁶²⁴ Budgetary increases in other areas of educational support included no additional supports for Traveller children. Resources are provided based on 'identified individual educational need' to all children, with no specific provision for Traveller children or others based on cultural or ethnic background.⁶²⁵ No data collection on the impact of the *Traveller Education Strategy* on educational outcomes for Traveller has been undertaken.



608 Department of Finance (2010) *Summary of 2011 Budget Measures: Policy Changes*, Dublin: Stationary Office.
609 The Delivering Equality of Opportunity in Schools (DEIS) Programme, introduced in 2006, aims to address the educational needs of children from marginalised communities through lower pupil-teacher ratios and a range of literacy and numeracy programmes. For more information see: Department of Education and Skills, *DEIS - Delivering Equality of Opportunity in Schools*, <http://www.pdst.ie/DEISMainPage> [accessed 10 February 2015]. Department of Education and Skills, *Information Note Regarding Main Features of 2011 Estimated for Education and Skills Vote*, http://www.education.ie/en/Press-Events/Press-Releases/2010-Press-Releases/pr_budget_education_2011.pdf [accessed 12 May 2015].
610 Barnardos, *School Costs Survey 2015 Briefing Paper*, p. 14, <http://www.barnardos.ie/assets/files/Advocacy/2015SchoolCosts/BarnardosSchoolCostsSurveyBriefing2015.pdf> [accessed 1 September 2015].
611 *Ibid.*, p. 14.
612 Barnardos, *School Costs Survey 2015 Briefing Paper*, p. 7 <http://www.barnardos.ie/assets/files/Advocacy/2015SchoolCosts/BarnardosSchoolCostsSurveyBriefing2015.pdf> [accessed 1 September 2015].
613 Children's Rights Alliance (2014) *Post Budget 2015 Analysis*, p. 14 http://www.childrensrightrights.ie/sites/default/files/submissions_reports/files/Analysis%20of%20Budget%202015%20and%20its%20Impact%20on%20Children.pdf [accessed 1 September 2015].
614 Parents at primary school pay €26-€150 for school books, while at post-primary level, many parents pay over €300, Barnardos, *School Costs Survey 2015 Briefing Paper*, pp. 10-11 <http://www.barnardos.ie/assets/files/Advocacy/2015SchoolCosts/BarnardosSchoolCostsSurveyBriefing2015.pdf> [accessed 1 September 2015].
615 Department of Finance (2011) *Budget 2012*, Dublin: Department of Finance. Budget 2012 doubled the rate of primary school pupil transportation fees from €50 to €100, with a maximum family payment of €220, while the payment for post-primary school students now stands at €350 per student, with a cap placed at €650 per family. These increases in transportation costs disproportionately affect rural families.
616 Barnardos, *School Costs Survey 2015 Briefing Paper*, pp. 18-19 <http://www.barnardos.ie/assets/files/Advocacy/2015SchoolCosts/BarnardosSchoolCostsSurveyBriefing2015.pdf> [accessed 1 September 2015].

617 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/0/2, para. 59(d).
618 UN Committee on the Rights of the Child (1998) *Concluding Observations: Ireland*, CRC/C/15/Add.85, paras. 14 and 34.
619 Central Statistics Office, *Census 2011 Profile 7 - Religion, Ethnicity and Irish Travellers*, <http://www.cso.ie/en/media/csoie/census/documents/census2011profile7/Profile,7,Education,Ethnicity,and,Irish,Traveller,entire,doc.pdf> [accessed 12 February 2015].
620 B. Harvey (2013) *Travelling with Austerity: Impacts of Cuts on Travellers, Traveller Projects and Services*, Dublin: Pavée Point, p. 35.
621 The Equality Authority and ESRI (2011) *Multiple Disadvantage in Ireland: An Equality Analysis of Census 2006*, Dublin: Equality Authority and the Economic and Social Research Institute.
622 Department of Education and Skills and Office of the Minister for Integration (2010) *Intercultural Education Strategy, 2010-2015* https://www.education.ie/en/Schools-Colleges/Information/Intercultural-Education-Strategy/mig_intercultural_education_strategy.pdf [accessed 1 May 2015].
623 The Traveller Education Strategy Advisory and Consultative Forum (TESACF) was established in 2009. It was tasked with ensuring the implementation of recommendations made in the Report and Recommendations for a Traveller Education Strategy and to identify issues and obstacles to its implementation. One of the key issues highlighted by the forum was the lack of comprehensive data on Traveller education. The Department of Education and Skills introduced an ethnic identifier which asks all children to identify their ethnicity, across the education system. Proposals for the Primary Online Database (POD) provide for the retention of a child's personal data from the time they enter school until they turn thirty years of age. Department of Education and Skills (2014) Circular 0017/2014, Fair Processing Notice to explain how some of the personal data of pupils in primary and special schools will be recorded on the proposed POD and how this data will be processed by the Department of Education and Skills, in compliance with the Data Protection Act 1988 and the Data Protection (Amendment) Act 2003, p. 5.
624 Investment in Traveller education has been reduced from €76.5 million in 2008 to €10.2 million in 2013. The Traveller Education Advisory Consultative Committee has responsibility for monitoring implementation of the Report and Recommendations for a Traveller Education Strategy. It meets only four times per year and was not consulted on the cuts. The Visiting Teachers for Travellers Programme and the 42 associated posts, together with the Resource Teachers for Travellers were abolished in Budget 2011. Minister for Education and Skills, Ruairí Quinn TD, *Departmental Funding*, [7412/13], Dáil Debates, 12 February 2013.
625 Communication received by the Children's Rights Alliance from the Department of Justice and Equality, 4 November 2014.

- 361.** Migrant children made up 11 per cent of the primary and 12 per cent of post-primary pupils in the school year 2013–2014.⁶²⁶ Research points to an ‘achievement gap’ emerging between young migrants and non-migrants in Ireland linked to access and mobility.⁶²⁷ The streaming of students as a result of the structure of the examination system impacts on migrant participation in third level.⁶²⁸ In addition, enrolment practices limit the school choices available to young migrants.⁶²⁹
- 362.** Approximately 70–75 per cent of children from a migrant background have a first language that is not English and may require additional assistance.⁶³⁰ English language supports no longer have a funding stream distinct from other learning supports and so it is now more difficult to monitor the adequacy and effectiveness of the impact of these supports.⁶³¹ Provision in this area is no longer based on the needs of pupils: in primary schools it is based on the number of mainstream teaching posts, and in post-primary schools it is based on the number of pupils.⁶³² English language support was cut by 19 per cent in 2012, despite a significant number of children in post-primary school who do not speak English at home receiving the lowest scores in reading.⁶³³
- 363.** In Ireland, 42 per cent of men and 47 per cent of women (in the 25–43 age range) have a higher educational attainment than their parents.⁶³⁴ However, a person’s socio-economic background remains a strong determining factor in their educational attainment. A person is three times more likely to go to higher education if their parents have higher education than someone whose parents have education below secondary level.⁶³⁵ The rapid expansion of education in recent decades⁶³⁶ and the removal of tuition fees have benefited most socio-economic groups⁶³⁷ in accessing higher education but these developments have not had a significant impact on the entry rate of students from under-represented socio-economic groups.⁶³⁸ Some progress has been made in the area of access to higher education for people from under-represented socio-economic backgrounds under the two Action Plans on equity of access to higher education covering 2005–2007 and 2008–2013.⁶³⁹ The latter Plan sets an entry rate target of 54 per cent for all socio-economic groups by 2020. In 2013, just over one fifth of entrants to higher education institutions were from lower socio-economic groups, lower than the projected rate of 31 per cent by 2013.⁶⁴⁰ A new national access plan is currently under development.

364. Recommendation: The Committee is urged to recommend that the State:

- > Develops a long-term, adequately resourced strategy and implementation plan to address educational disadvantage;
- > Carries out an assessment on the needs of, and challenges facing, Traveller and Roma children in education with a view to updating the Traveller Education Strategy and effective implementation of this;
- > Includes national language policy as a part of the Intercultural Education Strategy;
- > Provides specific supports for mother-tongue education such as mother-tongue and bi-lingual textbooks to assist children who use English as an additional language, as well as further language supports;
- > Ensures that the new national access plan builds on the work of the previous plans in this area and provides a more focused framework for the achievement of targets for people of lower socio-economic backgrounds in accessing higher education. Families from such backgrounds should be consulted regarding the new action plan.

- 365. Special Educational Needs:** In 2006, the Committee recommended that the State continues to develop an inclusive school environment for children with special needs by undertaking appropriate professional assessments, reducing class sizes, providing supports and the opportunity to be heard.⁶⁴¹
- 366.** An estimated 25 per cent of children in Ireland have special educational needs.⁶⁴² The seminal piece of legislation in this area is the Education for Persons with Special Educational Needs Act 2004. Key provisions of the Act remain unimplemented, such as those providing for individual needs assessments and individual education plans for children.⁶⁴³ The full implementation of the Act was put on hold due to budgetary considerations.⁶⁴⁴
- 367.** During the economic recession, a cap was placed on the number of Special Needs Assistants available to children in schools.⁶⁴⁵ While efforts have been made to increase the cap and supports to children with special educational needs⁶⁴⁶ since then⁶⁴⁷ there is still a disparity between available supports and the needs of many children.⁶⁴⁸



626 Communication received by the Children’s Rights Alliance from the Department of Education and Skills, 11 November 2014.

627 Whitaker Institute for Innovation and Societal Change, NUIG, *Impact Insights*, p. 43 http://whitakerinstitute.ie/wp-content/uploads/2014/02/WhitakerInstitute_ImpactBook.pdf [accessed 20 May 2015].

628 *Ibid.* In streamed classes, students are placed in class groups in line with their assessed level of achievement or ability.

629 Rules in relation to preferential access to school by the child of a past pupil and of the ethos of the school together with residential patterns, largely based on socio-economic conditions, have led to claims of effective segregation with four out of five children from migrant backgrounds concentrated in 23 per cent of primary schools. See Senator Avril Power, Joint Committee on Education and Social Protection Debate, *Vote 26: Update on Pre-Budget and Policy Issues*, 24 September 2014; P. Duncan, J. Humphries, *Census figures raise concerns of ethnic segregation in schools*, Irish Times, 24 February 2015. P. Duncan, J. Humphries, ‘Census figures raise concerns of ethnic segregation in schools’, *Irish Times*, 24 February 2015. Proposed legislation and new regulations in this area do not address these issues. Admission Policies of Schools and Related Matters Regulations 2013, Regulations 15 and 16 allows the Minister to provide a derogation to schools to give priority to a student as the child of a past pupil of the school.

630 European Commission against Racism and Intolerance (2013) *ECRI Report on Ireland (fourth monitoring cycle)*, Strasbourg: Council of Europe, p. 23.

631 It has been combined with the General Allocation Model for special needs education. F. McGinnity, E. Quinn, G. Kingston et al. (2014) *Annual Monitoring Report on Integration 2013*, Dublin: ESRI and the Integration Centre, p. 34.

632 In the 2013/14 academic year, some permanent English as an Additional Language (EAL) posts were made available to primary schools with a high concentration of pupils requiring language support and, while these will be retained, additional permanent posts will not be allocated for the 2014/15 year. Communication received by the Children’s Rights Alliance by the Department of Education and Skills, 11 November 2014.

633 F. McGinnity, E. Quinn, G. Kingston et al. (2013) *Annual Monitoring Report on Integration 2012*, Dublin: ESRI and the Integration Centre, p. 1.

