

Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women

Submission to the United Nations Committee on the
Elimination of Discrimination Against Women on Ireland's
combined sixth and seventh periodic reports

January 2017



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an Duine agus Comhionannas
Irish Human Rights and Equality Commission

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Irish Human Rights and Equality Commission

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The Irish Human Rights and Equality Commission (IHREC) 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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Overview of Issues and Recommendations

If we start educating all children about the value of girls and equality, the next generations may not have to put up with the same discrimination we do

The Irish Human Rights and Equality Commission ('the Commission') welcomes the opportunity to provide this report to the United Nations Committee on the Elimination of Discrimination against Women ('the Committee') in advance of its forthcoming examination of Ireland's compliance with the United Nations Convention on the Elimination of All Forms of Discrimination against Women ('the Convention').

The Commission engages in the CEDAW process in its dual capacity as Ireland's 'A-status' National Human Rights Institution (NHRI) and as Ireland's National Equality Body and in the context of its previous submission to the Committee in October 2015 under the List of Issues Prior to Reporting Procedure. Following that engagement, the Commission conducted an extensive nationwide consultation on the implementation of the Convention, including: focus groups with marginalised groups of women; research visits to women living in detention facilities; and research visits to women seeking asylum and women refugees who are living in direct provision centres. The information gathered during the Commission's CEDAW consultation has been used to inform and enrich its analysis, and direct reference has been made to the voices of women who engaged with the Commission throughout the report. In this overview, the Commission summarises the issues and recommendations contained in the report.

The Commission would like to draw the Committee's particular attention to a number of thematic areas where the Committee may wish to focus its attention during the State's examination, and during the subsequent follow-up period.

The reporting period has seen significant shifts in the political, economic and social landscape in Ireland. Women, especially women from already marginalised groups (section 13), have been particularly susceptible to entrenched poverty, social exclusion and gender-based violence (sections 6, 10, 11, 12, 13).

The Commission views it as a priority for the State to take action to reverse any negative impacts on women's economic and social rights in particular those exacerbated by austerity measures. Connected to the overarching issue of poverty and social exclusion, the Commission would also like to draw the Committee's attention to issues affecting specific groups of women. In particular, the Commission is of the view that the State should address as a matter of priority the need for reform in the system of direct provision, recognition of Traveller ethnicity, ratification and gender-sensitive implementation of the Convention on the Rights of Persons with Disabilities, and the gender-sensitive reform of penal policy towards women.

In the area of access to reproductive health services (section 12), the Commission remains concerned that the current legal position in relation to abortion puts in place barriers which impede a woman's right to bodily autonomy and has a disproportionate negative impact on certain groups of women. The Commission endorses recent recommendations by UN treaty monitoring bodies that the State revise its legislation on abortion in line with international human rights standards.¹

The Commission emphasises the continued failure of the State to meet its international human rights obligations to provide access to justice (section 3) for women who were institutionalised in the Magdalene laundries, or subject to the practice of symphysiotomy in Irish maternity hospitals. The Commission is also concerned about the limited scope of the State's investigation of mother and baby homes.

¹ This is the majority view of the Irish Human Rights and Equality Commission.

1. General Observations on the Implementation of CEDAW

While the State has asserted that it does not intend to alter the dualist nature of the Irish legal order, which prevents the automatic incorporation of the Convention into domestic law, the Commission is of the view that the State should take steps to incorporate the Convention. Given the State's policy of keeping reservations to international treaties under review, the Commission considers that in light of the enactment of the *Children and Family Relationships Act 2015*, the State should remove its reservations in relation to Articles 11(1), 13(a) and 16(1)(d) and 16(1)(f) of the Convention.

The Commission recognises that CEDAW forms an important part of Ireland's international human rights and equality law obligations. Bearing this in mind the Commission recommends that the State develop structures both at Governmental and parliamentary level to ensure that the recommendations of the UN treaty monitoring bodies are implemented in full. The Commission also expresses the view that in order for the State's international human rights obligations to be implemented in full, improvements need to be made to data collection systems, particularly in relation to the disaggregation of data, and the training of public officials, including members of the judiciary, on women's rights and gender equality.

The Commission also observes that the gaps in the State's ratification of international treaties must be addressed particularly in relation to treaties which have particular relevance for women's rights, including the Council of Europe's Istanbul Convention, the UN Convention on the Rights of Persons with Disabilities and the UN International Convention on the Protection of the Rights of Migrant Workers.

2. Legal Framework on Gender Equality (Article 2)

During its consultation process, the Commission was frequently reminded that the constitutional and legislative framework must be responsive to cultural and societal changes in order to fully protect gender equality and women's rights. In particular, the Commission is of the view that the Constitution of Ireland should be amended to include an explicit provision on gender equality and reviewed to ensure that gender neutral language is used throughout the text. The Commission also recommends that equality law be amended to include a definition of multiple discrimination and provide for socio-economic status as a ground of discrimination.

The Commission is also of the view that the State must provide appropriate and effective remedies that are accessible to all women. Having analysed the range of available remedies at common law and in statute in cases of relevance to gender equality, the Commission is of the view that there is room for improvement in the State's legal framework. For instance, the Commission recommends that the equality legislation be amended to allow for its use in the challenge of other potentially discriminatory laws and to remove the current limitations on the level of compensation that may be awarded to claimants.

The Commission also recommends that human rights legislation be amended to ensure that court findings are implemented in a timely manner by the legislature – in the *Foy* case, for example, the relevant legislation, the *Gender Recognition Act 2015*, was enacted over a decade after the High Court declared the legal framework to be incompatible with the European Convention on Human Rights.

The Commission also reiterates the views set out in its submissions to the Council of Europe's Committee of Ministers and recommends that the State review its narrow interpretation of the judgment in *O'Keeffe v Ireland* to ensure that all victims of sexual abuse have the right to an effective remedy irrespective of whether or not there was a prior complaint of abuse.

The Commission considers that barriers to effective remedies jeopardise the vindication of individual rights and in particular considers that economic means should not pose a barrier. The Commission therefore considers that the State's civil legal aid scheme should be reformed. The Commission recommends that the minimum contribution fee and waiver scheme be reviewed, particularly with respect to domestic violence cases. The Commission also considers that the Legal Aid Board's guidelines on the provision of assistance to persons with an intellectual disability be placed on a statutory footing.

3. Access to Justice in Relation to Historical Abuse (Articles 2(c), 3, 5(a) and 15)

The experiences of women in Magdalene laundries, in mother and baby homes, and who were subject to the practice of symphysiotomy were raised throughout the Commission's consultation process. The Commission is of the view that these abuses of women's rights must be fully investigated by the State in line with international human rights standards. In particular, the Commission is concerned about the lack of an independent investigation into symphysiotomy and the abuses suffered by women in Magdalene Laundries. The Commission also maintains its view that the scope of the Commission of Investigation into Mother and Baby Homes ought to be widened. Following the conclusion of these investigations, the State should conduct any relevant criminal prosecutions.

The Commission is also of the view that the State must provide redress to all women who suffered abuses of their rights as a result of symphysiotomy or within Magdalene laundries or in mother and baby homes. This would also require full implementation of the *Redress for Women Resident in Certain Institutions Act 2015* and the *Assisted Decision-Making (Capacity) Act 2015*.

4. National Machinery for the Advancement of Women (Article 3)

No single institution in Ireland fulfils the role of national machinery as envisioned by the Committee. Regretting the closure of several key agencies which had played a part in this framework, the Commission notes the role of the Gender Equality Division of the Department of Justice and Equality, and its monitoring of national and international commitments in this respect. Of particular relevance is the forthcoming National Women's Strategy 2017–2020. The Commission recommends that in order to inform the design of this, the impact of the National Women's Strategy 2007–2016 ought to be reviewed and the new strategy should be results-oriented with indicators, benchmarks, timelines, with mechanisms for monitoring and implementing the policies therein.

The Commission also considers that the Public Sector Duty, as provided for in Section 42 of the *Irish Human Rights and Equality Act 2014*, should underpin the National Women's Strategy 2017–2020. Since the Public Sector Duty requires public bodies to eliminate discrimination, promote equality and protect human rights in the performance of their functions, the Commission is of the view that the duty has the potential to become a powerful mechanism for the advancement of women.

Acknowledging the evidence of heightened economic vulnerability of women as a result of austerity, the Commission considers that gender proofing of budgetary and policy-making processes is an essential part of the State's institutional framework for human rights and equality. To achieve this, the Commission recommends, in line with the views expressed during its consultation process, the establishment of a national budget proofing committee, along with the review and strengthening of regulatory impact assessments, social impact assessments and poverty impact assessments as committed to in *A Programme for a Partnership Government*. The Commission is also of the view that the forthcoming national action plan on business and human rights should ensure that human rights and equality considerations are fully taken into account in public procurement practices.

5. Stereotyping (Article 5)

During the Commission's consultation process women and girls frequently expressed the view that stereotyping, traditional gender roles and prejudice impacted adversely on their lives. The Commission was also informed that such negative experiences are exacerbated in the case of marginalised groups of women. Evidence of such stereotyping is found in Article 41.2 of the Constitution of Ireland, which presumes that women occupy primary carer roles within the home. Citing political commitment to address this, the Commission urges the Government to publish a timeline with respect to the holding of a referendum on the removal or amendment of this provision.

