

***Submission to the UN Committee
against Torture on the List of
Issues for the Third Examination
of Ireland***

January 2020



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



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Irish Human Rights and Equality Commission
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2. Introduction

The Irish Human Rights and Equality Commission ('the Commission') exercises a dual capacity as the "A" Status National Human Rights Institution ('NHRI') and the National Equality Body for Ireland. Under the *Irish Human Rights and Equality Commission Act 2014*, the Commission is mandated to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality and to consult with international bodies having a knowledge or expertise in the field of human rights or equality as it sees fit.¹

The purpose of this submission is to provide the Committee Against Torture with information to inform its preparation of the List of Issues Prior to Reporting (LOIPR) for Ireland, due to be examined by the Committee in its 69th session, ahead of its third periodic review of Ireland.

The submission follows the Commission's engagement with the Committee during the one-year follow-up to Ireland's second periodic report in 2018,² and during Ireland's second periodic review in 2017.³

This submission returns to a number of the themes outlined in these engagements, and is also informed by the Commission's *Strategy Statement 2019-2021*, where 'disability' and 'promoting access to justice' were identified as priority areas alongside 'socio-economic rights' and 'combatting racism and promoting intercultural understanding'.

In this regard, a significant focus of this submission is on ongoing concerns regarding safeguards in and independent oversight of institutional settings and on access to justice for historical abuses.

A further recurring theme throughout this submission is slow progress on legislative reform in Ireland. Even where legislation is passed, there are persistent delays in reforms taking practical effect.

Finally, this submission is made in the context of the State's continued failure to ratify OPCAT and establish a National Preventative Mechanism. OPCAT ratification and the Establishment of a National Preventative Mechanism will be essential in addressing a number of the key issues outlined here, not least in the areas of prisons, police custody, and deprivation of liberty in psychiatric institutions.

The Commission remains at the disposal of the CAT Secretariat and Committee to further discuss the material presented in this submission.

¹ See section 10(2) of the [Irish Human Rights and Equality Commission Act 2014](#).

² IHREC (2018) [Submission to the UN Committee against Torture on Ireland's one year follow-up to its second periodic report under CAT](#).

³ IHREC (2017), [Ireland and the Convention Against Torture: Submission to the United Nations Committee Against Torture on Ireland's second periodic report](#)

3. Legislative and Administrative Framework (Article 2, 11, 16 UNCAT)

OPCAT and *Inspection of Places of Detention Bill*

In the concluding observations on the second period report of Ireland, the Committee expressed concern about the lack of independent monitoring of places of deprivation of liberty, noting in particular that Ireland has still not ratified the Optional Protocol to the UN Convention against Torture and All Forms of Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) over 10 years after signing it, and recommended that Ireland should immediately ratify the Optional Protocol and establish a national preventive mechanism (NPM).⁴

The Commission has previously recommended that it should lead as a co-ordinating body within the NPM framework under the legislation incorporating OPCAT.⁵ The Commission understands that legislation providing for this, *Inspection of Places of the Detention Bill*, is being drafted and that the Commission will be accorded this role. In this regard, the Commission notes the importance of appropriate funding, staffing, and data access for the effective functioning of the National Preventative Mechanism co-ordinating body, and the importance of the involvement of civil society organisations in the operation of OPCAT.⁶

The Commission invites the Committee to urge the State to ratify OPCAT without further delay, and to provide detail on the establishment of the national preventative mechanism, and on plans for the appropriate resourcing of the co-ordinating body.

Enacted legislation

The Commission is concerned by the practice of enacting legislation, but not ‘commencing’ it,⁷ particularly in relation to legislation providing for rights and safeguards against ill-treatment. The *Assisted Decision-making (Capacity) Act 2015* was enacted over four years ago, and it has yet to be commenced. As noted by the Committee in its concluding observations on the second periodic

⁴ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2, at paras. 7-8.

⁵ IHREC (2018) [Submission to the UN Committee against Torture on Ireland’s one year follow-up to its second periodic report under CAT](#), at p. 3.

⁶ IHREC (2017) *Ireland and the Optional Protocol to the UN Convention against Torture: Submission to the Criminal Law Reform Division of the Department of Justice and Equality*.

⁷ In Ireland, an Act may be enacted but still not be “in force” or “commenced”. An Act may provide that it will enter into operation when commencement provisions in the Act are invoked. Commencement provisions may specify a date or may delegate to a specified government minister the power to designate the day upon which an Act, or part of an Act, will enter into operation. The delegation of power to a government minister is more common. The Minister will then issue an order (secondary legislation) prescribing the date upon which the Act or part of the Act will enter into operation. It is therefore often entirely at the Minister’s discretion to decide when a piece of legislation will enter into operation. If an Act does not contain a commencement provision, the Act will be deemed to have entered into force on the date upon which it is signed by the President of Ireland.

review of Ireland, this legislation will significantly alter procedures regarding involuntary confinement in residential care.⁸

The *Mental Health (Amendment) Act 2018*, which amends the definition of ‘voluntary patient’ in the *Mental Health Act 2001* to reflect capacity and consent and provides for guiding principles in mental health treatment, has also been enacted but not commenced.

Similarly, section 9 of the *Criminal Justice Act 2011*, which provides that Garda questioning must not commence until legal advice has been accessed, remains uncommenced.

The Commission invites the Committee to urge the State to immediately commence the *Assisted Decision Making (Capacity) Act 2015*.

The Commission invites the Committee to urge the State to immediately commence the *Mental Health (Amendment) Act 2018*.

The Commission invites the Committee to urge the State to immediately commence section 9 of the *Criminal Justice Act 2011*.

Proposed legislation

Similarly, the Commission is concerned by the delay in bringing forth legislation in the areas of mental health and capacity. In 2015, the report of the Expert Group Review of the Mental Health Act 2001 was published, containing 165 recommendations to reform mental health law in Ireland, including in relation to involuntary admissions and consent to treatment.⁹ Nearly five years later, the bill providing for these reforms is yet to be published. Given the significant implication of this legislation for human rights and equality, the Commission is of the view that, when published, it should be subject to public consultation.

Similarly, the Commission is concerned about the delay in bringing forward legislation to put in place safeguards protecting the liberty of persons with capacity issues in certain facilities. In March 2018, the Commission made a submission¹⁰ to the Department of Health’s consultation on its *Deprivation of Liberty: Safeguards*¹¹ Consultation Paper and preliminary draft heads. Our submission outlined our concerns that the proposed legislation did not sufficiently provide for the consideration of consent, nor for access to effective remedies where a person wishes to leave a facility. The government is still yet to produce the revised legislation.

The Commission invites the Committee to ask the State to advise on the progress of the *Protection of Liberty Safeguards Bill* and provide a timeline for its finalisation and enactment. The Commission further invites the Committee to ask the State how it intends to align the Bill with international human rights standards.

⁸ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2, at para. 35.

⁹ Department of Health (2014) [Report of the Expert Group on the Review of the Mental Health Act 2001](#), 8 Dec 2014.

¹⁰ IHREC (2018) [Submission to the public consultation on Deprivation of Liberty: Safeguard Proposal](#).

¹¹ This legislation is now called the “Protection of Liberty Safeguards”.

The Commission invites the Committee to ask the State to advise on the progress of the bill implementing the recommendations of the Expert Review Group, and provide a timeline for its enactment of the legislation.

Disaggregated Data

The Commission is concerned about the unavailability of disaggregated data on minority groups in Ireland, particularly in the context of places of detention,¹² as well as mental health units and residential centres for persons with disabilities. There continue to be significant gaps in administrative data available on minority groups, and concerns about its availability, quality, and use. A recent study found that only 14% of the 97 national health and social care data collections¹³ collect information on ethnic or cultural background.¹⁴

This reflects concerns raised by other treaty monitoring bodies, including the Committee on the Elimination of Racial Discrimination,¹⁵ the Committee on Economic, Social and Cultural Rights¹⁶ and the Committee on the Rights of the Child,¹⁷ that Ireland does not have sufficient disaggregated data to allow an adequate and regular assessment of the extent to which it is meeting its obligations under international law.¹⁸

The Commission has consistently recommended that the State develop a system of data collection that can be disaggregated and cross-referenced to highlight instances of intersectionality. In particular, the Commission is of the view that it is important to know if there are any particular groups in mental health establishments that are over represented, or if they are subject to higher rates of involuntary detention, or if they are detained for longer periods than other groups.

The Commission invites the Committee to ask the State what measures it is undertaking to collect comprehensive disaggregated data, with a view to ensuring that individual rights are respected and protect individuals against multiple discrimination.

¹² The Irish Prison Service collects data on the age, gender, and nationality of prisoners. However, 'nationality' does not specify Travellers or Roma population, and the available data is only available up to 2017. See Irish Prison Service, [Snapshot Statistics](#).

¹³ The national catalogue of all national collections of routine health and social care data is catalogued by Health Information and Quality Authority (HIQA).

¹⁴ Ailish Hannigan, Nazmy Villarroel, Maria Roura, Joseph LeMaster, Alphonse Basogomba, Colette Bradley, and Anne MacFarlane (2020) *Ethnicity recording in health and social care data collections in Ireland: where and how is it measured and what is it used for?* International Journal for Equity in Health (2020) 19:2. The authors conclude that 'HSE's goal to build an evidence base on ethnic minority health and ensure evidence-informed practice will be challenging to achieve without more attention to the capacity and technical infrastructure to collect, analyse and continuously report ethnicity data; assessing the quality of the data; and strong leadership and commitment from all stakeholders'.

¹⁵ Committee on the Elimination of Racial Discrimination (2019) [Concluding observations on the combined fifth to ninth reports of Ireland](#), CERD/C/IRL/CO/5-9, at para. 5.

¹⁶ Committee on Economic, Social and Cultural Rights (8 July 2015), [Concluding observations on the third periodic report of Ireland](#), E/C.12/IRL/CO/3, at p. 2.

¹⁷ Committee on the Rights of the Child (2016), [Concluding Observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4, at p. 4.

¹⁸ See for example, IHREC (press release, 13 February 2017), [Statement of the Irish Human Rights and Equality Commission to the United Nations Committee on the Elimination of Discrimination Against Women](#).

Provision of State Services by Private Companies

Under section 42 of the *Irish Human Rights and Equality Commission Act 2014* public bodies, in the performance of their functions, are required to have regard to the need to eliminate discrimination, promote equality of opportunity and protect human rights. The Commission has repeatedly expressed its concern that accountability mechanisms can be weakened where the State delivers its functions through private, non-State actors.¹⁹

Of relevance to this submission, it is worth noting that the Health Service Executive (HSE) provides funding of approximately €3 billion to over 2,000 agencies for the delivery of a range of health and social care services.²⁰ Similarly, all 39 Direct Provision centres, accommodation for seeking international protection, are operated by private non-State actors.

The Commission is concerned that commercial interests may take precedence over the protection of rights of service users. The Commission is therefore of the view that the public sector duty should be met regardless of whether the service is provided directly by the State, or through a non-State actor.

It is the view of the Commission that an opportunity exists to adopt a more holistic approach to standard-setting in State procurement of services. Public procurement regulations now make compliance with certain international social conventions a permissible selection criterion.²¹

The Commission invites the Committee to ask the State to what extent it includes the Public Sector Equality and Human Rights Duty in its procurement processes and Service Level Agreements when it subcontracts its functions to non-State actors.

¹⁹ IHREC (2019) [Ireland and the Convention on the Elimination of Racial Discrimination. Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#), at p. 119.

²⁰ In 2017, the HSE provided over €3.3 billion to HSE funded bodies. See Department of Health (2018) [Report of the Independent Review Group established to examine the role of voluntary organisations in publicly funded health and personal social services](#), at p. 21.

