

**Submission to the United Nations
Human Rights Committee on the
List of Issues for the Fifth
Periodic Examination of Ireland**

August 2020



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

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1. Introduction

The Irish Human Rights and Equality Commission ('the Commission') exercises a dual capacity as the "A" Status National Human Rights Institution ('NHRI') and the National Equality Body for Ireland.¹

The purpose of this submission is to provide the Human Rights Committee with information to inform its preparation of the List of Issues for Ireland, due to be adopted by the Committee in its 130th session, ahead of its fifth periodic review of Ireland.

The submission follows the Commission's engagement with the Committee during the follow-up to Ireland's fourth periodic report in 2017² and 2015³, and during Ireland's fourth periodic review in 2014.⁴

This submission is informed by the Commission's *Strategy Statement 2019-2021*,⁵ where 'promoting access to justice', 'combatting racism and promoting intercultural understanding', and 'disability', were identified as priority areas alongside 'socio-economic rights'.

Noting the concerns raised and statements issued by UN Treaty Bodies with regard to the protection of rights during the Covid-19 pandemic,⁶ this submission will also, where relevant, touch on the impact the State's response to the pandemic has had on the enjoyment of Covenant rights.⁷

A new Government was formed in Ireland in June 2020. Where relevant this submission will refer to commitments made under the new Government's Programme for Government.

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

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

² IHREC, [Submission to UN Human Rights Committee in relation to information received from Ireland on follow-up to the concluding observations](#) (September 2017).

³ IHREC, [Submission to UN Human Rights Committee on Ireland's One-Year Follow-up Report to its Fourth Periodic Review under ICCPR](#) (September 2015).

⁴ IHREC, [Submission of the Irish Human Rights Commission to the UN Human Rights Committee on the Examination of Ireland's Fourth Periodic Report under the International Covenant on Civil and Political Rights](#) (June 2014).

⁵ IHREC, [Strategy Statement 2019-2021](#) (January 2019).

⁶ Joint Statement by UN Treaty Bodies (24 March 2020), 'UN Human Rights Treaty Bodies call for human rights approach in fighting COVID-19'. See OHCHR (April 2020), [Compilation of statements by human rights treaty bodies in the context of COVID-19](#). See also Human Rights Committee, *Statement on derogations from the Covenant in connection with the COVID-19 pandemic* (30 April 2020) CCPR/C/128/2.

⁷ The *Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020*, signed into law on the 20 March, empowers the Minister of Health to make regulations to prevent, limit, minimise and slow the spread of Covid-19, including regulations that direct people to stay at home, impose travel restrictions, prohibit certain events, restrict access to certain premises, and empower the police to enforce these restrictions. The Act also enables medical officers to order the detention and isolation of persons who are suspected to be a potential source of Covid-19 infection in circumstances where the person does not submit to voluntary self-isolation. In a letter to An Taoiseach, the Commission stated that as these exceptional measures have the potential to curtail fundamental freedoms and rights it is important that any restrictions are necessary, proportionate and non-discriminatory and the implementation of the regulations are informed by international human rights and equality principles. See IHREC, Letter to An Taoiseach (25 March 2020).

2. Legislative and Administrative Framework

Domestic incorporation and reservations

The State report does not provide any response to the Committee's recommendation in the 2014 Concluding Observations to take effective measures to ensure that the rights protected under the Covenant are directly applicable in Irish courts.⁸ The failure to incorporate the rights into domestic law means that rights holders remain unable to rely directly on the provisions of the Covenant before the Irish Courts.

In its 2014 Concluding Observations, the Committee also recommended that the State review its reservations to Article 10(2) and Article 20(1) with a view to withdrawing them.⁹ The State report does not provide any response to this recommendation.

The Commission recommends that the Committee reiterates its recommendation to the State to ensure the Covenant's incorporation into domestic law.

The Commission recommends that the Committee requests information on whether the State will review its reservations to Articles 10(2) and 20(1) with a view to withdrawing them.

Legislation

Fines (Payment and Recovery) Act 2014 (Article 11)

In the 2014 Concluding Observations, the Committee recommended the State fully implement the *Fines (Payment and Recovery) Act 2014* to ensure that in no case imprisonment is used as a method of enforcing contractual obligations.¹⁰ The legislation was commenced in 2016,¹¹ however recent commentary¹² and analysis¹³ has indicated that the legislation is not working as envisaged as there has been a sharp increase in the failure to pay court-imposed fines¹⁴ and there continues to be significant numbers of women imprisoned for failing to pay court-ordered fines.¹⁵ A High Level

⁸ Human Rights Committee, [Concluding observations on the fourth periodic report](#) (19 August 2014) CCPR/C/IRL/CO/4, para. 5.

⁹ Human Rights Committee, [Concluding observations on the fourth periodic report](#) (19 August 2014) CCPR/C/IRL/CO/4, para. 5.

¹⁰ Human Rights Committee, [Concluding observations on the fourth periodic report](#) (19 August 2014) CCPR/C/IRL/CO/4, para. 16.

¹¹ Government of Ireland, [Fifth periodic report submitted by Ireland under article 40 of the Covenant](#) (31 January 2020) para. 182.

¹² Carl O'Brien, [Laws aimed at cutting numbers jailed for unpaid fines 'not working'](#) (01 March 2020) *The Irish Times*.

¹³ [Correspondence from Angela Denning, Chief Executive Officer of the Courts Service, to the Public Accounts Committee](#) (04 December 2019). See also [Vote 22: Courts Service](#), Committee of Public Accounts debate (14 November 2019).

¹⁴ Rose from 455 in 2018 to 861 in 2019. See Irish Prison Service, [Annual Report 2019](#) (June 2020) p. 25.

¹⁵ In 2019, 17 per cent of female committals to prison were for non-payment of court-ordered fines – twice that of the comparable figure of men. See Irish Prison Service, [Annual Report 2019](#) (June 2020).

Working Group¹⁶ was formed in May 2019 to review the terms, operation, and enforcement of the Act.¹⁷

The Commission recommends that the Committee asks the State to provide information on the review of the efficacy of the *Fines (Payment and Recovery) Act 2014*, particularly in relation to its disproportionate impact on women.

Commencement delays

In Ireland, legislation may be enacted but still not be “in force” or “commenced”. An Act may provide that it will enter into operation when commencement provisions in the Act are invoked. This can give rise to significant delays between formal enactment of legislation and its entry into force.¹⁸ The Commission would highlight three important Acts, or parts of Acts, that were enacted some time ago but have not yet been “commenced”:

The *Assisted Decision-making (Capacity) Act 2015*, which will significantly alter procedures regarding involuntary confinement in residential care, as well as providing for assisted decision making for persons lacking capacity in relation to certain important decisions, was enacted five years ago but is yet to be commenced.

The *Mental Health (Amendment) Act 2018*, which amends the definition of ‘voluntary patient’ in the *Mental Health Act 2001*, as recommended by the Committee,¹⁹ to reflect capacity and consent and provides for guiding principles in mental health treatment, has also been enacted but not commenced.

Similarly, **section 9 of the *Criminal Justice Act 2011***, which provides that Garda questioning must not commence until legal advice has been accessed, was enacted nine years ago but has not been commenced.

The Commission recommends that the Committee urges the State to immediately commence the *Assisted Decision Making (Capacity) Act 2015*, the *Mental Health (Amendment) Act 2018* and section 9 of the *Criminal Justice Act 2011*.

¹⁶ The Group comprises representatives of the Department of Justice and Equality, the Attorney General’s Office, the Director of Public Prosecutions, the Courts Service, An Garda Síochána, the Irish Prisons Service and the Probation and Welfare Service.

¹⁷ Minister for Justice and Equality, [Courts Service Administration](#), Dáil Éireann Debate (12 June 2019).

¹⁸ Commencement provisions may specify a date or may delegate to a specified government minister the power to designate the day upon which an Act, or part of an Act, will enter into operation. The delegation of power to a government minister is more common. The Minister will then issue an order (secondary legislation) prescribing the date upon which the Act or part of the Act will enter into operation. It is therefore often entirely at the Minister’s discretion to decide when a piece of legislation will enter into operation. If an Act does not contain a commencement provision, the Act will be deemed to have entered into force on the date upon which it is signed by the President of Ireland.

¹⁹ Human Rights Committee, [Concluding observations on the fourth periodic report](#) (19 August 2014) CCPR/C/IRL/CO/4, para. 12.

Proposed legislation

Amendments to the *Mental Act 2001*

There have been significant delays in bringing forth legislation in the areas of mental health and capacity, including in relation to involuntary admissions and consent to treatment. While the State report²⁰ indicates that amendments to the *Mental Act 2001* are being progressed on the basis of recommendations of the Expert Group Review,²¹ the Bill to encompass these proposed reforms is yet to be published over five years after the publication of the recommendations.

The State report indicates²² that the Department of Health is continuing to progress a general scheme of a Bill to put in place safeguards protecting the liberty of persons with capacity issues in certain facilities. However, there have also been significant delays in bringing forward this legislation. In March 2018, the Commission made a submission²³ to the Department's public consultation on its *Deprivation of Liberty: Safeguards*²⁴ Consultation Paper and preliminary draft heads.

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

The Commission recommends that the Committee asks the State how it intends to align the Bill with international human rights standards, in particular the Convention on the Rights of Persons with Disabilities (CRPD).

The Commission recommends that the Committee asks the State to advise on the progress of the *Protection of Liberty Safeguards Bill* and provide a timeline for its finalisation and enactment.

Optional Protocol to the UN Convention against Torture and All Forms of Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

The Commission has previously called for the ratification of the Optional Protocol to the UN Convention against Torture and All Forms of Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and the establishment of a National Preventative Mechanism (NPM) to independently monitor places of detention.²⁵ The State report outlines that a draft scheme of the *Inspection of Places of Detention Bill* is being prepared which provides for the creation of a network of national preventative mechanisms in a number of sectors and a coordinating mechanism to assist these

²⁰ Government of Ireland, [Fifth periodic report submitted by Ireland under article 40 of the Covenant](#) (31 January 2020) para. 93.

²¹ Department of Health, [Report of the Expert Group on the Review of the Mental Health Act 2001](#) (December 2014).

²² Government of Ireland, [Fifth periodic report submitted by Ireland under article 40 of the Covenant](#) (31 January 2020) para. 95.

²³ IHREC, [Submission to the public consultation on Deprivation of Liberty: Safeguard Proposals](#) (March 2018).

²⁴ This legislation is now called the "Protection of Liberty Safeguards".

²⁵ IHREC, [Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland](#) (January 2020) p. 5.

bodies.²⁶ The Commission has emphasised the importance of appropriate funding, staffing, and data access for the effective functioning of the National Preventative Mechanism co-ordinating body, and the importance of the involvement of civil society organisations in the operation of OPCAT.²⁷ The Commission has also recommended that it be given a role as NPM Coordinating Body.²⁸

The Commission recommends that the Committee urges the State to ratify OPCAT without further delay, and to provide detail on the establishment, resourcing and data access of the national preventative mechanism and the involvement of civil society organisations in the operation of OPCAT.

Equality and human rights infrastructure (Article 26)

In the Commission's 2014 submission to the Committee it highlighted concerns that neither the Constitutional guarantee of equality under Article 40.1 nor the legislative provisions on discrimination in the *Equal Status Acts* and the *Employment Equality Acts* are as extensive as the protections under Article 26 of the Covenant.²⁹ The Commission has recommended that the grounds of discrimination be expanded to include to prohibit discrimination on the ground of socio-economic status.³⁰ The Commission has also recommended that the equality acts should explicitly prohibit discrimination against transgender, non-binary and intersex people.³¹

The Commission recommends that the Committee asks the State to advise on what measures it is taking to amend the *Employment Equality Acts 1998-2015* and the *Equal Status Acts 2000-2018* to ensure that the protected grounds of discrimination under the legislation are as comprehensive as the protections under Article 26.

Business and human rights

The State has a positive obligation to ensure that all Irish businesses respect human rights throughout their operations and take measures to avoid negative impacts on human rights in their

²⁶ Government of Ireland, [Fifth periodic report submitted by Ireland under article 40 of the Covenant](#) (31 January 2020) paras. 98-99.

²⁷ IHREC, [Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland](#) (January 2020) p. 5,

²⁸ IHREC, [Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland](#) (January 2020)

²⁹ IHREC, [Submission of the Irish Human Rights Commission to the UN Human Rights Committee on the Examination of Ireland's Fourth Periodic Report under the International Covenant on Civil and Political Rights](#) (June 2014) pp. 18-19.

³⁰ IHREC (2017) [Observations on the Equality \(Miscellaneous Provisions\) Bill 2017](#).

³¹ IHREC, [Submission to the Citizens' Assembly on Gender Equality](#) (March 2020) pp. 27-28; IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination](#) (October 2019) pp. 17-18; IHREC, [Observations on Equality \(Miscellaneous Provisions\) Bill 2017](#) (December 2017); IHREC, [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women](#) (January 2017) p. 34; IHREC, [Observations on the General Scheme Equality/Disability \(Miscellaneous Provisions\) Bill](#) (November 2016) pp. 47-49; IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (May 2015) pp. 22-23.

supply chains and procurement contracts.³² The Programme for Government of the new Government includes a commitment to complete the review of the implementation of the Business and Human Rights Action Plan by the end of 2020.³³ The Programme commits to ensuring that the Action Plan is further developed to review whether there is a need for a greater emphasis on mandatory due diligence. The Commission has recommended that the State should consider introducing human rights due diligence as a mandatory requirement with legislative underpinning, including in the context of government procurement.³⁴

The Commission recommends the Committee asks the State on the status of the review of the Business and Human Rights Action Plan, in particular the consideration of adopting mandatory human rights due diligence.

Equality budgeting

In 2015, the Committee on Economic, Social and Cultural Rights recommended that Ireland ‘consider instituting human rights impact assessments into its policy-making processes’.³⁵ Social and policy impact assessments and regulatory impact assessments are important resources to ensure due consideration has been given to equality and human rights obligations in the performance of budgetary functions.³⁶ The new Programme for Government commits to expand the Equality Budgeting Programme across government departments and agencies and expanding the Equality Budgeting Initiative, looking at outcomes of expenditure as they relate to people with disabilities.³⁷

The Commission recommends the Committee asks the State on measures taken to ensure the budgetary policy is equality and gender proofed.

Collection of disaggregated data

The Commission has consistently recommended that the State develop a system of data collection that can be disaggregated to capture the experiences of minority and marginalised groups in Ireland.³⁸

³² See UN Office of the High Commissioner for Human Rights (2011), [Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework](#). See also, IHREC (March 2015), [Submission on Ireland’s National Action Plan on Business and Human Rights](#), pp.13–14.

³³ *Programme for Government – Our Shared Future* (June 2020) p.129.

³⁴ IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination](#) (October 2019) pp. 147-148.

³⁵ Committee on Economic, Social and Cultural Rights (2015) [Concluding observations on the third periodic report of Ireland](#), para. 11(d).

³⁶ IHREC, [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women](#) (January 2017) p. 50.

³⁷ *Programme for Government – Our Shared Future* (June 2020) pp.89, 92.

³⁸ IHREC(2020) [Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland.](#)) p. 7; IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination](#) (October 2019) pp. 22-23; IHREC, [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women](#) (January 2017) p. 30; IHREC, [Ireland and the United Nations Convention on the Rights of the Child](#) (December 2015) p. 33.

This reflects concerns raised by other treaty monitoring bodies including the Committee on the Elimination of Racial Discrimination,³⁹ the Committee on the Elimination of Discrimination against Women,⁴⁰ the Committee on the Rights of the Child,⁴¹ and the Committee on Economic, Social and Cultural Rights⁴² that Ireland does not have sufficient disaggregated data to allow an adequate and regular assessment of the extent to which it is meeting its obligations under international law.

In the midst of the Covid-19 pandemic the need for such a system is critically important particularly to understand if and why the public health impacts of the virus, and the policing and economic measures disproportionately and differentially affected different groups within society.

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

3. Fair Trial and Equal Access before the Law (Articles 9, 14)

Access to counsel

In its 2014 Concluding Observations the Committee recommended the State guarantee, in law and in practice, the right to counsel prior to interrogation, and to take concrete steps to facilitate the presence of lawyers during interrogation.⁴³ Section 9 of the *Criminal Justice Act 2011*, which provides that Garda questioning may not take place until the person has had the opportunity to access legal advice, has not been commenced.

The Code of Practice on Access to a Solicitor by Persons in Garda Custody⁴⁴ provides that a suspect should be advised before questioning commences that they may request a solicitor be present during the interview. In 2017, in the case of *DPP v. Doyle*,⁴⁵ the Supreme Court decided that while there is a right to reasonable access to a solicitor, this did not entail a requirement to have a solicitor present during an interview.

³⁹ Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland](#) (23 January 2020) CERD/C/IRL/CO/5-9, para. 5.

⁴⁰ Committee on the Elimination of Discrimination against Women, [Concluding observations on the combined sixth and seventh periodic reports of Ireland](#) (09 March 2017) CEDAW/C/IRL/CO/6-7, paras. 18, 26.

⁴¹ Committee on the Rights of the Child, [Concluding Observations on the combined third and fourth periodic reports of Ireland](#) (01 March 2016) CRC/C/IRL/CO/3-4, para. 17.

⁴² Committee on Economic, Social and Cultural Rights, [Concluding observations on the third periodic report of Ireland](#) (08 July 2015) E/C.12/IRL/CO/3, para. 6.

⁴³ Human Rights Committee, [Concluding observations on the fourth periodic report](#) (2014) para. 17.

⁴⁴ An Garda Síochána, [Code of Practice on Access to a Solicitor by Persons in Garda Custody](#) (2015).

⁴⁵ [DPP v Doyle](#) [2017] IESC 1.

The Commission recommends the Committee asks the State, in the context of the proposed codification of police powers,⁴⁶ whether it will place the current practice of permitting lawyers be present during questioning on a statutory basis.⁴⁷

Undue delays in criminal and civil proceedings

The State has yet to provide effective remedy, as set out in *General Comment No. 32*,⁴⁸ to individuals whose right to a fair trial in criminal and civil proceedings without undue delay⁴⁹ has been violated. The European Court of Human Rights held in *McFarlane v. Ireland*⁵⁰ in 2010, and a number of other related cases since then, that the State was in violation of Article 6.1 (excessive length of proceedings) and Article 13 (lack of effective remedies) of the European Convention on Human Rights.⁵¹ The State proposed a statutory non-court compensatory scheme,⁵² however a report by the Joint Committee on Justice and Equality raised a number of concerns with this proposal including access to legal advice and lawyers, the lack of clarity about possibilities to appeal the refusal of an award, and the restrictions applicable to the award of compensations.⁵³

The Courts in Ireland, including the Supreme Court, were once again criticised in April 2020 for excessive delays (violation of Article 6 ECHR) in dealing with a civil case and lack of an effective remedy (violation of Article 13 ECHR) by the European Court of Human Rights in *Keaney v Ireland*.⁵⁴

The Commission recommends the Committee asks the State how it intends to deal with chronic delays in the Courts system and to provide an effective remedy to individuals whose right to a fair trial in criminal or civil proceedings without undue delay has been violated.