The Commission is of the view that active and ongoing educational and awareness-raising measures are required to address gender stereotyping and considers that such measures could be delivered via the forthcoming National Women's Strategy 2017–2020 to both public servants and the general public. Initiatives should make reference to clear timelines and monitoring mechanisms, as well as take into account the multiple discriminations faced by many marginalised groups of women. Recalling the Committee's General Recommendation No. 33 on access to justice, the Commission also recommends that the Legal Services Regulatory Authority and the Minister for Justice and Equality consider developing an action plan to address stereotyping in the justice system.

To address the broader phenomenon of sexism and stereotyping in the media and advertising, increased regulation of the sector and the creation of positive duties to project better representations of women and gender equality may be beneficial. The Commission recommends that the State consider introducing statutory guidelines on gender equality for advertising and the marketing industry. The Commission recommends that research be carried out to assess the portrayal of women in Irish media.

6. Gender-Based Violence (Articles 2, 5, 11, 12 and 16)

While there have been considerable legal, policy and institutional developments during the reporting period, particularly the publication of the Second National Strategy on Domestic, Sexual and Gender-Based Violence 2016–2021, gaps in the State's response to gender-based violence were highlighted to the Commission during its consultation process. These gaps include: a lack of up-to-date research on the prevalence of sexual and domestic violence; deficiencies in the legal framework on domestic violence and hate crime; and administrative barriers which present obstacles for victims of domestic violence seeking emergency and longer-term accommodation.

Legal developments

Recalling its recommendations in relation to the overarching legal framework on gender equality, the Commission is of the view that legislation must reflect the reality of experience of gender-based violence. In that regard the Commission welcomes the enactment of the *Criminal Justice (Female Genital Mutilation) Act 2012*, but recommends that policy measures, such as an action plan, are required to protect women and girls' rights. Forthcoming legislative proposals and reviews of existing legislation also provide opportunities to strengthen Ireland's legal framework.

The Commission recommends that the Government ratify the Council of Europe's Istanbul Convention without delay and publish the *Criminal Justice (Victims of Crime) Bill* and the *Domestic Violence Bill* as a matter of priority. The Commission recommends that the *Domestic Violence Bill* should include: clear definitions of gender-based violence; the criminalisation of psychological and emotional harm; and provisions on emergency barring orders to ensure persons are never without access to protection. The Commission recommends that domestic violence laws be amended to extend protection to those in intimate relationships who are not cohabiting. The Commission also recommends that the proposals to reform the law on harassment set out in the Law Reform Commission's 2016 *Report on Harmful Communications and Digital Safety* be taken into account in the development of a legal response to the issue of cyber harassment and abuse.

During its consultation process, concerns were expressed to the Commission about gaps in immigration law which do not adequately protect migrant women who are victims of domestic violence. In order to strengthen Ireland's immigration law in this regard, the Commission recommends that Ireland opt-in to the EU Directive on Family Reunification and introduce implementing legislation which provides for autonomous residence permits. The protection of undocumented women from violence should also be considered as a priority in immigration reform.

The Commission is concerned by reports during its consultation process of the prevalence of hate crime faced by particular groups of women on account of their race, religious belief or gender identity. Given that hate crime targeting minorities can act in an intersectional way with the discrimination and violence already suffered by women, reform of law, policy and practice is required.

Accommodation for victims of domestic violence

During its consultation process the Commission became acutely aware of the debilitating effect of austerity cuts on services for victims of domestic violence. The Commission is concerned these cuts coupled with demand for services have created barriers to accessing emergency accommodation, particularly for rural women, women with addiction, migrant women, and Traveller and Roma women.

In conversation with service providers at regional consultation events, the Commission became acutely aware of the impact of the housing crisis in Ireland on the accessibility of emergency and longer-term accommodation for victims of domestic violence. In particular, the Commission was informed that victims of domestic violence are spending more time in emergency accommodation due to the rising cost of private rented accommodation and the failure of social housing law and policy to provide an appropriate response for victims of domestic violence. The Commission recommends that section 2 of the *Housing Act 1988* be amended to instruct housing authorities to prioritise applications from victims of

domestic violence and disregard any conditions pertaining to local connection or residence. The Commission further recommends that regulations under the *Housing Acts 1966–2009* be amended to the effect that 'alternative accommodation' for the purposes of a housing need assessment excludes accommodation that is unsafe because of the risk of domestic violence.

7. Trafficking and Exploitation of Prostitution (Article 6)

While the publication of the *Second National Action Plan to Prevent and Combat Human Trafficking* is to be welcomed, the Commission remains concerned that gaps exist in the legal framework, specifically pertaining to identification and non-punishment of victims as well as legal support and remedies. The Commission recommends that statutory rights to assistance, including legal aid, protection and compensation, should be available to all potential victims of trafficking regardless of their nationality or immigration status. The procedure for the identification of victims should also be placed on a statutory footing, and fair procedures must be guaranteed throughout the process. Further, the Commission is of the opinion that accommodation of victims of human trafficking in direct provision centres does not comply with the Convention. The Commission recommends that victims of human trafficking be accommodated in appropriate single-gender facilities with access to the necessary services and supports. This approach echoes recommendations made by civil society organisations working with victims of human trafficking to the Commission during its CEDAW consultation.

The Commission notes that both research and civil society submissions received during its consultation process indicate that there is no consensus on the best model for addressing trafficking in human beings for sexual exploitation. At the time of writing, legislation criminalising the purchase of sex and creating a separate offence of making a payment for the prostitution of a trafficked person was progressing through parliament. The Commission recommends that if this proposal, set out in section 20 of the *Criminal Law (Sexual Offences) Bill 2015*, is to be enacted, it should be accompanied by comprehensive support and awareness strategies, including a sufficiently resourced exit strategy and its implementation in practice should be monitored closely, measuring effectiveness in discouraging demand, in the provision of protection and assistance to victims, and in the prosecution of traffickers.

8. Participation in Public Life, Civil Society and Sport (Articles 4, 7, 8 and 13)

Participation in public life (Article 7(a))

While there has been an increase in women's representation in parliament, in local government, in the judiciary, in the diplomatic service and on public boards, the Commission considers that further action is required to ensure that women's participation in public life is in line with the European average.

With respect to participation in politics, the Commission is of the view that the positive impact of gender quotas on candidate selection required by the *Electoral (Amendment) Political Funding Act 2012* should be replicated at local government level. During its regional consultation events, the Commission was alerted to the fact that there are notable geographical differences with respect to women's candidacy and election which has manifested in an urban–rural divide. Training and mentoring initiatives are required to address both the under-representation of women in non-urban areas and the low

participation of minority women such as members of migrant and Traveller communities. The Commission also recommends that the State should monitor political party gender recruitment practices including female party membership rates, the level of female party office-holders, party investment and expenditure on the promotion of women, and the implementation of gender quotas during candidate selection.

As women's participation on public boards grows, the Commission believes that its own statute-based requirement of equal gender balance is exemplary of best practice and should be replicated across all State boards.

Participation in civil society (Article 7(c))

Recalling its parallel report to the Committee on Economic, Social and Cultural Rights in 2015, the Commission reiterates its concerns about the impact of funding cuts and structural changes to local government and community development on civil society, noting the negative impact on the women's sector specifically. In line with the previous community development programme, the Commission recommends that 'disadvantaged women' should be included as a target group in the Social Inclusion and Community Activation Programme. The Commission also recommends that the guidelines for the establishment of Local Community Development Committees be amended to include a requirement of gender balance in the membership of the Committees.

Participation in sport (Article 13(c))

During its consultation process, it was frequently highlighted to the Commission that women in Ireland do not enjoy equal treatment in sport. State funding practices, a lack of female representation in sports governance, and poor representation by the media of women in sport were cited as the key barriers to gender equality in sport. The Commission is therefore of the opinion that the State's sports investment practices require review in order to ensure that funding is allocated in a manner that promotes equal participation. As with political and governmental decision-making, national sports governing bodies could also benefit from increased female participation, and thus the Commission recommends that those in receipt of State funding should be required to have gender balance on their boards. The Commission also recommends that an action plan be developed to ensure a more equal representation of women's sport in the media.

9. Women, Peace, Security and International Protection (Articles 1-3, 5(a) and 15)

Northern Ireland

Women's participation in the protection and promotion of human rights and equality is essential to the success of the peace process in Northern Ireland. The Commission welcomes the publication of the inquiry, supported by the Department of Foreign Affairs and Trade, into the low levels of women's participation in the post-conflict situation and the implementation of the actions proposed.