634 OECD (2014) *Education at a Glance 2014: OECD Indicators*, OECD Publishing, p. 100 <http://dx.doi.org/10.1787/eag-2014-en> [accessed 1 September 2015].

635 *Ibid.*, p. 93.

636 Expert Group on the Future Funding of Higher Education, (2015) *The Role, Value and Scale of Higher Education in Ireland*, p. 22 <https://www.education.ie/en/The-Education-System/Higher-Education/Higher-Education-Expert-Group-on-Future-Funding-for-Higher-Education-Discussion-Paper-for-Stakeholder-Consultation-.pdf> [accessed 1 September 2015].

637 Higher Education Authority (2008) *Action Plan for Equity of Access to Higher Education 2008–2013*, Section 2, http://www.heai.ie/sites/default/files/national_plan_for_equity_of_access_to_higher_ed.pdf [accessed 1 September 2015].

638 Expert Group on the Future Funding of Higher Education, (2015) *The Role, Value and Scale of Higher Education in Ireland*, p. 9 <https://www.education.ie/en/The-Education-System/Higher-Education/Higher-Education-Expert-Group-on-Future-Funding-for-Higher-Education-Discussion-Paper-for-Stakeholder-Consultation-.pdf> [accessed 1 September 2015]. p. 22. Such groups include those from skilled manual, semi-skill and unskilled manual and non-manual groups.

639 Higher Education Authority (2014) *Consultation Paper: Towards the development of a new National Plan for Equity of Access to Higher Education* p. 8 http://www.heai.ie/sites/default/files/consultation_paper_web_0.pdf [accessed 1 September 2015]; Expert Group on the Future Funding of Higher Education, (2015) *The Role, Value and Scale of Higher Education in Ireland*, p. 22 <https://www.education.ie/en/The-Education-System/Higher-Education/Higher-Education-Expert-Group-on-Future-Funding-for-Higher-Education-Discussion-Paper-for-Stakeholder-Consultation-.pdf> [accessed 1 September 2015].

640 Expert Group on the Future Funding of Higher Education, (2015) *The Role, Value and Scale of Higher Education in Ireland*, p. 9 <https://www.education.ie/en/The-Education-System/Higher-Education/Higher-Education-Expert-Group-on-Future-Funding-for-Higher-Education-Discussion-Paper-for-Stakeholder-Consultation-.pdf> [accessed 1 September 2015].

641 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/IRL/CO/2, para. 59.

642 This estimate is based on the definition of special educational needs found in the EPSEN Act 2004 and interpreted in broad terms taking into account the perspective of both parents and teachers. Boys show a higher prevalence at 29 per cent with girls at 21 per cent. National Council for Special Education (2011) *A Study on the Prevalence of Special Educational Needs: National Council for Special Education Research Report No. 9*, Dublin: National Council for Special Education, p. 96.

643 Irish Statute Book, *Education for Persons with Special Educational Needs Act 2004, Legislative Directory, Commencement*, http://www.irishstatutebook.ie/isbc/2004_30.html [accessed 1 May 2015]. If commenced in full, the EPSEN Act will provide additional entitlements to children with special educational needs, and benefit a larger cohort of children than those deemed to have had entitlements under existing statutory provisions.

644 Minister for Education and Science, Batt O’Keeffe TD, Departmental Expenditure, I45337/08], Dáil Debates, 9 December 2008.

645 Department of Education and Skills (2011) Circular to Boards of Management and Principal Teachers of Primary, Post-Primary and Special Schools on revised arrangements for the allocation of Special Needs Assistant posts, Circular 0006/2011, https://www.education.ie/en/Circulars-and-Forms/Active-Circulars/cl0006_2011.pdf [accessed 1 September 2015].

646 The Education of Persons with Special Education Needs Act 2004, s. 1 defines special educational needs ‘a restriction in the capacity of the person to participate in and benefit from education on account of an enduring physical, sensory, mental health or learning disability, or any other condition which results in a person learning differently from a person without that condition and cognate words shall be construed accordingly’.

647 Communication received by the Children’s Rights Alliance from the Department of Education and Skills, 11 November 2014. A further increase in supports was announced in July 2015 to be in place for September 2015, Department of Education and Skills, ‘Minister O’Sullivan announces significant additional SNA posts from September 2015’, [press release] 7 July 2015 <http://www.education.ie/en/Press-Events/Press-Releases/2015-Press-Releases/PR2015-07-07.html> [accessed 1 September 2015].

648 Communication received by the Children’s Rights Alliance from the Alliance Against Cutbacks in Education, 29 January 2015; C. O’Brien, ‘Quinn reverses planned cuts to supports for special needs pupils’, *Irish Times* [online], 25 June 2013, <http://www.irishtimes.com/news/education/quinn-reverses-planned-cuts-to-supports-of-special-needs-pupils-1.1442100> [accessed 1 September 2015]; C. O’Brien, ‘Special needs children face cut in support despite Government U-turn’, *Irish Times* [online], 28 June 2013, <http://www.irishtimes.com/news/education/special-needs-children-face-cut-in-support-despite-government-u-turn-1.1445526> [accessed 1 September 2015].

368. A 2013 report found that, while most schools welcome and enrol children with special educational needs, some schools erect overt and/or 'soft' barriers in the form of restrictive practices that prevent or discourage parents from enrolling their children in these schools.⁶⁴⁹ While Section 2 of the Education for Persons with Special Educational Needs Act 2004 on inclusive education for children with special educational needs has been enacted, the necessary regulations have not been put in place. There is evidence that some schools are not co-operating with the regulations.⁶⁵⁰ This can lead to the effective exclusion of such children, particularly if they live in rural areas.⁶⁵¹ NGOs have expressed concern that due to a lack of resources, parents of children with special educational needs are faced with the choice of either sending their child to a mainstream school, at which the child will not receive therapeutic inputs, or sending their child to a special class or school with therapeutic inputs.⁶⁵²

369. Recommendation: The Committee is urged to recommend that the State publishes and begins action on a plan to fully implement the Education for Persons with Special Educational Needs Act 2004 and that the State provides resources to increase teacher to pupil ratios and training for all staff.

370. Early School Leaving: Article 28(e) of the Convention requires States to encourage regular school attendance and reduce school drop-out rates. In 1998, the Committee expressed its concern about the situation of children who are excluded from school because of sanctions imposed by teachers and the adverse effect generated that may sometimes impact on drop-out rates and school attendance.⁶⁵³

371. Early school leaving in Ireland is defined as non-participation in school before reaching the age of 16 years or before the completion of three years post-primary education, whichever is later.⁶⁵⁴ In 2012, almost 10 per cent of 18 to 24 years olds had left school early.⁶⁵⁵ This is below the EU average of almost 13 per cent. Young people from a lower socio-economic background,⁶⁵⁶ Travellers,⁶⁵⁷ young people from migrant backgrounds, those caring for sick family members or those who have a disability are disproportionately represented among those who leave school early.⁶⁵⁸ According to one study, one fifth of LGBT young people had skipped school because they felt threatened or were afraid of getting hurt at school based on their LGBT identity, with five per cent indicating they left school early because of how they were treated as a result of their identifying as LGBT.⁶⁵⁹ A 2015 ERSI Review of the School Completion Programme found that governance arrangements were weak and it lacked a national cohesive approach. Tusla – Child and Family Agency has conducted its own review and recently committed to a number of actions.

372. Recommendation: The Committee is urged to recommend that the State comprehensively reforms the School Completion Programme in line with the recent ESRI review.

373. Guidance Counselling in Schools: Article 28(d) provides that States should '[m]ake educational and vocational information and guidance available and accessible to all children'. From 2012 to 2014, a change to the guidance counselling policy⁶⁶⁰ saw a reduction of 58.8 per cent in one-to-one guidance counselling for students in post-primary schools.⁶⁶¹ Hours allocated to guidance counselling services were reduced by 23.7 per cent with significant variations across school types.⁶⁶² Because counsellors are obliged to prioritise the needs of senior students, junior students in post-primary schools receive even less time during the period of their education where they are most likely to form educational aspirations that are highly predictive of routes taken later on.⁶⁶³

374. Recommendation: The Committee is urged to recommend that the State restores the allocation of guidance counsellors to the pre-2012 level to ensure that both junior and senior post-primary students have adequate access to quality career guidance and counselling to support their personal, social, educational and vocational needs.

375. Complaints Mechanisms in Education: Families of children who wish to make a complaint regarding an aspect of their child's education must complain to the school's Board of Management which is appointed by the school's patron.⁶⁶⁴ However, there is no formal legal framework for this process: while section 28 of the Education Act 1998 makes provision for a Grievance Procedure to be established, this section has not been commenced.

376. Section 29 of the Education Act 1998 provides for an appeals process to the Department of Education and Skills for a parent or child over the age of 18 in relation to a decision by a Board of Management with regards to just four specific areas: expulsion, suspension, enrolment or a decision which the Minister for Education and Skills may, in consultation with stakeholders, determine may be appealed under this section.⁶⁶⁵ This means that there is no legal framework to address complaints on issues such as the use of seclusion rooms, physical restraint or other disciplinary methods. The right of appeal under section 29 applies only to parents or a person over the age of 18 years.⁶⁶⁶ Given the lack of a legal framework, there is no guarantee that a pupil under the age of 18 years will be allowed to make a complaint to the Board of Management in the first instance.

377. Recommendation: The Committee is urged to recommend that the State implements section 28 of the Education Act 1998 to establish a formal Grievance Procedure in schools. Children should be permitted to make complaints in their own right, through the available mechanisms.

649 National Council for Special Education (2013) *Supporting Children with Special Educational Needs in Schools: NCSE Policy Advice Paper No. 4*, Trim: NCSE, p. 4; J. Travers, T. Balfé, C. Butler et al. (2010) *Addressing the Challenges and Barriers to Inclusion in Irish Schools: Report to Research and Development Committee of the Department of Education and Skills*, Dublin: St. Patrick's College, p. 41.

650 Restrictive practices might include advising a parent that another school might be more 'suitable' to their needs or have more resources available, or by responding that the school does not have the necessary health-funded resources they consider necessary to accommodate a child. National Council for Special Education (2013) *Supporting Students with Special Educational Needs in Schools*, Dublin: NCSE, pp. 89–90.

651 J. Travers, T. Balfé, C. Butler et al. (2010) *Addressing the Challenges and Barriers to Inclusion in Irish Schools: Report to Research and Development Committee of the Department of Education and Skills*, Dublin: St. Patrick's College, p. 41.

652 Inclusion Ireland, Special Needs Parents Association, Irish Autism Action and Down Syndrome Ireland, *Presentation to the Joint Oireachtas Committee on Education and Social Protection*, <http://www.autismireland.ie/news-events/news/1126/> [accessed April 1 2015].

653 UN Committee on the Rights of the Child (1998) *Concluding Observations: Ireland*, CRC/C/15/Add.85, para. 22.

654 Education (Welfare) Act 2000, s. 31.
655 9.7 per cent of 18–24 year olds left school with a lower post-primary education at most in 2012. Central Statistics Office, *Education, EU: Early School Leavers*, <http://www.cso.ie/en/releasesandpublications/ep/p-mip/measuringirelandsprogress2012/education/education/#.VRFP7o6sVC8> [accessed 12 February 2015].

656 *Ibid.*, p. 111.