²¹ Regulation 18(4)(a) provides: 'In the performance of a public contract, an economic operator shall comply with applicable obligations in the fields of environmental, social and labour law... established by European Union law, national law, collective agreements or by international, environmental, social and labour law'. These regulations have been in force since 18 April 2016.

4. Prisons (Articles 2, 10, 11, 13, 14, 16 UNCAT)

Oversight

In the concluding observations on the second periodic review of Ireland, the Committee expressed concern over the deficiencies in the system including a lack of or incomplete documentation of complaints, delays in investigations, gaps in referrals to police, and confusion about the categorization of complaints, as well as the apparent lack of confidence in the complaints system.²²

Many of the issues in oversight of prison detention remain, in a context where the State has yet to ratify OPCAT. There is no independent body to which prisoners can complain. There is also low confidence in the internal complaints system.²³ There are reports of delays in the publication of the reports made by the Inspector of Prisons, and there have been calls to amend the legislation to permit the Inspector to publish the reports directly, without sending them to the Minister of Justice and Equality.²⁴ The Inspector has also reported being refused access to a prison.²⁵

The Prison Visiting Committees have also been criticised for a lack of independence, as well as issues with their reports, such as lack of standardisation in terms of structure and quality of content.²⁶ There is no published inspection report of the Midlands, Portlaoise, Cork, Cloverhill prisons and Wheatfield Place of Detention, as the Office of Inspector of Prisons had insufficient human and fiscal resources to fully comply with statutory requirements.²⁷ Only three prisons have been subject to a formal inspection in the last five years.

The Commission invites the Committee to ask the State whether it intends to enhance the independence of the Inspector of Prisons.

Recalling the recommendation of the Committee during the second periodic report of Ireland,²⁸ the Commission invites the Committee to ask the State whether it intends to establish an independent complaints mechanism.

Training

All recruited prison officers undertake mandatory human rights training as part of the Higher Certificate of Arts in Custodial Care.²⁹ Further, the Commission developed a human rights and equality training package with the Irish Prison Service College, which enables trainers to deliver a

²² Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2, at paras. 21-22.

²³ Irish Penal Reform Trust (2019) [Progress in the Penal System \(PIPS\) A framework for penal reform](#), at p. 16.

²⁴ Irish Penal Reform Trust (2019) [Progress in the Penal System \(PIPS\) A framework for penal reform](#), at p. 17.

²⁵ Inspector of Prisons (2019) *Annual Report 2018*, at p. 13.

²⁶ Irish Penal Reform Trust (2019) [Progress in the Penal System \(PIPS\) A framework for penal reform](#), at p. 17.

²⁷ Inspector of Prisons (2019) *Annual Report 2018*, at p. 2.

²⁸ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2, at para. 22(a).

²⁹ Waterford Institute of Technology, [Higher Certificate of Arts in Custodial Care](#).

two-hour training course to prison personnel on the principles of dignity, respect and equality in the daily interaction of prison officers and prisoners.

Conditions

Remand and convicted prisoners continue to be held together in some prisons.³⁰ While the size of the prison population has significantly reduced, the number of female prisoners continues to rise.³¹ As was noted by the Committee during the second periodic review of Ireland, overcrowding persists in female prisons.³² Figures from January 2020 show Ireland's two women's prisons to be operating above the Inspector of Prisons' recommended capacity: 136% at the Dóchas Centre and 150% at Limerick Female Prison.³³ In some cases, prisoners have been sleeping on mattresses on the floor because of overcrowding.³⁴

Recalling the Committee's previous recommendation to eliminate slopping out and improve in-cell sanitation,³⁵ the Commission notes that there continue to be issues. The practice of slopping out has not been fully ended – as of October 2019, 58 prisoners were slopping out.³⁶ In November 2019, the Supreme Court found that a man who was forced to slop out during his 7 ½ month incarceration in 23 hour lock up, was entitled to a declaration that the conditions of his detention infringed his constitutional right to dignity.³⁷

There has been a significant increase in the number of prisoners toileting in the presence of others.³⁸ During a consultative visit to the Limerick Female Prison in May 2018, the issue of menstruation products was raised with the Commission. Products are poor quality and must be purchased by prisoners.

The Commission invites the Committee to ask the State what measures will it take to further decrease the number of persons in the prison system.

The Commission invites the Committee to ask the State how does it plan to overhaul in-cell sanitation in prisons in the wake of the *Simpson* ruling.

The Commission invites the Committee to ask the State about the measures it is taking to increase toilet privacy for prisoners.

The Commission invites the Committee to ask the State about the measures it is taking to increase the availability and quality of menstruation products in prisons.

³⁰ Irish Prison Service, [Monthly Information Note – December 2018](#); Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), 31 Aug 2017, at para. 15(b).

³¹ Houses of the Oireachtas (2018) [Joint Committee on Justice and Equality Report on Penal Reform and Sentencing](#) May 2018, at pp. 53, 71.

³² Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2, at para. 15.

³³ Irish Prison Service (2020) [Prisoner Population on Tuesday 21st January 2020](#).

³⁴ Irish Penal Reform Trust (2019) [Progress in the Penal System \(PIPS\) A framework for penal reform](#), at p. 30.

³⁵ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2, at para. 16.

³⁶ Irish Prison Service (2019) [Census Prison Population October 2019 – Cell occupancy – In-Cell Sanitation](#), Apr 2019. This is compared to the 465 prisoners slopping out in January 2014.

³⁷ *Gary Simpson v Governor of Mountjoy Prison, and others* [2019] IESC 81 (14 November 2019).

³⁸ Irish Penal Reform Trust (2019) [Progress in the Penal System \(PIPS\) A framework for penal reform](#), at p. 45.

Healthcare

Mental illness is prevalent across the prison population. The Irish Penal Reform Trust reported that in May 2018, '323 out of 4,000 prisoners in custody were deemed to be suffering from severe mental illness.'³⁹ Still, prison staff representatives have reported that lack of training and resources have resulted in safety issues.⁴⁰ There are limited number of places available to prisoners in the Central Mental Hospital.⁴¹ Castlerea, one of the country's biggest prisons, has no dedicated psychiatrist.⁴²

There are consistently 20–30 prisoners with severe mental illness awaiting transfer to the Central Mental Hospital.⁴³ In July 2018, it was reported that mentally ill prisoners were forced to sleep on the floor in prison because of the lack of spaces in the Central Mental Hospital.⁴⁴ Others on the waiting list for the hospital are forced to stay in isolation cells for their own protection because of a shortage of qualified staff.⁴⁵ Further, the Mental Health Commission has reported that there is a disparity in accommodation facilities at the Central Mental Hospital for male and female patients.⁴⁶

Reports on deaths of prisoners are also illustrative of under-resourced health services in prisons.⁴⁷ There were 16 deaths in custody in 2018.⁴⁸ There has been some recent concern over supervision of vulnerable prisoners. More than two-thirds of investigations into the deaths of vulnerable prisoners since 2012 have raised concerns about inaccurate record-keeping by prison staff, and the care afforded to inmates who have suicidal ideation.⁴⁹

The Commission invites the Committee to ask the State what measures it has taken to increase the number of guards and medical personnel in prisons.

³⁹ Irish Penal Reform Trust (2019) [Progress in the Penal System: Mental healthcare Spotlight 1](#).

⁴⁰ 'Prisoners with mental health issues are more likely to assault staff, particularly if their psychiatric illness is combined with a drug problem. These prisoners require additional supervision resources compared with prisoners who do not present with psychiatric illness,' Mr John Clinton "Penal Reform: Prison Officers' Association" [Parliamentary Debates: Joint Committee on Justice and Equality](#), 22 Mar 2017.

⁴¹ [Parliamentary Debates: Dáil Éireann](#), 30 Mar 2017.

⁴² Irish Penal Reform Trust (2019) [Progress in the Penal System \(PIPS\) A framework for penal reform](#), at p. 45.

⁴³ Irish Penal Reform Trust (2018) [Progress in the Penal System: Mental healthcare Spotlight 1](#).

⁴⁴ Conor Gallagher (2018) [Mentally ill prisoners sleeping on floors because of overcrowding](#), The Irish Times, 9 Jul 2018.

⁴⁵ Irish Penal Reform Trust (2018) ['Unacceptable' conditions for mentally ill prisoners](#), 11 Jul 2018.

⁴⁶ All female patients are accommodated in one unit, regardless of the nature of their diagnosis and treatment needs, whereas male patients are accommodated on a basis relating to the degree of their care. See Mental Health Commission (2017) [Central Mental Hospital Inspection](#), 1 Mar 2017.

⁴⁷ See Office of the Inspector of Prisons, [Deaths in Custody Reports](#).

⁴⁸ Office of the Inspector of Prisons (2019) [Annual Report 2018](#), at p. 17.

⁴⁹ Joe Leogue (2018) [Concern over prison death records](#), Irish Examiner, 7 Aug 2018. An inquest in Cork found that a written record of monitoring a vulnerable prisoner in the hours before his death was false. The prisoner was meant to be checked on every 15 minutes on the night that he died, but CCTV footage showed large gaps between checks. See Michael Clifford (2019) [Minister expresses 'grave concern' over prison deaths in internal correspondence](#), Irish Examiner, 24 Apr 2019.

Violence and restricted regimes

Gang culture and inter-prisoner violence remains prevalent in Irish prisons. In 2018, there were 418 reported prisoner-on-prisoner assaults,⁵⁰ which may represent significantly less than the actual number of assaults.⁵¹

Gang violence has caused prisoners to enter restricted regimes for their own protection. The Mountjoy Visiting Committee reported that one in four inmates in Mountjoy prison are in solitary confinement at any given time due to their fears of attack from other inmates.⁵² There is a reported increase in prisoners requesting protection on committal to Cloverhill prison as a consequence of gang culture which pervades prisons.⁵³ These prisoners face restricted access to education and physical activities; limitations on family contact; and difficulties in accessing health and addiction care.⁵⁴ In October 2019, there were 545 prisoners in total subject to a restricted regime (19 hours+ lock up).⁵⁵ 514 prisoners were restricted on grounds of protection at their own request.

The Commission invites the Committee to ask the State what measures it is undertaking to ensure that solitary confinement is solely imposed as an exceptional measure, and that any restrictions are subject to a proportionality test along with rigorous standards of review.

Children's detention

There remain concerns over the treatment of children in the Oberstown Children Detention Campus. A recent investigation into that facility found that there were concerns regarding the significant use of restraint and poor record-keeping on physical interventions.⁵⁶

The Commission is also concerned that the report of an Operational Review carried out in 2017 of the Campus has not been made public. The reasons have been given for the non-publication of the report include 'legal opinion and risk', 'fair procedures and risk', 'passage of time', and 'straying from remit'.⁵⁷

The Commission questions whether these reasons could not be overcome, including by further consultation and redrafting, or redaction. Any legal risk identified should be considered in light of public interest and the rights of the children affected by the issues contained in the report, in particular, their right to information.

The Commission invites the Committee to ask the State what engagement the Department of Children and Youth Affairs is having with the Board of Management of Oberstown to remedy any

⁵⁰ Irish Prison Service (2018) [Figures of Assaults](#).

⁵¹ Inter-prisoner violence is likely under-reported as many prisoners decline to tell the authorities they have been attacked.

⁵² Mountjoy Visiting Committee (2018) [Annual Report for 2017](#).

⁵³ Cloverhill Visiting Committee (2016) [Annual Report 2015](#), at p. 5.

⁵⁴ Irish Penal Reform Trust (2018) ['Behind the Door': Solitary Confinement in the Irish Penal System](#), at p. 7.

⁵⁵ Irish Prison Service (2019) [Census of Restricted Regime Prisoners October 2019](#).