Civil legal aid

Under *General Comment No. 32*, States are encouraged to provide legal aid in non-criminal proceedings for individuals who do not have sufficient means to pay for it. In Ireland civil legal aid is

⁴⁶ As discussed in Section 7.

⁴⁷ IHREC, [Submission to the Commission on the Future of Policing](#) (2018) p. 21; IHREC, [Submission to the Committee against Torture](#) (2017) pp. 23-24.

⁴⁸ Human Rights Committee, [General Comment No. 32](#) (2007) para. 58.

⁴⁹ Human Rights Committee, [General Comment No. 32](#) (2007) paras. 27, 35.

⁵⁰ [McFarlane v. Ireland \[2010\]](#) Application no. 31333/06.

⁵¹ The State's failure to provide an effective remedy in this group of cases led the Council of Europe Committee of Ministers to transfer the supervision of this group from the standard to the enhanced procedure in 2017. Council of Europe, [1288th Meeting: Decision](#) (6-7 June 2017).

⁵² The draft general scheme of the *European Convention on Human Rights (Compensation for Delays in Court Proceedings) Bill* provided for an independent assessor to make findings in respect of alleged breaches and award compensation as appropriate. An application to the scheme can be made either with regard to those proceedings which have not yet been concluded or no later than 12 months after the conclusion of such proceedings. Applicants can receive compensation under this mechanism and also retain the possibility to recover damages for a breach of a constitutional right.

⁵³ Joint Committee on Justice and Equality, [Report on pre-legislative scrutiny of the General Scheme of the European Convention on Human Rights \(compensation for delays in court proceedings\) Bill](#) (2019).

⁵⁴ [Keaney v Ireland \[2020\]](#) Application no. 72060/17.

unavailable in a number of legal and administrative areas, which has proved to be a barrier to access to justice for those on low incomes, women, victims of domestic violence, victims of trafficking and labour exploitation, international protection applicants, Travellers, Roma, and minority ethnic communities.⁵⁵ The Legal Aid Board is precluded from providing representation to individuals before quasi-judicial tribunals and bodies⁵⁶ dealing with social welfare appeals, housing issues, and employment and equality cases.⁵⁷

The Commission has called for the remit of the Legal Aid Board to be reviewed and for civil legal aid services to be made available in a wider range of areas⁵⁸, for the minimum contribution fee for civil legal aid to be reviewed, particularly in light of the Legal Aid Board's Public Sector Equality and Human Rights Duty obligations, and for the Legal Aid Board to be adequately resourced to ensure that waiting times are reduced.⁵⁹

The Commission recommends the Committee asks the State to detail the measures it is taking to ensure that the financial requirements of accessing legal aid do not act as barrier to justice for vulnerable groups.

The Commission recommends the Committee urges the State to consider extending the scope of the system of civil legal aid to tribunals in the areas of social welfare appeals, housing issues, and employment and equality cases so as to ensure appropriate access to justice.

Criminal legal aid

Planned reforms under the *Criminal Justice (Legal Aid) Bill*⁶⁰ have been subject to repeated delay since the Government's commitment in 2015 to reform criminal legal aid.⁶¹ Submissions to the Joint Committee on Justice and Equality's discussion on access to justice and legal costs highlighted the impact that the under-resourcing of the criminal legal aid system has on an individual's access to justice.⁶²

The Commission recommends the Committee urges the State to progress the planned legislation to reform the system of criminal legal aid.

⁵⁵ IHREC, [Submission to the Citizens' Assembly on Gender Equality](#) (2020) pp. 29-30; IHREC, [Submission to the Committee on the Elimination of Racial Discrimination](#) (2019) pp. 110-111, 142-143; IHREC, [Submission to the Committee on the Elimination of Discrimination Against Women](#) (2017) pp. 38, 62, 68; IHREC, [Report to Committee on Economic, Social and Cultural Rights](#) (2015) pp. 14-15.

⁵⁶ Including the Labour Court, the Social Welfare Appeals Office, and the Workplace Relations Commission.

⁵⁷ Human Rights Council, [Report of the UN Independent Expert on Extreme Poverty and Human Rights, Maqdalena Sepúlveda Carmona: Mission to Ireland](#) (2011) p.4.

⁵⁸ IHREC, [Submission to the Committee on the Elimination of Racial Discrimination](#) (2019) p. 143.

⁵⁹ IHREC, [Submission to the Committee on the Elimination of Discrimination Against Women](#) (2017) p. 39.

⁶⁰ Transferring the administration of the Criminal Legal Aid Scheme to the Legal Aid Board, introducing a more rigorous and objective means testing system for criminal legal aid, provision for contributions by applicants, and new sanctions.

⁶¹ Minister for Justice and Equality, [Legal Aid Service Reform, Dáil Éireann debate](#) (03 October 2019). See also Department of Justice and Equality, [Criminal Legal Aid: Overview of current system and potential lessons](#) (July 2018) pp. 31-32.

⁶² Joint Committee on Justice and Equality, [Access to justice and legal costs: Discussion](#) (27 November 2019).

The Commission recommends the Committee asks the State to detail the measures taken to ensure that the system of criminal legal aid is properly resourced so as to ensure access to justice for individuals.

Offences against the State Act

In its Concluding Observations, the Committee has repeatedly expressed concerns that the State is not effectively monitoring the necessity for retaining the existing legislation,⁶³ by providing evidence of the inadequacy of ordinary courts to administer justice, particularly when there is a pattern of non-usage of provisions.

The Commission on the Future of Policing recommended the establishment of an independent examiner to review terrorist and serious crime legislation.⁶⁴ The Department of Justice and Equality, as part of implementing the recommendations of the Commission on the Future of Policing, is planning a review of the offences against the State legislation.⁶⁵

The Commission recommends the Committee urges the State to ensure that the review of existing legislation considers whether the legislation is necessary, proportionate and compatible with Ireland's obligations under the Covenant.

Retention of the Special Criminal Court

Notwithstanding the Committee's longstanding recommendation that the State should consider the abolition of the Special Criminal Court, the Court continues to be in operation with its remit expanded over the years⁶⁶ and a second Special Criminal Court beginning to operate in 2016 to clear a backlog of cases.⁶⁷

The 2002 Committee to Review the *Offences against the State Acts 1939 to 1998* (the Hederman Committee) recommended that the State should consider alternative methods of preventing jury intimidation such as that juries can be anonymous, they can be protected during the trial, and they

⁶³ Human Rights Committee, [Concluding observations on the fourth periodic report](#) (19 August 2014) para. 17; Human Rights Committee, [Concluding observations of the Human Rights Committee: Ireland](#) (30 July 2008) para. 20; Human Rights Committee, [Report of the Human Rights Committee](#) (2000) para. 436; Human Rights Committee, [Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Comments of the Human Rights Committee](#) (03 August 1993) para. 11.

⁶⁴ Commission on the Future of Policing, [The Future of Policing in Ireland](#) (2018) p. 38.

⁶⁵ [Offences against the State \(Amendment\) Act 1998 and Criminal Justice \(Amendment\) Act 2009: Motions](#), Dáil Éireann debate (24 June 2020).

⁶⁶ Extension to list of scheduled criminal offences under Section 8 of the [Criminal Justice \(Amendment\) Act 2009](#). The Commission recommended that the list of scheduled offences should not be extended to include these organised criminal offences as the section of the Act was disproportionate and unnecessary. See IHRC, [Observations on the Criminal Justice \(Amendment\) Bill 2009](#) (2009).

⁶⁷ Department of Justice and Equality, [Minister Fitzgerald signs rules of court for the second Special Criminal Court](#) (22 April 2016).

can even be located in a different place from where the trial is held with communication by video link.⁶⁸

In *Kavanagh v. Ireland*, the Committee held that that the State should ensure that persons should not be tried before the Special Criminal Court unless reasonable and objective grounds for the decision of the DPP to refer a case are provided. The Commission has recommended that the decision of the DPP to refer a case to the Special Criminal Court should be subject to a positive review mechanism.⁶⁹

The Commission recommends the Committee requests the State to consider implementing the concluding observations of the Committee, the recommendations of the Hederman Committee, and the Committee’s decision In *Kavanagh v. Ireland*.

Covid-19 impact on access to justice

The move towards remote hearings during the pandemic⁷⁰ has given rise to concerns on the right to a fair trial including ability to fully participate in proceedings, access to legal assistance, access to information, and access to translation and interpretation services.⁷¹ The decision by the Courts Service to initially suspend new jury trials⁷² inevitably led to further delays in the criminal justice system with significant consequences for access to justice.

Concerns have also been raised by a number of defence solicitors around the lack of clear guidelines on social distancing and hygiene within Garda stations which impacted on a suspect’s right to access legal advice.⁷³

The Commission recommends the Committee asks the State how it intends to apply the lessons on the lack of standardised health protocols in Garda stations to ensure that a person’s right to access legal advice during questioning is not restricted in the future.

The Commission recommends the Committee asks the State to assess the impact of remote hearings on criminal justice outcomes and the fairness of criminal justice proceedings.

⁶⁸ A Committee established in 1998 to examine all aspects of the *Offences against the State Acts 1939 to 1998*. While a majority of the Hederman Committee were in favour of retaining the Special Criminal Court, a minority stated the case for the necessity of non-jury trials had not been established as there are steps that can be taken to reduce jury intimidation. See The Committee to Review the Offences against the State Acts 1939 to 1998, [Report of the Committee to Review the Offences against the State Acts, 1939 - 1998 and Related Matters](#) (2002) paras. 9.88-9.97.

⁷⁰ Remote hearings have been in the Supreme Court, High Court, Court of Appeal, the Circuit Court, and District Court. The Chief Justice has stated that remote hearings could be held alongside safe physical hearings until the second half of 2021. Courts Service, [General statement of the Chief Justice](#) (08 May 2020)

⁷¹ Fair Trials, [Safeguarding the right to a fair trial during the Coronavirus pandemic: Remote criminal justice proceedings](#) (2020).

⁷² Courts Service, [COVID-19: Statements of the President of Each Jurisdiction](#) (16 May 2020).

⁷³ See results of a nationwide survey conducted of solicitors from 01 May to 13 May. Shalom Binchy & Co Solicitors, [The Experiences of Criminal Defence Solicitors in Garda Stations during Covid 19 - March to May 2020](#) (2020).

4. Redress for Historic Abuses (Article 2, 3, 7)

Commissions of investigation

The State's approach to inquiring into historical abuse is marked with inconsistencies.⁷⁴ Under the *Commissions of Investigation Act 2004* the State can establish independent statutory investigations, however not all reviews and inquiries are established under this Act.⁷⁵ The Commission has previously recommended that the Act should be amended so that a Minister should have to provide reasons to Dáil Éireann for their decision to not establish a statutory investigation.⁷⁶ Furthermore, it is essential that the State incorporate human rights and equality considerations into the terms of reference of commissions of inquiry.⁷⁷

The Commission recommends that the Committee asks the State what steps it is taking to embed human rights and equality considerations in the statutory frameworks for investigating historical abuse.

Historical Abuse in Scouting Ireland

A recent non-statutory based 'learning review' of historical sexual abuse of children in Scouting Ireland found that sexual abuse did occur and 'was not responded to in a way that protected the young person or sought to hold the offender to account.'⁷⁸ The full extent of the abuse is not able to be substantiated as evidence 'was mismanaged and hidden by a combination of incompetence and intent.'⁷⁹

The Commission recommends that the Committee asks the State to provide information on measures taken to respond to the findings of the review of historical child sexual abuse in Scouting Ireland.

⁷⁴ See IHREC, [Ireland and the Convention against Torture: Submission to the United Nations Committee against Torture on Ireland's second periodic report](#) (July 2017) p. 53; IHREC, [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women: Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's combined sixth and seventh periodic reports](#) (January 2017) p. 41.

⁷⁵ For example The Inter-Departmental Committee inquiry into the Magdalen Laundries, was not established under this Act and therefore had no terms of reference to investigate allegations of abuse. See IHREC, [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women: Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's combined sixth and seventh periodic reports](#) (January 2017) p. 41.

⁷⁶ IHREC, [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women: Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's combined sixth and seventh periodic reports](#) (January 2017) pp. 41-42.

⁷⁷ The Council of Europe Commissioner for Human Rights noted in 2017 that 'a common feature of most of these inquiries is that they have not taken a human rights based approach'. See Council of Europe Commissioner for Human Rights, [Report by Nils Muižnieks following his visit to Ireland from 22 to 25 November 2016](#) (2017) para. 170.

⁷⁸ Report commissioned by Scouting Ireland. See Ian Elliott, [Historical Sexual Abuse in Scouting: A Learning Review](#) (March 2020) p. 4.

⁷⁹ Ian Elliott, [Historical Sexual Abuse in Scouting: A Learning Review](#) (March 2020) p. 33.

Abuse in care settings

There have been repeated delays in the publication of a final report, by a statutory Commission of Investigation into allegations of abuse of a woman ('Grace') with intellectual disabilities in a foster care home between 1989 and 2009.⁸⁰ The Commission commenced Phase 1 of its investigation in May of 2017 and was meant to have a report completed within a year. Two twelve month extensions of time for the Phase 1 report to be completed were granted by the State but it was still not finished in May of 2020 when the Commission asked for a further (3rd) extension of time.

The 'Grace' case raises very significant concerns around the culture and treatment of individuals with intellectual disabilities in the care system⁸¹ but also about the efficacy of independent Commissions of Investigation.

The Commission recommends that the Committee asks the State how it intends to address the Commission of Investigation's delay in producing a Phase 1 report and how similar delays with Phase 2 of the Commission of Investigation will be avoided.

The Commission recommends that the Committee asks the State how it intends to address the Phase 1 findings of the Commission of Investigation, and what measures it is taking to ensure victims of child sexual abuse such as 'Grace' are provided with an effective remedy, including appropriate compensation, restitution, rehabilitation and measures of satisfaction.

Magdalen Laundries

The Committee's recommendation⁸² in the fourth periodic review for the State to undertake a prompt, independent and thorough investigation into all the allegations of abuse of women and children in Magdalen laundries has still not been addressed.⁸³ The Commission has previously stated that the report of the McAleese Inter-Departmental Committee is insufficient for the State to meet its human rights obligations as it had no remit to investigate allegations of torture and other criminal offences.⁸⁴

There has been progress in implementing the recommendations of the Office of the Ombudsman in the administration of the Magdalen Restorative Justice Scheme.⁸⁵ However recommendations in the

⁸⁰ Ó Cionnaith, '[State inquiry into abuse at foster home set to be delayed for third time](#)' RTÉ, 8 May 2020.

⁸¹ IHREC, '[Commission Calls for 'Grace' Investigation to Respect Human Rights and Equality Obligations for People with Intellectual Disabilities](#)' (07 March 2017).

⁸² Human Rights Committee, '[Concluding observations on the fourth periodic report of Ireland](#)' (19 August 2014) CCPR/C/IRL/CO/4, para. 10.

⁸³ The Commission has recommended that all credible allegations of abuse be promptly, thoroughly and independently investigated. See IHREC, '[Submission to UN Human Rights Committee on Ireland's one year follow-up report to its fourth periodic review under ICCPR](#)' (September 2015) para. 6.

⁸⁴ IHREC(2020) '[Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland](#)', p. 27.

⁸⁵ See recommendations in Office of the Ombudsman, '[Annual Report 2018](#)' (2019) pp. 22-23.

Quirke report⁸⁶ which established the *ex gratia* scheme are still not implemented.⁸⁷ In addition the non-commencement of the *Assisted Decision-Making (Capacity) Act 2015* has meant that women who were deemed to lack capacity were not able to access the scheme, a number of these women were eventually made wards of the court.⁸⁸

In relation to the prosecution of perpetrators, the State's report states that no individuals claiming to be victims of the Magdalen laundries have made any complaints to the Department of Justice and Equality seeking further inquiries or criminal investigations.⁸⁹ However victims may not be aware of the complaints mechanism or have the physical or psychological ability to present to law enforcement officials.⁹⁰ The Commission has stated that the initiation of a criminal investigation does not require a victim to make a complaint.⁹¹

In a recent decision,⁹² the Committee against Torture has found it has jurisdiction to decide Elizabeth Coppin's complaint that the State failed to establish an a prompt and independent investigation into her allegations that she was subject to torture and cruel, inhuman and degrading treatment and punishment in three separate Magdalen laundries and that the State failed to provide her with full redress for the violations suffered. The Committee against Torture found that the complaint was admissible as the complainant had shown for the purposes of admissibility that the State is continually violating its obligations under the Convention against Torture and there is no domestic remedies available to the complainant to provide her with redress.⁹³ The Committee against Torture also noted that they were not precluded from examining the complaint despite the complainant waiving their right to action as a condition of receiving *ex gratia* awards and that these waivers do not alleviate the obligation of the State to investigate allegations of continuing violations.⁹⁴

⁸⁶ The Magdalen Commission Report, [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](#) (2013).

⁸⁷ In particular, Mr. Justice Quirke recommended that as part of the scheme women who were admitted to and worked in Magdalen laundries should be provided with a medical card which provides access to the full range of medical services currently enjoyed by holders of the *Health (Amendment) Act 1996* card ("the HAA card"). The Magdalen Commission Report, [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](#) (2013) p. 7.

⁸⁸ Of the 39 women who were deemed to lack capacity, 7 had died without receiving any redress payment. Conall Ó Fátharta, [Seven die in wait for Magdalene laundry redress payments](#) (05 March 2018) *The Irish Examiner*.

⁸⁹ Government of Ireland, [Fifth periodic report submitted by Ireland under Article 40 of the Covenant](#) (January 2020), para. 67.

⁹⁰ Justice for Magdalenes Research (2018) [Follow-up report to the UN Committee against Torture](#), p. 9.

