



UN Convention against Torture and other Cruel,
Inhuman or Degrading Treatment or Punishment
List of Issues Prior to Reporting – IRELAND



Irish Council for
Civil Liberties

Submission to the UN Committee against Torture **16 August 2013**

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The Irish Council for Civil Liberties (ICCL) is Ireland's leading independent human rights watchdog, which monitors, educates and campaigns in order to secure full enjoyment of human rights for everyone. Founded in 1976 by Mary Robinson and others, the ICCL has played a leading role in some of the most successful human rights campaigns in Ireland. These have included campaigns resulting in the establishment of an independent Garda Síochána Ombudsman Commission, the legalisation of the right to divorce, more effective protection of children's rights, the decriminalisation of homosexuality and introduction of enhanced equality legislation.

We believe in a society which protects and promotes human rights, justice and equality.

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Introduction

1. The ICCL welcomes the opportunity to contribute to the *List of Issues Prior to Reporting* of Ireland at the Fifty-First Session of the Committee against Torture.¹
2. Following on from Ireland's inaugural examination in 2011 to which the ICCL and Irish Penal Reform Trust submitted a Joint Shadow Report, the ICCL and other partner NGOs have disseminated copies of the Concluding Observations to statutory bodies, civil society groups, lawyers, academics and media. In addition, we facilitated national media coverage (regarding which Committee members will be aware) and organised a follow-up event to mark the one-year anniversary of the Committee's examination of Ireland in June 2012 (in conjunction with Justice for Magdalenes).
3. Regarding Ireland's first examination under UNCAT, the ICCL notes Ireland's positive engagement with the process, not least in relation to the follow-up information provided to the Committee on 31 July 2012.² Moreover, we welcome the communication from the Committee Vice-Chair and Follow-up Rapporteur, Ms Felice Gaer to the Irish Government on 22 May 2013.
4. Following on from the Committee's last engagement with Ireland, the ICCL notes the following positive developments: the adoption of the Criminal Justice (Female Genital Mutilation) Act 2012; movement with respect to redress for the women detained in the Magdalene Laundries;³ and, developments with respect to penal reform⁴ and the protection of children from abuse.⁵
5. However, as is detailed in this submission, Ireland has been slow to progress many of the Committee's other recommendations. Most notably, the ICCL wishes to highlight that the Optional Protocol to the Convention against Torture (OPCAT) has yet to be ratified by Ireland, nearly six years after it was signed.
6. Since Ireland's appearance before the Committee in 2011, there have been a number of developments with respect to Ireland's engagement with UN systems. As Committee members will be aware, Ireland was elected to the UN Human Rights Council commencing on 1 January 2013. Ireland's first UPR examination took place in October 2011, with formal adoption of the UPR Working Group Report on Ireland in March 2012. Furthermore, Ireland submitted its Fourth Periodic Report to the UN Human Rights Committee under the International Covenant on Civil and Political Rights (ICCPR) on 25 July 2012, reference to which is made throughout this document.⁶
7. This submission highlights components of Irish law and policy where we consider Ireland is not in compliance with UNCAT standards. We respectfully request that the Committee consider making certain enquiries of Ireland when adopting the *List of Issues Prior to Reporting* and these are set out at the end of each section.

¹ October – 22 November 2013.

² <http://www.irishstatutebook.ie/2012/en/act/pub/0011/print.html>.

³ See section 7.

⁴ See section 15.

⁵ See section 6.

⁶ *Ireland's Fourth Periodic Report under ICCPR to the UN Human Rights Committee*, available here http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2f4&Lang=en Ireland is scheduled to be examined by the UN Human Rights Committee in July 2014.

Section 1:

Implementation of International Human Rights Law

Concluding Observations of the Committee against Torture, June 2011

The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities, and the International Convention for the Protection of All Persons from Enforced Disappearance.

Expedite the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the establishment of a national preventive mechanism.

- 1.1 On foot of its inaugural UPR examination in 2011, 9 countries recommended that Ireland ratify the Optional Protocol to the Convention against Torture (OPCAT).⁷
- 1.2 On 6 February 2013, in a written response to a Parliamentary question, the Minister for Justice, Equality and Defence, Alan Shatter TD, stated that the Government had “approved the drafting of a General Scheme of an Inspection of Places of Detention Bill, which will include provisions to enable ratification of OP-CAT”.⁸ He continued that the “Bill will make provision for the designation of National Preventative Mechanisms”.⁹ However, no timeframe was provided for the introduction of the legislation beyond his statement that “it is expected that the General Scheme will be completed early this year [2013]”.¹⁰
- 1.3 Given the significant delay in ratification of the OPCAT, the ICCL considers that this legislation should be prioritised within the upcoming Government Legislative Programme. In this respect, the ICCL welcomes the Minister’s intention “to facilitate a consultation process in advance of drafting and publication of the Bill”¹¹ and looks forward to participating in this process in the coming months.¹²
- 1.4 With respect to Ireland’s ratification of the UN Convention on the Rights of People with Disabilities (ICRPD), Ireland received UPR recommendations regarding ratification of the Convention from fifteen countries.¹³ The Government has consistently maintained that Ireland was not in a position to ratify the Convention until the law on assisted decision-making was aligned with the standards of the Convention. On 17 July 2013, the Assisted Decision-Making (Capacity) Bill 2013 was published and, if enacted, would remove any remaining barrier to Ireland’s ratification of the CRPD. In its Fourth Periodic Report under the ICCPR to the UN Human Rights Committee, Ireland indicated that once legislation on assisted decision-making is enacted, it is the intention of the State to ratify the Convention “as quickly as possible”.¹⁴

⁷ Estonia, Brazil, Chile, France, Greece, Slovenia, United Kingdom, Switzerland and Peru.

⁸ Written Answers, (6 February 2013), available at <http://www.kildarestreet.com/wrans/?id=2013-02-06a.110&s=optional+protocol+to+the+convention+against+torture#g111.q> (accessed 30/07/2013).

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² On 15 February 2012, the Irish Council for Civil Liberties (ICCL) and the Irish Penal Reform Trust (IPRT) hosted a high level roundtable meeting with Malcolm Evans, Chair, UN Sub-Committee for the Prevention of Torture (SPT) and the Association for the Prevention of Torture (APT). In attendance were statutory office holders whose remit includes the inspection of places where people are detained, in addition to representatives from An Garda Síochána (Irish police).

¹³ Indonesia, Chile, Ecuador, Costa Rica, Argentina, Peru, Austria, Canada, Greece, Iran, Iraq, Spain, Algeria, France and Hungary.

¹⁴ *Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee*, para 39.

Suggested Enquiries:

- ▶ **When will the State produce the General Scheme of an Inspection of Places of Detention Bill?**
- ▶ **How will the State ensure an inclusive and genuinely participatory consultation process on the General Scheme of an Inspection of Places of Detention Bill?**
- ▶ **When will the Assisted Decision-Making (Capacity) Bill 2013 be presented to the Oireachtas (Irish Parliament)?**
- ▶ **Will the State confirm its intention to ratify the ICRPD directly following the enactment of the Assisted Decision-Making (Capacity) Bill 2013?**

Section 2:

Human Rights Infrastructure

Concluding Observation of the Committee against Torture, June 2011

The Committee recommends that the State party should ensure that the current budget cuts to human rights institutions, in particular the Irish Human Rights Commission, do not result in the crippling of its activities and render its mandate ineffective. In this regard, the State party is encouraged to strengthen its efforts in ensuring that human rights institutions continue to effectively discharge their mandates. Furthermore, the Committee recommends that the State party should strengthen the independence of IHRC by, inter alia, ensuring its direct accountability to Parliament and financial autonomy in line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).

- 2.1 Following on from Ireland's first report on UNCAT, the Committee will be aware of the significant cuts that have been experienced in recent years by the national human rights institution (NHRI), the Irish Human Rights Commission (IHRC),¹⁵ and the Equality Authority.¹⁶
- 2.2 On 9 September 2011, the Minister for Justice, Equality and Defence, announced plans to merge the existing IHRC with the Equality Authority to establish the Irish Human Rights and Equality Commission (IHREC), a single body with a mandate to carry out the functions of both organisations.¹⁷ In May 2012, the General Scheme of the Bill governing the proposed merger was published.¹⁸ However, at the time of submission, the final text of the Bill has yet to be made public. In advance of the establishment of the new body (17 April 2013), a Commission comprising fourteen independently selected Commissioners was appointed to oversee the establishment of the Commission.¹⁹
- 2.3 Notwithstanding these welcome appointments, there is growing concern at the pace of the establishment of IHREC particularly in relation to the adequacy of resources that will be available to the new body and the delay in introducing the governing legislation. Moreover, it is not yet clear whether the new body will be established in a manner which is in full compliance with the Paris Principles, including, with respect to accountability to Parliament and maintaining its A-Status accreditation with the International Coordinating Committee. Regarding financial autonomy, the draft legislation provides that the Commission "shall be provided with

¹⁵ The Irish Human Rights Commission was established under the Human Rights Commission Acts 2000 and 2001 as a State-funded agency with a role to protect and promote the human rights of everyone in Ireland. See <http://www.ihrc.ie> (accessed 8/8/2013).

¹⁶ The Equality Authority was established under the Employment Equality Acts 1998 with a mandate to address discrimination under nine grounds which are covered by the legislation. See <http://www.equality.ie> (accessed 8/8/2013). As reported to the Committee in 2011, budget cuts to the Irish Human Rights Commission and the Equality Authority were widely considered to be of a disproportionate nature and subsequently impacted both the operation and efficiency of these bodies. See for example, Irish Human Rights Commission (March 2011), Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland, available at http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf (accessed 16/8/2013) and Irish Human Rights Commission (1 April 2011), National Human Rights Institution Submission to the UN Committee against Torture on the Examination of Ireland's First National Report, available at http://www.ihrc.ie/download/pdf/ihrc_report_to_un_committee_against_torture_april_2011.pdf (accessed 16/8/2013).

¹⁷ Department of Justice and Equality, Press Release, (9 September 2011), "Government to establish a new enhanced Human Rights and Equality Commission – Shatter", available at <http://www.justice.ie/en/JELR/Pages/PR11000174> (accessed 23/07/2013).

¹⁸ See Heads of the Irish Human Rights and Equality Commission Bill 2013, available at <http://www.justice.ie/en/JELR/20120605HeadsOfIHRECBill.pdf/Files/20120605HeadsOfIHRECBill.pdf> (accessed 23/07/2013).

¹⁹ Appointment of Members Designate of the new Irish Human Rights and Equality Commission, (17 April 2013), <http://www.merrionstreet.ie/index.php/2013/04/appointment-of-members-designate-of-new-irish-human-rights-and-equality-commission/> (accessed 30/07/2013). The selection of the new Commission which was scheduled to begin work in 2012 was delayed following correspondence between the selection panel, which was appointed by the Minister for Justice, Equality and Defence, and the Office of the High Commissioner for Human Rights concerning the independence of the process. The new Commission was appointed in 2013 although the position of Chief Commissioner remains vacant.

sufficient sources to ensure that it can carry out each of its functions effectively;²⁰ however, under the current Scheme, it is proposed that budget allocations will remain solely within Ministerial control.

Suggested Enquiries:

- ▶ **When will the State publish the Irish Human Rights and Equality Commission Bill? How will the State provide for a coherent and effective NHRI under the proposed legislation?**
- ▶ **How will the IHREC comply with the Paris Principles, generally and specifically regarding Parliamentary accountability, and will the IHREC satisfy the conditions for A-Status accreditation from the International Coordinating Committee?**
- ▶ **Provide details of the budget allocation for the IHREC, including reference to its adequacy to enable the Commission to discharge sufficiently its statutory powers and functions.**

²⁰ Heads of the Irish Human Rights and Equality Commission Bill 2013, Head 28.

Section 3:

Extraordinary Rendition (Article 3)

Concluding Observation of the Committee against Torture, June 2011

[P]rovide further information on specific measures taken to investigate allegations of the State party's involvement in rendition programmes and the use of the State party's airports and airspace by flights involved in "extraordinary rendition" [and provide] clarification on such measures and the outcome of the investigations, and take steps to ensure that such cases are prevented.

3.1 As the Committee is aware from its hearing on Ireland's First Examination, documents brought into the public domain in 2010 revealed that Irish Government Ministers were aware that rendition flights were landing in Ireland. The materials documented an exchange which took place in 2007 between the previous US Ambassador Foley and previous Irish Minister for Foreign Affairs, Mr. Dermot Ahern TD, where Mr. Ahern appeared to be "quite convinced that at least three flights involving renditions had refuelled at Shannon airport before or after conducting renditions elsewhere."²¹

This conversation is also recorded in a 2013 report by the Open Society Justice Initiative which includes further evidence on Ireland's involvement in rendition. The report sets out the dates, flight numbers, airline operators and, in some cases, passenger names (known to be victims of rendition detention), obtained from pleadings and official court records in lawsuits against commercial aviation companies in the US.²²

3.2 Ireland's Fourth Report to the Human Rights Committee under ICCPR (2012), sets out the complaints that have been received by An Garda Síochána (Irish police) regarding alleged rendition flights to/from Shannon Airport. It states that all of the allegations have been investigated by senior police officers and that "two investigations resulted in files

being forwarded to the Director of Public Prosecutions";²³ however, "no prosecutions have been directed by him as no evidence was available to support such a prosecution".²⁴

3.3 In his most recent Parliamentary comment on Ireland's responsibilities with respect to the prevention of rendition, the Tánaiste and Minister for Foreign Affairs and Trade, Eamonn Gilmore, stated that the "Government is completely opposed to the practice of extraordinary rendition" and that the,

[C]urrent Government has made a clear commitment in the programme for Government to enforce the prohibition of the use of Irish airports and related facilities for purposes that are not in line with the dictates of international law. Where overflights are concerned and where prisoners are being transported through Irish airports, there is a requirement to seek our permission. If, at any time, we receive evidence that there is a breach of this requirement, we will have our law enforcement officials take action on it.²⁵

3.4 In response to a question specifically addressing the question of inspections, the Tánaiste replied that "there is no evidence to suggest that any of these aircraft were carrying prisoners at any time when they transited through Irish airports, including Shannon

²¹ Wikileaks Cable, 07DUBLIN916, TOUR D'HORIZON WITH IRISH FOREIGN MINISTER, Thomas C Foley, US Ambassador, Dublin, (December 2007), available at <http://wikileaks.org/cable/2007/12/07DUBLIN916.html>, (accessed 23/07/13). See also CAT/C/IRL/CO/1, para. 9. Previous reports on the matter include: European Parliament Report RR\382246EN.doc (30 January 2007), para. 121-126, available at http://www.europarl.europa.eu/comparl/tempcom/tdip/final_report_en.pdf (accessed 23/07/13); Council of Europe, Committee on Legal Affairs and Human Rights, (7 June 2006), *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states* AS/Jur (2006) 16 Part II, para. 289; Irish Human Rights Commission, (23 December 2005) *Resolution in Relation to Claims of US Aircraft carrying Detainees*, available at http://www.ihrc.ie/download/pdf/ihrc_rendition_report_final.pdf (accessed 23/07/2013).

²² Open Justice Society Initiative, (February 2013) *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition*, p. 86, available at <http://www.osisa.org/sites/default/files/globalizing-torture-20120205.pdf> (accessed 23/07/13).

²³ *Ireland's Fourth Periodic Report under ICCPR to the UN Human Rights Committee*, para 239.

²⁴ *Ibid.*

²⁵ Dáil Debates, (20 February 2013), available at <http://www.kildarestreet.com/debates/?id=2013-02-20a.226&s=rendition+1999-01-01..2013-07-23#g227.q> (accessed 23/07/2013).