Law and policy framework on international protection

During its consultation process, civil society organisations working with refugee women and women seeking asylum expressed concerns about the lack of gender-sensitive practices and procedures in Ireland's international protection framework, citing the use of male interpreters for female applications as an example. Recalling General Recommendation No. 33 on access to justice, the Commission is of the view that gender equality must be

respected throughout the protection process. Therefore, the Commission recommends that the *International Protection Act 2015* be amended to allow for statutory guidelines to be developed on gender-sensitive approaches to credibility assessment in asylum claims. The Commission is also of the view that safe and legal routes of migration should be established in order to protect women from human trafficking and exploitation.

10. Education (Article 10)

The Commission is of the view that participation in formal education is integral to the advancement of gender equality and in that regard considers it necessary that the State introduce reforms to ensure that gender equality is fully respected within the Irish education system.

Meeting with school-age girls during its consultation process, the Commission was informed that gender stereotyping remains an issue in schools, particularly with respect to subject choice. In order to address this, the Commission recommends that the Department of Education and Skills provide guidance to schools on respecting gender equality in the subject choice process. During the Commission's CEDAW consultation, school-age girls also expressed concerns about the lack of adequate sexual and reproductive health education in schools. In order to address this, the Commission recommends that the new Junior Cycle subject in Social, Personal and Health Education (SPHE) be made compulsory and that teachers are trained to ensure that they are adequately equipped to deliver the curriculum. Recognising also that pregnant students face barriers in continuing education, the Commission recommends that the Department of Education and Skills, in conjunction with the Department of Children and Youth Affairs, develop a policy to support pregnant students to remain in education.

School admission policies also present barriers in relation to access to education, particularly for Traveller, Roma and migrant girls. Therefore, the Commission recommends that the *Equal Status Acts 2000–2015* be amended to prohibit the use of a connection with a former student of the school as a criterion in the admission of a child and to ensure that no child should be given preferential access to a publicly funded school on the basis of their religion.

During its consultation process, the Commission was also informed of the issues faced by women in third-level education. These include barriers to access for migrant women and low levels of women in senior leadership positions in third level institutions in the State. The Commission notes that a fee waiver scheme, called the Pilot Support Scheme, was introduced in recognition of the barriers faced by asylum-seekers and refugees living in direct provision. The Commission recommends that the State consider implementing a policy akin to this to facilitate undocumented persons' access to third-level education. However, the Commission recommends that the Pilot Support Scheme be altered to remove the requirement of five years spent in the Irish education system. In order to address gender imbalance in leadership in higher education, the Commission recommends that the State implement the recommendations set out in the Higher Education Authority's Gender Equality Review, in consultation with relevant stakeholders.

11. Employment and Social and Economic Life (Articles 11 and 13)

Employment

Respondents to the Commission's survey, which formed part of its consultation process, expressed concerns about the 14 per cent gender pay gap. The Commission is also concerned about the prevalence of women in low paid jobs as well as the use of employment contracts with unspecified hours of work or 'zero hour contracts'. The Commission recommends that the Minister for Jobs, Enterprise and Innovation give due consideration to the *Report of the Low Pay Commission on the Preponderance of Women on the National Minimum Wage*.

The Commission notes that following the economic recession, pregnancy-related discrimination increased despite being legally prohibited. During its consultation process, the Commission was also informed about discrimination faced by particular groups of women, including women with disabilities, Traveller women and trans women. To address discrimination in the workplace, the Commission recommends that the Minister for Jobs, Enterprise and Innovation commission a survey of employers' knowledge of, and attitudes towards, maternity protection legislation, and a study to investigate the barriers faced by marginalised groups of women in the workplace.

Having spoken directly to migrant women workers during its consultation process, the Commission has identified a number of areas of employment law, policy and practice that are in need of reform. The Commission was particularly concerned by reports of discriminatory recruitment practices in relation to migrant women workers performing domestic work. The Commission recommends that the *Employment Equality Acts 1998–2015* be amended to address this. With regard to employment permits, the Commission recommends that the Critical Skills Employment Permit be reviewed from a gender perspective and that the Minister for Jobs, Enterprise and Innovation should consider the creation of permits for domestic work. The Commission also recommends that a regularisation scheme be introduced for undocumented migrants and that asylum seeking women living in direct provision be permitted and supported to work in Ireland.

Social security and social supports (Articles 11(1)(e) 11(2)(c))

The Commission is concerned about the gendered nature of the social security system, which is predicated on the 'male breadwinner' model. In cases where both spouses are eligible, in order to avail of a social welfare payment one spouse must be regarded as an adult dependent. The majority of these dependents are women, who are not recorded in official unemployment figures. To remedy this, the Commission recommends that the State conduct a comprehensive review of welfare policy from a gender perspective in order to eliminate any indirect discrimination pertaining to gender. The Commission also recommends that the State review the operation of the Habitual Residence Condition in order to eliminate any discriminatory impact on migrant women, Traveller women and Roma women.

A significant gender gap is also evident in Ireland's pension system, where women are less likely to be in receipt of occupational or contributory State pensions due to the increased likelihood of career interruptions. The Commission notes with concern changes made in 2012 which led to doubling of the minimum contribution a woman worker needed to make in order to qualify for a State pension. During the Commission's consultation, many older women highlighted the negative impact of these changes on their standard of living.

The Homemakers' Scheme allows up to twenty years out of the workforce to be discounted from pension assessments; however, the Commission notes that the scheme does not apply to the period before April 1994. The Commission recommends that the State's pension policy be reviewed, employing a gender impact analysis, and that the Homemaker Scheme be applied retrospectively in order to broaden access to the contributory State Pension.

Access to maternity benefit excludes those who become parents by way of surrogacy arrangements. The Commission recommends that the Maternity Benefit Scheme be amended to ensure that it is accessible to all mothers, including to those who have children by means of surrogacy.

Care work remains gendered in Irish society, with women in the majority of care roles. The Commission recommends that the State facilitate women's participation in the labour market through the implementation of the Affordable Childcare Scheme and the development of quality State-run care services for the elderly and persons with disabilities. The Commission also calls for greater recognition of the unpaid care work of women in Ireland and the provision of adequate social supports.

Poverty and homelessness (Article 13)

The economic recession experienced by Ireland during the reporting period, and the labour market crises that followed, had strong gender dimensions. Noting the particular susceptibility of certain groups of women to poverty and social exclusion, the Commission calls for the incorporation of a gender impact analysis of austerity measures with actions to reverse any negative impacts on women's economic and social rights. Similar considerations should be applied to all anti-poverty measures. Research demonstrates that lone parents faced particular hardship during this time and in that regard attention is drawn to the changes to the One Parent Family Payment introduced during the reporting period. The Commission recommends that the Minister for Social Protection review the One Parent Family Payment and implement the necessary support to ensure that recipients' right to an adequate standard of living is progressively realised.

During its consultation process, the Commission was informed that homelessness in Ireland is becoming increasingly gendered with growing numbers of women and families presenting as homeless. This has also been recognised in *Rebuilding Ireland*, the national housing and homelessness strategy. The Commission notes that research demonstrates that paths to homelessness for women and their families have been shown to be often triggered by experiences of domestic violence. The Commission recommends that a gender-sensitive approach be applied to the relevant actions of *Rebuilding Ireland* in order to support women experiencing and at risk of homelessness.

12. Health (Article 12)

During its consultation process, the Commission received numerous reports of barriers to physical and mental healthcare for women from marginalised groups, including migrant women, women with disabilities, Traveller and Roma women, and trans women. These can include the lack of interpretation or support services, as well as culturally insensitive approaches and administrative barriers. The Commission is concerned by the lack of a gender perspective in *A Vision for Change*, the national mental health policy. To address this, the Commission recommends that the State adequately resource the implementation of the

HSE Gender Mainstreaming Framework in order to ensure its effective rollout, facilitating the gender-sensitive provision of health care. Similarly, the Commission recommends that a gender perspective be adopted in the forthcoming review of *A Vision for Change* in order to ensure the consideration of women's experiences and their rights.

Sexual and reproductive health services

The *National Maternity Strategy – Creating a Better Future Together 2016–2026* highlights a number of issues within maternity services including an over-medicalised model of childbirth and poor breastfeeding support in the hospital and community, which were also raised during the Commission's consultation process. The Commission recommends that the implementation of the *National Maternity Strategy – Creating a Better Future Together 2016–2026* and the *National Sexual Health Strategy 2015–2020* be fully resourced in order to address these shortcomings in maternity services. In particular, the Commission calls for the 2016 recommendations of the UN Committee on the Rights of the Child regarding breastfeeding to be fully implemented by the State. These include awareness-raising and provision of access to materials, along with strengthening training for health-care professionals.

Ireland's legal framework regulating access to reproductive health care services stems from Article 40.3.3 of the Constitution of Ireland. The Commission remains concerned that the current legal position in relation to abortion puts in place barriers which impede a woman's right to bodily autonomy and has a disproportionate negative impact on certain groups of women. The Commission notes that this is currently under consideration by the Citizen's Assembly (amongst a suite of other constitutional concerns) which will, following deliberation, submit a report with recommendations to the Irish parliament. The Commission recommends that the Citizens' Assembly and the parliamentary committee tasked with considering its report ensure that the relevant aspects of the Committee's concluding observations and the findings of other UN treaty monitoring bodies are taken into account.