⁵⁶ Health Information and Quality Authority (2020) [Report of Oberstown Children Detention Campus](#).

⁵⁷ Fagan (2018) [Decision not to publish Oberstown review 'deeply problematic'](#), Irish Times, 6 Aug 2019. Joint Committee on Children and Youth Affairs debate - [Oberstown Children Detention Campus Operational Review Report: Discussion](#), Wednesday, 30 Jan 2019.

fair procedure issues and legal risks with the report of the Operational Review so it can be published.

5. Policing (Articles 2, 6, 10, 11, 12, 13, 16 UNCAT)

Policing reform

A number of efforts have been made to improve oversight of An Garda Síochána since the last examination of Ireland by the Committee. In September 2018, the Commission on the Future of Policing in Ireland published *The Future of Policing in Ireland* report laying out its views of changes that need to be made across the government and police service.⁵⁸ The report recognises, as a first principle, that ‘human rights are the foundation and purpose of policing’.⁵⁹

The *Future of Policing in Ireland* report recommended, among other things, that the Garda Síochána Ombudsman Commission (GSOC) should be superseded by a new independent complaints body.⁶⁰ In December 2018, the Minister for Justice and Equality announced an implementation plan for the Report and stated that the Department of Justice and Equality would begin work on the legislation to reform GSOC and the processes for handling complaints/issues relating to the conduct of Garda personnel.⁶¹

The *Future of Policing in Ireland* report also recommended that human rights training be provided during the recruit course, as well as part of in-service training to all Gardaí.⁶² An Garda Síochána *Mission & Strategy Statement 2019 – 2021* committed to incorporating human rights into training,⁶³ as did its *Human Rights Strategy 2020–2022*.⁶⁴ The Commission has previously noted the need for human rights training for police, which would include training on the prohibition of torture.⁶⁵

The Commission invites the Committee to ask the State to provide detail of its plan, including timeframes, sequencing and responsibilities, to implement the recommendations in *The Future of Policing in Ireland* report, and to inform it of progress thus far achieved.

⁵⁸ The Commission on the Future of Policing in Ireland (2018) [The Future of Policing in Ireland](#), Sep 2018.

⁵⁹ The Commission on the Future of Policing in Ireland (September 2018), [The Future of Policing in Ireland](#), at p. ix.

⁶⁰ Commission on the Future of Policing in Ireland (2018) [The Future of Policing in Ireland: Key Recommendations and Principles](#).

⁶¹ Department of Justice and Equality (2018) [Minister Flanagan announces implementation plan for Commission on the Future of Policing in Ireland Report](#), 18 Dec 2018; See Government of Ireland (2018) [Implementing the Report of the Commission on the Future of Policing in Ireland](#), Dec 2018.

⁶² The Commission on the Future of Policing in Ireland (September 2018), [The Future of Policing in Ireland](#), at p. 12.

⁶³ An Garda Síochána (2019) [Strategy Statement 2019-2021](#), at p. 8.

⁶⁴ An Garda Síochána (2020) [Human Rights Strategy 2020–2022](#), at p. 10.

⁶⁵ See IHREC (2018), [Submission to the Commission on the Future of Policing](#); IHREC (2019) [Ireland and the Convention on the Elimination of Racial Discrimination. Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland’s Combined 5th to 9th Report](#), at p. 141.

The Commission invites the Committee to ask the State to provide details on the progress of incorporating human rights training, including on the prohibition of torture and non-coercive interrogation techniques, in the recruit course and in in-service training.

Police custody

Police custodial settings are still not subject to independent oversight or unannounced inspections. As noted above, the State has indicated its intention to ratify OPCAT and establish an NPM in the *Inspection of Places of Detention Bill*, however, this bill is yet to be published.

In August 2019, the Garda Inspectorate announced that it has commenced an inspection of the treatment of persons in the custody of An Garda Síochána.⁶⁶ The inspection will examine all aspects of custody, with a particular focus on the human rights of detained persons and the conditions of the facilities. The Law Reform Commission has committed to examining ‘the potential for consolidation and reform of the legislation concerning the detention of persons in Garda custody’.⁶⁷

In the concluding observations on the second periodic review of Ireland, the Committee expressed concern that the right to have a legal representative present during police interrogations is not provided in law and that the police do not consistently keep accurate detention records or use closed-circuit monitoring of interview rooms.⁶⁸ Section 9 of the *Criminal Justice Act 2011*, which provides that Garda questioning must not commence until legal advice has been accessed, remains uncommenced. In 2017, in the case of *DPP v Doyle*,⁶⁹ the Supreme Court decided that there was no right to have access to a solicitor present during Garda questioning. While there is a right to reasonable access to a solicitor, this did not entail a requirement have a solicitor present during an interview.

The Commission invites the Committee to reiterate its recommendation from its second periodic review of Ireland,⁷⁰ and urge the State to commence section 9 of the *Criminal Justice Act 2011*.

The Commission invites the Committee to reiterate its recommendation from its second periodic review of Ireland,⁷¹ and request that the State to expedite the ratification of OPCAT and the drafting of the *Inspection of Place of Detention Bill*.

⁶⁶ Garda Inspectorate (2019) [The Garda Inspectorate commences a new inspection of custody in Garda stations](#); Garda Inspectorate (2019) [Terms of Reference for an Inspection of the Treatment of Persons in the Custody of the Garda Síochána](#).

⁶⁷ Law Reform Commission (2019) [Fifth Programme of Law Reform](#), 5 Jun 2019. The issues that will specifically be examined are ‘the scope of the right of access to a lawyer; the provision of information; the provision of medical assistance; the question of consular assistance for foreign detainees; and the provision of a translator or interpreter.’

⁶⁸ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2, at para. 9.

⁶⁹ *DPP v Doyle* [2017] IESC 1.

⁷⁰ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2, at para. 10(a).

⁷¹ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2, at para. 10(b).

The Commission invites the Committee to reiterate its recommendation from its second periodic review of Ireland,⁷² and request that the State collect data on the performance of police with respect to provision of safeguards against torture.

6. Mental Health Establishments (Articles 2, 11, 16 UNCAT)

Oversight

Under the *Mental Health Act 2001*, the Mental Health Commission has the power to inspect, regulate, and enforce standards in hospitals or other inpatient facilities for the care of people experiencing a mental illness or mental disorder, and which are registered with the Mental Health Commission.⁷³ It does not have the power to enforce its recommendations.

The Commission is concerned that there are gaps in oversight in establishments for persons with mental health issues. The Inspector of Mental Health Services has expressed serious concern 24-hour supervised high support accommodation are not regulated and fall outside of the scope of Health Information and Quality Authority (HIQA) inspections and mandatory inspections by the Mental Health Commission.⁷⁴ The Expert Review Group on the Mental Health Act 2001 recommended extending the powers of the Mental Health Commission to such residences.⁷⁵

The Commission invites the Committee to ask the State whether it intends to extend the powers of the Mental Health Commission.

Definition of ‘Voluntary Patients’

The Commission is concerned that there is potential for so-called ‘voluntary patients’ to be deprived of their liberty, because they may lack capacity, or because their will is disregarded.

Section 2(1) of the *Mental Health Act 2001* defines a ‘voluntary patient’ as a person who ‘is not the subject of an admission order or a renewal order’.⁷⁶ This definition of a ‘voluntary patient’ does not address whether the person has consented to their admission or whether they have the capacity to consent. Voluntary patients do not enjoy any of the rights or safeguards under the 2001 Act that apply to involuntary admissions, including access to the periodic independent review. The *Mental Health (Amendment) Act 2018* amended this definition to define a ‘voluntary patient’ as a person

⁷² Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2, at para. 10(c).

⁷³ Part 3 of the *Mental Health Act 2001*.

⁷⁴ Mental Health Commission (2019) [2018 Inspection of 24-Hour Supervised Residences](#).

⁷⁵ [Report of the Expert Review Group on the Review of the Mental Health Act 2001](#) (2015), at pp. 75-76.

⁷⁶ Section 2(1) of the *Mental Health Act 2001*.

who has capacity and has given consent to their admission. However, this amendment has not yet been commenced.

As noted above, the Commission is concerned about the delay in bringing forward legislation to put in place safeguards against the deprivation of liberty in the context of persons with capacity issues. The Commission, as the independent monitoring mechanism for the Convention on the Rights of Persons with Disabilities (CRPD) in Ireland, is also concerned that the principles underlying the proposed legislation in this regard, the *Protection of Liberty Safeguards*, will not meet the standards of that Convention, particularly in relation to the issue of voluntariness of detention.⁷⁷

The Commission invites the Committee to urge the State to immediately commence the *Mental Health (Amendment) Act 2018*.

The Commission invites the Committee to ask the State about the progress of the *Protection of Liberty Safeguards Bill* and provide a timeline for drafting, publication, parliamentary scrutiny and enactment. The commission further invites the Committee to ask the State how it intends to align the Bill with international human rights standards, including the CRPD.

Process for reclassifying patients from voluntary to involuntary

The Commission is concerned about the practice of preventing voluntary patients from leaving mental health establishments. This issue was addressed in the case of *P.L. v St. Patrick's Hospital*,⁷⁸ where the Commission appeared as an *amicus curiae*. The Court of Appeal ruled that the patient's detention was unlawful, stating that while the hospital could attempt to persuade a patient stay under their care, there must be no restraint. The judge said he was a voluntary patient and free to leave the hospital whenever he wished.

The Commission invites the Committee to ask the State what practical measures it has taken to ensure that the decision in *P.L. v St. Patrick's Hospital* is followed and that voluntary patients are not unlawfully detained.

Involuntary admissions

In 2018, 13% of all inpatients in mental health services were admitted involuntarily. The Mental Health Commission has noted that there has been a 13% increase in admission orders over the last five years.⁷⁹

The Commission remains concerned that persons are being involuntarily detained on foot of applications by family members and Gardaí, rather than by an Authorised Officer on behalf of the HSE.⁸⁰ In 2018, 66% of involuntary admission applications were made by family members or Gardaí,⁸¹ indicating that there remains a need for a review of the operation of the Authorised Officer Scheme.

⁷⁷ IHREC (2018) [Submission to the public consultation on Deprivation of Liberty: Safeguard Proposals](#).

⁷⁸ *P.L. v. Clinical Director of St. Patrick's University Hospital*, Court of Appeal, 14th February 2018. See PILA (2018) [Irish Court of Appeal finds no legal basis for preventing a voluntary patient from leaving psychiatric unit](#)

⁷⁹ Mental Health Commission (2019) [Annual Report 2018](#), at p. 4.

⁸⁰ Conor Gallagher (2018) [Family involved in detention of mentally ill far too often - watchdog](#), 10 Sep 2018, Irish Times.

⁸¹ Mental Health Commission (2019) [Annual Report 2018](#), at p. 36.

The Commission invites the Committee to ask the State to undertake a review of the system of Authorised Officers and what measures, if any, has it taken to ensure that all community-based interventions are considered prior to invoking the process of involuntary admission.

Seclusion, restraint and involuntary treatment

In 2018, 27 establishments continued to use seclusion, and 67% of these centres were not in compliance with the *Rules Governing the Use of Seclusion and Mechanical Restraint*.⁸² In 2018, there were 73 reported episodes where seclusion was used for more than 72 hours continuously.⁸³

Similarly, 81% of approved centres used physical restraint in 2018.⁸⁴ Only 19% of these were compliant with the *Code of Practice on the Use of Physical Restraint*.⁸⁵ Of the non-compliant centres, 43% failed to carry out a physical examination after the episode of restraint.⁸⁶ The Mental Health Commission has expressed concern that there 'is a lingering complacency in the use of these practices. In many services, these practices are accepted and common place. Such practices directly affect a person's human rights to liberty, autonomy and bodily integrity. We have seen little real engagement in the proper scrutiny and reduction of these practices by the mental health services'.⁸⁷

The Commission invites the Committee to ask the State what measures it has taken to reduce the use of seclusion and restraint practices in mental health services.

