

Ireland and the International Covenant on Civil and Political Rights

Submission to the Human Rights Committee
on Ireland's fifth periodic report

Irish Human Rights and Equality Commission
June 2022



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The Irish Human Rights and Equality Commission was established under statute on 1 November 2014 to protect and promote human rights and equality in Ireland, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, and to work towards the elimination of human rights abuses and discrimination.

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**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') is Ireland's 'A' Status National Human Rights Institution ('NHRI') and the National Equality Body. The Commission is also the Independent National Rapporteur on the Trafficking of Human Beings;¹ awaits statutory designation as the Independent Monitoring Mechanism under the UN Convention on the Rights of Persons with Disabilities ('UNCRPD');² and will be assigned the role of the National Preventative Mechanism co-ordinating body under the Optional Protocol to the Convention against Torture ('OPCAT'), pending ratification.³

The Commission provided comments to the Human Rights Committee ('Committee') in August 2020 to inform the List of Issues on Ireland, and these comments provide detailed background context and recommendations to inform the review.⁴ The purpose of this parallel report is to update the Committee on relevant developments since the adoption of its List of Issues on Ireland in January 2021.⁵ It follows the Commission's engagement with the Committee during Ireland's fourth periodic review in 2014,⁶ and as part of the follow-up procedure in 2015,⁷ and 2017.⁸ The focus and structure of this report reflects the priority issues identified by the Committee for the review,⁹ as well as the Commission's Strategy Statement 2022-2024.¹⁰

1 See Section 10 of this report.

2 The [Assisted Decision-Making \(Capacity\) \(Amendment\) Bill 2021](#) will amend the IHREC Act 2014 to provide a statutory basis for the Commission's designation as the Independent Monitoring Mechanism under the UNCRPD.

3 See Section 11 of this report.

4 IHREC, [Submission to the United Nations Human Rights Committee on the List of Issues for the Fifth Periodic Examination of Ireland](#) (2020).

5 Human Rights Committee, [List of issues in relation to the fifth periodic report of Ireland](#) (2021) UN Doc. CCPR/C/IRL/Q/5.

6 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](#) (2014).

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

8 IHREC, [Submission to UN Human Rights Committee in relation to information received from Ireland on followup to the concluding observations](#) (2017).

9 See Human Rights Committee, [List of issues in relation to the fifth periodic report of Ireland](#) (2021) UN Doc. CCPR/C/IRL/Q/5.

10 IHREC, [Strategy Statement 2022-2024](#) (2022). The Commission's Strategic Priorities are as follows:

Much has changed since Ireland's last examination under the International Covenant on Civil and Political Rights ('ICCPR') in 2014, and several areas identified by the Committee in its Concluding Observations have not seen sufficient progress.¹¹ In particular, the Commission is concerned about the ongoing failure of the State to take full accountability for Ireland's long and dark history of institutional abuse; the continuing and widespread discrimination faced by Travellers; ongoing deficiencies in the State's response to gender-based violence, including trafficking; the incompatibility of Ireland's international protection framework with human rights obligations; and inadequate safeguards to ensure access to justice and the rule of law. State action to eradicate structural and institutional racism, ableism, ageism and sexism is also required to ensure the equal protection of civil and political rights for all individuals and groups.

In addition, the Covid-19 pandemic raised significant human rights and equality challenges. The fundamental societal challenges laid bare by the pandemic – systemic inequality, the strains on our social harmony, and the serious gaps in democratic scrutiny and accountability – did not fade away as restrictions were lifted. As we reflect on the lessons learned from the pandemic, there is an opportunity to futureproof our human rights commitments by putting in place protective measures to prevent rights abuses, as other crises emerge and intensify. Global crises, such as climate change, humanitarian emergencies and the pushback to core and well-established concepts of women's rights, require domestic attention to ensure that the State adopts a strong leadership role and offers adequate protection, as required.

The Commission remains available to the Secretariat and Committee to further discuss the information presented in this report and our 2020 List of Issues submission. The Commission also welcomes the significant work of Irish civil society in protecting civil and political rights in Ireland, and the expertise that these organisations bring to the State review.

Economic equality: We will seek greater economic equality in housing, employment, income and for carers; Justice: We will defend access to justice and the rule of law in the international protection system, in the courts and in the use of public powers; Respect and recognition: We will promote the eradication of racism, ableism, ageism and sexism through public understanding and State action; Futureproofing: We will respond to crises that threaten rights and equality, including the COVID-19 pandemic and climate change; and Public Sector Duty: We will encourage, report on and enforce the compliance of public bodies.

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

2.

Constitutional and legal framework

(Article 2)

Domestic incorporation of and reservations to ICCPR

In its 2014 Concluding Observations the Committee recommended that the State take effective measures to ensure that the rights protected under ICCPR are directly applicable in national law, and to review its reservations to Articles 10(2) and Article 20(1) with a view to withdrawing them.¹² The State has confirmed in 2022 that it has chosen to implement its ICCPR obligations indirectly,¹³ resulting in rights-holders remaining unable to directly rely on its provisions before the Irish courts. The Commission also notes that the withdrawal of Ireland's reservation to Article 10(2) is under consideration, but that the State's position on Article 20.1 is unchanged.¹⁴ Given the Committee's clarification that Article 20(1) is fully compatible with the right of freedom of expression¹⁵ and recent international acts of aggression contrary to fundamental rights, Ireland's reservation is unnecessary and fails to demonstrate human rights leadership.

- » **The Commission recommends that the State incorporate ICCPR into domestic law.**
- » **The Commission recommends that the State withdraw its reservations to Articles 10(2) and 20(1) of ICCPR as a matter of priority.**

Public Sector Equality and Human Rights Duty

Since 2014, the Public Sector Equality and Human Rights Duty ('Public Sector Duty') has been part of the legislative framework governing human rights and equality in Ireland. Section 42 of the *Irish Human Rights and Equality Commission Act 2014* ('2014 Act')¹⁶ imposes a legal obligation on public bodies to have regard to the need to eliminate discrimination, promote equality of opportunity and protect the human rights of those to whom they provide services and staff when carrying out their daily work. It puts equality and human rights in the mainstream of how public bodies execute their functions.

The Public Sector Duty requires public bodies to undertake an assessment of the equality and human rights issues pertaining to their purpose and functions; to devise an action plan to address the issues raised in the assessment; and to

12 Human Rights Committee, [Concluding observations on the fourth periodic report of Ireland](#) (2014) UN Doc. CCPR/C/IRL/CO/4 para 5.

13 Human Rights Committee, [Replies of Ireland to the list of issues in relation to its fifth periodic report](#) (2022) UN Doc. CCPR/C/IRL/RQ/5 paras 1-2.

14 Human Rights Committee, [Replies of Ireland to the list of issues in relation to its fifth periodic report](#) (2022) UN Doc. CCPR/C/IRL/RQ/5 paras 3-5.

15 Office of the High Commissioner for Human Rights, [General Comment No. 11: Prohibition of propaganda for war and inciting national, racial or religious hatred \(Art. 20\)](#) (1983) para 2.

16 See *Irish Human Rights and Equality Commission Act 2014*.

report annually on progress and achievements with regard to identified actions. To fulfil this requirement, the Commission guidance recommends that public bodies consult with staff and service users, including those from minority groups, to identify issues and actions and monitor progress.¹⁷

The Commission is of the view that compliance with the Public Sector Duty is fundamental to the public service's ability to meet its obligations under ICCPR. This Duty is an important mechanism through which the implementation of international human rights norms, including ICCPR, can be progressed by public bodies at a national level.

- » **The Commission recommends that the State should issue a formal communication, in the form of a circular, to public bodies to advance compliance with the statutory Public Sector Equality and Human Rights Duty, in line with the Commission's guidance on the Duty.**
- » **The Commission recommends that the State take steps to ensure public bodies bound by the Duty include equality and human rights obligations in agreements with contractual partners, in order to prevent rights violations in outsourced public functions.**

Data collection

The Commission has repeatedly highlighted¹⁸ the considerable shortfalls in equality data in Ireland, and noted confusion or reluctance among many public bodies – including the police¹⁹ – in relation to the collection and processing of 'special category' data such as race, ethnicity and religion.²⁰ Other treaty monitoring bodies have also noted that Ireland does not collect and publish sufficient disaggregated data.²¹

A dearth of data has been observed by the Commission in relation to the

17 Further information and guidance on the Duty can be found at: <http://www.ihrec.ie/our-work/public-sector-duty>.

18 See for example, [IHREC Submission to the Anti-Racism Committee: Developing a National Action Plan Against Racism \(2021\)](#), pp. 13-18; [IHREC Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland \(2020\)](#), p. 7; [IHREC Ireland and the Convention on the Elimination of Racial Discrimination \(2019\)](#), pp. 22-23; [IHREC Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women \(2017\)](#), p. 30; and [IHREC Ireland and the United Nations Convention on the Rights of the Child \(2015\)](#), p. 33.

19 IHREC, [Ireland and the Convention on the Elimination of All Forms of Racial Discrimination \(2022\)](#), p. 2.

20 See [Article 9\(1\), European Union \(EU\) General Data Protection Regulation 2016/679](#).

21 [Committee on the Elimination of Racial Discrimination \(2020\), para 5](#); [Committee on the Elimination of Racial Discrimination \(2019\), para 5](#); [Committee on the Elimination of Discrimination against Women \(2017\), paras. 18, 26](#); [Committee on the Rights of the Child \(2016\), para 17](#); and [Committee on Economic, Social and Cultural Rights \(2015\), para 6](#).

effectiveness of equality legislation,²² and by the Irish Central Statistics Office ('CSO') in relation to data on racial or ethnic origin across public bodies.²³ The Commission also notes a concerning gap in information available from key agencies in the penal system, including the courts, and the absence of an ethnic identifier throughout the criminal justice process.²⁴ In this regard the Commission notes that in June 2022 the Oireachtas Committee on Justice has recommended that ethnicity should be recorded by An Garda Síochána ('AGS') during stop and searches, in order to build a comprehensive data set of the ethnicity of people searched by AGS.²⁵

It is the view of the Commission that the collection of equality data can be done lawfully within current European and Irish data protection legislation,²⁶ but further clarification in law should be considered to address the ongoing confusion and reluctance referenced above.²⁷ The Commission welcomes progress on the development of a national equality data strategy.²⁸

22 See IHREC, [Submission on the Review of the Equality Acts](#) (2021), pp. 66-68. Furthermore, the Commission has noted a need for more baseline research on equality and poverty, including on the impact of Covid-19. See [IHREC, Submission to the Third Universal Periodic Review Cycle for Ireland \(2021\)](#), p.2.

23 The only two data sets which routinely and systematically collected data on race were the Census and Social Inclusion and Community Activation Programme (SICAP) data. A recent audit highlights that the other 24 data sets which were marked as covering race actually contained nationality or ethnicity data. Membership of the Traveller Community appeared in 12 data sets (typically through a yes/no question). See [CSO, Equality Data Audit, 2020](#). The audit also noted significant data gaps in relation to other equality groups. For example, in its 'coverage' section, it notes that characteristics such as sexual orientation and religion 'are not routinely included in data collection.' See CSO, [Coverage of the Dimensions of Equality, Equality Data Audit](#) (2020). Furthermore, data from An Garda Síochána on recorded crimes has been categorised by the CSO as 'Statistics Under Reservation', which means it does not currently meet the CSO's standards for the completeness and accuracy required of official statistics. See for example, CSO, [Recorded Crime Q4 2021](#) (29 March 2022).

24 Irish Penal Reform Trust, [Progress in the Penal System \(PIPS\)](#) (2021), p. 4. See also, Section 5 of this report on the recommendation for an ethnic identifier and annual reports on ethnic minorities in the criminal process and EU Commission, [Guidance note on the collection and use of equality data based on racial or ethnic origin](#) (2021).

25 See Oireachtas Joint Committee on Justice, [Report on Pre-Legislative Scrutiny of the General Scheme of the Garda Síochána \(Powers\) Bill](#) (2022) p. 6. <https://www.oireachtas.ie/en/committees/33/justice/>

26 For further information, see IHREC, [Ireland and the Convention on the Elimination of All Forms of Racial Discrimination](#) (2022), pp. 2-3.

27 The 2018 EU Equality Data Guidelines emphasise the legal basis for the collection of equality data, including special category data. See: European Commission High Level Group on Non-Discrimination, Equality and Diversity – Subgroup on Equality Data, [Guidelines on improving the collection and use of equality data](#) (2018). The EU Equality Data Subgroup – which is chaired by the Fundamental Rights Agency – is a satellite group of the EU High Level Group ('HLG') on Non-Discrimination, Equality and Diversity. IHREC is represented on this group. It was mandated to prepare the [Guidance Note](#) to feed into the EU Anti-Racism Action Plan 2020- 2025, which was published in September 2021. The Commission also notes the forthcoming 2022 guidance note from the Subgroup on LGBTQI+ data.

28 Recommended in the OECD Scan, [Equality Budgeting in Ireland](#): 'Designing a data strategy to support equality budgeting. Such a strategy would focus on improving the extent to which official statistics and administrative data provide insights into equality gaps and assess the impact of different government interventions. Efforts should build on the existing Open Data Strategy 2017-2020, the Public Service Data Strategy 2019-2023 and the work of the National Statistics Board in setting priorities.' P. 4, and 'The development of an equalities data strategy can further bolster the impact of equality budgeting', p. 22.

- » **The Commission recommends that all bodies subject to the Public Sector Duty should be mandated to collect, process, and publish accessible disaggregated equality data.**
- » **The Commission recommends that the State provides a ring-fenced budget to public sector bodies to ensure that they have the necessary resources to collect accessible and usable disaggregated equality data.**
- » **The Commission recommends that all public bodies should publish equality data, in an accessible format, that can be readily utilised by the public, civil society organisations and independent researchers.**

3.

Accountability for past human rights violations

(Articles 2, 6-7, 14)

Commissions of investigation

The Commission has highlighted the importance of incorporating human rights and equality considerations into the terms of reference of commissions of investigation.²⁹ The exclusion of human rights and equality principles from the terms of reference of the Commission of Investigation into Mother and Baby Homes meant that it was not mandated to examine what occurred in these institutions as potential violations of human rights.³⁰ The *Final Report of the Commission of Investigation into Mother and Baby Homes* was subject to considerable criticism by survivors; and the Commission appeared as *amicus curiae* in cases where the State acknowledged that the rights of two survivors were breached as they were identifiable in the Final Report.³¹

- » **The Commission recommends that the State amends the *Commissions of Investigation Act 2004* to embed human rights and equality considerations in the legislation. The Commission further recommends that members of commissions of investigation should have relevant expertise and/or training in human rights and equality commensurate with the human rights and equality issues being examined.**

Investigations into historical abuse

The State has repeatedly failed to ensure independent, thorough and effective investigations, in line with the recommendations of treaty monitoring bodies, into allegations of human rights abuses in respect of Magdalene Laundries,³² Mother

29 IHREC, [Submission to the United Nations Human Rights Committee on the List of Issues for the Fifth Periodic Examination of Ireland](#) (August 2020) p. 16.

30 In 2014, the Commission recommended that the 'investigation should take place within a human rights and equality framework and, in particular, that it fully conforms with the State's human rights obligations under the Constitution and under international human rights law'; IHREC (Designate), [Proposed Commission of Investigation to Inquire into Mother and Baby Homes: Submission on behalf of the Irish Human Rights and Equality Commission \(Designate\)](#) (2014) p. 2. The Commission of Investigation itself noted it in its final report that the Government 'did not opt for that approach in its mandate to the Commission.'; Department of Children, Equality, Disability, Integration and Youth, [Final Report of the Commission of Investigation into Mother and Baby Homes](#) (2021) Chapter 36: Human Rights, para. 36.2.

31 The State consented to a High Court declaration which stated that the two survivors, while not named in the *Final Report of the Commission of Investigation* should have been provided with relevant extracts of the draft report and had the opportunity to make submissions before it was finalised; see *amicus curiae* submission in [Philomena Lee v The Minister for Children, Equality, Disability, Integration and Youth, the Government of Ireland, Ireland and the Attorney General](#); and [Mary Harney v The Minister for Children, Equality, Disability, Integration and Youth, the Government of Ireland, Ireland and the Attorney General](#).

32 The Committee against Torture has found that it has full jurisdiction to decide Elizabeth Coppin's complaint alleging that Ireland has failed to investigate or to ensure accountability or comprehensive redress for the abuse that she suffered in three Magdalene Laundries: 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.

and Baby Homes, reformatory and industrial schools,³³ foster care settings,³⁴ and the practice of symphysiotomy.³⁵ The Special Rapporteur on Child Protection has called for a State inquiry, following the truth commission model, into the practice of illegal adoption.³⁶ Although the Ryan Report, published in 2009,³⁷ highlighted the abuse and neglect experienced by disabled children in residential institutions, which continue to negatively impact their adult life,³⁸ investigations into historical abuse have failed to adequately and comprehensively address issues relating to ableism and racism in institutional settings.³⁹

The continued failure of the State to effectively investigate historical abuse has directly impacted the identification, prosecution and conviction of perpetrators.⁴⁰ To date, there have been 86 complaints to AGS in relation to alleged crimes in

33 The Special Rapporteur remarked that 'past systemic abuses, such as those committed in institutions and in the area of adoption, are yet to be fully examined, with accountability and redress remaining elusive for victims'. United Nations 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](#), A/HRC/40/51/Add.2 (15 November 2019) para. 75.

34 The Farrelly Commission of Investigation was established in 2017 to examine the culture and treatment of individuals with intellectual disabilities in a foster care setting in the South East. It was due to submit its final report by May 2018 but there have been ongoing delays and it has been granted an extension until July 2022 to complete the final phase one report into the case. IHREC, [Commission Calls for 'Grace' Investigation to Respect Human Rights and Equality Obligations for People with Intellectual Disabilities](#) (press release, 7 March 2017); Department of Health, [Written Answers – Departmental Investigations](#) (29 March 2022).

35 Committee on the Elimination of Discrimination against Women, [Concluding observations on the combined sixth and seventh periodic reports of Ireland](#), CEDAW/C/IRL/CO/6-7 (9 March 2017) paras. 14–15; Committee against Torture, [Concluding observations on the second periodic report of Ireland](#), CAT/C/IRL/CO/2 (31 August 2017) paras. 23–30; Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland](#), CERD/C/IRL/CO/5-9 (12 December 2019) paras. 17–18.

36 Special Rapporteur on Child Protection, [Proposals for a State response to illegal birth registrations in Ireland](#) (2022).

37 <https://www.gov.ie/en/publication/3c76d0-the-report-of-the-commission-to-inquire-into-child-abuse-the-ryan-re/>. The report contained 20 recommendations and 99 actions. The Implementation Plan to address the recommendations, categorised the 99 actions under 6 categories including 'Addressing the effects of past abuse'. The [fourth and final report](#) of the monitoring group was approved by Government and was laid before the Houses of the Oireachtas on 13 March 2015.

38 See [Ryan Report: Chapter 13 – Special needs schools and residential services](#) (2009). The experience of disabled children has also been highlighted in other inquiries into the abuse and exploitation of children; Carole Holohan, [In plain sight: Responding to the Ferns, Ryan, Murphy and Cloyne reports](#) (Amnesty International, 2016) pp. 193–195.

39 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. Furthermore, 'race' has been excluded as a specific theme from the Terms of Reference of a number of investigations into historic abuses in Irish institutions, including the Commission to Inquire into Child Abuse. While 'race' was included in the final Terms of Reference of the Mother and Baby Homes Commission of Investigation, the finding in the final report that there was no evidence of discrimination against mixed race children, disabled children and Traveller children in decisions around adoption has been contested. See IHREC, [Submission to the Third Universal Periodic Review Cycle for Ireland](#) (March 2021) p. 19 (footnote 58).

40 There were only eleven cases referred for prosecution based on the Ryan Report regarding abuse in child residential institutions. There has been no recent criminal prosecutions related to Magdalene Laundries or symphysiotomy. James Gallen, 'Transitional justice and Ireland's legacy of historical abuse' (2020) 55 *Éire-Ireland* 35, p. 60.

Mother and Baby Homes;⁴¹ however, 54 of these cases have been closed and only 32 remain open for further investigation.⁴²

- » **The Commission calls for the State to overhaul the approach to investigating historical human rights abuses to ensure that all allegations are afforded timely, independent, transparent, thorough and effective victim-centred investigations, in line with international human rights standards. Investigations should adopt an intersectional approach and adequately address issues relating to ableism and racism in institutional settings.**

- » **The Commission recommends that identified perpetrators should be prosecuted and punished with penalties proportionate to the gravity of the offence.**⁴³

Provision of an effective remedy

The implementation of redress schemes for past human rights violations has been marked by inadequacies and limitations which have created barriers for victims and survivors in accessing effective redress.⁴⁴

41 The complaints relate to emotional abuse; sexual abuse; physical abuse/mistreatment; legality of adoption/birth-cert falsified; medical treatments/vaccine trials; baby deaths/burial; and, other crimes (i.e. theft/state corruption). The State's reply to the List of Issues noted that An Garda Síochána considered the Final Report of the Commission of Investigation into Mother and Baby Homes and determined that there is insufficient information to commence criminal investigations. However, it separately acknowledges that this Commission 'was designed to facilitate effective fact-finding, not to impose penalties or adjudicate on individual behaviours.' See Human Rights Committee, [Replies of Ireland to the list of issues in relation to its fifth periodic report](#) (2022) CCPR/C/IRL/RQ/5, paras 26-27.

42 As of 1 April 2022, see [monthly reports of the Garda Commissioner to the Policing Authority](#) for February, March and April 2022. Cases have been closed due to failure to identify or contact victims, victims declining to engage, and An Garda Síochána being unable to identify criminal behaviour.

43 For example, the Commission noted in its 2020 report to the Committee that the State's 2019 report sets out that no individuals claiming to be victims of the Magdalene laundries have made any complaints to the Department of Justice and Equality seeking further inquiries or criminal investigations. However, victims may not be aware of the complaints mechanism or have the physical or psychological ability to present to law enforcement officials. The Commission has stated that the initiation of a criminal investigation does not require a victim to make a complaint: IHREC, [Submission to the United Nations Human Rights Committee on the List of Issues for the Fifth Periodic Examination of Ireland](#) (2020), pp. 18-19.

44 The State has established a range of redress schemes to address historical abuse including the Magdalene Restorative Justice Scheme, the Symphysiotomy Payment Scheme, the Residential Institutions Redress Scheme and the O'Keeffe Scheme. Shortcomings identified in the operation of these redress schemes include an adversarial approach to the provision of redress; an unduly restrictive and narrow approach to the category of 'victim'; a short timeframe to apply to the scheme; overly burdensome standards of proof; low levels of award in comparison to violations suffered; difficulties accessing personal records held in archives; over reliance on the records of religious congregations in making assessments for eligibility; ambiguity about the weight being afforded to the testimony of individuals and/or their relatives; the ex gratia nature of the scheme meaning there is no acknowledgement of the violation of rights; and a requirement to sign a waiver against further legal recourse against state and non-state actors through the judicial process. IHREC, [Submission to the UN Committee against Torture on the List of Issues for the Third Examination](#)

Despite the signing of an agreement with the State in 2002 to provide the cost of redress in exchange for indemnity from legal action from former residents who experienced child abuse,⁴⁵ the religious congregations which managed and operated the institutions have continually failed to meet the costs of the running redress schemes since the publication of the Ryan Report.⁴⁶

The Government recently announced proposals for a payment scheme for survivors of Mother and Baby Homes and related institutions,⁴⁷ which will be established on a statutory footing.⁴⁸ The Commission is of the firm view that the scheme cannot be bound by the significant limitations of the Commission of Investigation's findings and recommendations.⁴⁹ The Commission has called for the design and implementation of the scheme to be human rights and equality compliant,⁵⁰ and for the legislation to form part of a larger transitional justice response to the treatment of women and children in Mother and Baby Homes and other institutions.⁵¹

[of Ireland](#) (2020) pp. 26, 29–30; IHREC, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on the follow-up procedure to Ireland's combined sixth and seventh periodic report](#) (2020) pp. 2, 4–5, 7.

45 The State indemnified 18 congregations from any legal actions which former residents might take against them in return for their contribution to the cost of the redress scheme. The congregations agreed to contribute €128 million; following the publication of the Ryan Report the congregations made a further voluntary offer. The amounts offered total €480.6 million, contributions received to date are €236.5 million; Department of Education, [Parliamentary Question: Residential Institutions](#) (26 April 2022). See also Comptroller and Auditor General, [Cost of Child Abuse Inquiry and Redress](#) (2017) pp. 37–39.

46 Despite a Government policy for a sharing of the costs on a 50:50 basis between the taxpayer and the congregations, by the end of 2015, contributions received from the congregations represented only 13% of the cost of the redress and the offered amount was only 23% of the overall cost; Comptroller and Auditor General, [Cost of Child Abuse Inquiry and Redress](#) (2017) pp. 37–39. See also Patsy McGarry, [Redress for abuse in religious institutions falls short of 2009 commitments](#).

47 The purpose of the Mother and Baby Institutions Payment Scheme is to provide financial payments based on length of stay, a work-related payment, and an enhanced medical card to defined groups in acknowledgement of suffering experienced while resident in Mother and Baby and County Home Institutions. Department of Children, Equality, Disability, Integration and Youth, [Mother and Baby Institutions Payment Scheme: Government Proposals](#) (November 2021).

48 *General Scheme of a Mother and Baby Institutions Payment Scheme Bill*.

49 The Commission previously raised concerns on the narrowness of the Commission of Investigation's remit in terms of the institutions, types of abuses, and persons under investigation. In April 2021, the Commission provided an advisory paper to the Government on the human rights and equality components of the redress scheme needed for survivors of Mother and Baby Homes and related institutions. The Commission's submission was informed by a series of one-to-one listening sessions in March 2021 with survivors and key stakeholders to get their personal views on redress. The participants all expressed concern about the findings of the Commission of Investigation. IHREC, [Advisory Paper to the Interdepartmental Group on the Government's Planned Development of a 'Restorative Recognition Scheme for former residents of Mother and Baby Homes and County Homes'](#) (April 2021).