13. Issues Affecting Specific Groups of Women (Articles 1-3, 5(a), 14 and 15)

Recalling the Committee's General Recommendation No. 28 on the vulnerabilities faced by certain groups of women, the Commission gave particular attention to the situations faced by Traveller women, women with disabilities, rural women and women in agriculture, women living in direct provision, and women in detention.

Traveller women (Articles 1-3, 5(a) and 15)

The Commission notes the repeated calls upon the State from national and international bodies to recognise Irish Travellers as an ethnic minority, and welcomes media reports in November 2016 of renewed political commitment to the recognition of Traveller ethnicity. The Commission notes the persisting institutional barriers to the provision of accommodation to Travellers, and recommends that the State take steps to address these barriers in order to progressively realise the right to culturally appropriate housing for Travellers.

Women with disabilities (Articles 1-3, 5(a) and 15)

The Commission welcomes the State's commitment to ratify the UN Convention on the Rights of Persons with Disabilities (CRPD) and the publication of a draft of the

Equality/Disability (Miscellaneous Provisions) Bill 2016, in particular its proposed approach to establishing an independent monitoring mechanisms under Article 33 CRPD. The Commission recalls the obligation under Article 4.3 CRPD for the State to ensure the full participation of persons with disabilities at all stages of ratification, and further recalls the importance of intersectionality in applying the CRPD. The Commission recommends that, in putting the legislative and policy framework in place for CRPD ratification, the State engage in a participatory process in order to elicit the views of people with disabilities. This process should include a gender perspective.

The Commission also welcomes the introduction of the *Recognition of Irish Sign Language for the Deaf Community Bill 2016*, and recommends that its provisions are assessed against CRPD standards.

Rural women (Articles 1-3, 5(a), 14 and 15)

In its List of Issues, the Committee asked the State to provide information on 'targeted support for rural women to increase their ... ownership of land'. The Commission further recalls the Committee's General Recommendation No. 34, which recognises that rural women's rights are insufficiently addressed in national and local policies and strategies. The Commission notes, for example, that there is one reference to gender inequality in the *Rural Development Programme Ireland 2014–2020*. The Commission recommends the integration and mainstreaming of a gender perspective in all rural development policies, strategies, plans and programmes, particularly in the mid-term review of the *Rural Development Programme*. The Commission further notes that there is a relatively low level of female land ownership in Ireland and recommends that the State conduct research into the barriers that women may face in owning land.

Many women participating in the Commission's consultation highlighted the impact of rural isolation on their lives, in particular with reference to limited rural public transport. The Commission recommends that the State undertake a review of the gender-differentiated demands for services in rural areas to ensure that the transport needs of rural women are met.

Asylum-seeking and refugee women in direct provision (Articles 1-3, 5(a), 14 and 15)

Ireland's scheme of international protection requires asylum seekers to live in accommodation under a regime known as direct provision. This system has been the subject of criticism by UN treaty monitoring bodies and by the courts in Northern Ireland. The Commission acknowledges the *Final Report* of the Working Group on the Protection Process in identifying a range of issues within the direct provision system, and the Department of Justice and Equality's ongoing efforts to implement its recommendations.

The Commission has visited a number of direct provision centres since 2014. In preparation for this report, the Commission visited two additional direct provision centres, namely Park Lodge, Killarney, Co. Kerry, and the Eglington Hotel, Salthill, Co. Galway. During its visits the Commission engaged directly with women seeking asylum and women refugees living in the centres as well as with relevant Government officials and private contractors running the facilities. The concerns raised by residents echoed some of those raised elsewhere, including in the report of the Working Group on the Protection Process, in particular with regard to the impact of direct provision on mental health.

The Commission was struck during its visits by reports of harassment experienced by female residents of both direct provision centres. Women made reference to catcalling, verbal abuse and proposition, and the effect this behaviour had on their well-being.

The Commission calls for the recommendations of the Working Group on the Protection Process to be fully implemented. The Commission recommends that gender-sensitive mental health and counselling services be provided to all women living in direct provision, and that the implementation of the Reception and Integration Agency's guidelines on sexual violence be monitored as part of inspections of direct provision centres. The Commission also recommends that both publicly and privately owned centres are made subject to the Public Sector Duty, and that all staff are trained in gender equality and human rights.

Women in detention (Articles 2 and 15)

As part of its preparation for this report, the Commission conducted visits to both of Ireland's women's prisons – the Dóchas Centre at Mountjoy Prison in Dublin and Limerick Prison – where focus group discussions were held with the women in detention. The Commission also met prison management and noted that the Irish Prison Service has begun to recognise the complex needs of women living in detention, particularly in light of the Joint Strategy mentioned in the State Report as well as the 2010 Bangkok Rules.

The Commission notes that women's prisons are the most overcrowded in the State, posing particular challenges with regard to the segregation of sentenced and remand prisoners. The Commission considers that a review of the conditions in women's prisons now needs to be a priority, along with a need for alternatives to custody. There is a disparity between facilities available to male prisoners and those available to women, including with regard to step-down facilities, post-release and integration programs, and education programmes.

The Commission recommends that the Minister for Justice and Equality, in conjunction with the Irish Prison Service, review the operation of prison facilities in order to ensure equal treatment of women and men. The Commission further recommends that gender-sensitive approaches and facilities should be offered to women who are committed to detention in the State.

The Commission notes the absence of a specific policy on the placement of transgender persons in prison, and recommends that the Irish Prison Service adopt a policy on this in line with the Yogyakarta Principles.

The Commission also notes the over-representation of Traveller women in prison. Recalling the commitment by the Irish Prison Service to deliver 'improved services for all Travellers within the system' and to 'examine particular issues faced by female Travellers in custody', the Commission recommends that an action plan, designed in consultation with the Traveller community, be implemented to address the needs of Traveller women in prison.

The potentially damaging effect of incarceration on family relationships and mental health was highlighted to the Commission during its visits. The Commission recommends that delays in postal communications between prisoners and their families be addressed. The Commission further recommends that family-friendly contact between prisoners and their children be facilitated, including outside prison where possible.

The Commission notes the increase in the number of women being imprisoned, and acknowledges the legislative measures recently undertaken to provide alternatives to custody. However, the Commission remains concerned about the over-use of remand in cases involving women and recommends that the State develop further gender-sensitive alternatives to custody.

Background to the Report

Sometimes it's
hard to tell if
the discrimination
I face is because
I'm a woman or
because I've a
disability

Introduction

On 1 November 2014 the Irish Human Rights and Equality Commission ('the Commission') was established by the *Irish Human Rights and Equality Commission Act 2014*.² It is the successor body to the Equality Authority and the Irish Human Rights Commission (IHRC) which contributed to the examination of Ireland by the UN Committee on the Elimination of Discrimination against Women ('the Committee') at its 43rd session in 2006.³ The Commission notes the Committee's particular interest in the State's view that this merged body has the potential to strengthen the protection of vulnerable groups.⁴

The Commission has a broad statutory remit to protect and promote human rights and equality and is tasked with reviewing the adequacy and effectiveness of law, policy and practice and with making recommendations to Government on measures to strengthen, protect and uphold human rights and equality.⁵ In accordance with section 10(2)(h) of the *Irish Human Rights and Equality Commission Act 2014*, the Commission is mandated to consult with international bodies or agencies with a knowledge of or expertise in human rights or equality. The Commission also has statutory guidance and compliance functions with respect to the Public Sector Duty, which requires all public bodies to eliminate discrimination, promote equality and protect human rights.

The Commission welcomes the opportunity to provide this parallel report to the Committee in advance of its forthcoming examination of Ireland's compliance with the Convention on the Elimination of All Forms of Discrimination against Women ('the Convention'). The Commission makes this submission in its dual capacity as Ireland's National Human Rights Institution (NHRI), which was in November 2015 accredited as an 'A-status' NHRI that is in compliance with the Paris Principles⁶ by the Global Alliance of NHRIs (GANHRI), and as Ireland's National Equality Body, in accordance with European Union anti-discrimination law.⁷

The Commission is concerned about the State's delay in reporting to the Committee. Civil society organisations that have been regularly involved in the UN treaty monitoring process also expressed concerns about the delay in reporting.⁸ The Commission notes that there was also a ten year gap in reporting to the UN Committee on the Rights of the Child. The Commission is of the view that delays in reporting can hamper the State's progress in monitoring the implementation of recommendations from UN treaty monitoring bodies. The Commission also notes Ireland's election by the UN Economic and Social Council

² *The Irish Human Rights and Equality Commission Act 2014* merged the former Irish Human Rights Commission and the former Equality Authority into a single enhanced body.

³ See Irish Human Rights Commission (2006) *Submission to the UN Committee on the Rights of the Child on Ireland's second periodic report under the UN Convention on the Rights of the Child* available: http://www.ihrec.ie/download/pdf/sub_unrc_200605.pdf

⁴ The State asserted this view during the first cycle of the Universal Periodic Review. See CEDAW (2016) *List of issues and questions prior to the submission of the combined sixth and seventh periodic reports of Ireland*, para. 4.