⁹¹ IHREC, [Submission to UN Human Rights Committee on Ireland's one year follow-up report to its fourth periodic review under ICCPR](#) (September 2015) para. 8.

⁹² Committee against Torture, [Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 879/2018](#) (14 January 2020) CAT/C/68/D/879/2018.

⁹³ Committee against Torture, [Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 879/2018](#) (14 January 2020) CAT/C/68/D/879/2018, paras. 6.5-6.6, 6.8.

⁹⁴ Committee against Torture, [Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 879/2018](#) (14 January 2020) CAT/C/68/D/879/2018, para. 6.7.

The Commission recommends that the Committee urges the State to undertake a prompt, thorough and independent investigation into the situation of the women who were institutionalised in the Magdalen Laundries.

The Commission recommends that the Committee asks the State what measures are being taken to ensure allegations of abuse and torture taking place in Magdalen Laundries are investigated, and lead to the prosecution and punishment of the perpetrators.

The Commission recommends that the Committee asks the State what measures it is taking to ensure victims are provided with an effective remedy, including appropriate compensation, restitution, rehabilitation and measures of satisfaction.

The Commission recommends that the Committee inquires about the State's progress on implementation of the recommendations by the Office of the Ombudsman and the recommendations of the Quirke Report.

Mother and Baby Homes

The Commission has argued that the remit of the Commission of Investigation into Mother and Baby Homes is too narrow in terms of the institutions that it is investigating, and that the exclusion of certain children from the Residential Institutions Redress Scheme may be an arbitrary barrier to an effective remedy.⁹⁵ The final report of the Commission of Investigation into Mother and Baby Homes while due in February 2020 was extended to June 2020.⁹⁶

The Committee on the Elimination of Racial Discrimination recently expressed concerns about reports of abuses based on race in mother and baby homes, including racial discrimination in the adoption process and physical, emotional and sexual abuse experienced by those children who self-identify as mixed-race Irish in these institutions. The Committee welcomed the inclusion of examination of discrimination on the ground of race in the terms of reference of the Commission of Investigation and called for the State to fully implement the recommendations of the Commission of Investigation with a view to bringing perpetrators to justice, providing victims with adequate remedies and preventing a reoccurrence.⁹⁷

The full report of the Collaborative Forum on Mother and Baby Homes⁹⁸ was not published on the advice of the Attorney General who said that it should not be published before the Commission of

⁹⁵ IHREC, [Submission to the UN Committee against Torture on Ireland's one year follow-up to its second periodic report under CAT](#) (November 2018) pp. 53-54. In its second interim report the Commission of Investigation into Mother and Baby Homes stated that the State should consider the decision not to include unaccompanied children that were resident in Mother and Baby Homes and County Homes from the remit of Residential Institutions Redress Scheme. Commission of Investigation into Mother and Baby Homes and Certain Related Matters, [Second Interim Report](#) (2016) pp. 3-4.

⁹⁶ Sean O'Riordan, [Mother and Baby Homes commission seeks more time](#) (15 February 2020) *Irish Examiner*.

⁹⁷ Committee on the Elimination of Racial Discrimination (2020) [Concluding observations on the combined fifth to ninth reports of Ireland](#), para. 18.

⁹⁸ Comprised of former residents of these homes and related institutions, the Forum was established in July 2018 to examine issues of concern to them including identity, access to personal information, health and

Investigation into Mother and Baby Homes report.⁹⁹ In December 2019, the Minister for Health announced a package of health and wellbeing supports for former residents of Mother and Baby Homes and related institutions.¹⁰⁰ However the package announced does not reflect all the recommendations of the Collaborative Forum,¹⁰¹ in particular the recommendation that the former residents be transferred to a HAA card.

The Commission recommends that the Committee urges the State to ensure that any allegations of abuse that arise from the report of the Commission of Investigation into Mother and Baby Homes in both the institutions that are under its terms of reference and the other institutions which have been excluded, are thoroughly and independently investigated, and the perpetrators that are identified are prosecuted and punished.

The Commission recommends that the Committee asks the State what measures have been undertaken to provide full redress for victims, including restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices.

The Commission recommends that the Committee urges the State to publish the full report of the Collaborative Forum of Former Residents of Mother and Baby Homes and Related Institutions.

Children's Institutions

The State Report provided no information on the implementation of the Committee's recommendation in its concluding observations to conduct an effective investigation of abuse, mistreatment or neglect in children's institutions and the provision of effective remedies to survivors of reformatory and industrial schools.¹⁰² In a recent documentary *Redress: Breaking the Silence*¹⁰³ survivors of institutional abuse expressed dissatisfaction with the conduct at the Commission of Inquiry into Child Abuse and the administration of the redress scheme. The UN Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and

wellbeing supports, and memorialisation. See Government of Ireland, [Mother and Baby Home Collaborative Forum \(2019\)](#).

⁹⁹ [Mother and Baby Homes Inquiries](#), Dáil Éireann Debate (20 June 2019).

¹⁰⁰ Government of Ireland, [Minister for Health Announces Package of Supports for Former Residents of Mother and Baby Homes and Related Institutions \(2019\)](#).

¹⁰¹ Collaborative Forum on Mother and Baby Homes, [Recommendations from the First Report of the Collaborative Forum of Former Residents of Mother and Baby Homes \(2018\)](#).

¹⁰² Human Rights Committee, [Concluding observations on the fourth periodic report of Ireland](#) (19 August 2014) CCPR/C/IRL/CO/4, para. 10.

¹⁰³ A number of survivors felt like they were 'on trial' and the adversarial nature of the Inquiry left them feeling 'humiliated and undermined' during when giving evidence. Many survivors said that the waivers they signed in order to receive their awards were further abuses designed to prevent them revealing the full extent of what happened to them in the institutions. See [Redress: Has the State delivered for abuse survivors?](#) (03 March 2020) RTÉ News.

other child sexual abuse material stated that past systemic abuses of children in institutions have ‘yet to be fully examined, with accountability and redress remaining elusive for victims.’¹⁰⁴

As Ireland’s designate Independent Monitoring Mechanism under the UN Convention on the Rights of Persons with Disabilities, the Commission is particularly concerned about the failure to address the historic abuse of children with physical, sensory, intellectual or mental health impairments in institutional settings.¹⁰⁵

The Commission recommends that the Committee asks the State how many allegations of abuse in reformatory and industrial schools have been investigated, and led to the prosecution and punishment of the perpetrators.

The Commission recommends that the Committee asks the State to detail the measures taken to provide effective remedy to survivors of reformatory and industrial schools.

The Commission recommends that the Committee asks the State to detail the measures taken to specifically provide a system of redress for violations within children’s institutions that is accessible for persons with disabilities.

Retention of Records Bill 2019

The previous Government’s *Retention of Records Bill 2019*, which lapsed with the dissolution of Dáil Éireann in January 2020, proposed that upon on the dissolution of the Commission to Inquire into Child Abuse, the Residential Institutions Redress Board, and the Residential Institutions Redress Review Committee the records¹⁰⁶ of these bodies would be deposited in the National Archives where they would be withheld from public inspection for a period of 75 years.¹⁰⁷ While the right to privacy of individuals who do not wish to be identified must be upheld, the withholding of records in the manner proposed in this Bill is disproportionate. It would inhibit potential future legal redress, frustrate the nation’s recognition of its history of institutional abuse, and run contrary to principles of transparency and accountability. The new Government has recently indicated that it will delay and re-examine the planned legislation.¹⁰⁸

The Commission recommends that the Committee asks the State the status of the planned legislation, and whether the review of the intended legislative approach to the retention of the records of industrial and reformatory schools will ensure any planned legislation is in line with international human rights standards.

¹⁰⁴ United Nations General Assembly Human Rights Council, [Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#) (15 November 2019) A/HRC/40/51/Add.2, para. 75.

¹⁰⁵ Pauline Conroy (2012) [No safety net for disabled children in residential institutions in Ireland](#), *Disability & Society*, 27:6, 809-822

¹⁰⁶ These records include administrative records of the institutions, survivors’ personal records, and all other relevant documents created by State representatives and the aforementioned bodies.

¹⁰⁷ Dr Maeve O’Rourke, Máiréad Enright, Dr Sinéad Ring, [Submission on the provisions of the Retention of Records Bill 2019](#) (2019) p. 3.

¹⁰⁸ Justine McCarthy (02 August 2020) [Bill to seal Ryan commission abuse testimonies put on ice after survivors’ campaign](#), *The Times*.

O'Keeffe v. Ireland¹⁰⁹

In 2014 the Grand Chamber of the European Court of Human Rights held that the State had failed to fulfil its obligation to protect Louise O'Keeffe from inhuman and degrading treatment, and had failed to provide her with an effective remedy for failing to protect the applicant from sexual abuse by a teacher in her primary school in 1973.¹¹⁰ In October 2015, the Commission reported to the Council of Europe's Committee of Ministers its concern that the State has adopted an unduly restrictive and narrow approach to the category of "victim" of abuse in its interpretation of the ruling of the European Court of Human Rights. This view was shared by an independent assessor in 2019 who held that the "prior complaint" condition risks a "*continuing breach of the rights under Article 13 of the ECHR*" (the right to an effective remedy) of those survivors of child sexual abuse in National Schools.¹¹¹

The Commission recommends that the Committee urges the State to overhaul its *ex gratia* scheme to ensure effective remedy to those who are being denied justice by State inaction.

Symphysiotomy

In its 2014 Concluding Observations the Committee recommended an independent investigation into the cases of women who were subjected to symphysiotomy.¹¹² This has yet to be undertaken and the response of the State to the practice of symphysiotomy is not in full compliance with the State's human rights obligations.¹¹³

A redress scheme was established in 2014. However some victims did not participate in the Symphysiotomy Payment Scheme as the time to apply for the scheme was too short, the standard of proof for an award was overly burdensome, and the level of award was low in comparison to the violation suffered.¹¹⁴ In addition, payment under this scheme required signature of a 'deed of waiver and indemnity' precluding the applicant from further legal recourse against a scheduled list of State and non-State actors, effectively excluding those women unwilling or unable to waive their entitlement to legal recourse.¹¹⁵

¹⁰⁹ [O'Keeffe v. Ireland](#) [28 January 2014] Application no. 35810/09.

¹¹⁰ The Court found violations of Articles 3 and 13 of the European Convention on Human Rights. <http://hudoc.echr.coe.int/eng?i=001-140235>

¹¹¹ See IHREC, [Irish Human Rights and Equality Commission welcomes Mr Justice Iarfhlaith O'Neill's interpretation of Louise O'Keeffe's Strasbourg judgment as too restrictive](#) (08 July 2019).

¹¹² Human Rights Committee, [Concluding observations on the fourth periodic report of Ireland](#) (19 August 2014) CCPR/C/IRL/CO/4, para. 11.

¹¹³ IHREC, [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women: Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's combined sixth and seventh periodic reports](#) (January 2017) p. 44; IHREC, [Submission to UN Human Rights Committee on Ireland's one year follow-up report to its fourth periodic review under ICCPR](#) (September 2015) para. 25.

¹¹⁴ IHREC, [Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland](#) (January 2020) pp. 29-30; IHREC, [Submission to UN Human Rights Committee on Ireland's one year follow-up report to its fourth periodic review under ICCPR](#) (September 2015) paras. 23-24.

¹¹⁵ Symphysiotomy Payment Scheme, Schedule 1 – Deed of Waiver and Indemnity, at p. 38.

Three women are now pursuing a complaint to the European Court of Human Rights, where they claim that symphysiotomy was done without their knowledge or consent, and has resulted in pain, impaired mobility, incontinence and an inability to bond with their children.¹¹⁶ The Court has accepted the case.

The Commission recommends that the Committee asks the State whether it intends on undertaking a comprehensive and independent investigation of the practice of symphysiotomy.

5. Incitement to Hatred and Hate Speech (Article 20)

Prohibition of Incitement to Hatred Act 1989

The State report indicates that a review of the *Prohibition of the Incitement to Hatred Act 1989* is ongoing,¹¹⁷ in December 2019 the Commission submitted its observations on the Act to the public consultation where it recommended lowering the *mens rea* threshold to recklessness, explicitly prohibiting online incitement to hatred, amending the Act to include the offences of incitement to violence and incitement to hostility as provided under Article 20(2) of the Covenant, and amending the prohibited grounds under the legislation to at minimum align with Irish equality legislation. To address the low rate of prosecutions it recommended that Section 8 of the Act be amended to allow Gardaí prosecute without prior approval of the Director of Public Prosecutions, and that training and guidance should be provided to prosecutors on the importance of pursuing charges under the Act.

¹¹⁸

The Commission recommends the Committee asks the State to provide information on the progress of the review of the *Incitement to Hatred Act 2019*, including any proposed timeframes for publication of legislative proposals, whether such legislative proposals will be compliant with international human rights and equality norms and how it will ensure that any proposed policy or legislative changes ensure that the Act is effectively used to prosecute charges under the Act.

Hate Speech

The response to hate speech necessitates not only criminal sanctions but also a range of policy and regulatory measures and frameworks such as media regulation and self-regulation, codes of conduct for public bodies and elected representatives, counter speech, education and awareness raising, and support for victims to encourage non-discriminatory rhetoric and discourse.¹¹⁹

¹¹⁶ Justine McCarthy (2019) [State fights Irish women's symphysiotomy claims in European Court](#), The Times, 6 Oct 2019

¹¹⁷ Government of Ireland, [Fifth periodic report submitted by Ireland under article 40 of the Covenant](#) (31 January 2020) para. 266.

¹¹⁸ IHREC, [Review of the Prohibition of Incitement to Hatred Act 1989](#) (December 2019).

¹¹⁹ See IHREC, [Review of the Prohibition of Incitement to Hatred Act 1989](#) (December 2019)

The Commission recommends the Committee asks the State to provide information on the policy and regulatory measures that govern the use of the hate speech and ensure effective sanctions for any violation of the conditions and the supports provided to victims seeking redress.

Online hate speech

The internet is important for the full and meaningful participation of marginalised groups in public and political life. However online spaces can also serve as a platform for perpetuating misogyny and racist hate.¹²⁰ The Government undertook a public consultation on regulating online content and implementing the European Union *Audiovisual Media Services Directive*,¹²¹ and is in the process of developing an *Online Safety and Media Regulation Bill*.¹²²

The Commission recommends the Committee asks the State to provide information on the *Online Safety and Media Regulation Bill*, including: proposed timeframe for drafting and legislative scrutiny, provisions under the Bill to monitor compliance, and whether the Bill will comprehensively address online discriminatory and prejudicial content and hate speech to ensure that the rights of persons to participate in public and political life is not restricted.

Hate Crime

The State report indicates that the Department of Justice is undertaking research into hate crime.¹²³ The incoming Government's Programme includes a commitment to introduce hate crime legislation on an 'aggravated offences' model.¹²⁴

Ireland's criminal laws do not include substantive hate crime offences nor do they provide for aggravation of crimes on the statute book.¹²⁵ Current practice in sentencing in Ireland allows for prejudice motivations to be taken into account by the sentencing court, however the court is under no obligation to do so.¹²⁶ Concerns have also been raised on the extent of awareness within the

¹²⁰ In particular, women can be targeted by online hate speech on overlapping grounds of discrimination which serves to further reinforce marginalisation of minority groups and restricts participation in public and political life. See IHREC, [Submission to the Citizens' Assembly on Gender Equality](#) (March 2020) p. 11; IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination: Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#) (October 2019) pp. 47-48.

¹²¹ Department of Communications, Climate Action and Environment, [Public Consultation on the Regulation of Harmful Content on Online Platforms and the Implementation of the Revised Audiovisual Media Services Directive: Explanatory Note](#) (March 2019)

¹²² See IHREC, [Submission to the Citizens' Assembly on Gender Equality](#) (March 2020) p. 13; IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination: Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#) (October 2019) pp. 48-49;

¹²³ Government of Ireland, [Fifth periodic report submitted by Ireland under article 40 of the Covenant](#) (31 January 2020) para. 267.

¹²⁴ *Programme for Government – Our Shared Future* (June 2020)

¹²⁵ IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination: Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#) (October 2019) pp. 41-42.

¹²⁶ IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination: Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#) (October 2019) p. 41.

Gardaí of what constitutes hate crime or a hate-related incident, how it should be recorded, and the importance of it being recorded.¹²⁷

The Commission recommends the Committee asks the State to advise on the progress of the review of the legislative framework on hate crime, including the planned timeframe for its completion and implementation.

6. Experiences of Minorities in Ireland (Article 27)

Traveller and Roma Communities

As recommended by the Committee¹²⁸, in 2017 the State formally recognised Travellers as an ethnic minority group. This historic action was widely welcomed, including by Traveller organisations and by the Commission. While this is a significant and symbolic recognition, the necessary funding and infrastructure has yet to be put in place to preserve and develop the culture and identity, including horse ownership and nomadism, of the Traveller community.¹²⁹ There is a need for a greater monitoring of *the National Traveller and Roma Inclusion Strategy 2017–2021* and an evaluation of the impact of official recognition on the rights of Travellers,¹³⁰ especially in light of the extremely high proportion of the adult Traveller population who are unemployed (80.2%).¹³¹

Negative stereotypes attached to the Traveller community and Traveller culture, which exacerbate this inequality, reflect the poor knowledge and appreciation among the majority of the population about the history and culture of Irish Travellers.¹³² Roma in Ireland report high levels of discrimination in accessing services,¹³³ and many Roma report having to hide their identity in order to avoid discrimination.¹³⁴

The Commission recommends the Committee asks the State how it intends to evaluate the impact of recognition on the rights of Travellers and to detail measures taken to support Travellers in preserving and developing their identity and culture, including nomadism and horse ownership.

¹²⁷ James Carr, 'Recording and Reporting Racist Hate Crime: Police and Civil Society Responses' and Amanda Haynes and Jennifer Schweppe, 'The disappearing of hate crime in the Irish criminal justice process', in Amanda Haynes et al. (eds.), *Critical Perspectives on Hate Crime* (2017).

¹²⁸ Human Rights Committee, [Concluding observations on the fourth periodic report](#) (2014) para. 23.

¹²⁹ See IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination: Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#) (October 2019) pp. 80-81.

¹³⁰ Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland](#) (23 January 2020) CERD/C/IRL/CO/5-9, para. 31-32.

¹³¹ Census of Population 2016, Profile 11 Employment, Occupations and Industry, [\(Table EB015 and Figure 3.4\)](#).