50 The Commission notes communication from eight United Nations Special Procedures to the Irish Government in relation to the human rights concerns with the proposed redress scheme for former residents of Mother and Baby Homes and County Homes. In the correspondence, the UN experts set out the international legal obligations which the State should comply with it in designing and implementing the scheme. See United Nations, [Communication from UN Special Procedures to Ireland, IRL 2/2021](#) (5 November 2021).

51 IHREC, [Advisory Paper to the Interdepartmental Group on the Government's Planned Development of a 'Restorative Recognition Scheme for former residents of Mother and Baby Homes and County Homes'](#) (2021).

- » **The Commission recommends that the State overhaul the operation of its redress schemes for past human rights violations to ensure access to an effective remedy for victims and survivors of historical abuse, in line with human rights and equality principles. The Commission further recommends that the State ensure that redress schemes are based on the right to truth, justice, reparation, non-recurrence and memory processes.**
- » **The Commission recommends that the State provides a detailed update on the financial contributions of religious congregations to redress.**

Access to birth certificates and early life information

The *Birth Information and Tracing Bill* was published in January 2022,⁵² and the Commission regrets that a number of its recommendations have not been adopted.⁵³ The legislation does not specify timeframes for compliance with requests for information giving rise to the potential of undue delay in establishing identity.⁵⁴ The retention of a mandatory information session potentially constitutes a disproportionate and irrational interference with a person's right to know their origins and their right to dignity and equality.⁵⁵ The Bill only provides an entitlement to counselling to parents.⁵⁶

- » **As the *Birth Information and Tracing Bill* is likely to be passed by Parliament prior to the State review by the Committee,⁵⁷ the Commission recommends that the public information campaign⁵⁸ on the process for registering contact preferences and for accessing birth information should have a broad reach, utilise various means of communication, and include information on the supports and services available to affected persons.**

52 *Birth Information and Tracing Bill 2022*. The purpose of the Birth Information and Tracing Bill is to legislate for full and unredacted access to birth and early life information.

53 IHREC, [Submission on the General Scheme of the Birth Information and Tracing Bill 2021 \(2021\)](#).

54 IHREC, [Submission on the General Scheme of the Birth Information and Tracing Bill 2021 \(2021\)](#) pp. 15-16.

55 Section 17 of the Bill provides that where a parent has indicated a no contact preference, an information session shall be held with the person who has applied for access to information where they will be informed of their own rights of access and the entitlement of the parent to not be contacted and the right to privacy of the parent. This has been described as paternalistic and the Commission considers it to not be supported by evidence; IHREC, [Submission on the General Scheme of the Birth Information and Tracing Bill 2021 \(2021\)](#) pp. 17-22.

56 IHREC, [Submission on the General Scheme of the Birth Information and Tracing Bill 2021 \(2021\)](#) pp. 21-22.

57 The Bill has been passed by Dáil Éireann (lower house of Parliament) and is currently before Seanad Éireann (upper house of Parliament).

58 Section 60 of the *Birth Information and Tracing Bill* provides that the Adoption Authority of Ireland may hold a public information campaign to raise awareness of the process.

- » **The Commission recommends that the review of the operation of the legislation should include the participation of affected persons and a report of the review should be made publicly available.⁵⁹**

Dignity in death

The Government published the *Institutional Burials Bill* in February 2022,⁶⁰ which provides a legislative basis for the dignified burials for victims left in mass graves associated with Mother and Baby Homes and related institutions.⁶¹ The Commission acknowledges that there may be significant difficulties in retrieving, identifying and returning remains to family members.⁶² However, this does not diminish the obligation on the State to make its best efforts to do so, and in developing and implementing this law, to ensure meaningful engagement with women and families who have been affected.⁶³

- » **The Commission recommends that the State ensure the design and implementation of the *Institutional Burials Bill* is based on the pillars of transitional justice, underpinned by meaningful engagement with affected individuals and complemented by a transparent communications strategy.**

59 Section 70 of the *Birth Information and Tracing Bill* provides the Minister for Children, Equality, Disability, Integration and Youth shall, not later than 2 years after enactment, commence a review of the operation of the Act.

60 *Institutional Burials Bill 2022*.

61 The discovery of the mass grave site at the former Mother and Baby Home at Tuam in 2017 and the findings of the *Final Report of the Commission of Investigation into Mother and Baby Homes* illustrated that many of the Mother and Baby Homes did not properly record the burials of children who died in these institutions; IHREC, [Submission to the Joint Committee on Children, Disability, Equality and Integration on the General Scheme of a Certain Institutional Burials \(Authorised Interventions\) Bill](#) (February 2021) pp. 2–4.

62 The Commission has called for a comprehensive and multidisciplinary approach to the identification process; IHREC, [Submission to the Joint Committee on Children, Disability, Equality and Integration on the General Scheme of a Certain Institutional Burials \(Authorised Interventions\) Bill](#) (February 2021) p. 23.

63 The State is under a legal duty to investigate mass burials and to preserve and protect evidence at sites, the Commission makes clear, and any ongoing criminal investigations should not see any mass grave sites excluded from the remit of this burials law; IHREC, [Submission to the Joint Committee on Children, Disability, Equality and Integration on the General Scheme of a Certain Institutional Burials \(Authorised Interventions\) Bill](#) (February 2021) pp. 8–9.

4.

Derogations

(Articles 4, 9, 12, 21-22)

As established by the Committee in 2020, States had to observe certain requirements and conditions when exercising emergency powers in connection with the Covid-19 pandemic, including by ensuring that derogating measures were not discriminatory and deviated "only to the extent strictly required by the exigencies of the public health situation".⁶⁴ From the outset, the Commission stressed the need for the State to incorporate human rights and equality standards in its emergency decision-making and to ensure that all restrictions on rights met the minimum requirements of legality, necessity, proportionality and non-discrimination.⁶⁵ The Commission notes that Ireland did not formally submit any notification of derogations from ICCPR.⁶⁶

During the pandemic, the Minister for Health had 'sweeping powers' to introduce restrictions on civil liberties, and most of these restrictions were introduced through regulations.⁶⁷ This raised serious rule of law concerns and made it difficult to maintain effective democratic oversight over emergency measures, with no scope for pre-enactment consultation with, or scrutiny by, a Parliamentary committee.⁶⁸ The Government's subsequent presentation of public health measures persistently blurred the boundary between legal requirements and public health guidance, which led to uncertainty, inequality and the indirect enforcement of guidance as if it were the law.⁶⁹ For example, during the strictest phase of lockdown, over-70s were advised to self-isolate (with no legal requirement to do so), but the official language used in guidance suggested that cocooning was mandatory.⁷⁰ The State also relied on other statutory schemes

64 Human Rights Committee, [Statement on derogations from the Covenant in connection with the COVID-19 pandemic](#) (2020) pp. 1-2.

65 IHREC, [Statement from the Irish Human Rights and Equality Commission on COVID-19 Oversight in Respect of Human Rights and Equality](#) (27 April 2020); IHREC, [Submission to the Special Committee on COVID-19 Response Regarding the Adequacy of the State's Legislative Framework to Respond to COVID-19 Pandemic and Potential Future National Emergencies](#) (September 2020) pp. 1-2.

66 In April 2020, the Committee called on all State parties that had taken emergency measures in connection with the Covid-19 pandemic that derogate from their obligations under the Covenant to comply without delay with their duty to notify the Secretary-General immediately: Human Rights Committee, [Statement on derogations from the Covenant in connection with the COVID-19 pandemic](#) (2020) CCPR/C/128/2, para 1.

67 In Ireland, the Minister for Health is empowered to enact certain restrictions via secondary legislation (regulations), rather than primary legislation. Research published by the Commission in January 2021 demonstrated that the Minister for Health had made 67 sets of Covid-related regulations by that point in the pandemic. See IHREC/COVID-19 Law and Human Rights Observatory, [Ireland's Emergency Powers During the Covid-19 Pandemic](#) (February 2021), pp. 2, 49.

68 Regulations were also applied retroactively, and were frequently not published for several days after they were made. IHREC/COVID-19 Law and Human Rights Observatory, [Ireland's Emergency Powers During the Covid-19 Pandemic](#) (February 2021), pp. 48-49, 64, 68.

69 IHREC/COVID-19 Law and Human Rights Observatory, [Ireland's Emergency Powers During the Covid-19 Pandemic](#) (February 2021) pp. 65, 99. The Joint Committee on Justice has recommended that in future situations, care is taken to ensure that regulations are made clear to the public and that there is no confusion over public health advice and regulations carrying a criminal sanction: [Report on Civil Liberties during the Covid-19 Pandemic](#) (2021), p. 9.

70 IHREC/COVID-19 Law and Human Rights Observatory, [Ireland's Emergency Powers During the Covid19 Pandemic](#) (February 2021) p.66

to enforce compliance with health advice, including by restricting social welfare payments on the grounds of travel abroad.⁷¹

The State's response to the pandemic also demonstrated a lack of human rights and equality expertise in decision-making structures, and in the systems that implement and scrutinise those decisions.⁷² For example, making it an offence to leave one's home disproportionately affected those with caring responsibilities,⁷³ and the relaxation of procedural safeguards for detention on mental health grounds contravened the United Nations Convention on the Rights of Persons with Disabilities ('UNCRPD').⁷⁴ Research published by the Commission found particularly adverse effects on disabled people,⁷⁵ women, older people, children without access to technology or living space, people living in overcrowded accommodation (including Direct Provision centres), Travellers and Roma, and those living in, or at risk of poverty.⁷⁶ However, despite the disproportionate impact of the restrictions and their enforcement on specific groups, there was a notable lack of representation and involvement of these groups in the core pandemic decision-making structures.⁷⁷ The Commission has noted, in particular, the very limited participation of disabled people and Disabled Persons Organisations in the development and oversight of the Covid-19 response.⁷⁸

The Commission has repeatedly called for the establishment of a dedicated Parliamentary Committee on Human Rights and Equality.⁷⁹ A dedicated

71 IHREC/COVID-19 Law and Human Rights Observatory, [Ireland's Emergency Powers During the Covid19 Pandemic](#) (February 2021) pp. 96-99.

72 Research published by the Commission noted: 'it is difficult to avoid the conclusion that the delegation of legislative power to the Minister for Health has resulted in a black hole for the consideration of human rights and equality concerns.' See IHREC/COVID-19 Law and Human Rights Observatory, [Ireland's Emergency Powers During the Covid-19 Pandemic](#) (February 2021) p. 9.

73 IHREC/COVID-19 Law and Human Rights Observatory, [Ireland's Emergency Powers During the Covid19 Pandemic](#) (February 2021) p.77.

74 IHREC/COVID-19 Law and Human Rights Observatory, [Ireland's Emergency Powers During the Covid19 Pandemic](#) (February 2021) p.74.

75 It is the Commission's view that the Covid-19 pandemic highlighted the limited realisation of disabled people's rights and gave rise to significant risks of discrimination and the undermining of rights for disabled people in areas ranging from health and wellbeing to education and employment: IHREC, [Submission to the Oireachtas Joint Committee on Justice: COVID-19 and Civil Liberties](#) (2021), p. 7.

76 IHREC/COVID-19 Law and Human Rights Observatory, [Ireland's Emergency Powers During the Covid19 Pandemic](#) (February 2021). p.vii; IHREC, [Submission to the Oireachtas Joint Committee on Justice: COVID-19 and Civil Liberties](#) (2021), p.7. See also, Irish Council for Civil Liberties, [Human Rights in a Pandemic: A Human Rights Analysis of the Irish Government's Response to Covid-19](#) (2021), p. 70.

77 IHREC/COVID-19 Law and Human Rights Observatory, [Ireland's Emergency Powers During the Covid19 Pandemic](#) (February 2021) p.61 and IHREC, '[Letter to the Minister for Health](#)' (18 May 2020).

78 See Article 4.3.3, UNCRPD and IHREC, [The Impact of COVID-19 on People with Disabilities: Submission by the Irish Human Rights and Equality Commission to the Oireachtas Special Committee on COVID-19 Response](#) (2020), p. 4. While a Vulnerable People Sub-Group was developed to feed into the National Public Health Emergency Team, it did not include participation by disabled people or Disabled Persons Organisations, and was disbanded in July 2020. See Irish Examiner, [NPHET committee on vulnerable people disbanded](#) (November 2020) and NPHET Vulnerable People Subgroup, [Overview of meetings to date](#) (June 2020).

79 See for example, IHREC, [Submission to the Third Universal Periodic Review Cycle for Ireland](#) (March 2021), p. 3. A former Parliamentary Sub-Committee on Human Rights, relative to Justice and Equality matters met

Parliamentary Committee could have provided oversight of the implementation of emergency measures taken in response to Covid-19, and acted as a forum for those most likely to be affected by those measures.⁸⁰ Expert input from a dedicated Parliamentary Committee would also enable human rights and equality to be embedded into national responses to future crises.

The Commission notes the Government's indication that there will be an evaluation of the State's response to the Covid-19 pandemic,⁸¹ but no concrete details about the scope, timeframes or approach have been published.

- » **The Commission recommends that the State carries out a thorough inquiry into the pandemic response, including an examination of the impact on civil and political rights and the development of legal and policy measures to mitigate the disproportionate impact of future crises on structurally vulnerable groups,⁸² and to ensure their representation and active participation in emergency planning and decision-making structures.**

- » **The Commission recommends that the State establish a Parliamentary Committee on Human Rights and Equality with an expansive mandate across all Government Departments, including close oversight of emergency legislation.**

three times before the Parliament was dissolved on 3 February 2016 and it was not re-established following the 2016 general election.

80 IHREC, [Statement from the Irish Human Rights and Equality Commission on COVID-19 Oversight in Respect of Human Rights and Equality](#) (Press release, 27 April 2020). See also IHREC, [Submission to the Special Committee on COVID-19 Response Regarding the Adequacy of the State's Legislative Framework to Respond to COVID-19 Pandemic and Potential Future National Emergencies](#) (September 2020) p. 2.

81 Dáil Debates, [Order of Business](#) (1 March 2022) and Dáil Éireann Debate, [Covid-19 pandemic](#) (15 February 2022).

82 For the purpose of this parallel report, we define a structurally vulnerable person as someone who is particularly vulnerable to violations of their civil and political rights due to political, economic, social and cultural structures. Instead of focusing on the personal characteristics of individuals and groups and viewing them as lacking agency, 'structural vulnerability' refers to the structures in place which render certain sectors of the population particularly vulnerable to human rights abuses.

5.

**Non-
discrimination**

(Articles 2-3, 14, 20, 23, 26-27)

Equal Status Acts

The Commission notes the State has initiated a review of equality legislation which is an important opportunity to correct the flaws and shortcomings that have been observed, including in the Equal Status Acts ('ESA').⁸³ The Commission and its predecessor bodies have repeatedly highlighted that the scope of protection against discrimination is limited by the exemption for enactments under the ESA which effectively prevents any challenge to discriminatory laws.⁸⁴ The exclusion of public functions from the definition of services coupled with this enactment exemption excludes a significant amount of State activity from discrimination challenges.⁸⁵ While Ireland ratified the UNCPRD in 2018, the Commission is concerned that the requirement of reasonable accommodation under Article 5 has not been incorporated to the fullest extent possible into the ESA.⁸⁶ A lack of provision for intersectional discrimination,⁸⁷ socio-economic discrimination⁸⁸ and a number of procedural aspects⁸⁹ of discrimination proceedings also continue to restrict the effectiveness of the ESA to combat discrimination and provide redress.

The Commission notes the 2021 Supreme Court judgment in *Zalewski v Adjudication Officer & Ors*, where the Court held that the standard of justice

83 Review of the Equality Acts: <https://www.gov.ie/en/press-release/24864-minister-ogorman-announces-review-of-the-equality-acts/>. For a comprehensive list of reforms of equality legislation recommended by the Commission see generally: IHREC (2021) [Submission on the Review of the Equality Acts](#).

84 Section 14(1)(a)(i) of the ESA excludes 'any action that is required by or under any enactment or order of a court' from the prohibition on discrimination. The Commission considers this exemption to be overly broad, lacking objective justification and potentially raises compliance issues with the State's obligations under the European Union's Racial Equality Directive 2000/43/EC and Gender Goods and Services Directive 2004/113/EC. See: IHREC (2021) [Submission on the Review of the Equality Acts](#), pg. 32-33; IHREC (2017) [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women](#), pg. 36; Irish Human Rights Commission (IHRC) (2014) [Submission to the UN Human Rights Committee on the Examination of Ireland's Fourth Periodic Report under the International Covenant on Civil and Political Rights](#), pg. 18-19.

85 The lack of express reference to public functions in the definition of services has been interpreted as an exemption and serves to deny access to a remedy to a person alleging discrimination using the provisions of EU Equality Directives. See: IHREC (2021) [Submission on the Review of the Equality Acts](#), pg. 51-52.

86 Under Section 4 service providers are not required to provide reasonable accommodation if this would amount to more than a nominal cost and unless it would be impossible or unduly difficult for the person to access the service. See: IHREC (2021) [Submission on the Review of the Equality Acts](#), pg. 53-55.

87 IHREC (2021) [Submission on the Review of the Equality Acts](#), pg. 27-32; IHREC (2019) [Ireland and the Convention on the Elimination of Racial Discrimination](#), pg. 17-18; IHREC (2017) [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women](#), pg. 33-34; IHREC (2020) [Submission to the Citizens' Assembly on Gender Equality](#), pg. 28.

88 IHREC (2015) [Ireland and the International Covenant on Economic, Social and Cultural Rights](#), pg. 22-23; IHREC (2017) [Observations on the Equality \(Miscellaneous Provisions Bill 2017\)](#); IHREC (2017) [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women](#), pg. 33-34; IHREC (2019) [Ireland and the Convention on the Elimination of Racial Discrimination](#), pg. 17-18; IHREC (2020) [Submission to the Citizens' Assembly](#), pg. 27-28; IHREC (2018) [Comments on Ireland's 15th National Report on the Implementation of the European Social Charter](#), pg. 16

89 For example, the mandatory two month notification to the respondent of intention to bring proceedings and an inaccessible complaints procedure. See: IHREC (2021) [Submission on the Review of the Equality Acts](#), pg. 41- 63; IHRC (2004) [Observations on the Equality Bill 2004](#), pg. 3-4; IHREC (2017) [Ireland and the Convention on the Elimination of Discrimination Against Women](#), pg. 35-36.

administered in bodies such as the Workplace Relations Commission ('WRC') cannot be lower or less demanding than the justice administered by the courts, and must comply with fundamental human rights principles such as fairness.⁹⁰ The Commission is concerned about systemic shortcomings in accessing justice in equality cases in Ireland. CSO data from 2019 demonstrates that just 3% of people who experienced discrimination made an official complaint or took legal action.⁹¹

- » **The Commission recommends that the enactment exemption in section 14(1)(a) of the *Equal Status Acts* be amended to allow challenges to discriminatory legislation.**
- » **The Commission recommends that the *Equal Status Acts* be amended to expressly include public functions within the definition of services and that any exceptions to same are necessary, proportionate and justifiable.**
- » **The Commission recommends that the current legislative provision on the right to reasonable accommodation is amended to comply, insofar as is constitutionally possible, with the UNCRPD.**
- » **The Commission recommends that the State extend the scope of legal aid to equality cases by designating the WRC as a prescribed tribunal under Section 27(2) (b) of the *Civil Legal Aid Act 1995*.⁹²**

National policy and economic frameworks

The Commission notes that a number of national equality strategies have concluded in the absence of successor strategies, and are either undergoing review or awaiting evaluation, with the focus on the processes for implementation.⁹³ The State has committed to the development and implementation of new national strategies relating to migrants, Travellers and Roma, children and young people, disabled people and the LGBTI+ community,⁹⁴

90 *Zalewski v Adjudication Officer & Ors* [2021] IESC 24.

91 Central Statistics Office, *Equality and Discrimination: Quarter 1 2019* (2019). See also, F. McGinnity, R. Grotti, O. Kenny and H. Russell, *Who experiences discrimination in Ireland? Evidence from the QNHS Equality Modules (IHREC and ESRI)* (2017) 10. See: IHREC (2021) [Submission on the Review of the Equality Acts](#), pg. 7-11

92 See: IHREC (2021) [Submission on the Review of the Equality Acts](#), pg.10

93 A combined evaluation of the Migrant Integration Strategy, the National Strategy for Women and Girls, and the National Traveller and Roma Inclusion Strategy has been commissioned with this exercise due to conclude by Q3 2022. The Department of Children, Equality, Disability, Integration and Youth has advised that the evaluation report will be published on conclusion. An independent evaluation of the LGBTI+ National Youth Strategy 2018-2020 is expected to be undertaken next year. For further information, see Government of Ireland, [National Reform Programme for the European Semester](#) (April 2022), p. 57.

94 Department of the Taoiseach (2020) [Programme for Government: Our Shared Future](#), pg. 76-77. See also, Department of Children, Equality, Disability, Integration and Youth, [Minister O'Gorman publishes Better Outcomes, Brighter Futures Annual Report 2020](#) (2022). The successor framework to the National Disability

The State is also developing the third National Strategy on Domestic, Sexual and Gender-Based Violence,⁹⁵ and is conducting a mid-term review of the Roadmap for Social Inclusion 2020-2025.⁹⁶ As noted previously in this report, the Commission has highlighted the disproportionate impact of the pandemic on disabled people, older people, women, Travellers, residents of Direct Provision centres and people living in or at risk of poverty.⁹⁷ The evaluation of equality strategies and the development of successor strategies must adopt an intersectional approach and ensure a coherent response to the exacerbation of discrimination and exclusion due to the Covid-19 pandemic⁹⁸ as well as rising cost of living pressures.⁹⁹ Addressing discrimination should also inform the State's investment of European Commission funds to address the health, economic and social crisis caused by the pandemic.¹⁰⁰

- » **The Commission recommends that the evaluation reports, and the anonymised evidence on which they are based, are published and include a focus on the processes for implementation and outcomes of the national equality strategies.**

- » **The Commission recommends that successor equality strategies and economic frameworks address the exacerbation of inequality, discrimination and exclusion for structurally vulnerable groups during the Covid-19 pandemic, and establish protective measures for future national emergencies.**

The Commission welcomed the establishment of the Anti-Racism Committee in June 2020 but regrets the delayed publication of the National Action Plan Against Racism ('NAPAR').¹⁰¹ The Commission calls for greater urgency and

Inclusion Strategy (NDIS) 2017-2022 will be framed taking account of the need to prioritise implementation of the UNCRPD: Department of Children, Equality, Disability, Integration and Youth, [Departmental Strategies](#) (24 March 2022).

95 See Section 7 of this report.

96 Dáil Éireann Debate, [Departmental Strategies](#) (22 March 2022).

97 See Section 4 of this parallel report.

98 For further information, see Section 4. See also, IHREC (2021) [Submission to the Oireachtas Joint Committee on Justice, Covid-19 and Civil Liberties](#); IHREC (2020) [Comments on Ireland's 17th National Report on the Implementation of the European Social Charter](#), pg. 12-13; IHREC (2020) [The Impact of Covid-19 on People with Disabilities](#); IHREC (2021) [Submission to the Joint Committee on Key Issues affecting the Traveller Community](#), pg. 17-18; IHREC (2020) [Statement from the Irish Human Rights and Equality Commission in Respect of Direct Provision](#).

99 K. McQuinn, C. O'Toole, W. Disch, E. Shiel and E. Kenny, [Quarterly Economic Commentary: Spring 2022](#) (ESRI: 2022).

100 Through its National Recovery and Resilience Plan, the Irish Government has secured a significant investment from the European Commission to mitigate the public health, economic and social crisis caused by the Covid-19 pandemic. However, the Irish Plan does not specifically address human rights or equality concerns. See Department of the Taoiseach, [The National Recovery and Resilience Plan](#) (2021).

101 The ARC was established to provide an Interim Report to the Government within 3 months of convening and a draft NAPAR within 1 year. See: Department of Justice (2020) [Action Plan Against Racism for Ireland to be drawn up by new Independent Anti-Racism Committee](#). The Interim Report was submitted to Government in November 2020 but was not published until April 2021. See: Anti-Racism Committee (2020) [Interim Report](#).

prioritisation of the State's commitment to the elimination of racial discrimination. An authoritative, participatory mechanism for coordinating and monitoring the implementation of the NAPAR should also be established for the lifetime of the strategy, in line with the human rights principles of participation and accountability.¹⁰²

- » **The Commission recommends no further delays in the publication of the NAPAR, that authority for the oversight and implementation of the Action Plan be vested in the Department of the Taoiseach, and that the State takes immediate action to establish implementation structures, allocate resources and deliver recommendations.**

Hate crime and hate speech

The Commission notes with concern reports of increases in hate crime and discriminatory incidents over the course of the pandemic,¹⁰³ and recently issued a number of recommendations in relation to the proposed *Criminal Justice (Hate Crime) Bill*, which is intended to replace the *Prohibition of Incitement to Hatred Act 1989*.¹⁰⁴ Effective operation and enforcement of hate crime and incitement to hatred legislation requires that members of AGS, the judiciary and prosecutors be provided with ongoing training on such offences.¹⁰⁵ The Commission is concerned that the proposed definition of 'hatred' does not align with international standards and that the effectiveness of the Bill would be improved by the provision of clearer definitions of harm, unlawful discrimination and by defining hostility and incitement.¹⁰⁶ Effective enforcement of this legislation also requires the establishment of robust sustainably funded hate crime reporting mechanisms and the collection and publication of accurate and reliable disaggregated data on hate crime and incitement to hatred offences.¹⁰⁷

The Commission notes the publication of the *Online Safety and Media Regulation*

[to the Minister for Children, Equality, Disability, Integration and Youth](#). The latest information available to the Commission is that the timeline for publication of the NAPAR is June/July 2022. The Commission notes that under the EU Anti-Racism Action Plan 2020-2025, all Member States are encouraged to develop and adopt national action plans against racism and racial discrimination by the end of 2022.

102 IHREC (2021) [Submission to the Anti-Racism Committee](#), pg. 7-10.

103 Irish Network Against Racism (INAR) (2020) [Reports of Racism in Ireland 2020](#) – Overall figures remained consistent from 2019 despite Covid-19 restrictions, reports of hate speech doubled, assaults reached the highest rates reported and a notable increase in crimes against Chinese, South Asian and Other Asian people could be observed. These trends largely continued into 2021. See: INAR (2021) [Reports of racism in Ireland](#).