657 55 per cent of Traveller children had left school by the age of 15, an average of 4.7 years earlier than the general population according to Census 2011 Central Statistics Office, *Census 2011 Profile 7 – Religion, Ethnicity and Irish Travellers*, <http://www.cso.ie/en/media/csoie/census/documents/census2011profile7/Profile,7,Education,Ethnicity,and,Irish,Traveller,entire,doc.pdf> [accessed 12 February 2015].

658 Department of Education and Skills (2013) *Early Leavers – What Next? Report on Early Leavers from Post-Primary schools – pupils enrolled in 2009/2010 and not in 2010/2011*. Dublin: Department of Education and Skills, pp. 11, 15 and 21.

659 P. Mayock, A. Bryan, N. Carr et al. (2009) *Supporting LGBT Lives: A Study of the Mental Health and Well-Being of Lesbian, Gay, Bisexual and Transgender People*, Dublin: Gay and Lesbian Equality Network (GLEN) and BeLonG To, p. 68.

660 Guidance Counselling is provided for under the Education Act 1998 s. 9(c) and aims to provide students with support in their educational and career choices.

661 Institute of Guidance Counsellors, *National Audit of Guidance Counselling practice in second level schools and colleges of further education in Ireland 2011–2014, Report of Findings, Phase 3*, p. 2 <http://www.igc.ie/download/1/2014/IGC%20reports/IGC%20Audit%20of%20Guidance%20Counselling%20Practice%20-%20Phase%203.pdf> [accessed 13 May 2015]. Ex-quota allocations of guidance counsellors were abolished in Budget 2011, meaning that guidance counselling time had to come from a school's general allocation of staffing.

662 *Ibid.*, p. 2.

663 Selina McCoy, Emer Smyth, Dorothy Watson et al. (2014) *Leaving School in Ireland: A Longitudinal Study of Post School Transitions*, p. 61, Dublin: Economic and Social Research Institute.

664 Under section 15 of the Education Act 1998, Boards of Management are accountable to the patrons of the school.

665 Education Act 1998, s. 29(1).

666 *Ibid.*

> AIMS OF EDUCATION WITH REFERENCE ALSO TO QUALITY OF EDUCATION

- 378.** Article 29 relates to the aims of education, specifically the development of a child's personality, talents and abilities to their fullest potential; the development of respect for their parents, cultural identity, language and values, their national identity and that of others and respect for the environment.
- 379. Bullying:** In 2006, the Committee recommended that the State takes measures to combat bullying and that its impact be dealt with in a responsive and child-sensitive way.⁶⁶⁷
- 380.** In 2014, Childline received more than 8,000 calls in relation to bullying.⁶⁶⁸ A 2011 consultation showed that over a quarter of respondents from secondary schools have said they or someone they knew had been bullied and 22% of respondents from the primary schools said that they or someone they knew had experienced bullying.⁶⁶⁹ A 2013 survey showed that 23 per cent of 9–16 year olds reported being bullied. Just 4 per cent of those reported having being bullied online.⁶⁷⁰ Reported face-to-face bullying in Ireland was therefore slightly above the EU average while cyberbullying was slightly lower. The most prevalent type of bullying among nine year olds is verbal, followed by exclusion and physical bullying.⁶⁷¹ A report by the ISPCC noted that parents struggle to ensure their child's safety in dealing with technology.⁶⁷² There is a lack of empirical research on the impact of cyberbullying on children and young people in Ireland.⁶⁷³
- 381.** The Department of Education and Skills published an Action Plan and Anti-Bullying Procedures for Primary and Post-Primary Schools in 2013.⁶⁷⁴ Implementation of the Action Plan is intended to be assessed as part of the Department of Education and Skills Inspectors' Whole School Evaluation.⁶⁷⁵ The Action Plan and Procedures are envisaged as a starting point to ensure there is common understanding about bullying amongst all members of the school community (staff, parents and students) in keeping with the whole school community approach in order to be better able to identify, prevent and address it.

667 UN Committee on the Rights of the Child (2006) *Concluding Observations Ireland*, CRC/C/IRL/CO/2, para. 59(c).
 668 Childline is a 24 hour listening service for children and is operated by the non-governmental organisation, the Irish Society for the Prevention of Cruelty to Children (ISPCC). ISPCC, *The Right to be safe, Cyberbullying: A new reality in child safety. A position paper from ISPCC*, p. 7 http://www.ispcc.ie/file/415/20/1/5_0/ISPCC+-+National+Report+On+Cyberbullying.pdf [accessed 1 April 2015].
 669 ISPCC, *Bullying Statistics, Research and Statistics on the Prevalence of Bullying*, http://www.ispcc.ie/file/39/1/0_0/BULLYING+STATISTICS.pdf [accessed 1 September 2015].
 670 B. O'Neill, T. Dinh (2013) *Cyberbullying among 9-16 year olds in Ireland*. Digital Childhoods Working Paper Series (No.5). Dublin: Dublin Institute of Technology.
 671 J. Williams et al. (2009) *Growing up in Ireland, National Longitudinal Study of Children, Child Cohort, The Lives of 9 Year Olds, Executive Summary*. Dublin: Stationery Office, p. 19.
 672 ISPCC, *The Right to be safe, Cyberbullying: A new reality in child safety. A position paper from ISPCC*, http://www.ispcc.ie/file/415/20/1/5_0/ISPCC+-+National+Report+On+Cyberbullying.pdf, p. 7 [accessed 13 May 2015].
 673 H. Gleeson (2014) *Literature Review, The Prevalence and Impact of Bullying linked to Social Media on the Mental Health and Suicidal Behaviour Among Young People*. Commissioned by the HSE National Office for Suicide Prevention and the Department of Education and Skills, p. 66 <https://www.education.ie/en/Publications/Education-Reports/The-Prevalence-and-Impact-of-Bullying-linked-to-Social-Media-on-the-Mental-Health-and-Suicidal-Behaviour-Among-Young-People.pdf> [accessed 1 September 2015].
 674 Department of Education and Skills, *Action Plan on Bullying*, <https://www.education.ie/en/Publications/Education-Reports/Action-Plan-On-Bullying-2013.pdf> [accessed 14 May 2015]; Department of Education and Skills, *Anti-Bullying Procedures for Primary and Post-Primary Schools*, Circular 0045/2013, http://www.education.ie/en/Circulars-and-Forms/Active-Circulars/cl0045_2013.pdf [accessed 1 May 2015].
 675 Department of Education and Skills, *Whole School Evaluation*, <http://www.education.ie/en/Publications/Inspection-Reports-Publications/Whole-School-Evaluation-Reports-List> [accessed 1 May 2015].

- 382.** The Action Plan sets out a range of recommendations and immediate actions to address bullying in schools, such as developing a positive school culture and climate, as well as evidence-based intervention strategies. The Anti-Bullying Procedures include a template for schools to record incidents of identity-based bullying such as racist, homophobic and cyber-bullying. However, the obligation to complete the template applies only in limited circumstances and the State is missing an important opportunity to gather data and monitor incidents of identity-based bullying.⁶⁷⁶
- 383.** Bullying is a particular issue for children of Traveller, Roma and migrant backgrounds, children with an illness or disability and lesbian, gay, bisexual and transgender (LGBT) young people.⁶⁷⁷ Research found high levels of homophobic bullying: 58 per cent of LGBT young people surveyed had experienced verbal homophobic bullying by other students; 40 per cent were verbally threatened by fellow students; 25 per cent were physically threatened by their peers; and 34 per cent had heard homophobic comments from their teachers.⁶⁷⁸ Only one student in five experiencing homophobic bullying sought help from teachers or the school.⁶⁷⁹
- 384. Recommendation: The Committee is urged to recommend that the State:**
- > Undertakes and publishes a review of the implementation of the Anti-Bullying Action Plan and Procedures in order to determine where impact was made and lessons learned;
 - > Increases supports to parents to help them deal with bullying, particularly in the area of cyberbullying, and assist them make informed decisions in relation to the issues facing their children;
 - > Undertakes and publishes research on the impacts of cyberbullying on children and young people;
 - > Ensures that all incidents of identity-based bullying are recorded in schools and these records are inspected as part of the whole school evaluation process;
 - > Adequately resources mental health services to ensure children and young people receive timely and child-appropriate services.

> CULTURAL RIGHTS OF CHILDREN BELONGING TO INDIGENOUS AND MINORITY GROUPS

- 385.** Article 30 obliges States to ensure that a child from an ethnic, religious or linguistic minority or of indigenous origin shall not be denied the right to enjoy their own culture, to practice their own religion or to speak in their own language.
- 386. Promotion and Protection of the Irish Language:** In 2006, the Committee called on the State to provide information on efforts to promote the Irish language and culture among children and young people.⁶⁸⁰

676 Department of Education and Skills, *Anti-Bullying Procedures for Primary and Post-Primary Schools*, Circular 0045/2013, http://www.education.ie/en/Circulars-and-Forms/Active-Circulars/cl0045_2013.pdf [accessed 1 May 2015].
 677 S.J. Minton, T. Dahl, A.M. O'Moore and D. Tuck, (2008) *An Exploratory Survey of the Experiences of Homophobic Bullying Among Lesbian, Gay, Bisexual and Transgendered Young People in Ireland* Dublin: Irish Educational Studies. Vol. 27, No. 2, June 2008, pp. 177–191.
 678 P. Mayock, A. Bryan, N. Carr and K. Kitching, (2009) *Supporting LGBT Lives: A Study of the Mental Health and Well-Being of Lesbian, Gay, Bisexual and Transgender People*. Dublin: Gay and Lesbian Equality Network (GLEN) and BeLonGto, pp. 67–69.
 679 S.J. Minton, T. Dahl, A.M. O'Moore and D. Tuck (2006) *A report on an exploratory survey of the experiences of homophobic bullying amongst lesbian, gay, bisexual, and transgendered young people in the Republic of Ireland*. Dublin: Anti-Bullying Centre, TCD.
 680 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/IRL/CO/2, paras. 80 and 81.

387. Under Article 8 of the Constitution of Ireland, the Irish language is recognised as the first official language of the State and the language rights of Irish-speakers have been upheld by the Irish Courts in a number of cases.⁶⁸¹ In 2011, some 77,185 people – representing 1.8 per cent of the population over the age of three – spoke Irish on a daily basis outside of the education system.⁶⁸² This figure increases to 25 per cent in the seven designated Gaeltacht (Irish-speaking) regions. Since 2008, the Office of the Irish Language Commissioner has experienced a reduction of 45 per cent in its budget, leading to the resignation of the Irish Language Commissioner (An Coimisinéir Teanga) in February 2014 after a decade in the role.⁶⁸³

388. Recommendation: The Committee is urged to recommend that the State restores the budget of the Irish Language Commissioner and ensures that the State fulfils its obligations in this area.

> EDUCATION ON HUMAN RIGHTS AND CIVIC EDUCATION

389. While human rights education is a part of primary education under the Social and Personal Health Education (SPHE) programme, as of September 2014, it is no longer a compulsory element in post-primary education. The Civic, Social and Political Education (CSPE) programme at post-primary level, in which human rights education is included, is now optional and no longer examinable for all students. Given the crowded and exam-orientated curriculum at post-primary level, the reduction in the status of CSPE may result in it receiving less attention from both teachers and students.

390. Recommendation: The Committee is urged to recommend that the State puts in place a comprehensive and mandatory programme of human rights education in all education curricula, and ensures that human rights principles are embedded in schools policies.