Airport".²⁶ Furthermore, with respect to steps to ensure that such cases are prevented, the Tánaiste stated that the "*permission of the Irish Government must be sought and obtained for the transport of prisoners through Irish airports*".²⁷ He continued that "*under no circumstances will we grant permission for the transport of prisoners who are subject to extraordinary rendition*".²⁸

Suggested Enquiry:

- ▶ **Provide details, including the procedural format, of the operational preventative steps (such as unannounced inspections) that Ireland is taking to ensure prisoners who are subject to rendition are not passing through Irish territory.**

- 3.5 However, in contrast to the advice received from the Irish Human Rights Commission (IHRC),²⁹ the State maintains the argument that it is entitled to rely on diplomatic assurances from the United States Government to the effect that Irish airports are not being used to facilitate rendition. Ireland's Fourth Periodic Report under ICCPR to the UN Human Rights Committee refers to "*assurances at the highest level*" by the United States that "*it would not transport prisoners through Irish airspace without seeking the permission of the Government*".³⁰ Furthermore, in the Dáil (Irish Parliament), the Tánaiste reaffirmed the Government's satisfaction with diplomatic assurances from the US authorities that prisoners had not been transferred through Irish territory, stating that they "*were confirmed at the highest political level. They are of a clear and categoric nature, relating to facts and circumstances within the full control of the United States Government*".³¹
- 3.6 It is submitted that the continued reliance on diplomatic assurances from the US Government is insufficient to discharge Ireland's obligations under the Convention to prevent torture or inhuman or degrading treatment or punishment.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Irish Human Rights Commission, (23 December 2005), *Resolution in Relation to Claims of US Aircraft carrying Detainees*. According to the IHRC, diplomatic assurances are not adequate to discharge Ireland's positive obligations to actively ensure that torture, inhuman or degrading treatment or punishment is not facilitated by the State (under Article 7 and paragraph 9 of Human Rights Committee General Comment 20 concerning prohibition on torture, inhuman and degrading treatment or punishment, 10 March 1992 and section 4(1) Criminal Justice (United Nations Convention Against Torture) Act 2000 No. 11 of 2000). Having conveyed their concerns to the State in late 2005, on 5 April 2006, the IHRC received a letter from the (former) Minister for Foreign Affairs stating that he rejected their advice regarding the impermissibility of diplomatic assurances in this context but failed to address the Commission's concerns with regard to the State's obligation to investigate allegations of rendition. See Irish Human Rights Commission, *Submission to the European Parliament's Temporary Committee on Rendition*, (28 November 2006), p. 2, available at http://www.ihrc.ie/_fileupload/banners/Submission-to-European-Temporary-Committee-on-Rendition-of-the-European-Parliament.doc (accessed 23/07/2013).

³⁰ *Op cit*, p. 76.

³¹ Dáil Debates, (20 February 2013), *op cit*.

Section 4:

Refugees and International Protection (Articles 3, 12)

Concluding Observation of the Committee against Torture, June 2011

The Committee recommends that the State party pursue efforts aimed at strengthening the protection of persons in need of international protection. In this regard, the State party should consider amending the draft immigration, residence and protection bill in order to bring it into line with the requirements of the Convention, in particular with regard to the rights of migrants to judicial review over administrative actions as also recommended by the Committee on the Elimination of Racial Discrimination (CERD/C/IRL/CO/3-4, para. 15). The Committee also recommends that the State party consider amending its legislation so that the lodging of an appeal before the Refugee Appeals Tribunal has suspensive effect on the impugned decision. Furthermore, the Committee recommends that the State party investigate the considerable drop in positive determinations for refugee status to ensure that applications are processed following due process.

Immigration, Residence and Protection Bill 2010

4.1 The Committee should note that the Immigration, Residence and Protection Bill 2010 (which had its original incarnation in 2008) has, to date, not been enacted. At the time of submission, it is not known whether an amended or replacement Bill will be introduced and whether the proposed legislative measure will address the concerns of the Committee as set out above, or those raised in 2008 by the Human Rights Committee regarding summary removal, access to legal representation, and independent appeals for all immigration related decisions.³²

Applications for Asylum

4.2 Ireland is the only EU Member State which does not have a single procedure to “*examine all of the protection needs of an asylum seeker at the same time*”.³³

Suggested Enquiries:

▶ **The Committee is urged to ask the State party if it plans to introduce a single procedure for asylum applicants.**

Direct Provision

4.3 The Reception and Integration Agency (RIA) operates a system of dispersal and direct provision for people seeking asylum or another form of protection (e.g. victims of human trafficking).³⁴ This is provided on a full-board basis (all meals provided) and is accompanied by a single weekly social transfer payment of €19.10 for an adult and €9.60 for a child, a rate which has remained unchanged since its introduction in 1999. Currently, there are approximately 4,800 people living in direct provision accommodation (down from 5,400 at the end of 2011) in Ireland, including approximately 60 per cent for three years or more. Almost a third of the total numbers of residents are children under the age of 18.³⁵ Figures below from 2012 indicate the relative waiting times of applicants within the system.

³² UN Human Rights Committee, *Concluding Observations of the UN Human Rights Committee*, op cit, para 19. See also Irish Refugee Council, *Submission to Ireland's Fourth Periodic Report under the International Covenant on Civil and Political Rights*, May 2012, available at <http://www.irishrefugeecouncil.ie/> (accessed 8/8/2013). See Irish Refugee Council, *THE SINGLE PROTECTION PROCEDURE, A Chance for Change*, January 2013, available at <http://www.irishrefugeecouncil.ie/wp-content/uploads/2011/08/Chance-for-Change.pdf> (accessed 07/02/13).

The Committee should also note UPR Recommendation 106.60 to establish a consolidated framework relating to immigration and asylum issues, including an independent Appeals body (United Kingdom).

³³ Reception and Integration Agency, *Reception, Dispersal and Accommodation*, 2010. Available at: http://www.ria.gov.ie/en/RIA/Pages/Reception_Dispersal_Accommodation/ (accessed 8/8/2013).

³⁴ Reception and Integration Agency, *Reception, Dispersal and Accommodation*, 2010, available at http://www.ria.gov.ie/en/RIA/Pages/Reception_Dispersal_Accommodation/ (accessed 8/8/2013).

³⁵ Reception & Integration Agency – Statistics (February 2013), available at [http://www.ria.gov.ie/en/RIA/RIAFeb\(A4\)2013.pdf/Files/RIAFeb\(A4\)2013.pdf](http://www.ria.gov.ie/en/RIA/RIAFeb(A4)2013.pdf/Files/RIAFeb(A4)2013.pdf) (accessed 8/8/2013).

- 4.4 In a case decided in August 2013, the Northern Ireland High Court ruled that an asylum seeker and her three children should not be sent back to (the Republic of) Ireland because of the marked difference in quality of accommodation under the direct provision scheme compared to provision for asylum seekers in Northern Ireland. In this respect, the Court held that the best interests of the children favoured an order permitting the family to remain in Northern Ireland.³⁶
- 4.5 Asylum applicants remain precluded in law from taking up gainful employment. A recommendation from a fellow EU state to grant refugees the right to work was categorically rejected by the Irish government during its first UPR examination (2012).³⁷ In 2013, the European Commission on Racism and Intolerance (ECRI) noted, “*that residents of the direct provision centers have little control over their daily lives (cooking, cleaning, celebrating important events), which in many cases impacts negatively on family life [...]*.”³⁸ ECRI recommended that the authorities should conduct a systematic review of the policy of direct provision and called for an alternative system that would promote independence and ensure adequate living conditions.³⁹

Suggested Enquiries:

- ▶ Provide more detailed information on the policies and practices which govern the system of direct provision.
- ▶ The Committee is urged to ask the State Party whether and if so, when, it intends to end the system of direct provision for asylum seekers and to adopt alternative reception and integration policies to ensure that asylum seekers, including children, are not unfairly disadvantaged or segregated from the community.

Independent Complaints Mechanism: Asylum and Protection System

- 4.6 There is a lack of an independent complaints mechanism for residents of direct provision or remedy for individuals who have been aggrieved despite the recently-expressed concern by the Ombudsman that the treatment of asylum seekers may entail breaches of Ireland’s obligations under the Constitution and international human rights law.⁴⁰

During its first UPR examination (2012), Ireland “*partially accepted*” the recommendation of the Netherlands to consider “*alternative (legislative) measures that will enhance the position of children in the short term (i.e. extending the remit of the Ombudsman to children in prisons and asylum-seeking children)*”,⁴¹ stating that a “*number of measures are currently being implemented to enhance the position and protection of children in Irish society*”.⁴²

Duration of Stay by Applicants in Direct Provision							
0-1 yrs	1-2 yrs	2-3 yrs	3-4 yrs	4-5 yrs	5-6 yrs	6-7 yrs	7 yrs +
539	630	770	945	812	670	397	272

TABLE 1: Taken from a presentation by the Head of the Reception and Integration Agency to the European Migration Network Ireland conference, December 2012

³⁶ ALJ and A, B and C’s Application for Judicial Review [2013] NIQB 88.

³⁷ Recommendation 108.15 did not enjoy the support of Ireland: “Introduce a law allowing for family reunions as well as a law granting refugees the right to work (Czech Republic)”. *Report of the Working Group on the Universal Periodic Review: Ireland* (21 December 2011), UN Doc A/HRC/19/9.

³⁸ European Commission on Racism and Intolerance (ECRI), Report on Ireland (Fourth Monitoring Cycle), (19 February 2013), page 26, para 115, available at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ireland/IRL-CbC-IV-2013-001-ENG.pdf> (accessed 15/8/2013). Further information on the direct provision scheme can be found in Free Legal Advice Centres, (2009), *One Size Doesn’t Fit All*, available at: <http://www.flac.ie/publications/one-size-doesnt-fit-all/> (accessed at 8/8/2013).

³⁹ European Commission on Racism and Intolerance (ECRI), *op cit*, para.116-117.

⁴⁰ Irish Times, *Treatment of asylum seekers may be ‘our next national scandal’, warns Ombudsman*, (9 July 2013), available at <http://www.irishtimes.com/news/social-affairs/treatment-of-asylum-seekers-may-be-our-next-national-scandal-warns-ombudsman-1.1458049> (accessed 8/8/2013).

⁴¹ 107.11.

⁴² *Report of the Working Group on the Universal Periodic Review: Ireland Addendum* (6 March 2012), UN Doc A/HRC/19/9 Add.1.

However, it can be presumed that this partial acceptance did not relate to enhancing the position of asylum-seeking children as the Minister for Justice, Equality and Defence is on the record as recently as April 2013 stating that,

*[s]ection 5 (1) (e) of the Ombudsman Act, 1980 and section 11(1) (e) of the Ombudsman for Children's Act, 2002 provide that either Ombudsman shall not investigate any action taken by or on behalf of a person in the administration of the law relating to, inter alia, asylum. [T]here are no plans to change those legislative provisions to give either Office the power to investigate asylum related matters.[.]*⁴³

Suggested Enquiries:

- ▶ **Will an independent complaints mechanism for people living in direct provision be introduced and if not, how will Ireland's obligations under Article 12 of the Convention be discharged?**
- ▶ **Will the State Party extend the remit of the Office of the Ombudsman and the Office of the Ombudsman for Children to deal with complaints received from asylum seekers and to advocate on their behalf?**
- ▶ **Until such time as the practice of direct provision ends, will the State Party consider bringing direct provision centres under the remit of the Health Information and Quality Authority (HIQA) for the purposes of inspection?**

Independent Appeals Mechanism

4.7 In 2011, the Committee recommended that Ireland have regard to the rights of migrants to judicial review over administrative actions and bring the practices into line with the Convention. In 2008, the Human Rights Committee also recommended that the State adopt an independent appeals mechanism for immigration related decisions.⁴⁴ Furthermore, the Committee should also note the United Kingdom's UPR Recommendation that Ireland should "establish a consolidated framework relating to immigration and asylum issues,

including an independent Appeals body".⁴⁵

- 4.8 The establishment of an independent appeals mechanism to deal with immigration decisions not falling within the remit of the Refugee Appeals Tribunal (RAT) is necessary to ensure access to fair procedures and effective remedies for migrants and their family members seeking to challenge decisions affecting their human rights. The 2011 Programme for Government contained a commitment to "introduce comprehensive reforms of the immigration, residency and asylum systems, which will include a statutory appeals system and set out rights and obligations in a transparent way."⁴⁶ However, it is not known whether the forthcoming Immigration, Residence and Protection legislation will include this measure.
- 4.9 Currently, people seeking to challenge decisions refusing them permission to remain in the State or permission to enter the State – for example for the purpose of family reunification or the preservation of the family unit – must seek judicial review of that decision by the High Court. However, as part of judicial review proceedings, the High Court is not in a position to review the merits of a case and cannot deal with questions of fact. Unlike an expert administrative tribunal, the High Court does not have the power to alter or vary an administrative decision and access to the court is severely limited by a 14-day time limit (to take a case).⁴⁷ Applicants also face a high risk of having legal costs (including those of the State) awarded against them should they be unsuccessful.

Suggested Enquiries:

- ▶ **Will the State Party provide details of any proposed independent appeals mechanism, a timeframe for its establishment and information on how it will ensure the independence of such a mechanism?**
- ▶ **How will the State Party ensure that the costs associated with immigration and asylum-related proceedings before the High Court are not a prohibitive barrier for applicants who wish to appeal a negative decision?**

⁴³ Minister for Justice and Equality, Written Response to Parliamentary Question 919, (16 April 2013) available at <http://www.kildarestreet.com/wrans/?id=2013-04-16a.2162&s=%22no+plans+to+change+those+legislative+provisions+to+give+either+Office+%22#g2164.r> (accessed 8/8/2013).

⁴⁴ UN Human Rights Committee, *Concluding Observations of the UN Human Rights Committee*, Op cit. para 19.

⁴⁵ Report of the Working Group on the Universal Periodic Review: Ireland, op cit, 106.60.

⁴⁶ http://www.merrionstreet.ie/wp-content/uploads/2010/05/Programme_for_Government_2011.pdf.

⁴⁷ Section 5(2)(a) Illegal Immigrants (Trafficking) Act 2000, available at <http://www.irishstatutebook.ie/2000/en/act/pub/0029/print.html> (accessed 8/8/2013).

Section 5:

Policing, Detention and Procedural Rights (Articles 7, 10, 11, 12, 13)

Concluding Observation of the Committee against Torture, June 2011

The Committee recommends that the State party ensure by law that all allegations of torture and ill-treatment by the police are directly investigated by the Garda Síochána Ombudsman Commission and that sufficient funds are allocated to the Commission so as to enable it to carry out its duties promptly and impartially and to deal with the backlog of complaints and investigations which has accumulated. The Committee also requests the State party to provide it with statistical data on (a) the number of complaints of torture and ill-treatment filed against prison officers, the number of investigations instituted, and the number of prosecutions and convictions imposed; and (b) the number of cases that have been referred to the Garda Síochána (para. 19).

Complaint Investigation Mechanisms

5.1 The Garda Síochána Ombudsman Commission (GSOC) is Ireland's independent police complaints body. In 2011, GSOC received 2,275 complaints and in 2012, this number fell slightly to 2,089.⁴⁸ The budget of the Commission in 2011 was €9,242,000 which fell to €8,731,000 (adjusted to €8,381,000) in 2012. In her 2013 Report on Ireland, the UN Special Rapporteur on human rights defenders, expressed concern at the "serious constraints" faced by GSOC, including financial and resource limitations, and the reported limited public awareness of its activities and responsibilities.⁴⁹

5.2 Previously, GSOC has proposed to increase the "leaseback" procedure of certain complaints for investigation by the Garda Síochána (Irish police). However, in Ireland's Fourth Periodic Report under ICCPR to the UN Human Rights Committee, it is reported that GSOC suggests

a referral mechanism for cases *only* where it is clear that the matter is an "alleged minor infraction, such as discourtesy, and not involving any criminal act on the part of the Garda officer concerned".⁵⁰ Furthermore, in their *Five-Year Report 2012*⁵¹ and *Annual Report 2012*,⁵² GSOC has suggested that any "leaseback arrangement" would only include a "service complaint" which could be investigated by Gardaí themselves.⁵³ Ireland's ICCPR Report indicates that GSOC intends to submit a paper to the Minister for Justice, Equality and Defence "including legislative proposals to update the complaints mechanism"; however, details of this, as yet, are unforthcoming.⁵⁴

5.3 Since its inception in 2007 until January 2013, GSOC received 13,673 complaints, of which 7,718 were deemed admissible, yet only 149 cases have been referred to the Office of the Director of Public Prosecutions, and prosecutions have been directed in only 41

⁴⁸ Garda Síochána Ombudsman Commission, *Annual Report 2012* (presented to the Minister for Justice, Equality and Defence in March 2013). According to the Report, "complaints contained 5,449 allegations of misconduct by gardaí. The most prominent factors relating to situations which gave rise to complaints were Garda Síochána operations involving investigation, arrest and road policing", p. 4, available at http://www.gardaombudsman.ie/docs/publications/GSOC_Annual_Report_2012.pdf (accessed 16/8/2013).