104 IHREC (2022) [Submission on the General Scheme of the Criminal Justice \(Hate Crime\) Bill](#).

105 IHREC (2022) [Submission on the General Scheme of the Criminal Justice \(Hate Crime\) Bill](#), pg. 18-20.

106 IHREC (2022) [Submission on the General Scheme of the Criminal Justice \(Hate Crime\) Bill](#), pg. 28-32; The [UN Rabat Plan of Action](#) defines hatred as 'intense and irrational emotions of opprobrium, enmity and detestation towards the target group.' The Bill requires that the hatred be of a magnitude *likely* to lead to harm or unlawful discrimination.

107 IHREC (2022) [Submission on the General Scheme of the Criminal Justice \(Hate Crime\) Bill](#), pg. 20-24.

Bill and regrets that there is no specific reference to hate speech or incitement to violence and hatred in the definition of harmful online content under this Bill.¹⁰⁸ The Commission considers it critical that the two Bills are aligned.¹⁰⁹

- » **The Commission recommends that efforts to legislate for hate crime and incitement to hatred prioritise ongoing training for An Garda Síochána, the judiciary and the legal profession, the provision of clear and precise definitions of relevant terms, and the establishment and maintenance of strong reporting mechanisms and transparent data sharing policies.**

Travellers

The Commission has emphasised that Travellers continue to face egregious violations of their housing rights, with many living in severe levels of deprivation due to structural racism and discrimination, policy failures and inconsistencies, and a siloed approach by State actors.¹¹⁰ A Commission review into the provision of Traveller-specific accommodation across all local authorities uncovered a lack of appropriate consultation and a significant underspend of funds available.¹¹¹ The European Commission Against Racism and Intolerance concluded in 2022 that "that little has been done to address the structural shortcomings in the identification of the housing needs of Travellers and to ensure greater accountability in the use of the Traveller accommodation funds".¹¹² Several pieces of legislation used to target Travellers serve to weaken the legislative and policy framework regarding Traveller specific accommodation and reform is required.¹¹³

108 IHREC (2021) [Submission to the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill](#), pg. 23-26.

109 IHREC (2022) [Submission on the General Scheme of the Criminal Justice \(Hate Crime\) Bill](#), pg. 26.

110 The European Committee of Social Rights has found Ireland to be substantially deficient in the provision of Traveller accommodation, in violation of the Revised European Social Charter. Accommodation is often wholly unsuitable for human habitation with insecure electricity and inadequate sanitation. These living standards contributed to the significantly higher rate of Covid-19 infections among Travellers when compared to the general population. See: IHREC (2021) [Comments on Ireland's 18th National Report on the implementation of the European Social Charter](#), pg. 7-15 and European Committee of Social Rights, [Findings 2021](#) (2022), pg. 96. See generally: IHREC (2021) [Submission to the Joint Committee on Key Issues affecting the Traveller Community](#).

111 The Commission used statutory legal powers under Section 32 of the *Irish Human Rights and Equality Commission Act 2014* to initiate equality reviews of the provision of Traveller-specific accommodation of all 31 local authorities in the State. From 2008-2018 only two thirds of the funding available for provision was drawn down. The review also uncovered evidence of poor information gathering and failures to identify the true accommodation preferences of Travellers. See: IHREC (2021) [Accounts of First Council-by-Council Equality Review on Traveller Accommodation in History of State Published](#).

112 European Commission Against Racism and Intolerance, [Conclusions on the implementation of recommendations in respect of Ireland subject to interim follow-up](#) (2022), p. 4.

113 Legislation cited as being used by AGS and local authorities to target Travellers include: *Housing (Traveller Accommodation) Act 1998*, Section 32; *Housing (Miscellaneous Provisions) Act 1992*, Section 10; *Criminal Justice (Public Order) Act 1994*, Part 11A; *Roads Act 1993*, Section 69; *Control of Horses Act 1996*; *Planning and Development Act 2000*. See: IHREC (2021) [Submission to the Anti-Racism Committee](#), pg. 52.

The Commission also notes with concern recent research findings of extremely low levels of trust in and satisfaction with AGS, the courts and judiciary among Travellers, when compared to the general population.¹¹⁴

- » **The Commission recommends that local authorities who fail to provide new Traveller-specific and culturally appropriate accommodation¹¹⁵ in areas where there is a stated need should be subject to dissuasive sanctions, as necessary.**
- » **The Commission recommends that the State develop, publish, fund and implement a strategy across the criminal justice process to address gaps in trust, legitimacy and accountability, impacting on the Traveller community, underpinned by data from an ethnic identifier and annual reports on ethnic minorities in the criminal process.¹¹⁶**

Gay and bisexual men

The Commission welcomes the important work of the Working Group to Examine the Disregard of Convictions for Certain Qualifying Offences Related to Consensual Sexual Activity between Men, which was formally established in 2021.¹¹⁷ In May 2022, the Minister for Justice published a progress report of the Working Group,¹¹⁸ as well as announcing that a public consultation will be launched in the following weeks.¹¹⁹ The Working Group have recommended the

114 Forthcoming research into how Travellers experience and perceive the criminal justice process found that respondents have: significant distrust in AGS (35% have no trust) and the courts (30% have no trust); strong perceptions of not being treated fairly by AGS (80%), judges (70%) and the courts (60%); high levels of perceived disrespect from AGS (90%) and judges (75%); strong perceptions of stricter treatment from AGS (89%) and judges (82%) and extreme dissatisfaction among victims of crimes with AGS (64%). See: S. Joyce, O. O'Reilly, M. O'Brien, D. Joyce, J. Schweppe and A. Haynes, *Irish Travellers Access to Justice: Headline Findings* (European Centre for the Study of Hate: Limerick, 2022).

115 The *Housing (Traveller Accommodation) Act 1998* provides housing authorities with the powers to construct and provide halting sites, including sites that may not be permanent places of residence for those pursuing a nomadic lifestyle.

116 See also, Section 2 of this report.

117 The Working Group is tasked with making recommendations to the Minister for Justice in relation to the development of a scheme to disregard the criminal convictions of men convicted for consensual same-sex sexual acts prior to decriminalisation in 1993. A Final Report and recommendations for the establishment of a disregard scheme are to be completed and published by Q3 2022 or the nearest date thereafter. The Working Group consists of representatives from IHREC, the Department of Justice, An Garda Síochána, the Office of the Attorney General and three members of the LGBTI+ community: Department of Justice, [Working Group to Examine the Disregard of Convictions for Certain Qualifying Offences Related to Consensual Sexual Activity between Men: A Progress Report](#) (May 2022).

118 In its interim report, the Working Group noted issues around identifying appropriate records; An Garda Síochána and the Department of Justice acting as a first point contact for a scheme due to individuals' traumatic and difficult associations with these bodies; applications by representatives of those who are deceased or applications by those resident in another jurisdiction; criteria for a conviction to be eligible for a disregard; and offences to be included under the disregard scheme.

119 The purpose of the proposed public consultation is to allow representative organisations and affected

establishment of a 'Disregard' Scheme, which would minimise the burden placed on applicants.¹²⁰ The Commission notes that the Working Group is considering the issue of pardons for affected persons, and that this is complicated by the Constitutional provision that only the President can issue a pardon and there is no specific provision in Irish law for collective pardons.¹²¹

- » **The Commission recommends that the State ensures the 'Disregard' Scheme is established in a timely manner.**

people to provide input, based on their lived experience, on a number of key issues identified by the Working Group, which will inform the Group's final deliberations and ensure more effective policy making and implementation: Department of Justice, [Minister McEntee publishes update on work to disregard certain historic convictions of gay and bisexual men](#) (Press release, 5 May 2022).

120 The Working Group recommended that the scheme involves a consideration of each individual case, to determine whether the convictions involved would be eligible for a disregard; that the scheme must recognise that there was an onus on the State to maintain, preserve and produce records and that this must be a consideration in any application where records are unavailable; applicants should be able to submit relevant supporting documentation with the application and that this will be considered; applications be accepted from living persons or those exercising power of attorney on their behalf, as well as by a representative (to be defined) on behalf of deceased persons; applications can be made domestically or from abroad by persons who no longer reside in Ireland and/or are not Irish citizens. See Department of Justice, [Working Group to Examine the Disregard of Convictions for Certain Qualifying Offences Related to Consensual Sexual Activity between Men: A Progress Report](#) (May 2022) pp. 14–15.

121 Under Article 13 of the Constitution, the right of pardon is provided to the President alone, who may only act on the advice of the Government.

6.

Gender equality

(Articles 2-3, 25-26)

Constitutional and policy reform

There has been limited progress in advancing gender equality in the Irish Constitution, which is essential to bring Ireland's constitutional framework in line with international human rights obligations.¹²² Current constitutional provisions such as Article 41.2¹²³ perpetuate stereotypical attitudes towards the role of women.¹²⁴ The Commission welcomes recent recommendations from the Citizens' Assembly on Gender Equality¹²⁵ for constitutional reform, including amending Article 40.1 to refer explicitly to gender equality and discrimination,¹²⁶ amending Article 41 to reflect broader definitions of the 'family' beyond marital family,¹²⁷ as well as replacing Article 41.2 with language that is gender neutral and supports care within the home and wider community.¹²⁸ The Commission regrets that the draft scheme of the *Amendment of the Constitution (Role of Women) Bill*, intended to amend Article 41.2 of the Constitution, has yet to be published, despite being scheduled in the Government's Legislation Programme since Autumn 2020.¹²⁹ In pursuing constitutional reform, the Commission stresses the importance of complementary measures, including reform of political and judicial culture, to support the vindication of women's rights in Ireland.¹³⁰ The Commission finally notes the importance of appropriate policy supports and resource allocation, and draws particular attention to the absence of any published final independent evaluation or successor strategy

122 See Houses of the Oireachtas, Joint Committee on Gender Equality, [Recommendations of Citizens' Assembly on Gender Equality: Discussion](#) (2022): p. 8.

123 Article 41.2 of the Constitution of Ireland: 1° In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved; 2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

124 IHREC [Submission to the Citizens' Assembly for Gender Equality](#), March 2020.

125 In March 2020, the Commission made a written submission to the Assembly, with 32 recommendations across the four thematic areas within its mandate (Women in Political and Public Life; Gender and Decent Work; Gender and Care Work; Gender Norms and Stereotypes). See IHREC [Submission to the Citizens' Assembly for Gender Equality](#), March 2020. In June 2021, the Citizens' Assembly published 45 priority recommendations to Government to tackle gender discrimination in areas including constitutional reform, promoting women's greater participation in leadership and politics, care and childcare, domestic, sexual and gender-based violence, pay and the workplace and social protection, and technology and the media. See [Report of the Citizens' Assembly on Gender Equality](#), June 2021.

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

127 Article 41.3.1 of the Constitution of Ireland: The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.

128 [Report of the Citizens' Assembly on Gender Equality](#) (June 2021): p. 50.

129 The Heads of the Amendment of the Constitution (Role of Women) Bill were approved on 5 July 2018 and pre-legislative scrutiny has taken place. However, this Bill has not been included in the priority list for publication and drafting since being scheduled in the Autumn 2020 Legislation Programme. See Government of Ireland, [Autumn Legislation Programme 2020](#) (2020): p. 23; See also: Government of Ireland, [Summer Legislation Programme 2022](#) (2022): p. 9.

130 A forthcoming publication by the Commission underscores the need for 'cultural not just textual change' when incorporating rights into the Constitution, to ensure that judicial and political actors, as well as the public, understand and appreciate the value and importance of the rights, so that their protection is bolstered and realised by appropriate legislative, judicial, and policy responses.

to the National Strategy for Women and Girls 2017–2020,¹³¹ which expired at the end of 2021.¹³² The development of a new National Strategy should involve an independent evaluation of the gender impact of the State’s response to Covid-19, and include specific measures to mitigate the impact of Covid-19 and future emergencies on gender equality.¹³³

- » **The Commission recommends that Article 40.1 of the Constitution is amended to refer explicitly to gender equality and non-discrimination.**
- » **The Commission recommends that Article 41 is amended to reference ‘family life’, and that ‘family life’ should be understood as including a wide range of family relationships and include situations where family members do not live in the same home.**
- » **The Commission recommends that Article 41.2 is amended to include language that is not gender specific and obliges the State to take reasonable measures to support care within the home and wider community.**
- » **The Commission recommends that the State undertakes an independent, human rights and equality-based evaluation of the expired National Strategy for Women and Girls 2017-2020, and that findings regarding processes and outcomes are published and reflected in this final review.**
- » **The Commission recommends that the State develops a successor national equality strategy for women and girls that has high level goals and corresponding objectives; specific actions and activities, including measures to address the gender impact of Covid-19 and gender-proofing of future emergency plans; clear timeframes and responsibility for implementation and continuous, comprehensive monitoring of implementation.**¹³⁴

131 The Strategy was extended until the end of 2021. See Gov.ie, [Gender Equality: National Policy and Strategies](#) (2021). As noted above, a combined evaluation of the Migrant Integration Strategy, the National Strategy for Women and Girls, and the National Traveller and Roma Inclusion Strategy has been commissioned with this exercise due to conclude by Q3 2022. The report of the evaluation will be published when concluded. See Government of Ireland, [National Reform Programme for the European Semester](#) (April 2022), p. 57.

132 See Houses of the Oireachtas, [Joint Committee on Gender Equality debate - Thursday, 24 Mar 2022](#) (2022).

133 See [Compendium of resources: the gender impact of the COVID-19 pandemic and gender-sensitive responses](#). See also Rethink Ireland and National Women’s Council, [The impact of Covid-19 on women’s economic mobility](#) (2021).

134 This should include monitoring against target outcomes with performance indicators and metrics for delivery and evaluation mechanisms.

Participation in political life

The Commission welcomes advancements in the participation of women in politics, including the increased participation of women in the previous general and European electoral cycles. Increased participation in politics may be attributed to the commencement of the *Electoral (Amendment) (Political Funding) Act 2012*, which requires political parties to ensure that 30% of their candidates in a general election are women or face financial penalties.¹³⁵

The recent General Election in 2020 evidenced the highest representation of women on the ballot, with 162 of the 528 candidates being women (31%).¹³⁶ Women subsequently accounted for 36 of those elected (22.5%), an improvement of one seat when compared with the previous General Election in 2016.¹³⁷ Significant progress was evidenced during the European Parliament elections in 2019, when 22 of the 59 candidates to contest in Ireland were women (37%). Following election, six of 13 Irish MEPs (46%) in the European Parliament were women.¹³⁸ However, in the 2019 local elections, women accounted for only 29% of all local candidates and 23.9% of those subsequently elected,¹³⁹ a figure which is far below the EU average of 32% for women's representation in local politics.¹⁴⁰ In June 2021, the Citizens' Assembly recommended that Ireland increase current gender quotas from 30% to 40% and to extend them to local elections, Seanad elections and European Parliament elections by the end of 2022.¹⁴¹

Specific groups of women have also been found to face compounding barriers to participation in political life, including Traveller, migrant and disabled women, who continue to be largely underrepresented in both national and local elections in Ireland.¹⁴² Recent research has found that ethnic minority women interested in political candidacy report 'not fitting in', and experience rules and political culture as exclusionary.¹⁴³ Moreover, the lack of basic supports, including the provision of maternity leave, and the perpetuation of traditional gender roles

135 The *Electoral (Amendment) (Political Funding) Act 2012* introduced a requirement for political parties to select at least 30% women candidates to contest general elections, or their funding will be cut by half. This threshold will rise to 40% from 2023 onwards.

136 Women For Election, [More Women- Changing the Face of Politics](#), March 2021: p. 18

137 There are now 37 women elected to the Dáil, following a bye-election in Dublin Bay South in July 2021. See Houses of the Oireachtas, Elections, last updated on 13 January 2022. See also Women For Election, [More Women- Changing the Face of Politics](#), March 2021: p. 18

138 Women For Election, [More Women- Changing the Face of Politics](#), March 2021: p. 19

139 National Women's Council of Ireland press statement on the 2019 Local Elections. Available [here](#).

140 European Parliament, [Briefing](#), 'Women in politics in the EU: State of play', March 2021: p. 4

141 [Report of the Citizens' Assembly on Gender Equality](#), June 2021: p. 70.

142 [Report of the Citizens' Assembly on Gender Equality](#), June 2021. In July 2020, Senator Eileen Flynn became the first woman from the Traveller community to be appointed to the Seanad. See Women For Election, [More Women- Changing the Face of Politics](#), March 2021: p. 13. There is a poor representation of disabled women in Irish politics, research has shown that there is currently only one female member of Dáil Éireann with a disability; NDA, [Overview of UNCRPD Article 6 in Ireland: Women with disabilities](#) (2021) p. 42.

143 Cullen and Gough, [Different Paths, Shared Experiences: Ethnic Minority Women and Local Politics in Ireland](#) (2022): p. 6.

in care work, serve as inhibitors to political access. Women living in rural areas face practical barriers, such as the time spent travelling to meetings, as well as more conservative attitudes and different cultural expectations about the role of women in politics.¹⁴⁴ This is particularly concerning given evidence that local government experience is statistically more significant for women than men in the development of political careers.¹⁴⁵

- » **The Commission recommends that the State extend gender quotas to local, Seanad and European Parliament elections, to ensure at least 40% of election candidates are women.**
- » **The Commission recommends that the State introduce additional positive action measures such as reserved Parliamentary seats and a quota system to support the political participation of under-represented groups, including minority ethnic¹⁴⁶ and disabled women, as well as paid maternity leave for elected politicians.**

Women's representation in public and corporate boards

The Government target of 40 per cent gender balance was met in July 2018 in respect of average membership across State boards,¹⁴⁷ and continues to be pursued in respect of all individual boards.¹⁴⁸ The Commission welcomes the Citizens' Assembly recommendation to make funding to public bodies contingent on reaching a 40 per cent gender balance quota by 2025.¹⁴⁹ The Commission notes that its own statute-based requirement of equal gender balance is exemplary of best practice.¹⁵⁰

There remains a significant gender gap in the leadership of private sector businesses in Ireland.¹⁵¹ Data released by the CSO in 2021 indicates that only

144 Fiona Buckley and Caroline Hofman (2015) '[Women in local government: Moving in from the margins](#)', *Administration*, vol. 63, no. 2, pp. 79–99. See also Women For Election, [More Women- Changing the Face of Politics](#), March 2021: pp. 22, 49.

145 Cullen and Gough, '[Different Paths, Shared Experiences: Ethnic Minority Women and Local Politics in Ireland](#)' (2022): p. 10.

146 See IHREC, [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#) (2019), p. 55.

147 There are approximately 230 State Boards in Ireland.

148 See Department of Justice and Equality, [Report of the Comprehensive National-level Review: Twenty-fifth anniversary of the Fourth World Conference on Women and adoption of the Beijing Declaration and Platform for Action](#) (June 2019). See also the commitment in the [Civil Service Renewal 2030 Strategy](#) to achieve gender balance across leadership levels in the civil service (p. 25).

149 [Report of the Citizens' Assembly on Gender Equality](#), June 2021.

150 IHREC Act 2014: (12) Membership of the Commission: (ii) Of the members of the Commission, not less than 6 of them shall be men and not less than 6 of them shall be women, and in a case where there are 14 or more members, not less than 7 of them shall be men and not less than 7 of them shall be women.

151 Research has shown the disproportionate impact of Covid-19 on women in business due to childcare

one in eight CEOs of large enterprises is a woman.¹⁵² The same data indicates that women make up just 22 per cent of board membership. The female share of board membership in certain sectors is even lower, with men accounting for 84.3 per cent of all board membership in the Industry sector and 94.4 per cent in the construction sector. In June 2020, the European Committee of Social Rights found Ireland to be in violation of Article 20 of the Revised European Social Charter due to insufficient progress in ensuring a balanced representation of women in private-sector decision-making positions.¹⁵³ The Commission welcomes the recent Citizens' Assembly recommendation to enact gender quota legislation to require private companies to have at least 40 per cent gender balance according to specific criteria, including turnover and number of employees.¹⁵⁴

- » **The Commission recommends that the State places the requirement to have at least 40 per cent gender balance on State Boards on statutory footing, and that funding of public bodies is contingent on reaching this quota by 2025.**
- » **The Commission recommends that the State introduces a statutory 40 per cent gender balance quota for private company boards.**

and other caring responsibilities, home schooling, longer work days, and increased need for flexibility and working from home. These impacts have the potential to regress progress in gender equity in businesses; IBEC, [Impact of Covid-19 on women](#) (2021).

152 In senior management positions women represented 29.7% of Senior Executives; 28.1% of Chief Financial Officers; 21.8% of Boards of Directors; 14% of Chairpersons; and, 13.4% of Chief Executive Officer. CSO, [Statistical Release: Gender balance in business survey](#) (21 July 2021).

153 University Women of Europe (UWE) v. Ireland, Complaint No. 132/2016 (June 2020).

154 [Report of the Citizens' Assembly on Gender Equality](#), June 2021.

7.

**Violence
against women,
including
domestic
violence**

(Articles 2-3, 6-7, 24, 26)

The Committee recommended in its Concluding Observations in 2014 that the State should take further legislative and policy measures to ensure all women, particularly women from structurally vulnerable communities, have equal access to protection against perpetrators of violence.¹⁵⁵ In this context, the Commission welcomes a number of developments, including Ireland's ratification of the Istanbul Convention in March 2019,¹⁵⁶ and the enactment of the *Harassment, Harmful Communications and Related Offences Act 2020*.¹⁵⁷ The development of a third National Strategy on Domestic, Sexual and Gender-Based Violence is underway but its publication has been delayed.¹⁵⁸ As the third Strategy is focused on the implementation of the Istanbul Convention,¹⁵⁹ it is important that its actions fully reflect the State's obligations under the Convention.¹⁶⁰ The Commission also notes the Government's commitment to introduce statutory-based domestic violence leave and would welcome further progress in this regard.¹⁶¹

» **The Commission recommends that the State progress the introduction of statutory domestic violence leave.**

Access to specialist support services

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

156 Ireland ratified the Convention with reservations to the provisions on state compensation to domestic violence victims and jurisdiction.

157 The *Harassment, Harmful Communications and Related Offences Act 2020* introduced new offences for dealing with the taking and distribution of intimate images without consent, 'upskirting', stalking and online or digital harassment. While both women and men may be subject to harassment and harmful communications, these attacks often take a gender-based form, such as sexist commentary, sexual harassment and even threats of sexual violence, including threats of rape.

158 The Third National Strategy was scheduled to be published in April 2022, although this timeframe has now been postponed to June 2022; [Dáil Éireann debate – Thursday 12 May 2022](#). Additionally, a National Agency specific to domestic, sexual and gender-based violence will also be established. The agency will be responsible for overseeing all of the actions set out in the Third National Strategy for delivering domestic violence services. See Joint Committee on Gender Equality Debate, [Recommendations of the Citizens' Assembly on Gender Equality: Discussion \(Resumed\)](#), 28 April 2022: pp. 3, 6. The Citizens' Assembly on Gender Equality has recommended that Government action on domestic, sexual and gender-based violence should be coordinated by a Cabinet Minister with direct responsibility for implementation of a national strategy: See [Report of the Citizens Assembly on Gender Equality](#) (June 2021).

159 The new strategy will be structured around the four pillars of the Istanbul Convention: prevention; protection; prosecution; and a co-ordinated policies. See <https://www.gov.ie/en/consultation/c39f8-public-consultation-on-the-third-national-domestic-sexual-and-gender-based-violence-strategy/>.

160 Commitments under the strategy should include strengthened data collecting and reporting mechanisms; prioritisation of combatting violence against structurally vulnerable groups of women; developing gender-sensitive asylum and reception procedures and support services for asylum seekers; improvements in access to specialist support services; training for Gardaí and prosecutors; and, accessible information on gender equality. IHREC, [Statement on the ratification of the Council of Europe Convention on preventing and combatting violence against women and domestic violence](#) (2019).

161 See Department of Children, Equality, Disability, Integration and Youth, [Domestic Violence](#) (4 May 2022). The Government committed to introducing provisions for domestic violence leave in the *Work Life Balance Bill* in its [Spring Legislation Programme 2022](#), but such provisions were not including in the *General Scheme of a Work Life Balance and Miscellaneous Provisions Bill 2022* published in April 2022.

Despite some progress, there are ongoing issues with Ireland's response to violence against women and girls, as highlighted in a recent audit of the State's domestic, sexual and gender based violence infrastructure.¹⁶² There is limited availability, particularly in rural locations, of reliable support services, domestic violence refuge accommodation, accessible procedures, and specialised practitioners.¹⁶³ Scarcity of supports and specialist services is particularly concerning given the context of the Covid-19 pandemic,¹⁶⁴ as there has been a documented increase of domestic violence.¹⁶⁵ The positive measures adopted by the State to respond to domestic violence at the outset of the pandemic should ground the approach to the reform of policies and strategies, including for future emergencies.¹⁶⁶

Recently published research has shown that there are at least 11,000 women who experienced addiction issues and domestic violence in 2020.¹⁶⁷ Other research demonstrates that 40% of disabled female higher education students report experiences of rape (compared with 27% of non-disabled students).¹⁶⁸ Migrant

162 This audit identified: deficits in policy, in funding arrangements for essential services and in the collection and analysis of data, leading to a lack of clarity about who is responsible for what and ultimately to gaps in services for victims; deficiencies in current strategy and its implementation structure; and fragmentation within and across the sector. The audit recommends: that policy leadership and service provision for domestic sexual and gender-based violence be placed clearly with the Department of Justice; that mainstream community services be enabled to respond to victims; and that a co-designed, dedicated office be established to lead policy implementation with oversight by a special Ministerial Committee or Cabinet committee. See Department of Justice, [Domestic, Sexual and Gender Based Violence: An Audit of Structures](#), June 2021.