⁵ Section 10(2)(b) of the *Irish Human Rights and Equality Commission Act 2014*.

⁶ United National General Assembly resolution 48/134 of 20 December 1993.

⁷ The requirement for EU Member States to set up equality bodies under EU anti-discrimination directives is explained on the website of Equinet, the European Network of Equality Bodies: 'The EU equal treatment legislation requires Member States to set up an equality body. Most Member States have implemented the Racial Equality Directive (2000/43/EC) and the Gender Equal Treatment Directives (the 2010/41 on self-employed persons, the 2006/54 Recast directive, and the 2004/113 Goods and services directive) either by designating some existing institution or by setting up a new institution to carry out the competences assigned by the new legislation'. Available: <http://www.equineteurope.org/-Equality-bodies>

⁸ This was raised by the Irish Council for Civil Liberties and the Free Legal Advice Centres in their written submissions to the Commission during its CEDAW consultation.

(ECOSOC) in April 2016 to the United Nations Commission on the Status of Women. The Commission welcomes this development, and the opportunity it presents for the State to 'build on [its] international engagement on the full realisation of the rights of women and girls'.⁹

The State's delay in reporting to the Committee is of particular importance given the significant changes in the political, economic and social landscape in Ireland in the last twelve years. The most striking achievements during this period in terms of gender equality have been the introduction of marriage equality through a popular vote in 2015 and the introduction of gender recognition laws.¹⁰ These reforms have made a significant contribution to the advancement of equality for Ireland's LGBT community, including lesbians and trans women. They have also resulted in an expanded recognition of same-sex parenting rights, and in so doing have made a contribution to combating stereotypical gender roles in the State.¹¹ The economic collapse is referred to both in the common core document¹² and in the State Report.¹³ The impact of austerity measures which followed the economic collapse in Ireland have been well documented at both the international and domestic level,¹⁴ and in light of this the Commission recalls the acknowledgement of the UN Committee on Economic, Social and Cultural Rights that such measures disproportionately impact women and may give rise to 'a step backwards in terms of gender equality'.¹⁵

The common core document also provides an overview of demographic trends based on the 2011 Census of the Population, which states that Ireland has an aging population and one in eight women now have non-Irish nationality.¹⁶ The most recent Census of Population was conducted in 2016. These demographic changes indicate that more women in Ireland may now be more likely to face multiple discrimination. Recalling General Recommendation No. 28, the Commission demonstrates throughout this report that 'the discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity'.¹⁷ In writing this report, the Commission has adopted the Committee's view that 'intersectionality is a basic

9 Department of Foreign Affairs and Trade, 'Minister Flanagan announces Ireland's election to the UN Commission on the Status of Women' [press release], 8 April 2016. Available at <https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2016/april/minister-announces-irelands-election-to-uncsw/>. Ireland's term will run from 2017 to 2021.

10 Article 41.4 of the Constitution of Ireland provides: 'Marriage may be contracted in accordance with law by two persons without distinction as to their sex'. The *Gender Recognition Act 2015* came into force on 4 September 2015.

11 In February 2015, in advance of the referendum on marriage equality, the Irish Human Rights and Equality Commission published a policy statement on access to civil marriage in which it stated that 'the opening out of civil marriage to two persons, without distinction as to their sex, is a matter of equality and human rights.' In particular, the Commission highlighted that 'that the current Constitutional position relating to marriage does not provide full recognition and equality of status for same-sex couples in a way that would underpin wider equality for people within Irish society', and that 'in light of the position of the family based on marriage under the Irish Constitution, the Constitution currently does not provide full recognition of the equal right to family life for same-sex couples'. See: Irish Human Rights and Equality Commission, *Policy Statement on Access to Civil Marriage*, February 2015, at page 1, available at: https://www.ihrec.ie/download/pdf/ihrec_policy_statement_access_civil_marriage_11_feb_2015.pdf

12 *Common core document forming part of the reports of States parties: Ireland* (2014), HRI/CORE/IRL/2014, para. 8.

13 *Combined sixth and seventh periodic reports of the State parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, para. 16.

14 UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations on the third periodic report of Ireland*, E/C.12/IRL/CO/3; UN Human Rights Council (2011) *Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona: Mission to Ireland*, A/HRC/17/34/Add.2; Frances McGinnity, Helen Russell, Dorothy Watson, Gillian Kingston, Elish Kelly (2014) *Winners and Losers? The Equality Impact of the Great Recession in Ireland*, Dublin: the Equality Authority and the Economic Social Research Institute.

15 UN Committee on Economic, Social and Cultural Rights (2016) *Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights: Statement by the Committee on Economic, Social and Cultural Rights*, E/C.12/2016/1, para. 2.

16 *Common core document forming part of the reports of States parties: Ireland* (2014), HRI/CORE/IRL/2014, paras. 18–27.

17 *UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2*, CEDAW/C/GC/28, para. 18.

concept for understanding the scope of the general obligations of State parties'.¹⁸ The Commission has also endeavoured, where appropriate, to reflect the experience of the girl child in line with the Committee's life cycle approach.¹⁹

Many of the issues set out in this report have already been raised by the Commission²⁰ in its parallel reports to a range of UN treaty monitoring bodies and Council of Europe treaty bodies as well as throughout the two cycles of the Universal Periodic Review (UPR) process. This report will comment, where appropriate, on the extent to which the State has implemented the Concluding Observations arising from these examinations. This report will also endeavour to reflect the numerous cross-cutting themes that have emerged in the context of these processes, in particular where issues give rise to intersectionality and multiple discrimination. The Commission has observed from its engagement in these processes, particularly during the State's most recent examination by the UN Committee on the Rights of the Child, that while the State has published numerous strategies and actions plans during the reporting period, the implementation of such policies is not effectively monitored. In this report the Commission will comment, where appropriate, on the implementation and development of policies from a gender perspective.

Overview of IHREC CEDAW Consultation

The Commission submits this report in the context of its previous submission to the Committee in October 2015 under the List of Issues Prior to Reporting Procedure, which is to be read alongside this report.²¹ In 2016, building on an extensive public consultation undertaken as part of its strategic planning process,²² the Commission carried out a significant nationwide consultation on the implementation of the Convention which used a number of methodologies to ensure maximum participation of rights-holders. The Commission used this opportunity to raise awareness about the Convention in line with its role as an NHRI. Where possible the Commission refers throughout this report to the voices of the individuals and the key issues raised during its CEDAW consultation. The Commission used a variety of methods to learn people's views on what life is like for women in Ireland and to ensure that we gave everybody an opportunity to engage with us in a way that was easiest and most useful for them. Approximately one thousand people engaged with the consultations. The views and insights from people were provided to the Commission in the following ways:

- responding to our open call for submissions;
- attending regional consultation events which the Commission held in four locations around Ireland;
- attending our focus group meetings with women from marginalised groups;
- meeting us when we went to direct provision centres and women's prisons;
- meeting us to share insights from their own work;
- attending a Commission stand at the National Ploughing Championships to share their views.

A full list of the organisations that sent written submissions to the Commission and those who contributed to the CEDAW consultation is set out in Appendix 1 of this report.

18 CEDAW (2010) *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2*, para. 18.

19 CEDAW (2010) *General Recommendation No. 27 on older women and protection of their human rights*, para. 15.

20 The Commission's predecessor body, the Irish Human Rights Commission, has also raised these issues.

21 Available at: http://www.ihrec.ie/download/pdf/ihrec_submission_to_cedaw_loipr_2015.pdf The Commission also outlined key issues of concern at the Pre-Session Working Group in November 2015.

22 For this report, the Commission has also reviewed from a gender perspective the submissions it received during a nationwide public consultation on its first Strategy Statement.

Section 1: General Observations on the Implementation of CEDAW

My experience of discrimination also relates to broader social norms, such as being treated as less intelligent or accomplished simply because I'm a woman from a working class background

1.1 Status of CEDAW in Domestic Law

In its 2005 Concluding Observations, the UN Committee on the Elimination of Discrimination against Women ('the Committee') recommended that Ireland incorporate the UN Convention on the Elimination of All forms of Discrimination against Women ('the Convention') into domestic law. The Convention has not yet been incorporated into domestic law. This is consistent with what has been the State's general approach to domestic incorporation of international treaties, rooted in its dualist legal system.²³ In its engagement with the first cycle of the Universal Periodic Review in 2011, Ireland indicated that it does not intend to 'alter current practice' of making incorporation contingent on legislation.²⁴ The only international human rights treaty to have a corresponding piece of domestic legislation is the European Convention on Human Rights (ECHR), which was indirectly incorporated in its entirety into Irish law.

As a result of this system, rights holders are unable to rely directly on the provisions of the Convention before the Irish courts.²⁵ It is noted in the State Report that 'provisions of the Convention are incorporated in Irish law' through equality legislation.²⁶ The purpose of Irish equality law is to transpose EU anti-discrimination directives on employment and access to goods and services. Given the particular purpose intended when these pieces of legislation were enacted, it is not the case that the equality and human rights legislation has incorporated the Convention into domestic law.