The Commission is concerned that there remain issues surrounding involuntary treatment in mental health services. Section 60 of the *Mental Health Act 2001* provides that the administration of medicine to an adult patient who is detained for longer than three months cannot be continued unless the patient gives consent in writing or the medicine is approved by the treating consultant psychiatrist and authorised by another consultant psychiatrist. However, in 2018, there was found to be only 81% compliance with the Act.⁸⁸ There have been recent reports of human rights breach relating to consent to treatment during inspections by the Mental Health Commission.⁸⁹

The Commission invites the Committee to ask the State what measures it is taking to reduce the incidence of, and reliance on, involuntary treatment.

Conditions

The Commission is concerned by reported poor conditions in mental health establishments. In 2018, a reported 70% of premises inspected by the Mental Health Commission were not compliant with

⁸² Mental Health Commission (2019) [Annual Report 2018](#), at p. 66. See Mental Health Commission (2009) [Rules Governing the Use of Seclusion and Mechanical Means of Bodily Restraint](#).

⁸³ Mental Health Commission (2019) [Annual Report 2018](#), at p. 67.

⁸⁴ Mental Health Commission (2019) [Annual Report 2018](#), at p. 68.

⁸⁵ Mental Health Commission (2009) [Code of Practice on the Use of Physical Restraint in Approved Centres](#).

⁸⁶ Mental Health Commission (2019) [Annual Report 2018](#), at p. 68. See also Mental Health Commission (2019) [The Use of Restrictive Practices in Approved Centres: Seclusion, Mechanical restraint and Physical Restraint](#).

⁸⁷ Mental Health Commission (2019) [Submission to the Joint Committee on Health from the Inspector of Mental Health Services](#).

⁸⁸ Mental Health Commission (2019) [Annual Report 2018](#), at p. 68.

⁸⁹ Mental Health Commission (2019) [Mental Health Commission finds one critical and 20 high risk ratings in three mental health centres](#).

the regulations, and were dirty, malodorous and poorly maintained.⁹⁰ In February 2019, the Health Service Executive (HSE) was fined for serious failures at the psychiatric unit at St. Luke's Hospital following the first prosecution in the state over poor conditions, under the *Mental Health Act 2001*.⁹¹

The Commission invites the Committee to urge the State to ensure that living conditions in mental health establishments are appropriate and adhere to highest attainable standards.

Treatment of children

The continuing admission of children to adult psychiatric units remains a concern for the Commission.⁹² There are rising numbers of child admissions to adult mental health inpatient services, and inadequate funding and waiting times for child and adolescent mental health services.⁹³ In 2018, there were 84 admissions to adult centres.⁹⁴ As of the end of August 2019, 39 children had been admitted to adult mental health units since the start of the year.⁹⁵ Children are placed in adult units because of lack of capacity in children's units or because of lack of specialised services. As of the end of August 2019, there were a total of 2,038 persons in Ireland waiting for a child and adolescent mental health services appointment, 201 of which have been waiting for over a year.⁹⁶ Further, there is only one Children and Adolescent Mental Health Services (CAMHS) emergency bed in the country.⁹⁷

The Commission is concerned that the lack of mental health services for children and adolescents is resulting in preventable death and trauma.⁹⁸ Exacerbating the inadequate supply of inpatient beds is that some children and adolescents are having their detention in inpatient facilities continued despite the lack of medical necessity,⁹⁹ because there is a lack of appropriate step-down facilities in

⁹⁰ Mental Health Commission (2019) [Annual Report 2018](#), at p. 63.

⁹¹ Mental Health Commission (2019) [Mental Health Commission acts to protect rights of patients at psychiatric facility in Kilkenny](#). The seclusion facilities were found not to be clean or maintained to ensure the privacy of patients was respected. A colostomy bag was found in a waste bin in treatment room, which caused significant malodour.

⁹² Mental Health Commission (2019) [Mental Health Commission finds eight children admitted to one adult mental health service](#).

⁹³ National Review Panel (2019) [Review undertaken in respect of a death experienced by a young person who had contact with Tusla: Niamh](#).

⁹⁴ Mental Health Commission (2019) [Annual Report 2018](#), at p. 26. In 2018, there were 84 admissions to adult units, compared with 82 admissions in 2017.

⁹⁵ HSE (2019) [Response to PQ 40341/19](#), 3 Oct 2019.

⁹⁶ HSE (2019) [Response to PQ 40339/19](#), 2 Oct 2019.

⁹⁷ [Joint Committee on Health debate - Wednesday, 20 Nov 2019](#).

⁹⁸ A recent review of the death of a 15 year old girl found that she was referred to CAMHS over her drug use, but was found ineligible for the service, as well as that a recommendation for a residential addiction service could not be fulfilled because no such service exists for girls in Ireland. The review highlighted "the need to provide services for young people whose clinical diagnosis does not fit within eligibility guidelines operated by CAMHS." See National Review Panel (2019) [Review undertaken in respect of a death experienced by a young person who had contact with Tusla: Niamh](#).

⁹⁹ For examples, see HIQA (2018) [Monitoring inspection report of Ballydowd special care unit](#), at pp. 14-15; HIQA (2018) [Monitoring inspection report of Coovaqh House special care unit](#), at p. 22.

place.¹⁰⁰ This is depriving children in need of high level services, but also amounts to an unjustified deprivation of liberty. Further, there remains a lack of legislation on children's consent to and refusal of medical treatment. As noted above, we are awaiting publication of the legislation implementing the recommendations of the Expert Review Group on the Mental Health Act 2001, which is due to address children's right to consent and refuse treatment.

The Commission invites the Committee to urge the State to increase the funding for CAMHS and increase the availability of services, teams, and emergency beds for children and adolescents.

The Commission invites the Committee to ask the State what measures it is taking to reduce the number of children who are admitted to psychiatric wards and to ensure that, where such practice is necessary, facilities are age-appropriate.

Transfers outside the State

The Commission is concerned that the lack of specialised psychiatric facilities in Ireland, or lack of staffing in such facilities, has led to circumstances whereby vulnerable minors and adults are transferred to facilities outside of the State for treatment.¹⁰¹ The Child Care Law Reporting Project has further noted that some of the children sent abroad for treatment in secure care settings would not be eligible for detention in Ireland, because personality disorder or anorexia nervosa do not fall within the definition of a mental disorder under the *Mental Health Act 2001*. Therefore, these children are made wards of court.¹⁰²

In a report commissioned by IHREC on Ireland and the Optional Protocol to the UN Convention against Torture, the authors noted, from their interviews with State officials, that it was not clear who was monitoring the cases of these children, as inspectorate bodies such as the Mental Health Commission and HIQA would not have jurisdiction.¹⁰³

The Child Law Reporting Project found a number of concerning issues including that children are being removed from the state against their and their families' wishes for prolonged periods of time and are prevented from being released and returned home because of the lack of follow-up care and step-down placement in Ireland.¹⁰⁴ In particular, there is the concern that the facilities outside of the State are not subject to the same regulation and patients there do not enjoy the same safeguards.

The Commission invites the Committee to ask the State what measures it is taking to ensure that secure care units are adequately staffed.

¹⁰⁰ For examples, HIQA (2018) [Monitoring inspection report of Ballydowd special care unit](#), at p. 18; HIQA (2018) [Monitoring inspection report of Coovagh House special care unit](#), at p. 14; HIQA (2017) [Monitoring inspection report of Gleann Alainn special care unit](#), at p. 6. See also Childcare Law Reporting Project by Dr Carol Coulter (2015) [Final Report](#), at p. 27.

¹⁰¹ Lisa Colfer and Dr Carol Coulter (2020) [High Court oversight of children's complex care needs](#). See also UN Committee on the Rights of the Child (2016) Concluding Observations on the combined third and fourth periodic reports of Ireland, CRC/C/IRL/CO/3-4, para. 43(b).

¹⁰² Lisa Colfer and Dr Carol Coulter (2020) [High Court oversight of children's complex care needs](#).

¹⁰³ Rachel Murray and Elina Steinerte (2017) [Ireland and the Optional Protocol to the UN Convention against Torture](#), IHREC, p. 35.

¹⁰⁴ Childcare Law Reporting Project by Dr Carol Coulter (2015) [Final Report](#), p. 27.

The Commission invites the Committee to ask the State to clarify which body is monitoring the situation of children and adults who have been transferred outside the State.

7. Older Persons, Persons with Disabilities, Homeless People and Other Adults at Risk of Harm or Neglect (Articles 2, 11, 16 UNCAT)

The Commission has significant concerns regarding the lack of systematic safeguards, vulnerability assessment, and independent regulation across a range of institutional and quasi-institutional settings where people may be at risk - such as health and social care services, accommodation services for homeless people, drug treatment facilities, direct provision centres for applicants for international protection, and residential settings for older people and disabled people. The Commission is also concerned at the State's failure to commence the *Assisted Decision Making (Capacity) Act* and the impact of this inaction on wards of court who are by definition a particularly vulnerable group.

Wardship

In the concluding observations on the second periodic review of Ireland, the Committee expressed regret that the *Assisted Decision Making (Capacity) Act 2015* was still not commenced.¹⁰⁵ As noted above, the 2015 Act remains uncommenced and the *Lunacy Regulations (Ireland) Act 1871*, and the practice of placing persons with capacity issues into wardship continues to be in effect.¹⁰⁶

The Decision Support Service, a body created under the 2015 Act to provide decision-making support to adults who have difficulties with decision-making capacity, has only been allocated a fraction of what it requires to be operational, two consecutive years in a row.¹⁰⁷ Moreover, there are many regulations that still must be made by the Department of Justice and Equality and Department of Health that are necessary for the decision support framework.

In this context, wardship orders are being made at increasing rates in recent years. Over 1,250 people have been made a ward of court since the 2015 Act was enacted: in 2016, there were 290; in 2017, there were 325; in 2018, there were 327; and as of 20 November 2019, there have been 316.¹⁰⁸

¹⁰⁵ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2, at paras. 35-36.

¹⁰⁶ The use of wardship has raised a number of serious human rights concerns. These include the lack of system of oversight and automatic review; the voice of the ward is not heard during an application; prospective wards have no legal advocacy independent of the person making the petition; the process does not take into account the vulnerability of the ward, who may not fully understand court documents; wards are sometimes not provided with medical documents nor the order of the Court; there are no clear guidelines around conflict of interest in relation to the petitioner nor the Committee members; and there are no clear guidelines on the quality of the medical reports. See National Safeguarding Committee, *Review of Current Practice in the Use of Wardship for Adults in Ireland* (2017), at pp. 9 – 11.

¹⁰⁷ Minister for Justice and Equality (2018) [Assisted Decision Making Dáil Éireann Debate](#), Tuesday - 16 October 2018.

¹⁰⁸ [Wards of Court Dáil Éireann Debate, Wednesday - 20 November 2019.](#)

The Commission invites the Committee to urge the State to immediately commence the *Assisted Decision Making (Capacity) Act 2015*, and adequately fund the Decision Support Service so it can fulfil its statutory mandate.¹⁰⁹

The Commission invites the Committee to ask the State what steps it has taken to establish other parts of the regulatory framework under the 2015 Act, and to progress the required regulations under the Act.

The Commission invites the Committee to ask the State to outline its approach, including timeframes and milestones, to ending the practice of wardship, as provided for under Part 6 of the *Assisted Decision Making (Capacity) Act 2015*.