163 As of 2022, Ireland had less than a third of the number of domestic violence refuge spaces it is required to have under European standards. Furthermore, nine counties in Ireland have no refuges, presenting additional difficulties for victims living in rural areas. See Joint Committee on Gender Equality Debate, [Recommendations of the Citizens' Assembly on Gender Equality: Discussion \(Resumed\)](#), 27 April 2022: pp. 6-8. See also [Laura Foley, Gender-based violence in Ireland \(Geary Institute for Public Policy, 2022\) pp. 5-7](#). The Citizens' Assembly on Gender Equality has recommended that the Government should ensure sufficient publicly funded provision of beds, shelters and accommodation for victims/survivors of domestic, sexual and gender-based violence across the country and their dependents in line with the Istanbul Convention: See [Report of the Citizens Assembly on Gender Equality](#) (June 2021) p. 82.

164 Barry, U. (2021) [The care economy, COVID-19 recovery and gender equality - A summary report](#). UCD Geary Institute for Public Policy.

165 In 2020, An Garda Síochána received approximately 43,000 calls regarding domestic violence, which was a 16% increase on 2019; [Laura Foley, Gender-based violence in Ireland \(Geary Institute for Public Policy, 2022\) p. 4](#). See also Government of Ireland (June 2020) [Report on the Social Implications of Covid-19 in Ireland: Update 5 June](#).

166 Promising measures have been identified in the State's coordinated approach to the domestic violence including an interagency plan between Government and non-Government bodies; a specific policing operation (Operation Faoiseamh) focussed on domestic violence; prioritisation of domestic violence cases in the court system; funding for service providers; and, awareness campaigns. European Institute for Gender Equality, [The Covid-19 pandemic and intimate partner violence against Women in the EU](#) (2021).

167 Project Davina, [In Plain Sight: A Rapid Review of the International Literature and a National Estimate of the Prevalence of Women Who Use Substances and Experience Domestic Violence in Ireland](#) (Saol Project and Trinity College Dublin School of Nursing and Midwifery, 2022) pp. 26-27.

168 This data is from the NUI Galway Sexual Experiences Survey 2020 of higher education. See Disabled Women's Group [Submission to Third National Strategy on Domestic, Sexual and Gender-Based Violence](#), June 2020: p. 3.

women have also been found to be at greater risk of gender-based violence in Ireland and are disproportionately represented in the figures of women presenting to frontline domestic and sexual violence services.¹⁶⁹ The Commission welcomes the interim recommendation by the Anti-Racism Committee for the State to remove all barriers to accessing support for migrant women experiencing gender-based violence,¹⁷⁰ and in this regard underlines the importance of incorporating an intersectional approach to combatting and responding to gender based violence in Ireland.¹⁷¹ In particular, gender sensitive immigration reform is needed to ensure all women have equal access to protection and support,¹⁷² including women whose residence status is tied to their abusive partner and women without permission to be in the State,¹⁷³ as well as women and girls in Direct Provision.¹⁷⁴

- » **The Commission recommends that the State ensures adequately resourced provision of specialised and accessible services and refuge spaces across the country, and provides supports for victims to access such services. Cultural, ethnic and other differences should be taken into account in the provision of services and supports for victims.**
- » **The Commission recommends that the State develops a trauma-informed continuum of supports for women and girls experiencing gender-based violence, co-designed with structurally vulnerable groups and their representative bodies, such as minority ethnic women, women with addiction issues, and disabled woman.**

Data collection

In its Concluding Observations in 2014, the Committee recommended that Ireland should establish a systematic data collection system to inform current and future policies and priorities, and provide disaggregated statistics on complaints,

169 This data relates to Women's Aid One-to-One and Dolphin House services. See Women's Aid [Annual Impact Report 2020](#), June 2021: pp. 29-30.

170 Anti-Racism Committee, [Interim Report to the Minister for Children, Equality, Disability, Integration and Youth](#), 30 November 2020: p. 15.

171 IHREC, [Submission to the UN Committee on Economic, Social and Cultural Rights for the List of Issues on Ireland's Fourth Periodic Report](#), December 2021: p. 26.

172 Maeve Foreman, *Migrant Women and Gender Based Violence in Ireland: Policy, Research & Practice*, 2018, at p. 10.

173 INIS has published guidelines on how the immigration system deals with cases where the victim's immigration status is derived from or dependent on that of the perpetrator of domestic violence. However, the Minister has discretion in all decisions, and the arrangements do not apply to victims without permission to be in the State. See IHREC, [Submission to the UN Committee on Economic, Social and Cultural Rights for the List of Issues on Ireland's Fourth Periodic Report](#) (2021), p. 105.

174 See Council of Europe, [Protecting migrant women, refugee women and women asylum seekers from gender-based violence](#) (2019), p. 5.

prosecutions and sentences regarding violence against women.¹⁷⁵ However, there is limited data and research available on violence against women in Ireland, including in the State's correspondence with the Committee.¹⁷⁶ The Commission welcomes the ongoing national survey on the prevalence of sexual violence, which will be repeated every decade.¹⁷⁷ The State's reply to the list of issues provides that a survey is being developed to include data from migrant populations, Traveller communities and people with intellectual disabilities;¹⁷⁸ however, there is no specified timelines for the start or completion of this survey.

- » **The Commission recommends that the State prioritises the improvement of disaggregated data on violence against women and domestic violence, including through the use of ethnic identifiers in gender-based violence services to account for the experience of minority ethnic women.**
- » **The Commission recommends that the State should not wait until the end of the current phase of the survey on the prevalence of sexual violence in Ireland to undertake survey research with structurally vulnerable groups of women.**

Investigations, prosecutions and convictions

There are documented inaccuracies in AGS's recording and classification of crimes involving domestic violence,¹⁷⁹ as well as evidence of chronic under-reporting of these crimes by victims from structurally vulnerable groups.¹⁸⁰ The Commission is further concerned that between 2019 and 2021, thousands of emergency calls were cancelled by AGS, hundreds of which were emergency calls relating

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

176 Government of Ireland, [Fifth periodic report submitted by Ireland under article 40 of the Covenant](#) (31 January 2020) and Human Rights Committee, [Replies of Ireland to the list of issues in relation to its fifth periodic report](#) (April 2022), CCPR/C/IRL/RQ/5.

177 Human Rights Committee, [Replies of Ireland to the list of issues in relation to its fifth periodic report](#), CCPR/C/IRL/RQ/5 (13 April 2022) para. 79.

178 Human Rights Committee, [Replies of Ireland to the list of issues in relation to its fifth periodic report](#), CCPR/C/IRL/RQ/5 (13 April 2022) para. 79.

179 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.

180 Migrant women are less likely to leave abusive environments for fear of losing their immigration status due to their residence permission being tied to an abusive spouse; Akidwa, Stamp-3-Association, Ruhama, Nasc and Sexual Violence Centre Cork, [Joint Submission to Citizens' Assembly on Gender Equality: Violence against women](#) (2020): pp. 4-5. Disabled women experience additional barriers to reporting of crimes; Disabled Women's Group, [Submission to Third National Strategy on Domestic, Sexual and Gender-Based Violence](#) (2020) pp. 8-9.

to domestic violence.¹⁸¹ Recent Commission-supported research highlights the difficult experience of sexual crime complainants and vulnerable witnesses within the criminal justice system. A key theme to emerge across respondents was a feeling of powerlessness throughout the investigation and prosecution process.¹⁸² The Government has committed to implementing the recommendations of a review on the protection of vulnerable witnesses in the investigation and prosecution of sexual offences.¹⁸³ The Citizens' Assembly has also recommended greater support for victims and survivors in accessing justice through reforms to the system, including the provision of specialised supports such as healthcare and legal representation.¹⁸⁴

- » **The Commission recommends that the State provides specialist training to immigration officers and police officers, with a view to improving the identification, investigation and prosecution of gender-based violence, and improving the capacity of officials in respect of responding to victims of trafficking.**

- » **The Commission recommends that the State adopts concrete measures such as intermediary reporting to encourage and facilitate the reporting of crimes, including special measures for women and girls from structurally vulnerable groups.**

181 An independent review of the cancellation of calls noted that between 1 January 2019 and 31 October 2020, there were almost 203,000 cancelled incidents. Additional cancelled calls were identified in September 2021. The cancellation of calls related to domestic violence 'could have delayed or deprived a victim of the opportunity to obtain a barring order'; Derek Penman, [Independent Report for the Policing Authority: Interim Update on the Preliminary Examination of the Garda Síochána review of the closure, \(including cancellation\) of Computer Aided Dispatch incidents](#) (2021).

182 N. Gould, *The Victim Experience in Focus: An empirical study into the experiences of sexual crime complainants in the criminal justice system in Ireland* (One in Four: 2022). Participants underlined the need for further trauma-information and legal supports, specialist training for the Gardaí and all legal professionals, a reduction of delays in proceedings, and a code of conduct governing the manner in which questioning can take place during a trial.

183 The O'Malley Report contains 52 targeted actions and 4 overarching recommendations for Government including training for An Garda Síochána engaging with victims of sexual crime and specialist training for members of An Garda Síochána interviewing victims and other vulnerable witnesses; a complete roll-out of Divisional Protective Services Units; ensuring a geographical spread of specialist interview suites; periodic independent review of specialist interview suites; and funding for the Office of the Director of Public Prosecutions to establish and maintain the new Sexual Offences Unites. Department of Justice, [Review of the protections for vulnerable witnesses \('O'Malley Report'\)](#) (2020) p. 43. In October 2020, the Government published an implementation plan to progress these recommendations; Department of Justice and Equality, [Supporting a Victim's Journey: A plan to help victims and vulnerable witnesses in sexual violence cases](#) (October 2020). To date, a number of actions have been delivered as part of implementing Supporting a Victim's Journey; including: the introduction of Preliminary trial hearings; development of specialist training for legal professionals; completion of the nationwide rollout of Divisional Protective Services Units; and, a new sexual offences unit in the Office of the Director of Public Prosecutions has been established. Department Of Justice, [Office of Director of Public Prosecutions](#) (10 May 2022).

184 [Report of the Citizens Assembly on Gender Equality](#) (June 2021) p. 82.

Female genital mutilation

An estimated 6,000 women and girls living in Ireland have undergone female genital mutilation ('FGM').¹⁸⁵ There is an urgent need for the State to invest more in preventative measures through education and awareness raising by engaging the practicing community and by adopting a national action plan on FGM. The Committee on the Elimination of Racial Discrimination also recommended that the State fully enforce the *Criminal Law (Female Genital Mutilation) Act 2012*.¹⁸⁶

- » **The Commission recommends that the State fully enforces the *Criminal Law (Female Genital Mutilation) Act 2012*.**
- » **The Commission recommends that, in collaboration with affected communities, the State undertake active measures to raise awareness about FGM, support access to specialist services for women and girls who have experienced FGM and adopt a National Action Plan on FGM, including a focus on prevention measures.**

185 See Akidwa, [Statement to the Joint Oireachtas Committee on Gender Equality](#) (April 2022), p. 8.

186 The *Criminal Justice (Female Genital Mutilation) Act 2012* made it a criminal offence to perform FGM or to remove a woman or girl from the State for FGM. See Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland](#) (2020), para. 40(e).

8.

Termination of pregnancy and reproductive rights

(Articles 2-3, 6-7, 24)

Following public referendum, the *Health (Regulation of Termination of Pregnancy) Act 2018* ('2018 Act') was enacted in December 2018 and provides for a termination of pregnancy where it has been certified by a medical practitioner that the pregnancy has not exceeded 12 weeks and at least three days have elapsed following this certification.¹⁸⁷ Abortion services in Ireland commenced on 1 January 2019.¹⁸⁸ As of April 2022, 7% of general practitioners have registered with My Options, the HSE's unplanned pregnancy service that provides abortion care to the general public, and ten maternity units had signed up to provide abortion services in Ireland.¹⁸⁹

On 8 December 2021, the Minister for Health initiated a review of the operation of the 2018 Act,¹⁹⁰ required no later than three years after the Act's commencement.¹⁹¹ The review comprises two main phases; the first phase has three elements: a public consultation, finalised on 1 April 2022; and separate research on the perspectives of service users and service providers.¹⁹² The second phase is led by an independent Chair, who will assess the extent to which the objectives of the 2018 Act have been achieved.¹⁹³ The Commission understands that the review will be completed in 2022.¹⁹⁴

» **The Commission recommends that there is no delay in the publication of the abortion review by the Government, and the anonymised evidence on which it is based.**

187 It also provides for terminations in later stages of pregnancy where there is a fatal foetal abnormality or risk to the health or the life of the mother. See the *Health (Regulation of Termination of Pregnancy) Act 2018*.

188 Government of Ireland, Press Release, '*Minister for Health commences Phase one of the Review of the Health (Regulation of Termination of Pregnancy) Act 2018*', published on 8 December 2021.

189 NWCI, Press Release, '*Significant challenges remain in accessing abortion care in Ireland*', April 2022.

190 The review is intended to provide an opportunity to assess the degree to which universality and equality of access to services are achieved. See Government of Ireland, Press Release, '*Minister for Health commences Phase one of the Review of the Health (Regulation of Termination of Pregnancy) Act 2018*', published on 8 December 2021.

191 Section 7 of the *Health (Regulation of Termination of Pregnancy) Act 2018*.

192 The qualitative studies will respectively generate an in-depth understanding of the experiences of women who have accessed abortion care services since the commencement of the Act and capture the views/experiences of termination of pregnancy service providers. See Government of Ireland, Press Release, '*Minister for Health commences Phase one of the Review of the Health (Regulation of Termination of Pregnancy) Act 2018*', published on 8 December 2021.

193 Marie O'Shea BL was appointed the independent Chair of the review in January 2022. The three strands of information in the first phase of the review will be analysed by the Chair in the second phase. Department of Health, Press release, '*Review of the operation of the Health (Regulation of Termination of Pregnancy) Act 2018 Appointment of Independent Chair*', published on 26 January 2022.

194 Houses of the Oireachtas, Dáil Éireann Debate, [Wednesday - 2 February 2022](#).

Criminal liability

Section 23 makes it a criminal offence for any person to aid or abet abortion outside the specific terms of the 2018 Act. Civil society organisations have highlighted that criminal liability significantly impacts the ability to access and provide abortion services, particularly given that the offence under Section 23 carries a sentence of up to 14 years.¹⁹⁵ Moreover, the Commission is concerned that criminalisation disproportionately affects medical practitioners, which undermines clinical judgment and professional expertise.¹⁹⁶

- » **The Commission recommends that the State decriminalise abortion in all circumstances.**

Conscientious objection

The 2018 Act allows medical practitioners to conscientiously object to carrying out a termination of pregnancy.¹⁹⁷ While recognising the need for appropriate provisions to safeguard the right of medical practitioners to conscientious objection,¹⁹⁸ the Commission has previously emphasised that the legislative and regulatory framework in place must ensure the necessary systems, personnel and resources to guarantee that women are provided safe and timely access to abortion services.¹⁹⁹ Concern has been raised by civil society organisations over

195 Concerns raised include that health professionals, under the threat of prosecution and criminalisation, are essentially forced to police themselves, determining when and whether the statutory criteria for access to care have been met. See NWCI, [Abortion Working Group Joint Submission to the Public Consultation on the review of the operation of the Health \(Regulation of Termination of Pregnancy\) Act 2018](#), March 2022: p. 3.

196 See IHREC Policy Paper, [Human rights and equality considerations in the development of a new legislative and regulatory framework on abortion](#) (2017): p. 11 and NWCI, [Abortion Working Group Joint Submission to the Public Consultation on the review of the operation of the Health \(Regulation of Termination of Pregnancy\) Act 2018](#), March 2022: p. 3.

197 Section 22 of the *Health (Regulation of Termination of Pregnancy) Act 2018*.

Conscientious objection, however, cannot be invoked in an emergency situation, when the risk to a pregnant woman's life or health is immediate. See Dáil Éireann Debate, [Abortion Legislation](#) (15 January 2019).

The Act further obliges the objecting medical practitioner to transfer the care of the patient to enable the procedure to be carried out. See Section 22(3) of the *Health (Regulation of Termination of Pregnancy) Act 2018*: 'A person who has a conscientious objection...shall, as soon as may be, make such arrangements for the transfer of care of the pregnant woman concerned as may be necessary to enable the woman to avail of the termination of pregnancy concerned.' The Commission has recommended that in addition to provision in legislation, clear procedures for expeditious transfer of care should be provided through regulation and guidelines. See IHREC, [Observations on General Scheme of a Bill Entitled Health \(Regulation of Termination of Pregnancy\) 2018](#), September 2018: para. 21.

198 The Commission has previously recommended that appropriate provision for conscientious objection and the related restrictions and referral obligations should be extended to a broader range of health and social care professionals with whom a pregnant woman or girl may come into contact. See IHREC, [Observations on General Scheme of a Bill Entitled Health \(Regulation of Termination of Pregnancy\) 2018](#), September 2018: pp. 7-11.

199 See IHREC, [Observations on General Scheme of a Bill Entitled Health \(Regulation of Termination of](#)

the very low number of providers in community and hospital settings, which can be attributed to "a silent refusal which is not being monitored or recorded appropriately and which is impacting the effective operation of the Act."²⁰⁰ The Commission is of the view that advance declaration and registration of conscientious objection by medical practitioners may assist medical institutions to effectively plan for and accommodate conscientious objection, and identify gaps in effective access to services.²⁰¹ The Commission calls for medical practitioners to be required to record requests for abortion care, whether care was provided and whether referral occurred.²⁰²

- » **The Commission recommends that the State take active measures to ensure that healthcare institutions plan for and accommodate conscientious objection, including the introduction of advance declaration and registration of conscientious objection by medical practitioners, and a robust monitoring and enforcement mechanism to ensure safe and timely access to care.**

Universality and equality of access

The Commission remains concerned about the principle of universality and equality of access to services for the termination of pregnancy in Ireland, which are not evenly spread across regions, particularly in rural locations.²⁰³ Moreover, specific groups of women, including women from ethnic minority groups and disabled women, face additional barriers in accessing or receiving treatment in sexual, reproductive and fertility health services.²⁰⁴

[Pregnancy\) 2018](#), September 2018.

200 Despite it being illegal for institutions such as publicly-funded maternity hospitals to conscientiously object to abortion, the fact that nearly 50% of maternity hospitals do not provide full abortion services suggests that conscientious objection may be a factor in poor hospital coverage. Being refused abortion services due to conscientious objection causes delays to accessing abortion. While individual medical practitioners can refuse to provide abortion under the Act, a timely referral to an alternative provider should be provided immediately in line with Irish Medical Council guidance. See NWCI, [Abortion Working Group Joint Submission to the Public Consultation on the review of the operation of the Health \(Regulation of Termination of Pregnancy\) Act 2018](#), March 2022: p. 13.

201 IHREC, [Observations on General Scheme of a Bill Entitled Health \(Regulation of Termination of Pregnancy\) 2018](#), September 2018: para. 27. See also NWCI, [Abortion Working Group Joint Submission to the Public Consultation on the review of the operation of the Health \(Regulation of Termination of Pregnancy\) Act 2018](#), March 2022: p. 7.

202 See also, NWCI, [Abortion Working Group Joint Submission to the Public Consultation on the review of the operation of the Health \(Regulation of Termination of Pregnancy\) Act 2018](#), March 2022, pg. 5-7.

203 In some counties, there are no GPs providing abortion services, forcing anyone wishing to access abortion services to travel. See NWCI, [A Quick Guide to Abortion](#) (2022): p. 10.

204 Side, K. (2020) [Abortion Im/mobility: Spatial Consequences in the ROI](#). *Feminist Review* 124, no. 1 (March 2020): 15–31. These include financial barriers, prejudicial attitudes, inaccessible information, physical and communication barriers, and transportation infrastructure. See also NWCI, [Abortion Working Group Joint Submission to the Public Consultation on the review of the operation of the Health \(Regulation of Termination of Pregnancy\) Act 2018](#), March 2022: pp. 44-46.

The Commission stresses the need for access to comprehensive, accessible and reliable health information to ensure universality and equality of access to abortion services,²⁰⁵ which is particularly important given the 12-week gestational limit. The current framework on abortion must also be implemented in a manner that meets the needs of young women and girls, including through the development of age-appropriate procedures for their consent to treatment and the adaptation of the clinical assessment, referral and certification processes.²⁰⁶ The Commission notes for example that the HSE's targeted website for teenagers on relationships and sex does not have information on how to access abortion services.²⁰⁷

In light of the challenges presented during the Covid-19 pandemic, the Department of Health issued a revised model of care to allow for remote consultations with a medical practitioner.²⁰⁸ Given the 12-week gestational limit on abortion services, access to remote consultations is highly time-sensitive, and any delays in provision under the revised model ultimately risks abortion services being denied.²⁰⁹ The revised model has been welcomed by civil society organisations, as well as by disabled people, who may experience additional challenges in accessing in-person appointments.²¹⁰ However, the Commission notes that the Minister for Health has not confirmed the continuation of a blended approach to termination of pregnancy care,²¹¹ despite a previous commitment to continue remote consultations.²¹²

» **The Commission recommends that the State ensures universality and equality of access to abortion services, particularly in rural locations and for structurally vulnerable women, including disabled women and minority ethnic women.**

» **The Commission recommends that the State ensure that remote**

205 IHREC, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on the follow-up procedure to Ireland's combined sixth and seventh periodic report](#), August 2020: p. 13.

206 IHREC, [Observations on General Scheme of a Bill Entitled Health \(Regulation of Termination of Pregnancy\) 2018](#), September 2018: pp. 5-6. International evidence suggests that , they are less aware of their rights concerning abortion and post-abortion care, and can take longer than adult women to realise they are pregnant, leading to later term abortions which carry more risk. See M.F. Fathalla (2020) "Safe abortion: The public health rationale" *Best Practice & Research Clinical Obstetrics and Gynaecology* 63.

207 The website was launched as part of a campaign by the HSE Crisis Pregnancy Programme. Under the 'Teachers and Youth Workers' section, it states that that the campaign was developed 'because evidence strongly suggests that young people who have sex at an early age are more likely to have crisis pregnancies and sexually transmitted infections in their lifetime.' <https://b4udecide.ie> accessed on 29 April 2022.

208 Valerie Ryan, '[Telemedicine abortion consultations permitted — Health Minister](#)', Irish Medical Times, 27 March 2020.

209 Dr Catherine Conlon (Trinity College Dublin) blog post: [Pregnancy in a Time of Crisis](#).

210 Spillane A, Taylor M, Henchion C, Venables R, Conlon C. Early abortion care during the COVID-19 public health emergency in Ireland: implications for law, policy, and service delivery. *Int J Gynecol Obstetr.* 2021; 154(2): 379– 384.

211 Stephen Donnelly TD, Minister for Health, [Written Answers 4 May 2022](#) [22003/22].

212 Stephen Donnelly TD, Minister for Health, [Written Answers 13 July 2021](#) [28446/21].

consultations for abortion services continue beyond the Covid-19 pandemic.

- » **The Commission recommends that the State ensure comprehensive, accessible and reliable information on abortion services, and age-appropriate procedures for young women and girls.**

Safe access zones

The Commission welcomes the Government commitment in 2020²¹³ to legislate for the establishment of 'exclusion zones' around medical facilities,²¹⁴ but regrets that as of April 2022, no draft legislation has been brought forward.²¹⁵ There is a significant body of evidence in other jurisdictions detailing the negative mental and physical impacts of witnessing these protest activities, which may manifest in hostility and intimidation.²¹⁶ Respondents to studies in the US, UK and Australia reported feelings of intimidation, distress, anxiety and pervasive concerns about the unpredictable behaviour of protesters and their own physical safety.²¹⁷ Some research has found that anti-abortion activity outside of service providers can cause health risks to service users due to the emotional trauma inflicted.²¹⁸ The Commission recognises the need to balance rights such as freedom of assembly and association, but is of the view that such access zones are essential in order to vindicate the right of women and girls to access medical care in private and without discrimination, the right to bodily integrity and to be treated with dignity, as well as to ensure the safety of service providers.

- » **The Commission recommends that the Government urgently enact legislation to provide for the establishment of safe access zones.**

213 Government of Ireland, [Programme for Government: Our Shared Future](#), October 2020: p. 47.

214 Exclusion or safe zones help to ensure that patients, service providers, healthcare staff and members of the public can access premises in which abortion services may be provided without fear of intimidation or harassment. See Dáil Éireann Debate, [Abortion Services Provision-5 February 2019](#).

215 There is currently a Private Members Bill on safe access zones before the Oireachtas. See Houses of the Oireachtas, [Safe Access to Termination of Pregnancy Services Bill 2021](#). In the Government's Summer Legislation Programme 2022, a Government-sponsored *Safe Access to Termination of Pregnancy Services Bill* has been prioritised, and the Heads of the Bill have yet to be published. See Government of Ireland, [Summer Legislation Programme 2022](#) (2022): p. 5.

216 Abortion Rights Coalition of Canada (2018) Citations of studies/court evidence that abortion clinic picketing raises the risk of medical complications for women, available at: <https://www.arcc-cdac.ca/wp-content/uploads/2020/06/protesters-increase-risk-of-medical-complications.pdf>, see also a summary account of medical research conducted in this area in; Sifris, R. and Penovic, T. (2018) Anti-Abortion Protest and the Effectiveness of Victoria's Safe Access Zones: An Analysis, *Monash University Law Review* 44(2) 317-340, 325-328.

217 Sifris and Penovic (2018), Foster, DG. Kimport, K. Gould, H. et al. (2013) Effect of abortion protestors on women's emotional response to abortion, *Contraception* 87(1): 81-87, Lowe, P. and Hayes, G. (2019) Anti-Abortion Clinic Activism, Civil Inattention and the Problem of Gendered Harassment, *Sociology* 53(2) 330-346.

218 Sifris and Penovic (2018) 325-328, Abortion Rights Coalition of Canada (2018).

9.