> REST, PLAY, LEISURE, RECREATION AND CULTURAL AND ARTISTIC ACTIVITIES

391. Article 31 provides for the right of children to rest and leisure, to play appropriate to the age of the child and to participate freely in cultural life and the arts.

392. In 2006, the Committee recommended that Ireland places more emphasis on the creation of facilities for children to enjoy leisure, recreation and cultural activities.⁶⁸⁴

393. The State Report documents the progress and developments that have taken place in this area.⁶⁸⁵ This includes the adoption of a National Play Policy which ran from 2004 to 2008⁶⁸⁶ and a National Recreation Strategy for Children and Young People, launched in 2007 to provide a framework for the promotion of positive recreational opportunities aimed principally at young people aged 12 to 18.⁶⁸⁷ The Policies included no national oversight mechanism or guidance; this led to patchy implementation, often dependent on the initiative of individuals at local level.⁶⁸⁸ In addition, although the National Play Policy identified the need for a universal design approach to play spaces, there are no national policies or 'good practice' guidelines developed to guide this process.⁶⁸⁹ Consequently, playgrounds may not be accessible for children with disabilities.

394. A study on outdoor play demonstrates that children between the ages of 7 and 13 like to play in gardens, paths, roads and green spaces in their housing estates, highlighting the importance of planning and design of housing estates.⁶⁹⁰ However, research has found that 42 per cent of mothers of nine-year-old children reported an absence of safe parks or play areas, and a similar proportion indicated that their local area lacked appropriate recreational facilities.⁶⁹¹ A 2014 study on young children's freedom to travel independently also showed that children in Ireland have less freedom than their counterparts in a number of European countries, including England.⁶⁹²

395. Recommendation: The Committee is urged to recommend that the State conducts a review of the national play and recreation policies to assess their impact and identify key issues which should be addressed in future policies in the area.

396. Youth Work: Youth work is defined in the Youth Work Act 2001 as '...complementary to [a young person] formal, academic or vocational education' and aims at '...enhancing the personal and social development of young persons...'. It also plays a vital role in promoting positive health, in particular mental health, and in the area of youth justice. Youth work is undertaken on a considerable scale in Ireland, with almost 1,500 staff working with over 40,000 volunteers to support more than 380,000 young people.⁶⁹³ An assessment of the economic value of youth work in 2012 showed that the sector makes a significant social impact as well as delivering value for money.⁶⁹⁴ Youth work suffered cuts in consecutive budgets from 2008 to 2014, cumulating in a 31 per cent reduction in funding since 2008.⁶⁹⁵

397. Recommendation: The Committee is urged to recommend that the State continues to support quality youth work, both as a protective factor contributing to the young person's overall development and as a mechanism to reach out to the most marginalised young people.

681 See for example, *Ó Foghludha v McClean* (1934) IR469, *Ó Beoláin v Fahy* [2001] 2 I.R. 279, *Ó Murchú v An Taoiseach & eile*, [2010] IESC 26.

682 Central Statistics Office (2012) *Census 2011 Profile 9 – What We Know*, Dublin: Stationery Office, p. 27.

683 The Irish Language Commissioner was established in 2004 with the aim of providing advice to the public on their Irish language rights and to provide advice to public bodies on their obligations and duties.

684 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, 29 September 2006, CRC/C/IRL/CO/2, para. 63.

685 Department of Children and Youth Affairs (2013) *Ireland's Consolidated Third and Fourth Reports to the UN Committee on the Rights of the Child*, Dublin: Department of Children and Youth Affairs, para. 626–659.

686 Department of Children and Youth Affairs (2004) *Ready, Steady, Play! A National Play Policy*, Dublin: Stationery Office.

687 Department of Children and Youth Affairs (2007) *National Recreation Strategy for Children and Young People*, Dublin: Stationery Office.

688 Interview with Irene Gunning, Irish Play and Playgroups Association (IPPA) and Steve Good, *Independent Play Consultant*, November 2008.

689 Examples of such approaches can be found in the UK and Canada. See Office of the Deputy Prime Minister (2003) *Developing Accessible Play Space: A Good Practice Guide*, London: Office of the Deputy Prime Minister; Canadian Coalition for Accessible Playspaces (2014) *Accessible Playspaces in Canada: A Guidebook for Children's Playspaces that are Accessible to Persons with Disabilities based on CAN/CSA-Z61, Annex H*, Canadian Coalition for Accessible Playspaces.

690 C. Bannon (2013) *Physical activity play in local housing estates and child wellness in Ireland*, *International Journal of Play*, Volume 2 Issue 3, pp. 220–236.

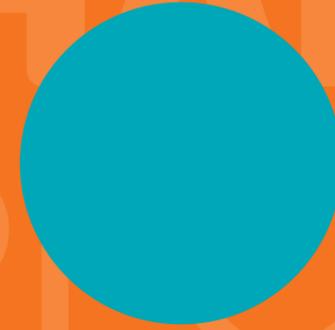
691 S. McCoy et al. (2012) *Growing up in Ireland, National Longitudinal Study of Children, Influences on 9 Year Olds' Learning: Home School and Community*, Dublin: Stationery Office, p. 40.

692 B. O'Keefe and A. O'Beirne (2014) *Children's Independent Mobility on the Island of Ireland*, Limerick: Mary Immaculate College.

693 National Youth Council of Ireland, 'Youth Council reaction to Budget 2015' [press release], 15 October 2014, <http://www.youth.ie/nyci/Youth-Council-reaction-Budget-2015> [accessed 1 May 2015].

694 Indecon (2012) *Assessment of the Economic Value of Youth Work*, Dublin: National Youth Council of Ireland.

695 *Ibid.*



CHAPTER 9: SPECIAL PROTECTION MEASURES

CHAPTER
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> CHILDREN OUTSIDE THEIR COUNTRY OF ORIGIN SEEKING REFUGEE PROTECTION

- 398.** Article 22 obliges States to ensure that children seeking or holding refugee status, whether unaccompanied or not, shall receive appropriate protection and assistance in the enjoyment of Convention rights and other applicable human rights treaties. The State is further obliged to assist the child in the tracing of his or her family and in obtaining information relevant for their reunification. In circumstances where the child's family cannot be found, the child is entitled to the same protections under the Convention as other children deprived of their family.
- 399.** In 2006, the Committee called on the State to 'take necessary measures to bring [its immigration] policy, procedures and practice into line with its international obligations, as well as principles outlined in other documents, including the Statement of Good Practice produced by the United Nations High Commissioner for Refugees and Save the Children.'⁶⁹⁶
- 400. Legislative Reform:** In 2006, the Committee reviewed the State's proposal for legal reform set out in the Immigration, Residence and Protection Bill 2006.⁶⁹⁷ The 2006 Bill was not enacted, nor was the revised iteration of the Bill published in 2011. Legislative proposals on the protection system were published in March 2015 (the General Scheme of the International Protection Bill 2015) but to date no legislative proposals on immigration and residence have been published, and so the area remains largely governed by administrative practice.
- 401.** The General Scheme of the International Protection Bill 2015 has many positives, including the introduction of a single procedure for international protection applicants to replace the existing multi-layered system; and the inclusion of 'child-specific' forms of persecution as ground for protection.⁶⁹⁸ The Scheme stipulates that the best interests of the child are a primary consideration, in areas such as the permission to reside for family members of qualified persons,⁶⁹⁹ but the principle does not apply to the protection determination process, including the exercise of powers in relation to deportation orders. The Scheme does not provide for the right of a child to lodge a separate protection application from that of their parents; nor does it allow for the separate consideration of a child within a family application. It also does not include a definition of an unaccompanied child.

402. Research, published in 2014, found that practice varies among social workers in how they carry out their duties in respect of unaccompanied minors.⁷⁰⁰ Some social workers delayed in making an application on behalf of the child until the child was older and could better understand the process.⁷⁰¹ In other cases, the social worker did not believe that the child had a credible protection case and so no application was made on the child's behalf.⁷⁰² The General Scheme of the International Protection Bill 2015 continues with the current practice that Tusla – Child and Family Agency will make the decision on whether or not, and when, to submit a protection application on behalf of a separated child.⁷⁰³ However, it fails to stipulate the key duties of the Child and Family Agency in respect of unaccompanied minors.⁷⁰⁴

403. Recommendation: The Committee is urged to recommend that the State ensures its laws are compliant with the Committee's General Comment No. 6, 'Treatment of Unaccompanied and Separated Children Outside Their Country of Origin'.⁷⁰⁵ The principle of the best interests of the child as a primary consideration should be extended to apply to both the substantive and procedural aspects of any proposed legislation. Provision should be made for a separate application and assessment process for a child where appropriate. All unaccompanied minors should be entitled to access early and continued legal assistance and to the appointment of an independent Guardian *ad Litem*. The duties of Tusla – Child and Family Agency should be set out in law.

404. Separated Children: In 2006, the Committee expressed concern that unaccompanied children or children separated from their parents might not receive adequate guidance, support and protection during the asylum process, in particular with respect to access to services and an independent representation.⁷⁰⁶ In 2006, the Committee called on the State 'to ensure that the same standards of and access to support services applies whether the child is in the care of the authorities or their parents.'⁷⁰⁷

405. In 2009, the Health Service Executive adopted an Equity of Care Policy, following criticism of the inadequate care regime for separated children and concern about the high number of such children disappearing from care and feared trafficked.⁷⁰⁸ This led to a major change as separated children are now accommodated within the mainstream care system. On reaching 18 years, however, the young person is moved from his or her foster family or residential care home and placed in direction provision (see below), except in exceptional circumstances.

406. Direct Provision: Most children of asylum seeking families live in Direct Provision. This is a system of accommodation provided by the State to people seeking asylum in Ireland. It provides room and board within former hotels, hostels or other large buildings. Each centre is managed by private contractors on behalf of the Reception and Integration Agency. In addition to room and board, adult asylum seekers receive a weekly allowance of €19.10 while a child receives a weekly allowance of €9.60. At the end of June 2014, of the 4,324 asylum seekers living in direct provision accommodation, over one third – or 1,527 – were children. The average length of stay in direct provision is four years but 16 per cent of residents have been living in the system for more than eight years.⁷⁰⁹ This means that there are children that have spent their whole lives living in a centre.



696 UN Committee on the Rights of the Child (2006) *Concluding Observations, Ireland*, CRC/C/IRL/CO/2 para. 65.

697 *Ibid.*, para. 64.

698 General Scheme of the International Protection Bill 2015, Head 6(2)(f).

699 *Ibid.*, Head 52, s(2) stipulates that 'In the application of Heads 47, 48, 49, 50 and 51 in relation to a child under the age of 18 years the best interests of the child shall be a primary consideration.' The Heads are as follows (47) Extension to qualified person of certain rights, (48) Permission to reside in the State, (49) Travel document, (50) Permission to enter and reside for member of qualified persons and (51) Permission to reside for member of family of qualified person.

700 E. Quinn *et al.* (2014) *Policies and Practices on Unaccompanied Minors in Ireland*, ESRI Research Series 38, Dublin: The Economic and Social Research Institute.

701 *Ibid.*, p. 25.

702 *Ibid.*

703 Head 12(4) of the General Scheme of the International Protection Bill 2015 provides that: 'Subject to Head 21, where it appears to the Child and Family Agency, on the basis of information available to it, that an application for international protection should be made on behalf of a child in respect of whom the Agency is providing care and protection it shall arrange for the appointment of an employee of the Agency or such other person as it may determine to make an application on behalf of the child.'