¹³² Advisory Committee on the Framework Convention for the Protection of National Minorities, [Fourth Opinion on Ireland](#) (2019) p. 20.

¹³³ IHREC, [Submission to the Committee on the Elimination of Racial Discrimination](#) (2019) pp. 62-63, 72, 79, 85-87, 88, 100-101.

¹³⁴ Pavee Point Traveller and Roma Centre and Department of Justice and Equality, [Roma in Ireland – A National Needs Assessment](#) (2018) p. 51.

Discrimination faced by minority ethnic groups

The 2017 Commission study *Who experiences discrimination in Ireland?* found that compared to 'White Irish' respondents, 'Black' people are three times more likely to experience discrimination in access to public services and almost five times more likely to experience discrimination in access to private services such as shops, banks, and housing.¹³⁵ In a 2018 Commission study on the labour market, Black people of nationalities other than Irish are five times more likely to experience discrimination when seeking employment, and over 2.5 times more likely to experience discrimination in the workplace.¹³⁶ Africans have significantly higher unemployment rates than the general population, 39.7%, compared with a national rate of 13% in 2016.¹³⁷

The Commission has called for the establishment of a full parliamentary Committee on Human Rights, Equality and Diversity.¹³⁸ The incoming Government's Programme commits to publishing a new national Action Plan against Racism, and developing and implementing a new Migrant Integration Strategy.¹³⁹ The Action Plan is being drawn up by a new independent Anti-Racism Committee.¹⁴⁰ The incoming Government also includes a ministry with responsibility for Equality and Integration.¹⁴¹

The Commission recommends the Committee asks the State to detail the measures it has taken to combat racism, including colour-based racism, tackle discrimination and prejudice, and promote intercultural awareness and their evidenced impacts.

7. Rights of migrants and Asylum Seekers (Article 13)

Asylum determination

Waiting times

In its 2014 concluding observations, the Committee expressed concern 'at the lack of a single application procedure for the consideration of all grounds for international protection, leading to delays in the processing of asylum claims'.¹⁴² While the *International Protection Act 2015* has resulted in some progress on application processing times as there is now a single procedure for

¹³⁵ IHREC/ESRI, [Who experiences discrimination in Ireland?](#) (2017) p. 36.

¹³⁶ IHREC/ESRI, [Ethnicity and Nationality in the Irish Labour Market](#) (2018) p. 36.

¹³⁷ Census of Population 2016, Profile 11 Employment, Occupations and Industry ([Table EB015 and Figure 3.4](#)).

¹³⁸ IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination: Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#) (October 2019) pp. 15-16.

¹³⁹ *Programme for Government – Our Shared Future* (June 2020) p.87.

¹⁴⁰ The Committee comprises people from diverse backgrounds, including those with lived experience of racism including representatives of the public, private and voluntary sector and expert views. Department of Justice and Equality, [Action Plan Against Racism for Ireland to be drawn up by new independent Anti-Racism Committee](#) (19 June 2020).

¹⁴¹ Minister for Children, Disability, Equality and Integration.

¹⁴² Human Rights Committee, [Concluding observations on the fourth periodic report of Ireland](#) (2014) para. 19.

both refugee and subsidiary protection applications, the wait between application and first-instance international protection decision is approximately 15 months.¹⁴³ The Committee on the Elimination of Racial Discrimination has recommended that the State ‘Expedite the processing of applications with a view to delivering the decision within six months’.¹⁴⁴ In its 2019 annual report, the International Protection Appeals Tribunal stated that a substantive appeal of a first instance (International Protection Office) decision took an average of 170 ‘working days’ or approximately 8 months to complete.¹⁴⁵

The Commission recommends the Committee asks the State what concrete steps it is taking to deliver first instance decisions on international protection applications within 6 months of application.

The Commission recommends the Committee asks the State what steps the International Protection Appeals Tribunal is taking to speed up the appeals process.

Rejection rate

It is worth noting that the first instance rejection rate for asylum applications has decreased very significantly in recent years.¹⁴⁶

In 2019, however, approximately 48% of first instance single procedure international protection applications which were determined by the International Protection Office were rejected.¹⁴⁷ Approximately 29% of negative first instance decisions dealt with on appeal were overturned during the same year.¹⁴⁸ The significant rates of successful appeals can be attributed to an inconsistent application of credibility analysis, unreasonable plausibility findings, poor application of country of origin information, and a lack of access to legal representation at the earlier stages of the asylum determination process.¹⁴⁹

The Commission recommends the Committee requests that the State provide an update on the number of rejected applications for international protection which are overturned on appeal and the reasons why so many decisions are overturned.

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

Unaccompanied and separated Children

There is a lack of consistent and comprehensive data on unaccompanied and separated children in the international protection system, which presents a challenge to the development of appropriate

¹⁴³ The Minister for Justice and Equality, [International Protection](#), Dáil Éireann debate (05 March 2020).

¹⁴⁵ International Protection Appeals Tribunal (2020) [Annual Report 2019](#), pp.49-50.

¹⁴⁶ In 2011, for example, the rate – including withdrawals and Dublin II referrals - was close to 97%. See Office of the Refugee Applications Commissioner (2011), [Annual Report 2011](#), p62.

¹⁴⁷ In 2019, the International Protection Office recommended that 895 applications be rejected. See ECRE AIDA Asylum Information Database, Irish Refugee Council, [Statistics: Republic of Ireland \(2020\)](#).

¹⁴⁸ International Protection Appeals Tribunal (2020), [Annual Report 2019](#), p. 52.

¹⁴⁹ Katie Coyle (2020) [Overturned on Appeal: Why Well-Founded Asylum Applications Fail in First Instance](#).

policy responses.¹⁵⁰ Further, there is an absence of guidance to support the Child and Family Agency to uphold the ‘best interests of the child’ principle when making applications on behalf of unaccompanied and separated children.¹⁵¹

The Commission recommends the Committee asks the State what measures it is taking to ensure the principle of the ‘best interests of the child’ guides the process of international protection applications for children.

Supports for applicants

A parliamentary committee recently recommended that an early legal advice model be implemented with greater resourcing for the Legal Aid Board.¹⁵² The State has not opted in to the Asylum Procedures Directive (recast), which requires vulnerable applicants be provided the special procedural guarantees and conditions necessary to ensure they can effectively access procedures and substantiate their application for international protection.¹⁵³

The Commission recommends the Committee asks the State what measures it is taking to provide protection applicants with comprehensive access to legal advice and other supports necessary to ensure they can substantiate their application for international protection.

Direct Provision

In its last concluding observations the Committee stated that prolonged accommodation in Direct Provision ‘is not conducive to family life’.¹⁵⁴ Inappropriate living conditions, isolation, and a lack of activities, among other issues, continue to adversely affect the physical and mental health of persons living in Direct Provision centres.¹⁵⁵ A number of Direct Provision centres with shared rooms have also recently experienced clusters of Covid-19 infections.¹⁵⁶

The Commission has recommended that that Direct Provision as a reception model should be phased out and an alternative model for accommodation and support of asylum seekers be developed.¹⁵⁷ In December 2019, the government announced the establishment of the Expert Group on Direct Provision, tasked with developing new approaches to meeting the long-term needs of asylum seekers in the protection process.¹⁵⁸ In June 2020 the Expert Group issued a briefing note

¹⁵⁰ ESRI and Office for the Promotion of Migrant Integration, [Data for Monitoring Integration: Gaps, Challenges and Opportunities \(2019\)](#) pp. 29–30.

¹⁵¹ IHREC, [Submission to the Committee on the Elimination of Racial Discrimination](#) (2019) p. 124.

¹⁵² Joint Committee on Justice and Equality, [Report on Direct Provision and the International Protection Application Process \(2019\)](#) p. 55.

¹⁵³ [Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection \(recast\), Recital 29.](#)

¹⁵⁴ Human Rights Committee, [Concluding observations on the fourth periodic report of Ireland](#) (2014) para. 19.

¹⁵⁵ IHREC, [Submission to the Committee against Torture on the List of Issues for the Third Examination of Ireland](#) (2020) p. 34.

¹⁵⁶ Oireachtas Special Committee on Covid-19 Response debate Tuesday, 26 May 2020: [Congregated Settings: Direct Provision.](#)

¹⁵⁷ IHREC, [Submission to the Committee on the Elimination of Racial Discrimination](#) (2019) p. 115.

¹⁵⁸ Department of Justice and Equality, [Ministers Flanagan and Stanton announce establishment of Expert Group on Direct Provision](#) (28 December 2019).

providing an update on the progress of its work, in which it recommended a set of immediate measures which would immediately improve the situation of those currently in direct provision.¹⁵⁹ The incoming Government's Programme commits to "ending the Direct Provision system" and replacing it "with a new International Protection accommodation policy centred on a not-for-profit approach", and to publish a White Paper on this by the end of 2020.¹⁶⁰ Under the incoming Government, the responsibility for Direct Provision has transferred from the Department of Justice to the Department of Children, Disability, Equality and Integration.¹⁶¹

The Commission recommends the Committee asks the State what progress it has made in implementing the recommendations of the Expert Group, in developing a White Paper on a new international protection accommodation policy, and the timeline for ending the Direct Provision system.

The Commission recommends the Committee asks the State how it intends to ensure that human rights and equality considerations, including accountability mechanisms, are central to the development and procurement of an alternative reception and accommodation model.

Emergency accommodation

There are significant capacity issues within the Direct Provision system, which are being exacerbated by the housing crisis, resulting in residents who have been granted refugee or subsidiary protection status or leave/permission to remain for other reasons being unable to leave Direct Provision accommodation.¹⁶² In response to these capacity issues, the State has been providing 'emergency' accommodation to international protection applicants in hotels and guesthouses since September 2018.¹⁶³ Many of these centres are located away from cities in less populated and less well serviced areas where opportunities for employment or further education are extremely limited (international protection applicants cannot at the moment get Irish driving licences as they are not considered to be resident in the country).¹⁶⁴ Emergency accommodation should cease as soon as possible as it does not adequately protect the rights of international protection applicants.¹⁶⁵

The Commission recommends the Committee asks the State how and when it will stop the use of emergency accommodation.

¹⁵⁹ Department of Justice and Equality, [Statement by Ministers Flanagan and Stanton regarding the direct provision system](#) (8 June 2020). Recommended measures include extending the right to work; alternative Housing models and funding provisions; ensuring all applicants can open bank accounts; reduction of time taken to process positive decisions; ensuring binding standards for centres are applied and enforced by January 2021; compulsory training and regular networking for centre managers; ending use of emergency accommodation; ensuring vulnerability assessments take place; and facilitating access to driving licenses..

¹⁶⁰ *Programme for Government – Our Shared Future* (June 2020)

¹⁶¹ Fiach Kelly, [New Department of Children to be responsible for Direct Provision](#) (28 June 2020) *The Irish Times*.

¹⁶² IHREC, [Submission to the Committee on the Elimination of Racial Discrimination](#) (2019) p. 113-114.

¹⁶³ Joint Committee on Justice and Equality, [Report on Direct Provision and the International Protection Application Process](#) (2019) p. 48.

¹⁶⁴ IHREC Press Release (30 June 2020), ['Court Rules that RSA Regulations Block All Asylum Seekers from Getting Driving Licence'](#).

¹⁶⁵ IHREC, [Submission to the Committee on the Elimination of Racial Discrimination](#) (2019) p. 115.

The Commission recommends that the Committee asks the State about the refusal to provide Irish driving licences to international protection applicants which, amongst other things, may prevent them accessing employment.

Vulnerability assessments

Vulnerability Assessments are required under the Reception Conditions Directive.¹⁶⁶ Under the transposing legislation, the European Communities (Reception Conditions) Regulations 2018, the Minister for Justice is obliged within 30 working days of an international protection application to assess whether the applicant is a recipient with special needs and if so, the nature of his special reception needs. However, this does not seem to be happening in practice which means the State is in breach of its obligation under the Directive.¹⁶⁷

In December 2019, a parliamentary committee recommended ‘the urgent implementation of comprehensive Vulnerability Assessments, to be conducted by appropriately trained and qualified professionals’.¹⁶⁸ Without such assessments, people are not accessing necessary healthcare and are being placed in entirely inappropriate accommodation settings.¹⁶⁹

The Commission recommends the Committee asks the State how it intends to ensure that all individuals receive an initial vulnerability assessment within a reasonable time after an application for international protection is made and before their placement in a direct provision or emergency accommodation centre.

Regulation and oversight

While the Office of the Ombudsman and the Ombudsman for Children are now permitted to receive individual complaints relating to Direct Provision, there remains no independent inspectorate tasked to regulate the centres.

The Commission recommends the Committee urge the State to develop a robust independent inspection mechanism to regulate and inspect the centres, and hold those responsible accountable for any breaches.

¹⁶⁶ See Articles 21–22 of the [Reception Conditions Directive \(recast\)](#) (2013/33/EU).

¹⁶⁷ There have been criticisms by organisations supporting asylum seekers in Ireland that these vulnerability assessments are not taking place at the beginning of the asylum procedure, as required. See Irish Refugee Council (27 May 2019) [Refugee organisations highlight absence of vulnerability assessment in Irish asylum procedure](#).

¹⁶⁸ Joint Committee on Justice and Equality, [Report on Direct Provision and the International Protection Application Process](#) (2019) p. 50.

¹⁶⁹ Irish Refugee Council, [The Reception Conditions Directive: One Year On \(2019\)](#) pp. 18–19.

Deportation and refusal of leave to land

The number of people deported or refused entry to the State has increased in recent years.¹⁷⁰ Immigration control measures at Dublin Airport have specifically targeted Albanians and Georgians, with the then Minister for Justice and Equality confirming a policy of conducting immigration checks, which usually take place at passport control, at the steps of aircraft to prevent individuals disembarking and claiming international protection.¹⁷¹ The Commission is concerned about the availability of effective remedy and access to legal advice and interpretation services for persons undergoing the deportation process or refused leave to land.¹⁷²

There is no appeal from a deportation or refusal of leave to land decision. Judicial review in the High Court of deportation/exclusion is possible but legal aid is not available (in general) for these applications. The position for persons refused leave to land in Ireland is even more difficult as lawyers are not permitted access to the immigration offices in the airport. It is only in an occasional case where the person being removed is sent to a local prison until a return flight can be arranged that they have an opportunity to consult with a lawyer.¹⁷³

There has been occasional discussion of an independent appeal system for immigration decisions for over a decade, including a commitment to create an immigration appeals body in a previous Programme for Government.¹⁷⁴

The Commission recommends the Committee asks the State to detail the steps taken, including the provision of comprehensive legal and interpretation services, to ensure that it fulfils its obligations under the prohibition on refoulement.

The Commission recommends the Committee ask the State to publish data on the countries of origin of the persons denied leave to land and that lawyers be permitted to access immigration facilities to advise people refused leave to land.

The Commission recommends the Committee asks the State about persons refused leave to land being detained in prisons with convicted criminals and the development of immigration detention facilities.

The Commission recommends the Committee asks the State about an appeal system for immigration/deportation decisions.

¹⁷⁰ In 2017, 3,968 people were deported or otherwise removed from the State (90% of whom were refused entry). In 2018, 5,028 people were deported or otherwise removed from the State (95% of whom were refused entry). Irish Naturalisation and Immigration Service, [Immigration in Ireland: Annual Review 2017](#) and [Immigration in Ireland: Annual Review 2018](#).

¹⁷¹ Georgia and Albania are among the top countries of nationality of asylum seekers in Ireland and are considered by Ireland as safe countries of origin. However being an asylum seeker from a safe country of origin is not a barrier to claiming asylum; individuals are entitled under Irish and EU law to an individual examination of the application to ensure that the country is safe for the particular person. See Dr Ciara Smyth (02 March 2020) [Ireland is illegally turning back Georgian and Albanian immigrants](#), The Irish Times.

¹⁷² IHREC, [Submission to the Committee against Torture](#) (2017) p. 14.

¹⁷³ Aodhan O'Faolain (13 July 2020) [High Court orders inquiry into Chilean student's detention in Mountjoy](#), The Irish Times.

¹⁷⁴ [Government for National Recovery 2011-2016](#) (2011) p.51

Family Reunification

The Commission acted as *amicus curiae* in two recent cases¹⁷⁵ heard jointly by the Supreme Court in which the Court concluded that refugees who acquire citizenship by naturalisation continue to have a right to ‘refugee’ family reunification under the quite generous provisions in the *Refugee Act 1996*.¹⁷⁶ The judgment recognises the importance of family reunification, particularly with spouses and children, for persons granted international protection.

The *Refugee Act* was repealed at the end of 2016. A number of provisions of the *International Protection Act 2015* limit the ability of persons granted international protection to apply for ‘refugee’ family reunification. The Act restricts access to ‘refugee’ family reunification provisions to spouses, civil partners and minor children of the person granted international. Individuals in a customary marriage or long-term partnership are excluded, as are ‘post flight’ spouses and adult dependents.

The 2015 Act also requires family reunification applications to be made within 12 months of the grant of refugee or subsidiary protection status which significantly impacts applications due to limited access to tailored legal services and information.¹⁷⁷ It is not uncommon for persons granted international protection to have split from spouses and children and to have lost contact with them for a time. Applications for ‘refugee’ family reunification when/if the spouse or child is traced more than 12 months after the application for international protection are deemed ineligible.

More broadly, individuals denied their application for ‘refugee’ family reunification may not have access to an effective remedy. As with most other immigration decisions, the decision on reunification cannot be challenged on appeal, it is only possible to review the reasonableness of a decision through judicial review. Judicial review in the High Court may be a costly and time-consuming procedure, particularly since legal aid is not generally available.¹⁷⁸

The Commission recommends the Committee asks the State to clarify how it intends to address the deficiencies in its statutory framework for family reunification for persons granted international protection.

¹⁷⁵ [KN & Ors -v- Minister for Justice & Equality, MAM -v- Minister for Justice & Equality](#) [2020] IESC 32.

¹⁷⁶ IHREC, [Significant Supreme Court Judgment in Family Reunification Cases Vindicates the Family Unit as Right of Refugees](#) (19 June 2020).

¹⁷⁷ IHREC, [Submission to the Committee on the Elimination of Racial Discrimination](#) (2019) pp. 121-122.

¹⁷⁸ IHREC, [Submission to the Committee on the Elimination of Racial Discrimination](#) (2019) p. 123.