Right to life

(Articles 6-7)

Impact of the pandemic in institutional settings

Since the onset of the pandemic, the Commission has highlighted the disproportionate impact on people resident in institutional and detention settings such as nursing homes, residential disability facilities, mental health settings and prisons.²¹⁹ Those living in residential facilities are at a higher risk of contracting Covid-19 due to the congregated nature of the setting, in combination with age, a higher prevalence of disability and underlying medical conditions, and in some cases the need for support to eat, dress and bathe.²²⁰ Older people have been severely impacted; of the over 7,000 reported deaths, the median age is 82 years.²²¹ 79.9% of people who died are reported to have an underlying medical condition.²²² The impact of the pandemic has been most acute in nursing homes.²²³ There have been 1,418 Covid-19 outbreaks in nursing homes,²²⁴ and 2,480 deaths (34.6% of total deaths) linked to the confirmed outbreaks in these settings.²²⁵ There have been 1,678 Covid-19 outbreaks in residential institutions,²²⁶ and 119 deaths (1.7% of total deaths) linked to the confirmed outbreaks in these settings.²²⁷ Data on deaths in residential institutions disaggregated by setting is not available for 2022, but data from the first year of the pandemic shows that there were 47 deaths in centres for disabilities, 27 deaths in centres for older people and five deaths in mental health facilities which were linked to confirmed

219 The Commission notes limitations in data disaggregation in these settings. While data is available on location of cases; there is an absence of data on gender, disability, and ethnic, racial or national origin of those who have died in these settings. IHREC, [The Impact of COVID-19 on People with Disabilities: Submission by the Irish Human Rights and Equality Commission to the Oireachtas Special Committee on COVID-19 Response](#) (June 2020). The impact of Covid-19 in the prison system is discussed in Section 11.

220 John Lombard et al., [Shaping palliative care policy using a human rights-based approach: Examining the experience of people living in nursing homes, their families, and staff during the COVID-19 pandemic](#) (University of Limerick and All-Ireland Institute of Hospice and Palliative Care, 2022).

221 Data up to 24 May 2022; see <https://epi-covid-19-hpscireland.hub.arcgis.com/>.

222 Data up to 7 May 2022. 9.6% of persons did not have an underlying condition, while in 10.5% of cases it was unknown whether the person had an underlying condition. HPSC, [Weekly report on COVID-19 deaths reported in Ireland](#) (9 May 2022) p. 2.

223 In 2020, 82% of nursing homes reported at least one confirmed case of Covid-19 amongst staff or residents; HIQA, [Annual Report 2020](#) (2021) p. 24. A number of issues have been put forward as having contributed to the rapid spread of the virus in nursing home and residential care settings; including: inadequate supplies of Personal Protective Equipment, inadequate physical distancing in facilities, low staffing levels, cases of nursing home staff who tested positive for the virus being asked to continue working, poor communication by nursing homes about the welfare of residents with relatives, lack of infection controls within the homes; staff working in both one or more care facilities as well as in general hospitals; IHREC, [The Impact of COVID-19 on People with Disabilities: Submission by the Irish Human Rights and Equality Commission to the Oireachtas Special Committee on COVID-19 Response](#) (June 2020) pp. 6–7.

224 Data up to 21 May 2022; see HPSC, [Epidemiology of COVID-19 Outbreaks/Clusters in Ireland - Weekly Report. Week 20, 2022](#).

225 Data up to 7 May 2022, HPSC, [Weekly report on COVID-19 deaths reported in Ireland](#) (9 May 2022) p. 4.

226 Residential institutions include: Centres for disabilities, Centres for older people, Children's/TUSLA residential centres and mental health facilities. Data up to 21 May 2022; see HPSC, [Epidemiology of COVID-19 Outbreaks/Clusters in Ireland - Weekly Report. Week 20, 2022](#).

227 Data up to 7 May 2022; see HPSC, [Weekly report on COVID-19 deaths reported in Ireland](#) (9 May 2022) p. 2.

outbreaks in these settings.²²⁸

While restrictive measures to lower the risk of contamination in institutional settings were necessary, restrictions on services, programmes, social events and visits by family and friends impacted on residents' right to self-determination and decision-making.²²⁹ It is important to remember that institutional settings are places of residence for people and not solely a site of healthcare provision. The pandemic led to people in these settings experiencing increased fear and anxiety, while restrictions on visiting led to deeper levels of isolation.²³⁰ While the crisis has impacted mental health widely, disruptions to mental health services and supports have a significant impact on people with pre-existing psychosocial disabilities.²³¹ Even when restrictions were eased in the community, excessive restrictions remained in place in some designated centres for disabled people.²³² While there were positive measures such as the use of online options in mental health services, these innovations excluded those without access to digital devices and adequate internet connection or adequate digital literacy skills.²³³

- » **The Commission recommends that data collection systems must be strengthened to collect and report real-time data on infection and death disaggregated by membership of equality groups and institutional setting.**²³⁴
- » **The Commission recommends that the experience of residents, their families and staff of institutional settings should inform the adoption by the State of preparatory measures to protect older and structurally vulnerable groups in future crises.**

228 Data up to 06 March 2021; see HPSC, [Epidemiological Report: First year of the COVID-19 pandemic in Ireland](#) (2022) p. 47.

229 Mental Health Commission, [Supervising, monitoring and supporting Irish residential mental health services during COVID-19](#) (2021) p. 8; Mental Health Commission, [Annual Report 2020: Report of the Inspector of the Mental Health Services](#) (2021) p. 69; National Disability Authority, [Lockdowns Unlock Innovation: Review of innovations and adaptations affecting persons with disabilities arising from COVID-19 restrictions](#) (2021) p. 42.

230 IHREC funded research found that there was uncertainty at times within nursing homes, and for families, due to factors such as policy change, fear, and a desire to protect residents; John Lombard et al., [Shaping palliative care policy using a human rights-based approach: Examining the experience of people living in nursing homes, their families, and staff during the COVID-19 pandemic](#) (University of Limerick and All-Ireland Institute of Hospice and Palliative Care, 2022). See also HIQA, [Annual Report 2020](#) (2021) p. 30; Mental Health Commission, [Annual Report 2020: Report of the Inspector of the Mental Health Services](#) (2021) pp. 69, 80.

231 Mental Health Commission, [COVID Paper II: Examining the impacts and response in residential mental health services](#) (2021).

232 HIQA, [Annual Report 2020](#) (2021) p. 37.

233 Mental Health Commission, [Annual Report 2020: Report of the Inspector of the Mental Health Services](#) (2021) p. 70. See also, Section 14 of this report.

234 The collection of accurate and reliable real-time data and the rapid and accurate sharing of this information between healthcare organisations and public health agencies is considered integral to an effective response to a public health emergency. See B. Walsh, C. Mac Domhnaill and G. Mohan, *Developments in Healthcare Information Systems in Ireland and Internationally* (ESRI: June 2021), p. 30.

Safeguarding and regulatory framework

Covid-19 has highlighted significant gaps and weaknesses in the provision of services and in the legislation and regulations which provide the mechanism to regulate institutional settings.²³⁵ The pandemic highlighted the ongoing need for an overarching social care policy and legislation which outlines clearly what the State's role is in the identification and addressing of the social care needs of older and structurally vulnerable populations.²³⁶ A Parliamentary Committee remarked that the lack of statutory clinical oversight of care for residents in the private nursing home sector is one of the biggest weaknesses exposed by Covid-19.²³⁷ There are 578 registered nursing homes in Ireland;²³⁸ the majority of these are privately owned and operated. There are also many younger disabled people inappropriately accommodated in nursing homes.²³⁹ The Commission understands and is concerned that during the pandemic there has been an increased use of digital door codes for residents to access and exit residential care institutions, with the result that people can be de facto locked in. It is imperative that all service providers, whether public or private, ensure that their policies and practices are human rights and equality proofed to ensure compliance with their obligations under the Public Sector Duty.

Covid-19 exacerbated existing issues such as inappropriate facilities and multi-occupancy rooms.²⁴⁰ The collective living arrangements in congregated care settings made already vulnerable people particularly susceptible to Covid-19. Despite the State's commitment to deinstitutionalise residential disability services,²⁴¹ progress has been slow and the revised target timeframe for implementation by 2021 was not met.²⁴² The State continues to be overly reliant on institutional care for older persons and disabled people.²⁴³ 2,841 (31%) of the

235 Oireachtas Special Committee on COVID-19 Response, [Final Report](#) (October 2020) p. 14; HIQA, [Annual Report 2020](#) (2021) p. 63; Mental Health Commission, [Supervising, monitoring and supporting Irish residential mental health services during COVID-19](#) (2021) p. 7; National Disability Authority, [Lockdowns Unlock Innovation: Review of innovations and adaptations affecting persons with disabilities arising from COVID-19 restrictions](#) (2021) p. 63.

236 The Health Information and Quality Authority ('HIQA') has called for the reform of the social care regulatory framework to place the emphasis on the type or needs of the people rather than the location of the care; HIQA, [The need for regulatory reform: A summary of HIQA reports and publications examining the case for reforming the regulatory framework for social care services](#) (2021) p. 8.

237 Oireachtas Special Committee on COVID-19 Response, [Interim report on COVID-19 in nursing homes](#) (July 2020) p. 14.

238 Health Service Executive, [List of Nursing Homes in Ireland](#) (accessed 10 May 2022). There are approximately 32,000 residential places in nursing homes; HIQA, [Annual Report 2020](#) (2021) p. 25.

239 As of June 2020, there were here were 1,320 people under 65 years of age supported by the Nursing Homes Support Scheme; see Office of the Ombudsman, [Wasted lives: Time for a better future for younger people in nursing homes](#) (2021) p. 7.

240 Mental Health Commission, [Annual Report 2020: Report of the Inspector of the Mental Health Services](#) (2021) p. 70.

241 HSE, [Time to Move on from Congregated Settings A Strategy for Community Inclusion](#) (2011).

242 National Disability Authority, [Independent Assessment of Implementation of the National Disability Inclusion Strategy for 2021](#) (2022) p. 40.

243 Oireachtas Special Committee on COVID-19 Response, [Final Report](#) (October 2020) p. 14.

9,166 residential places providing services to disabled adults and children are located in congregated settings.²⁴⁴ There are higher levels of non-compliance with national standards in congregated residential disability settings in comparison to centres in the community, and those resident in smaller community-based homes had more control and choice over their day-to-day routines than those in larger campus or congregated settings.²⁴⁵ Those living in congregated settings do not receive the same supports in exercising and enjoying their human rights, and are at an increased risk of being exposed to safeguarding issues.²⁴⁶

The pandemic has highlighted the need for the State to phase out institutional disability services and re-allocate funds into the development of both disability specific and accessible mainstream community-based alternatives. Covid-19 has demonstrated how rapidly policy and practice can change, and limitations on resources be overcome, when deemed necessary.

- » **The Commission recommends that the State undertake a comprehensive review of legislation and policy relating to provision of health and social care services to ensure the regulatory framework is appropriate to protect and support the needs of our older and structurally vulnerable communities. The Commission further recommends that other forms of social care should be subject to regulation.**²⁴⁷

- » **The Commission recommends that the State accelerate the deinstitutionalisation process to ensure that persons have the right to in-home, residential and community support services, including personal assistance, necessary to support living in the community. These services should be adequately resourced and funded.**

- » **The Commission recommends that the State put in place robust independent inspection mechanisms that are human-rights based and that incorporate all public, voluntary and private health and social care providers.**²⁴⁸

244 Data up to the end of 2020; HIQA, [Annual Report 2020](#) (2021) p. 40.

245 In 2020, 15% of congregated settings were not compliant in comparison to 8.4% of non-congregated settings; HIQA, [Overview report: Monitoring and regulation of disability services in 2020](#) (2021) pp. 17–18.

246 HIQA, [Overview report: Monitoring and regulation of disability services in 2020](#) (2021) pp. 24, 37.

247 Including supported or assisted living and sheltered housing; personal assistance; day services; homecare; home sharing; respite; short-stay or convalescence or step down units; hospice and or palliative care; and, live-in services. HIQA, [The need for regulatory reform: A summary of HIQA reports and publications examining the case for reforming the regulatory framework for social care services](#) (2021) pp. 13–14.

248 The need for the ratification of the Optional Protocol to the Convention Against Torture is discussed in Section 11.

10.

Trafficking in persons

(Articles 6-8, 24)

In October 2020, the Commission was designated as Ireland's Independent National Rapporteur on the Trafficking of Human Beings.²⁴⁹ The Commission recognises this important development as an essential mechanism for the evaluation and implementation of the State's response to trafficking, and to ensure a human rights-based approach to anti-trafficking actions.²⁵⁰ However, the Commission is of the view that in order to effectively carry out its role, appropriate access to information and data is necessary.

- » **The Commission recommends that a clearly defined entitlement for the National Rapporteur to request and access information and data, in a timely manner, from relevant actors must be placed on a statutory footing.**

Mechanisms to identify and provide protection to all victims of trafficking

The establishment of a new National Referral Mechanism ('NRM') to identify victims of trafficking and facilitate their access to advice, accommodation and support must be a priority.²⁵¹ The Commission is deeply concerned with the decreasing numbers of people being officially identified as victims of trafficking, especially child victims.²⁵² The ineffective identification system fails victims and has led to suspects who are, in reality, victims of trafficking being remanded in custody for lengthy periods without any identification decision being made.²⁵³ A

249 IHREC, [Commission Takes on New Role as Ireland's National Rapporteur on the Trafficking of Human Beings](#) (22 October 2022).

250 GRETA, [Report Concerning the Implementation of the Council of Europe Convention on Action Against Trafficking in Human Beings by Ireland. Second Evaluation Round](#) (September 2017) 11.

251 For further information on the issues with the current procedures in place, see E. Cunniffe and O. Ayodele, *Detection, Identification, and Protection of Third-Country National Victims of Human Trafficking in Ireland* (ESRI: 2022), pp. 43-50.

252 The Garda Anti-Trafficking unit reported 39 investigations in 2019 (36 for sex trafficking and three for labour trafficking, which included two for forced criminality), a significant decrease compared to 64 investigations in 2018. The Government initiated prosecutions for five suspects, two for sex trafficking and three for forced labour (compared to none in 2018, three in 2017, and nine in 2016). According to the Anti-Human Trafficking Unit in the Department of Justice, the authorities identified 20 child victims of trafficking from 2013-2017 (out of a total 283 victims). There were three reports of child trafficking in 2017, five in 2018, nine in 2019, and none in 2020. The Commission established that there were 475 victims of human trafficking identified since 2013 to date, of these 55% represented trafficking for sexual exploitation, 38% - trafficking for labour exploitation and just 7 % trafficking for forced criminal activities respectively. Recent figures from the ESRI also evidences that the number of victims identified each year has decreased year on year since 2017: E. Cunniffe and O. Ayodele, *Detection, Identification, and Protection of Third-Country National Victims of Human Trafficking in Ireland* (ESRI: 2022), p. 15.

253 For non-national victims of trafficking, the lack of identity documents and ties to the jurisdiction will potentially lead to refusal of bail: see Irish Penal Reform Trust, [The practice of pre-trial detention in Ireland](#) (2016). In the review of Irish practice, it is noted that many of the potential victims spent long periods — in some cases, several years — on remand in custody. The bail issue highlights again the urgent need for early identification of victims, and shows that because delayed identification impairs the exercise of prosecutorial discretion, it can lead to long periods of pre-trial detention for victims; something the non-prosecution and

functioning victim identification mechanism is urgently needed to ensure that decisions to prosecute can be reviewed and, where appropriate, reversed when the person is a victim of trafficking.²⁵⁴

In the absence of a comprehensive statutory NRM outlining the measures for identification and assistance to all victims,²⁵⁵ the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking ('AIA')²⁵⁶ continues to be the operating NRM by default. Despite strong criticism by the Committee and the Commission,²⁵⁷ under the current system, asylum-seekers cannot be formally identified under the AIA as a victim of trafficking or granted permission to reside on that basis unless they withdraw from the asylum process, giving up their right to international protection. This is incompatible with international human rights law.

The Commission welcomes the proposals for a new NRM, which will give this mechanism a statutory basis and incorporate several State agencies as well as involving civil society organisations as 'trusted partners'.²⁵⁸ However, these proposals have not been progressed with the required urgency.²⁵⁹

» **The Commission recommends that the establishment of a new National Referral Mechanism is progressed as a matter of utmost**

non-punishment principles are intended to avoid.

254 *P. v. Chief Superintendent of the Garda National Immigration Bureau & Ors* [2015] IEHC 222. The case, in which the Commission appeared as *amicus curiae*, concerned a Vietnamese woman who was discovered by the Gardai locked in a cannabis 'grow house' and who was charged with drugs offences. The woman claimed she was a victim of trafficking and that the failure of the Garda to recognise this deprived her of her right to avail of the protection regime for such victims. The Court found that the State's administrative scheme for the recognition and protection of victims of human trafficking was inadequate to meet its obligations under EU law aimed at combatting trafficking in human beings. See also, L00295/0112 (Legal Aid) *DPP v. Hung Ba Tran and Hoang Hu Vo*.

255 Department of Justice, [Second National Action Plan to Prevent and Combat Human Trafficking in Ireland \(2016\)](#) p. 56.

256 Department of Justice (2011), [Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking](#).

257 IHREC (2021). [Ireland's Actions Against Trafficking in Human Beings: Submission by the Irish Human Rights and Equality Commission to the Council Group of Experts on Action against Trafficking in Human Beings \(GRETA\)](#), p. 32.

258 Department of Justice, '[Government approves proposal for a revised National Referral Mechanism to make it easier for human trafficking victims to come forward and receive supports](#)' (11 May 2021). The proposed new mechanism would expand the role of 'competent authority' for the identification of victims of trafficking beyond An Garda Síochána, to include several other State agencies. These include: the Department of Justice Immigration Service; Department of Social Protection; the HSE; Tusla; Department of Children, Equality, Disability, Integration and Youth; International Protection Accommodation Services (IPAS), Workplace Relations Commission.

259 [The reform of the National Referral Mechanism was approved by Cabinet in May 2021 yet it has failed to be included in any subsequent legislative programme, see Government of Ireland, Legislation Programme Summer Session 2022 \(2022\). This comes on the back of a commitment in 2016, contained in the Second National Action Plan to Prevent and Combat Trafficking in Human Beings to establish a number of working groups, one of which was to look at 'Development of a National Referral Mechanism'. Also see, Dáil Éireann Debates, \[Written Answers by Minister for Justice, Wednesday 24 March 2021\]\(#\).](#)

priority, in line with the publication by the State of a clear timeline. The improved mechanism must guarantee early identification and gender, child and exploitation-specific assistance.

- » **The Commission recommends that the proposed new National Referral Mechanism incorporate explicit provisions to ensure that international protection can be pursued at any moment in time – prior to, during, or after identification as a victim of trafficking – and that formally identified victims have access to the rights and assistance measures put in place for victims of human trafficking, regardless of any pending international protection claim.**

Unprecedented numbers of people fleeing the war in Ukraine are arriving in Ireland. These people, mostly women and children, face risks of human trafficking, including sexual and labour exploitation.²⁶⁰

- » **The Commission recommends that the State, in responding to the Ukraine crisis, work actively with EU and other partners to prevent and detect human trafficking, and support potential victims, through the full implementation of the shared EU Anti-Trafficking Plan.²⁶¹**

Investigations, prosecutions and convictions for trafficking offences

In June 2021, the first conviction under the relevant human trafficking legislation was secured.²⁶² The Commission welcomes this important development as it demonstrates the capacity of the system to penalise human trafficking crimes in Ireland. The number of confirmed cases before the courts at the end of 2019 indicate that progress is being made to tackle organised prostitution as a high-risk environment for human trafficking,²⁶³ and the realised conviction is a testament to this. However, in light of the problematically low number of convictions to date, the Commission is of the view that a review of the barriers in the criminal justice response is necessary.

260 United Nations, '[Targeted by Traffickers -Ukrainian Refugees at High Risk of Exploitation](#)' (2022). One Irish escort site noted a 250% increase in searches on its website for Ukrainian escorts in the first two weeks of March 2022. A. Murphy, '[Surge in men searching for Ukrainian escorts on Irish sites](#)', (2nd April 2022).

261 The plan is based on the EU Strategy on Combatting Trafficking in Human Beings (2021-2025) and will address the specific challenges emerging from the Ukrainian war: See European Commission, *The 10-Point Plan: For stronger European coordination on welcoming people fleeing the war from Ukraine* (2022).

262 Department of Justice (Press Release, 11 June 2021), '[Minister Naughton welcomes the first convictions for Human Trafficking handed down today](#)'.

263 See: Dáil Debate, [Criminal Prosecutions Data](#) (3 December 2019) and SERP, [Shifting the Burden](#) (2020); European Commission (2021), *Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings 2021-2025*, COM(2021) 171

There is a failure to criminalise slavery, servitude and forced labour as separate offences in Irish law.²⁶⁴ At present, these are only criminalised indirectly as part of a trafficking offence. This situation needs to be addressed as it is incompatible with Article 8 of the ICCPR and Article 4 of the European Convention on Human Rights, which requires criminalisation of slavery, servitude and forced labour.²⁶⁵

- » **The Commission recommends that the Garda Inspectorate launch a standalone inspection of the police response to trafficking in human beings.**
- » **The Commission recommends the introduction of separate offences to criminalise holding a person in slavery or servitude or subjecting them to forced labour.**

National action plan to prevent and combat human trafficking

The Commission welcomes the partial progress that has been made in the implementation of the second *National Action Plan to Prevent and Combat Human Trafficking in Ireland 2016* ('NAP'),²⁶⁶ but remains concerned about the absence of any indication of the agencies responsible for the different actions, the budget allocation,²⁶⁷ or specific timelines for implementation.²⁶⁸ The Commission understands that the Department of Justice has begun initial discussions regarding the development of a new NAP but there are no clear timelines for the progression and completion of this work. There are a number of important priorities to be addressed in a new NAP, and some of these – such as the provision of gender-specific accommodation²⁶⁹ and removing the condition of cooperation

264 Under section 4(1) of the 2008 Act, a person who trafficks another person for the purposes of the exploitation of the trafficked person is guilty of an offence if, in or for the purpose of trafficking the trafficked person, the trafficker employs any of the means listed in section 4(1)(a)-(e). The act of trafficking defined in s 1 is framed more broadly in Irish law than in EU or international law, so that while it includes the action elements of the core definition, it incorporates other actions not found there, including causing a person to enter or leave the State or to travel within the State and providing the person with accommodation or employment.

265 See *CN v. United Kingdom*, Application No 4239/08, 13 November 2012.

266 In particular, the establishment of the Garda National Protective Services Bureau, the Garda Divisional Protective Services Units, the Anti-Human Trafficking Team in the Health Service Executive and the Human Trafficking Legal Team in the Legal Aid Board. Additionally, there has been a notable increase in funding to frontline support services.

267 GRETA, [Report Concerning the Implementation of the Council of Europe Convention on Action Against Trafficking in Human Beings by Ireland. Second Evaluation Round](#) (September 2017) p. 11.

268 Department of Justice, [Second National Action Plan to Prevent and Combat Human Trafficking in Ireland \(2016\)](#).

269 Immigrant Council of Ireland, [Housing trafficked Women in Ireland: Submission to the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process \(2020\)](#). See also, IHREC, [White Paper Submission \(Direct Provision\) \(2020\) in which](#) the Commission placed an emphasis on the need for a new reception system to be guided by a trauma-informed approach, and by the underpinning assumption that all asylum seekers may have experienced trauma. Additionally, the US

with law enforcement in accessing assistance²⁷⁰ - are matters of absolute urgency.

- » **The Commission recommends that the State publish a clear schedule for the adoption of a new National Action Plan as a matter of urgency, and that the Plan includes specific actions and activities with clear timeframes and responsibility for implementation.**
- » **The Commission recommends the prompt establishment of gender-specific accommodation for victims of trafficking.**
- » **The Commissions recommends the removal of the conditional assistance to victims of trafficking, which is linked to cooperation with investigative authorities.**

State Department's 2020 TIP report noted a lack of specialised services in the centres for all victims, but especially for female victims who had been traumatized due to psychological, physical, or sexual violence. It also noted that victims who were in the asylum process remained in direct provision accommodation while a determination was being made in relation to their claim for international protection, which could continue for years. It noted that while the Government, including a parliamentary committee, acknowledged the lack of adequate accommodation and planned to develop alternative government-funded accommodation, officials took no concrete steps during the reporting period. See US State Department, [Trafficking in Persons Report 20th Edition](#) (2020) p. 271.

270 IHREC (2021). *Ireland's Actions Against Trafficking in Human Beings: Submission by the Irish Human Rights and Equality Commission to the Council Group of Experts on Action against Trafficking in Human Beings (GRETA)*, p. 33.

11.

**Prohibition of
torture and other
cruel, inhuman
or degrading
treatment or
punishment, and
treatment of
persons deprived
of their liberty**

(Articles 7, 9-11)

Legislative delays

The Commission has consistently highlighted delays in the commencement and reform of enacted legislation concerning legal capacity and people with psychosocial disabilities.²⁷¹ The State's commitment to commence the *Assisted Decision Making (Capacity) Act 2015* by June 2022 is welcome.²⁷² However, it should not be at the expense of democratic scrutiny including the effective participation of disabled people in the design and implementation of the legislation.²⁷³ There is significant planned legislative reform including the *Assisted Decision-Making (Capacity) (Amendment) Bill*,²⁷⁴ the *Mental Health (Amendment) Bill*,²⁷⁵ and the *Protection of Liberty Safeguards Bill*.²⁷⁶ These legislative developments will need to be carefully monitored to ensure there is no divergence in standards or treatment of individuals; and be subject to post-legislative scrutiny to ensure that they are fully commenced and implemented.

The Commission continues to be concerned that the *Inspection of Places of Detention Bill*, to provide for the establishment of a National Preventative Mechanism ('NPM'),²⁷⁷ has been subject to repeated delays.²⁷⁸ Rather than wait for the publication of the Bill, there is no impediment in law to the immediate ratification of OPCAT.²⁷⁹ The delay in ratifying OPCAT impacts on the effective independent oversight of prisons, police custody, mental health establishments, and healthcare and residential settings.²⁸⁰ The Commission stresses the importance of a statutory basis for civil society involvement in the operation of the

271 For example the *Assisted Capacity Decision Making (Capacity) Act 2015*, the *Mental Health Act 2001* and the *Mental Health (Amendment) Act 2018*. IHREC, [Submission on the General Scheme of the Mental Health \(Amendment\) Bill](#) (2022) pp. 2–3.

272 Department of Children, Equality, Disability, Integration and Youth, [Cabinet approves General Scheme of the Assisted Decision-Making \(Capacity\) \(Amendment\) Bill](#) (Press release, 22 November 2021).