704 The Scheme is thus not compliant with the Committee's General Comment No. 6. Committee on the Rights of the Child (2005) *General Comment No. 6, Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, CRC/GC/2005/6.

705 *Ibid.*

706 UN Committee on the Rights of the Child (2006) *Concluding Observations Ireland*, CRC/C/IRL/CO/2, para. 64.

707 *Ibid.*, para. 65.

708 Department of Children and Youth Affairs, *Separated Children Seeking Asylum*, http://www.dcy.a.gov.ie/docs/Separated_Children_Seeking_Asylum/1905.htm [accessed 6 May 2015].

709 Reception and Integration Agency, 'Monthly Statistics Report – June 2014', <http://www.ria.gov.ie/en/RIA/RIAJuneper cent28A4per cent292014.pdf/Files/RIAJuneper cent28A4per cent292014.pdf> [accessed 14 January 2015].

407. A number of child protection and child welfare concerns have been raised about children living in the direct provision system, including by the Irish Human Rights and Equality Commission⁷¹⁰ and the Ombudsman for Children.⁷¹¹ The Special Rapporteur on Child Protection has stated that direct provision is an interference in the right to family life.⁷¹² In July 2014, the UN Human Rights Committee criticised the prolonged length of time residents spend in the direct provision system, highlighting that the centres are ‘not conducive to family life’ and recommending that residents should spend as short a time as possible in the centres.⁷¹³ In November 2014, the High Court held, on the facts of the case, that overall the direct provision system did not breach the right of residents to family life. It held, however, that certain House Rules did interfere with residents’ constitutionally protected right to a home and Article 8 of the European Convention on Human Rights (Private and Family Life).⁷¹⁴ Further it found that the internal complaints procedure for residents was ‘deficient’ and lacking an independent final arbiter. In 2015, HIQA raised concerns about a significantly higher referral rate of child protection and welfare cases than for the general population and it found that there were no standardised protocols on how Tusla - Child and Family Agency and providers of direct provision should work together.⁷¹⁵ It should be noted here that asylum seeking children are not permitted to make complaints to the Ombudsman for Children’s Office. It should also be noted that Ireland has not opted into the European Union Reception Conditions Directive.⁷¹⁶ Direct provision centres are not covered by any national standards relating to children nor are they inspected under an independent inspection regime.⁷¹⁷

408. Asylum seekers are generally not permitted to cook for themselves in direct provision centres or store food in their rooms.⁷¹⁸ Residents of the centres have repeatedly criticised the food provision for being neither of adequate quality nor culturally appropriate but also that it lacks nutritional value, particularly for those with specific dietary requirements.⁷¹⁹ Residents are denied the autonomy to choose their own food, which raises particular concerns for parents with children who cannot provide their food of choice to their children nor decide when to wean their babies from formula milk onto solid food.⁷²⁰ The communal living environment risks inappropriately exposing children to adult sexuality and increases their risk of sexual abuse and grooming.⁷²¹

409. In October 2014, the Minister for Justice and Equality and the Minister of State for Equality, New Communities and Culture established a Working Group to review the protection process and make recommendations on how to improve the standard of living for those in the direct provision system.⁷²² The Final Report of the Working Group (McMahon Report), published in June 2015,⁷²³ recommended reforms to address child poverty, child welfare and child protection concerns associated with living in the direct provision system. These include to increase the weekly payment for children to €29.80; to provide families with self-contained units with cooking facilities or family quarters together with communal kitchens; to provide adequate recreational space for children; to extend the remit of the Office of the Ombudsman and Office of the Ombudsman for Children to include complaints from residents, and establish an independent inspection regime against new standards.

410. Recommendation: The Committee is urged to recommend that the State takes immediate steps to protect the rights of children living in direct provision by implementing in full the recommendations on children of the Working Group on Improvements to the Protection Process, including Direct Provision and Supports for Asylum Seekers.

> CHILDREN BELONGING TO A MINORITY OR AN INDIGENOUS GROUP

411. Article 30 provides that children in ethnic, religious, linguistic minorities or of indigenous origin shall not be denied the right to enjoy his or her own culture, religion or language.

412. Travellers are an indigenous minority group who have been part of Irish society for hundreds of years. They have a distinctive lifestyle and culture based on a nomadic tradition with a language, customs and traditions which make them identifiable as a group to both themselves and to others.⁷²⁴

413. In 2006, the Committee recommended that the State works towards the recognition of Travellers as an ethnic minority; uses research as a basis for policies for the improvement of minority children, in particular Traveller children with regards to health, housing and education; implements the recommendations of the Task Force on the Traveller Community and provides detailed information on the enjoyment by Travellers of their rights, in particular relating to access to education, health services and housing facilities.⁷²⁵ The Committee regretted the lack of information on efforts made to prevent the marginalisation of Roma children and requested further details. In 2014, the UN Human Rights Committee also recommended that Ireland should ‘adopt an effective policy and action plan, developed in consultation with Traveller and Roma communities, to redress situations of inequality.’⁷²⁶ These sentiments echo the recommendations of the UN Committee on the Elimination of Racial Discrimination from 2011.⁷²⁷

710 Irish Human Rights and Equality Commission, *Policy Statement on the System of Direct Provision in Ireland*, 10 December 2014, http://www.ihrec.ie/download/pdf/ihrec_policy_statement_on_direct_provision_10dec14.pdf [accessed 6 May 2015].

711 Ombudsman for Children’s Office (2014) *Annual Report 2013*, Dublin: OCO, p. 38.

712 G. Shannon (2014) *Seventh Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas, Dr Geoffrey Shannon*, p. 61 <http://www.dcy.gov.ie/documents/publications/SeventhSpecialRapReport2014.pdf> [accessed 15 January 2015].

713 UN Human Rights Committee (2014) *Concluding Observations under the International Covenant on Civil and Political Rights: Ireland*, CCPR/C/IRL/CO/4, para. 19.

714 *C.A. and T.A. (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland*. Judgment not published at time of publication of this Report.

715 Health Information and Quality Authority (2015) *Report on inspection of the child protection and welfare services provided to children living in direct provision accommodation under the National Standards for the Protection and Welfare of Children*.

716 Council Directive 2013/33/EU of 26 June 2013, laying down standards for the reception of applicants for international protection (recast), Article 23 of which requires signatories to ensure that the best interests of the child are a primary consideration in decision-making and States must ‘ensure a standard of living adequate for the minor’s physical, mental, spiritual, moral and social development.’

717 Direct provision centres are inspected by the Reception and Integration Agency which is under the remit of the Department of Justice and Equality. *Reception and Integration Agency, Inspections and Clinics*, http://www.ria.gov.ie/en/RIA/Pages/Inspections_Clinics [accessed 1 May 2015].

718 Reception and Integration Agency (2011) *RIA House Rules and Procedures*, Dublin: RIA, p. 14.

719 K. Barry (2014) *What’s Food Got To Do With It: Food Experiences of Asylum Seekers in Direct Provision*, Cork: Nasc, The Irish Immigrant Support Centre, p. 7; S. Arnold (2012) *State Sanctioned Poverty and Social Exclusion: The case of children in state accommodation for asylum seekers*, Dublin: Irish Refugee Council, pp. 20–22.

720 C. Breen (2008) *The policy of Direct Provision in Ireland: a violation of asylum seekers’ right to an adequate standard of housing*, Oxford: Oxford University Press, (2009) *One Size Doesn’t Fit All: A legal analysis of the direct provision and dispersal system in Ireland, 10 years on*, Dublin: FLAC, p. 104.

721 Health Information Quality Authority, *Report on inspection of the child protection and welfare services provided to children living in direct provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007* <http://www.hiqa.ie/press-release/2015-05-25-findings-hiqa-inspection-child-protection-and-welfare-services-provided-chi> [accessed 1 September 2015].

722 Department of Justice and Equality, ‘Ministers Fitzgerald and Ó Riordáin announce composition of Working Group to examine improvements to the Protection process and the Direct Provision system’ [press release], 13 October 2014, [tp://www.justice.ie/en/JELR/Pages/PR14000280](http://www.justice.ie/en/JELR/Pages/PR14000280) [accessed 19 January 2015].

723 Working Group on the Protection Process (2015) *Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report*, <http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf> [accessed 1 September 2015].

724 C. Kelleher et al. (2010) *Our Geels, All Ireland Traveller Health Study*, Dublin: University College Dublin, p. 9.

725 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2 para. 79.

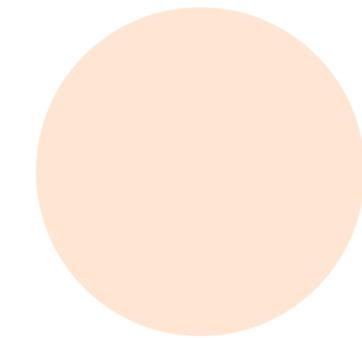
726 UN Human Rights Committee (2014) *Concluding Observations: Ireland*, CCPR/C/IRL/CO/4, para. 23.

727 UN Committee on the Elimination of Racial Discrimination (2011) *Concluding Observations: Ireland*, CERD/C/IRL/C/3-4, para. 13.

> CHILDREN IN SITUATIONS OF EXPLOITATION

- 414. Traveller Children:** According to Census 2011, there are 14,913 Traveller children living in Ireland.⁷²⁸ Travellers have a very young population with 42 per cent of Travellers being under the age of 15 years. Outcomes for Traveller children are almost universally worse than their settled peers. In 2014, a Seanad Committee expressed its concern that 'Travellers in Irish society suffer high levels of racism and discrimination, including indirect discrimination'.⁷²⁹ In a welcome development, in November 2014, the Minister for Equality, New Communities and Culture pledged to grant State recognition to Travellers as an ethnic minority within six months.⁷³⁰ This has yet to happen.⁷³¹
- 415. Roma Children:** It is estimated that there are between 3,000 and 5,000 Roma living in Ireland.⁷³² In 2014, the UN Human Rights Committee expressed concern at the lack of data on the Roma community living in Ireland.⁷³³ Research indicates that Roma children face many barriers in trying to access education including 'poverty, racism, discrimination, poor housing and health conditions' while 'a lack of access to employment and social protection' also causes financial difficulties.⁷³⁴ These barriers further marginalise Roma children and perpetuate a cycle of social exclusion. The fear of engagement with authorities can lead to mothers disengaging from the Public Health Nurse Service which may result in children remaining unvaccinated.⁷³⁵
- 416.** In 2014, a Special Inquiry into the removal of two Roma children from their respective families found that the Garda Síochána (Police Service) had acted disproportionately and breached the constitutional rights of the families.⁷³⁶ Of particular concern is the finding that the children's ethnicity featured in the decision-making, and the actions of the Gardai in one of the cases conformed to the definition of ethnic profiling.⁷³⁷
- 417. Recommendation:** The Committee is urged to recommend that the State revises the *Ireland's National Traveller and Roma Integration Strategy*, in consultation with Traveller and Roma representatives and puts in place a rigorous monitoring mechanism to ensure commitments are delivered.