Migrant experiences

Citizenship and residency

Following the approval of the Twenty-Seventh amendment of the Irish Constitution by referendum on 11 June 2004¹⁷⁹, the *Irish Nationality and Citizenship Act 2004* was enacted which provides that children born in Ireland whose parent is Irish or British, or had permission to reside in Ireland for three of the previous four years,¹⁸⁰ are entitled to citizenship at birth.¹⁸¹ Since then there has been increased public debate on reforming the law on citizenship. For example, a 2018 opinion poll revealed that 71 per cent of people agree that anyone born in Ireland should be entitled to citizenship.¹⁸² There has been discussion of law reform in this area for the last number of years, including a commitment to do so in the previous Programme for a Partnership Government.¹⁸³

Research published by the Ombudsman for Children in June 2020 found that children in migration situations¹⁸⁴ face numerous barriers in securing access to citizenship and its attendant rights.¹⁸⁵ Such barriers include the fact that children are not permitted to independently apply for international protection and register with immigration authorities.¹⁸⁶ Children may also face barriers in providing proof of identity due to the lack of a birth certificate or passport from their country of origin.¹⁸⁷ Even refugee children are often requested to produce passports from the country of origin to prove identity for naturalisation and/or an Irish passport.

Following the 2004 referendum, there are also now young people in their mid-teens who were born in Ireland and have lived here all their lives undocumented. There have been a small number of cases in which children born in Ireland have faced deportation, or effective deportation as their parents are being deported, to countries they have never been to and have no real connection with.¹⁸⁸ In 2018, Eric Zhi Xue, a nine-year-old boy who was born in Ireland, had a deportation/exclusion order issued against him. His mother came to Ireland over 12 years earlier

¹⁷⁹ See Article 9 of the Irish Constitution. 79% of voters supported the change to the Constitution, see Author Unknown (12 June 2004), '[Citizenship Referendum carried by massive majority](#)' *The Irish Times*.

¹⁸⁰ Time spent undocumented or resident with an international student permission does not qualify for meeting this requirement.

¹⁸¹ Section 6 of the *Irish Nationality and Citizenship Act 1956*, as amended by the *Irish Nationality and Citizenship Acts 2001 and 2004*. See Immigrant Council of Ireland (2016), [Child Migration Matters: Children and Young People's Experiences of Migration](#), p. 37.

¹⁸² This poll is based on a nationally representative sample of 905 eligible Irish voters aged 18 years and over. The margin of error is +/- 3.3%. *The Sunday Times* (November 2018), [Opinion Poll](#), p13.

¹⁸³ [Programme for a Partnership Government](#) (2016). p 103. See also Immigrant Council of Ireland, (2017) [Submission to the 4th Programme of Law Reform under the Law Reform Commission Act 1975 Immigration, Residence and Citizenship – an Area for Law Reform](#).

¹⁸⁴ Children whose parents are seeking international protection; whose parents are undocumented; who are separated from their families and in the care of the State (that is separated children); and stateless children.

¹⁸⁵ Arnold (2020) [Pathways to Irish Citizenship Separated, Stateless, Asylum Seeking and Undocumented Children](#) (OCO: Dublin).

¹⁸⁶ Arnold (2020) [Pathways to Irish Citizenship Separated, Stateless, Asylum Seeking and Undocumented Children](#) (OCO: Dublin), p 22.

¹⁸⁷ Arnold (2020) [Pathways to Irish Citizenship Separated, Stateless, Asylum Seeking and Undocumented Children](#) (OCO: Dublin), p 16.

¹⁸⁸ Seanad Éireann debate (21 November 2018), [Irish Nationality and Citizenship \(Naturalisation of Minors Born in Ireland\) Bill 2018: Second Stage](#).

and her attempts to regularise her status were unsuccessful. Following an intervention from the Minister for Health, it was confirmed that the family were ‘not in danger’ of deportation¹⁸⁹.

The Minister of Justice can refuse citizenship on ‘good character’ grounds, which is vague term and provides a wide discretion to the Minister.¹⁹⁰ In 2019 the High Court ruled, in a case concerning the Minister’s refusal of an application for citizenship of a seven year old girl whose application was refused on the basis that her father was not of good character,¹⁹¹ that while the applicant in accordance with section 15(3) is the parent/guardian/person acting in loco parentis, it is the minor born in the State who is required to meet the conditions of naturalisation.

Although it is referred to in the current Programme for Government, there is a continued absence of any pathway to residency for undocumented people in Ireland and the Commission has recommended that the State introduce a regularisation scheme for undocumented migrants.¹⁹² It is estimated that there may be as many as 6,000 undocumented children living in the State.¹⁹³

More broadly, the Commission has also noted that many migrants and refugees are experiencing long delays in the processing of naturalisation applications and in renewal/variation of immigration permission applications.¹⁹⁴ These delays are unconnected with and predate the Covid-19 pandemic. Applicants are often left in difficult circumstances while they wait many months, or even years, for a decision as, for one reason or another, they may have no immigration status or permission ‘stamp’ while the application is being processed.

There is an absence of an appeals mechanism in place if an application for citizenship or residency is refused. The only option available to individuals is to apply to the High Court to undertake a judicial review of the decision making of an administrative body. The process of judicial review is a lengthy and complex process, which can significantly impact on an individuals’ ability to challenge the decision to deny their application for citizenship or residency.

The Commission recommends that the Committee asks the State to provide information on its plans and timeline for reviewing the legislative framework on citizenship and residency.

The Commission recommends that the Committee asks the State about progress with a regularisation scheme for undocumented migrants referred to in the current Programme for Government.

The Commission recommends that the Committee asks the State about delays in processing naturalisation applications and applications for renewal/variation of residency permissions.

¹⁸⁹ Irish Times, 26 October 2018, ‘Eric Zhi Ying Xue faces ‘no imminent threat of deportation’, says Simon Harris’.

¹⁹⁰ Section 15A(1) *Irish Nationality and Citizenship Act*, 1956.

¹⁹¹ *Iurescu (a minor) v. The Minister for Justice and Equality & Ors* [2019] IEHC 535.

¹⁹² IHREC (2017) CEDAW Shadow Report, p. 91.

¹⁹³ Migrant Rights Centre Ireland (2016), [Ireland is Home 2016](#).

¹⁹⁴ In 2020 over 3,600 people were waiting for over two years for their citizenship application to be processed, See Sorcha Pollak (26 May 2020) [Over 3,600 people waiting two years for citizenship application to be processed](#), The Irish Times.

8. Mental Health Establishments (Articles 7, 9, 16)

Equal recognition before the law

In its 2014 concluding observations, the Committee recommended the State bring the *Assisted Decision-making (Capacity) Bill* into line with international standards on the rights of persons with disabilities.¹⁹⁵ This legislation now enacted retains a functional assessment of mental capacity that can be used to restrict or deny legal capacity,¹⁹⁶ in contravention to the requirements of the Convention on the Rights of Persons with a Disability (CRPD).¹⁹⁷

The Commission recommends the Committee asks the State to assess the compliance of the *Assisted Decision Making (Capacity) Act 2015* with international human rights standards, including the CRPD.

Non-consensual psychiatric treatment

The Commission appeared as an *amicus curiae* in *P.L. v. St. Patrick's Hospital*,¹⁹⁸ concerning the practice of preventing voluntary patients from leaving mental health establishments. The Court of Appeal ruled that the patient's detention was unlawful, stating that while the hospital could attempt to persuade a patient stay under their care, there must be no restraint.

The Commission recommends the Committee asks the State what practical steps it is taking to ensure that the decision in *P.L. v St. Patrick's Hospital* is adhered to.

Involuntary treatment, seclusion and restraint

In its 2014 Concluding Observations, the Committee recommended the State ensure that non-consensual use of psychiatric medication, electroshock, and other restrictive and coercive practices in mental health services is generally prohibited and only used in exceptional circumstances as a measure of last resort.¹⁹⁹

There has been a 13% increase in admission orders over the last five years.²⁰⁰ In 2018, 13% of all inpatients in mental health services were admitted involuntarily,²⁰¹ and 66% of involuntary admissions applications were made by family members or Gardaí, rather than by an Authorised Officer on behalf of the HSE.²⁰² In inspections of facilities the Mental Health Commission has noted the continued use of seclusion, physical restraint, Electro-Convulsive Therapy, involuntary

¹⁹⁵ Human Rights Committee, [Concluding observations on the fourth periodic report](#) (2014) para. 12.

¹⁹⁶ IHREC, [Comments on Ireland's 14th National Report on the Implementation of the European Social Charter](#) (2017) p. 30.

¹⁹⁷ Committee on the Rights of Persons with Disabilities, [General comment No. 1 - Article 12: Equal recognition before the law \(2014\)](#).

¹⁹⁸ [P.L. v. Clinical Director of St. Patrick's University Hospital](#) [2018] IECA 29.

¹⁹⁹ Human Rights Committee, [Concluding observations on the fourth periodic report](#) (2014) para. 12.

²⁰⁰ Mental Health Commission, [Annual Report 2018](#) (2019) p.4

²⁰¹ Mental Health Commission, [Annual Report 2018](#) (2019) p.4.

²⁰² Mental Health Commission, [Annual Report 2018](#) (2019) p.36.

administration of medication and recorded a pattern of failure on behalf of these establishments to comply with the rules governing the use of these practices.²⁰³

The Commission recommends the Committee asks the State what measures it is taking to reduce the incidence of, and reliance on, involuntary treatment, seclusion and restraint.

Impact of COVID-19 on mental health facilities

The Mental Health Commission has reported 17 deaths of residents of mental health services due to COVID-19.²⁰⁴ At one point there was 112 suspected or confirmed cases relating to residents and 179 suspected or confirmed cases relating to staff across 55 of 179 facilities.²⁰⁵ The impact of COVID-19 in mental health establishments highlights the importance that living conditions in these facilities adhere to highest attainable standards.

The Commission recommends the Committee asks the State on whether it has conducted an analysis of the impact of COVID-19 on the provision of care in mental health establishments to ensure that living conditions adhere to international human rights standards, including the CRPD.

9. Human Trafficking (Article 8)

Identification and protection of victims of trafficking

Ireland is both a destination and source country for human trafficking; including people trafficked for sexual exploitation, domestic work, fishing, agriculture, the restaurant industry, waste management, and car washing services. Human traffickers exploit domestic and foreign victims in Ireland, and traffickers exploit victims from Ireland abroad.²⁰⁶

Recalling the Committee's recommendation in 2014 to adopt legislation to ensure that effective and appropriate assistance and protection is afforded to potential victims of trafficking,²⁰⁷ the Commission appeared as *amicus curiae* in the case of *P. v. The Chief Superintendent of the Garda National Immigration Bureau & Ors* in 2015,²⁰⁸ wherein the High Court found that the State's current

²⁰³ Mental Health Commission, [Annual Report 2018](#) (2019) pp. 66, 68; Mental Health Commission, [Mental Health Commission finds one critical and 20 high risk ratings in three mental health centres \(2019\)](#); Mental Health Commission, [The Administration of Electro-Convulsive Therapy in Approved Centres: Activity Report 2017 & 2018](#) (2020).

²⁰⁴ Mental Health Commission, [Notable decrease in Covid-19 cases across mental health facilities](#) (26 May 2020).

²⁰⁵ Mental Health Commission, [Assurance required on Covid-19 test results for mental health staff](#) (11 May 2020).

²⁰⁶ US Department of State, [Trafficking in Persons Report](#) (2020) p. 272.

²⁰⁷ Human Rights Committee, [Concluding observations on the fourth periodic report of Ireland](#) (2014) para. 20.

²⁰⁸ [P. v. The Chief Superintendent of the Garda National Immigration Bureau & Ors](#) [2015] IEHC 222.

administrative scheme is inadequate under EU law aimed at combatting human trafficking.²⁰⁹ However the State continues to rely on an inadequate administrative scheme for the identification and protection of victims of trafficking.²¹⁰

There are several deficiencies in the State's response to trafficking, which have been identified by the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA)²¹¹ and the US Department of State. The failure of the State to take appropriate measures pertaining to identification and non-punishment of victims as well as the provision of legal support and remedies resulted in the US Department of State downgrading Ireland to "Tier 2" status in its 2018²¹² and 2019²¹³ *Trafficking in Persons* reports, and to the "Tier 2 Watchlist" in its 2020 report.²¹⁴

The State has committed under its *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland* to undertake a review of the formal identification process to ensure it meets best international practice.²¹⁵ In its 2018 report to GRETA²¹⁶ the State reported that the review was incomplete. The review of the identification process is not subject to concrete timelines or clear outcomes.²¹⁷

The Commission recommends the Committee asks the State to provide information on its review of the formal victim identification process, the measures it is taking to address the shortcomings in the victim identification process and whether it intends to place the victim identification process and the non-punishment principle on a statutory footing; and measures it is taking to strengthen the National Referral Mechanism.

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

The Commission recommends that the Committee asks the State to provide information on the measures it is taking to improve the quality of its data systems including collection and reporting.

²⁰⁹ IHREC, [Submission to the Committee against Torture on the List of Issues for the Third Examination of Ireland](#) (2020) p. 10; IHREC, [Submission to the Committee on the Elimination of Racial Discrimination](#) (2019) pp. 127-133.

²¹⁰ Due to deficiencies in the formal procedures for victim identification, and the role of An Garda Síochána in being responsible for identifying victims while also having the responsibility for investigating trafficking offences which can create a conflict of priorities. IHREC, [Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland](#) (2020) pp. 40-41; IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination: Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#) (October 2019) pp. 130-131

²¹¹ GRETA, [Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland](#) (2017).

²¹² US Department of State, [Trafficking in Persons Report](#) (June 2018).

²¹³ US Department of State, [Trafficking in Persons Report](#) (June 2019).

²¹⁴ Downgraded due to lack of trafficking convictions, which weakened deterrence, contributed to impunity for traffickers, and undermined efforts to support victims to testify; systematic deficiencies in victim identification, referral, and assistance; lack of specialized accommodation and adequate services for victims; and the amended working scheme for sea fishers increased their vulnerability to trafficking. US Department of State, [Trafficking in Persons Report](#) (2020) pp. 269-272.

²¹⁵ Department of Justice and Equality, [Second National Action Plan to Prevent and Combat Human Trafficking in Ireland](#) (2016) p. 47.

²¹⁷ IHREC, [Submission to GRETA in advance of its Second Evaluation Round of Ireland](#) (September 2016) p. 22.

Accommodation in direct provision centres

Victims of trafficking continue to be accommodated within the direct provision centres, which lack sufficient special services and supports.²¹⁸ Victims of trafficking should be accommodated in appropriate single-gendered facilities that ensure access to the necessary support services.²¹⁹

The Commission recommends the Committee asks the State what measures have been taken to accommodate victims of trafficking in appropriate accommodation.

Investigation and prosecution of trafficking offences

There have been no convictions for trafficking for the purposes of sexual and labour exploitation since the introduction of *Criminal Law (Human Trafficking) (Amendment) Act 2013*.²²⁰ This failure to convict traffickers and the absence of appropriate sentences creates a sense of impunity, which undermines efforts to support victims to testify.²²¹

The Commission recommends the Committee asks the State what measures it is taking to address the existing obstacles preventing the prosecution of perpetrators of trafficking.

Compensation, data and monitoring

A number of administrative and other barriers, including a lack of convictions for trafficking and the absence of a dedicated compensation fund,²²² exist in practice, which prevents victims of trafficking from accessing justice and an effective remedy for the violation of their rights.²²³ The difficulties in accessing compensation can lead to secondary victimisation.

Statutory rights to assistance, including legal aid, protection and compensation, should be available to all potential victims of trafficking regardless of their nationality or immigration status.

²¹⁸ IHREC, [Submission to the Committee on the Elimination of Racial Discrimination](#) (2019) p. 133. The reliance on direct provision centres for accommodating victims of trafficking may expose them to further exploitation, trauma, and mental health issues, which will undermine their recovery and increase their risk of being re-trafficked.

²¹⁹ IHREC, [Submission to GRETA in advance of its Second Evaluation Round of Ireland](#) (2016) p. 38.

²²⁰ US Department of State, [Trafficking in Persons Report](#) (2019) p. 251. While An Garda Síochána commenced 64 investigations in 2018 in relation to trafficking, they did not initiate any prosecutions.

²²¹ GRETA, [Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland](#) (2017) p. 55.

²²² GRETA, [Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland](#) (2017) pp. 45-46.

²²³ Victims of trafficking can obtain compensation through a court order, civil action, the Criminal Injuries Compensation Tribunal, and State bodies dealing specifically with work-related rights, including the Workplace Relations Commission. IHREC, [Submission to the Committee on the Elimination of Racial Discrimination](#) (2019) p. 133.

The Commission recommends that the Committee asks the State on the measures taken to support victims of trafficking with access to compensation.

In 2017, GRETA called on the authorities to continue developing the data collection and monitoring systems in place to ensure that there is a comprehensive picture of the human trafficking situation in Ireland.²²⁴ The *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland* sets out the State's commitment to considering the possibility of putting in place an independent National Rapporteur on Human Trafficking.²²⁵

The Commission recommends that the Committee asks the State to provide information on progress to appoint a national rapporteur in line with international best practice.

Impact of Covid-19 on victims of trafficking

The existing inequalities faced by victims of trafficking are particularly vulnerable to being exacerbated during the Covid-19 pandemic.²²⁶ The lack of access to services and supports, including housing, healthcare and legal, can lead to re-victimisation.²²⁷ Access to justice is affected as confinement reduces the likelihood of victims being identified and impacts on the investigation and prosecution of criminal offences of trafficking as law enforcement resources are being focused on implementing confinement measures.²²⁸

The Commission recommends that the Committee asks the State to analyse the experience of providing service and support to victims of trafficking during the Covid-19 pandemic, so as to inform its current and future legislative and policy approach to victims of trafficking.

²²⁵ Department of Justice and Equality, [Second National Action Plan to Prevent and Combat Human Trafficking in Ireland](#) (2016) p. 81.

²²⁶ Office of High Commissioner for Human Rights, [States must combat domestic violence in the context of COVID-19 lockdowns – UN rights expert](#) (27 March 2020); United Nations Office on Drugs and Crime, [Impact of the covid-19 pandemic on trafficking in persons](#) (03 May 2020). Further, the Special Rapporteur on violence against women warned that vulnerable groups of women including victims of trafficking are at a higher risk of domestic violence. Office of High Commissioner for Human Rights, [States must combat domestic violence in the context of COVID-19 lockdowns – UN rights expert](#) (27 March 2020).