⁴⁹ Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, (26 February 2013), *Mission to Ireland* (19 – 23 November 2012), A/HRC/22/47/Add.3.

⁵⁰ Ireland's Fourth Periodic Report under ICCPR to the UN Human Rights Committee, Supplementary Information Document, p. 1.

⁵¹ Garda Síochána Ombudsman Commission, *Five-Year Report 2012*, in accordance with section 80(4) of the Garda Síochána Act, 2005, available at <http://www.gardaombudsman.ie/docs/publications/Five-yearReport2012.pdf> (accessed 24/07/2013).

⁵² Garda Síochána Ombudsman Commission, *Annual Report 2012*, *op cit*.

⁵³ This would not be a complaint of either criminal misconduct or of a breach of discipline. It would not necessarily seek to form a complaint of misconduct against any individual member of the gardaí. A "service complaint" would arise where a person is dissatisfied with the standard or level of service provided by the gardaí. Garda Síochána Ombudsman Commission, *Five-Year Report 2012*, *op cit*, s 3.3, p 24.

⁵⁴ Ireland's Fourth Periodic Report under ICCPR to the UN Human Rights Committee, Supplementary Information Document, p. 1.

of these cases.⁵⁵ Regarding information on the types of complaints filed with GSOC, Ireland's ICCPR State Report states that, "an analysis of cases received shows that about 47% relate to allegations of abuse of authority, 26% relate to discourtesy and about 24% are allegations of neglect of duty". In its *Five-Year Report 2012*, GSOC defines four types of allegations as "most prevalent", including non-fatal offences (which effectively translates as an allegation of assault).⁵⁶ In its *Annual Report 2012*, GSOC notes the top four allegation types are abuse of authority (34%), neglect of duty (27%), and falsehood or prevarication and non-fatal offences (11%). These figures point to an unexplained disparity between the complaints alleged, for example, non-fatal offences, and the extremely low levels of prosecution (averaging at fewer than 7 prosecutions per annum).

5.4 Delays continue to be an issue in the discharge of the Commission's functions (in relation to minor and more serious complaints) and in May 2013, the Minister for Justice, Equality and Defence, stated his concern that "it took an inordinate amount of time" for an investigation [including in relation to allegations of collusion by members of An Garda Síochána with an individual in the movement and supply of controlled drugs] to be concluded.⁵⁷ He further noted that "GSOC attribute the main reason for this long delay to difficulties experienced by the investigation team in obtaining evidence from the Garda Síochána".⁵⁸ This has been confirmed by GSOC at the Oireachtas (Parliamentary) Committee on Public Service Oversight and Petitions, where Commissioners stated,

[M]any of our investigations were open for far too long. We firmly believed that this situation was not satisfactory in giving redress to the people complaining to us, nor to the gardaí [sic] being complained about. The main reason for delays has been the difficulties encountered in the collection of information and evidence.

*Requests to the Garda Síochána for information necessary to advance investigations were not being completed within a timeframe of 30 days agreed in protocols concluded under the Garda Síochána Act 2005. In one case we waited 542 days for a request to be completed and the vast majority were well over the agreed time limits, often by excessive periods.*⁵⁹

5.5 In the same appearance, GSOC pointed to another "very worrying trend in our interactions with the Garda Síochána", namely that, "when requesting information, we were being asked to state why it was relevant to our inquiry".⁶⁰ In May 2013, the Minister has indicated his intention to convene a meeting between the parties in order to resolve the matter in order to ensure that "where allegations are made against members of An Garda Síochána that the matter is resolved quickly".⁶¹

Suggested Enquiries:

- ▶ **Confirmation that any legislative proposals to update the GSOC complaints mechanism will not include the "leaseback" to the Gardaí of complaints involving allegations of criminal or potentially criminal conduct by a Garda member.**
- ▶ **More detailed information (1) regarding the types of complaints filed with GSOC, including in relation to non-fatal offences (which effectively translate as allegations of assault) and (2) on the final outcome of complaints processed by GSOC.**
- ▶ **Information on efforts taken to reduce delays in the discharge of the Commission's functions.**

⁵⁵ Dáil Debates, (6 March 2013), available at <http://www.kildarestreet.com/debates/?id=2013-03-06a.313&s=garda+siochan+a+ombudsman+commission#g314.q> (accessed 24/07/2013).

⁵⁶ Garda Síochána Ombudsman Commission, *Five-Year Report 2012*, in accordance with section 80(4) of the Garda Síochána Act, 2005 (the Act), s 2.2, p.14, available at <http://www.gardaombudsman.ie/docs/publications/Five-yearReport2012.pdf> (accessed 16/8/2013).

⁵⁷ Statement by the Minister for Justice, Equality and Defence, Mr Alan Shatter, T.D., on an investigation by the Garda Síochána Ombudsman Commission (9 May 2013), available at <http://www.justice.ie/en/JELR/Pages/PR13000182> (accessed 16/8/2013).

⁵⁸ *Ibid.*

⁵⁹ Joint Committee on Public Service Oversight and Petitions Debate, (3 July 2013), Garda Síochána Ombudsman Commission Reports: Discussion, available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debates-webpack.nsf/committeetakes/NVJ2013070300003?opendocument> (accessed 8/8/2013).

⁶⁰ *Ibid.*

⁶¹ Statement by the Minister for Justice, Equality and Defence, Mr Alan Shatter, T.D., on an investigation by the Garda Síochána Ombudsman Commission, *op cit*, <http://www.justice.ie/en/JELR/Pages/PR13000182> (accessed 16/8/2013).

Training of Law Enforcement Personnel

Concluding Observation of the Committee against Torture, June 2011

The Committee recommends that the State party:

- (a) Ensure that law enforcement personnel are provided, on a regular and systematic basis, with the necessary training on the provisions of the Convention, especially with regard to the prohibition of torture;
- (b) Ensure that medical personnel and others involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, as well as other professionals involved in the documentation and investigation of torture, are provided, on a regular and systematic basis, with training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and that the Manual is translated into all appropriate languages. The State party should also ensure that such training is also provided for individuals involved in asylum determination procedures;
- (c) Develop and implement a methodology to assess the effectiveness and impact of such educational and training programmes on the prevention of torture and ill-treatment and regularly evaluate the training provided for its law enforcement officials;
- (d) Strengthen its efforts to implement a gender-sensitive approach for the training of those involved in the custody, interrogation or treatment of women subjected to any form of arrest, detention or imprisonment;
- (e) Strengthen its efforts to ensure the training of law enforcement personnel and others on the treatment of vulnerable groups at risk of ill-treatment, such as children, migrants, Travellers, Roma and other vulnerable groups;
- (f) Strengthen professional training in hospitals, medical and social institutions.

5.6 Ireland's Fourth Report to the Human Rights Committee on the ICCPR (2012) makes extensive reference to Garda Human Rights training as part of the professional development of members.⁶² It further refers to initiatives at operational level including anti-racism training, LGBT education and the Garda Racial and Intercultural Diversity Office. However, it is silent on whether training is provided to members on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

5.7 Despite these ongoing developments (including *An Garda Síochána Training and Development Review Group Report*), it is unclear the extent to which lessons learnt are being applied in practice as no impact assessment or evaluation framework is available.

Suggested Enquiries:

- ▶ Provide information on the impact and effectiveness of Garda human rights training on operations.
- ▶ Confirm that training is provided to all members of An Garda Síochána on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

⁶² Ireland's Fourth Periodic Report under ICCPR to the UN Human Rights Committee, Supplementary Information Document, *op cit*, p. 13.

Right of Access to Lawyer/Right to Silence

- 5.8 Ireland continues to allow inferences to be drawn from the silence of a suspect or accused person.⁶³ This situation persists although the Garda (police) caution still has not been amended in line with the change to the law which took place in 2007 (extending the scope of inference-drawing provisions).⁶⁴
- 5.9 Ireland's Fourth Report under the ICCPR to the Human Rights Committee states that an *"inference may not be drawn unless the person was informed before the failure/refusal occurred that they had the right to consult a solicitor and, other than where they waived that right was afforded an opportunity to so consult"*.⁶⁵ Although the Report states that these amendments were prompted by recent jurisprudence of the European Court of Human Rights, it fails to explain why the State has yet to fully implement that jurisprudence, which provides that *"access to a lawyer should be provided from the first interrogation of the suspect by the police unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right."*⁶⁶ These necessary amendments have not taken place despite the Human Rights Committee's recommendation in 2008 that Ireland *"should also give full effect to the rights of criminal suspects to contact counsel before, and to have counsel present during, interrogation"*.⁶⁷
- 5.10 The European Court of Human Rights has also held that the systematic denial of legal assistance while in custody amounts to a breach of Article 6(1).⁶⁸ People who are held in police custody in Ireland do not have the right to have a legal representative present while

being questioned by the Gardaí.⁶⁹ Although the Government established a Standing Committee to advise on Garda interviewing of suspects in 2010,⁷⁰ the ICCL is seriously concerned that Ireland has not officially 'opted into' the EU Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest,⁷¹ the provisions of which would assist Ireland in addressing concerns regarding access to legal representation. The Directive was formally adopted by the European Parliament on 10 September 2013.

Suggested Enquiries:

- ▶ **Provide information on the current Garda caution and the reasons why this has not been amended to reflect changes in criminal law allowing for inferences from silence, despite the provision of Ministerial Regulations providing for same.**
- ▶ **State whether Ireland considers its law is in compliance with the European Court of Human Rights jurisprudence on the right of access to a lawyer (cases of *Salduz et al*) and, if not, how the Government plans to bring about compliance.**
- ▶ **Indicate whether the State intends to opt in to the draft EU Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest, and re-instate Ireland's commitment to develop common minimum safeguards in the European Union for suspects and accused persons.**

⁶³ See concerns expressed by the Human Rights Committee in 2008: CCPR/C/IRL/CO/3, para. 14.

⁶⁴ Criminal Justice Act 2007.

⁶⁵ *Ibid.*

⁶⁶ *Salduz v Turkey* (2009) 49 EHRR 421.

⁶⁷ UN Human Rights Committee, *Concluding Observations of the UN Human Rights Committee, op cit*, para 14.

⁶⁸ *Dayanan v Turkey*, App No. 7377/03, 13 October 2009.

⁶⁹ Despite concerns expressed by the HRC in 2008, that "access to counsel during interrogation at Garda stations is not prescribed by law" CCPR/C/IRL/CO/3, para. 14.

⁷⁰ This committee comprises individuals from State agencies and the legal representative bodies whose purpose is to produce recommendations to the Minister for Justice, Equality and Defence; however, no clear timetable has been published with regards to the Committee's work. See <http://www.inis.gov.ie/en/JELR/Pages/Minister%20Ahern%20establishes%20Advisory%20Committee%20on%20Garda%20Interviewing%20of%20suspects> (accessed 24/07/2013).

⁷¹ 11497/11 DROIEN 61 COPEN 152 CODEC 1018.

Special Criminal Court

5.11 Although the Human Rights Committee has made consistent calls for the abolition of the non-jury Special Criminal Court,⁷² its remit has in fact expanded in recent years to include additional offences relating to organised crime.⁷³ Despite the Human Rights Committee's finding in the *Kavanagh* case⁷⁴ that Irish law⁷⁵ was in breach of Article 26(1) of the Covenant, the DPP retains her discretion in assigning cases to the Court and is not required to make her reasons public (or demonstrate decision-making based on reasonable and objective criteria as stated by the Committee in *Kavanagh*).

Suggested Enquiry:

- ▶ Provide reasons for the retention of a non-jury court.
- ▶ How will the State Party comply with the 2001 decision of the UN Human Rights Committee in *Kavanagh v. Ireland*?

⁷² Concluding Observations of the UN Human Rights Committee: Ireland, 24 July 2000, UN Doc A/55/40, at para 15 and Concluding Observations of the Human Rights Committee: Ireland, 30 July 2008, UN Doc CCPR/C/IRL/CO/3, at para 20. Refer to Communication No 819/1998: Ireland 26 April 2001, *Kavanagh v. Ireland*, UN Doc: CCPR/C/71/D/819/1998.

⁷³ Section 8 of the Criminal Justice (Amendment) Act 2009 which deemed that offences under Part 7 of the Criminal Justice Act 2006 (organised crime offences) could be tried without a jury at the Special Criminal Court as the ordinary courts were declared "inadequate to secure the effective administration of justice and the preservation of public peace and order in relation to an offence".

⁷⁴ Communication No 819/1998: Ireland 26 April 2001, *Kavanagh v. Ireland*, UN Doc CCPR/C/71/D/819/1998.

⁷⁵ Section 47 of the Offences against the State Act.

Section 6:

Follow-up to the Ryan Report (Articles 12, 13, 14, 16)

Concluding Observation of the Committee against Torture, June 2011

The Committee recommends that the State party:

- (a) Indicate how it proposes to implement all the recommendations of the Commission to Inquire into Child Abuse and indicate the time frame for doing so;
- (b) Institute prompt, independent and thorough investigations into all cases of abuse as found by the report and, if appropriate, prosecute and punish perpetrators;
- (c) Ensure that all victims of abuse obtain redress and have an enforceable right to compensation, including the means for as full rehabilitation as possible.

6.1 On 31 July 2012, Ireland provided further follow up information on the recommendations of the Committee.⁷⁶ At Ireland's UPR examination in March 2012, Thailand recommended that Ireland "institute a comprehensive statutory inquiry and compensation scheme in order to guarantee accountability and assist the (women and children) victims (of violence)".⁷⁷

6.2 In her follow up letter to the Ireland on 22 May 2013, Committee Vice-Chair, Ms Felice Gaer, asked the following with respect to follow up to the Ryan Report:

- 1 When and how "restorative and preventative measures will be implemented and requests clarification as to the expected time frame".
- 2 If the State could provide "further information on how the Board proposes to advertise for applications from victims to avail themselves of the proposed Residential Institutions Statutory Fund".
- 3 Provide an update on the number and status of investigations and prosecutions, as well as specific actions taken or anticipated to investigate and bring prosecutions of persons responsible for abuses. The Committee Vice-Chair requested that the State ensure prosecutions for those responsible for abuses against individual

children (General Comment No. 3). In this respect, it was acknowledged that the Commission to Inquire into Child Abuse Act 2000 prevents the disclosure of the names of persons referred to in the Report, however, it was noted that the Act "does not prevent prompt, independent and thorough investigation into cases of abuse found in the Report, or identified as a result of the Garda helpline".

6.3 Since Ireland's appearance before the Committee, there has been certain progress with respect to the implementation of the Ryan Report recommendations. Specifically, the General Scheme of Children First Bill 2012⁷⁸ was published in April 2012 and the same year saw the enactment of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012,⁷⁹ and the Criminal Justice (Withholding Information on Offences Against Children and Vulnerable Persons) Act 2012.⁸⁰ The latter Act imposes sanctions with respect to the withholding of information relating to certain offences against children, including certain sexual offences. Other developments include the adoption of *National Standards for the Protection and Welfare of Children for HSE Child and Family Services* by the Health and

⁷⁶ Committee against Torture, Concluding observations on the initial report of Ireland, adopted by the Committee at its forty-sixth session (9 May – 3 June 2011), Addendum, Information received from Ireland on the implementation of the Committee's concluding observations, CAT/C/IRL/CO/1.

⁷⁷ Human Rights Council nineteenth session, (21 December 2011), *Report of the Working Group on the Universal Periodic Review: Ireland*, A/HRC/19/9, Recommendation 107.40, p. 8, as accepted by Ireland in March 2012, see Human Rights Council nineteenth session, (6 March 2012), *Report of the Working Group on the Universal Periodic Review Ireland: Addendum*, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review.

⁷⁸ The Bill places a legal duty on individuals and organisation to share relevant information and liaise with other services in the best interests of the child.

⁷⁹ No.47/2012 available at <http://www.oireachtas.ie/documents/bills28/acts/2012/a4712.pdf> (accessed 07/02/13). The Act provides for the disclosure of relevant information for the protection of children or vulnerable persons.