Adult Safeguarding Framework

The need for a comprehensive safeguarding framework to protect adults from abuse, harm and neglect in a broad range of institutional or quasi-institutional settings has been recognised and promoted by many public and advocacy bodies in recent years.¹¹⁰ This recognition has developed in response to growing media and public awareness of the risk of abuse of vulnerable adults in such settings. In 2014 RTÉ's high profile *Prime Time* investigation of Áras Attracta, a residential care facility in Mayo helped raise these issues in the public consciousness. This consciousness has deepened with an increasing awareness of range of situations – such as health and social care services, accommodation services for homeless people, drug treatment facilities, direct provision centres for applicants for international protection¹¹¹ and residential settings for older people and disabled people – where people may find themselves experiencing or at risk of abuse, harm, or neglect at a time or place in their lives when they may not be able to adequately protect themselves. A comprehensive safeguarding framework must have a firm legislative basis. It must set standards for provision that ensure the wellbeing and protect the dignity of service users, it must provide for effective monitoring and enforcement and it must include support for advocacy and self-advocacy.

The Commission invites the Committee to ask the State about its progress on adult safeguarding legislation.

The Commission invites the Committee to ask the State about its progress on establishing and implementing a comprehensive national regulatory framework for adult safeguarding.

¹⁰⁹ Minister for Justice and Equality (2018) [Assisted Decision Making Dáil Éireann Debate](#), Tuesday - 16 October 2018.

¹¹⁰ The Law Reform Commission, which is currently conducting a consultation on adult safeguarding, including the approach to establishment of a national adult safeguarding authority, has outlined in detail the regulatory and oversight gaps in this area. Law Reform Commission (29 January 2020), [Issues Paper: A Regulatory Framework for Adult Safeguarding](#).

¹¹¹ Direct provision is addressed in Section 10 below.

Residential Centres

The Commission remains concerned at the lack of safeguarding legislation applicable to residential centres for older persons and persons with disabilities.¹¹² There is also a reported lack of adequate safeguarding measures within residential centres for persons with disabilities.¹¹³ The Commission is aware, from the work of its legal team, that some residential care facilities lack basic safeguarding rights, such as access to a phone to contact legal representation.

Of particular concern is the current lack of adequate national complaints mechanism. The Ombudsman cannot receive complaints about privately operated residential centres for older persons and persons with disabilities. While it can receive complaints about HSE and HSE-funded services, it appears that complaints communicated to HIQA have not reliably been passed onto the Ombudsman. HIQA does not have the remit to investigate individual complaints, but these may be used to inform its monitoring of individual centres.

In 2017, HIQA received more than 4,600 allegations of suspected or confirmed abuse of disabled people in residential care from care providers.¹¹⁴ This allegations included 2,726 instances of physical abuse, more than 1,000 of psychological abuse and more than 209 of sexual abuse. Further, in 2017, HIQA received 298 pieces of unsolicited information relating to abuse and safety from staff, residents and relatives, but only one allegation was passed to Gardaí and none to the Office of the Ombudsman.¹¹⁵

In relation to residential centres for older persons, HIQA received 899 complaints alleging abuse of residents, including 366 cases of physical abuse, 138 of psychological abuse and 68 of sexual abuse.¹¹⁶ It also received 820 pieces of unsolicited information in connection with older persons' services.¹¹⁷ None of these was passed onto the Ombudsman or An Garda Síochána.

While the Commission welcomes the memorandum of understanding between HIQA and the Ombudsman,¹¹⁸ there remains no memorandum of understanding between An Garda Síochána and HIQA.¹¹⁹

¹¹² Regulation 34 of *Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities Regulations 2013* (S.I. No. 376 of 2013) requires a registered provider to provide an effective complaints procedure for residents. There is, however, a notable lack of safeguarding legislation beyond this. The government has indicated its intention to develop legislation relating to adult safeguarding [Autumn Legislative Programme 2019](#). In the absence of adequate legislation, the HSE developed the '[Safeguarding Vulnerable Persons at Risk of Abuse - National Policy and Procedures](#)', however, this policy is limited to HSE centres or centres funded by the HSE. In 2019, HIQA and Mental Health Commission jointly developed [National Standards for Adult Safeguarding](#). HIQA also published [Guidance on a Human Rights-based Approach in Health and Social Care Services in conjunction with Safeguarding Ireland](#).

¹¹³ In 2018, HIQA found that almost one in three centres inspected failed to ensure that residents were adequately safeguarded at all times in 2018. See HIQA (2019) [Five years of regulation in designated centres for people with a disability](#), at p. 7. See also HIQA (2017) [Overview of 2016 HIQA regulation of social care and healthcare services](#), Apr 2017

¹¹⁴ [Dáil Éireann debate - Wednesday, 3 Oct 2018](#).

¹¹⁵ [Dáil Éireann debate - Wednesday, 3 Oct 2018](#). See also: Conor Gallagher (2018) [Hiqa criticised for not passing complaints on to Garda or ombudsman](#), Irish Times, 1 Oct 2018.

¹¹⁶ [Dáil Éireann debate - Wednesday, 3 Oct 2018](#).

¹¹⁷ [Dáil Éireann debate - Wednesday, 3 Oct 2018](#).

¹¹⁸ HIQA (2019) [HIQA and the Ombudsman forge closer ties to better protect the public](#), 11 Jul 2019.

¹¹⁹ [Dáil Éireann debate - Wednesday, 3 Oct 2018](#).

The Commission invites the Committee to ask the State what measures it is undertaking to ensure inter-agency cooperation and what measures it is undertaking to ensure that genuine allegations of abuse are reported to the Ombudsman and An Garda Síochána.

Emergency Accommodation for Homeless People

Ireland is experiencing a prolonged housing crisis, which has resulted in a significant rise in the levels of homelessness.¹²⁰ The Commission has previously highlighted a number of human rights and equality concerns in relation to the ongoing housing and homelessness crisis and has recommended reform of key aspects of housing law and policy, regarding the supply of quality permanent social housing and security of tenure.¹²¹ The Commission has also expressed concerns about the gender dimensions of the homelessness crisis as well as its impact on children's rights.¹²²

Broad reform of housing policy to address the housing crisis is a necessary condition for addressing homelessness. Homelessness policy must also be reformed around a housing first approach and must as far as possible move away from reliance on temporary or emergency accommodation.¹²³ Further, the standards of treatment and the protection of the rights of people within homelessness services and emergency accommodation must be addressed including within the comprehensive national safeguarding framework.

The Commission has expressed concern that emergency accommodation in the form of 'family hubs', group accommodation units for homeless families, has the potential to normalise family homelessness and may lead to families being institutionalised.¹²⁴ The Commission has in particular expressed concern at the absence of objective standards against which to measure the family hub services and the lack of independent inspection of such settings.¹²⁵ The Commission has similar concerns with regard to Direct Provision and emergency accommodation for applicants for international protection (see section 10 below).

The Commission notes that while emergency accommodation a necessary first response, it is inappropriate as a long-term solution, and only permanent housing provision can vindicate the accommodation needs and human rights of individuals and families.

The Commission invites the Committee to ask the State what measures it is taking to ensure that rights based standards of protection and treatment of homeless people are effectively embedded and implemented within homelessness services and accommodation.

¹²⁰ ¹²⁰ In July 2019, there were 10,275 people accessing emergency homeless accommodation in Ireland including 1,721 families and 3,778 children. See Department of Housing, Planning and Local Government, [Homelessness Report July 2019](#). In December 2014, there were 407 families with 880 children and 2,310 persons without children in emergency homeless accommodation. See Department of Housing, Planning and Local Government, [Breakdown of homeless persons in emergency accommodation during the week 22 to 28 December 2014](#).

¹²¹ IHREC (2015) *Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to the UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review*, section 9.2.

¹²² IHREC (2017) *Ireland and the Convention on the Elimination of All Forms of Discrimination against Women*, sections 6.2 and section 11.4; IHREC (2015) *Ireland and the United Nations Convention on the Rights of the Child: Report on Ireland's Combined Third and Fourth Periodic Reports*, section 4.5.

¹²³ OECD (2020) [Better data and policies to fight homelessness in the OECD](#), Policy Brief on Affordable Housing, OECD, Paris.

¹²⁴ IHREC (2017) [The provision of emergency accommodation to families experiencing homelessness](#).

¹²⁵ IHREC (2017) [The provision of emergency accommodation to families experiencing homelessness](#).

The Commission invites the Committee to ask the State what measures it is taking to ensure that family hubs are not being used as a long term solution for families.

The Commission invites the Committee to ask the State what measures it is taking to ensure that the homeless services should be subject to regular inspection by an independent inspection body.

The Commission invites the Committee to ask the State to review the practice of one-night only emergency accommodation.

8. Accountability for Historic Abuses (Articles 2, 12, 13, 14, 16 UNCAT)

The Commission remains concerned that the State is perpetuating human rights abuses by failing to investigate and ensure access to remedy for historical abuses. This concern has been noted by the Committee previously,¹²⁶ as well as other treaty monitoring bodies, including the Human Rights Committee¹²⁷ and the Committee on the Elimination of Discrimination against Women.¹²⁸

Commission to Inquire into Child Abuse and *Retention of Records Bill 2019*

The Commission notes the recent announcement that the provision of redress under the Residential Institutions Statutory Fund by Caranua¹²⁹ has been extended on foot of a further payment from the Christian Brothers.¹³⁰

The Commission is concerned that a proposed piece of legislation, the *Retention of Records Bill 2019*, would impinge on the rights of survivors of industrial and reformatory schools. The *Retention of Records Bill 2019* proposes that, on the dissolution of the Commission to Inquire into Child Abuse, the Residential Institutions Redress Board and the Residential Institutions Redress Review Committee, their records will be deposited in the National Archives where they will be withheld from public inspection for a period of 75 years. These records will include administrative records of the institutions, survivors' personal records, and all relevant documents created by State representatives and the aforementioned bodies.¹³¹ The Commission is concerned that, if enacted, the legislation would significantly weaken survivors' rights to their personal information, contrary to

¹²⁶ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2, at paras. 25-32.

¹²⁷ Human Rights Committee (2014) [Concluding observations on the fourth periodic report of Ireland](#), CCPR/C/IRL/CO/4, at para. 4.

¹²⁸ CEDAW, [Concluding Observations on the combined sixth and seventh periodic reports of Ireland](#), CEDAW/C/IRL/CO/6-7, paras. 14-15.

¹²⁹ Caranua is the independent state body set up to support survivors of abuse in residential institutions in Ireland and have received settlements, Redress Board or Court awards. See caranua.ie.

¹³⁰ Cate McCurry (2019) [Christian Brothers pay outstanding 6.8m euro debt to victims' organisation](#), Independent, 8 Dec 2019.

¹³¹ Dr Maeve O'Rourke, Máiréad Enright, Dr Sinéad Ring (2019) [Submission on the provisions of the Retention of Records Bill 2019](#), at p. 3.

international and European human rights norms.¹³² It may also inhibit potential future legal redress, frustrate the nation's recognition of its history of institutional abuse, and run contrary to principles of transparency and accountability.

The government has stated that the sealing of the records is necessary to respect the absolute confidentiality provisions of the Commission and the redress board, which some gave evidence on the basis of, and the need to protect both survivors and persons accused of abuse from their information becoming public. While the Commission accepts that the right to privacy of individuals who do not wish to be identified must be upheld, it is of the view that withholding the records in the manner proposed is disproportionate.

In November 2019, the Joint Oireachtas Committee on Education and Skills deferred further consideration of the Bill by the Oireachtas, and sought a response from the Minister for Education and Skills on concerns raised by survivors and legal experts about the Bill.¹³³

Recalling the recommendation of the Committee in the second period report of Ireland,¹³⁴ the Commission invites the Committee to ask the State how many allegations of abuse and torture in reformatory and industrial schools have been investigated, and led to prosecution and punishment of the perpetrators.