²³ Article 29.6 of the Constitution of Ireland provides that 'no international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas'. This provision has been interpreted as precluding the Irish courts from giving effect to an international agreement if it is contrary to domestic law or grants rights or imposes obligations additional to those of domestic law.

²⁴ See UN Human Rights Council (2011) *Report of the Working Group on the Universal Periodic Review: Ireland*, para 28, A/HRC/19/9, 21 December 2011. Available: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-9_en.pdf

²⁵ For example in *Olaniran & Others v Minister for Justice, Equality and Law Reform* [2010] IEHC 83, Clarke J clearly stated that ratification of international human rights treaties, such as the UN Committee on the Rights of the Child, is of no effect in Irish courts.

²⁶ *Combined sixth and seventh periodic reports of State parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, 16 September 2016, at para. 25.

The Commission notes that in General Recommendation No. 28 on the core obligations of States Parties, the Committee recognises that while the Convention may not have direct effect in some States, it encourages States to consider incorporation 'in order to facilitate the full realisation of convention rights'.²⁷ The Commission is also aware that the Law Reform Commission is currently examining the application of Ireland's international obligations in domestic law, with specific focus on the State's dualist approach arising from Article 29.6 of the Constitution of Ireland.²⁸

Recommendation:

The Commission recommends that the State take steps to incorporate the Convention into Irish law to ensure that policymakers and public bodies comply with the Convention in the carrying out of their functions.

²⁷ CEDAW (2010) *General Recommendation No. 28: The Core Obligations of States Parties under Article 2*, para. 31, available <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/472/60/PDF/G1047260.pdf?OpenElement>

²⁸ See: <http://www.lawreform.ie/welcome/6-international-law.383.html>

1.2 Reservations to CEDAW

The Commission notes the State's intention²⁹ not to withdraw its reservations to Articles 11(1), 13(a) and 16(1)(d) and 16(1)(f) of the Convention despite the Committee's 2005 concluding observations.³⁰ The Commission recalls that reservations that are incompatible with the object and purpose of the Convention are impermissible and should be withdrawn.³¹ In this regard, the Commission notes that the Committee has previously stated that Article 16 of the Convention is to be regarded as a core provision of the Convention,³² such that reservations to this Article are incompatible with the Convention and should be reviewed, modified or withdrawn.³³

The State has itself previously lodged objections in respect of reservations entered into by State Parties on ratification or accession, including reservations in respect of Article 16.³⁴ In doing so, the State has placed reliance on Article 28(2) of the Convention, and on the principle that reservations of a general nature may undermine the basis of international treaty law.

The Commission considers that the State's reservation in respect of Article 16(1)(f) of the Convention should be reviewed in light of the commencement of relevant provisions of the Children and Family Relationships Act 2015.³⁵ The Commission further considers that the State's reservation in respect of Articles 16(1)(d) and 16(1)(f) may more properly be regarded as a conditional interpretative

declaration, insofar as the State purports to subject its consent to be bound by Articles 16(1)(d) and 16(1)(f) of the Convention to its interpretation as to the meaning and effect of these provisions, rather than to exclude or modify their legal effect.³⁶

The Commission notes that the Committee is competent to assess the permissibility of reservations to the Convention,³⁷ and that the State has previously been invited to submit an opinion to the UN Office of Legal Affairs in respect of its reservation of in respect of Article 15(3) of the Convention.³⁸

Recommendation:

The Commission recommends that the State be invited to furnish a legal opinion to the UN Office of Legal affairs in respect of its reservations in relation to Articles 11(1), 13(a) and 16(1)(d) and (f), with a view to assessing the permissibility of these reservations in light of Article 28(2) of the Convention.

²⁹ *Combined sixth and seventh periodic reports of States parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, 16 September 2016, at para. 29.

³⁰ UN Committee on the Elimination of Discrimination against Women (2005) *Concluding comments: Ireland*, CEDAW/C/IRL/CO/4-5, para. 40–41.

³¹ Article 28(2) of the Convention on the Elimination of All forms of Discrimination against Woman, relating to Article 19(c) of Vienna Convention on the Law of Treaties.

³² *Report of the Committee on the Elimination of Discrimination against Women on its nineteenth session*, para. 6. See also CEDAW (1992) General Recommendation No. 20, Reservations to the Convention.

³³ CEDAW (1994) *General Recommendation No.21, Equality in Marriage and Family Relations*, at para.17

³⁴ See UNTS Volume 2668, A-20378; Volume 2163, A-20378; Volume 2180, A-20378; Volume 2185, A-20378, Volume 2402, A-20378; Volume 2402, A-20378.

³⁵ Part 4 of the *Children and Family Relationships Act 2015*, which provides for certain amendments to the *Guardianship of Infants Act 1964*, was commenced on 18 January 2016 by virtue of *Children and Family Relationships Act 2015 (Commencement of Certain Provisions) Order 2016* (SI No 12 of 2016).

³⁶ See definitions of 'reservation' and 'conditional interpretative declaration' as provided for by the International Law Committee (2011) *Guide to Practice on Reservations to Treaties*, para. 1.1 and 1.4.

³⁷ International Law Committee (2011) *Guide to Practice on Reservations to Treaties*, para. 3.2.

³⁸ Department of Justice and Equality (2003) *Ireland's combined fourth and fifth periodic reports*, para.15.1.

1.3 Gaps in the Ratification of International Human Rights Standards Relevant to Women

Ireland has yet to ratify a number of international conventions and protocols relevant to the protection of women's rights. These include: the UN Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol, the Optional Protocol to the UN Convention against Torture (OPCAT),³⁹ the Optional Protocol to the International Covenant and Economic, Social and Cultural Rights (OP-ICESCR),⁴⁰ the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), the UN Convention for the Protection of all Persons from Enforced Disappearances (CED), the Optional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,⁴¹ the Protocol of 2014 to the ILO Forced Labour Convention 1930 (P029), the Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention),⁴² and the Council of Europe's Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention).⁴³

Recommendation:

The Commission recommends that the State ratify other outstanding international treaties and protocols as a matter of priority, including through prioritising the passage of any legislative and policy reforms necessary for ratification.

³⁹ Ireland signed OPCAT in 2007 but has not yet ratified it. The Government has not yet provided a timeframe for the ratification of OPCAT or enumerated the types of policy and legislative measures necessary to advance the progress of ratification. The Government has also yet to provide information as to what type of National Preventive Mechanism (NPM) it envisages as part of the requirements of OPCAT.

⁴⁰ Ireland signed the Optional Protocol to ICESCR on 23 March 2012 but has not yet ratified it.

⁴¹ Ireland signed this Optional Protocol in 2000 but has not yet ratified it.

⁴² Ireland signed the Lanzarote Convention on 25 October 2007, but has not yet ratified it.

⁴³ Ireland signed the Convention on 5 November 2015 and published an action plan on the same day, which will be discussed in more detail in section 6 below. See also Department of Justice (2015) *Istanbul Convention Action Plan*. Available: <http://www.justice.ie/en/JELR/ActionPlanIstanbulConNovember.pdf/Files/ActionPlanIstanbulConNovember.pdf>

1.4 Monitoring Mechanisms for the Implementation of International Human Rights Law

The Commission recalls the Committee's General Recommendation No. 33 on access to justice which requires States to 'ensure the national implementation of international instruments and decisions of international and regional justice systems relating to women's rights and establish monitoring mechanisms for the implementation of international law'.⁴⁴ The Commission notes that while some measures were put in place during the reporting period, the future work plans of these measures remain unclear at the time of writing.

1.4.1 Governmental oversight

In 2015 the Minister for Foreign Affairs published a statement on Ireland's foreign policy priorities, which included a commitment to the establishment of an Inter-Departmental Committee on Human Rights to 'improve the coherence of the promotion and protection of human rights' and 'assist progress towards the ratification by Ireland of key international human rights treaties and timely reporting to UN human rights bodies'.⁴⁵

The Inter-Departmental Committee on Human Rights held its first meeting on 25 March 2015.⁴⁶ At its first meeting it was stated that the Committee would meet two to three times a year.⁴⁷

⁴⁴ CEDAW (2015) *General recommendation No. 33 on women's access to justice*, para. 56(e).

⁴⁵ Department of Foreign Affairs and Trade (2015), *The Global Island: Ireland's Foreign Policy for a Changing World*, available at: <https://www.dfa.ie/media/dfa/alldfawebstimedia/ourrolesandpolicies/ourwork/global-island/the-global-island-irelands-foreign-policy.pdf>

⁴⁶ The meeting was chaired by the Minister of State for Development, Trade Promotion, and North-South Co-operation, Seán Sherlock, TD and comprised of representatives from all government departments as well as the Office of the Attorney General. See Department of Foreign Affairs and Trade, 'Minister Sherlock chairs First Meeting of the Inter-Departmental Committee on Human Rights', 25 March 2015. Available: <https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2015/march/minister-chairs-human-rights-committee/>

⁴⁷ Department of Foreign Affairs and Trade, 'Minister Sherlock chairs First Meeting of the Inter-Departmental Committee on Human Rights', 25 March 2015. Available: <https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2015/march/minister-chairs-human-rights-committee/>

The Committee met for the first time since the 2016 General Election on 28 September 2016.⁴⁸

The Commission notes the proposal to amend the terms of reference of the Inter-Departmental Committee on Human Rights to include monitoring the Government-wide implementation of the National Action Plan on Business and Human Rights.⁴⁹ The Commission welcomes this proposal and encourages the Department to take this opportunity to reflect more broadly on its remit, particularly in light of the Public Sector Duty regarding human rights and equality.