⁸⁰ No.24/2012 available at <http://www.oireachtas.ie/documents/bills28/acts/2012/a2412.pdf> (accessed 07/02/13). The Act criminalises the withholding of information regarding the commission of offences, including sexual offences, against children or other vulnerable persons.

Information Authority and the publication of the Child and Family Agency Bill in July 2013 (which will establish a statutory Child and Family Agency).⁸¹

- 6.4 Reportedly, the Ryan Report Monitoring Group is due to conclude its work in 2013.⁸² However, as the Committee will be aware, the Ryan Report recommendations are central to the advancement of children's rights in Ireland, addressing key weaknesses in the Irish child care system and setting out a reform agenda (such as the measures set out above). Therefore, it is essential that an alternative mechanism is established to maintain public accountability with respect to the ongoing implementation of outstanding commitments.⁸³

Suggested Enquiry:

- ▶ **Will a suitable replacement mechanism to the Ryan Report Implementation Plan Monitoring Group be established to ensure the plan is fully implemented and to provide a timeframe for full implementation of the plan?**

⁸¹ See <http://www.dcy.a.gov.ie/viewdoc.asp?fn=%2Fdocuments%2FChidFamilySupportAgency%2FAgencyMainPage.htm> (accessed 15/8/2013).

⁸² Children's Rights Alliance, Annual Report Card 2013, p 69, available at http://www.childrensrights.ie/sites/default/files/submissions_reports/files/ReportCard2013.pdf (accessed 8/8/2013).

⁸³ In their 2013 Annual Report Card, Children's Rights Alliance states that "it is imperative that a replacement mechanism is found to continue the monitoring and accountability which has been achieved through the publications of the Monitoring Group's annual reports; that the outstanding commitments and learning from the Implementation Plan are brought into the programme of work of the Department of Children and Youth Affairs and the Child and Family Support Agency; and there is a method to incorporate relevant recommendations from other reports, including the reports of the Special Rapporteur on Child Protection, the National Review Panel for Serious Incidents and Child Deaths, the Health Information and Quality Authority and the Ombudsman for Children."Children's Rights Alliance, *op cit*.

Section 7:

Magdalene Laundries (Articles 2, 12, 13, 14, 16)

Concluding Observation of the Committee against Torture, June 2011

The Committee recommends that the State party institute prompt, independent and thorough investigations into all complaints of torture and other cruel, inhuman or degrading treatment or punishment that were allegedly committed in the Magdalene Laundries and, in appropriate cases, prosecute and punish the perpetrators with penalties commensurate with the gravity of the offences committed, and ensure that all victims obtain redress and have an enforceable right to compensation, including the means for as full rehabilitation as possible.

- 7.1 Since the Committee Vice-Chair wrote to the State in May 2013, many of her queries regarding a full inquiry into all complaints of State abuse at the laundries remain unanswered.⁸⁴ As the Vice-Chair pointed out, the McAleese Inquiry commissioned to establish the facts of State involvement in the Magdalene laundries, “lacked many elements of a prompt, independent and thorough investigation”.⁸⁵
- 7.2 Three significant developments have taken place since the State’s last communication to the Committee.
- 7.3 On 19 February 2013, the Taoiseach (Irish Prime Minister) gave a formal State apology to the Magdalene women, apologising “unreservedly to all those women for the hurt that was done to them, and for any stigma they suffered, as a result of the time they spent in a Magdalene Laundry”.⁸⁶
- 7.4 On 18 June 2013, the Irish Human Rights Commission (IHRC) published its *Follow up Report on State Involvement with the Magdalene Laundries*.⁸⁷ The IHRC called for a “comprehensive redress scheme that provides individual compensation, restitution and rehabilitation for the women in accordance with the State’s human rights obligations”.⁸⁸
- 7.5 On 26 June 2013, Mr Justice Quirke published *The Magdalen Commission Report*, concerning a redress scheme for the Magdalene women.⁸⁹ The Quirke Scheme is based on the McAleese findings and as the Vice-Chair noted in her follow up communication, the McAleese Inquiry did not investigate “allegations of arbitrary detention, forced labour or ill-treatment”, despite receiving information regarding this from several sources. Consequently, the Quirke Scheme does not provide a remedy to women who suffered physical abuse in the laundries.

⁸⁴ Rapporteur for Follow-up on Concluding Observations Committee against Torture, (22 May 2013), available at <http://www.ohchr.org/english/bodies/cat/docs/followup/IrelandFurtherInfo22May2013.pdf> (accessed 29/07/2013).

⁸⁵ *Ibid.*

⁸⁶ Statement on Magdalene Report, (19 February 2013), <http://www.merrionstreet.ie/index.php/2013/02/taoiseach-enda-kennys-statement-on-magdalene-report/?cat=11> (accessed 29/07/2013).

⁸⁷ Irish Human Rights Commission, (18 June 2013), *Follow-up Report on State Involvement with Magdalene Laundries*, available at <http://www.ihrc.ie/download/pdf/20130618164449.pdf> (accessed 29/07/2013).

⁸⁸ *Ibid* and see IHRC Press Release, (18 June 2013), *Irish State failed to protect and vindicate the human rights of women in Magdalen laundries – redress scheme must reflect impact of human rights violations experience*, available at <http://www.ihrc.ie/newsevents/press/2013/06/18/irish-state-failed-to-protect-and-vindicate-the-hu/> (accessed 29/07/2013). The IHRC also made a number of recommendations regarding measures needed to ensure similar wrongs are not repeated in the future, including that measures should be implemented which as far as possible guarantee that surviving women who resided in Magdalene Laundries receive restitution and rehabilitation, for example by the provision of lost wages and any pension or social protection benefits arising from carrying out forced or compulsory labour which occurred on an unpaid and unacknowledged basis; and the provision of appropriate rehabilitation interventions including housing; health and welfare; education and; assistance to deal with the psychological effects of the time spent in the Magdalene Laundries. The IHRC further recommended that the State scrutinise “its interactions with non-State actors to ensure that its regulatory and oversight functions are sufficiently robust to prevent human rights breaches arising, and if any such allegations are made, that a competent statutory body be in a position to investigate them thoroughly and effectively and provide redress where merited,” pp. 6- 8, *op cit*.

⁸⁹ *The Magdalen Commission Report*, (May 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, available at <http://justice.ie/en/JELR/2.%20THE%20MAGDALEN%20COMMISSION%20REPORT.pdf/Files/2.%20THE%20MAGDALEN%20COMMISSION%20REPORT.pdf> (accessed 29/07/13).

7.6 The Scheme offers *ex gratia* payments to women based on the length of their documented service in the laundries. However, the determination of service may prove to be problematic due to the inaccurate or incomplete nature of the records, control of which is maintained by the religious orders. In this respect, the Quirke Scheme does not include individualised assessments of experience and injury suffered, despite the recommendation of the IHRC that a comprehensive redress scheme that “provides individual compensation for the impact of the human rights violations as experienced by women who resided in Magdalene Laundries”. The Quirke Scheme includes recommendations on social supports such as access to a medical card and the State pension. However, as pointed out by the IHRC, there should be provision also for “appropriate rehabilitation interventions including housing; health and welfare; education and; assistance to deal with the psychological effects of the time spent in the Magdalene Laundries”.⁹⁰

Suggested Enquiries:

- ▶ **When will the State establish a prompt, thorough and independent investigation into the abuse perpetrated in the Magdalene Laundries?**
- ▶ **How will the State ensure that the scheme is independently monitored and how will the appeals process operate?**
- ▶ **What measures will the State take to ensure former Magdalene residents currently living outside of Ireland are appropriately and adequately included, for example:**
 - Effective advertising of the Scheme
 - Equivalent medical and other social supports (an Irish medical card is an integral component of the Scheme)

⁹⁰ The Scheme also includes and provision for Magdalene women who remain in the care of religious institutions or the State; however, it is unclear who will act as independent advocates for these women.

Section 8:

Children in Detention (Articles 2, 11, 16)

Concluding Observation of the Committee against Torture, June 2011

The Committee recommends that the State party proceed, without any delay, with the construction of the new national children detention facilities at Oberstown. In the meantime, the Committee recommends that the State party take appropriate measures to end the detention of children in St Patrick's Institution and move them into appropriate facilities. The Committee recommends that the State party review its legislation on the establishment of the Ombudsman for Children with a view to including in the mandate the power to investigate complaints of torture and ill-treatment of children held at St Patrick's Institution.

- 8.1 In 2012, the Government committed that, by April 2014, all detained people under 18 would be housed in the new National Children's Detention facility (Oberstown campus).⁹¹ From 1 May 2012,⁹² existing child detention facilities at Oberstown have catered for all newly remanded or sentenced 16-year old boys. However, seventeen year-old boys are still detained at St Patrick's Institution, which also houses adults up to 21 years of age with statistics showing the numbers have risen in recent years. Official figures show there were thirty-one 17-year-olds in St Patrick's on 1 August 2012, compared to twenty-one on 11 July 2011.⁹³
- 8.2 In July 2013, the Minister for Justice, Equality and Defence announced that St Patrick's institution would be closed within six months and that all 17 year old prisoners would be transferred to a designated segregated section of Wheatfield prison in west Dublin while the construction of new detention facility is completed. This follows on from report by the Inspector of Prisons in 2012⁹⁴ which detailed, what he termed as the systematic violation of the human rights of children and young people in the prison, including:
- Forced stripping and clothes being cut from boys and young men when being held in Special Cells.
 - Inappropriate and excessive use of Special Cells in violation of the Irish Prison Service's own guidelines and rules.
 - Excessive and unrecorded use of force by staff against prisoners, in violation of the Irish Prison Service's own guidelines and rules, including a disproportionate number of under-18s being relocated using control and restraint (C&R) techniques.
 - Excessive and unauthorised punishment of prisoners, including denying children family visits or phone calls.
 - Undocumented "isolation" of a number of prisoners in solitary confinement for 56 days following an incident at the prison.
 - Bullying and intimidation of young and vulnerable inmates by some staff, and indifference to concerns of inmates, including emergency calls for help.
 - A completely deficient complaints system where no complaint by a prisoner was upheld, even where prison management had acknowledged that staff had behaved inappropriately.

⁹¹ A new National Children's Detention Facility will be located at Oberstown, Lusk, Co. Dublin. The building work of six new specialised units over 3 years is scheduled to be completed by April 2014. Existing facilities consist of three detention schools. Trinity House School operates as a self contained secure facility for boys aged up to 17 years at the time of their detention in relation to criminal matters. Oberstown Boys School and Oberstown Girls School operate a more open model of detention, sharing some resources, such as education, recreation, maintenance and making use of the wider grounds within the campus boundary. Oberstown Boys School accommodates boys up to the age of 17 years on admission and Oberstown Girls School accepts girls up to the age of 18 years old. There are two education centres on the campus catering for all the children being detained. This service comes under the remit of the County Dublin Vocational Educational Committee, as provided for in the Children Act 2001. See Irish Youth Justice Service Website at <http://www.iyjs.ie/en/IYJS/Pages/WP08000052> (accessed 16/8/2013).

⁹² The last 16 year-old in St Patrick's Institution was released in July 2012. See "'Milestone' as last 16-year-old freed from adult jail" (6 August 2012), *The Examiner*, available at <http://www.irishexaminer.com/ireland/icrime/milestone-as-last-16-year-old-freed-from-adult-jail-203196.html> (accessed 8/8/2013).

⁹³ See "Call to speed up release of 17-year-old boys from jail", (7 August 2012), *The Examiner*, available at <http://www.irishexaminer.com/ireland/call-to-speed-up-release-of-17-year-old-boys-from-jail-203294.html> (accessed 8/8/2013).

⁹⁴ See *Inspector of Prisons Report on an Inspection of St. Patrick's Institution for Young Offenders* <http://www.justice.ie/en/JELR/Appendix%20A%2005.10.pdf/Files/Appendix%20A%2005.10.pdf> (accessed 8/8/2013).

- At a general level, the Inspector also found serious deficiencies in attendance at school, access to healthcare and the availability of training. He also found many parts of the prison cold and dirty.⁹⁵

8.3 Following an inspection of St Patrick's Institution conducted in March 2013, the Inspector of Prisons reported that he found "very disturbing incidents of non-compliance with best practice and breaches of the fundamental rights of prisoners".⁹⁶ Among the recommendations in the report was a recommendation that St Patrick's Institution be closed down. In order to facilitate closure, the Inspector recommended that 18 to 20 year old prisoners should be removed to a "separate wing(s) of a general prison(s)" for separate recreation and accommodation.⁹⁷ The Inspector also stated that prison authorities should focus on providing rehabilitation through education, work and training for prisoners and that they could participate in education and work training with the general prison population.

Suggested Enquiries:

- ▶ Will the State Party provide detailed information on the establishment of the new Oberstown campus, including confirmation that the project is on track and that 17 year olds will be housed there by April 2014?
- ▶ Will the State Party provide details on how it will ensure that 18 to 20 year old prisoners will remain segregated from the greater prison population?
- ▶ How will the State Party implement the recommendations of the Inspector of Prisons on the closure of St Patrick's Institution?

⁹⁵ See Irish Penal Reform Trust, "MEDIA ADVISORY: Horrific Report on St. Patrick's Instn. raises questions over continued operation of prison" (16 October 2012) available at <http://www.iprt.ie/contents/2436> (accessed 8/8/2013).

⁹⁶ Inspector of Prisons, *Inspector of Prisons Annual Report 2012*, at pp22-24. Available at: <http://www.inspectorofprisons.gov.ie/en/IOP/Inspector%20of%20Prisons%20Annual%20Report%202012%20%28PDF%20-%2020203KB%29.pdf/Files/Inspector%20of%20Prisons%20Annual%20Report%202012%20%28PDF%20-%2020203KB%29.pdf> (accessed 8/8/2013).

⁹⁷ Department of Justice, Press Advisory: *Minister Shatter publishes Inspector of Prisons Annual Report for 2012; An Assessment of the Irish Prison System by the Inspector of Prisons and announces plans for the future use of St Patrick's Institution*. Available at: <http://www.justice.ie/en/JELR/Pages/PR13000267> (accessed 8/8/2013).

Section 9:

Abortion (Articles 2 and 16)

Concluding Observation of the Committee against Torture, June 2011

The Committee urges the State party to clarify the scope of legal abortion through statutory law and provide for adequate procedures to challenge differing medical opinions as well as adequate services for carrying out abortions in the State party, so that its law and practice is in conformity with the Convention.

Laws Governing Access to Abortion in Ireland

- 9.1 In most cases abortion remains illegal in Ireland.⁹⁸ The Protection of Life During Pregnancy Act 2013 (the “2013 Act”) provides for abortion in very limited circumstances and a highly restrictive regime remains in place governing all other aspects of reproductive rights for women.⁹⁹ The 2013 Act was introduced in order to implement the judgment of the European Court of Human Rights in *A, B and C v. Ireland*.¹⁰⁰ Although it is extremely limited, the legislation provides long overdue clarity on abortion where a mother’s life is at risk.
- 9.2 Provision for lawful abortion in Ireland must be framed in the context of Article 40.3.3 of the Constitution which provides for the defence of the right to life of the unborn, as far as practicable, with due regard to the equal right to life of the mother. In the 1992 *X* case, the Supreme Court held that abortion is constitutionally permitted only where there is a real and substantial risk to the life, as opposed to the health of the mother (including by suicide).¹⁰¹
- 9.3 However, the 2013 Act falls a long way short of meeting international human rights standards and the Irish Human Rights and Equality Commission (IHREC) has raised a number of significant concerns in relation to aspects of the legislation.¹⁰²
- 9.4 Particular areas of concern in relation to the 2013 Act include:
- a Following on from the Irish constitutional position, the legislation does not address situations where there is a risk to the health of the mother contrary to recommendations of several UN Committees.¹⁰³
 - b Stark criminal sanctions persist for women and their doctors where an abortion is conducted outside the narrow confines of the legislation (see paragraph 9.5 below).¹⁰⁴
 - c The procedure to determine whether or not a woman is suicidal (including the appellate procedure) is lengthy and requires pregnant women to undergo multiple assessments.¹⁰⁵ The IHREC has pointed out that the number

⁹⁸ Article 40.3.3° of the Irish Constitution provides that the right to life of a mother and that of her unborn child have equal status. Article 40.3.3° also guarantees the right to travel to access abortion in another state and the right to information about abortion.