The Commission invites the Committee to ask the State whether it will review its proposed approach to the retention of records to bring it in line with international human rights norms.

Magdalen Laundries

In the second period review of Ireland, the Committee recommended that the State investigate fully, in line with international human rights standards, the situation of women who were institutionalised in the Magdalen Laundries.¹³⁵

There still has not been an independent, thorough, and effective investigation into allegations of ill-treatment of women and children in the Magdalen laundries. The Commission has previously stated that the report of the McAleese Inter-Departmental Committee is insufficient to meet the state's human rights obligations.¹³⁶

While the Commission welcomes the progress on implementation of the recommendations of the Office of the Ombudsman's report on the administration of the Magdalen Restorative Justice Scheme,¹³⁷ the Commission remains concerned that there are recommendations in the Quirke

¹³² In particular: Article 8, European Convention on Human Rights and Article 19, International Covenant on Civil and Political Rights. See Dr Maeve O'Rourke, Máiréad Enright, Dr Sinéad Ring (2019) [Submission on the provisions of the Retention of Records Bill 2019](#), at pp. 18-19.

¹³³ Houses of the Oireachtas (2019) [Education Committee to defer consideration of Retention of Records Bill](#), press release, 26 Nov 2019.

¹³⁴ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2, at para. 24(b).

¹³⁵ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2, at para. 26(a).

¹³⁶ IHREC (2018) [Submission to the UN Committee against Torture on Ireland's one year follow-up to its second periodic report under CAT](#), at p. 5.

¹³⁷ Office of the Ombudsman (2017) [Opportunity Lost: An Investigation by the Ombudsman into the Administration of the Magdalen Restorative Justice Scheme](#), November 2017. For more information on

report, which established an *ex gratia* Scheme for women who were admitted to and worked in the Magdalen Laundries, that are unimplemented.¹³⁸ In particular, Mr. Justice Quirke recommended that anyone who qualified for the Scheme should be awarded the *Health Amendment Act* (HAA) card which gives entitlement to a range of services, including therapies and dental care.¹³⁹

The Commission invites the Committee to urge that the State undertake a comprehensive and independent investigation the situation of women who were institutionalised in the Magdalen Laundries.

The Commission invites the Committee to ask the State how many allegations of abuse and torture taking place in Magdalen Laundries have been investigated, and led to prosecution and punishment of the perpetrators.

The Commission invites the Committee to ask the State if it intends to implement the recommendation of the Quirke Report in relation to the HAA card.

The Commission invites the Committee to inquire about the State's progress on implementation of the recommendations by the Office of the Ombudsman.

Mother and Baby Homes¹⁴⁰

The Commission remains concerned that the Mother and Baby Homes Commission of Investigation remit is too narrow in terms of institutions that is investigating, as well as types of abuses, and unaccompanied children.¹⁴¹ In this regard, the Commission recalls its previous comment that the *Commissions of Investigation Act 2004*, under which the Mother and Baby Homes Commission of Investigation was established, should be amended to embed human rights and equality considerations,¹⁴² in line with the public sector duty under section 42 of the *Irish Human Rights and Equality Commission Act 2014*.

In 2016, the Commission of Investigation into Mother and Baby Homes stated in its second interim report that children who were resident in certain homes should be eligible for the Residential Institutions Redress Scheme, since residents were now old and in need of redress before the

implementation of the other recommendations, see Office of the Ombudsman (2019) [Annual Report 2018](#), at p. 23. See also the *Redress for Women Resident in Certain Institutions (Amendment) Act 2019*.

¹³⁸ The Magdalen Commission Report (2013) [Report of Mr Justice John Quirke: On the establishment of an ex gratia Scheme and related matters for the benefit of those women who were admitted to and worked in the Magdalen Laundries](#).

¹³⁹ The Magdalen Commission Report (2013) [Report of Mr Justice John Quirke: On the establishment of an ex gratia Scheme and related matters for the benefit of those women who were admitted to and worked in the Magdalen Laundries](#), at p. 7.

¹⁴⁰ There were over 190,000 women and children placed in Mother and Baby Homes between 1922 and 1998, when the last institution closed. Over 57,000 survivors of these institutions are believed to still be alive. See Department of Health (2019) [Report of the Inter-Departmental Working Group established to examine the health and wellbeing recommendations contained in the First Report of the Collaborative Forum](#), at p. 27.

¹⁴¹ IHREC (2017) [Ireland and the Convention against Torture: Submission to the United Nations Committee against Torture on Ireland's second periodic report](#), at p. 54.

¹⁴² IHREC (2017) [Ireland and the Convention against Torture: Submission to the United Nations Committee against Torture on Ireland's second periodic report](#), at p. 53.

investigation would be completed.¹⁴³ However, the government has decided not to extend the Scheme, as the Commission has not made no findings to date regarding abuse or neglect within Mother and Baby Homes.¹⁴⁴

In July 2018, a Collaborative Forum was established to examine ways to facilitate dialogue with former residents of Mother and Baby Homes and related institutions on issues of concern to them, in particular relating to health and well-being supports.¹⁴⁵ In April 2019, the recommendations of the Report of the Collaborative Forum of Former Residents of Mother and Baby Homes and Related Institutions was published,¹⁴⁶ however, the government has declined to publish the full report, on the basis the Attorney General's advice that it should not be published ahead of the Commission of Investigation's final report, expected February 2020.¹⁴⁷ The full report is said to be critical of government agencies and legislation.¹⁴⁸

In December 2019, the Minister for Health announced a package of health and wellbeing supports for former residents of Mother and Baby Homes and Related Institutions. These were based on recommendations by the Inter-Departmental Working Group, which was established to examine the health recommendations contained in the *First Report of the Collaborative Forum for Former Residents of Mother and Baby Homes and Related Institutions*.¹⁴⁹ While the Commission welcomes the commitment of the government to fund a programme of health research into the health and wellbeing of survivors, the Commission notes that the package does not reflect the majority of recommendations of the Collaborative Forum, most notably in relation to the recommendation that survivors to be transferred to HAA Card, which gives entitlement to a range of medical services.

The Commission invites the Committee to ask the State how many allegations of abuse and torture taking place in Mother and Baby Homes have been investigated, and led to prosecution and punishment of the perpetrators.

Recalling the Committee's recommendation in its concluding observations of the second periodic report,¹⁵⁰ the Commission invites the Committee to ask the State whether the records of the Commission of Investigation into Mother and Baby Homes will be made public to the greatest extent possible.

The Commission invites the Committee to ask whether the *Report of the Collaborative Forum of Former Residents of Mother and Baby Homes and Related Institutions* has been published.

¹⁴³ Commission of Investigation into Mother and Baby Homes and Certain Related Matters (2017) [Second Interim Report](#), at pp. 3-4.

¹⁴⁴ [Second Interim Report of the Commission of Investigation into Mother and Baby Homes and Certain Related Matters: Statements](#), Seanad Éireann debate - Wednesday, 17 May 2017

¹⁴⁵ Department of Children and Youth Affairs (2019) [Mother and Baby Home Collaborative Forum](#)

¹⁴⁶ Collaborative Forum of Former Residents of Mother and Baby Homes (2018) [Recommendations from the First Report of the Collaborative Forum of Former Residents of Mother and Baby Homes](#).

¹⁴⁷ [Mother and Baby Homes Inquiries Dáil Éireann Debate, Thursday - 20 June 2019](#)

¹⁴⁸ Conall Ó Fátharta (2019) [Zappone rejects criticism over report's release](#), Irish Examiner, 26 Oct 2019.

¹⁴⁹ Collaborative Forum of Former Residents of Mother and Baby Homes (2018) [Recommendations from the First Report of the Collaborative Forum of Former Residents of Mother and Baby Homes](#).

¹⁵⁰ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2, at para. 27.

Symphysiotomy

Recalling the recommendation of the Committee in the concluding observation of the second periodic report of Ireland that there be an independent investigation into the cases of women who were subjected to symphysiotomy, there has still yet to be one undertaken.¹⁵¹ A redress scheme was established in 2014, but some victims have forgone the scheme because the standards of proof are overly burdensome,¹⁵² it entails no acknowledgement of breach of rights, the quantity of awards is low and do not reflect the gravity of harm, and the application time was unreasonably short.¹⁵³ In addition, payment under this scheme required signature of a 'deed of waiver and indemnity' precluding the applicant from further legal recourse against a scheduled list of State and non-State actors, effectively excluding those women unwilling or unable to waive their entitlement to legal recourse.¹⁵⁴ The Commission is of the view that the response of the State to the previous practice of symphysiotomy and the imposition of the *ex gratia* scheme are not in full compliance with the State's human rights obligations.

Three women are now pursuing a complaint to the European Court of Human Rights, who claim that symphysiotomy was done without their knowledge or consent, and has resulted in pain, impaired mobility, incontinence and an inability to bond with their children.¹⁵⁵

The Commission invites the Committee to ask the State whether it intends on undertaking a comprehensive and independent investigation of the practice of symphysiotomy.

¹⁵¹ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2, at para. 30.

¹⁵² See IHREC (2015) [IHREC Submission to the UN Human Rights Committee on Ireland's One-Year Follow-up under the ICCPR](#), at p. 7.

¹⁵³ Justine McCarthy (2019) [State fights Irish women's symphysiotomy claims in European Court](#), The Times, 6 Oct 2019. The opening date for applications was 10 November 2014, and the closing date was December 5 that year.

¹⁵⁴ Symphysiotomy Payment Scheme, Schedule 1 – Deed of Waiver and Indemnity, at p. 38.

¹⁵⁵ Justine McCarthy (2019) [State fights Irish women's symphysiotomy claims in European Court](#), The Times, 6 Oct 2019

9. Violence against Women (Articles 12, 13, 14 UNCAT)

Sexual violence

Violence against women and girls is prevalent in Ireland. A 2012 survey conducted by the Fundamental Rights Agency found that 26% of women in Ireland had experienced physical and/or sexual violence by a partner and/or non-partner since the age of 15.¹⁵⁶ A recent survey has reported that Ireland has the highest level of claimed sexual harassment in Europe, with 32% of Irish women between the ages of 18 and 34 saying they had experienced some form of sexual harassment in the last 12 months.¹⁵⁷ In 2018, it was announced that the government approved new national survey on the prevalence of sexual violence in Ireland, with a full pilot survey in the field to be undertaken in 2020.¹⁵⁸

A high proportion of sexual assaults are not reported to the criminal justice authorities. Where sexual violence is reported to An Garda Síochána, it appears that only 11% of cases are solved.¹⁵⁹ While the establishment of the specialist Garda unit investigating sex crimes is welcomed, it is under resourced and staffed, and is therefore not taking on new cases.¹⁶⁰

The Commission invites the Committee to ask the State to provide an update on the progress of the Sexual Violence Survey.

The Commission invites the Committee to urge the State to increase funding to the Garda Sex Crimes Unit.

Domestic violence

The *Domestic Violence Act 2018* was commenced in 2019. Contrary to the Committee's recommendation in its concluding observations of the second periodic review of Ireland, it failed to include a specific offence of 'domestic violence'.¹⁶¹ It is therefore difficult to calculate the number of

¹⁵⁶ European Union Agency for Fundamental Rights (2014) [Violence Against Women: An EU Wide Survey](#).

¹⁵⁷ Department of Justice and Equality (2019) [Minister Flanagan launches major national awareness campaign on sexual harassment and sexual violence](#), press release, 9 May 2019.

¹⁵⁸ [Sexual Offences Data](#). Dáil Éireann Debate, Wednesday - 10 July 2019.

¹⁵⁹ Central Statistics Office (2019) [Recorded Crime Detection 2018](#).