273 The Commission has expressed concern that the legislation is being moved at a significant pace through the legislative process; IHREC, [Statement to the Joint Committee on Equality, Disability, Integration and Youth on the Pre-legislative scrutiny of the General Scheme of the Assisted Decision-Making \(Capacity\) \(Amendment\) Bill 2021](#) (16 February 2022).

274 The [Assisted Decision-Making \(Capacity\) \(Amendment\) Bill 2021](#) will amend the IHREC Act 2014 to provide a statutory basis for the Commission's designation as the Independent Monitoring Mechanism under the Convention on the Rights of Persons with Disabilities.

275 IHREC, [Submission on the General Scheme of the Mental Health \(Amendment\) Bill](#) (2022) pp. 1–2.

276 The draft Bill has not yet been published and there does not appear to be a clear timeframe for its publication. See comments made by the Minister for Health in [Proposed Legislation – Dáil Éireann Debate, 19 January 2022: Question 1866](#).

277 As noted in the introduction, the Commission will be assigned the NPM coordinator role under OPCAT, pending ratification.

278 The State's reply to the list of issues provides that the State committed to ratifying OPCAT before the end of 2021. The Department of Justice's Justice Plan 2022 commits to publishing the General Scheme of the *Inspection of Places of Detention Bill* by the end of Q1 2022. The State has missed both these deadlines. Human Rights Committee, [Replies of Ireland to the list of issues in relation to its fifth periodic report](#), CCPR/C/IRL/RQ/5 (2022) para. 120; Department of Justice, [Justice Plan 2022](#) (2022) p. 37.

279 Article 24 OPCAT affords State Parties the option to 'make a declaration postponing their obligations ... for a maximum of three years', with the possibility of a further extension of two years.

280 IHREC, [Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland](#) (2020) pp. 9, 10, 16.

NPM, and ensuring appropriate funding, staffing, and data access for the effective functioning of the NPM co-ordinating body.²⁸¹

- » **The Commission recommends that legislative proposals concerning capacity and psychosocial disabilities align with human rights standards, including the UN Convention on the Rights of Persons with Disabilities.**
- » **The Commission recommends that the State proceed with the immediate ratification of OPCAT. The Commission further recommends that the State provides a statutory basis for the involvement of civil society organisations in the operation of the National Preventative Mechanism, as well as ensuring appropriate resourcing and data access for the co-ordinating body.**

Consent to treatment and use of restrictive practices

There continues to be issues surrounding involuntary treatment in mental health services,²⁸² including in the communication to people on admission of their right to refuse treatment.²⁸³ There is ongoing use of seclusion, physical restraint, electroconvulsive therapy, involuntary administration of medication, and a recorded pattern of failure to comply with the rules governing these practices.²⁸⁴ The reform of the *Mental Health Act 2001* offers the opportunity for Ireland to be proactive in reducing the use of restrictive practices and to develop strategies which promote less restrictive alternatives.²⁸⁵ It also provides the opportunity to

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

282 IHREC, [Submission on the General Scheme of the Mental Health \(Amendment\) Bill](#) (2022).

283 The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) noted that several persons stated that they: 'consented to treatment, even though they did not want it, either because they did not think they could refuse, or because they did not wish to be forcibly medicated.' CPT, [Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019](#) (2020) p. 63.

284 In 2020, there were 5,830 episodes of restrictive practices (1,840 episodes of seclusion, 3,990 episodes of physical restraint). In 2020, 19% (442) of electroconvulsive therapy treatments were administered without consent. In 2020, 77% of approved centres were compliant with the rules governing the use of electroconvulsive therapy; 86% were compliant with code of practice on the use of electroconvulsive therapy; 61% were compliant with the rule on seclusion, 86% were compliant with the rules of mechanical restraint, 84% were compliant with consent procedures; and 76% were compliant with the code of practice on physical restraint. Mental Health Commission, [Annual Report 2020](#) (2021) pp. 23, 28, 75–78; Mental Health Commission, [The use of restrictive practices in approved centres: Seclusion, mechanical restraint and physical restraint – Activity Report 2020](#) (2021); and Mental Health Commission, [The administration of electroconvulsive therapy in approved centres: Activity Report 2020](#) (2021).

285 The State should strengthen safeguards – including that restraint and seclusion should be a measure of last resort, the right of a person to access an advocate in discussions on the use of seclusion or restraint, and the reason for the use of restraint and seclusion, and its nature and extent should be included in the register and the person's clinical file – and embed human rights standards within the rules and codes of practice on the use of these practices. IHREC, [Submission on the General Scheme of the Mental Health \(Amendment\) Bill](#)

end the practice of admitting children to adult mental health services.²⁸⁶

- » **The Commission recommends that the State ensure that people subject to restrictive practices have access to independent advocacy, legal representation and accessible information about their rights.**
- » **The Commission recommends that the State reduce the use of restrictive practices, and ensure that these practices are only used in exceptional circumstances.²⁸⁷ The State should publish an action plan to ensure that restrictive practices are reduced in services across population groups and the country.**
- » **The Commission recommends that the reform of mental health law must be accompanied by State measures – including legislation, rules and codes of practice – aimed at ensuring less restrictive forms of treatment in the community are available and the ultimate eradication of coercion in the treatment of people with psychosocial disabilities.**
- » **The Commission recommends that the *Mental Health (Amendment) Bill* should explicitly set out that children should not be admitted to an adult approved inpatient facility.**

Conditions of detention

The Commission is concerned that despite the positive steps to reduce the number of people in prison throughout the pandemic, the use of custody is returning to pre-pandemic levels of overcrowding,²⁸⁸ which means that a substantial number of prisoners are required to share cells²⁸⁹ and, in some cases, sleep on mattresses.²⁹⁰ 47.5% of prisoners are required to use a toilet in the

(2022).

286 There were 27 admissions of children to adult approved inpatient facility in 2020. There was 0% compliance with the code of practice on the admission of children to approved centres as the services did not provide age appropriate facilities and programmes of activities for children admitted to adult facilities. Mental Health Commission, [Annual Report 2020](#) (2021) pp. 4, 20, 29.

287 A restrictive practice should only be used where it is the only means available to prevent immediate or imminent harm to a person or others, and its use should not be prolonged beyond what is necessary for this purpose; IHREC, [Submission on the General Scheme of the Mental Health \(Amendment\) Bill](#) (2022).

288 On 31 March 2022, 3,970 persons were in custody. This compares with 3,753 (31 March 2021), 3,881 (31 March 2020) and 4,034 (31 March 2019). Irish Prison Service, [Monthly Information Note – March 2022: Comparison number in custody & temporary release – last day of month](#).

289 823 cells accommodated two prisoners (1,646 prisoners); 87 cells accommodated three prisoners (261 prisoners); and, 38 cells accommodated four or more prisoners (152 prisoners). Irish Prison Service, [Census Prison Population April 2022 – Cell occupancy – In-Cell Sanitation](#).

290 CPT, [Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019](#) (2020) pp. 4, 6.

presence of others, and some prisoners are still required to 'slop out'.²⁹¹ Prisoners on remand and people detained for immigration-related reasons,²⁹² continue to share cells with sentenced prisoners in a number of prisons.²⁹³ Many prisoners are on restricted regimes for their own protection,²⁹⁴ limiting their access to services, supports and contact with the outside world.²⁹⁵ Concerns have been raised with the effectiveness of the National Violence Reduction Unit in reducing violent behaviour.²⁹⁶ Health services are under-resourced in prisons, despite the prevalence of psychosocial disabilities²⁹⁷ and drug misuse.²⁹⁸ Prisoners face significant challenges based on their ethnicity and nationality,²⁹⁹ including discrimination from prison staff.³⁰⁰ Prisoners with limited literacy skills and non-English speakers face difficulties in accessing information on their rights;³⁰¹ particularly in the context of Covid-19.³⁰² There is a continued lack of recognition

291 1,908 prisoners, including 18 female detainees, were required to use the toilet in the presence of another prisoner. 31 prisoners (0.8%) were required to slop out. Irish Prison Service, [Census Prison Population April 2022 – Cell occupancy – In-Cell Sanitation](#).

292 There is no specific designated facility for people detained for immigration-related reasons for a period longer than 24 hours. See CPT, [Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019](#) (2020) pp. 4, 17–18.

293 Irish Prison Service, [Annual Report 2020](#) (2021).

294 In April 2022, 758 prisoners were on restricted regimes; 254 prisoners were on a 22 hour restricted regime, 81 prisoners were on a 23 hour restricted regime, and 76 prisoners were on a 24 hour restricted regime. Irish Prison Service, [Census of Restricted Regime Prisoners April 2022](#).

295 CPT, [Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019](#) (2020) pp. 26–31.

296 The CPT delegation noted that all four prisoners in the NVRU in the Midlands Prison were spending 23 to 24 hours alone in their cells. Two of the prisoners were dismissive of the regime and felt the approach infantilised them: [Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019](#) (2020) pp. 32–33.

297 The Inspector of Mental Health Services has highlighted that prisoners with a psychosocial disability are not provided with the same standard and access to mental healthcare as available in the community: [Access to Mental Health Services for People in the Criminal Justice System](#) (2021) pp. 10, 16.

298 Inspector of Mental Health Services, [Access to Mental Health Services for People in the Criminal Justice System](#) (2021) p. 5.

299 Research funded by the Commission identified significant challenges facing foreign national and minority ethnic people in prison regarding isolation, access to services, respect for different religious backgrounds, as well as language, communication and cultural barriers. Irish Penal Reform Trust and Maynooth University School of Law and Criminology, [“Sometimes I’m missing the words”: The rights, needs and experiences of foreign national and minority ethnic groups in the Irish penal system](#) (2022).

300 In a number of the Covid-19 thematic reports, the Office of the Inspector of Prisons observed that prisoners are experiencing discrimination by prison staff on the basis of their race and/or nationality; [COVID-19 Thematic Inspection of prisons by the Office of the Inspector of Prisons](#). The CPT delegation received allegations from Travellers and persons of African descent that prison staff were deliberately provoking prisoners, for example, by referring to their crimes or their family in an inappropriate manner or calling them names; CPT, [Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019](#) (2020) p. 22.

301 Irish Penal Reform Trust and Maynooth University School of Law and Criminology, [“Sometimes I’m missing the words”: The rights, needs and experiences of foreign national and minority ethnic groups in the Irish penal system](#) (2022) pp. 35–38.

302 [COVID-19 Thematic Inspection of prisons by the Office of the Inspector of Prisons](#). A lack of provision of interpreting services impacts on the ability of prisoners to access health care; Irish Penal Reform Trust and Maynooth University School of Law and Criminology, [“Sometimes I’m missing the words”: The rights, needs and experiences of foreign national and minority ethnic groups in the Irish penal system](#) (2022) p. 35.

of the distinct needs of women, particularly women from structurally vulnerable communities, in the criminal justice system.³⁰³

There is a lack of publicly available, up-to-date data on cases of Covid-19 in the prison system; however, the Minister for Justice confirmed the first death of a prisoner in November 2021.³⁰⁴ Restrictions and disease control measures imposed due to the Covid-19 pandemic have had a significant impact on prisoners and conditions within prisons;³⁰⁵ including accessibility of information, reduction on out-of-cell time,³⁰⁶ restrictions on social supports, including in-person family visits, and a lack of structured activities.³⁰⁷ The conditions faced by prisoners are compounded by the fact that there is still no fully independent external complaints mechanism for prisoners.³⁰⁸

- » **The Commission recommends that the State prioritise greater use of alternatives to imprisonment and remand detention to address prison overcrowding and improve prison conditions, particularly for groups over-represented in the prison population.**³⁰⁹
- » **The Commission recommends that all prisoners have access to structured activities, including regular, safe outdoor exercise, and that this is recorded in data on out-of-cell time. The Commission further recommends that the State ensure that those on restricted regimes, including those in the National Violence Reduction Unit, are**

303 The Irish Penal Reform Trust have remarked that there is a consistent lack of data on the availability of gender-specific community sanctions and research on women in prisons. Irish Penal Reform Trust, [Progress in the Penal System \(PIPS\): The need for transparency \(2021\)](#) (2022) pp. 42–45. Women continued to raise concerns around the availability of personal hygiene and menstruation products during Covid-19; Office of the Inspector of Prisons, [COVID-19 Thematic Inspection of Mountjoy Women's Prison - Dóchas Centre: 14–15 September 2021](#) (2022) p. 26.

304 The Minister also confirmed that there has been 277 cases of Covid-19 in prison and two cases of hospitalisation; see Department of Justice, [Reply to Parliamentary Question 463 – Prison Service](#) (23 November 2021).

305 Irish Penal Reform Trust, [Progress in the Penal System \(PIPS\) Assessing progress during a pandemic \(2020\)](#) (2021).

306 Data on the extent to which prisoners have access to outdoor exercise and meaningful human contact during their out-of-cell time is not collated or published. See IPRT, [Irish Prisons and Covid-19: One Year On](#) (2021), p. 9.

307 [COVID-19 Thematic Inspection of prisons by the Office of the Inspector of Prisons](#); Irish Penal Reform Trust, [Progress in the Penal System \(PIPS\): The need for transparency \(2021\)](#) (2022).

308 The CPT have called for the necessary resources and training to be in place to ensure that the new complaints system is fair, efficient and effective. CPT, [Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019](#) (2020) pp. 5, 24.

309 Irish Travellers, foreign nationals and members of the Black or Black-Irish community are over-represented in the prison system. Irish Travellers comprise almost 8 per cent of committals but only represent 0.7 per cent of the total population in Ireland. Foreign nationals comprise 17 per cent of committals while just comprising 12 per cent of the population in Ireland. Black or Black-Irish community comprised 2 per cent of committals while representing 1.2 per cent of the population. Irish Penal Reform Trust and Maynooth University School of Law and Criminology, ["Sometimes I'm missing the words": The rights, needs and experiences of foreign national and minority ethnic groups in the Irish penal system](#) (2022) p. 30.

provided with meaningful engagement with structured supports and services.

- » The Commission recommends that the State end the practice of remand and sentenced prisoners sharing cells, and the practice of detaining people for immigration-related reasons in prisons.
- » The Commission recommends that the State ensure that people with severe psychosocial disabilities³¹⁰ are not detained in prisons, and instead are provided with treatment in appropriate settings, including in the community. When people with psychosocial disabilities are detained, they should be provided with specialist supports on entry to prison and should not be placed in cells with other prisoners.
- » The Commission recommends that people with addictions, including drug, alcohol, other substances and / or online gambling addictions, are provided with specialist services and support in prison, and with a continuum of care on release.
- » The Commission recommends that dedicated policies and strategies should be developed to address discriminatory treatment in the prison system, and to enhance the protection of the rights of specific groups in detention, including women, disabled people and members of structurally vulnerable racial, ethnic and nationality groups.

310 Research has shown the prevalence of psychotic or affective disorders, alcohol disorder and substance abuse, and homelessness at the time of committal; see Gulati et al. The prevalence of major mental illness, substance misuse and homelessness in Irish prisoners: systematic review and meta-analyses (2019) 36 Irish Journal of Psychological Medicine 35–45.

12.

Rights of refugees and asylum seekers

(Articles 2, 13)

Direct Provision

The Commission has repeatedly expressed concern over the long-term impact of the Direct Provision system in Ireland on the rights of people seeking international protection, including the rights to private and family life and self-determination as protected under ICCPR.³¹¹ In February 2021, the Government committed to replacing Direct Provision with a 'human rights and equality based' model by December 2024 and it is essential that this is progressed in a timely manner.³¹²

The Commission notes the disproportionate impact that the Covid-19 pandemic has had on residents in Direct Provision centres.³¹³ Due to the congregated nature of accommodation centres, residents were unable to adhere to public health advice, including that of social distancing and self-isolation.³¹⁴ While the Commission welcomes measures introduced by Government to mitigate these impacts,³¹⁵ including the provision of self-isolation facilities for symptomatic people, Direct Provision accommodation remains fundamentally incompatible with the State's obligation to provide adequate accommodation for asylum seekers under international law.³¹⁶ The Commission continues to look for urgent action to phase out the Direct Provision system,³¹⁷ and for the State to ensure

311 IHREC, *Submission on the White paper on Direct Provision* (December 2020). See also, IHREC, *Ireland and the Convention on the Elimination of Racial Discrimination*, (October 2019).

312 Measures proposed include: ending the 'for profit' approach to reception of international protection applicants; earlier access to the labour market; provision of own-door community-based accommodation; provision of support payments; improved legal, health, education, childcare, and employment activation supports. See Department of Children, Equality, Disability, Integration and Youth, *A White Paper to End Direct Provision and to Establish a New International Protection Support Service*, (February 2021). Longstanding administrative barriers to access to bank accounts and driving licences, identified in the White Paper, have been recently addressed by Government. See Government of Ireland, [Minister of State Browne and Minister O'Gorman welcome new Guide to Opening Bank Accounts for international protection applicants and people with status](#), May 2021; Government of Ireland, [Asylum seekers can now apply for driving licences](#), December 2021.

313 'Covid-19 has demonstrated that the State can no longer be a party to the provision of facilities where there is not the capacity to self-isolate where residents fall ill...The situation is starker in direct provision centres where residents from different households are often forced to share the same accommodation. Many residents of direct provision centres were not able to self-isolate when they fell victim to the virus or when they displayed symptoms prior to diagnosis. These conditions facilitated the spread of Covid-19': [Oireachtas Special Committee on Covid-19 Response Final Report](#), October 2020: para. 18.

314 See IHREC, [Statement from the Irish Human Rights and Equality Commission In Respect of Direct Provision](#) (2020) and IHREC, [Statement from the Irish Human Rights and Equality Commission In Respect of Direct Provision](#) (2020). The Irish Refugee Council stated that the pandemic has highlighted the need to end Direct Provision and that the issues faced included overcrowding and an inability to social distance, difficulty accessing medical services and social protection payments, difficulties for health and social care workers living in direct provision, and the impact on children. See [Oireachtas Special Committee on Covid-19 Response Final Report](#) (2020), para. 79 and Irish Refugee Council, [Healthcare workers seek to move out of Direct Provision](#) (2020).

315 Department of Children, Equality, Disability, Integration and Youth, [COVID-19 Guidelines for IPAS Accommodation Centres - 17 May 2021](#) (2021).

316 See Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland \(2020\) CERD/C/IRL/CO/5-9](#), paras 37-38 and Human Rights Committee, [Concluding observations on the fourth periodic report of Ireland](#) (2014) CCPR/C/IRL/CO/4, para. 19.

317 The White Paper sets out that all Direct Provision accommodation will be phased out by the end of 2024.

that pressures such as the pandemic and the increase in Ukrainian people seeking temporary protection do not result in targets being missed and a regression in standards.³¹⁸ While the core progress to date in implementing the measures outlined in the White Paper has been policy development and planning, the Commission welcomes that transition to Phase Two accommodation is intended to commence in 2022.³¹⁹

- » **The Commission recommends that the State progress its planned phasing out of Direct Provision by 2024, with clearly defined targets and regular, accessible updates on the timeline for implementation.**³²⁰

Vulnerability assessments

Irish law stipulates that vulnerability assessments to identify special reception needs must be carried out within 30 days of an applicant lodging an international protection claim.³²¹ The Commission notes that as of February 2021, a vulnerability assessment pilot programme has been in operation by the International Protection Accommodation Service, in which applicants for international protection are entitled to participate.³²² While a welcome development, the Commission notes ongoing concerns with the manner in which vulnerability assessments are currently being carried out, including inconsistencies between the two-step and one-step assessments, delays, the lack of a disability focus, as well as the refusal to facilitate further assessments on an on-going basis and when new information is provided by applicants.³²³ The capacity of the State's assessment process needs to be scaled up significantly if all applicants are to be assessed in a timely manner.

This timeframe is longer than the Day report's recommendation for a new international protection system to be in place by mid-2023. See Department of Children, Equality, Disability, Integration and Youth, [A White Paper to End Direct Provision and to Establish a New International Protection Support Service](#), February 2021; and Department of Justice, [Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process](#) (October 2020).

318 See [Coalition to end Direct Provision in Ireland launched by leading not-for-profit groups](#) (January 2022).

319 Houses of the Oireachtas, [Dáil Éireann Debate-International Protection](#), Thursday - 24 March 2022. After the first four months in initial reception and integration centres, applicants whose protection claims are still being processed will move to Phase Two accommodation in the community. This will be own-door or own-room accommodation, for which they will pay a means-tested rent. See Department of Children, Equality, Disability, Integration and Youth, [A White Paper to End Direct Provision and to Establish a New International Protection Support Service](#), February 2021: p. 43.

320 The Commission notes that a website has been launched to provide updated information and reports on the progress of transitioning to the new model of accommodation. See Department of Children, Equality, Disability, Integration and Youth, [International Protection Support Services](#).

321 Section 8, [S.I. No. 230/2018 - European Communities \(Reception Conditions\) Regulations 2018](#). This is in line with Article 22, [DIRECTIVE 2013/33/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 laying down standards for the reception of applicants for international protection \(recast\)](#).

322 Houses of the Oireachtas, [Dáil Éireann Debate-International Protection](#), Thursday- 3 February 2022.

323 Asylum Information Database (AIDA), [Identification: Republic of Ireland](#), Last updated on 20 April 2022. See also, K. Barry, [Assessing Vulnerability: Asylum Seekers with Disabilities in Direct Provision in Ireland](#) (October 2021).

- » **The Commission recommends that the State takes active measures to ensure that vulnerability assessments are carried out within 30 days of an applicant lodging an international protection claim, and on an ongoing basis (with reasonable frequency and at points of transition).**
- » **The Commission recommends that the State provides sufficient supports to all applicants for international protection, including meaningful access to medical health services, reasonable accommodation for disabled people and gender and sexual orientation sensitive supports.**

Delays and processing times

The Commission is of the view that reform of the international protection system provides a critical opportunity to address the significant backlog of applications that await processing.³²⁴ While the *International Protection Act 2015* ('2015 Act') resulted in some progress on application processing times as there is now a single procedure for both refugee and subsidiary protection applications, the wait between application and first-instance international protection decisions, and the wait between the substantive appeal of a first instance decision has been significantly exacerbated by the Covid-19 pandemic.³²⁵ The Commission has stressed the importance of adhering to due process, natural and constitutional justice requirements, and fair procedures when addressing the backlog.³²⁶ Furthermore, the current reliance on remote hearings for appeals must take account of the digital divide, and balance the risk of creating additional barriers for some applicants.³²⁷

- » **The Commission recommends that the State take active measures to reduce the significant backlog of applications for international protection, with a view to ensuring a first-instance decision within 6 months and an appeal hearing within 6 months of the first-instance decision.**

324 Department of Children, Equality, Disability, Integration and Youth, *A White Paper to End Direct Provision and to Establish a New International Protection Support Service* (February 2021), section 3.5.

325 Recent figures from the Department of Justice indicate that applicants whose circumstances fall outside the prioritisation criteria wait approximately 23 months for a first-instance decision on their application, while those who successfully seek prioritisation wait approximately 14 months. This compares to pre-Covid-19 waiting times of approximately 8 months for prioritised applications and 15 months for all other applications. The median waiting period for appeals before the International Protection Appeals Tribunal (IPAT) was 13.5 months. See Asylum Information Database (AIDA), [Country Report: Ireland \(2021 Update\)](#) (April 2022), p. 12. See also Department of Justice, [International Protection Appeals Tribunal: Annual Report 2020](#) (February 2022), p. 46.

326 IHREC, *White Paper Submission Direct Provision* (December 2020).

327 For further information, see section 14.

Family reunification

The 2015 Act has severely restricted eligibility and applicable deadlines for family reunification applications, and has excluded naturalised citizens from its purview.³²⁸ The Commission has serious concerns regarding retrogressive measures on family reunification introduced in the 2015 Act that limit the statutory right to family reunification to members of the nuclear family, and requires family reunification applications to be made within 12 months of the grant of refugee or subsidiary protection status – a timeframe that is impossible for many refugees.³²⁹ The Commission has repeatedly emphasised the need for more expansive family reunification policies, particularly in the context of the Irish Refugee Protection Programme for Afghan nationals.³³⁰

- » **The Commission recommends the amendment of the *International Protection Act 2015* to more broadly define ‘family member’ in line with international human rights law, and clarify in law the rights of programme refugees and refugees who acquire Irish citizenship to reunification.**

Regularisation of undocumented migrants

The Commission welcomes the Government’s recent introduction of measures to regularise the situation of undocumented migrants and their families in Ireland.³³¹ A parallel scheme has also commenced for international protection applicants who have been waiting for a decision for two years or more.³³² While both regularisation schemes are welcome, the Commission notes concern amongst civil society actors about ongoing administrative barriers, including high and prohibitive

328 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) at p. 11.

329 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) at p. 11. The Commission continues to have serious concerns about this timeframe, while noting that the Supreme Court found that this provision was not unconstitutional in *I.I (Nigeria) v Minister for Justice and Equality*. The Commission has committed in its [Strategy Statement 2022–2024](#) to propose changes to the International Protection legislation relating to family reunification.

330 See Commission’s call for the State to *expand and strengthen the policies on family reunification*: IHREC, [Crisis in Afghanistan Underscores Need for Wider Family Reunification in Ireland’s Refugee Policy](#) (29 September 2021).

331 The current scheme will last for six months, from 31 January to 31 July 2022, and will allow people who have no immigration status in Ireland to apply for legal residence. The scheme is intended for people who have been undocumented in Ireland for at least 4 years at the start of the scheme, or for at least 3 years for families with children under 18. See Citizens Information Board, [Regularisation of Long-Term Undocumented Migrants Scheme](#), Updated on 7 February 2022.