⁹⁹ Protection of Life During Pregnancy Act 2013, available at <http://www.oireachtas.ie/documents/bills28/bills/2013/6613/b66b13d.pdf> (accessed 8/8/2013).

¹⁰⁰ *A, B and C v Ireland*, Application No. 25579/05 [2010] ECHR 2032 (16 December 2010). See also the Report of the Expert Group on the Judgment in *A, B and C v Ireland*, available at http://cdn.thejournal.ie/media/2012/11/judgment_abc.pdf (accessed 8/8/2013).

¹⁰¹ *Attorney General v X* [1992] IESC 1 (5th March, 1992). The case involved a pregnant fourteen year old victim of rape who wished to leave the State to have an abortion. The Supreme Court ruled that abortion is permissible within the State: “if it is established... that there is a real and substantial risk to the life, as distinct from the health, of the mother, which can only be avoided by the termination of her pregnancy, such termination is permissible.” This includes a risk to the life of the mother including that arising from the threat of suicide. The Supreme Court rejected the contention that risk to life must be either a virtual certainty or that it must be imminent or immediate.

¹⁰² Irish Human Rights Commission, (July 2013), Observations on the Protection of Life During Pregnancy Bill 2013 http://www.ihrcc.ie/download/pdf/ihrcc_observations_protection_of_life_in_pregnancy_bill_2013.pdf (accessed 16/8/2013).

¹⁰³ UN Human Rights Committee, *Concluding Observations of the UN Human Rights Committee, op cit*, para 13; UN Committee for the Elimination of Discrimination against Women, (22 July 2005), *Concluding Observations of the Committee on the Elimination of Discrimination against Women*, UN Doc CEDAW/C/IRL/CO/4-5, para 38 and 39.

¹⁰⁴ UN Committee against Torture, *Concluding Observations of the UN Committee against Torture, op cit*, para 26.

¹⁰⁵ Sections 9-14 Protection of Life During pregnancy Act 2013.

of examinations that a girl or woman has to undergo, particularly girls and women in vulnerable situations and primarily those who are at risk of suicide, should be framed so as not to unduly increase her risk of mental anguish or suffering.¹⁰⁶

- d The circumstances in which a medical practitioner may exercise a conscientious objection to carrying out an abortion under the legislation require clarity to ensure the expeditious transfer of the care of the woman to another doctor/health professional.¹⁰⁷ According to the IHREC, the legislation should specify that where the action or inaction of a person claiming to have a conscientious objection and refusing to carry out or assist in carrying out a lawful procedure knowingly contributes to the death of or significant harm to the woman, that person and/or the institution shall be guilty of a specified offence.¹⁰⁸

Suggested Enquiries:

- ▶ **How will the Protection of Life During Pregnancy Act 2013 adequately protect the lives of pregnant women, specifically with regard to the distinction that doctors are required to make regarding a woman's life, as distinct from her health?**
- ▶ **Provide a detailed assessment of how the current legislation on abortion upholds a woman's right to freedom from inhuman or degrading treatment and non-discrimination as specified under the Convention.**

Criminalisation of Abortion

- 9.5 In 2011, the Committee expressed concern that *"the risk of criminal prosecution and imprisonment facing both the women concerned and their physicians, [...] may raise issues that constitute a breach of the Convention"*.¹⁰⁹ The Committee should note that undertaking an abortion in Ireland outside the narrow confines of the 2013 Act continues to attract significant criminal sanction. Under the legislation, pregnant women and/or doctors and health professionals could face a penalty of up to 14 years imprisonment (section 22).

Suggested Enquiry:

- ▶ **Will the State Party review and repeal section 22 of the Protection of Life During Pregnancy Act 2013?**

Freedom from Cruel, Inhuman and Degrading Treatment: Rape

- 9.6 During the Parliamentary passage of the 2013 Act, the Government was adamant that provisions regarding rape could not be included in the legislation as the main purpose of the proposed legal framework was to *"restate the general prohibition on abortion in Ireland by regulating access to a lawful termination of pregnancy in accordance with the X case judgment and the judgment of the European Court of Human Rights in the A, B and C v. Ireland case"*.¹¹⁰ During the Seanad Éireann (Upper House of Parliament) debate on the Bill, the Minister for Health stated that the purpose of the Bill [now Act] *"is not to confer new rights regarding the termination of pregnancy but to clarify existing rights"*.¹¹¹

Suggested Enquiry:

- ▶ **Provide information on how a lawful abortion for women and girls in situations of rape can be provided in Irish law.**

¹⁰⁶ Irish Human Rights Commission, *op cit*, p. 4.

¹⁰⁷ Section 17 Protection of Life during Pregnancy Bill, *op cit*.

¹⁰⁸ Irish Human Rights Commission, *op cit*, p. 36, para 81.

¹⁰⁹ UN Committee against Torture, *Concluding Observations of the UN Committee against Torture, op cit*, para 26.

¹¹⁰ However, General Comment 28 (paragraph 10) of the UN Human Rights Committee recognises that Articles 3 and 7 of the ICCPR may be implicated where women are forced to undergo life-threatening clandestine abortions or are denied access to abortion in the case of rape. Seanad Éireann Debate (15 July 2013), *Protection of Life During Pregnancy Bill 2013: Second Stage*, available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/seanad2013071500022> (accessed 16/8/2013).

¹¹¹ *Ibid.*

Freedom from Cruel, Inhuman and Degrading Treatment: Terminations for Medical Reasons

9.7 Access to lawful abortion is not available to a woman carrying a foetus with a fatal abnormality, a situation which has been described as a “great cruelty” by the Minister for Justice, Equality and Defence. The Minister was further reported as saying that he “personally” believes that,

it is a great cruelty that our law creates a barrier to a woman in circumstances where she has a fatal foetal abnormality being able to have a pregnancy terminated, and that according to Irish law any woman in those circumstances is required to carry a child to full term knowing it has no real prospect of any nature of survival following birth”. [...] “I think it’s unfortunate that this is an issue we cannot address. Clearly many women who find themselves in these circumstances address this issue by taking the plane or the boat to England. Despite what we have been able to do within this legislation, this will continue to be a British solution to an Irish problem.”¹¹²

However, the Minister is reported to have ruled out any progress on the matter under the current Administration stating,

It’s not an issue that I anticipate is going to be dealt with within the lifetime of the current Government, but it is an issue I anticipate some future government may need to consider putting to the people... I do believe that as a State we have responsibilities we should live up to in this area.”¹¹³

9.8 Although the 2013 Act is silent on this matter, there is no settled legal position prohibiting such a provision under the Constitution. For example, in the case of *D v Ireland*, the Irish Government argued before the European Court of Human Rights that it was possible to interpret the Irish Constitution as permitting termination of pregnancy in cases of fatal foetal

abnormality.¹¹⁴ The European Court of Human Rights agreed that such an interpretation by the Irish Courts was possible and therefore, on this basis, dismissed the applicant’s case. However, this position that has yet to be tested before the courts.¹¹⁵

9.9 The Committee should also note that the most recent case law from the European Court of Human Rights on the issue of reproductive rights, in the cases of *RR v Poland*¹¹⁶ and *P and S v Poland*,¹¹⁷ indicates that Council of Europe states are obliged to ensure that women seeking lawful terminations are not exposed to inhuman and degrading treatment contrary to Article 3 of the European Convention on Human Rights. Similarly, as the Committee will be aware, in the *K.L. v Peru* case, the Human Rights Committee held that the physical and psychological harm arising from forcing a pregnant girl to carry a pregnancy to term despite a diagnosis of anencephaly (a foetal complication incompatible with life) amounted to a violation of Article 7 of the Covenant.¹¹⁸

Suggested Enquiry:

► **Can the State Party clarify whether it is permissible under Irish law for a pregnant woman with a fatal foetal anomaly to have a termination in Ireland by reference to its arguments in *D v Ireland*, and to provide details of plans to provide certainty and assistance to women in such situations.**

¹¹² Mac Cormaic, Ruadhan (24 July 2013), Shatter describes abortion restrictions as ‘a great cruelty’, *Irish Times*, available at <http://www.irishtimes.com/news/ireland/irish-news/shatter-describes-abortion-restrictions-as-a-great-cruelty-1.1473673> (accessed 16/8/2013).

¹¹³ *Ibid.*

¹¹⁴ Article 40.3.3.

¹¹⁵ Application No. 26499/02, Decision on admissibility of 27 June 2006; (2006) 43 EHRR SE 16.

¹¹⁶ Application No.27617/04, Judgment of 26 May 2011; (2011) 53 EHRR 31.

¹¹⁷ Application No. 57375/08, Judgment of 30 October 2012.

¹¹⁸ CCPR/C/85/D/1153/2003 (22 November 2005).

Right to Travel

- 9.10 Irish law guarantees women the right to travel to access abortion in another state. However, the severe regulation of abortion within Ireland perpetuates the disproportionate impact that faces vulnerable groups of women; for example, minors, undocumented women, migrant women and women living in poverty, as noted in 2011 by the Committee and the Council of Europe Human Rights Commissioner.¹¹⁹ It means that women who seek abortions for reasons other than a risk to their life must travel to other jurisdictions to avail of these services and incur the consequent psychological, financial and health burdens which, potentially, could have the cumulative effect of reaching the threshold of cruel, inhuman and degrading treatment.
- 9.11 For many women, the need to raise funds to cover fees for a health service denied within the state and to travel to avail of such a service elsewhere means that they experience significant delays in accessing services. Delayed access to services and lack of public awareness are strongly associated with subsequent adverse health outcomes and can make the difference between a minor procedure and a more invasive procedure that could involve more risk for a woman whose health may be already compromised.¹²⁰

Suggested Enquiry:

- **Can the State Party outline in detail the measures open to a woman whose pregnancy endangers her health as distinct from her life, and who is unable to travel to another state to access abortion?**

¹¹⁹ *Concluding Observations of the UN Committee against Torture, op cit*, para 26. Report by the Commissioner for Human Rights, Mr. Thomas Hammarberg, on his Visit to Ireland, 26 - 30 November 2007, adopted Strasbourg, April 30, 2008, CommDH (2008) and his visit to Ireland, 1- 2 June 2011, adopted Strasbourg, September 30, 2011, CommDH (2011). *Concluding Observations of the UN Committee against Torture, op cit*, para 26.

¹²⁰ See, for example, Special Rapporteur of the Human Rights Council on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, (3 August 2011), *Interim Report on the Right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Doc A./66/254, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf?OpenElement> (accessed 8/82013).

Section 10:

Violence against Women (Article 16)

Concluding Observation of the Committee against Torture, June 2011

The Committee urges the State party:

- (a) To strengthen its efforts to prevent violence against women through, inter alia, the effective implementation of the National Strategy on Domestic, Sexual and Gender-based Violence, including the collection of relevant data;
- (b) To enhance its support and funding of refuge and support services provided for victims of domestic violence;
- (c) To institute prompt, impartial and thorough investigations into allegations of domestic violence, and where appropriate, prosecutions and convictions;
- (d) To amend the Domestic Violence Act of 1996 so as to include clear criteria to grant safety and barring orders and extend eligibility for all parties who are or have been in an intimate relationship, regardless of cohabitation, in line with internationally recognized best practice;
- (e) To ensure that migrant women with dependent immigration status who are experiencing domestic violence be afforded independent status under legislation.

Adequate Data

10.1 The baseline prevalence study on sexual violence, *Sexual Abuse and Violence in Ireland (SAVI)*, was published in 2002 and, though it has acted since as a key informant of Irish policy in relation to sexual violence, it is considerably out of date. Submitted in 2012, Ireland's Fourth Periodic Report under the ICCPR to the UN Human Rights Committee acknowledges, that "*there are significant data deficits in relation to domestic violence and that they need to be tackled*".¹²¹ The Report sets out the aim of the National Strategy on Domestic, Sexual and Gender-based Violence to improve data collection and also refers to a data Committee dealing with this matter. However, the Report lacks information with respect to a timeframe, projected outcomes and deliverables, or the participation of groups representing women who have been a victim of violence in the data collection process.

Suggested Enquiry:

- ▶ Provide detailed information, including a timeframe, with respect to the sustained collection of data on sexual and domestic violence.

Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence

10.2 In May 2011, the Council of Europe's Committee of Ministers adopted the Council of Europe Convention on preventing and combating violence against women and domestic violence. Out of the 47 states of the Council of Europe, Ireland is one of 18 countries that have not signed the Convention, despite its acceptance of Austria's UPR recommendation when it announced that "*Ireland can accept in principle the terms of the Convention*".¹²² During the UPR process, the Irish Government further stated that the "*detailed provisions of the Convention and the administrative and legislative arrangements that would be necessary to allow signature of the Convention by Ireland are currently being examined*".¹²³ It is contended that the barrier to signature and ratification is Article 52 of the Convention which provides for emergency barring orders for which currently, there is no provision under Irish law. Notwithstanding the need to have such legislation in place in order to ratify the Convention, in any event, there is a clear need for barring orders to be available outside of traditional Court hours, so that victims of domestic violence do not find themselves without protection for extended periods of time.

¹²¹ Ireland's Fourth Periodic Report under ICCPR to the UN Human Rights Committee, *op cit*, para 172.

¹²² Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Ireland, 2011 A/HRC/19/9*, Recommendation 107.37.

¹²³ *Ibid*, p 7.

10.3 With respect to domestic violence support services, Ireland's Fourth Periodic Report under the ICCPR to the UN Human Rights Committee states that "the level of service density has also increased with the effect that activity levels in the domestic violence sector satisfy most of the guidelines set out by the Council of Europe".¹²⁴ However, the Report is silent on implementation of the accepted UPR Recommendation and/or when Ireland will ratify the Council of Europe Convention.

Suggested Enquiry:

▶ **When will Ireland sign and ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence?**

Support for Women's Organisations

10.4 Budget cuts over the past few years have disproportionately impacted on the capacity of women's organisations to protect the rights of all women, in particular vulnerable women, through frontline services and advocacy work (see percentage cuts below). Ireland's Fourth Periodic Report under the ICCPR to the UN Human Rights Committee notes that the National Women's Council of Ireland (NWC), which represents over 160 organisations, is "recognised by the Government as the body which puts forward women's concerns and perspectives"¹²⁵ as an "informed and constructive contributor to the implementation and review of policy initiatives".¹²⁶ However, the Report also acknowledges the sharp decrease in funding awarded to the Council in 2012 citing it as necessary in order to prioritise national security services. Indeed, over the past two years government funding to the NWC has been cut by 50%¹²⁷ while funding for locally based women's projects has been cut by 35% since 2011.¹²⁸

10.5 NGOs providing services to women experiencing domestic and sexual violence are witnessing an unprecedented growth in demand for their services. Rape Crisis Centres have seen a relentless year on year increase in demand for their services, as demonstrated by the snapshot of statistics set out below:

- 2012 saw a 12% increase (since 2010) in survivors and others seeking counselling and support from their specialist services.¹²⁹
- Figures across Ireland in 2011 show that 42,383 helpline calls were answered, and 7,797 individual women and 3,066 individual children received support from domestic violence support services. This represents a 56.6% increase in demand for these support services since 2007; however, some services experienced up to a 35% cut to their funding during this period.¹³⁰
- In 2011, on 2,537 occasions, services were unable to accommodate women in refuges, and on 2,302 occasions there were unable to accommodate children.¹³¹ This was because the refuge was full or there was no refuge in their area. The Council of Europe recommends that there should be a target by member states of at least 1 refuge place per 10,000 of population.

Suggested Enquiry:

▶ **Will the State Party ring-fence funding for women's groups at local, regional and national level particularly with respect to those organisations supporting women who have experienced violence in order to ensure an adequate level of service provision and support effective advocacy?**

¹²⁴ Ireland's Fourth Periodic Report under ICCPR to the UN Human Rights Committee, *op cit*, para 176.

¹²⁵ *Ibid*, at para 139.

¹²⁶ *Ibid*, at para 149.

¹²⁷ Government Budget 2011 and 2012. See National Women's Council of Ireland, (October 2012), *Pre-Budget Submission 2012*, p 28, available at www.nwci.ie (accessed 8/8/2013).

¹²⁸ *Ibid*.