- 418. Use of Children in the Illicit Production and Trafficking of Drugs:** Article 33 provides that States shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of drugs and to prevent the use of children in the illicit production and trafficking of such substances. Research has identified that in some disadvantaged communities drug dealers and gangs are identifying vulnerable children and grooming them, often at a very young age, to become involved in illegal activities on their behalf, such as delivering or collecting drugs, money or fire arms.⁷³⁸ In addition, over the past few years a number of children,⁷³⁹ teenagers and young adults have been killed,⁷⁴⁰ and in other instances children have witnessed their parents being killed in violent circumstances that are suspected to be gang or were drug-related.⁷⁴¹
- 419. Recommendation:** The Committee is urged to recommend that the State, as part of support services and Garda (police) diversionary programmes in disadvantaged communities, provides intensive, coordinated and early interventions aimed at identifying vulnerable children at risk of grooming by drug dealers and gangs.
- 420. Sale, Trafficking and Abduction:** Article 35 provides that States shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.
- 421.** In 2006, the Committee called on the State to adopt and implement a strategy to combat trafficking, and put in place measures for the physical and psychological recovery and reintegration of victims and requested further data on child trafficking.⁷⁴² Concerns were also raised by the Council of Europe in 2013⁷⁴³ and the UN Human Rights Committee in 2014.⁷⁴⁴
- 422.** Since 2006 much progress has been made, the Anti-Trafficking Unit of the Department of Justice and Equality was established in 2008 and the Blue Blindfold public awareness campaign was rolled out.⁷⁴⁵ Ireland's first anti-trafficking National Action Plan was launched in 2009.⁷⁴⁶ This strategy ended in 2012 and a follow-on National Action Plan to prevent and combat trafficking is expected to be published in 2015.⁷⁴⁷



728 Central Statistics Office, *Census 2011 Profile 7 – Religion, Ethnicity and Irish Travellers*, http://www.cso.ie/en/media/csoie/census/documents/census2011profile7/Profile_7_Education_Ethnicity_and_Irish_Traveller_entire.doc.pdf [accessed 26 January 2015].

729 Houses of the Oireachtas, Seanad Éireann, Seanad Public Consultation Committee, (2014) *Report on Ireland's Compliance with the International Covenant on Civil and Political Rights with Observations and Recommendations to the United Nations Human Rights Committee and to the Irish Government*, June 2014, para. 19.

730 K. Holland, 'Traveller ethnicity will be reality in six months, says Ó Riordáin', *The Irish Times*, 19 November 2014. In 2014, the Joint Oireachtas Committee on Justice, Defence and Equality joined an array of national, European and international bodies and agencies in calling on the Government to grant ethnic minority status to the Traveller community. These bodies include the Equality Authority; the Human Rights Commission; the National Consultative Committee on Racism and Interculturalism; the UN Human Rights Committee; the Council of Europe Commissioner for Human Rights; the UN Committee on the Rights of the Child; the UN Committee on the Elimination of Racial Discrimination; the Advisory Committee on the Implementation of the Council of Europe Framework Convention for the Protection of National Minorities (FCNM), the Council of Europe Advisory Committee on The Framework Convention For The Protection Of National Minorities, Third Opinion On Ireland Adopted On 10 October 2012, Acfc/Op/iii(2012)006.

731 Recognition of Traveller ethnicity would require public authorities and policymakers to ensure that the identity and culture of Travellers is respected in matters affecting them and ensure that Travellers would be afforded protection under the EU Racial Equality Directive.

732 There is no official data on the Roma community living in Ireland.

733 UN Human Rights Committee (2014) *Concluding Observations: Ireland*, CCPR/C/IRL/CO/4 para. 23.

734 L. Pohjola (2014) *Roma and Education*, Dublin: Pavee Point, p. 5.

735 L. Pohjola (2014) *Challenging Barriers and Misconceptions: Roma Maternal Health in Ireland*, Dublin: Pavee Point, p. 23.

736 E. Logan (2014) *Garda Síochána Act 2005 (Section 42) (Special Inquiries relating to Garda Síochána) Order 2013: Report of Ms Emily Logan*, Dublin: Department of Justice and Equality.

737 *Ibid.*, para. 2.10.66.

738 M. Higgins, *The Drugs Crisis in Ireland: A new agenda for action. CityWide Policy Statement February 2012*, http://www.drugsandalcohol.ie/17145/1/Citywide_the_drugs_crisis_in_ireland_a_new_agenda_for_action.pdf [accessed 14 May 2015].

739 In June 2014, a six year old boy was shot in the neck in a hallway of a house when two gunmen missed their intended target. T. Brady, G. Gittens, C. McQuinn 'Boy (6) has been shot in the neck at his Dublin home', *Irish Independent* [online], <http://bit.ly/Independent-boy6-shot-Ballyfermot> [accessed 19 January 2015].

740 For example in February 2012 a 16 year old girl was murdered in a drive-by shooting, the gunman was also a minor at the time of the shooting. 'Man (19) found guilty of Melanie McCarthy McNamara murder' *Irish Independent* [online], <http://bit.ly/Independent-MMcCarthyMcNamara-Murder> [accessed 19 January 2015].

741 C. Lally, 'Gardai identify two men linked to murder of Tallaght teenager', *Irish Times* [online], 10 February 2012, <http://www.irishtimes.com/newspaper/ireland/2012/0210/1224311576260.html> [accessed 2 January 2013]; RTÉ, 'Gardai to speak to child who saw father shot dead in Dublin' RTÉ News [online], 26 September 2012, <http://www.rte.ie/news/2012/0925/declan-oreilly-dublin.html> [accessed 3 January 2013].

742 UN Committee on the Rights of the Child (2006) *Concluding Observations, Ireland*, CRC/C/IRL/CO/2, para. 77.

743 Council of Europe (2013) Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings. Recommendation CP(2013)9 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland, http://www.coe.int/t/dghl/monitoring/trafficking/docs/CommitteeParties/Recommendations/CP_2013_9_IRL_en.pdf [accessed 1 May 2015].

744 UN Human Rights Committee (2014) *Concluding Observations, Ireland*, CCPR/C/IRL/CO/4, para. 20.

745 Department of Justice, Equality and Law Reform, *National Action Plan to Prevent and Combat Trafficking in Human Beings in Ireland 2009-2012*, <http://www.justice.ie/en/JELR/Final%20National%20Action%20Plan2.pdf/Files/Final%20National%20Action%20Plan2.pdf> [accessed 1 April 2015]. For more information on the Blue Blindfold Campaign, see www.blueblindfold.ie.

746 *Ibid.*

747 A draft National Action Plan to Prevent and Combat Human Trafficking in Ireland is currently being drafted, of which the response to child trafficking is to be a component. Minister for Justice and Equality, Frances Fitzgerald TD, *Human Trafficking*, [11858/15] Dáil Debates, 26 March 2015.

> CHILDREN IN CONFLICT WITH THE LAW AND JUVENILE JUSTICE

- 423.** The Criminal Justice (Human Trafficking) Act 2008 criminalises the trafficking, selling, offering, purchasing or inviting to make an offer or purchase of a child⁷⁴⁸ A person who sexually exploits, trafficks or detains a child for the purposes of sexual exploitation is also guilty of an offence.⁷⁴⁹ The nature of trafficking in Ireland appears to be changing. There are indications that the profile of victims of trafficking is no longer migrant children from outside the EEA but Irish children. For example, of the 44 potential victims of trafficking identified in 2013 – the latest year for which statistics are available – 16 were children, including 11 Irish children who were trafficked for sexual exploitation.⁷⁵⁰
- 424.** There is concern that there is not enough legislative protection for victims of trafficking in Ireland.⁷⁵¹ Most suspected victims and a significant number of identified victims are housed in Direct Provision as they are not eligible for special Administrative Arrangements for victims of trafficking, which provide, for example, for a 60 day reflection and recovery period.⁷⁵² This is because the Arrangements do not apply to European Economic Area (EEA) nationals, asylum seekers or those who already hold a residence permit in the State.⁷⁵³
- 425.** In September 2015, the Government published the Criminal Law (Sexual Offences) Bill 2015, which creates for the first time an offence of paying, giving or offering payment to a child for the purpose of sexual exploitation.⁷⁵⁴ This offence applies to a person offering a child to another person or obtaining a child for himself or herself or for another person for the purpose of sexually exploiting that child. It also criminalises the purchase of sexual services.⁷⁵⁵
- 426. Recommendation:** The Committee is urged to recommend that the State provides in law for the protection and temporary immigration status of all child victims of trafficking and ensures that the best interests of the child is paramount in decision-making; enacts the Criminal Law (Sexual Offences) Bill 2015; and works with EU Member States to put in place a legal framework to identify and tackle the trafficking of EU nationals.

- 427. Children Deprived of their Liberty:** Article 37 provides that children shall be deprived of their liberty only as a last resort and for the shortest appropriate time; and that such children shall be treated in a manner that takes into account the needs of a person of his or her age, including that he or she be separated from adults unless in the child's best interests and shall maintain contact with his or her family; and have prompt access to legal and other appropriate assistance.
- 428. Children in Adult Prisons:** In 2006, the Committee expressed its concern that children aged 16 and 17 years were being detained in St. Patrick's Institution, a closed, medium security prison detention centre for males up to the age of 21 years,⁷⁵⁶ and called on the State to provide children under the age of 18 with separate detention facilities.⁷⁵⁷
- 429.** The operation and the practice of detaining children at St. Patrick's Institution has been criticised as a glaring human rights violation by a number of domestic and international bodies, including the UN Human Rights Committee,⁷⁵⁸ the UN Committee Against Torture,⁷⁵⁹ the Council of Europe Commissioner for Human Rights,⁷⁶⁰ the Council of Europe Committee for the Prevention of Torture,⁷⁶¹ and the Ombudsman for Children.⁷⁶² A 2012 report found St. Patrick's Institution to be the most violent prison in Ireland, responsible for one third of all assaults in the prison system.⁷⁶³
- 430.** In 2012, the Government committed to ending the practice of detaining children in adult prisons and to detain all those under 18 years in a National Children Detention Facility to be developed on the Oberstown campus in County Dublin.⁷⁶⁴ In July 2013, the Inspector of Prisons published his 2012 Annual Report calling for the complete closure of St Patrick's Institution due to 'very disturbing incidents of non-compliance with best practice and breaches of the fundamental rights of prisoners.'⁷⁶⁵ On foot of this report, the former Minister for Justice, Equality and Defence announced his intention to close St Patrick's Institution, and in April 2015, the Government published the General Scheme of the Prisons Bill, which provides for the complete closure of St. Patrick's Institution.⁷⁶⁶

748 Criminal Justice (Human Trafficking) Act 2008, s. 2.
 749 *Ibid.*, s. 3.
 750 US Department of State (2014) *Trafficking in Persons Report*, p. 213.
 751 Policy exists under the Department of Justice and Equality (2011) *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking*, <http://bit.ly/1Q192E0> [accessed 12 March 2015].
 752 Department of Justice and Equality, *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking*, <http://bit.ly/1Q192E0> [accessed 1 May 2015]. The Administrative Immigration Arrangements provide for a 60 day reflection and recovery period and later a renewable Temporary permit which allows victims to move out of direct provision and into private-rented accommodation and to access social welfare.
 753 See also, Immigrant Council of Ireland, *Submission of the accommodation needs of adult victims of sex trafficking in Ireland*, <http://www.nascireland.org/wp-content/uploads/2014/10/Proposal-for-housing-of-adult-victims-of-sex-trafficking.pdf> [accessed 1 May 2015].
 754 Criminal Law (Sexual Offences) Bill 2015, s. 3.
 755 Criminal Law (Sexual Offences) Bill 2015, s. 20. Under this section, the person offering sexual acts does not commit any offence.