²²⁷ Council of Europe Group of Experts on Action against Trafficking in Human Beings, [In time of emergency the rights and safety of trafficking victims must be respected and protected](#) (02 April 2020); United Nations Office

²²⁸ GRETA, [In time of emergency the rights and safety of trafficking victims must be respected and protected](#) (02 April 2020); Inter-Agency Coordination Group against Trafficking in Persons, [COVID-19 pandemic and its impact for victims and survivors of trafficking in persons](#) (28 April 2020).

10. Gender Equality and Rights of the Family (Articles 3, 23)

Gender Equality

Constitutional reform

In its 2014 *Concluding Observation* the Committee recommended that the State amend Article 41.2 of the Constitution to render it gender neutral.²²⁹ The Commission has recommended that the Constitution be amended to include gender neutral language, and an explicit provision on gender equality²³⁰ and has proposed an approach to amending the Constitution which replaces references to ‘woman’ and ‘mothers’ with a reference to ‘family life’.²³¹

The Commission recommends that the Committee reiterates its recommendation to the State to amend Article 41.2 to render it gender neutral, and to consider amending the Constitution to include gender neutral language and a specific provision on gender equality so as to advance the State’s obligations under human rights and equality principles.

Violence against women

Sexual and domestic violence

The Committee’s recommended in its Concluding Observations in 2014 that the State should take further legislative and policy measures to ensure all women, particularly women from marginalised and vulnerable communities, have equal access to the protection.²³² The ratification of the Istanbul Convention²³³ and the enactment of the *Domestic Violence Act 2018* is welcome, and the implementation of the legislation should be underpinned by the systematic collection of comprehensive, robust and disaggregated data on all forms of violence against women.²³⁴

²²⁹ Human Rights Committee, [Concluding observations on the fourth periodic report](#) (19 August 2014) CCPR/C/IRL/CO/4, para. 7.

²³⁰ IHREC, [Submission to the Citizens’ Assembly on Gender Equality](#) (March 2020) p. 8. See also IHREC, [Article 41.2 of the Constitution of Ireland](#) (June 2018) p. 15; IHREC, [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women: Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland’s combined sixth and seventh periodic reports](#) (January 2017) pp. 33-34.

²³¹ IHREC, [Submission to the Citizens’ Assembly on Gender Equality](#) (March 2020) pp. 7-8.

²³² Human Rights Committee, [Concluding observations on the fourth periodic report](#) (19 August 2014) CCPR/C/IRL/CO/4, para. 8.

²³³ The Commission has set out priority areas for State action under the aegis of the Convention, including on data collection, combatting violence against specific groups of women, gender-sensitive asylum policy, access to services, access to justice and the promotion of gender equality. See IHREC, [Statement on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence](#) (July 2019).

²³⁴ IHREC, [Statement on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence](#) (July 2019) p. 2.

A high proportion of sexual assaults are not reported to the criminal justice authorities.²³⁵ Where sexual violence is reported to An Garda Síochána, it appears that only 11% of cases are solved.²³⁶ There are also reported inaccuracies by An Garda Síochána in the recording and classification of crimes involving sexual and domestic violence.²³⁷ The State report failed to provide disaggregated statistics on complaints, prosecutions and sentences regarding violence against women as recommended by the Committee in 2014.²³⁸ There is a limited availability, particularly in rural locations, of reliable support services, refuge spaces, accessible procedures, and specialised practitioners.²³⁹

The State report outlines that a review of the investigation and prosecution of sexual offences is underway²⁴⁰ and noted the commitment to undertake a national survey on the prevalence of sexual violence, which would be repeated every decade.²⁴¹ The inclusion of a representative sample of minority ethnic and other groups will only be considered after the completion of the first survey.²⁴² This raises concerns about the specific timelines and commitments relating to this second phase and the potential for significant delays in the availability of the data, as well as concerns about the extent to which the data will be comparable.

The Commission recommends that the Committee reiterates its recommendation to the State to provide disaggregated statistics on complaints, prosecutions and sentences regarding violence against women. The Commission recommends that the Committee asks the State what measures it is taking to ensure that perpetrators of sexual and domestic violence are investigated, prosecuted, and punished.

The Commission recommends that the Committee asks the State what measures it is taking to ensure that the level of assistance, services, including shelters and access to justice, to victims of domestic violence is sufficient and not limited by geographical disparity or disability access.

²³⁵ IHREC, [Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland](#) (January 2020) p. 31.

²³⁶ Central Statistics Office, [Recorded Crime Detection 2018](#) (2019)

²³⁷ IHREC, [Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland](#) (January 2020) p. 32; IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination: Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#) (October 2019) p. 103.

²³⁸ Human Rights Committee, [Concluding observations on the fourth periodic report](#) (19 August 2014) CCPR/C/IRL/CO/4, para. 8.

²³⁹ IHREC, [Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland](#) (January 2020) p. 32; IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination: Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#) (October 2019) p. 103; IHREC, [Comments on Ireland's 16th National Report on the implementation of the European Social Charter](#) (May 2019) p. 19.

²⁴⁰ Government of Ireland, [Fifth periodic report submitted by Ireland under article 40 of the Covenant](#) (31 January 2020) para. 35.

²⁴¹ Government of Ireland, [Fifth periodic report submitted by Ireland under article 40 of the Covenant](#) (31 January 2020) para. 44.

²⁴² IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination: Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#) (October 2019) p. 104.

The Commission recommends that the Committee asks the State to provide details on the review of the investigation and prosecution of sexual offences, including a proposed timeframe for publication of the report.

The Commission recommends that the Committee asks the State to provide an update on the progress of the sexual violence study, and a planned timeline for the inclusion of equality groups.

Female genital mutilation

An estimated 5,795 women and girls living in Ireland have undergone female genital mutilation (FGM).²⁴³ There is an urgent need for the State to invest more into preventative measures through education and awareness raising by engaging the practising community and by adopting a national action plan on FGM.²⁴⁴ The Committee on the Elimination of Racial Discrimination recommended the State fully enforce the *Criminal Law (Female Genital Mutilation) Act 2012*.²⁴⁵

The Commission recommends that the Committee asks the State to provide information on what measures it is taking to ensure full enforcement of the *Criminal Law (Female Genital Mutilation) Act 2012*.

The Commission recommends that the Committee asks the State to provide information on what measures it is undertaking to raise awareness about FGM, support access to the specialist services for women and girls who have experienced FGM, and prevent FGM; and what steps it has taken to adopt a National Action Plan on FGM.

Reproductive rights

Since the last examination, *the Health (Regulation of Termination of Pregnancy) Act 2018* was enacted, following an amendment of Article 40.1.1 of the Constitution of Ireland, and now provides for a termination of pregnancy in certain circumstances.²⁴⁶ While welcoming the introduction of the Act, the Commission has stressed that the legislative and regulatory framework, including the provision related to conscientious objection,²⁴⁷ should avoid creating or replicating barriers to access

²⁴³ This figure was compiled by synthesising Census 2016 data with UNICEF global prevalence estimations from 2016. See AkiDwA, [CERD Submission](#) (January 2018) p. 2.

²⁴⁴ IHREC, [Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland](#) (January 2020) p. 32.

²⁴⁵ Committee on the Elimination of Racial Discrimination (2020) [Concluding observations on the combined fifth to ninth reports of Ireland](#), para. 40(e).

²⁴⁶ See IHREC (2018) [Observations by the Irish Human Rights and Equality Commission on the General Scheme of a Bill Entitled Health \(Regulation of Termination of Pregnancy\) Bill 2018](#).

²⁴⁷ The Commission notes that *General Comment no. 36* provides that State should remove barriers caused as a result of the exercise of conscientious objection to the effective access by women and girls to safe and legal abortions. See Human Rights Committee, [General Comment 36](#) (30 October 2018) CCPR/C/GC/36, para. 8.

to abortion particularly for vulnerable and marginalised groups of women and girls.²⁴⁸ A review of the operation of the Act is due in 2022.²⁴⁹

The Commission recommends the Committee asks the State to provide information on its plans for review of the Act, and on measures taken to ensure the universality and equality of access to abortion services.

The Commission recommends that the Committee asks the State to provide information on measures it is taking to ensure that healthcare institutions plan for and accommodate conscientious objection in a way that does not adversely affect women's and girls' access to services.

Rights of the family

Constitutional definition of family

Article 41 of the Constitution of Ireland recognises the family as the 'natural primary and fundamental unit group of Society', and the Courts have interpreted this provision to apply to the nuclear married family.²⁵⁰ Nevertheless, a wider interpretation of the types of familial relationships protected by Article 41 has been contemplated by the Superior Courts more recently.²⁵¹ Legislation and public policy also recognise a much broader range of family relationships, for example through the introduction of automatic guardianship rights to unmarried fathers in certain circumstances²⁵² and the provision for cohabiting couples and one parent families in the social welfare code.

²⁴⁸ In legislative observations on the proposed Bill, the Commission called for conscientious objection to operate within a legislative and regulatory framework that ensures the necessary systems, personnel and resources to guarantee that women are provided safe and timely access to medical procedures. The Commission further called for the State to ensure that the operation of the Act did not disproportionately affect particular groups of women based on their socio-economic, disability, rural, or asylum status. See IHREC, [*Observations by the Irish Human Rights and Equality Commission on the General Scheme of a Bill Entitled Health \(Regulation of Termination of Pregnancy\) Bill 2018*](#) (September 2018).

²⁴⁹ Per section 7 of the Act.

²⁵⁰ Noting that Article 41.3.1 obliges the State to 'guard with special care the institution of Marriage, on which the Family is founded' the Supreme Court has interpreted the references to the family in Article 41 as the family founded on marriage. *State (Nicolaou) v An Bord Uchtála* [1996] IR 567. This narrow judicial interpretation has been the subject of much litigation and debate.

²⁵¹ *RX, QMA & CX v Minister for Justice, Equality and Law Reform* [2010] IEHC 446. In that case Mr Justice Hogan stated: 'The fact that marriage was (and, of course, is) regarded as the bedrock of the family contemplated by the Constitution does not mean that other close relatives could not, at least under certain circumstances, come within the scope of Article 41'. In addition, following a referendum to amend Article 41 of the Constitution in 2015, the constitutional definition of the family has been expanded to include married same-sex couples. Article 41.4 provides that 'marriage may be contracted in accordance with law by two persons without distinction as to their sex'. Previously the High Court defined marriage as between a man and a woman in *Zappone & Gilligan v. Revenue Commissioners & Ors* [2006] IEHC 404. See also: IHREC (2015) *Policy Statement on Access to Civil Marriage*, available https://www.ihrec.ie/download/pdf/ihrec_policy_statement_access_civil_marriage_11_feb_2015.pdf.

²⁵² Section 6 of the Guardianship of Infants Act 1964, as amended by the Children and Family Relationships Act 2015. For an overview of the amendments see: O'Toole and Mahon (2016) 'Guardianship and the family' *Bar Review*, 21(4). See further: Bergin-Cross (2015) 'The Evolution of the Definition of Marriage and the Family under the Irish Constitution', *Irish Journal of Family Law*, 15(2).

As well as being recognised in Irish law, family rights are also recognised by a number of international human rights treaties.²⁵³

The Commission recommends that the Committee requests the State to consider amending Article 41, including Article 41.3.1, to recognise the broader conception of family life recognised in international human rights law.

Assisted human reproduction

The Department of Health is in the process of drafting the *Assisted Human Reproduction Bill*.²⁵⁴ The legislation has implications for the child's right to genetic identity as disclosure of surrogacy will only be disclosed when a birth certificate is requested by a person over the age of 18.²⁵⁵

The Commission recommends the Committee asks the State to advise on the progress of the *Assisted Human Reproduction Bill* and provide a timeline for its finalisation and enactment. The Commission recommends the Committee asks the State how it intends to vindicate the right of individuals, particularly children under the age of 18, to their genetic identity under the Bill.

Covid-19 impact on violence against women

Self-isolation and quarantine measures have placed women at greater risk of domestic and sexual violence.²⁵⁶ There has been additional provision of refuge and non-refuge accommodation units for victims of domestic violence and the additional funding has been provided to domestic and sexual violence services.²⁵⁷ Domestic violence services have noted positively the increased contact with An Garda Síochána which have resulted in quicker access to safety and protection for victims.²⁵⁸

²⁵³ Article 16(3) Universal Declaration of Human Rights recognises that 'the family is the natural and fundamental group unit of society and is entitled to protection by society and the State'. This is echoed in Article 23(1) of the International Covenant on Civil and Political Rights (ICCPR). Article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which states that 'the widest possible protection and assistance should be accorded to the family'. Article 8 of the European Convention on Human Rights (ECHR).²⁵³ In its jurisprudence the European Court of Human Rights has broadly conceived 'family life' beyond the nuclear family to recognise familial relationships where there is evidence of the existence of close personal ties, i.e. *de facto* family ties. For an overview of the Court's jurisprudence on Article 8 see: http://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf.

²⁵⁴ The general aim of the legislation is to protect and promote the safety of children, their parents and other persons involved in the Assisted Human Reproduction process. See Minister for Health, [Proposed Legislation](#), Dáil Éireann Debate (27 May 2020).

²⁵⁵ See submission of Dr Katherine Wade to the Joint Committee on Health's discussion on the General Scheme of the *Assisted Human Reproduction Bill 2017*. Dr Katherine Wade, [Submission on the General Scheme of the Assisted Human Reproduction Bill 2017](#) (2019) p. 35.

²⁵⁶ There has been a 25% increase in the reporting of domestic abuse incidents. See Paul Reynolds, [25% rise in domestic violence calls during pandemic](#) (09 June 2020) *RTÉ News*.

²⁵⁷ Department of Justice and Equality, [Ministers Flanagan and Stanton announce campaign to reassure victims of domestic abuse that support is still available despite COVID-19](#) (10 April 2020). See also Minister for Children and Youth Affairs, [Domestic Violence Refuges Provision](#), Dáil Éireann debate (27 May 2020); Minister for Justice and Equality, [Domestic Violence](#), Dáil Éireann Debate (16 June 2020).

²⁵⁸ Policing Authority, [Policing Performance by the Garda Síochána in Relation to Covid-19 Regulations](#) (20 May 2020) p. 12.

Organisations within the domestic violence sector have called for greater funding and investment in the area to allow services to reorganise and adapt to a post-Covid environment.²⁵⁹

The Commission recommends the Committee asks the State to provide information on how the lessons on positive integrated approaches between Government departments, State agencies, An Garda Síochána, and domestic and sexual violence services during the Covid-19 crisis will inform future policy and legislative approaches to addressing sexual and domestic violence.

11. Policing Powers (Articles 9, 17)

Policing reform

The Commission on the Future of Policing's report *The Future of Policing in Ireland* states that the first principle of policing is 'human rights are the foundation and purpose of policing'.²⁶⁰ The previous Government committed to implementing in full all the recommendations of the report within a four year period from 2019 to 2022²⁶¹ and the Programme of the incoming Government also reasserts this commitment.²⁶²

In its Concluding Observations in 2014, the Committee expressed concerns in relation to the independence of the Garda complaints.²⁶³ The report of the Commission on the Future of Policing includes a recommendation to create an independent body to receive complaints about the police service, which would supersede the Garda Síochána Ombudsman Commission.²⁶⁴ The Commission on the Future of Policing also recommended the appointment of an independent human rights adviser to the proposed new Policing and Community Safety Oversight Commission, which would supersede the Garda Síochána Inspectorate and the Policing Authority.²⁶⁵

Human rights and equality standards must be embedded in the ethos and operations of An Garda Síochána at all levels, including the oversight mechanisms and the training programmes provided to

²⁵⁹ Maresa Fagan, [Groups say €30m investment in domestic violence services is needed post-Covid](#) (10 June 2020) *The Irish Examiner*.

²⁶⁰ Commission on the Future of Policing, [The Future of Policing in Ireland](#) (2018) p. ix.

²⁶¹ Department of Justice and Equality, [Minister Flanagan announces implementation plan for Commission on the Future of Policing in Ireland Report](#) (18 December 2018). Government of Ireland, [A Policing Service for the Future: Implementing the Report of the Commission on the Future of Policing in Ireland](#) (2018).

²⁶² *Programme for Government – Our Shared Future* (June 2020). See pp 84-85 commitment to "Rapidly implement the Report of the Commission of the Future of Policing, while ensuring that there remains a strong and independent public external accountability mechanism for the Garda Commissioner and Garda Leadership Team"; "Increase the diversity within An Garda Síochána, prioritising the identification and removal of barriers to recruiting and retaining people from diverse and minority background".

²⁶³ Human Rights Committee, [Concluding observations on the fourth periodic report of Ireland](#) (2014) para. 13.

²⁶⁴ IHREC, [Primacy of Human Rights in the Future of Policing in Ireland Welcomed by Human Rights and Equality Commission](#) (18 September 2018). See also Commission on the Future of Policing, [The Future of Policing in Ireland](#) (2018) p. xi.

²⁶⁵ Commission on the Future of Policing, [The Future of Policing in Ireland](#) (September 2018) p. xi.

recruit and Garda members, so as An Garda Síochána can meet the requirements of the Public Sector Equality and Human Rights Duty.²⁶⁶

The Commission recommends the Committee asks the State to provide details of the implementation of the recommendations of *The Future of Policing in Ireland* report, including timeframes, sequencing and responsibilities, and to inform the Committee of progress thus far achieved.

Codification of police powers

The Commission on the Future of Policing recommended that the legislation defining police powers of arrest, search and detention should be codified, with statutory codes of practice.²⁶⁷ In June 2019, the Minister for Justice and Equality approved the proposal to draft new legislation, *Police Powers Bill*, to codify powers of arrest, search and detention into a clear and transparent code, and also codify the procedural rights and safeguards underlying the exercise of those powers.²⁶⁸

The Commission recommends that the Committee asks the State to provide details of the proposed legislation codifying the powers of search, arrest, and detention, including drafting and implementation timeframes, and to inform the Committee of progress thus far achieved.

The Commission recommends that the Committee asks the State on measures undertaken to ensure the proposed legislation is compliant with the Public Sector Equality and Human Rights Duty and that the process of codification will not compound existing issues identified with the exercise of police powers and lead to a regression in the existing protections.

There are concerns around the level of cultural competence within the policing system with evidence of discrimination faced by minority ethnic groups in particular the racial profiling in the use of stop and search powers.²⁶⁹

The Commission recommends that the Committee asks the State what measures have been taken to enhance the collection of disaggregated data to monitor the discrimination faced by minority ethnic groups in the operation of policing powers.