¹²⁹ Rape Crisis Network Ireland, (November 2012), *National Rape Crisis Statistics and Annual Report 2011*, available at www.rcni.ie (accessed 8/8/2013). Dublin Rape Crisis Centre also report more than 9,000 calls in 2012, a 23% increase in first time callers of which 88% were women. Dublin Rape Crisis Centre, (24 July 2013), *Annual Report*.

¹³⁰ Safe Ireland Annual Statistics, available at www.safeireland.ie (accessed 8/8/2013). It should also be noted that 190 women have died violently in Ireland since the beginning of 1996. In the 138 cases where perpetrators have been noted, 54% were killed by their partner or ex-partner - see Women's Aid, *Female Homicide Media Watch Statistics 1996-2013*.

¹³¹ Safe Ireland *Annual Statistics*, available at www.safeireland.ie (accessed 8/8/2013).

Inadequacies of Existing Legislation on Domestic Violence

10.6 Current Irish law on domestic violence does not recognise the various types and forms of relationships in Ireland today. Despite the extension of eligibility for orders in the Civil Law (Miscellaneous Provisions) Act 2011, the law still does not provide for women in dating relationships despite the fact that research indicates that Safety Orders should be available to all parties who are or have been in an intimate relationship.¹³² Furthermore, unmarried cohabitants have restricted eligibility with respect to barring orders.¹³³

Suggested Enquiry:

- ▶ Will the State Party extend existing legislation to provide Safety Orders for women in dating relationships and equal access (in relation to eligibility requirements) to unmarried cohabitants with respect to barring orders?

Asylum-seeking Women and Migrant Women who Experience Domestic Violence

10.7 With respect to sexual or gender-based violence experienced by asylum seekers in Ireland, guidelines on gender-based violence and harassment have been prepared for direct provision accommodation centers (see section 4). While these Guidelines are a welcome development, the complaint process is administered by a designated member of centre staff (the 'Reporting Officer'), who is neither independent nor qualified to deal with victims. There is no provision for victims to complain to an independent body, even where their complaint pertains to a member of centre staff.

10.8 Under current Irish law, immigrants to Ireland who experience domestic violence face further difficulties regarding their immigration status. Immigrants may apply for an independent permit where domestic violence has been experienced under the 'Victims of Domestic Violence Immigration Guidelines'.¹³⁴ However, information in relation to this process is not widely published and many migrants are uninformed of their rights in this regard.¹³⁵ In addition, the €300 registration fee generally payable by those people who are granted permission to remain in the State poses a significant barrier to all applicants including those people who achieve a successful change of status under the current 'Victims of Domestic Violence Immigration Guidelines'.¹³⁶

Suggested Enquiries:

- ▶ Will the State Party establish an independent complaints mechanism for asylum seekers who experience gender-based violence or harassment while accommodated at the State's direct provision centers?
- ▶ Will the State Party review the €300 registration fee payable by people who have been granted leave to remain in the State?

¹³² Domestic violence does occur in young/dating relationships. 190 women have been murdered in Republic of Ireland since 1996. 39 (21%) of these women were aged between 18 and 25 years. Of the 39 women aged 18-25, 30 cases have been resolved. Of the resolved cases, 16 women were killed by someone with whom they were or had been in an intimate relationship. See Women's Aid, *Female Homicide Media Watch Statistics 1996-2013*.

¹³³ Ancillary requirements for unmarried cohabitants regarding the duration of the relationship and a property test requirement, whereby the applicant must show an equal or greater legal or beneficial interest in the property, can create huge problems for women seeking to obtain a barring order.

¹³⁴ Section 4(7) of the Immigration Act 2004. The Guidelines are available at <http://www.inis.gov.ie/en/INIS/Victims%20Of%20Domestic%20Violence%20-%20Note%20for%20Web.pdf/Files/Victims%20Of%20Domestic%20Violence%20-%20Note%20for%20Web.pdf> (accessed 8/8/2013).

¹³⁵ This responsibility would fall to the Irish Naturalisation and Immigration Service (INIS) and the Department of Social Protection/HSE. The information contained on the website is not easily accessible and remains contradictory in that, for example, the section on 'Spouse of an Irish National/Civil Partnership with an Irish National' continues to state that "(T)here are no rights of retention of residence in the event of separation/divorce", available at <http://www.inis.gov.ie/en/INIS/Pages/WP07000024> (accessed 8/8/2013).

¹³⁶ Available at <http://www.inis.gov.ie/en/INIS/Victims%20Of%20Domestic%20Violence%20-%20Note%20for%20Web.pdf/Files/Victims%20Of%20Domestic%20Violence%20-%20Note%20for%20Web.pdf> (accessed 8/8/2013).

Section 11:

Mental Health Services (Articles 2 & 16)

Concluding Observation of the Committee against Torture, June 2011

The Committee recommends that the State party review its Mental Health Act of 2001 in order to ensure that it complies with international standards. The Committee, therefore, recommends that the State party report on the specific measures taken to bring its legislation into line with internationally accepted standards in its second periodic report.

11.1 In July 2011, a Steering Committee was formed to review the Mental Health Act 2001, including by reference to the recommendations of *A Vision for Change* (Report from the Expert Group on Mental Health Policy 2006)¹³⁷ and the UN Convention on the Rights of People with Disabilities. The Steering Group has conducted a public consultation process with organisations and service users and in May 2012, produced the interim report.¹³⁸ The Group is due to produce a more comprehensive final report although the timeline is unknown.

Suggested Enquiry:

- ▶ **When will the final, comprehensive report of the Steering Committee to review the Mental Health Act 2001 be published?**

Care of Persons with an Intellectual Disability

11.2 A Vision for Change¹³⁹ recommends that adults with intellectual disabilities should be cared for separately from people with a mental illness (where appropriate). However, a report from the Health Research Board found that in 2011, 113 people with a primary admission diagnosis of “*intellectual disability*” were admitted to a dedicated psychiatric care setting.¹⁴⁰

Suggested Enquiry:

- ▶ **Provide details of the number of persons with a primary diagnosis of intellectual disability who are accommodated in psychiatric care settings. How does the State Party plan to ensure that persons with an intellectual disability who are not diagnosed with a mental illness are accommodated in appropriate care settings?**

Detention in Psychiatric Hospitals

11.3 Under the Mental Health Act 2001, the definition of a ‘voluntary patient’ includes a person who lacks capacity to make decisions but is compliant with treatment and who is detained in an approved setting.¹⁴¹ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has raised concerns regarding the treatment of “*voluntary patients*” in Irish psychiatric settings with respect to the insufficient safeguards set down in law. On foot of its country visit to Ireland in 2010, the CPT noted that:

[M]any so-called “voluntary” patients were in reality deprived of their liberty; they were accommodated in closed units from which they were not allowed to leave and, in at least certain cases, were returned to the hospital if they left without permission. Further, if staff considered it necessary, these patients could

¹³⁷ Department of Health, *A Vision for Change* Report of the Expert Group on Mental Health Policy, 2006, available at http://www.dohc.ie/publications/vision_for_change.html, (accessed 31/05/2012).

¹³⁸ Dáil Éireann Debate, Vol. 765 No. 2, 16 May 2012, available at <http://debates.oireachtas.ie/dail/2012/05/16/00025.asp>, (accessed 31/05/2012).

¹³⁹ Department of Health and Children, (2001), *A Vision for Change*, available at http://www.dohc.ie/publications/vision_for_change.html (accessed 8/8/2013).

¹⁴⁰ Health Research Board, (2011), Series 18: *Activities of Irish Psychiatric Units and Hospitals 2011*, Table 3.6, para 83, available at http://www.hrb.ie/uploads/tx_hrbpublications/Activities_of_Irish_Psychiatric_Units_and_Hospitals_2011.pdf (accessed 8/8/2013).

¹⁴¹ Section 2, available at <http://www.irishstatutebook.ie/2001/en/act/pub/0025/print.html> (accessed 7/8/2013).

also be subjected to seclusion and could be administered medication for prolonged periods against their wish [...].¹⁴²

11.4 Furthermore, voluntary patients who indicate that they wish to leave the treatment facility may be detained against their will for a period of up to 24 hours, if a doctor or staff nurse is of the opinion that they are suffering from a mental disorder.¹⁴³ However, there is no requirement to inform the Mental Health Commission of this change in status.¹⁴⁴

Suggested Enquiry:

- Provide detailed statistics on the number of voluntary patients who have been detained under section 23 (voluntary patients subsequently detained involuntarily).

Force and Restraint

11.5 Seclusion and physical restraint continue to be used within the mental health services.¹⁴⁵ The use of restraint is a restriction on a person's freedom of movement and, depending on the circumstances and severity, may constitute inhuman and degrading treatment. According to figures of the Mental Health Commission (released in 2013), in 2011, there were 1,683 seclusion episodes in psychiatric units in Ireland, a rate of 36.7 per 100,000.¹⁴⁶ Two psychiatric units for children and adolescents

used seclusion in 2011.¹⁴⁷ In 16% of episodes of seclusion, it lasted between eight and 24 hours and in a further 6.9% of episodes it lasted between 24 and 72 hours. There were 33 episodes of seclusion which exceeded 72 hours, representing 2% of all seclusion episodes.¹⁴⁸ More than three-quarters of psychiatric units used physical restraint in 2011, with a total of 3,056 episodes of physical restraint and a rate of 66.6 per 100,000 population. The number of episodes of physical restraint in child and adolescent units doubled in 2011 compared to 2010 (from 100 to 214). Four episodes of physical restraint lasted for longer than one hour.¹⁴⁹

11.6 Furthermore, compliance by approved centers with the statutory Code of Practice on the use of Physical Restraint in Approved Centers¹⁵⁰ and the Rules Governing the Use of Seclusion¹⁵¹ is still low. In 2012, only 29% of approved centres were in full compliance with the Rules on Seclusion and just 48% were found to be in compliance with the Code of Practice on physical restraint.¹⁵²

Suggested Enquiry:

- What steps will the State Party take to improve compliance among approved centers with statutory codes of practice on force and restraint?

¹⁴² Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 January to 5 February 2010, p.60, available at: <http://www.cpt.coe.int/documents/irl/2011-03-inf-eng.pdf> (accessed 7/8/2013).

¹⁴³ Section 23.

¹⁴⁴ Amnesty International Ireland (2011) *Mental Health Act 2001: A Review: Summary Paper*, p 13, available at http://www.amnesty.ie/sites/default/files/MENTAL_HEALTH_SUMMARY_080711.pdf (accessed 7/8/2013).

¹⁴⁵ Mental Health Reform, (June 2012), MHR submission to the [Mental Health Commission] on *Seclusion and Restraint Reduction Strategy*, available at: <http://www.mentalhealthreform.ie/mhr-submission-to-the-mhc-on-seclusion-and-restraint-reduction-strategy/> (accessed 7/8/2013).

¹⁴⁶ Mental Health Commission, (2013) *The Use of Seclusion, Mechanical Means of Bodily Restraint and Physical Restraint in Approved Centres: Activities Report 2011*, Dublin: Mental Health Commission, p. 4, available at <http://www.mhcirl.ie/File/The-use-of-Seclusion-Mechanical-Means-of-Bodily-Restraint-and-Physical-Restraint-in-Approved-Centres-Activities-Report-2011.pdf> (accessed 8/8/2013).

¹⁴⁷ *Ibid.*, at p.5.

¹⁴⁸ *Ibid.*, at p.6.

¹⁴⁹ *Ibid.*

¹⁵⁰ Mental Health Commission, (October 2009), *Code of Practice on the Use of Physical Restraint in Approved Centres (Issued Pursuant to Section 33(3)(e) of the Mental Health Act 2001)*, available at http://www.mhcirl.ie/Mental_Health_Act_2001/Mental_Health_Commission_Codes_of_Practice/Use_of_Physical_Restraint/Revised_-_Code_of_Practice_on_the_Use_of_PhysicalRestraint_in_Approved_Centres.pdf (accessed 7/8/2013).

¹⁵¹ Mental Health Commission, (October 2009), *Rules Governing the Use of Seclusion and Mechanical Means of Bodily Restraint – Version 2*, available at http://www.mhcirl.ie/Mental_Health_Act_2001/Mental_Health_Commission_Rules/Seclusion_and_Mechanical_Restraint/Revised_Rules_Governing_the_Use_of_Seclusion_and_Mechanical_Means_of_Bodily_Restraint.pdf (accessed 7/8/2013).

¹⁵² Mental Health Commission, *Annual Report 2012 including Report of the Inspector of Mental Health Services*, Dublin: MHC, pp. 26-27, available at http://www.mhcirl.ie/File/MHC_2012_Annual_Rpt.pdf (accessed 7/8/2013).

Consent to Treatment: Electro Convulsive Therapy

- 11.7 The Mental Health Act 2001¹⁵³ governs consent to treatments including in the use of Electro Convulsive Therapy (ECT). The Mental Health Commission figures for 2011 show that a total of 332 programmes of ECT were administered in Ireland, which is a rate of 7.2 programmes per 100,000 population.¹⁵⁴ More than 80% of recipients were registered as having voluntary status. For 25 programmes of ECT, the treatment proceeded where the individual was either unwilling or unable to give consent. Of these, in three cases ECT proceeded where both the treating and second opinion psychiatrist thought the recipient was capable but unwilling.¹⁵⁵
- 11.8 It is submitted that there is a need for stronger protections than those afforded in current legislation in relation to consent to ECT treatment, in line with the standards of the Convention on the Rights of People with Disabilities. These should include legislative provision that ECT should only be used as a treatment of last resort and never in an emergency. The Committee should also consider whether there is a need to ensure that all prescriptions of ECT should be reviewed by an independent body.

Suggested Enquiries:

- ▶ **Provide detailed information on the use of ECT in relation to both voluntary and involuntary patients accommodated/detained in approved centres.**
- ▶ **How will the State Party ensure that ECT remains a treatment of last resort and that consent to ECT treatment is set down in law?**

¹⁵³ Sections 58 and 59.

¹⁵⁴ Mental Health Commission (2012) *The Administration of Electro-convulsive Therapy in Approved Centres: Activity Report 2011*, Dublin: MHC, page5, available at: <http://www.mhcirl.ie/File/The-Administration-of-ECT-in-approved-centres-Activity-Report-2011.pdf>, (accessed 7/8/2013).

¹⁵⁵ *Ibid*, p 35.

Section 12:

Corporal Punishment (Article 16(1))

Concluding Observation of the Committee against Torture, June 2011

The Committee recommends that the State party prohibit all corporal punishment of children in all settings, conduct public campaigns to educate parents and the general public about its harmful effects, and promote positive non-violent forms of discipline as an alternative to corporal punishment.

12.1 All forms of corporal punishment are still not prohibited under Irish law.¹⁵⁶ While partially accepting two UPR recommendations on the issue,¹⁵⁷ Ireland gave the following response,

This matter is under continuous review. A proposal to either prohibit the defence of reasonable chastisement or to further circumscribe the definitions of what constitutes reasonable chastisement would require careful consideration. Details of any possible future significant developments in this area will be communicated to the UN CRC.

12.2 In relation to Article 24 (Rights of the Child) of the ICCPR and specifically under the heading, *Corporal Punishment*, Ireland's Fourth Periodic Report to the UN Human Rights Committee states that,

The Department of Education and Skills, in September 2011, published its "Child Protection Procedures for Primary and Post-Primary Schools". The procedures have been developed following extensive consultation with the education partners and are based on "Children First – National Guidance for the Protection and Welfare of Children" 2011. They are designed to ensure a consistency of approach in relation to each school's Child Protection Policy and the oversight arrangements for its implementation at school level".¹⁵⁸

12.3 It is submitted that Ireland should be asked to prioritise an absolute ban on corporal punishment inside and outside the home. The State's Third and Fourth Periodic Report to the Committee on the Rights of the Child was due in 2009; however, it has yet to be submitted.

Suggested Enquiries:

- ▶ **When will the State Party introduce legislation to prohibit corporal punishment in all settings?**
- ▶ **What are the State Party's plans regarding education on non-violent discipline?**

¹⁵⁶ Under section 24 of the Non-Fatal Offences against the Person Act 1997, corporal punishment by teachers is a criminal offence. However, the ban on corporal punishment of children has not been extended to actions by parents or those in care settings. A common law defence of "reasonable and moderate chastisement" exists in the discipline of children within the home.