756 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, para. 69.
 757 *Ibid.*, para. 73.
 758 UN Human Rights Committee (2014) *Concluding Observations: Ireland*, CCPR/C/IRL/CO/4 para. 15.
 759 UN Committee Against Torture (2011) *Concluding Observations: Ireland*, CAT/C/IRL/CO/1, para. 22.
 760 Council of Europe (2011) *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Ireland from 1 to 2 June 2011*, Strasbourg: Council of Europe.
 761 Council of Europe (2010) *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*, Strasbourg: Council of Europe.
 762 Ombudsman for Children's Office 'Children's Ombudsman calls on the next Government to expedite closure of St. Patrick's Institution as a place of detention for children' [press release], 9 February 2011, <http://www.oco.ie/whats-new/media/press-release-archive/childrens-ombudsman-calls-on-the-next-government-to-expedite-closure-of-st-patricks-institution-as-place-of-detention-for-children.html>.
 763 Judge M. Reilly (2012) *Report on an Inspection of St. Patrick's Institution by the Inspector of Prisons*, Tipperary: Office of the Inspector of Prisons.
 764 Department of Children and Youth Affairs, 'Minister Fitzgerald to End Detention of 16 and 17 Year Olds in St. Patrick's Institution' [press release], 2 April 2012, <http://www.dcy.gov.ie/viewdoc.asp?DocID=1842> [accessed 10 February 2015].
 765 Inspector of Prisons (2013) *Annual Report 2012* Inspector of Prisons: Tipperary, p. 23. See also Ombudsman for Children (2011) *Young People in St. Patrick's Institution, A Report by the Ombudsman for Children's Office*, Dublin: Ombudsman for Children's Office.
 766 Department of Justice and Equality, 'Minister Fitzgerald publishes General Scheme of the Prisons Bill' [press release] 2 April 2015 <http://justice.ie/en/JELR/Pages/PB15000102> [accessed 1 May 2015].

- 431.** Since 2012, the Government has taken steps to remove children from St. Patrick's Institution. From 2012 onwards, all 16 year olds have been detained in Children Detention Schools and from December 2013, all 17 year olds serving custodial sentences have been transferred to a dedicated unit in Wheatfield Place of Detention, another adult prison, as an interim measure until the completion of the new facility in Oberstown.⁷⁶⁷
- 432.** For legal reasons, 17 year olds who are detained on remand (i.e. children awaiting trial for criminal offences or who have been denied bail) cannot be detained in Wheatfield Place of Detention so they continued to be remanded to St. Patrick's Institution. From 30 March 2015, all 17-year-olds newly remanded in custody, are remanded to the Children Detention Facility as capacity permits.⁷⁶⁸ As of 15 September 2015, there were three 17-year-olds detained on remand in St. Patrick's Institution and thirteen 17-year-olds in Wheatfield Prison.⁷⁶⁹ The Inspector of Prisons expressed grave concern about the continued detention of a small number of boys in St. Patrick's Institution describing it as 'at times, tantamount to holding them in isolation and it is certainly inhumane'.⁷⁷⁰
- 433. Recommendation:** The Committee is urged to recommend that the State invests the necessary resources to ensure that all 17 year olds detained in adult prisons can be accommodated in the National Children Detention Facility as a matter of urgent priority.
- 434. Children in Detention:** Since 2013, over €56 million has been invested in the development of a National Children Detention Facility, which will incorporate the three existing Children Detention Schools⁷⁷¹ at the Oberstown campus in County Dublin.⁷⁷² An amendment to the Children Act 2001, enacted but not yet commenced, underpins the operation of the new integrated Facility.⁷⁷³ The Facility will accommodate all children on remand or serving a custodial sentence, as originally provided for in the Children Act 2001. The building work and related staff recruitment are nearing completion. During 2014, a total of 168 boys and eight girls were remanded or committed to the Detention Schools,⁷⁷⁴ down slightly on the 179 boys and 12 girls held in 2013.⁷⁷⁵
- 435.** In its report dated February 2015, the Health Information and Quality Authority (HIQA) – the body charged with inspecting the Children Detention Schools – found that the schools met just one of the 10 national standards in full: the education standard.⁷⁷⁶ Six standards were found to require improvement; and the failure to meet three standards – on single separation, the management of medication, and staffing and training issues – was found by HIQA to present 'significant risk'.⁷⁷⁷ Children and staff reported that children were in single separation because 'they were waiting for more staff to come into the unit'.⁷⁷⁸

- 436.** HIQA found the use of single separation for 83 hours over four days in one case to be totally unacceptable.⁷⁷⁹ The previous 2012 HIQA inspection report also found that the use of single separation did not comply with the Irish Youth Justice Service Separation Policy as children were being placed in single separation for lengthy periods.⁷⁸⁰ The isolation of any child or young person from their peers can be damaging in itself, and the standards are clear that it must only be used sparingly and for the minimum appropriate period of time.
- 437.** In September 2015, the Minister for Children and Youth Affairs launched a review of single separation policies in use in special care, children's residential centres and the Children's Detention Schools in Oberstown.⁷⁸¹ This arose on foot of another HIQA report in August 2015, which showed unacceptable practices had been taking place involving children in single separation units in the Special Care Unit at Ballydowd.⁷⁸² For example, children had been forced to urinate on the floor and had only been given access to a shower on day four of a five day continuous single separation period.⁷⁸³
- 438.** In addition, HIQA has identified that children in Detention Schools had limited awareness of their rights and there was no mechanism in place for ensuring consultation and participation of children. In addition, there was no centralised mechanism for recording and acting on complaints.⁷⁸⁴
- 439. Recommendation:** The Committee is urged to recommend that admissions to the National Children's Detention Facility should be closely monitored on an ongoing basis to ensure that any increased capacity does not lead to a rise in the number of children in detention and that the use of single separation at the Oberstown facility should be greatly reduced. The Standards used to assess conditions in the Children Detention Schools, which were drafted over ten years ago, should be reviewed and revised to ensure that they reflect international standards and best practice.
- 440. Use of Remand:** In addition to Article 37 noted above, international standards provide that '[d]etention pending trial should only be used as a measure of last resort and for the shortest possible period of time';⁷⁸⁵ that it shall be avoided to the greatest extent possible and limited to exceptional circumstances⁷⁸⁶ and that '[d]eprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response'.⁷⁸⁷
- 441.** In addition, figures show that only 27 per cent of children detained on remand in 2013 were subsequently sentenced to detention on conviction.⁷⁸⁸ The question arises as to whether this breaches Section 96 of the Children Act 2001 which states that detention, including detention on remand, should only be used as a measure of last resort.

767 Minister for Children and Youth Affairs, Dr. James Reilly TD, *Child Detention Centres*, [7693/15], Dáil Debates, 24 February 2015.
 768 Statutory Instrument No. 94/2015 - Children Act 2001 (Section 160 Designation) Order 2015 and Statutory Instrument No. 95/2015 - Children Act 2001 (Designation of Remand Centres) (Amendment) Order 2015.
 769 Irish Prison Service, *Prisoner Population on Tuesday 15 September 2015*, http://www.irishprisons.ie/images/dailynumbers/15_september_2015.pdf [accessed 16 September 2015].
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 772 Budget 2015 provided the final instalment of a €56.4 million investment over three years in the national facility. An additional €19 million was allocated to complete the national facility and a further €1.8 million to cover the costs of additional staff and costs associated with the new, larger facility. Department of Finance, Budget 2014: Expenditure Allocation 2014-2016 <http://budget.gov.ie/Budgets/2014/Documents/Partper cent201per cent20per cent20Expenditureper cent20Allocationsper cent202014per cent20per cent202016.pdf> [accessed 10 January 2014].
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 776 Health Information and Quality Authority (2015) *Inspection Report on National Children's Detention School Campus*, p. 10 <http://www.hiqa.ie/social-care/find-a-centre/childrens-detention-schools> [accessed 1 May 2015].
 777 Health Information and Quality Authority, *Action Plan: National Children's Detention Campus*, p. 10 http://www.hiqa.ie/system/files/DS_Action_Plan.pdf [accessed 31 March 2015].
 778 Health Information and Quality Authority (2015) *Inspection Report on National Children's Detention School Campus*, p. 41 <http://www.hiqa.ie/social-care/find-a-centre/childrens-detention-schools> [accessed 1 May 2015].

779 Health Information and Quality Authority, *Action Plan: National Children's Detention Campus*, p. 2 http://www.hiqa.ie/system/files/DS_Action_Plan.pdf [accessed 31 March 2015].
 780 Health Information and Quality Authority, *A Follow Up Inspection Report of Children's Detention Schools on Oberstown Campus*, <http://hiqa.ie/social-care/find-a-centre/childrens-detention-schools> p. 5 [accessed 1 May 2015].
 781 Department of Children and Youth Affairs, 'Minister Reilly requests review of the operation of 'single separation' policies across the range of children's residential care settings' [press release], 1 September 2015, <http://www.dcy.gov.ie/viewdoc.asp?DocID=3527> [accessed 1 September 2015].
 782 Health Information and Quality Authority (2015) *Health Information and Quality Authority Regulation Directorate Focused Inspection Report – Special Care Units under Section 69(2) of the Child Care Act 1991 as amended by the Child Care (Amendment) Act 2011, Ballydowd Special Care Unit*, Inspection ID: 731, http://www.hiqa.ie/social-care/find-a-centre/inspection-reports?field_report_type_centre_value_many_to_one=reportchildrens [accessed 1 September 2015].
 783 *Ibid.*, p. 13.
 784 Health Information and Quality Authority, *Action Plan: National Children's Detention Campus*, http://www.hiqa.ie/system/files/DS_Action_Plan.pdf, p. 4. [accessed 31 March 2015].
 785 United Nations General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")*, 29 November 1985, A/RES/40/33 r.13.1.
 786 United Nations General Assembly, *The UN Rules for the Protection of Juveniles Deprived of their Liberty*, 14 December 1990, A/RES/45/11, notably rule 17.
 787 United Nations General Assembly, *UN Standard Minimum Rules for the Administration of Juvenile Justice*, 29 November 1954, A/ RES/ 40/33, Article 17(c).
 788 Minister for Children and Youth Affairs, Dr. James Reilly TD, Parliamentary Questions: Written Answers, Dáil Debates, 20 January 2015 [2192/15].

- 442.** In some cases, children have been remanded to custody on welfare grounds, contrary to Section 88 of the Children Act 2001 (as amended) which stipulates that the Court shall not remand a child in custody solely on the basis of care or protection concerns.⁷⁸⁹ Children are remanded for assessment but at times remain longer than necessary in detention due to a lack of an appropriate welfare (follow-on) placement.⁷⁹⁰
- 443. Recommendation:** The Committee is urged to recommend that the State undertakes an independent review of the use of remand; ensures children on remand are detained separately from children who have been convicted; and invests in effective bail supports. The duration of pre-trial detention should be limited by law and the State should withdraw its reservation to Article 10 (2b) of the International Covenant on Civil and Political Rights.
- 444. The Sentencing of Children:** Article 37(a) obliges States to ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age.
- 445.** The European Court of Human Rights has acknowledged that it is essential that cases involving children are dealt with speedily.⁷⁹¹ Due to delays in cases coming to trial, an individual who commits an offence while a child may be over 18 at the time of trial and therefore cannot benefit from the protections of the Children Act 2011, such as child sentencing provisions, the case being heard in the Children's Court, and reporting restrictions. In a judicial review, the Supreme Court held that the Director of Public Prosecutions (DPP) has a duty to act expeditiously in matters relating to minors.⁷⁹²
- 446. Recommendation:** The Committee is urged to recommend that the State introduces flexibility into its sentencing provisions to ensure that those who commit offences while children are sentenced as children. In addition, vulnerable adults up to the age of 24 years should be granted the protections and benefit that accrue to children in exceptional cases where the individual has impaired cognitive function, mental health issues or other difficulties.