332 This scheme will be open from 7 February to 7 August 2022. See Citizens Information Board, [Regularisation of Long-Term Undocumented Migrants Scheme](#), Updated on 7 February 2022.

application fees,³³³ and the short duration of the schemes, particularly given the challenges in disseminating information to 'hard-to-reach' populations that may be eligible, and the time needed to prepare the requisite documentation.³³⁴

- » **The Commission recommends that the State extend both regularisation schemes and ensure the provision of comprehensive, accessible and timely information to all eligible applicants.**
- » **The Commission recommends that the State introduce measures to address the high and potentially prohibitive application fees for people experiencing financial hardship.**

Citizenship

The Commission has repeatedly raised concerns about the legislative framework on citizenship, including due to its impact on children's rights.³³⁵ The General Scheme of the *Courts and Civil Law (Miscellaneous Provisions) Bill*, proposes reducing residency requirements for the naturalisation of children born in the State from five years to three years, but the Bill has yet to be published despite being scheduled in the Government's Legislation Programmes 2021 and 2022.³³⁶

Under Irish law, the Minister of Justice can refuse citizenship on 'good character' grounds, which is vague term and provides a wide discretion to the Minister.³³⁷ In 2022, the Commission acted as *amicus curiae* in a case before the Supreme Court involving the retrospective revocation of the refugee status of the parent, which had grave and enduring consequences for the child, ultimately depriving that child of Irish citizenship.³³⁸ The Commission is of the view that any decision that leads to

333 The application fee is: €700 for a family, €550 for an individual, and there is no fee for international protection applicants. The fee must be paid in full at the time of application. See Citizens Information Board, [Regularisation of Long-Term Undocumented Migrants Scheme](#), Updated on 7 February 2022.

334 Immigrant Council of Ireland, [Undocumented Regularisation Scheme to be profoundly transformative for thousands of migrants](#), December 2021.

335 The 27th amendment of the Constitution of Ireland, which was approved by referendum on 11 June 2004, removed the automatic right to citizenship for all children born in the State. For Commission commentary on the barriers faced by children due to the current legislative framework on citizenship, see IHREC, [Submission to the United Nations Human Rights Committee on the List of Issues for the Fifth Periodic Examination of Ireland](#) (August 2020), pp. 33-34.

336 For example, see Department of An Taoiseach, [Government Legislation Programme: Summer Session 2022](#) (April 2022), p. 6.

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

338 The case focuses on 'UM' who was born in Ireland and asserted Irish citizenship on the basis of his Afghan father's residency in the country, as a refugee, prior to his birth. His father was granted refugee status in 2006. However the Department of Justice informed the father in August 2013 that the Minister was revoking his refugee status due to fraud. UM, who was born before the revocation of his father's refugee status, had his Irish passport application refused later on the basis that any residence derived from his father's refugee grant could not be relied on for the purposes of UM's assertion of citizenship. See IHREC, [Commission Appears as Amicus Curiae & Publishes Legal Arguments](#), February 2022. The Supreme Court issued its ruling

a deprivation of a child's Irish citizenship must be subject to procedural safeguards and a proportionality assessment.³³⁹

- » **The Commission recommends that the State progresses proposed legislative amendments contained within the General Scheme of the *Courts and Civil Law (Miscellaneous Provisions) Bill*, and conducts a broader human rights-based review of the legislative framework on citizenship.**
- » **The Commission recommends that any decision to revoke citizenship must be subject to procedural safeguards and a proportionality assessment.**
- » **The Commission recommends the State eliminate the chronic administrative delays in the citizenship application process.**

State's response to the war in Ukraine

The Commission welcomes the solidarity of Ireland's national response, including the thousands of households registered for hosting refugees from Ukraine, generous personal giving, and the State's proactive welcome and support to incoming Ukrainians seeking temporary protection.³⁴⁰ The State's positive response indicates its capacity to achieve a permanent step-change in its wider approach to refugees seeking international protection and family reunification in Ireland, whether from Europe, Africa, the Middle-East or elsewhere globally.³⁴¹ The Commission further emphasises that there must be a particular focus on disabled people seeking refuge, people currently housed in institutional settings in Ukraine, those who because of age, ethnicity or race are facing additional blockages to fleeing the conflict,³⁴² and LGBTI people who are on the move or remain in Ukraine.³⁴³

in this case on 2 June 2022 and set out that 'the acquisition or loss of citizenship is a matter of profound significance for the individual concerned. Citizenship is an important aspect of the status of any individual'. The Commission has welcomed the ruling that the State cannot automatically deprive a child of citizenship at birth because of fraud of another person on whose residence they relied: IHREC, [Child's Citizenship Rights upheld by Supreme Court](#) (June 2022).

339 See IHREC, [Commission Appears as Amicus Curiae & Publishes Legal Arguments](#), February 2022.

340 IHREC, Press Release, '[Statement on Ukraine](#)' (2022).

341 IHREC, Press Release, '[Statement on Ukraine](#)' (2022).

342 IHREC, Press Release, '[Statement on Ukraine](#)' (2022); Houses of the Oireachtas, [IHREC Opening Statement to the Joint Committee on Disability Matters- 5 May 2022](#) (2022); and HelpAge International, [Ukraine crisis disproportionately affecting older people](#) (2022).

343 According to IGLA Europe, 'existing discrimination and violence against LGBTI people can put them in disadvantageous position and heightens their risk to be left in the blind spot of international protection and humanitarian relief programmes. Therefore, it is important that international and European institutions, governments and the humanitarian sector carefully consider the specific vulnerabilities and needs of the community and to ensure humanitarian assistance is LGBTI inclusive and appropriate, addresses specific practical and strategic needs': [Briefing Note: Ukraine war: LGBTI people in the context of armed conflict and](#)

- » **The Commission recommends that the State applies the learning from Ireland’s provision of temporary protection to Ukrainians to improve and streamline the practice and processes for refugees seeking international protection and family reunification in Ireland.**
- » **The Commission recommends that the State ensure the provision of immediate accommodation with attention to the gender, age, disability and trauma response specific needs of Ukrainian refugees.**
- » **The Commission recommends that the State actively engage with Disabled Persons Organisations to ensure a rights-based response to the impact of the war in Ukraine, in line with Ireland’s obligations to international cooperation under UNCRPD.³⁴⁴**

[mass displacement](#) (April 2022).

344 Article 32, UNCRPD. See also, Houses of the Oireachtas, [IHREC Opening Statement to the Joint Committee on Disability Matters- 5 May 2022](#) (2022).

13.

Freedom of conscience and religious belief

(Articles 2, 18 and 26)

Access to secular schooling

The Commission welcomed the introduction of the *Education (Admission to Schools) Act 2018* ('2018 Act'),³⁴⁵ but has noted that religious discrimination in school admissions is still permitted.³⁴⁶ Privately funded primary schools and secondary schools which purport to be providing education in an environment which promotes religious values can give preferential treatment to students of a particular religion, and publicly-funded schools providing education in an environment which promotes religious values can refuse to admit students on the basis of religion where doing so is considered essential to maintain the 'ethos' of the school.³⁴⁷ The Commission has called for the *Equal Status Acts* and the 2018 Act to be reviewed in light of this, to ensure there is no impact on access to education and there is appropriate balancing between the right to equal treatment and the right to free practice of religion.³⁴⁸ The Commission has also recommended that the *Equal Status Acts* be amended to provide greater clarity as to the definition of 'ethos' and to provide for the criteria upon which a school will base its claim that exclusion was 'essential' in order to restrict reliance on this exemption only to circumstances where absolutely necessary.³⁴⁹

- » **The Commission recommends that the State formally review the *Education (Admission to Schools) Act 2018* and the *Equal Status Acts* to ensure:**
- **that the exemption for refusal of admission on the basis of religion does not adversely impact access to education;**
 - **there is appropriate balancing between the right to equal treatment and the right to free practice of religion; and**
 - **to define 'ethos' and precisely what is required in order to establish that a refusal was 'essential' to maintain the ethos of the school.**

The Commission notes that the 2018 Act introduced a requirement on schools to provide details of how they will uphold a child's right to not receive religious instruction on an opt-out basis.³⁵⁰ However, the Act gives no direction as to how

345 IHREC (2019) [Comments on Ireland's 16th National Report on the implementation of the European Social Charter](#), pg. 35.

346 IHREC (2021) [Submission on the Review of the Equality Acts](#), pg. 34-36.

347 See section 7(3)(ca) of the *Equal Status Acts 2000-2018* as amended by the 2018 Act, section 11(b).

348 IHREC (2021) [Submission on the Equality Acts Review](#), pg. 36; IHREC (2020) [Submission to the UN Committee on the Rights of the Child on the List of Issues Prior to Reporting for the fourth periodic examination of Ireland](#), pg. 35.

349 IHREC (2021) [Submission on the Equality Acts Review](#), pg. 36.

350 Section 9 inserts, among others, a new section 62(7)(n) into the *Education Act 1998* which provides that a school's admission policy must 'provide details of the school's arrangements in respect of any student,

schools are to provide for students who opt out of religious instruction. The Commission is concerned that children will continue to be educated in schools that promote a particular ethos because of the integrated curriculum, and the fact that few schools have the resources to facilitate children opting out of denominational teaching.³⁵¹

- » **The Commission recommends that schools should be adequately resourced to facilitate children opting out of denominational teaching.**
- » **The Commission recommends that the State consider amending the *Education Act 1998* to set down minimum standards for a school's policy on arrangements for students who opt-out of denominational teaching, or use the Ministerial power to make regulations on how schools shall provide for such students.**³⁵²

The Commission welcomes the State's commitment to the secularisation of schooling through the establishment of new multi-denominational schools and the divestment of patronage from religious orders towards these models.³⁵³ The Commission remains concerned, however, that the State's slow progress on this means it may not achieve its stated target of 400 multi-denominational primary schools by 2030, having missed previous targets also.³⁵⁴ In the academic year 2021/22, only 4.7% of primary schools were classed as multi-denominational,³⁵⁵ with this figure rising to 29% for post-primary schools.³⁵⁶ These figures indicate only marginal improvement since the Committee's recommendation, particularly

where the parent of that student, or in the case of a student who has reached the age of 18 years, the student, has requested that the student attend the school without attending religious instruction at the school (which arrangements shall not result in a reduction in the school day in respect of the student concerned).'

351 IHREC (2019) [Comments on Ireland's 16th National Report on the implementation of the European Social Charter](#), pg. 35; Children's Rights Alliance (2019) Report Card, pg. 22 "[c]hildren whose parents are members of a minority or no religion will continue to have little choice in the type of school to which they can send their children. It is likely that many of these children continue to be educated in schools that promote a particular ethos...This is also because of the integrated nature of the curriculum and the fact that few schools have the facilities or personnel to facilitate children opting out of denominational teaching.'

352 This Ministerial power is provided for under section 65 of the 1998 Act. Such minimum standards should be set down in the spirit of pluralism and interculturalism and in a way that is not overly onerous on the student or his or her parents. For further information, see: IHREC (2016) [Observations on the Education \(Admission to Schools\) Bill 2016](#), pg. 23.

353 IHREC (2015) [Report to the UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review](#), pg. 87; Department of the Taoiseach (2020) [Programme for Government: Our Shared Future](#), pg. 96: "Achieve the target of at least 400 multid denominational primary schools by 2030 to improve parental choice."

354 IHREC (2020) [Submission to the UN Committee on the Rights of the Child on the List of Issues Prior to Reporting for the fourth periodic examination of Ireland](#), pg. 35.

355 4.7% amounts to 147 multi-denominational schools. 0.55% of primary schools are also inter-denominational.

356 20% of post-primary schools are inter-denominational. See: Department of Education, [Primary schools enrolment figures – 2021/2022 Preliminary Results](#) and [Post-primary enrolment figures – 2021/2022 Preliminary Results](#).

in relation to primary schools.³⁵⁷

- » **The Commission recommends that the State establishes a clear long-term plan for how it will meet its targets for the establishment of non-denominational and multi-denominational schools and the divestment of schools from religious patronage.**

Religious oaths

The Commission is concerned that despite the repeated recommendations of the Committee, the State has not undertaken any steps to remove the constitutional requirement of a religious oath for people wishing to take up some senior public office positions.³⁵⁸ The Commission notes that the European Court of Human Rights has found that an obligation to take a religious oath in advance of assuming public office may constitute a violation of the right to freedom of thought, conscience and religion if alternative oaths are not available.³⁵⁹ This matter was recently considered by the European Court in an application against Ireland and, while the application was declared inadmissible, the Court acknowledged that the reference by a State to a tradition cannot relieve it of its obligation to respect the rights and freedoms enshrined in the Convention and its Protocols.³⁶⁰

The Commission notes that any Constitutional change in this regard must be effected by referendum.

- » **The Commission recommends that the State take steps to amend articles 12, 31 and 34 of the Constitution by removing the requirement of a religious oath for people assuming senior public office.**

Employment Equality Act 1998

The Commission acknowledges that since the State was last reviewed, the enactment of the *Equality (Miscellaneous Provisions) Act 2015* has to a certain

357 According to figures published by the Department of Education in the academic year 2014/15, 3% of primary schools were multi-denominational and 0.5% were inter-denominational. 3% of post-primary schools were multi-denominational and 45% were interdenominational. For more see: [2014/15 data on primary schools](#) and [2014/15 data for post-primary schools](#).

358 The Constitution obliges the President (article 12), members of the Council of State (article 31) and members of the judiciary (article 34), to take religious oaths before taking up a public position.

359 *Buscarini and Others v San Marino* [1999] App No. 24645/94.

360 *Róisín Shortall and Others v Ireland* [2021] App No. 50272/18 at para 60. The application was declared inadmissible for lack of legal standing. The Court also acknowledged that the wide margin of appreciation afforded in questions concerning the relationship between States and religion goes hand in hand with European supervision, embracing both the law and the decisions applying it.

extent restricted the discriminatory potential of section 37 of the *Employment Equality Act 1998*.³⁶¹ However, private and religious institutions are excluded from the application of the amended provision and it is questionable whether this is compliant with the State's obligations under equality and non-discrimination law.³⁶² The Commission also remains concerned that a lack of clarity regarding terms such as 'religious ethos' and 'undermining' means that the circumstances in which institutions may rely on this provision are not sufficiently narrowed to only where it is absolutely necessary.

- » **The Commission recommends that section 37 of the *Employment Equality Acts* be amended to restrict the application of institutions who may rely on this provision to a precise publicly available list.**
- » **The Commission recommends that section 37 be amended to include clear and express definitions of the terms 'religious ethos' and that the term 'undermining' be amended with the addition of 'active and significant undermining.'**³⁶³

361 Public and part-public institutions now cannot provide more favourable treatment on the religion ground unless the treatment is necessary by reason of the nature of the institution's activities, and therefore the religion or belief of the employee or prospective employee constitutes a genuine, legitimate and justified occupational requirement, having regard to the institution's ethos; and the institution must ensure that the treatment does not constitute discrimination on any of the other discriminatory grounds.

362 Including the Framework Employment Directive 2000/78/EC, Article 4(2).

363 For further detail on the Commission's positions and recommendations, see IHREC (2021) [Submission on the Equality Acts Review](#), pg. 36.

14.

Participation in public affairs

(Articles 7, 14, 25-26)

Electoral Commission

The *Electoral Reform Bill* was published by the Government in March 2022. It provides for the establishment of an independent Electoral Commission, and proposes to modernise electoral registration and regulate online political advertising.³⁶⁴ Prior to the Bill's publication, the Commission recommended that the proposed Electoral Commission be specifically mandated to address the use of discriminatory rhetoric and hate speech in political campaigning, and that it should continuously engage with structurally vulnerable groups facing barriers to participating in the Irish electoral process.³⁶⁵

Measures in the Bill intended to improve access to the electoral process for disabled people are noted,³⁶⁶ however, regrettably several of the Commission's recommendations were not adopted. While the Bill does state a function of the Electoral Commission shall be encouraging participation by the public in the electoral process, there are no specific obligations relating to women, young people, migrants and people from ethnic minority backgrounds including Travellers and Roma. There is also no provision in the Bill which mandates the Electoral Commission to address the use of discriminatory rhetoric and hate speech in political campaigning, nor is there any obligation with regard to ensuring polling stations are accessible to disabled people.

- » **The Commission recommends that the *Electoral Reform Bill* be amended to ensure that the mandate of the Electoral Commission contains a specific obligation to increase the political participation of structurally vulnerable groups.**
- » **The Commission recommends that the Electoral Commission be mandated to set, monitor and enforce standards in political discourse, including specific obligations to address discriminatory rhetoric and hate speech.**
- » **The Commission recommends that the Electoral Commission be mandated to set standards to ensure the full accessibility of polling stations for disabled people across all impairment groups, and ensure their participation in the setting of such standards.**

364 *Electoral Reform Bill 2022*.

365 IHREC (2021) [Submission to the Committee on Housing, Local Government and Heritage on the General Scheme of the Electoral Reform Bill](#), pg. 2-4 IHREC (2019) [Recommendations on the Establishment of an Electoral Commission](#). Pg. 3-6, 9-12.

366 For example: Section 30 obliges the Electoral Commission to ensure referenda materials are accessible to persons with sight or hearing disabilities; Section 80 provides for applications for postal voting for persons who cannot physically attend their polling station due to illness or disability; Section 104 provides for persons applying for entry on the electoral register who for reasons associated with illness or disability are unable to comply with stated procedure.

Digital divide

The digital divide³⁶⁷ exacerbates existing social and economic inequalities and further isolates marginalised communities who are more likely to experience digital poverty (a lack of reliable access to the internet and technology, and of digital skills).³⁶⁸ The digital divide was further reinforced as essential services and supports were moved online,³⁶⁹ and will continue to deepen as the Government implements a 'digital first' policy for public services.³⁷⁰ The State must address the digital divide,³⁷¹ by increasing access to digital services, while also retaining non-digital access options.³⁷² The Commission is concerned that almost one in two adults (42%) in Ireland are without basic digital skills,³⁷³ and welcomes the commitment in the ten year Adult Literacy for Life Strategy to focus on advancing functional digital literacy³⁷⁴ and decreasing the share of adults without

367 'The gap between individuals, households, businesses and geographic areas at different socioeconomic levels with regard to both their opportunities to access information and communication technologies (ICTs) and to their use of the Internet for a wide variety of activities.' See OECD, '[Understanding the Digital Divide](#)' (2001), p.5. The Government's '[Adult Literacy for Life](#)' (2021) strategy also notes that 'the digital divide may also reflect a literacy and numeracy divide', p. 25.

368 IHREC, [Submission to the United Nations Human Rights Committee on the List of Issues for the Fifth Periodic Examination of Ireland](#), 2020, p. 57. See also: IHREC, [Submission to the Oireachtas Joint Committee on Justice, COVID-19 and Civil Liberties](#), (2021) p. 8, IHREC, [Developing a National Action Plan Against Racism: Submission to the Anti-Racism Committee](#) (2021) p. 28; IHREC, [Annual Report 2020](#) (2020) p. 5; Disability Federation of Ireland, [Submission to Oireachtas Special Committee on Covid-19 Response: Non-Covid-19 Healthcare](#) (2020) pp. 11-12; [Special Committee on Covid-19 Response debate](#) (14 July 2020); A. Kenny, [Concerns raised over children in care during Covid-19 lockdown](#) (2020); C. Hunt, [Covid-19: Charities concerned for people with addiction problems](#) (2020); Irish Association of Social Workers, [Social Work During Covid-19 Ongoing Survey Lockdown Data](#) (2020), p.2; and D. Coogan and J. Mooney, [Ireland – Country Context: Key Facts and Figures](#), in L. Dominelli et al. (ed) [Covid-19 and Social Work: A Collection of Country Reports](#) (2020), pp. 73-74.

369 Government of Ireland, [Report on Social Implications of COVID-19 in Ireland: Preliminary Assessment](#) (2020), pp. 1-2. See also D. Coogan and J. Mooney, [Ireland – Country Context: Key Facts and Figures](#), in L. Dominelli et al. (ed) [Covid-19 and Social Work: A Collection of Country Reports](#) (2020), pp. 73-74 and ESRI, [Learning for all? Second-Level Education in Ireland during Covid-19](#) (2020), pp. 19-21, 32-33.

370 See, [Civil Service Renewal 2030 Strategy 'Building on our Strengths'](#) (2021) p. 18,22; Department of Public Expenditure and Reform, [Public Service ICT Strategy](#) (2015); and Department of Communications, Energy and Natural Resources, [National Digital Strategy for Ireland](#) (2013), p. 4.

371 Age Action recommends a rights-based approach, supporting digital skills acquisition, income supports, and investment to maintain non-digital channels: [Digital Inclusion and an Ageing Population](#) (2021), p. 22.

372 For example, 33 per cent of Irish people aged 65–74 had never used the internet in 2019, compared to 11 per cent in Britain. National Economic & Social Council, [Digital Inclusion in Ireland: Connectivity, Devices and Skills](#) (2021), pp. 2-3; Accenture, [Bridging the Gap: Ireland's Digital Divide](#) (2020), pp. 52-53; and Age Action, [Digital Inclusion and an Ageing Population](#), (2021) p. 23. See also, <https://unece.org/media/Population/press/358156>.

373 Department of Further and Higher Education, Research, Innovation and Science, '[Adult Literacy for Life' - a 10-year adult literacy, numeracy and digital literacy strategy](#) (2021), p. 22.

374 Defined as having the technology and being able to use it to complete functions such as accessing news and information, using e-mail, social media and other tools to interact with others.

basic digital skills to 20%.³⁷⁵

- » **The Commission recommends that the State adopts measures³⁷⁶ to bridge the digital divide in Ireland and address: digital poverty, the increased need for online resources due to the Covid-19 pandemic, and the move towards a culture of hybrid or blended working arrangements and service provision post-pandemic.**
- » **The Commission recommends the allocation of adequate resources for the full implementation of the Adult Literacy for Life Strategy, and the development of a robust data system to track progress.**

375 Department of Further and Higher Education, Research, Innovation and Science, ['Adult Literacy for Life' - a 10-year adult literacy, numeracy and digital literacy strategy](#) (2021), p. 13.

376 The Commission is of the view that such measures should not be limited to educational measures.

15.

Fair trial and equal access before the law

(Articles 9, 14)

Offences Against the State Acts and the Special Criminal Court

The Commission notes the Committee's long-standing concerns with the operation and functioning of the non-jury Special Criminal Court, as well as aspects of the *Offences Against the State Acts* ('OASA').³⁷⁷ In February 2021, the Minister for Justice appointed an Independent Review Group to examine the OASA.³⁷⁸ The Commission has called for the abolition of the Special Criminal Court due to concerns about the discretion of the Director of Public Prosecutions to refer cases to the Court and the implications for a right to a fair trial with the rules of admission of evidence before the Court.³⁷⁹ The Commission has also called for the repeal of the OASA due to the lack of effective Government and parliamentary oversight of the continued necessity of the provisions.³⁸⁰ These recommendations have yet to be addressed by the Review Group or the State.³⁸¹

- » **The Commission recommends that the State abolish the Special Criminal Court and repeal the Offences Against the State Acts.**

Judicial Appointments Commission

The Government published the *Judicial Appointments Commission Bill* in April 2022,³⁸² which seeks to establish an independent body to oversee the nominations procedure for judicial office.³⁸³ The Commission is concerned that the proposed provision of a seat on the Judicial Appointments Commission ('JAC') to the Attorney General, the Government's chief legal advisor who also sits at Cabinet, carries the potential of executive influence in the decision-making of the JAC.³⁸⁴ The Bill requires the JAC to have regard for the objectives that the judiciary should be gender balanced and "reflect the diversity of the population of the State."³⁸⁵

377 See most recently, Human Rights Committee, [Concluding observations on the fourth periodic report of Ireland](#), CCPR/C/IRL/CO/4 (19 August 2014) para. 18. Also the decision of the Committee in *Kavanagh v Ireland*, Communication No. 819/1998, CCPR/C/71/D/819/1998 (26 April 2001).

378 See <https://www.oasareview.ie/>.

379 IHREC, [Submission to the Independent Review Group on the Offences Against the State Acts](#) (November 2021).

380 IHREC, [Submission to the Independent Review Group on the Offences Against the State Acts](#) (November 2021).

381 The final report of the independent Review Group was to be completed by the end of April 2022; Review Group, [Three Month Report to the Minister for Justice](#) (28 June 2021). An update received by the Commission in May 2022 indicated that the intention of the Group is to finalise its report in Autumn 2022.

382 *Judicial Appointments Bill 2022*: <https://www.oireachtas.ie/en/bills/bill/2022/42/>.

383 The Commission has published a list of recommendations relating to human rights and equality concerns that should be resolved in the Bill including recusal requirements and the publication of objective selection criteria and diversity statements. See generally: IHREC (2021) [Submission to the Minister for Justice on the General Scheme of the Judicial Appointments Commission Bill 2020](#).

384 IHREC (2021) [Submission to the Minister for Justice on the General Scheme of the Judicial Appointments Commission](#), pg. 14.

385 *Judicial Appointments Commission Bill*, Section 39(2)(b).

However, the term diversity is not defined and there is no reference to equality groups.³⁸⁶

- » **The Commission recommends that the *Judicial Appointments Commission Bill* is amended to remove the Attorney General from membership of the Judicial Appointments Commission, to ensure independence from the executive.**
- » **The Commission recommends that the *Judicial Appointments Commission Bill* is amended to define the term diversity and make specific reference to equality groups.**

Civil legal aid

The Commission has repeatedly highlighted shortcomings with the Civil Legal Aid Scheme.³⁸⁷ The Legal Aid Board is precluded from providing legal representation before many quasi-judicial tribunals and bodies, including the Workplace Relations Commission.³⁸⁸ These are bodies which structurally vulnerable groups regularly engage with, as they deal with employment and equality cases, social welfare appeals, and housing issues.³⁸⁹ The requirement of a minimum financial contribution for legal representation under the Scheme also constitutes a barrier to justice for people on low incomes.³⁹⁰ The Government committed to review the

386 The concept of diversity should at a minimum include – age, civil status, disability, family status, gender, ethnicity, including membership of the Traveller community, religious belief, sexual orientation and socio-economic status - IHREC (2021) [Submission to the Minister for Justice on the General Scheme of the Judicial Appointments Commission](#), pg. 25-26.

387 IHREC (2021) [Developing a National Action Plan Against Racism: Submission to the Anti-Racism Committee](#), pg. 62-63; IHREC (2020) [Submission to the United Nations Human Rights Committee on the List of Issues for the Fifth Periodic Examination of Ireland](#), pg. 13; IHREC (2015) [Report to the UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review](#), pg. 14-15; IHREC (2019) [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#), pg. 142-143; IHREC (2021) [Submission on the Review of the Equality Acts](#), pg. 8-11; IHREC (2022) [Ireland and the Convention on the Elimination of All Forms of Racial Discrimination](#), pg. 15-17.