²⁶⁶ IHREC, [Submission to the Commission on the Future of Policing](#) (2018).

²⁶⁷ Commission on the Future of Policing, [The Future of Policing in Ireland](#) (2018) p. 11.

²⁶⁸ Department of Justice and Equality, [Minister Flanagan announces Government approval for drafting of key Policing legislation](#) (25 June 2019). Further commitment for codification is expressed in the incoming Government's Programme for Government.

²⁶⁹ IHREC, [Submission to the Committee on the Elimination of Racial Discrimination](#) (2019) pp. 136-140. Concerns have been raised about the ability of the Garda Síochána Ombudsman Commission to effectively address and investigate complaints of racial profiling by Garda members. See Irish Network against Racism (2019) [Alternative Report on Racial Discrimination in Ireland](#), pp.23-24.

Police custody

The continued absence of independent oversight or unannounced inspections in police custodial settings requires immediate attention to ensure there is no gap in the prevention of ill-treatment in detention settings.²⁷⁰

In August 2019 the Garda Síochána Inspectorate announced it had commenced an inspection of the treatment of persons in custody.²⁷¹ The Law Reform Commission has committed to undertaking a review of the law of custody to ‘evaluate whether consolidation, or an effort to make the powers relating to the various forms of detention more uniform, should be considered.’²⁷²

The Commission recommends that the Committee asks the State to provide information on measures to establish a system of independent oversight and inspection of police custody and outcomes of these measures.

Surveillance and body cameras

The Future of Policing in Ireland report published by the Commission on the Future of Policing contained a recommendation for An Garda Síochána to develop a plan to deploy body-worn cameras.²⁷³ The Minister for Justice and Equality announced in June 2019 that the Government had approved the drafting of legislation, the *Garda Síochána (Recording of Images) Bill*, to extend the circumstances in which recording devices, including body-worn cameras, Closed Circuit Television (“CCTV”), and Automatic Number Plate Recognition (“ANPR”), can be used by An Garda Síochána.²⁷⁴ The recording and storing of images raises clear human rights concerns, including the right to privacy and protection of personal data and has potential equality implications particularly with minority groups’ experience of racial profiling.²⁷⁵

The Commission recommends the Committee asks the State to provide information on the progress of drafting the *Garda Síochána (Recording of Images) Bill*, including proposed timeframes and implementation plan.

The Commission recommends the Committee asks the State on measures taken to consider, in the context of the proposed legislation, whether the interference with the right to privacy, protection

²⁷⁰ IHREC, [Submission to the Commission on the Future of Policing](#) (2018) p. 27.

²⁷¹ Garda Síochána Inspectorate, [The Garda Inspectorate commences a new inspection of custody in Garda stations](#) (28 August 2019). Garda Síochána Inspectorate, [Terms of Reference for an Inspection of the Treatment of Persons in the Custody of the Garda Síochána](#) (2019).

²⁷² Law Reform Commission, [Fifth Programme of Law Reform](#) (2019) p. 10.

²⁷³ Commission on the Future of Policing, [The Future of Policing in Ireland](#) (2018) p. 79.

²⁷⁴ Department of Justice and Equality, [Minister Flanagan announces Government approval for drafting of key Policing legislation](#) (25 June 2019). The incoming Government’s Programme for Government has carried over this commitment, signalling its intention to “Extend the powers governing Garda use of CCTV and Automated Number Plate Recognition to help prevent crime and prosecute those involved in criminal activity”. See *Programme for Government – Our Shared Future* (June 2020), pp84-85.

²⁷⁵ IHREC, [Submission to the Committee on the Elimination of Racial Discrimination](#) (2019) pp. 136-138; IHREC, [Submission to the Commission on the Future of Policing](#) (2018) pp. 10-13.

of data and right to a fair trial that is presented by the use of body-worn cameras and CCTV/ANPR is proportionate and necessary in the prevention of disorder or crime.

Data Retention

In response to the independent Review of the Law on Access to Communication Data²⁷⁶ by Mr Justice Murray in 2016, the Commission noted that the legislative framework governing data retention by telecommunications service providers and disclosure of data to An Garda Síochána 'lacks ... well-resourced independent expert oversight at appropriate points in the process, and access to effective remedies where rights are infringed.'²⁷⁷

The Minister for Justice and Equality published the General Scheme of *Communications (Retention of Data) Bill*²⁷⁸ in October 2017 to give effect to the European Court of Justice judgments in *Digital Rights Ireland*²⁷⁹ and in *Tele2*^{280, 281}. Civil society groups²⁸² and the Joint Committee on Justice and Equality²⁸³ have said that the proposed provisions of the Bill do not adequately give effect to the ECJ judgments by ensuring any order for data retention is strictly necessary and provide effective oversight of data retention orders.

The Commission recommends the Committee asks the State to provide information on the *Communications (Retention of Data) Bill*, including the timeframe for drafting and legislative scrutiny of the provisions; and how the provisions of this legislation will give full effect to the decisions of the ECJ in *Digital Rights Ireland* and *Tele2*.

²⁷⁶ Established to 'examine the legislative framework in respect of access by statutory bodies to communications data of journalists held by communications service providers'. Department of Justice and Equality, [Statement by the Minister for Justice and Equality in relation to access to telephone records](#) (19 January 2016).

²⁷⁷ IHREC, [Memorandum: Review of the Law on Access to Communication Data](#) (13 June 2016) p. 2.

²⁷⁸ Department of Justice and Equality, [Minister Flanagan publishes proposals for a Communications \(Retention of Data\) Bill 2017](#) (03 October 2017).

²⁷⁹ The ECJ held that the EU Data Retention Directive 2006, which the State gave effect to in the *Communications (Retention of Data) Act 2011*, was incompatible with the European Charter of Fundamental Rights as the requirement under the directive for service providers to retain communications data for all persons, even those not suspected of committing a serious criminal offence was disproportionate. [Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resources and Others](#) [2014].

²⁸⁰ The ECJ held that EU law precludes national legislation which for the purposes of fighting crime permits the general and indiscriminate retention of traffic and location data. The Court found that EU law precludes national authorities accessing retained data where access is not subject to a prior review by a court or independent administrative authority. [Tele2 Sverige AB v. Post- och telestyrelsen & Ors](#) [2016].

²⁸¹ The bill has yet to be published, in September 2019 the Minister for Justice and Equality stated that drafting of the bill was at an advanced stage. [Data Retention](#), Dáil Éireann debate (06 September 2019)

²⁸² ICCL and Digital Rights Ireland, [Submission to Joint Committee on Justice and Equality Communications \(Retention of Data\) Act Bill 2017 General Scheme Pre-legislative Scrutiny](#) (16 November 2017).

²⁸³ Joint Committee on Justice and Equality, [Report on Pre-Legislative Scrutiny of the Communications \(Retention of Data\) Bill 2017](#) (2018) p. 43.

Covid-19 impact on policing

An Garda Síochána were afforded exceptional powers²⁸⁴ in the regulations signed under the *Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020*. The tone of policing during the pandemic has been described by the Policing Authority as being more empathetic, respectful, focused, caring and engaged which has helped build greater levels of trust and confidence in An Garda Síochána amongst marginalised groups.²⁸⁵ The Policing Authority has published a series of reports on the policing of the Covid regulations at the request of the Minister for Justice and Equality and has identified a number of issues arising including the introduction and use of spit guards and the need for better data on the use of police powers, including the need for ethnicity data.²⁸⁶

In correspondence with the Garda Commissioner, the Commission has stated that more detailed data and information on the implementation of emergency powers²⁸⁷ is required to ensure the powers are being exercised in a transparent manner and in line with human rights and equality principles, including proportionality.²⁸⁸

The Commission recommends that the Committee asks the State whether the policies and practices of An Garda Síochána in relation to its response to the Covid-19 pandemic were reviewed and assessed to ensure they are compliant with human rights and equality standards.

The Commission recommends the Committee asks the State to consider how it will use the positive feedback on the tone and engagement of the Garda Síochána with marginalised groups to inform future policing operations.

²⁸⁴ There are five powers afforded to Gardaí under the emergency legislation, which expires on the 07 November: direct a person to comply with the Regulations; arrest for failure to comply with such a direction; demand a person's name and address; arrest for failure to comply with the demand for name and address; and arrest for failure to comply with the Regulations. Policing Authority, [Policing Performance by the Garda Síochána in Relation to Covid-19 Regulations](#) (06 May 2020).

²⁸⁵ Policing Authority, [Policing Performance by the Garda Síochána in Relation to Covid-19 Regulations](#) (04 June 2020) pp. 11-12,

²⁸⁶ Policing Authority, [Report on the policing performance by the Garda Síochána in relation to the Health Act 1947 \(Section 31 – Temporary Restrictions\) \(Covid-19\) Regulations 2020 \("Covid-19 Regulations"\)](#) (20 April 2020) p. 8; Policing Authority, [Policing Performance by the Garda Síochána in Relation to Covid-19 Regulations](#) (06 May 2020) pp. 12-13; Policing Authority, [Policing Performance by the Garda Síochána in Relation to Covid-19 Regulations](#) (20 May 2020) p. 16. Policing Authority, [Policing Performance by the Garda Síochána in relation to Covid-19 Regulations](#) (04 June 2020).

²⁸⁷ e.g. gender, ethnicity, age bracket, geographic location of the arrest and the neighbourhood where they live, and whether it was the first time the person was arrested.

²⁸⁸ IHREC, [Letter to Garda Commissioner on Covid-19 Policing Powers](#) (28 April 2020).

12. Prisons (Article 10)

Conditions of detention

In-cell sanitation and slopping-out

Recalling the Committee's recommendation to improve in-cell sanitation and address the practice of slopping out,²⁸⁹ 1,702 prisoners (43% of prisoners in detention) were required to use a toilet in the presence of another prisoner and 58 prisoners continue to slop out as of January 2020.²⁹⁰ In November 2019, the Supreme Court in *Gary Simpson v Governor of Mountjoy Prison* found that a man who was forced to slop out during his 7½ month incarceration in 23 hour lock up, was entitled to a declaration that the conditions of his detention infringed his constitutional right to dignity.²⁹¹ Female prisoners have raised concerns with the poor quality of menstruation products and that menstruation products must be purchased by prisoners.²⁹²

The Commission recommends the Committee asks the State about the measures it is taking to increase toilet privacy for prisoners and to address in-cell sanitation in prisons in the wake of the *Simpson* judgment.

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

Inter-prisoner violence and restricted regimes

The State report indicates that in 2018 there were 418 reported incidents of prisoner-on-prisoner assaults,²⁹³ this figure may be significantly less than the actual number of assaults with prisoners reluctant to tell authorities they have been assaulted. The prevalence of gang violence has led prisoners to enter restricted regimes for their own protection, in January 2020, 589 prisoners were on restricted regimes,²⁹⁴ with 75 of those prisoners restricted to their cell for 22 or 23 hours.²⁹⁵ The significant in-cell time means that prisoners on restricted regimes face restricted access to services and supports such as education, health, reintegration programmes, addiction supports, family visits, and physical activities.²⁹⁶

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

²⁸⁹ Human Rights Committee, [Concluding observations on the fourth periodic report](#) (2014) para. 15.

²⁹⁰ Irish Prison Service, [Census Prison Population January 2020 – Cell occupancy – In-Cell Sanitation](#).

²⁹¹ [Gary Simpson v Governor of Mountjoy Prison, and others](#) [2019] IESC 81.

²⁹² IHREC, [Submission to the Committee against Torture on the List of Issues for the Third Examination of Ireland](#) (2020) p. 10.

²⁹³ Irish Prison Service, [Assault Figures](#) (2018).

²⁹⁴ Restricted to cell for 19-23 hours.

²⁹⁵ Irish Prison Service, [Census of Restricted Regime Prisoners January 2020](#).

²⁹⁶ Irish Penal Reform Trust, ['Behind the Door': Solitary Confinement in the Irish Penal System](#) (2018) p. 7.

Separation of sentenced and remand prisoners, and of detained immigrants from criminal prisoners

The Committee recommended in 2014 for the State to establish concrete timelines for the complete separation of remand and sentenced prisoners, and detained immigrants and sentenced prisoners.²⁹⁷ Persons held on remand continue to share cells with a sentenced prisoner in a number of prisons.²⁹⁸

In *General Comment No. 35*²⁹⁹ the Committee stated immigration detention should not take place in prison. The State has adopted the *European Communities (Reception Conditions) Regulations 2018*,³⁰⁰ which designates every Garda Síochána station and Cloverhill prison³⁰¹ as places of detention for international protection applicants.³⁰² The project to establish a dedicated immigration facility at Dublin Airport has been subject to repeated delays since 2016.³⁰³

The Commission recommends the Committee reiterates to the State its recommendation to put in place concrete timelines for the separation of sentenced and remand prisoner, and sentenced prisoners and detained immigrants.

The Commission recommends the Committee asks the State when the immigration detention facilities in Dublin Airport will be opened.

The Commission recommends that the Committee asks the State on measures taken to protect the rights of detained immigrants,³⁰⁴ including the regular inspection and evaluation of immigration related detention.

Independent prisoner complaints mechanism

Noting the State report³⁰⁵ the State has not implemented the Committee's recommendation³⁰⁶ to provide a fully independent effective complaints mechanism for prisoners. The proposals of the Inspector of Prisons to strengthen the system of prisoner complaints, including by providing

²⁹⁷ Human Rights Committee, [Concluding observations on the fourth periodic report](#) (2014) para. 15.

²⁹⁸ [Prisoner Data](#), Dáil Éireann Debate (18 June 2019). See also Irish Prison Service, [Annual Report 2019](#) (2020) p. 26.

²⁹⁹ Human Rights Committee, [General Comment No. 35](#) (2015) para. 18.

³⁰⁰ The [European Communities \(Reception Conditions\) Regulations 2018](#) transposed the EU (recast) Reception Conditions Directive.

³⁰¹ Regulation 31 amending [International Protection Act 2015 \(Places of Detention\) Regulations 2016](#).

³⁰² Government of Ireland, [Fifth periodic report submitted by Ireland under article 40 of the Covenant](#) (2020) para. 157.

³⁰³ Irish Refugee Council, [Asylum Information Database Country Report: Ireland](#) (2019) pp. 19-20.

³⁰⁴ Guidance of European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) provides that detained irregular migrants should have access to legal aid and should, without delay, be expressly informed of their rights and the procedure applicable to them, in a language they understand. They should have the lawfulness of their deprivation of liberty decided speedily by a judicial body. See CPT, [Immigration Detention Factsheet](#) (2017).

³⁰⁵ Government of Ireland, [Fifth periodic report submitted by Ireland under article 40 of the Covenant](#) (2020) paras. 161-163.

³⁰⁶ Human Rights Committee, [Concluding observations on the fourth periodic report](#) (2014) para. 15.

independent oversight of complaints,³⁰⁷ have been subject to undue delay which directly impacts on the rights of prisoners.

The Commission recommends the Committee asks the State to provide information on the timeframe for the introduction of an independent external prisoner complaints mechanism.

Prisoner reintegration and post-release support

High rates of recidivism³⁰⁸ highlight the failure of the prison system to provide treatment to prisoners with the essential aim of their reformation and social rehabilitation under Article 10(3). The prison system can exacerbate existing inequalities,³⁰⁹ and it is important to ensure the adequate allocation of resources to the provision of structured and purposeful activities to counteract the harmful impacts of incarceration.³¹⁰ It is also essential that prisoner reintegration supports be designed into the prison regime and made available to all prisoners³¹¹ and that a structured release approach is implemented so that prisoners, in particular vulnerable prisoners, are provided with links to supports in the community prior to release so as to ensure a continuation of care and support.³¹²

The Commission recommends the Committee asks the State to provide information on measures taken within prison system to address the high rate of recidivism.

The Commission recommends the Committee asks the State to provide information on measures undertaken to provide reintegration supports to prisoners with the aim of reformation and social rehabilitation.

Juvenile justice

Children in detention

An inspection of Oberstown Children Detention Campus in July 2019 found that there were concerns regarding the significant use of restraint, the lack of operational policy for the use of restrictive procedures, and poor record-keeping on physical interventions.³¹³ Any separation policy that amounts to de facto solitary confinement should never be imposed on children.³¹⁴

³⁰⁷ Inspector of Prisons, [Review, Evaluation and Analysis of the Operation of the present Irish Prison Service Prisoner Complaints Procedure](#) (2016) pp. 51-62.

³⁰⁸ 45.8% of prisoners released in 2012 were convicted of another crime within three years. Central Statistics Office, [Prison Recidivism 2011 and 2012 Cohorts](#).

³⁰⁹ IHREC, [Submission to the Committee on the Elimination of Discrimination Against Women](#) (2017) p. 121.

³¹⁰ IHREC, [Submission to the Committee against Torture](#) (2017) p. 33.

³¹¹ IHREC, [Submission to the Committee on the Elimination of Discrimination Against Women](#) (2017) p. 120.

³¹² IHREC, [Submission to the Committee against Torture](#) (2017) p. 39.

³¹³ Health Information and Quality Authority, [Report of Oberstown Children Detention Campus](#) (2020).

³¹⁴ IHREC, [Submission to the Committee against Torture](#) (2017) p. 32. The Committee against Torture has recommended that solitary confinement should never be applied to juveniles. Committee against Torture, [Concluding observations on the second periodic report of Ireland](#) (2017) para. 16(g).

In 2017 the Commission appeared as *amicus curiae* in four cases related to the segregation of children in Oberstown Children's Detention Centre,³¹⁵ in circumstances where the child detainees claimed to have been confined to their cell, without respite for a period of weeks, in conditions that they alleged amounted to solitary confinement.³¹⁶ The High Court reached the conclusion that it could not 'definitely state that the length of the separation period, albeit that it amounted to some three weeks, was in breach of a constitutional norm'.³¹⁷ However, it found that the constitutional rights of the child applicants were breached insofar as they were deprived of daily exercise and any contact with their families during the period of separation and there were no procedural safeguards relating to the imposition of the separation and associated deprivations.³¹⁸

The Commission recommends the Committee asks the State on steps taken to reduce to the use of restrictive practices and solitary confinement, and ensure the use of these practices are subject to appropriate oversight and monitoring to safeguard the rights of children.