¹⁵⁷ 107.41. Explicitly prohibit any form of corporal punishment in the family and continue developing awareness-raising campaigns and education for parents and for the public in general (Uruguay); and 107.42. Promote forms of discrimination and non-violent discipline as an alternative to corporal punishment, taking into consideration general comment No. 8 (2006) of the Committee on the Rights of the Child on the protection of children from corporal punishment and other cruel or degrading forms of punishment (Uruguay).

¹⁵⁸ Para. 747.

Section 13:

Deaths in State Care (Article 12)

Reform of the Inquest System

- 13.1** The State has procedural obligations in cases involving deaths or serious injuries in places of detention such as prisons or Garda custody, and places of organised state care. This includes the carrying out of an independent, prompt and effective investigation of incidents.¹⁵⁹
- 13.2** A Coroner is an independent official with responsibility for the investigation of sudden and unexplained deaths under the Coroner's Act 1962, as amended by the Coroner's (Amendment) Act 2005. The role of the Coroner is to enquire into the circumstances of sudden, unexplained, violent and unnatural deaths. The Coroner establishes the facts of an unexplained death and is not empowered to assign accountability nor to consider civil or criminal liability. However, as submitted to the Committee in 2011, the legislation and framework is out-dated and requires reform. The Coroner's Bill 2007,¹⁶⁰ provided for the reform of the Coroner's Service; however, it lapsed with the previous Government. In its observations on the Scheme of the Bill, the Irish Human Rights Commission recommended a number of amendments including the establishment of categories of deaths which would be regarded as reportable to the coroner and the disclosure of witness statements to victims' families and legal representatives.¹⁶¹
- 13.3** The deficiencies in the current inquest system in fulfilling the State's obligations under Article 6 of the Convention and Article 2 (Rights to freedom from torture and inhuman or degrading treatment or punishment) European Convention on Human Rights (ECHR) were brought into sharp focus by the death of Ms. Savita Halappanavar on 28 October 2012 following a miscarriage at an Irish hospital.¹⁶²
- 13.4** In addition to the inquest, where a unanimous verdict of death by misadventure was pronounced,¹⁶³ an investigation into her death was initiated by the Health Service Executive (HSE) and the Health and Information Quality Authority (HIQA). However, as set out above, the Coroner's remit is limited and neither the HSE nor the HIQA investigations were fully independent.¹⁶⁴ The Committee should also note that originally, it was envisaged that her death would be investigated by an internal hospital review team only and that multiple investigations are being carried out due to the persistence of her husband who was unsatisfied with the investigation originally commenced.¹⁶⁵ However, none of these inquiries is a fully effective independent official investigation in line with the standards of Article 2 ECHR.¹⁶⁶

¹⁵⁹ *McCann and Ors v. United Kingdom* (1996) 21 EHRR 97; *Jordan and Ors v. United Kingdom* (2001) 37 EHRR.

¹⁶⁰ <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2007/3307/document1.htm> (accessed 3/4/2011).

¹⁶¹ Irish Human Rights Commission, (19 September 2006), *Observations of the IHRC on the General Scheme of the Coroner's Bill 2005*, at p. 20, available at <http://www.ihrc.ie/publications/list/submission-on-scheme-of-coroners-bill> (accessed 2/4/2011). The Commission also recommended that, in the case of deaths which occur in Garda custody or as a result of Garda operations, the Coroner should have the assistance of coroner's officers who are not members of An Garda Síochána in order to break the institutional connection between those investigating and those being investigated, p. 16.

¹⁶² This case resonated throughout the world. See for example <http://www.bbc.co.uk/news/uk-northern-ireland-20321741> (accessed 8/8/2013).

¹⁶³ Holland, Kitty (19 April 2013), *Halappanavar inquest jury returns verdict of death by medical misadventure*, <http://www.irishtimes.com/news/health/halappanavar-inquest-jury-returns-verdict-of-death-by-medical-misadventure-1.1366326> (accessed 8/8/2013).

¹⁶⁴ Health Service Executive (Arulkumaran, Sabaratnam; Cora McCaughan, Cathriona Molloy, Brian Marsh, Geraldine Keohane, James Walker, Mary Horgan), (13 June 2013), *Investigation of Incident 50278 from time of patient's self referral to hospital on the 21st of October 2012 to the patient's death on the 28th of October, 2012*, available at <http://cdn.the-journal.ie/media/2013/06/savita-halappanavar-hse-report.pdf> (accessed 14 June 2013). Health and Information Quality Authority Report is pending. See <http://www.hiqa.ie/press-release/2012-11-23-hiqa-announces-investigation> (accessed 8/8/2013) and <http://www.hiqa.ie/press-release/2012-11-30-investigation-safety-quality-and-standards-services-provided-health-service> (accessed 8/8/2013).

¹⁶⁵ See Irish Examiner (1 April 2013), *Halappanavar husband unhappy with HSE inquiry*, available at <http://www.irishexaminer.com/breakingnews/ireland/halappanavar-husband-unhappy-with-hse-inquiry-589855.html> (accessed 8/8/2013).

¹⁶⁶ It has been reported that Mr Halappanavar is taking a claim in negligence to the Irish High Court in relation to the death of his wife. See <http://www.irishtimes.com/news/health/halappanavar-to-sue-hse-for-negligence-over-savita-death-1.1452048> (accessed 8/8/2013).

Suggested Enquiries:

- ▶ **When will the State Party introduce legislation to reform the current inquest system?**
- ▶ **Will the State Party introduce a suitable legal framework in order to satisfy the State's procedural obligation under the Convention and Article 2 ECHR to investigate deaths in State care?**

Independent Child Death Review Group

13.5 The 2012 *Report of the Independent Child Death Review Group* has highlighted gross failings by the State regarding children in State care.¹⁶⁷ The Report details the death of 196 children in State care, in receipt of aftercare or known to the Health Services Executive between 2000 and 2010. This figure includes a total of 112 children who died of non-natural causes. The Report raises a number of concerns in relation to deaths in State care including lack of care planning, delays in taking vulnerable children into care, consistency and appointment of social workers, poor record keeping, and, failure to pursue appropriate services and adequate supervision.¹⁶⁸

Suggested Enquiry:

- ▶ **What steps is the State Party taking to ensure that the concerns raised by the Child Death Review Group are being addressed?**

¹⁶⁷ Shannon and Gibbons, *Report of the Independent Child Death Review Group, 2011*, Department of Children and Youth Affairs, at p.vi, available at: http://www.dcy.a.gov.ie/documents/publications/Report_ICDRG.pdf, (accessed 2/8/2013).

¹⁶⁸ *Ibid*, at pp xiii-xiv.

Section 14:

Immigration-related Detention (Article 16(1))

Concluding Observation of the Committee against Torture, June 2011

The Committee recommends that the State party take measures to ensure that all persons detained for immigration-related reasons are held in facilities that are appropriate to their status.

14.1 As reported to the Committee in 2011, Irish law provides for immigration-related detention in a number of circumstances.¹⁶⁹ Persons detained for immigration-related reasons are held in ordinary prisons, on occasion, sharing accommodation with persons suspected or convicted of criminal offences.¹⁷⁰

14.2 Ireland has yet to implement the 2008 recommendation of the UN Human Rights Committee that the State should review its detention policies to give “priority to alternative forms of accommodation” and “take immediate and effective measures to ensure that all persons detained for immigration-related reasons are held in facilities specifically designed for this purpose”.¹⁷¹

14.3 During Ireland’s UPR examination in 2011, Brazil recommended that Ireland take the “necessary measures to avoid detention of asylum-seekers and to avoid situations which may equate the condition of immigrants to that of felons.”¹⁷² In accepting this recommendation, Ireland stated that detention is “only used in circumstances where failed asylum seekers seek to evade deportation”.¹⁷³ In the Fourth Periodic Report under ICCPR to the UN Human Rights Committee, the State justified the detention of people for immigration-related reasons in prisons, stating that they “are housed with remand prisoners, reflecting the common status of both groups as being made up of persons not convicted of a criminal offence”.¹⁷⁴

14.4 It is submitted that this is not sufficient to meet the standards of the UNCAT nor the recommendation of UN Human Rights Committee in 2008.

Suggested Enquiry:

▶ When will the State provide facilities specifically designed for immigration-related detention, should the exceptional circumstances arise where it is necessary to detain persons for that reason?

¹⁶⁹ See sections 9 and 10, Refugee Act, 1996 (as amended), section 3, Immigration Act 1999 (as amended) and Section 5 Immigration Act 2003.

¹⁷⁰ ICCL and IPRT, (April 2011), *Joint Shadow Report to the First Periodic Review of Ireland under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, available at <http://www.iphone.iccl.ie/joint-iccliprt-shadow-report-to-the-first-periodic-review-of-ireland-under-the-united-nations-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment-.html> (accessed 26/07/2013).

¹⁷¹ Concluding Observations of the Human Rights Committee on Ireland, 30 July 2008 UN Doc: CCPR/C/IRL/CO/3, para. 17.

¹⁷² *Report of the Working Group on the Universal Periodic Review: Ireland*, op cit, Recommendation 107.35.

¹⁷³ *Report of the Working Group on the Universal Periodic Review: Ireland* (Addendum), op cit.

¹⁷⁴ *Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee*, op cit, para. 355.

Section 15:

Prisoners' Rights and Conditions of Detention (Articles 12, 13, 16)¹⁷⁵

A lack of effective complaints and monitoring mechanisms, issues of overcrowding, the continued lack of in-cell sanitation in many prisons leading to practices such as 'slopping out' and the use of prisons for immigration detention purposes were among the serious human rights concerns raised during Ireland's first UPR examination in 2011.¹⁷⁶

Prison Numbers and Overcrowding in Irish Prisons

Concluding Observation of the Committee against Torture, June 2011

The Committee recommends that the State party:

- (a) Adopt specific time frames for the construction of new prison facilities which comply with international standards. In this regard, the Committee requests the State party to inform it of any decisions taken with regard to the Thornton Hall prison project;
- (b) Adopt a policy focusing on the development of alternative, non-custodial sanctions, including the enactment of the bill amending the Criminal Justice (Community Service) Act 1983, which provides that judges will be required to consider community service as an alternative to custody in all cases where a custodial sentence of 12 months or less is appropriate;
- (c) Expedite the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the establishment of a national preventive mechanism.

- 15.1 Ireland's prison population has doubled since 1997.¹⁷⁷ The most recently available statistics indicate that the current prison population is 4,180 (24 July 2013), or 95% of total available bed capacity.¹⁷⁸ In addition, some prisons continue to operate in excess of the maximum safe capacity of the facility.¹⁷⁹ Despite the largest ever prison-building programme undertaken in Ireland in the last 30 years, overcrowding has worsened.¹⁸⁰ Since 1997, more than 900 new spaces have been added to the prison system, however; new prison spaces have not matched the increase in prisoner numbers,¹⁸¹ despite the Committee's recommendation as set out above and the concern expressed by the Human Rights Committee in 2008 regarding "increased incarceration".¹⁸²
- 15.2 Overcrowding has a direct effect on increasing incidences of inter-prisoner violence. In 2010, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) reported dangerous levels of inter-prisoner violence in Irish prisons, observing that 'stabblings, slashings and assaults with various objects' are an almost daily occurrence.¹⁸³

¹⁷⁵ Section 15 was prepared in consultation with the Irish Penal Reform Trust (IPRT).

¹⁷⁶ *Report of the Working Group on the Universal Periodic Review: Ireland, op cit*, recommendations 106.36 – 106.48.

¹⁷⁷ Irish Penal Reform Trust, *Prison Facts*, available at <http://www.iprt.ie/prison-facts-2>, (accessed 26/7/2013).

¹⁷⁸ Irish Prison Service Statistics http://www.irishprisons.ie/images/dailynumbers/24_july_2013.pdf (accessed 26/7/2013).

¹⁷⁹ *Ibid.*

¹⁸⁰ Irish Penal Reform Trust, *IPRT Briefing on Overcrowding in Irish Prisons* available at http://www.iprt.ie/files/IPRT_Briefing_on_Overcrowding_Oct_2011.pdf (accessed 26/7/2013).

¹⁸¹ Irish Penal Reform Trust, *IPRT Briefing on Overcrowding in Irish Prisons, op cit*.

¹⁸² UN Human Rights Committee, *Concluding Observations of the UN Human Rights Committee, op cit*, para 15.

¹⁸³ Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 2010*, p. 21, para 32, available at <http://www.cpt.coe.int/documents/irl/2011-03-inf-eng.pdf> (accessed 16/8/2013).

Suggested Enquiries:

- ▶ Provide details on how the State Party plans to permanently eliminate overcrowding in Irish prisons.
- ▶ Provide details on how the State Party will ensure that imprisonment remains a 'last resort' option and whether and to what extent, non-custodial options will replace custodial sentences where appropriate.
- ▶ Outline how its revised prison-building programme will ensure humane and safe conditions for all prisoners in line with Ireland's obligations under the Convention.
- ▶ How will the State Party reduce the incidence of violence in prisons and ensure effective remedies for prisoners who have been subjected to such incidents?

Cell Conditions, Sanitation and 'Slopping-Out' in Prison

Concluding Observation of the Committee against Torture, June 2011

The Committee recommends that the State party strengthen its efforts to eliminate, without delay, the practice of "slopping out", starting with instances where prisoners have to share cells. The Committee further recommends that until such a time as all cells possess in-cell sanitation, concerted action should be taken by the State party to ensure that all prisoners are allowed to be released from their cells to use toilet facilities at all times.

- 15.3 The CPT also has consistently called for an end to slopping out in Irish prisons¹⁸⁴ and in 2008, the Human Rights Committee further requested that the State prioritise overcrowding and the "slopping-out of human waste"¹⁸⁵ as "priority issues."¹⁸⁶ While progress is being made, many prisoners continue to be detained in facilities without in-cell sanitation.¹⁸⁷ Significantly, in Limerick, Cork and Mountjoy prisons the practice of 'slopping-out' exists in overcrowded cell conditions. In these prisons the practice of slopping out is combined with multi-cell occupancy, long lock-down periods and an impoverished regime, exacerbating the impact on prisoners. An associated problem is the very high proportion of prisoners who are forced to use toilet facilities in the presence of another prisoner. At present 565 prisoners are slopping out and 1809 prisoners use a toilet in the presence of others.¹⁸⁸ While the Minister for Justice, Equality and Defence has provided assurances that slopping-out as a practice will be eliminated by 2014, in a recent report (2013), the Inspector of Prisons noted that this is not expected to be achieved until mid 2016.¹⁸⁹

Suggested Enquiries:

- ▶ Provide a detailed timeline on when the elimination of the practice of slopping out will be achieved.
- ▶ How will the prison authorities ensure that prisoners who do not have in-cell sanitation are not subjected to inhuman or degrading treatment by being forced to 'slop out'?
- ▶ Provide information on plans or measures to reduce the number of prisoners who have to use toilet facilities in the presence of others.

¹⁸⁴ Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *op cit*, p. 29, para 48.

¹⁸⁵ Where no in-cell facilities exist, prisoners urinate and defecate in buckets or portable units in the cell during lock up, which varies but is generally from 7.30pm to 8.00am and mealtimes during the day. A small number of prisoners are under 23-hour lock-up with no in-cell sanitation.

¹⁸⁶ *Op cit*, para 15. See also the report of the Inspector of Prisons: Inspector of Prisons, *The Irish Prison Population: An examination of the duties and obligations owed to prisoners*, July 2010, p. 20.

¹⁸⁷ Inspector of Prisons, *An Assessment of the Irish Prison System By the Inspector of Prisons Judge Michael Reilly*, May 2013, p.18, available at <http://www.justice.ie/en/JELR/An%20Assessment%20of%20the%20Irish%20Prison%20System.pdf/Files/An%20Assessment%20of%20the%20Irish%20Prison%20System.pdf> (accessed 8/8/2013).

¹⁸⁸ Parliamentary Question, (11 June 2013), Department of Justice and Equality, available at <http://www.kildarestreet.com/wrans/?id=2013-06-11a.1894> (accessed 16/8/2013).

¹⁸⁹ Inspector of Prisons, (May 2013), *op cit*.