Recommendations:

The Commission recommends that the Inter-Departmental Committee on Human Rights publish its revised terms of reference and work programme.

The Commission recommends that progress reports should be laid before the parliament (the Houses of the Oireachtas) in order to ensure coordination of governmental and parliamentary oversight of the implementation of international human rights standards.

⁴⁸ Department of Foreign Affairs and Trade, 'Minister McHugh convenes Inter-Departmental discussions on Human Rights', 28 September 2016. Available <https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2016/september/mchugh-committee-on-human-rights/>

⁴⁹ See <https://www.dfa.ie/media/dfa/alldfawebstimedia/ourrolesandpolicies/int-priorities/humanrights/Working-Outline-of-Irelands-National-Plan-on-Business-and-Human-Rights-2016---2019.pdf>

1.4.2 Parliamentary oversight

On 3 December 2014 a parliamentary committee, the Joint Sub-Committee on Human Rights relative to Justice and Equality matters,⁵⁰ was established to examine, amongst other things, the ratification by Ireland of international human rights treaties.⁵¹ The establishment of the committee was welcomed by the Commission during recent international reporting cycles with the caveat that the remit of the Joint sub-Committee should have ideally been extended to include the review of any matter with an underlying human rights component.

During its first meeting, the Joint Sub-Committee considered the role of parliament in both the ratification and implementation of international conventions, noting in particular the guidance from the United Nations and the Council of Europe.⁵² The Commission recalls that the Committee, in its 2005 Concluding Observations, called on the State to present its concluding comments to the Houses of the Oireachtas.

The Joint sub-Committee met three times in 2015 and did not have the opportunity to meet in 2016 before the Parliament was dissolved on 3 February 2016. The sub-Committee on Human Rights was not re-established when new parliamentary committees were established in June 2016 following the 2016 general election. However, a specific committee on parliamentary reform was established.

Recommendations:

The Commission recommends that a parliamentary committee on human rights and equality, which covers all thematic areas arising in other parliamentary committees, be established.

The Commission recommends that the Sub-Committee on Dáil Reform consider what role parliament could take in monitoring and encouraging the implementation of international obligations, particularly with respect to women's rights.

⁵⁰ The Commission understands this is the sub-Committee referred to in the common core document. Common core document forming part of the reports of States parties: Ireland (2014), HRI/CORE/IRL/2014, para. 132.

⁵¹ Houses of the Oireachtas (2015) Sub-committee on Human Rights relative to Justice and Equality Matters: Work Programme: May 2015, available: http://opac.oireachtas.ie/AWData/Library3/Work_Programme_May_2015_120637.pdf

⁵² Houses of the Oireachtas (2015) Joint sub-Committee on Human Rights relative to Justice and Equality matters, available: <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/JU22015051400002?opendocument#A00700>. See Council of Europe's Assembly Resolution 1823 (2011), available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18011&lang=en>

1.5 Data Collection

During the reporting period, the Central Statistics Office published data sets on Women and Men in Ireland on an annual basis between the years 2004–2013, with the exception of 2012. This report was not published between 2014 and 2016. The Commission acknowledges the commitment in the State Report that the Central Statistics Office will resume its reporting on Women and Men in Ireland in 2017.⁵³

In its 2005 submission to the Committee, the Irish Human Rights Commission (IHRC) recommended that the State develop a system of data collection which can be disaggregated by gender and cross-referenced to highlight instances of intersectionality.⁵⁴ In particular, the IHRC raised concerns about the lack of data on rural women at risk of poverty.⁵⁵ Recalling General Recommendation No. 34 on the rights of rural women, which highlights the importance of disaggregated data on the situation of rural women,⁵⁶ the Commission regrets that the State has not responded to the Committee's request for data on rural women.⁵⁷ Analysis of data collection reveals that 'the key issue both nationally and across the EU emerges as an absence of harmony between equality legislation and (equality) data collection'.⁵⁸ Deficiencies in the data collection systems, particularly the lack of an effective ethnic identifier and ineffective data collection in the area of gender-based violence, arose frequently throughout the Commission's CEDAW consultation.⁵⁹

⁵³ *Combined sixth and seventh periodic reports of States parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, 16 September 2016, para. 21. More information on the Women and Men in Ireland data series is available at: <http://www.cso.ie/en/statistics/womenandmeninireland/>

⁵⁴ Irish Human Rights Commission (2005), *Submission to the UN Committee on the Elimination of Discrimination against Women in respect of Ireland's combined 4th and 5th periodic reports*, at 27, available at: https://www.ihrec.ie/app/uploads/download/pdf/submission_cedaw.pdf

⁵⁵ Irish Human Rights Commission (2005), *Submission to the UN Committee on the Elimination of Discrimination against Women in respect of Ireland's combined 4th and 5th periodic reports*.

⁵⁶ CEDAW (2016) *General Recommendation No. 34 on the rights of rural women*, para 93.

⁵⁷ CEDAW (2016) *List of issues and questions prior to the submission of the combined sixth and seventh periodic reports of Ireland*. para. 23. The Committee asked the State to provide information on strategy and supports to increase rural women's access to health, education, justice, employment, economic development initiatives and ownership of land and to promote their participation in decision-making.

⁵⁸ Barry and Feeley (2016) *Comparative review of equality data collection practices in the EU*.

⁵⁹ This issue arose at each of the Commission's regional consultation

The Commission regrets that the State has failed to respond to the Committee's questions in relation to intended improvements to the State's data collection with respect to policy development and measurement of implementation of the Convention. The Commission is of the view that improvements to data collection systems will also prove crucial to the fulfilment of public bodies' duty to eliminate discrimination, promote equality and protect human rights.⁶⁰

Recommendations:

The Commission recommends that the Department of An Taoiseach in conjunction with the Central Statistics Office consider the design of guidelines on data collection in order to support the implementation of the Public Sector Duty set out in section 42 of the Irish Human Rights and Equality Commission Act 2014.

The Commission recommends that relevant data sets related to CEDAW and other international human rights instruments be provided to the Inter-Department Committee on Human Rights on a regular basis in order to ensure effective monitoring of the implementation of human rights treaties such as CEDAW.

events. It was also raised in written submissions from the Dublin Rape Crisis Centre and Women's Aid.

⁶⁰ This duty is set out in section 42 of the *Irish Human Rights and Equality Commission Act 2014* and has been in force since 1 November 2014. The operation of the duty in Ireland to date is discussed in more detail below.

1.6 Human Rights and Equality Training

The Commission notes that the common core document provides some information on promoting awareness of human rights among public officials, including the Irish Prison Service, An Garda Síochána (Irish police force) and members of the Defences Forces.⁶¹ The State Report outlines some of the activities undertaken by the judiciary through the Committee for Judicial Studies.⁶² Many of these activities include informal training and participation in conferences. In its parallel report to the UN Committee on the Rights of the Child, the Commission noted that members of the judiciary have used their judgments in individual cases to develop guidelines which would be of broad interest to members of the judiciary on the whole – for example, in one case the presiding judge set out a list of guidelines on the role of the child in family proceedings.⁶³

The Commission acknowledges that this model of judicial training may be subject to change with the proposed establishment of a Judicial Council as envisaged in the General Scheme of the Judicial Council Bill.⁶⁴ The Commission is of the view that this may present an opportunity to embed training on international human rights and equality standards into ongoing judicial learning and education.

Recommendation:

The Commission recommends that the State develop guidelines, for example in the form of a bench book, and ensure that training is provided for judges and court staff on gender equality and intersectionality.

⁶¹ *Common core document forming part of the reports of States parties: Ireland* (2014), HRI/CORE/IRL/2014, paras. 135–143.

⁶² *Combined sixth and seventh periodic reports of States parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, 16 September 2016, para. 28.