CHAPTER 10: OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

789 Ombudsman for Children's Office, *A Meta-Analysis of Repeat Root Cause Issues Regarding the Provision of Services for Children in Care*, http://www.oco.ie/assets/files/publications/complaints_and_investigations/OCmetaanalysisofservicesforchildrenincare.pdf [accessed 1 May 2015].

790 M. Seymour and M. Butler, *Young People on Remand: The National Children's Research Strategy Series*, http://www.dit.ie/cser/media/ditcser/images/Young_People_on_Remand_Study_261108.pdf [accessed 10 May 2015].

791 *Hokkanen v Finland* (1994) 19 EHRR 139, para. 72.

792 In this case, there had been a 17 month delay in charging the young person and he would have been an adult at the time of his trial. PD v Director of Public Prosecutions 2012/332 JR.

- 447.** In 2006, the Committee recommended that the State ratify the Optional Protocol on the Sale of Children, Child Pornography and Child Prostitution.⁷⁹³
- 448.** Ireland signed the Optional Protocol on 7 September 2000 but has yet to ratify it and is now the only Member State of the EU not to have ratified the Protocol.⁷⁹⁴ The State has indicated its intention to prioritise examination of the Protocol's ratification.⁷⁹⁵
- 449.** The failure to bring Irish law into line with the Optional Protocol and to ratify this Protocol means Irish law is failing to fully protect children from exploitation and is failing to support child victims.
- 450.** The law in Ireland falls short of obligations under the Optional Protocol as it lacks extraterritorial jurisdiction in relation to child pornography related offences; and does not contain provision for international cooperation regarding the Optional Protocol nor provision for confiscation of the proceeds and closure of premises connected to offences under the Optional Protocol. In addition, Irish law does not contain: safeguards for children giving evidence of sexual offences; supports for child victims during judicial proceedings; assistance to victims nor provision to seek compensation. Finally, the best interests of the child is not a primary consideration in dealing with child victims under Irish law.
- 451.** In 2015, the Government published two pieces of legislation which will bring Irish law further into compliance with the Optional Protocol – the Criminal Law (Sexual Offences) Bill 2015 and the General Scheme of the Criminal Justice (Victims of Crime) Bill 2015.
- 452. Recommendation:** The Committee is urged to again recommend that the State ratifies the Optional Protocol on the Sale of Children, Child Pornography and Child Prostitution without reservation and introduces relevant legislation to give it full effect in Irish law as a matter of priority.

⁷⁹³ UN Committee on the Rights of the Child (2006) *Concluding Observations Ireland*, CRC/C/IRL/CO/2, para. 83.
⁷⁹⁴ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography A/RES/54/263 of 25 May 2000, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx> [accessed 28 September 2015].
⁷⁹⁵ Department of Children and Youth Affairs (2013) *Ireland's Consolidated Third and Fourth Reports to the UN Committee on the Rights of the Child*, Dublin: Department of Children and Youth Affairs, para. 189.

CHAPTER 11:

CHAPTER 11: OPTIONAL PROTOCOL ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

- 453.** Ireland signed the Optional Protocol on the Involvement of Children in Armed Conflict on 7 September 2000 and ratified it on the 18 November 2002, with a declaration relating to the minimum age of recruitment to armed forces.⁷⁹⁶
- 454. Minimum Age of Recruitment:** The Optional Protocol amends Article 38 of the Convention and provides that no one under the age of 18 shall take part in direct hostilities or be compulsorily recruited into armed forces.
- 455.** Ireland was examined by the Committee under this Optional Protocol in 2008. In its *Concluding Observations*, the Committee called on the State to raise the minimum age for recruitment into the Defence Forces from 17 years to 18 years; to raise the minimum age of cadets participating in arms training provided by the Defence Forces to 18 years; and to explicitly criminalise direct involvement of any persons under the age of 18 in hostilities, both at home and abroad.⁷⁹⁷
- 456.** In 2013, the then Minister for Defence increased the minimum age of recruitment for the Defence Forces from 17 to 18 years of age.⁷⁹⁸ In January 2015, the State made an amended declaration to the Optional Protocol stating that the minimum age for voluntary recruitment into the armed forces is 18 years of age and that all recruitment is voluntary.⁷⁹⁹ This is a welcome development.
- 457. Former Child Soldiers:** NGOs have reported coming into contact with, and supporting, former child soldiers originally from other countries but now living in Ireland who have sought counselling and support due to their armed conflict experiences.⁸⁰⁰ There is no official data to indicate the number of children or young adults living in Ireland that have been identified as former child soldiers. Furthermore, there is no formal identification mechanism or referral service for former child soldiers who come to the attention of statutory agencies and require specialised mental health services.
- 458. Recommendation.** The Committee is urged to recommend that the State provides a mechanism to identify former child soldiers; and provides specialised mental health services and other supports to assist their psychological and physical recovery and integration into society.

⁷⁹⁶ Ireland's declaration to the Optional Protocol read: 'Pursuant to article 3, paragraph 2, of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, Ireland declares: In general, the minimum age for recruitment into the Irish armed forces is 17. An exception is made in the case of apprentices, who may be recruited at the age of 16. However, apprentices are not assigned to any military duties until they have completed up to four years apprenticeship trade training, by which time all would have attained the age of 18. Ireland has adopted the following safeguards to ensure that recruitment of personnel under the age of 18 is not forced or coerced: All recruitment to the Irish armed forces is voluntary. Ireland does not practice conscription and recruitment campaigns are informational in nature. Applicants must fill in an application and are selected on the basis of suitability. Applicants who are offered a position are under no obligation to accept that position. All applicants are required to provide proof of age. All unmarried applicants who are under 18 must have the written consent of a parent or guardian. In Ireland a person attains full age or adulthood either on attaining the age of 18 or upon marriage if they marry before that age. Under Irish law a person who is under the age of 18 years may not enter into a valid marriage unless an exemption is granted by the Circuit or High Court.'

⁷⁹⁷ UN Committee on the Rights of the Child (2008) *Consideration of Reports submitted by States Parties under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Concluding Observations: Ireland, CRC/C/OPAC/IRL/CO/1, paras. 11, 13 and 15.*

⁷⁹⁸ DFR A10, para. 7(1).

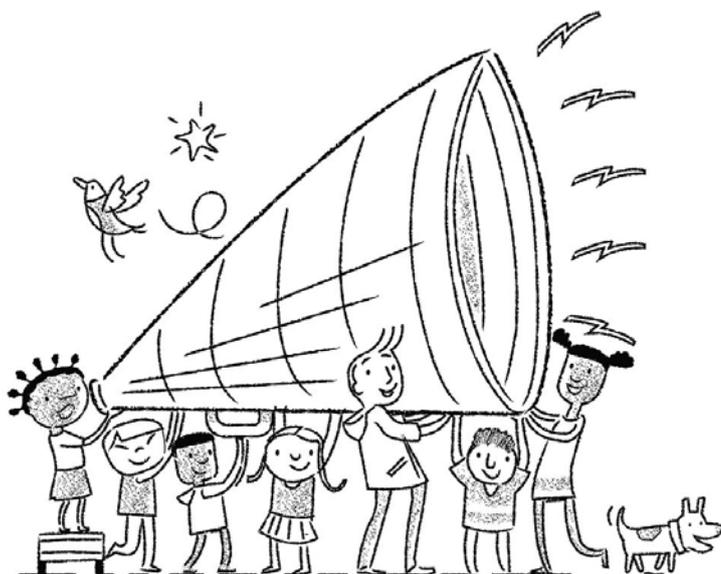
⁷⁹⁹ The additional Declaration of 12 January 2015 states that: 'Pursuant to Article 3, paragraph 2, of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Ireland declares: The minimum age for voluntary recruitment into the Irish armed forces is 18 years of age. All recruitment to the Irish armed forces is voluntary. Ireland does not practice conscription and recruitment campaigns are informational in nature. Applicants must fill in an application and are selected on the basis of suitability. Applicants who are offered a position are under no obligation to accept that position. All applicants are required to provide proof of age.'

⁸⁰⁰ Communication received by the Children's Rights Alliance in consultation with SPIRASI, 29 April 2015. Spirasi is an Irish non-governmental organisation that works with survivors of torture: it is the only specialist centre in Ireland for the care and rehabilitation of survivors of torture and severe trauma.

CHAPTER 12: OPTIONAL PROTOCOL ON A COMMUNICATIONS PROCEDURE

459. Ireland ratified the Third Optional Protocol to the Convention on a Communications Procedure in September 2014 and the Protocol came into effect on 24 December 2014.⁸⁰¹ This new procedure will enable children and their representatives to complain to the UN Committee on the Rights of the Child when their rights have been breached. Ireland was one of the first States in the world to ratify the Optional Protocol. The State is to be commended for ratifying the Optional Protocol in such a speedy manner.

460. Recommendation: The Committee is urged to recommend that the State undertakes further work to promote awareness of the Third Optional Protocol to the Convention on a Communications Procedure in particular among children, their families and advocates.



801 Office of the High Commissioner for Human Rights, *Ratification Status for CRC-OP-IC - Optional Protocol to the Convention on the Rights of the Child*, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CR&Lang=en [accessed 2 April 2015].

Appendix 1: Consultation Contributors

ORGANISATIONS

Aftercare Forum and Social Care Ireland
AkiDwA's Young Migrant Women's Group
ARC
ASH Ireland
Atheist Ireland
Autism Rights Together
Barnardos
BeLonG To LGBT Youth Services
Centre for Disability Law and Policy,
National University of Ireland, Galway
Cork Life Centre
Dental Health Foundation
Disability Federation of Ireland
Educate Together
EPIC
Immigrant Council of Ireland
Institute of Guidance Counsellors
Irish Association of Social Workers
Irish Heart Foundation
Irish National Teachers Organisation (INTO)
Irish Penal Reform Trust
Jesuit Centre for Faith and Justice
Mental Health Reform
National Youth Council of Ireland
North Kildare Network Disability Team
One Family
Pavee Point
Prevention and Early Intervention Network
Rape Crisis Network Ireland (RCNI)
Rialto Springboard
Sonas Domestic Violence Charity
Spirasi
Start Strong
Transgender Equality Network Ireland (TENI)
Women's Aid
Youth Work Ireland

INDIVIDUALS

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Dr. Jackie Bourke
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Dr. Fiona Donson and Dr. Aisling Parkes,
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Mary Gordon, Senior Psychologist,
National Educational Psychological Service
Carmen Kealy, Student, National University
of Ireland, Galway
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Dr. Helen Lynch, Department of
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Therapy, UCC
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Cycling Advocacy Network
Professor Dr. Geoffrey Shannon,
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Aoife Whitford, School of Law,
University College Cork

CHILDREN'S RIGHTS ALLIANCE

Uniting Voices For Children

The **Children's Rights Alliance** unites over 100 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services.

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Department of
Children and Youth Affairs



Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government

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