¹⁶⁰ Sean O'Riordan (2019) [Garda sex crimes unit can't take on new cases](#), Irish Examiner, 10 Dec 2019.

¹⁶¹ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2, at para. 32(a).

prosecutions for domestic violence.¹⁶² There are also reported inaccuracies by An Garda Síochána in the recording and classification of crimes involving domestic violence.¹⁶³

Furthermore, sexual and domestic violence offences appear to be chronically under-reported, because of, among other things, the limited availability of reliable support services, accessible procedures, and specialised practitioners.¹⁶⁴ An Garda Síochána receive 30,000 domestic abuse calls every year.¹⁶⁵ However, Ireland has less than a third of the number of refuge spaces required under EU standards.¹⁶⁶ In 2018, there were 3,256 unmet requests for emergency accommodation because refuges were full.¹⁶⁷ During the 2016 consultation for the Commission's CEDAW shadow report, it became apparent that the lack of emergency accommodation in a number of regions in the State may lead to multiple discrimination against rural women who are victims of domestic violence. Access to legal aid for victims remains problematic.¹⁶⁸

The Commission invites the Committee to ask the State about the level of provision of assistance, services, including shelters and access to justice, to victims of domestic violence.

The Commission invites the Committee to ask the State what measures it is taking to ensure that perpetrators of sexual and domestic violence are investigated, prosecuted, and punished.

Female genital mutilation

An estimated 5,795 women and girls living in Ireland have undergone female genital mutilation (FGM).¹⁶⁹ The specialised treatment centre in Dublin city centre for women and girls who have experienced FGM, operated by the Irish Family Planning Association, has noted that despite its awareness-raising work, challenges remain in ensuring access to this service, particularly for asylum seeking women. Women in the Direct Provision system experience difficulties in accessing childcare and meeting the required transport costs in order to access the service, particularly when they are

¹⁶² Women's Aid and Monica Mazzone (2019) *Unheard and Uncounted. Women, Domestic Abuse and the Irish Criminal Justice System*, at p. 15.

¹⁶³ IHREC (2017), [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women](#), p. 59; IHREC (2018), [Submission to the Commission on the Future of Policing](#); and CEDAW (9 March 2017), [Concluding Observations on the combined sixth and seventh periodic reports of Ireland](#), CEDAW/C/IRL/CO/6-7, p. 7.

¹⁶⁴ IHREC (February 2017), [Observations on the Criminal Justice \(Victims of Crime\) Bill 2016](#), p. 8 and Irish Observatory on Violence Against Women (September 2018), [Submission: The Policing Authority – Policing Priorities for 2019](#), at pp. 4-5.

¹⁶⁵ Dáil Éireann debate - Wednesday, 11 Dec 2019, [Domestic Violence: Statements](#)

¹⁶⁶ The Times (2019) [State accused of using old guideline to hide inadequate women's refuges](#), 16 Jan 2019.

¹⁶⁷ Evelyn Ring (2019) [3,256 'unmet requests' for refuge because the services were full in 2018](#), Irish Examiner, 10 Dec 2019.

¹⁶⁸ IHREC (2017) [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women](#), at p. 60.

¹⁶⁹ This figure was compiled by synthesising Census 2016 data with UNICEF global prevalence estimations from 2016. See AkiDWA (January 2018), [CERD Submission](#), at p. 2.

travelling from rural areas and have multiple counselling sessions.¹⁷⁰ Cultural barriers and the fear of the unknown have also been described as preventing many women and girls from accessing services for FGM.¹⁷¹

Beyond access to services there is an urgent need for the State to invest more into preventative measures through education and awareness raising by engaging the practising community and by adopting a national action plan on FGM. There needs to be a coordinated approach across agencies which includes State departments, frontline services and NGOs working with the affected communities.

The Commission invites the Committee to ask the State what measures it is taking to ensure full enforcement of the *Criminal Law (Female Genital Mutilation) Act 2012*.

The Commission invites the Committee to ask the State what measures it is undertaking to raise awareness about and support access to the specialist services.

The Commission invites the Committee to ask the State what preventative measures it is undertaking and what steps it has taken to adopt a National Action Plan on FGM.

¹⁷⁰ Irish Family Planning Association (2019), [Submission on Direct Provision to the Oireachtas Committee on Justice and Equality](#), at p. 4; Irish Family Planning Association (2017), [Supplementary information on Ireland in relation to sexual and reproductive health and rights for the consideration of the Committee Against Torture at its 61st session \(24 July–11 August 2017\)](#), at pp. 10-11 and IHREC (2017), [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women](#), at p. 65.

¹⁷¹ Sorcha Pollak (2019), [Female genital mutilation victims not availing of health services – charity](#), The Irish Times, 30 April 2019.

10. International protection, migrants, *Non-refoulement*, and the Use of Irish Airports (Articles 3, 5, 6, 7, 8, 11, 16 UNCAT)

Asylum determination

In 2018, there were 3,673 new applicants for international protection. That year, the International Protection Office recommended that 2,090 applicants be denied protection, a rejection rate of 70.3%.¹⁷² These included applicants from Syria, Zimbabwe, and Nigeria. While current statistics on appeals of these decisions are not available, statistics from 2014 and 2015 showed that almost half of negative first-instance decisions are overturned on appeal.¹⁷³ This raises questions about the reliability of decisions of the International Protection Office, particularly given the long waiting times for appeals to be processed.¹⁷⁴

The Commission invites the Committee to ask the State if it plans to publish more up-to-date statistics on appeals to negative first instance international protection applications.

The Commission invites the Committee to ask the State what measures it intends to take to improve the rate at which international protection applications are approved at first instance, rather than at appeal.

Direct Provision

Those seeking international protection are provided board and lodging in the direct provision system, which is overseen by the Reception and Integration Agency within the Department of Justice and Equality. As noted above, Direct Provision centres are run under contract by private companies and there are currently 39 direct provision centres in operation at locations across the State. As of November 2019, there were over 6,000 persons living in Direct Provision.¹⁷⁵ The mean length of stay in Direct Provision is 21 months.¹⁷⁶

Direct Provision centres have been widely criticised and their impact on asylum seekers is well documented.¹⁷⁷ Inappropriate living conditions,¹⁷⁸ isolation, and a lack of activities, among other

¹⁷² Irish Refugee Council, [Statistics: Republic of Ireland](#)

¹⁷³ Irish Refugee Council, [Country Report: Republic of Ireland – Fourth Update, Nov 2015](#). See Jenny Carla Moran (2019) [Submission to Joint Committee on Justice and Equality Report on Direct Provision and the International Protection Application Process](#), at p. 541

¹⁷⁴ Anne Sheridan (2019) [Annual Report on Migration and Asylum 2018: Ireland](#), at p. 73.

¹⁷⁵ [Direct Provision System Dáil Éireann Debate](#), Wednesday - 20 November 2019.

¹⁷⁶ Department of Justice and Equality (2019) [Parliamentary Questions](#), 20 Nov 2019.

¹⁷⁷ IHREC (2014) [Policy Statement on the System of Direct Provision in Ireland](#). See Oireachtas (2019) [Joint Committee on Justice and Equality debate - Wednesday, 12 Jun 2019: Direct Provision and the International Protection Application Process: Discussion](#), 12 Jun 2019.

¹⁷⁸ Doras Luimní, [Direct Provision](#).

issues, adversely affect physical and mental health of persons living in Direct Provision centres.¹⁷⁹ The Committee on the Elimination of Racial Discrimination recently expressed concern about the lengthy stay in Direct Provision centres and its significant impact on mental health and family life of asylum seekers, and urged the State to develop an alternative model, and recommended, in the interim, that the State improve living conditions.¹⁸⁰

Direct Provision accommodation has been shown to be particularly detrimental to children's well-being and development.¹⁸¹ In 2017, the Council of Europe highlighted the 'multiple negative effects of the direct provision system on the rights of asylum seeker children.'¹⁸² Further, there are also reports of sexual harassment of women living in the centres, some of whom were victims of sexual violence and trafficking.¹⁸³

The Commission remains concerned that Direct Provision centres are experiencing significant capacity issues.¹⁸⁴ These issues are being exacerbated by the housing crisis, which has meant that residents who have been granted refugee status are unable to leave.¹⁸⁵ Owing to the capacity issues in Direct Provision centres, the State has been providing emergency accommodation to international protection applicants in hotels and guesthouses since September 2018.¹⁸⁶

The Commission is concerned by reports of inadequate living conditions in emergency accommodation and the failure to ensure that asylum seekers are appropriately assessed for vulnerability and provided with access to the necessary services.¹⁸⁷ The Commission is of the

¹⁷⁹ Doras (2019) [Experiences of Living in Direct Provision: a Case Study of Mount Trenchard Accommodation Centre](#); Ní Raghallaigh, Foreman, Feeley (2016) [Transition: from Direct Provision to life in the community](#), June 2016, at p. 23; IHREC (2017) [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women: Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's combined sixth and seventh periodic reports](#), Jan 2017.

¹⁸⁰ Committee on the Elimination of Racial Discrimination (2019) [Concluding observations on the combined fifth to ninth reports of Ireland](#), CERD/C/IRL/CO/5-9, at para. 37.

¹⁸¹ Siobhán McGee (CEO Action Aid Ireland), [Reflections - one year on from the New York Declaration for Refugees and Migrants](#), 19 Sep 2017; Liam Thornton (2015) Spotlight on Direct Provision in Children's Rights Alliance (ed.), [Making Rights Real for Children: A Children's Rights Audit of Irish Law](#). Dublin: CRA pp. 124- 130; Geoffrey Shannon (2018) [Eleventh Report of the Special Rapporteur on Child Protection](#).

¹⁸² Nils Muižnieks (2017) [Report by the Commissioner for Human Rights](#), 27 Mar 2017, at para. 165.

¹⁸³ IHREC (2017) [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women: Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's combined sixth and seventh periodic reports](#), Jan 2017, at pp. 116-117.

¹⁸⁴ Ombudsman (March 2019), [The Ombudsman and Direct Provision: Update for 2018 – A commentary by the Ombudsman](#), p.7. There was an increase in the number of people seeking asylum during 2018. The number in Direct Provision grew from 5,687 (of which 591 were in emergency accommodation) on 1 January 2018 to 6,148 (of which 442 were in emergency accommodation) on 1 January 2019.

¹⁸⁵ Irish Times (2019) [What are the alternatives to our broken direct provision system?](#), 12 Feb 2019.

¹⁸⁶ As of October 2019, there were 1,399 people living in emergency accommodation across Ireland. Dáil Éireann debate (8 October 2019), [Direct Provision Data](#).

¹⁸⁷ Joint Committee on Justice and Equality (25 September 2019), [Direct Provision: Discussion with Ombudsman](#). Applicants raised wide-ranging concerns regarding their treatment, including: the failure to provide information about entitlements; the failure to place children in school and preschool; isolation due to lack of access to transport; a lack of play spaces for children; some adults sharing beds with strangers; insufficient sanitary and toiletry items; unsuitable food for the cultural and religious beliefs of residents; delays in accessing medical cards and PPS numbers; difficulties accessing medical treatment; and delays in accessing legal advice.

view that emergency accommodation does not adequately protect the rights of international protection applicants and that its use should cease as soon as possible.

While the Office of the Ombudsman and the Ombudsman for Children is now permitted to receive complaints relating to Direct Provision, there is no independent inspectorate. The Committee on the Elimination of Racial Discrimination recently recommended that the State develop clear standards of reception conditions in direct provision centres, and regulate and inspect the centres, and hold those responsible accountable for any breaches.¹⁸⁸

In December 2019, the government announced the establishment of the Expert Group on Direct Provision, tasked with developing new approaches to meeting the long-term needs of asylum seekers in the protection process.¹⁸⁹

The Commission invites the Committee to ask the State about how it intends to develop an alternative model for the reception of international protection applicants.