An Independent Complaints Mechanism for Prisoners

Concluding Observation of the Committee against Torture, June 2011

The Committee recommends that the State party:

- (a) Establish an independent and effective complaint and investigation mechanism to facilitate the submission of complaints by victims of torture and ill-treatment by prison staff and ensure that in practice complainants are protected against any intimidation or reprisals as a consequence of the complaints;
- (b) Institute prompt, impartial and thorough investigations into all allegations of torture or ill-treatment by prison staff;
- (c) Ensure that all officials who are allegedly involved in any violation of the Convention are suspended from their duties during the conduct of the investigations;
- (d) Provide the Committee with information on the number of complaints made concerning allegations of torture and ill-treatment by prison staff, the number of investigations carried out and the number of prosecutions and convictions, as well as on the redress awarded to victims.

15.4 In its 2010 Report, the CPT expressed concerns about the inadequate investigation of complaints regarding allegations of ill-treatment of prisoners by staff, poor recording of alleged incidents, and deficient or no medical examination of prisoners who make complaints.¹⁹⁰

15.5 Currently, there are no available statistics on the number of complaints made by prisoners with regard to allegations of ill-treatment by prison officers. In August 2012, the Minister for Justice, Equality and Defence accepted proposals by the Inspector of Prisons for a complaints mechanism whereby serious complaints from prisoners could be investigated by external investigators with an appeal to the Inspector.¹⁹¹ Since 1 November 2012 some complaints are subject to this independent investigation process, namely Category “A” complaints, alleging serious ill treatment, use of excessive force, racial discrimination, intimidation or threats.¹⁹² However, a fully functioning independent complaints system for all prisoners is still not available.

Suggested Enquiry:

- ▶ How does the State Party plan to implement the 2011 recommendations of the Committee regarding prisoner complaints?

Death of Gary Douche

15.6 As reported to the Committee in 2011, on 1 August 2006, 21 year old Gary Douche was unlawfully killed in Mountjoy Prison in a holding cell he shared with six others, one of whom was mentally ill. In May 2007, a Commission of Investigation, headed by a Senior Counsel, was established, and its report was due by the end of that year. At the time of writing, the report of the Commission of Investigation into the death of Mr Douche has still not been completed.¹⁹³

Suggested Enquiry:

- ▶ When will the report into the death of prisoner Gary Douche at Mountjoy Prison in 2006 be published?

¹⁹⁰ Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *op cit*, paragraphs 31-34, pp. 20-22.

¹⁹¹ See Inspector for Prisons, (March 2012), *Suggested Prisoner Complaints Model for Irish Prisons*.

¹⁹² *Ibid.*

¹⁹³ Irish penal Reform Trust, (6 June 2013), *Roundup: Reactions to further delays in report regarding the killing of Gary Douche*, available at <http://www.iprt.ie/contents/2518> (accessed 8/8/2013).

Pre-trial Detention

Concluding Observation of the Committee against Torture, June 2011

The Committee recommends that the State party take urgent measures to house remand prisoners separately from sentenced prisoners.

- 15.7 Ireland's Fourth Periodic Report under the ICCPR to the UN Human Rights Committee indicates that while the majority of accused persons held on remand are confined to purpose built segregated facilities at two prison sites, a significant minority continue to be held in non-segregated facilities at three facilities: Cork, Limerick and Midlands's prisons.¹⁹⁴

Suggested Enquiry:

- ▶ How will the State Party ensure that all persons on remand are held in segregated accommodation?

Female Prisoners

- 15.8 The number of female prisoners in Irish prisons has increased dramatically in recent years. In 2010, 1,701 women were committed to prison in Ireland. This figure represents over 12% of the persons committed to prison in 2010. Between 2005 and 2010 there was an 87% increase in the number of women committed to prison.¹⁹⁵

- 15.9 Strategic Action 3 of the *Irish Prison Service Three Year Strategic Plan 2012–2014* contains a commitment to develop a special strategy for women prisoners.¹⁹⁶ Appendix 1 of the Strategic Plan states:

As part of its Strategic Plan 2012-2015 the Irish Prison Service, working in partnership with the Probation Service and other stakeholders in the statutory, community and voluntary sectors will seek to develop a strategy for dealing with women offenders. The overall aims of the strategy which will be delivered in conjunction with other stakeholders, including the Probation Service, will be to:-

- *Identify and divert those at risk of a custodial sentence through greater use of community support and interagency cooperation.*
- *Seek to ensure that sentences are managed in a way which seeks to address both the offending behaviour and its causes.*

Suggested Enquiries:

- ▶ What practical steps are being taken to implement Strategic Action 3 of the Irish Prison Service Strategic Plan?
- ▶ Provide detailed information on legislative and policy changes planned to reduce the rate of women receiving custodial sentences for less-serious and non-violent crimes including through alternative sentencing options.

¹⁹⁴ Ireland's Fourth Periodic Report under ICCPR to the UN Human Rights Committee, *op cit*, para 393.

¹⁹⁵ Irish Penal Reform Trust, *Briefing on Women in Detention*, (22 August 2011), available at <http://www.iprt.ie/contents/2176> (accessed 16/8/2013).

¹⁹⁶ Irish Prison Service *Three Year Strategic Plan 2012–2015*, *op cit*, pp. 30-31.

Section 16:

Trafficking (Article 14)

16.1 Ireland has ratified the United Nations Convention on Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2010, and the Council of Europe Convention on Action against Trafficking in Human Beings.¹⁹⁷

Protection and Rehabilitation of Victims of Trafficking

16.2 In 2008, the UN Human Rights Committee urged Ireland to ensure the “*protection and rehabilitation of victims of trafficking*” and to ensure that “*permission to remain in the State party is not dependent on the cooperation of victims in the prosecution of alleged traffickers*”.¹⁹⁸

16.3 The Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (the “Arrangements”)¹⁹⁹ came into operation on 7 June 2008 and set out the applicable procedures in relation to immigration status where a person is identified as a suspected victim of human trafficking. Under the Arrangements, an individual must be formally identified as a victim of trafficking by a high ranking police officer.

16.4 The Arrangements provide for a 60 day recovery and reflection period during which there is no obligation on a suspected victim to cooperate with an investigation or

prosecution. Furthermore, suspected victims of trafficking may also apply for a (renewable) six month temporary residence permission where it is necessary in order to assist with an investigation or prosecution of a human trafficking offence.

16.5 Suspected victims of trafficking who apply for asylum are excluded from the scope of the Arrangements and do not benefit from the recovery and reflection period or temporary residence permission.²⁰⁰ This has knock-on effects regarding the equal treatment of suspected victims of trafficking. For example, a person who has assisted the Gardaí and has held a Temporary Residence Permit for three years can apply for a change of status and be granted permission to remain in the State on humanitarian grounds.²⁰¹ However, asylum seeking victims of trafficking will not be able to accumulate this required three year period as they will not be entitled to apply for an initial Temporary Residence Permit until after their application for refugee status has been terminated.²⁰²

Suggested Enquiry:

► **How will the State Party ensure that victims of trafficking who have sought asylum are granted comparable protections in the context of administrative arrangements to those people who have not sought asylum?**

¹⁹⁷ This Treaty entered into force on 1 November 2010.

¹⁹⁸ UN Human Rights Committee, *Concluding Observations of the UN Human Rights Committee, op cit*, para. 16.

¹⁹⁹ Irish Naturalisation and Immigration Service, *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking*, available at: <http://www.inis.gov.ie/en/INIS/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf/Files/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf> (accessed 2/8/2013).

²⁰⁰ See also, Immigrant Council of Ireland, *Asylum seeking victims of human trafficking in Ireland: Legal and practical challenges*, available at: http://www.immigrantcouncil.ie/images/stories/pdfs/UN_Gift_report_18.11.2011.pdf (accessed 16/8/2013).

²⁰¹ Section 21 Administrative Arrangements.

²⁰² Pursuant to Section 9(2) of the Refugee Act, 1996, available at <http://www.irishstatutebook.ie/1996/en/act/pub/0017/print.html> (accessed 16/8/2013).

Data on Trafficking

16.6 The Annual Report of the AHTU notes that the Unit does not collect specific details on reported victims, and advises against drawing inferences from the available statistics as to the estimated likely number of reported victims of trafficking.²⁰³ For example, in addition to statistical data on the number of referrals to Gardai (police), the Report also contains data on the number of referrals to NGOs. However, the Report notes that many of the referrals listed in both sections may refer to the same victims. The failure of the AHTU to collect information in a way which allows for more accurate estimation of the suspected number victims hampers efforts to determine the full extent of the problem of trafficking.

Suggested Enquiry:

- ▶ **Ensure that statistics collected by relevant agencies provide accurate data on the situation of suspected victims of trafficking in Ireland and related prosecutions on an annual basis.**

Legal Representation of Victims of Trafficking in Ireland

16.7 According to Ireland's Fourth Periodic Report under the ICCPR to the UN Human Rights Committee,²⁰⁴ legal aid and advice to victims of trafficking is provided by the Legal Aid Board. However, the Committee should note that the Legal Aid Board – through its Refugee Legal Service – only provides legal services on certain matters to persons identified by the Garda National Immigration Bureau (GNIB) as “potential victims” of human trafficking under the Criminal Law (Human Trafficking)

Act 2008.²⁰⁵ This means that a potential victim of trafficking is required to present herself/himself to An Garda Síochána and provide at least basic details of their identity and situation before they are considered eligible for legal assistance. In addition, the services offered to potential victims of human trafficking are currently limited to information (as opposed to advice) in relation to regularisation of a victim's stay in Ireland.

16.8 While the legal services currently provided to victims of trafficking appear to meet the minimum requirements of the UN Protocol, it is questionable whether they are in compliance with Article 15(2) of the Council of Europe Convention which provides for the right to free legal assistance and legal aid for victims in relation to compensation and legal redress.²⁰⁶ Moreover, it is likely that the current scheme in Ireland falls short of the services envisaged in the Council of Europe's explanatory report on Article 12 of the Convention on Action against Trafficking in Human Beings.²⁰⁷

Suggested Enquiries:

- ▶ **How will the State Party ensure that all victims of trafficking are fully informed of their rights and obligations at the earliest possible opportunity and are able to make an informed choice regarding their immigration status?**
- ▶ **How will the State Party ensure timely and adequate access to and provision of legal aid for victims of trafficking?**

²⁰³ Anti Human Trafficking Unit, *Annual Report in Trafficking in Human Beings in Ireland, 2011*, p. 7.

²⁰⁴ *Ireland's Fourth Periodic Report under ICCPR to the UN Human Rights Committee*, *op cit*, para 287.

²⁰⁵ Legal Aid Board, *Human Trafficking – Legal Advice and Aid*, available at http://www.legalaidboard.ie/lab/publishing.nsf/content/Human_Trafficking_Legal_Advice_and_Aid (accessed 2/8/2013).

²⁰⁶ Council of Europe, *Convention on Action Against Trafficking in Human Beings, CETS 197*, Article 15 provides that each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law.

²⁰⁷ *Ibid.* Article 12 provides that information provided to victims should deal with “matters such as availability of protection and assistance arrangements, the various options open to the victim, the risks they run, the requirements for legalising their presence in the Party's territory, the various possible forms of legal redress, how the criminal-law system operates (including the consequences of an investigation or trial, the length of a trial, witnesses' duties, the possibilities of obtaining compensation from persons found guilty of offences or from other persons or entities, and the chances of a judgment's being properly enforced). The information and counselling should enable victims to evaluate their situation and make an informed choice from the various possibilities open to them”.

Compensation

16.9 Currently, the avenues for obtaining compensation or financial redress for victims of trafficking in Ireland are limited. While it is possible for victims to obtain an order from the Court for damages to be paid by the trafficker post conviction, there is no evidence available for Ireland on the number of awards made.²⁰⁸

16.10 Critically, there is no State funded compensation fund for victims of human trafficking in Ireland at present and the Government has indicated in its 'Review of the National Action Plan To Prevent and Combat Trafficking in Human Beings 2009 – 2012' that it is of the view that the,

[E]stablishment of a dedicated compensation fund for victims of human trafficking would be inappropriate given that no such fund exists for any other victims of crime. While there is no doubt that victims of human trafficking constitute an extremely vulnerable group it would be difficult to justify not also having a compensation fund for victims of other crimes such as rape, etc.²⁰⁹

16.11 As noted in Ireland's Fourth Periodic Report under the ICCPR, victims of crime may pursue compensation through the Criminal Justice Compensation Tribunal.²¹⁰ The Tribunal considers applications from people who suffer a personal injury or death as a result of crime of violence. Compensation may be awarded on the basis of any vouched out of pocket expenses, including loss of earnings, experienced by the victim or, if the victim has died as a result of the incident, by the dependants of the victim. An application must be made to the Tribunal as soon as possible but not later than three months after the

incident; however, the tribunal may extend the time limit in circumstances where the applicant can show that the reason for the delay in submitting the application justifies exceptional treatment of the application. The time limits imposed by the legislation may lead to the exclusion of victims who are too traumatized to report their ordeals to the Gardaí in a timely fashion.

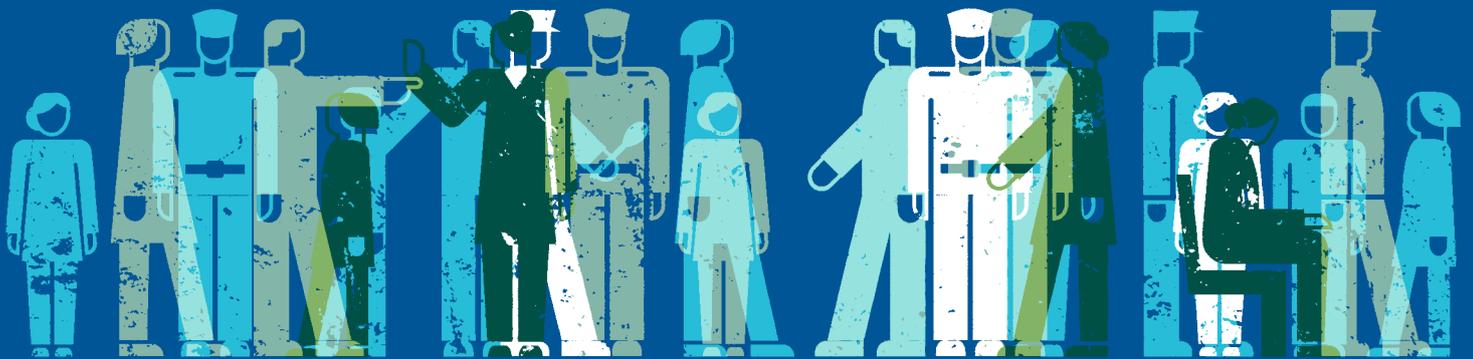
Suggested Enquiries:

- Provide detailed information on the number of awards for damages made to victims of trafficking.
- How will the State Party ensure that victims of trafficking are not unfairly disadvantaged in relation to rules pertaining to compensation?

²⁰⁸ However, evidence from the UK suggests a low percentage of compensation orders are made through the courts. Anti-Slavery International and Eaves Poppy Project, *A Guide to Legal Remedies for Trafficked Persons in the UK*, April 2010. The report notes that the compensation order is most effective in the UK as a remedy where the offender has readily identifiable assets which have been confiscated by the police and where the victim has suffered a readily quantifiable injury. Among human trafficking cases, however, the experiences of judges, prosecutors and police indicate that such a scenario is elusive. According to the report, UK Police have stated that traffickers often lack significant assets and, even where available, assets are difficult to confiscate. There is also no guarantee that a crime victim will receive a compensation order upon conviction of the offender, as an offender may default in payment of the order or may pay in irregular instalments, available at http://www.antislavery.org/includes/documents/cm_docs/2011/r/rights_and_recourse_report_final_pdf.pdf (accessed 16/8/2013).

²⁰⁹ Dept of Justice, *Review of the National Action Plan to Prevent and Combat Trafficking in Human Beings 2009 – 2012*, available at [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/RADN-95REJP1041313-en/\\$File/Review%20of%20the%20National%20Action%20Plan%20Final.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/RADN-95REJP1041313-en/$File/Review%20of%20the%20National%20Action%20Plan%20Final.pdf) (accessed 2/8/2013).

²¹⁰ Dept of Justice and Equality, *A Guide to the Functions, Records, Rules and Practices of the Criminal Injuries Compensation Tribunal, 2006*, available at <http://www.justice.ie/en/JELR/criminal%20injuries.pdf/Files/criminal%20injuries.pdf> (accessed 2/8/2013).



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