388 IHREC (2022) [Report of a review of section 19 of the Intoxicating Liquor Act 2003 carried out pursuant to section 30 of the Irish Human Rights and Equality Commission Act 2014](#), pg. 65; IHREC (2021) [Submission on the Review of the Equality Acts](#), pg. 8-11; IHREC (2021) [Developing a National Action Plan Against Racism: Submission to the Anti-Racism Committee](#), pg. 62-63; IHREC (2015) [Report to the UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review](#), pg. 14-15.

389 For example, such cases can be extremely complex and present particular issues for minority ethnic communities, due to residency requirements for social welfare payments, overrepresentation in the homeless population and higher rates of discrimination faced in the labour market. The exclusion of eviction proceedings also has a disproportionate effect on Travellers due to increased rates of forced evictions and cultural suppression. See IHREC (2021) [Developing a National Action Plan Against Racism: Submission to the Anti-Racism Committee](#), pg. 62-63; IHREC (2021) [Comments on Ireland's 18th National Report on the implementation of the European Social Charter](#), pg. 21-22; IHREC (2019) [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#), pg. 142.

390 IHREC (2015) [Report to the UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review](#), pg. 14-15; IHREC (2020) [Submission to the Citizens' Assembly on Gender Equality](#), pg. 29-30;

Scheme and to bring forward proposals for reform in 2021,³⁹¹ but the details of the review were published in June 2022 and a final report is due by June 2023.³⁹²

- » **The Commission recommends that the State extend the scope of the Legal Aid Board to areas of law that are particularly relevant to Travellers, ethnic minorities and low-income groups.**
- » **The Commission recommends that the planned review of the Civil Legal Aid Scheme is underpinned by ICCPR standards; is sufficiently broad in scope; and the participation of affected groups is adequately resourced. The reports from the review group should be made publicly available.**

Access to justice

The Commission has repeatedly highlighted various issues that can impact on access to justice for structurally vulnerable groups,³⁹³ including quality of interpreting services,³⁹⁴ lack of disaggregated sentencing data,³⁹⁵ no provision

391 Department of Justice (2022) [Justice Plan 2022](#), pg. 28. In May 2021 the Minister of State with special responsibility for Civil and Criminal Justice expressed the Government's commitment to a review of the Civil Legal Aid Scheme and indicated it would be commenced later that year. See: Department of Justice (2021) [Minister Naughton announces changes to Civil Legal Aid eligibility](#).

392 The review will be chaired by the retired Chief Justice and has membership drawn from academia, the Economic Social and Research Institute, Government Departments, civil society organisations, legal practitioners and the Legal Aid Board. It is intended that there will be a significant consultation with stakeholders, including those who have unmet legal needs, on the operation of the Scheme. The review will consider the eligibility for civil legal aid. The Review Group will make periodic reports to Minister for Justice on the progress of its work, before submitting its final report once its work is completed. See: Department of Justice (2022) [Minister announces review of Civil Legal Aid Scheme](#).

393 The Commission has repeatedly raised concerns about groups who feel access to justice issues more acutely such as those on low incomes, women, victims of exploitation, international protection applicants, Travellers, Roma, disabled people and minority ethnic communities. See: IHREC (2021) [Submission to the Third Universal Periodic Review Cycle for Ireland](#), pg. 7; IHREC (2019) [Ireland and the Convention on the Elimination of Racial Discrimination](#), pg. 134-143; IHREC (2022) [Ireland and the Convention on the Elimination of All Forms of Racial Discrimination](#), pg. 15-17; See also comments of the Chief Justice that 'Minorities, marginalised groups or the vulnerable obviously run a real risk of having less effective access to justice than others': [Chief Justice's Working Group on Access to Justice Conference](#), pg. 14.

394 A lack of accreditation and regulations has resulted in limited availability of interpreters with the necessary training and technical expertise to assist in legal proceedings. This has can have an effect on the perceived credibility of international protection applicants. See: IHREC (2019) [Ireland and the Convention on the Elimination of Racial Discrimination](#), pg. 143.

395 The Commission is concerned about the overrepresentation of minority ethnic groups in the prison system and a lack of available collated data disaggregated on ethnicity inhibits the introduction of measures to address this issue. See: IHREC (2019) [Ireland and the Convention on the Elimination of Racial Discrimination](#), pg. 137-138

for multi-party litigation,³⁹⁶ and barriers in discrimination proceedings.³⁹⁷ The Commission has consistently emphasised the serious barrier to justice constituted by Section 19 of the *Intoxicating Liquor Act* which requires people claiming discrimination against licensed premises to apply to the District Court rather than the informal, more accessible Workplace Relations Commission.³⁹⁸ Procedural complexity and a higher risk of costs and court fees can render such proceedings prohibitively difficult.³⁹⁹ This has had a disproportionate effect on access to justice for members of the Traveller Community who are significantly overrepresented in discrimination claims against licensed premises.⁴⁰⁰

- » **The Commission recommends that the State address the barriers to accessing justice for structurally vulnerable groups including by professionalising interpreting services, collecting disaggregated sentencing data, introducing multi-party litigation, and removing general procedural barriers in discrimination proceedings.**
- » **The Commission recommends that jurisdiction for discrimination cases against licensed premises be granted to the Workplace Relations Commission.**

The *Garda Síochána (Powers) Bill* provides for the right of a person in custody to consult with a legal representative prior to interrogation and the right of a legal representative to be present during interrogation.⁴⁰¹ While a welcome approach, the legislation proposes to allow for the permanent removal of a legal

396 The lack of provision for multi-party litigation and collective redress seeking can act as a barrier in encouraging specific groups to come forward and seek redress such as victims of trafficking, See: IHREC (2019) [Ireland and the Convention on the Elimination of Racial Discrimination](#), pg. 143-142.

397 A mandatory 2 month notification requirement and an inaccessible, unwieldy complaints procedure have been identified by the Commission as barriers to access to justice. That proceedings will no longer be anonymised unless special procedures are present may also act as a deterrent: IHREC (2021) [Submission on the Review of the Equality Acts](#), pg. 41-63.

398 IHREC (2021) [Submission on the Review of the Equality Acts](#), pg. 63-65; IHREC (2022) [Report of a review of section 19 of the Intoxicating Liquor Act 2003 carried out pursuant to section 30 of the Irish Human Rights and Equality Commission Act 2014](#); IHREC (2019) [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#), pg. 18-19; IHREC (2021) [Developing a National Action Plan Against Racism: Submission to the Anti-Racism Committee](#), pg. 61

399 Bringing a case under section 19 of the 2003 Act is procedurally complex due to strict formal rules, burden of proof requirements and technical documentation: IHREC (2022) [Report of a review of section 19 of the Intoxicating Liquor Act 2003 carried out pursuant to section 30 of the Irish Human Rights and Equality Commission Act 2014](#)

400 Council of Europe: Secretariat of the Framework Convention for the Protection of National Minorities (2019) *Advisory Committee on the Framework Convention for the Protection of National Minorities: Fourth Opinion on Ireland, adopted on 10 October 2018, ACFC/OP/IV(2018)005*, para 23 - According to data provided by the Courts Service the vast majority of discrimination cases taken against licensed premises prior to and preceding the enactment of the Intoxicated Liquor Act have been on the Traveller Community ground. In the years 2018 and 2019 combined 92 out of 95 applications under the Intoxicating Liquor Act were made by members of the Traveller community.

401 See Head 42 of the [General Scheme of the Garda Síochána \(Powers\) Bill](#). See IHREC, [Observations on the General Scheme of the Garda Síochána \(Powers\) Bill](#) (2022) pp. 67-70.

representative from an interview if their behaviour is 'unduly disruptive'.⁴⁰² The legislation also provides for the questioning of a person who has not yet consulted with a legal representative in certain situations.⁴⁰³ These provisions provide a broad power to restrict access to counsel, which risks infringing the right to a fair trial.⁴⁰⁴

- » **The Commission recommends that the State delete the provision within the *Garda Síochána (Powers) Bill* on the removal of a legal representative from an interview if their behaviour is 'unduly disruptive'. The Commission further recommends that the power to question a person who has not yet consulted with a legal representative should be subject to strict safeguards.**

Family law system

The State has committed to a family friendly reform of the family law system, including through the development of a national Family Justice Strategy and the adoption of the *Family Court Bill 2020*.⁴⁰⁵ In light of the disproportionate representation of structurally vulnerable groups⁴⁰⁶ in child and family law proceedings and the barriers faced by these groups in accessing proceedings, these reforms should include a focus on the creation of supports and procedures to address this over-representation.⁴⁰⁷ Furthermore, the Courts Service should be expressly required to engage with court users and structurally vulnerable groups to inform how to best divide court districts into accessible geographical locations.⁴⁰⁸

- » **The Commission recommends that reform of the family law system addresses the disproportionate representation of structurally vulnerable groups in child and family law proceedings, including disabled people, lone parent families and minority ethnic groups.**
- » **The Commission recommends that consideration be given to amending the *Family Court Bill* to include explicit guiding principles in relation to the fundamental right to fair procedures, non-**

402 This term is not defined within Head 42(6) of the General Scheme.

403 See Head 43 of the [General Scheme of the *Garda Síochána \(Powers\) Bill*](#).

404 The Garda Síochána Inspectorate's recent review of custody was unable to determine whether 19% of people who had requested to consult with a solicitor were able to do so; Garda Síochána Inspectorate, [Delivering custody services: A rights-based review of the treatment, safety and wellbeing of persons in custody in Garda Síochána stations](#) (July 2021) p. xi.

405 The General Scheme of the Family Court Bill provides for the establishment of a District Family Court, a Circuit Family Court and a Family High Court as divisions within the existing court structures. Department of Justice, [Reform of Family Justice System announced by Minister McEntee](#) (press release, 30 September 2020). See also Department of Justice, [Justice Plan 2022](#) (2022) pp. 18, 21.

406 For example groups such as disabled people, lone parent families and minority ethnic groups; IHREC, [Submission on the General Scheme of the Family Court Bill \(2021\) pp. 4–5](#).

407 IHREC, [Submission on the General Scheme of the Family Court Bill \(2021\)](#).

408 IHREC, [Submission on the General Scheme of the Family Court Bill](#) (2021) pp. 15-16.

discrimination, explicit recognition of disabled people's rights, and effective access to justice on an equal basis.

- » **The Commission recommends the *Family Court Bill* be amended to expressly require the Courts Service to have regard to the need to ensure that geographical locations are accessible to all courts users on an equal basis.**

16.

Policing

(Articles 9, 17)

Policing reform

There is significant reform of policing systems and structures underway, including legislative priorities such as the *Garda Síochána (Powers) Bill*,⁴⁰⁹ the *Garda Síochána (Digital Recording) Bill*,⁴¹⁰ and the *Policing, Security and Community Safety Bill*.⁴¹¹ The increased powers afforded to AGS under these proposals emphasise the need for a greater sense of urgency and responsiveness by AGS to advancing its commitments to foreground human rights and equality in policing reform.⁴¹² As each of these bills raise considerable human rights and equality issues, it is important to analyse their synergetic and cumulative impact.

Policing oversight

The *Policing, Security and Community Safety Bill* proposes wide-ranging reform in the mechanisms for internal and external oversight of AGS with the establishment of the Garda Board, the Policing and Community Safety Authority and the reform of the Office of the Garda Síochána Ombudsman ('OGSO'). The proposals do not guarantee sufficient independence of the Garda Board from Ministerial control,⁴¹³ or ensure sufficiently independent and effective oversight mechanisms; which hinder the potential to effect transformative change.⁴¹⁴ Such gaps in police accountability will impact public confidence in AGS. In particular, formal investigations by the OGSO should be conducted with the same principles and

409 The *Garda Síochána (Powers) Bill* codifies the police powers of arrest, search and detention.

410 The *Garda Síochána (Digital Recording) Bill* provides a legislative basis for the deployment and use of body-worn cameras and other recording devices by An Garda Síochána and the extension of the circumstances in which Closed Circuit Television ('CCTV') and Automatic Number Plate Recognition ('ANPR') devices may be used by An Garda Síochána.

411 The *Policing, Security and Community Safety Bill* will reform the operation of policing in Ireland including by: establishing an internal An Garda Síochána Board; creating a new Policing and Community Safety Authority (merging the functions of the Policing Authority and the functions of the Garda Síochána Inspectorate); increasing the independence and expanding the remit of the Office of the Garda Síochána Ombudsman; and establishing a new Independent Examiner of Security Legislation.

412 The Commission on the Future of Policing in Ireland's report *The Future of Policing in Ireland* states that 'human rights are the foundation and purpose of policing'. See Commission on the Future of Policing, [The Future of Policing in Ireland](#) (2018) p. ix. See also the commitments made in the An Garda Síochána, [Human Rights Strategy 2022-2024](#) (2022). It is important that the full protections of the Optional Protocol to the Convention Against Torture are reflected in the legislation; see further discussion on OPCAT in Section 11.

413 Head 10 of the *Policing, Security and Community Safety Bill* provides for the creation of a board of An Garda Síochána, the members of which to be appointed by the Minister for Justice. There is no reference to the procedures by which the members shall be chosen, or whether there is open competition for the reappointment for such members. Head 14 and Head 15 provide that the Minister can remove members of the Board if they have 'committed stated misbehaviour' or if the functions of the Board are not being performed in an effective and efficient manner.

414 Including a lack of open competition for re-appointment to the Authority and OGSO; restrictions on commenting on the merits of Government policy before Oireachtas committees; not providing for the public reporting of OGSO investigations; not providing for the OGSO to make a recommendation for the suspension or removal of the Garda Commissioner and Deputy Garda Commissioner; and, the requirement for Ministerial and Government approval for the OGSO to investigate the conduct of the Garda Commissioner.

protections as criminal investigations.⁴¹⁵ Provisions on community safety need to be strengthened to ensure the participation of structurally vulnerable groups.⁴¹⁶

- » **The Commission recommends that the *Policing, Security and Community Safety Bill* should strengthen the independence of the Garda Board, the Policing and Community Safety Authority and the Office of the Garda Síochána Ombudsman.**
- » **The Commission recommends the appointment of an independent human rights advisor to the Policing and Community Safety Authority to support the oversight of the implementation of human rights and equality standards in policing.**

Codification of police powers

The codification of the powers of arrest, search and detention, under the *Garda Síochána (Powers) Bill*, is broadening Garda powers in a number of areas⁴¹⁷ without clear justification or adequate safeguards in place for the protection of rights.⁴¹⁸ A rights-based approach to policing is essential, as AGS will be engaging with persons who may be placed in a situation of vulnerability in the interaction.⁴¹⁹ The Garda Síochána Inspectorate's inspection of Garda custody revealed serious deficiencies in the treatment of persons in this environment.⁴²⁰

415 Heads 168 and 169 of *Policing, Security and Community Safety Bill* provide for the undertaking of a formal investigation where the investigating officer will have equivalent powers to that of a member of An Garda Síochána.

416 Heads 92 of the *Policing, Security and Community Safety Bill* provides for the creation of Local Community Safety Partnerships, which will be responsible for developing and implementing local community safety plans which respond to the specific needs of the community. Membership will include local representatives, service providers, and representatives of local community and voluntary bodies involved in activities related to community safety.

417 Including stop and search, application for a warrant, power under a search warrant to demand a password or encryption key for a person's phone or computer, a general power of arrest, search of a person in custody, and extended periods of detention periods.

418 IHREC, [Observations on the General Scheme of the Garda Síochána \(Powers\) Bill](#) (2022).

419 For example, due to their membership of particular minority groups, factors such as limited English language skills or structural vulnerabilities such as homelessness and drug/alcohol use. See IHREC, [Observations on the General Scheme of the Garda Síochána \(Powers\) Bill](#) (2022) p. 37. The Garda Síochána Inspectorate review of custody records found that over 48% of those in custody had recently consumed or had a dependency on alcohol, drugs or both, 25% of those in custody had poor mental health or had engaged in self-harm and almost 14% of persons had drug or alcohol issues as well as poor mental health; see Garda Síochána Inspectorate, [Delivering custody services: A rights-based review of the treatment, safety and wellbeing of persons in custody in Garda Síochána stations](#) (2021) p. 22.

420 Issues identified include shortcomings in the safety and suitability of custody facilities; poor record keeping; a failure to properly maintain medical records; inconsistencies in meeting the needs of persons in custody; inadequate monitoring of the health, safety and wellbeing of persons in custody; and a lack of coherent, publicly available document on the rights, care and treatment of persons in custody. See Garda Síochána Inspectorate, [Delivering custody services: A rights-based review of the treatment, safety and wellbeing of persons in custody in Garda Síochána stations](#) (2021).

- » **The Commission recommends that fundamental legal rules governing the exercise of An Garda Síochána’s powers should be set down in legislation rather than left to be addressed in codes of practice.**
- » **The Commission recommends that information on the scope of Garda powers is provided in an accessible manner to people at the time they are searched, arrested or detained to enable them to understand their rights and obligations.⁴²¹ The Commission recommends that the right to an interpreter should be included in the legislation, and this should extend to sign language interpretation.**
- » **The Commission recommends that the principles of equality, non-discrimination, and dignity be explicitly recognised in the *Garda Síochána (Powers) Bill*.**

Digital recording

The *Garda Síochána (Digital Recording) Bill* proposes radical change in the area of recording of personal information by members of AGS, without clear guidelines on access to and disclosure of images.⁴²² This is concerning due to previous failings of AGS in the use of CCTV.⁴²³ The legislation fails to prohibit or adequately address safeguards in the use of facial recognition,⁴²⁴ covert recording and emerging technologies, including ensuring that the powers are not widened to include technologies not covered under the legislation without effective independent oversight. The Commission considers that the legislation should be sufficiently clear and transparent to ensure that it is accessible, that individuals know which technologies are covered in the legislation and can foresee the circumstances in which the respective powers under the legislation may be used.

- » **The Commission recommends that the use of technologies under the legislation should be subject to independent and effective**

421 For example, such measures are particularly important for individuals who have limited English language skills; who have low literacy skills; who have an intellectual disability; or who are neuro-diverse in a way that impairs their verbal and non-verbal communication, cognition, comprehension, and social interaction, or who have restricted, repetitive, behaviour patterns.

422 IHREC, [Submission to the Minister for Justice on the General Scheme of the Garda Síochána \(Digital Recording\) Bill](#) (April 2022).

423 In 2019, the Data Protection Commission made 13 findings in relation to infringements of the *Data Protection Act 2018*, after an inquiry into Garda-operated CCTV schemes under the *Garda Síochána Act 2005*; Data Protection Commission, [Decision of the Data Protection Commission regarding CCTV Schemes Authorised under Section 38\(3\)\(a\) of the Garda Síochána Act 2005](#) (23 August 2019).

424 The Minister for Justice has recently advised that facial recognition technology and Artificial Intelligence technology will be provided for in amendments to the *Garda Síochána (Digital Recording) Bill*: Department of Justice, [Address by Minister for Justice, Helen McEntee TD to the Garda Representative Association, Annual Delegate Conference 25 May 2022](#).

oversight. Oversight should occur prior to and after the technologies are deployed to examine compliance with human rights and equality principles.

- » **The Commission recommends that judicial authorisation must be sought for the installation and operation of CCTV, and for all applications to access third party CCTV by An Garda Síochána.**

Racial profiling

Minority groups' experience of racial profiling in Ireland will have to be carefully considered in the reform of policing legislation,⁴²⁵ as racial profiling can lead to the over-policing and over-criminalisation of certain groups and the reinforcing of stereotypical associations between crime and ethnicity.⁴²⁶ Discrimination does not explicitly constitute a breach of discipline within the *Garda Síochána (Discipline) Regulations 2007*,⁴²⁷ and concerns have been raised with the Commission about AGS's defensive response when issues relating to the policing of affected communities are highlighted. Measures⁴²⁸ to address racial profiling should be designed, implemented and monitored with the active participation of communities affected by racial profiling and discrimination.⁴²⁹ Such participatory mechanisms should be adequately resourced, structured and independently evaluated to ensure demonstrable impact.

- » **The Commission recommends that the State prioritise legislation through amendments to the *Garda Síochána (Powers) Bill* to define and prohibit racial profiling; and to include an express requirement**

425 Following two consultations organised by the Commission in March 2021, young participants reported experiencing racial profiling by An Garda Síochána and a question was posed as to whether police officers are adequately trained to deal with 'inter-racial atmospheres in Ireland.' See IHREC, [Submission to the United Nations Committee on the Elimination of Racial Discrimination on the follow-up procedure to Ireland's combined 5th to 9th periodic reports](#) (2022) p. 13.

426 United Nations Committee on the Elimination of Racial Discrimination, [General recommendation No. 36 \(2020\) on preventing and combating racial profiling by law enforcement officials](#), CERD/C/GC/36 (17 December 2020).

427 The Advisory Committee on the Framework Convention for the Protection of National Minorities have called on the Irish authorities to amend *Garda Síochána (Discipline) Regulations 2007* to explicitly specify that discrimination constitutes a breach of discipline. Advisory Committee on the Framework Convention for the Protection of National Minorities, [Fourth Opinion on Ireland](#), ACFC/OP/IV(2018)005 – adopted on 10 October 2018 (2019) para. 61.

428 The Committee on the Elimination of Racial Discrimination recommended that the State introduce legislation prohibiting racial profiling; put in place an independent complaints mechanism to handle racial profiling; review the policy, practices and training of the police, in collaboration with the communities most affected by racial profiling; and incorporate racial profiling issues into the training curriculum of police officers. Committee on the Elimination of Racial Discrimination; Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland](#), CERD/C/IRL/CO/5-9 (23 January 2020) paras. 15–16.

429 IHREC, [Developing a National Action Plan Against Racism: Submission to the Anti-Racism Committee](#) (August 2021) p. 68.

to record the racial and ethnic origin of a person being stopped and searched, and the location at which the power is exercised.⁴³⁰

- » The Commission recommends that the *Garda Síochána (Digital Recording) Bill* should prescribe the criteria for the selection of locations where CCTV is to be installed in order to safeguard against blanket surveillance of certain communities.

Covid-19 policing response

The tone of policing during Covid-19 was welcomed by some communities;⁴³¹ however, certain groups were potentially disproportionately affected by the policing powers.⁴³² There has been an inconsistency in the policing of demonstrations and protests,⁴³³ due, in part, to a lack of clear, publicly available operational guidance on facilitating protest during a public health pandemic.⁴³⁴ Reports of Gardaí using excessive force in counter protests to ‘anti-lockdown’ protests⁴³⁵ highlight the need for greater transparency around ‘post-incident’ reviews of public order operations.⁴³⁶ The use of anti-spit guards as a use of force

430 In the Oireachtas Committee on Justice’s pre-legislative scrutiny report on the Garda Síochána (Powers) Bill it recommended that the Bill should be amended to provide that An Garda Síochána record the ethnicity of a person during stop and searches: Oireachtas Joint Committee on Justice, [Report on Pre-Legislative Scrutiny of the General Scheme of the Garda Síochána \(Powers\) Bill](#) (2022) p. 6. See also IHREC, [Observations on the General Scheme of the Garda Síochána \(Powers\) Bill](#) (2022) pp. 47–48.

431 To date, the Policing Authority has submitted sixteen reports to the Minister for Justice on the policing performance by An Garda Síochána during the Covid-19 pandemic. A focus of the reports was on community policing and engagement. See <https://www.policingauthority.ie/en/all-media/publications-category-results/policing-authority-publications>.

432 Such as young people, ethnic and racial minorities, Travellers and Roma; see IHREC/COVID-19 Law and Human Rights Observatory, [Ireland’s Emergency Powers During the COVID-19 Pandemic](#) (February 2021). The Policy Authority noted that young people and members of minority and marginalised communities had a less positive experience of policing, including feeling they were over-policed but under-protected; see for example Policing Authority, [Report on Policing Performance by the Garda Síochána during the COVID-19 Health Crisis](#) (10 December 2021) pp. 15–16, 23.

433 The Policing Authority has noted the inconsistencies in the policing of demonstrations and protests such as the Debenham’s workers [employees who lost their jobs when the department store Debenhams went into liquidation], Black Lives Matter and anti-Covid-restrictions; see Policing Authority, [Report on Policing Performance by the Garda Síochána during the COVID-19 Health Crisis](#) (10 December 2021) p. 18. A number of people who attended protests which were small, socially distanced and in compliance with public health guidelines reportedly received fines for their attendance at these events; see Oireachtas Joint Committee on Justice, [Report on Civil Liberties during the Covid-19 Pandemic](#) (September 2021) pp. 24–25.

434 Oireachtas Joint Committee on Justice, [Report on Civil Liberties during the Covid-19 Pandemic](#) (September 2021) p. 24. See also Irish Council for Civil Liberties, [Human rights in a pandemic: A human rights analysis of the Irish Government’s response to COVID-19](#) (May 2021) p. 40.

435 Irish Council for Civil Liberties, [Human rights in a pandemic: A human rights analysis of the Irish Government’s response to COVID-19](#) (May 2021) p. 43.

436 ‘Post-incident’ reviews should include, where appropriate, consultation with members of the public, relevant civil society organisations and community groups. The Garda Síochána Inspectorate made a range of recommendations on public order policing in 2019 including on the use of force and post-incident management; see Garda Síochána Inspectorate, [Public Order Policing: A review of practices in the Garda Síochána](#) (April 2019).

option for AGS during the pandemic raises concern due to the inadequacy of safeguards.⁴³⁷

- » **The Commission recommends that the positive and negative experiences of engagement with structurally vulnerable communities during Covid-19 should be used to inform the training (including initial and continuous training), policies and procedures of An Garda Síochána going forward.**
- » **The Commission recommends that guidance should be published regarding An Garda Síochána's policing of public protests, including futureproofed guidance on the policing of public protests during times of national emergency. Any guidance should be equality and human rights proofed and accessible.**
- » **The Commission recommends that anti-spit guards should not be retained as a use of force option.**

437 Specifically that the procedures on the use of anti-spit guards ('ASG') are silent on the use of ASG on children aged 12-18; and an absence of disaggregated data on the use of additional force, whether medical assistance was sought, perceived specific characteristic of the individual (for example signs of an intellectual disability) and length of time the ASG was deployed; IHREC, [Letter to Assistant Commissioner Dublin Metropolitan Region re Use of Anti-Spit Guards by An Garda Síochána](#) (27 August 2020).



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