The Commission invites the Committee to ask the State what steps it is taking to end the practice of emergency accommodation of international protection applicants.

The Commission invites the Committee to ask the State about the development of an independent inspection mechanism for Direct Provision centres.

The Commission invites the Committee to ask the State about the progress of the Expert Group on Direct Provision, and how it plans to implement the Group's recommendations.

Vulnerability assessments

In the concluding observations on the second period review of Ireland, the Committee recommended that the State establish a formalised vulnerability-screening mechanism for torture victims.¹⁹⁰ The Committee on the Elimination of Racial Discrimination similarly recently expressed concern about the absence of adequate mechanisms for identifying asylum seekers with special reception needs.¹⁹¹

The *Reception Conditions Directive (recast)* obliges the State, among other things, to conduct assessments of the 'special reception needs of vulnerable persons'.¹⁹² While the State indicated that plans were underway to institute vulnerability assessment procedures in advance of opting into the

¹⁸⁸ Committee on the Elimination of Racial Discrimination (2019) [Concluding observations on the combined fifth to ninth reports of Ireland](#), CERD/C/IRL/CO/5-9, at para. 37.

¹⁸⁹ Department of Justice and Equality (2019) [Ministers Flanagan and Stanton announce establishment of Expert Group on Direct Provision](#), press release, 28 Dec 2019.

¹⁹⁰ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2, at para. 12(a).

¹⁹¹ Committee on the Elimination of Racial Discrimination (2019) [Concluding observations on the combined fifth to ninth reports of Ireland](#), CERD/C/IRL/CO/5-9, at para. 36.

¹⁹² See Article 22.

Directive¹⁹³ and has detailed a process whereby an applicant's needs are assessed during their initial interview, as well as at the Reception facility by a Health Screening Team,¹⁹⁴ the Commission is concerned about the adequacy of this process. The Commission has previously noted that a failure to identify a person with a disability, may lead them to be being placed in accommodation that inhibits access to necessary services. During a consultation with women living in Direct Provision, women reported hostility and misogyny in their daily lives, and often having previous experiences of trauma, torture, abuse and violence in their countries of origin.¹⁹⁵

There are reports that victims of torture are not identified months or even years into the process of seeking protection in Ireland.¹⁹⁶ Without vulnerability assessments, people are not accessing necessary healthcare and are being placed in inappropriate accommodation settings.¹⁹⁷

The Commission invites the Committee to ask the state what measures it intends to take to ensure that all individuals receive a vulnerability assessment within a reasonable period of time after an application for international protection is made, and prior to their placement in a Direct Provision or emergency accommodation centre.

Immigration related detention

In the concluding observations on the second period review of Ireland, the Committee recommended that the State ensure that persons detained for immigration purposes are not held with remand and convicted prisoners.¹⁹⁸ However, the numbers of persons detained in prison under broader immigration laws¹⁹⁹ remains steady.²⁰⁰ 414 committals, involving 406 detainees falling under this category for 2018.²⁰¹ There were on average 11 persons detained daily for immigration related matters in 2018.²⁰²

There are reports that immigration detainees held in prisons are subject to bullying by prisoners.²⁰³ Furthermore, they often do not avail of basic safeguards, such as legal representation, contact with

¹⁹³ The Department of Justice and Equality held a civil society briefing on labour market access for international protection applicants in Dublin on 28 July 2018. Officials indicated that, in keeping with the *Reception Conditions Directive (recast)*, a model would be adopted to cover health needs, including mental health, the needs of minors, and other vulnerabilities. Officials indicated that a two-step model was being prepared, which included an initial assessment of the applicant in Baleskin reception centre on arrival, followed by 'ongoing assessment by dedicated staff in Direct Provision Centres'. This briefing was given before emergency accommodation was being used to house protection applicants.

¹⁹⁴ Department of Justice and Equality (2019) [Parliamentary Questions](#), 23 Jul 2019.

¹⁹⁵ AkiDwA (31 May 2019), [Submission to the Joint Committee on Justice & Equality: Direct Provision & the International Protection Application Process](#), pp2-3.

¹⁹⁶ Irish Refugee Council (2019) [Refugee Organisations Highlight Absence of Vulnerability Assessment in Irish Asylum Procedure](#).

¹⁹⁷ Irish Refugee Council (2019) [The Reception Conditions Directive: One Year On](#).

¹⁹⁸ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2, at para. 12(a).

¹⁹⁹ This includes persons detained for offences outside of international protection e.g. trafficking of persons.

²⁰⁰ See Irish Prison Service (2019) [Annual Report](#), at p. 25.

²⁰¹ Corresponding figures for previous years are: 418 committals involving 396 detainees (2017); 421 committals involving 408 detainees (2016); see website of the [Asylum Information Database](#).

²⁰² See Irish Prison Service (2019) [Annual Report](#), at p. 25.

²⁰³ Nasc (2018) [Immigration Detention and Border Control in Ireland](#), at p. 59.

relatives or other third parties, and access to information about their rights during their detention.²⁰⁴ People that have been refused leave to land have been detained for long periods in the airport before being booked a return flight from where they came from, despite many flights leaving in the intervening time.²⁰⁵

The dedicated immigration detention centre at Dublin Airport has still yet to be opened. In June 2019, the government indicated that the immigration facility would open in 2019.²⁰⁶ The Commission has also been informed that a separate immigration detention unit is due to open in Clover Hill prison.²⁰⁷

The Commission invites the Committee to ask the State when the immigration detention facilities in Dublin Airport and Clover Hill Prison will be opened.

The Commission invites the Committee to ask the State how it intends to ensure the regular inspection and evaluation of immigration related detention.

Non-refoulement

In 2018, 3,500 persons were refused leave to land. This figure includes citizens from conflict areas where torture persists: 59 persons refused to land came from Afghanistan, 93 from Syria, 74 from Iraq, 43 from Somalia, 20 from Libya, 14 from Eritrea, and 3 from Yemen.²⁰⁸ Recalling that the Committee asked that the State provide the Committee in its next periodic report with data on the countries of origin of which persons denied leave to land,²⁰⁹ the Commission notes that this information is not generally publicly accessible.

The Commission invites the Committee ask the State what measures it is undertaking to ensure it fulfils its obligations under the prohibition on *refoulement*.

The Commission invites the Committee to ask the State to publish data on the countries of origin of which persons denied leave to land.

Use of Irish airports and ‘extraordinary rendition’

The Commission reiterates its concern at reports that US aircraft landing frequently in Irish airports could have been used for transporting prisoners to destinations where they were at risk

²⁰⁴ Nasc (2018) [Immigration Detention and Border Control in Ireland](#), at p. 51.

²⁰⁵ Nasc (2018) [Immigration Detention and Border Control in Ireland](#), at p. 57.

²⁰⁶ Cormac O’Keeffe (2019) [Dedicated immigration facility due to open at Dublin Airport](#), Irish Examiner, 12 Jun 2019.

²⁰⁷ Department of Justice civil society briefing on labour market access for international protection applicants, held in Dublin on 28 July 2018.

²⁰⁸ Garreth MacNamee (2018) [Over 3,500 people refused entry to Ireland last year including 487 Albanians and 459 Brazilians](#), theJournal.ie, 27 Dec 2018.

²⁰⁹ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2, at para. 12(e).

of torture, inhuman and degrading treatment.²¹⁰ The Commission has previously noted that Ireland was failing to comply with its human rights obligations to prevent torture and ill-treatment, and recommended that a system of inspection should be established.²¹¹

The Commission invites the Committee to ask the State to consider setting up an independent system of inspection of aircraft landing in Irish airports.

11. Trafficking (Articles 2, 12, 14 UNCAT)

Despite some efforts on the part of State authorities to combat trafficking and support victims, minimum standards across a number of areas are still not being met and are not being afforded sufficient priority. Although there were 64 reported investigations relating to trafficking in 2018, the authorities did not initiate any prosecutions (only three were initiated in 2017). Overall, there have been no convictions for trafficking for the purposes of sexual or labour exploitation since the relevant legislative framework was introduced in 2013.²¹²

The State continues to rely on an inadequate administrative scheme for the recognition and protection of victims of trafficking. A United Nations Office of Drugs and Crime research found that the total number of victims may be twice the number of identified victims.²¹³ The formal procedures for victim identification do not apply to EEA nationals or asylum seekers, requiring the latter to choose between identification as a victim of trafficking and their pending application for international protection.²¹⁴

The Commission notes that there is an absence of a clear statutory basis in Ireland for the right of victims to specialised services and assistance.²¹⁵ However, the Department of Justice and Equality has indicated that there are currently no plans to introduce primary legislation to address this gap.

Furthermore, the Group of Experts on Action against Trafficking in Human Beings (GRETA) has criticised the links between the criminal justice process and the provision of assistance, as a formal victim statement and referral from law enforcement are required for potential victims to access services through the national referral mechanism.²¹⁶ The Commission is also aware of concerns about the limited availability of supports for women who have been trafficked and, in particular,

²¹⁰ IHREC (2017) [Ireland and the Convention against Torture: Submission to the United Nations Committee against Torture on Ireland's second periodic report](#), at p. 14; IHRC (2007) ['Extraordinary Rendition' A Review of Ireland's Human Rights Obligations](#).

²¹¹ IHREC (2017) [Ireland and the Convention against Torture: Submission to the United Nations Committee against Torture on Ireland's second periodic report](#), at p. 15.

²¹² US Department of State (2019) [Trafficking in Persons Report](#), at p. 251.

²¹³ UNODC (2018), [Monitoring Target 16.2 of the United Nations Sustainable Development Goals: multiple systems estimation of the numbers of presumed victims of trafficking in persons - Ireland](#), at p. 4.

²¹⁴ US Department of State (June 2019), [Trafficking in Persons Report](#), at p. 252 and GRETA (20 September 2017), [Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: Second Evaluation Round](#), at para. 116.

²¹⁵ This right derives from Article 12 of the [Council of Europe Convention on Action against Trafficking in Human Beings](#) and Recital 18 and 22 and Article 11 of the [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#).

²¹⁶ US Department of State (June 2019), [Trafficking in Persons Report](#), at p. 252.

services that protect women from the risk of deportation and address their physical and mental health.²¹⁷

A number of administrative and other barriers exist in practice, preventing victims from accessing justice and an effective remedy for the violation of their rights. The absence of convictions for trafficking in Ireland precludes victims from accessing compensation through the courts.²¹⁸

The Commission invites the Committee to ask the State what measures it is taking to address the obstacles preventing the prosecution of perpetrators of trafficking.

The Commission invites the Committee to ask the State what measures it is taking to address the shortcoming in the victim identification process, as identified by US Department of State²¹⁹ and GRETA,²²⁰ among others.

The Commission invites the Committee to ask the State whether it intends to place victim identification process on a statutory footing.

The Commission invites the Committee to ask the State whether it intends to provide for a statutory right to specialised services and assistance, irrespective of their involvement with law enforcement agencies, to all potential victims of trafficking.²²¹

²¹⁷ US Department of State (June 2019), [Trafficking in Persons Report](#), at p. 252.

²¹⁸ Group of Experts on Action against Trafficking in Human Beings (20 September 2017), [Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: Second Evaluation Round](#), at paras. 174-175.

²¹⁹ US Department of State (June 2019), [Trafficking in Persons Report](#), at p. 252.

²²⁰ Group of Experts on Action against Trafficking in Human Beings (20 September 2017), [Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: Second Evaluation Round](#), at p. 29.

²²¹ IHREC (2016), [Submission to GRETA in advance of its Second Evaluation Round of Ireland](#), at p. 29.



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