Impact of detention on specific groups

Travellers are over-represented in the prison population, comprising 22% of the female prison population and 10% of male prison population, despite only comprising 0.6% of the general population.³¹⁹ There is a lack of a strategy for those in prison who face language and cultural barriers to accessing supports and services.³²⁰ There has been a call for a comprehensive strategy for management of older persons in prisons, which considers their rights.³²¹ Recently published has highlighted the significant difficulties faced by persons with disabilities within the prison system, and the need to ensure the prison system is accessible and persons with disabilities are not subject to discrimination in the provision of services and support.³²²

The Commission recommends the Committee asks the State to provide information on policies and strategies to enhance the protection of the rights of specific groups in detention, and ensure the prison system is accessible, particularly for persons with disabilities and minority ethnic groups.

³¹⁵ IHREC, [Irish Human Rights and Equality Commission Secures Court Role in Oberstown Child Detention Cases](#) (09 January 2017).

³¹⁶ The Commission in its legal submission highlighted its view to the Court that solitary confinement embraces any *de facto* situation where a person is confined to their cell for more than 22 hours a day with limited social interaction. IHREC, [Legal Submissions in Applicant v. The Director of Oberstown Detention Centre and Another](#) (2017).

³¹⁷ [S.F., L.C. and T.G. v. Director of Oberstown Children's Detention Centre & Ors](#) [2017] IEHC 829, para 122.

³¹⁸ [S.F., L.C. and T.G. v. Director of Oberstown Children's Detention Centre & Ors](#) [2017] IEHC 829, para 131.

³¹⁹ Kitty Holland, [Disproportionate number of Travellers in prison population](#) (20 October 2017) *The Irish Times*.

³²⁰ Irish Penal Reform Trust, [Progress in the Penal System \(PIPS\): A Framework for Penal Reform](#) (2019) p. 104.

³²¹ Irish Penal Reform Trust, ["In here, time stands still": Rights, Needs and Experiences of Older People in Prison](#) (2016) p. 4.

³²² Irish Penal Report Trust, [Making Rights Real for People with Disabilities in Prison](#) (2020). This research was funded through the IHREC Human Rights and Equality Grants Scheme

Covid-19 impact on prisons

The Covid-19 pandemic poses a particular threat to prisoners particularly in an overcrowded Irish prison system.³²³ Measures were taken to reduce the prison population including the decision to grant temporary release on case-by-case basis to low risk prisoners who were serving sentences of less than 12 months for non-violent offences and prisoners who had less than 6 months till release.³²⁴ Other measures introduced to safeguard the well-being of prisoners cocooning vulnerable prisoners; a quarantining arrangement; isolation and testing of prisoners with symptoms; specially trained contact tracing teams; basic health checks on all entrants, including staff; and restrictions on access to prisons, including suspension for of family visits for a period and the introduction on video calls.³²⁵ As of writing, there has been no positive prisoner case of Covid-19. The Commission notes that to ensure compliance with human rights and equality standards any measure adopted must be necessary, proportionate, time-bound, subject to review, and not result in *de facto* solitary confinement.³²⁶

The Commission recommends the Committee asks the State on how the positive measures implemented in response to the Covid-19 pandemic will be analysed, and where necessary improved and kept in operation.

13. Peaceful Assembly, Freedom of Association and Participation in Public Life (Articles 21, 22, 25)

Civil society space

The wide definition of ‘political purposes’³²⁷ and ‘third party’³²⁸ in Section 22 of the *Electoral Act 1997*,³²⁹ as amended, impacts on the activity of civil society organisations.³³⁰ The wide definition of political purposes could mean that the ordinary conduct of business (not connected to electoral or referendum activity and campaigns) of a civil society organisation could fall under the scope of

³²³ The number of persons committed to prison continued to rise in 2019. Irish Prison Service [Annual Report 2019](#) (2020) p. 25.

³²⁴ Minister for Justice and Equality, [Dáil Éireann Debate](#) (13 May 2020).

³²⁵ Minister for Justice and Equality. [Covid-19 Pandemic](#), Dáil Éireann debate (13 May 2020).

³²⁶ Inter-Agency Standing Committee, [Interim Guidance–Covid-19: Focus on Persons Deprived of their Liberty](#) (27 March 2020); CPT, [Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease \(COVID-19\) pandemic](#) (20 March 2020).

³²⁷ The definition of political purposes includes: to promote or oppose, directly or indirectly, the interests of a third party in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to a policy or policies or functions of the Government or any public authority; and otherwise to influence the outcome of the election or a referendum or campaign.

³²⁸ Third party defined as any person (other than a party or election candidate) who accepts a donation over €100 in a given year.

³²⁹ The [Electoral Act 1997](#) regulates the conduct of local, national, Presidential and European elections in Ireland.

³³⁰ IHREC, [Policy Statement on the Electoral Acts and Civil Society Space in Ireland](#) (2019).

political purposes as it could be seen as promoting or procuring a particular outcome in relation to a policy or policies of the Government or public body.

Section 22 prohibits donations from non-Irish citizens not resident in Ireland and from companies that do not have an office in Ireland.³³¹ The new Programme for Government includes a commitment to “review our current electoral laws and the conduct of politics in Ireland, to ensure that donations and resources from non-citizens outside the State are not being utilised to influence our elections and political process.”³³²

The Commission recommends the Committee asks the State to ensure that the planned review of the *Electoral Acts* considers whether the provisions are proportionate and do not unduly restrict the right to freedom of association and the ability of civil society organisations to freely carry out their activities.

Public and political participation

Female and minority representation

The Commission has consistently called for more diverse participation in political and public life, particularly an increase in the number of women³³³ persons with disabilities,³³⁴ and people from minority ethnic groups³³⁵ participating in politics and appointed to public boards.³³⁶

The incoming Government’s Programme includes a commitment to “introduce practical measures that will encourage more women to stand in local elections in 2024”.³³⁷ The Commission has proposed that the gender balance requirements under the *Electoral (Amendment) (Political Funding) Act 2012* should be extended to local government elections.³³⁸

Persons with disabilities face wide ranging barriers in seeking to stand for elected office or be appointed to public boards. It is therefore essential that the State engage with persons with disabilities to guarantee and enhance their right to participate in public life.

The recent appointment by the Taoiseach of the first female Traveller to Seanad Éireann is a welcome development. The Commission has proposed that the State should introduce a quota system for minority ethnic candidates in political party candidate selection and undertake additional

³³¹ The Fundamental Rights Agency of the European Union note that the ‘blanket ban on foreign funding can have a particularly serious impact in Ireland, where most independent funding of human rights work comes from trusts and foundations based outside of Ireland. European Union Agency for Fundamental Rights (2017) [Challenges facing civil society organisations working on human rights in the EU](#), p. 22

³³² *Programme for Government – Our Shared Future* (June 2020) p.134.

³³³ In the 2020 general election, 36 women candidates were elected to the parliament representing 22.5% of the total number of parliamentarians. This was only an increase of one seat from the 2016 election despite a record number of women candidates with 160 (31% of total number of candidates) contesting the election.

³³⁴ IHREC, [Recommendations on the Establishment of an Electoral Commission](#) (2019).

³³⁵ In the local elections in 2019, 56 migrants contested the elections with only nine being elected.

³³⁶ IHREC, [Submission to the Citizens' Assembly on Gender Equality](#) (2020) pp. 14-19; IHREC, [Submission to the Committee on the Elimination of Racial Discrimination](#) (2019) pp. 53-55; IHREC, [Submission to the Committee on the Elimination of Discrimination Against Women](#) (2017) pp. 73-76.

³³⁷ *Programme for Government – Our Shared Future* (June 2020).

³³⁸ IHREC, [Submission to the Citizens' Assembly on Gender Equality](#) (2020) pp. 14-15; IHREC, [Submission to the Committee on the Elimination of Discrimination Against Women](#) (2017) p. 73.

positive action measures to enable the political participation of minority ethnic groups, such as the introduction of reserved seats in Parliament and local government.³³⁹ The Seanad Public Consultation Committee has recommended reserving a seat in the Seanad for Travellers; the introduction of Traveller quota system at all levels of the Houses of the Oireachtas, in local elections, and within the Civil and Public Service; and specific quotas for Traveller women.³⁴⁰

The Commission recommends the Committee asks the State what legislative and policy measures it is progressing to increase the participation of women, particularly from marginalised communities, in political and public life.

The Commission recommends the Committee asks the State how it intends to support and enhance the political and public participation of minority groups.

The Commission recommends the Committee asks the State whether it will implement the recommendations of the Seanad Public Consultation Committee with regard to introducing a quota system for Traveller candidates and reserving a seat in Seanad Éireann.

Voting accessibility for persons with disabilities

Voters with a range of impairments face significant access barriers and the State has exhibited limited engagement with political participation of persons with disabilities.³⁴¹ Further action is needed to ensure the electoral process is inclusive in order for the running of elections to meet the requirements of the Public Sector Equality and Human Rights Duty.³⁴²

The Commission recommends the Committee to ask the State on measures taken to ensure the running of elections is inclusive for all persons with disabilities.

Electoral commission

The Government approved the General Scheme of an Electoral Commission bill in December 2019.³⁴³ The proposed electoral commission will bring together several electoral functions in an independent statutory body, inform Government and the Oireachtas in their consideration of reform of electoral law through a new research and advisory function, and a new voter education function will develop the means to enhance participation in the democratic processes. The new Programme for Government commits to having an Electoral Commission in place by the end of 2021.³⁴⁴

It is essential that the electoral commission be mandated to promote more equal participation of groups that face existing barriers to participating in the Irish electoral process, through information, education and facilitation programmes.³⁴⁵ It is also essential that the electoral commission be

³³⁹ IHREC, [Submission to the Committee on the Elimination of Racial Discrimination](#) (2019) p. 55.

³⁴⁰ Seanad Public Consultation Committee, [Seanad Public Consultation Committee Report on Travellers Towards a More Equitable Ireland Post-Recognition](#) (2020).

³⁴¹ IHREC, [Recommendations on the Establishment of an Electoral Commission](#) (2019) pp. 12-13. See also Kitty Holland, [People with disabilities faced 'enormous barriers' to voting in general election](#) (09 March 2020) *The Irish Times*; Kitty Holland, [Thousands will not be able to vote on Saturday, expert warns](#) (06 February 2020) *The Irish Times*.

³⁴² See IHREC, [Recommendations on the Establishment of an Electoral Commission](#) (March 2019) p. 13.

³⁴³ Department of Housing, Planning, and Local Government, [Government Approves the General Scheme of Electoral Commission Bill 2019 \(30 December 2019\)](#).

³⁴⁴ *Programme for Government – Our Shared Future* (June 2020).

³⁴⁵ IHREC, [Recommendations on the Establishment of an Electoral Commission](#) (2019) pp. 9, 11.

mandated to promote and develop standards of political discourse in election and referendum campaigns, with a particular focus on preventing and combating racist discourse related to migrants and minority ethnic groups.³⁴⁶

The Commission recommends the Committee asks the State on how it intends the electoral commission to promote and develop the equal participation of marginalised and underrepresented groups in political life so as to ensure their full enjoyment to the right to participate and the right to vote.

The Commission recommends the Committee urges the State to mandate the electoral commission to promote and develop standards of political discourse in relation to the electoral process so as to ensure marginalised groups are not subject to unjust attacks which potentially impact on their enjoyment of the right to participate in public affairs.

Digital Divide

According to the 2019 UN Digital Economy report, digital divides within countries are based on levels of income, education, gender and geographical location.³⁴⁷ This is echoed in research carried out in Ireland which also found that 42 per cent of Irish people describe themselves as being ‘below average’ for digital skills.³⁴⁸ Low population density and challenging geography have been identified as the key factors contributing to the digital divide in Ireland.³⁴⁹ In Ireland older persons, persons with disabilities, and persons living in isolated rural communities are more likely to experience digital disenfranchisement through a lack of direct exposure to technology or the educational opportunities to understand technology.³⁵⁰

The link between socio-economic status and digital inclusion is clear. Those who face existing social deprivation are more likely to experience digital poverty; a lack of reliable access to the internet and technology, and of digital skills. The growing emphasis on digital services as government, banking, financial services and recruitment increasingly move online, and everyday life becomes more intertwined with technology, has meant that those without access to equipment and digital skills are being left without access to these services and opportunities.³⁵¹ In this way, the digital divide in Ireland is exacerbating existing social inequalities and further isolating already marginalised communities.

The Covid-19 pandemic has further reinforced this digital exclusion as essential services and supports (courses, counselling, day services, support groups, and social work) for children, families

³⁴⁶ IHREC, [Recommendations on the Establishment of an Electoral Commission](#) (2019) pp. 3-6.

³⁴⁷ UN Conference on Trade and Development (2019) [Digital Economy Report 2019](#), p.14. In 2016, the UN Human Rights Council, called upon ‘all States to bridge the gender digital divide and enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of all women and girls’. See Human Rights Council (2016) [The promotion, protection and enjoyment of human rights on the Internet](#), p. 3.

³⁴⁸ Accenture (2020) [Bridging the Gap: Ireland’s Digital Divide](#), p.9.

³⁴⁹ Chambers Ireland (2017) [Reducing the Digital Divide – Why Ireland Needs Better Broadband](#).

³⁵⁰ Professor Roger O’Sullivan (2020) [Covid-19 and the digital divide](#), Institute of Public Health.

³⁵¹ Accenture (2020) [Bridging the Gap: Ireland’s Digital Divide](#), pp.52-53.

and adults have moved online.³⁵² While necessary from a public health perspective to restrict physical access to services, it has left those unable to engage online with these critical services isolated and vulnerable. The difficulties in accessing digital services are particularly enhanced for groups experiencing existing inequalities such as persons with disabilities,³⁵³ children in care,³⁵⁴ people dealing with addiction,³⁵⁵ and those in difficult domestic situations.³⁵⁶

The Commission is also concerned about the impact of the digital divide on access to education, which has come to the fore during the COVID 19 pandemic. Research has revealed that a gap in access to ICT was a salient issue for schools in implementing distance learning.³⁵⁷ In that regard the Commission welcomes the commitments made by Minister for Higher Education Simon Harris TD to bridge the digital divide in the higher education sector.³⁵⁸

The Commission recommends that the Committee ask the State what measures it intends to undertake to bridge the digital divide in Ireland, in light of the current inequalities in access to the internet, and in the context of increased need for online resources due to the COVID 19 pandemic.

Covid-19 impact on peaceful assembly and freedom of association

The restrictions on travel, public gatherings and holding of events introduced under the *Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020* significantly curtailed the right of peaceful assembly and the right to freedom of association. While the legislation includes a sunset clause to review the Act in November, the decision to extend the regulations enforcing the provisions of the Act is not subject to the same legislative oversight and scrutiny.

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has recommended that States should consult with civil society before new measures are adopted to ensure that any limitations respect the human rights principles of legality, necessity, proportionality, and non-discrimination.³⁶⁶

³⁵² Government of Ireland (2020) *Report on Social Implications of COVID-19 in Ireland: Preliminary Assessment*, pp.1-2. Declan Coogan and Joseph Mooney (2020) *Ireland – Country Context: Key Facts and Figures*, in Lena Dominelli et al. (ed) *Covid-19 and Social Work: A Collection of Country Reports*, pp.73-74.

³⁵³ Disability Federation of Ireland (01 July 2020) *Submission to Oireachtas Special Committee on Covid-19 Response: Non-Covid-19 Healthcare*, pp.11-12.

³⁵⁴ *Special Committee on Covid-19 Response debate* (14 July 2020). Aine Kenny (04 May 2020) *Concerns raised over children in care during Covid-19 lockdown*.

³⁵⁵ Conor Hunt (08 April 2020) *Covid-19: Charities concerned for people with addiction problems*, RTÉ News.

³⁵⁶ Irish Association of Social Workers (2020) *Social Work During Covid-19 Ongoing Survey Lockdown Data (12th-18th May 2020)*, p.2. Declan Coogan and Joseph Mooney (2020) *Ireland – Country Context: Key Facts and Figures*, in Lena Dominelli et al. (ed) *Covid-19 and Social Work: A Collection of Country Reports*, pp.73-74

³⁵⁷ ESRI (2020) *Learning for all? Second-Level Education in Ireland during Covid-19*, pp.19-21, 32-33

³⁵⁸ Aine McMahon (22 July 2020) *Extra funding for third level includes three million for mental health support*, The Irish Independent.

³⁶⁶ Office of the High Commissioner for Human Rights, *“States responses to Covid 19 threat should not halt freedoms of assembly and association” – UN expert on the rights to freedoms of peaceful assembly and of association, Mr. Clément Voule* (14 April 2020).

The Commission recommends the Committee asks the State how it intends to study the impact of the regulations on specific groups to ensure any future restrictions do not disproportionately affect marginalised and vulnerable groups.

14. Climate Justice (Articles 2, 3, 6)

Impact of climate change on human rights in Ireland

Ireland is the third worst performing country on climate change in the European Union.³⁶⁷ The Climate Change Advisory Council³⁶⁸ report that Ireland is unlikely to achieve its 2020 and 2030 national, European Union, and international targets for the reduction of greenhouse gas emissions.³⁶⁹ Research by the Irish Environmental Protection Agency has demonstrated that the effects of climate change on ‘natural and human systems’ are already apparent in Ireland.³⁷⁰ Climate change has a disproportionate effect on many disadvantaged, marginalized, excluded and vulnerable individuals and groups. Persons living in inadequate conditions, such as social housing and Traveller sites, will also be particularly affected by weather events which damage weak infrastructure. In addressing climate change, the promotion of human rights in business practices is of vital importance.³⁷¹ The new Programme for Government commits to revising Ireland’s trade and investment strategy, *Ireland Connected*, to include the promotion of human rights and environmental protection as key goals.

The Commission recommends the Committee asks the State to detail how it is implementing a rights-based approach to climate change including providing information on the participation of vulnerable and marginalised groups in decision-making on climate action policies and mitigating measures.

³⁶⁷ [Climate Change Performance Index 2020: Ireland](#).

³⁶⁸ Independent statutory body established under Section 8 of the [Climate Action and Low Carbon Development Act 2015](#), whose role is to review national climate policy and advise the government on how Ireland can move to a low carbon, climate resilient economy and society by 2050.

³⁶⁹ Climate Change Advisory Council, [Annual Review 2019](#) (2019) p. 8.

³⁷⁰ Environmental Protection Agency, [A Summary of the State of Knowledge on Climate Change Impacts for Ireland](#) (2017) p. 7. See also Department of Communications, *Climate Action & Environment, Seventh National Communication: a Report under the United Nations Framework Convention on Climate Change* (2018).

³⁷¹ Office of High Commissioner for Human Rights, [Key Messages on Human Rights and Climate Change](#).



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