⁶³ IHREC (2015) *Ireland and the United Nations Convention on the Rights of the Child: Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland's Combined Third and Fourth Periodic Reports*, pp 8–9. In a judicial separation case Abbott J set out key guidelines he adhered to when talking to the children involved, in which he drew upon his experience of 'networking and conferencing with judicial peers, lawyers, academics and professional experts, both nationally and internationally'. See *O'D v O'D* [2008] IEHC 468, para 10. Available: <http://www.bailii.org/ie/cases/IEHC/2008/H468.html> The Government-appointed Special Rapporteur on Child Protection, Dr Geoffrey Shannon, has recommended the publication of formal judicial guidelines. The recommendations are set out in section 4.1.4 of Geoffrey Shannon, *Sixth Report of the Special Rapporteur on Child Protection*, January 2013. Available: <http://www.dcy.gov.ie/documents/Publications/SixthRapporrtourReport.pdf>

⁶⁴ Available: <http://www.justice.ie/en/JELR/General%20Scheme%20Judicial%20Bill.pdf/Files/General%20Scheme%20Judicial%20Bill.pdf>

Section 2: Legal Framework on Gender Equality (Article 2)

As a Trans woman I face extreme pressures by society to present as cisgender, and to conform to a purely female form, yet there are non-binary Trans people who do not fit the 'norm'

Recalling General Recommendation No. 33 on access to justice, the Commission is of the view that a robust legal framework plays an integral role in the advancement of gender equality and women's rights and notes that states may not use domestic laws as justification for the failure to implement international obligations.⁶⁵

While the common core document provides an overview of the constitutional, political and legal, structure of the Irish State,⁶⁶ including the human rights legal framework,⁶⁷ it does not provide an explanation of the legislative process. The Commission is concerned that it can take a number of years before a legislative proposal is operationalised and that there is no official consolidation of the statutory law, which impedes access to justice. The legislative process and the status at the time of writing of key legislative proposals in Appendix 2 should be read alongside this section.

Recommendations:

The Commission recommends that when a Minister introduces proposed legislation to parliament they must include a proposed timetable of when the legislation will come into effect.

The Commission recommends that the State invest resources in the production of official consolidations of legislation in order to advance access to justice for all.

65 CEDAW (2010) *General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/GC/28.

66 *Common core document forming part of the reports of States parties: Ireland* (2014), HRI/CORE/IRL/2014, paras. 35–75.

67 *Common core document forming part of the reports of States parties: Ireland* (2014), HRI/CORE/IRL/2014, paras. 85–99.

2.1 Concept of Discrimination in Irish Law

During the last reporting cycle, the IHRC expressed concern about stereotyping in Article 41.2 of the Constitution of Ireland, which refers to the role of women, about the definition of discrimination in Article 40.1 of the Constitution of Ireland, and about the need for gender inclusive language in the Constitution of Ireland as a whole.⁶⁸ The Committee recommended constitutional reform to address these issues.⁶⁹ Constitutional protection of gender equality was considered by a parliamentary committee in 2006.⁷⁰ In 2013, the Convention on the Constitution⁷¹ considered the treatment of gender equality as well as Article 41.2 of the Constitution of Ireland.⁷² The Minister for Justice and Equality then established a departmental task force to examine the report, and the task force recommended that the Department of Justice and Equality pursue the issue of gender-neutral language in the Constitution with the Office of the Attorney General.⁷³ The task force also recommended that the Department of Justice and Equality undertake further examination of whether an explicit provision on gender equality or a non-discrimination clause should be included in the Constitution.

68 Irish Human Rights Commission (2005), *Submission to the UN Committee on the Elimination of Discrimination against Women in respect of Ireland's combined 4th and 5th periodic reports*, para. 2.7.

69 UN Committee on the Elimination of Discrimination against Women (2005) *Concluding comments: Ireland*, CEDAW/C/IRL/CO/4-5, paras. 24–25.

70 All-Party Committee on the Constitution (2006) *Tenth Progress Report: The Family*, Dublin, Stationery Office, available at: <http://archive.constitution.ie/reports/10th-Report-Family.pdf>

71 The Convention on the Constitution was established by a resolution of the two houses of the Oireachtas (parliament) and consisted of 100 individuals, 66 citizens selected at random from the population, 33 politicians, and an independent chairperson. See: Convention on the Constitution (2013) *Second report of the Convention on the Constitution*, available: <https://www.constitution.ie/AttachmentDownload.ashx?mid=268d9308-c9b7-e211-a5a0-005056a32ee4>

72 Article 41.2 of the Constitution of Ireland is discussed in section 5 of this report on stereotyping.

73 Department of Justice and Equality (2016) *Report of the Task Force on Implementation of the Recommendations of the Second Report of the Convention on the Constitution*, p. 24, available: http://www.justice.ie/en/JELR/TaskForceReport_Impl-2nd-Rpt-Conv-Constit.pdf/Files/TaskForceReport_Impl-2nd-Rpt-Conv-Constit.pdf

With respect to statutory law, the Commission welcomes the expansion of the scope of equality legislation to include discrimination on the ground of housing assistance.⁷⁴ While this is a positive step towards recognition of the socio-economic inequalities in Ireland, respondents to the Commission's CEDAW consultation indicated that given the high demand for private rented accommodation, landlords often tend not to rent to individuals in receipt of the housing assistance.⁷⁵ In its 2015 submission to the UN Committee on Economic, Social and Cultural Rights, the Commission had recommended the inclusion of discrimination on the basis of socio-economic status as a ground of discrimination.⁷⁶

The Commission also notes the proposal currently before parliament to amend the equality legislation to explicitly prohibit discrimination against trans and intersex persons.⁷⁷ These measures amount to positive reforms, although the equality framework is not yet in full compliance with Article 2 of the Convention, which requires State parties to 'legally recognise intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them'.⁷⁸ Under the equality framework an individual may bring proceedings on one or more of the nine grounds of discrimination, yet there is no provision for 'compound' discrimination where each ground adds to the other ground.⁷⁹ Therefore, clarity should be provided in relation to multiple discrimination.

74 *The Equality (Miscellaneous Provisions) Act 2015* made amendments to equality legislation to prohibit discrimination in the provision of accommodation against persons in receipt of social welfare payments to assist with housing.

75 This view was expressed by individuals working in community development organisations who attended the Commission's regional consultation events.

76 IHREC (2015) *Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to the UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review*, para. 4.1.1. Available: https://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf

77 Heads 10 and 11 of the draft *Equality /Disability (Miscellaneous Provisions) Bill 2016*. The Commission submitted observations on the general scheme of this legislation to members of both Houses of the Oireachtas.

78 CEDAW (2010) *General Recommendation No. 28 on the core obligations of States parties under article 2*, para. 18.

79 European Commission (2016) *Country report: Ireland – Gender equality: How are EU rules transposed into national law*, p. 12. Available: http://ec.europa.eu/justice/gender-equality/files/ge_country_reports_d1/2015-ie-country_report_ge_final.pdf

During the reporting period, concern has been expressed about the interpretation of indirect discrimination by the Irish courts,⁸⁰ particularly the requirement to produce statistical evidence which may create an 'onerous evidential barrier for indirect discrimination' in cases where such statistics may not be readily available.⁸¹ Recalling General Recommendation No. 28 on the core obligations of States Parties, the Committee defines indirect discrimination as follows:

Indirect discrimination against women occurs when a law, policy, programme or practice appears to be neutral in so far as it relates to men and women, but has a discriminatory effect in practice on women because pre-existing inequalities are not addressed by the apparently neutral measure.⁸²

Recommendations:

The Commission recommends that the State progress implementation of the recommendations of the departmental task force to include gender neutral language and an explicit provision on gender equality in the Constitution of Ireland.

The Commission recommends that the equality legislation be amended to include a definition of multiple discrimination and to expand the scope to prohibit discrimination on the ground of socio-economic status in all areas covered by the legislation.

80 *Stokes v Christian Brothers High School Clonmel* [2015] IESC 13.

81 Quinlivan (2015), 'Stokes v Christian Brothers High School: An exercise in splendid isolationism?' 18(2) *Irish Journal of European Law*, p. 91.

82 CEDAW (2010) *General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, para. 16.

2.2 Availability of Effective Remedies

General Recommendation No. 33 on access to justice states that 'good quality of justice states systems requires ... appropriate and effective remedies that are enforced and that lead to sustainable gender-sensitive dispute resolution for all women'.⁸³

Remedies are available both at common law and in statute in Ireland. In the context of statutory law, the Commission is mandated to keep the effectiveness of human rights and equality legislation under review, namely the *European Convention on Human Rights Act 2003*, the *Employment Equality Acts 1998–2015* and the *Equal Status Acts 2000–2015*.⁸⁴ Having conducted an analysis of this legislation, the Commission is of the view that the following four examples provide an illustration of the limits of the effectiveness of existing remedies available at common law and in statute in relation to gender equality and women's rights. The Commission has previously raised concerns about the availability of effective remedies in Irish law to the UN Human Rights Committee.⁸⁵

Example 1 – Civil action for damages

In *O'Keeffe v Ireland*⁸⁶ the European Court of Human Rights held there had been a violation of Article 3 of the European Convention on Human Rights as regards the State's failure to protect the applicant from sexual abuse by a teacher in her primary school in 1973. The Court also held that there had been a violation of Article 13 of the Convention on account of the lack of an effective remedy as regards the State's failure to fulfil its obligation to protect the applicant. The Commission has been monitoring Ireland's efforts to implement the judgment.⁸⁷ The State Claims Agency

has now adopted a policy that it will offer out of court settlements only to survivors of child sexual abuse who can demonstrate that their circumstances involved abuse by a primary or post-primary school employee in respect of whom there was a prior complaint of sexual abuse to a school authority. In October 2016, the Commission criticised the State's interpretation of the judgment and submitted a request to the Council of Europe that the case of *O'Keeffe v Ireland* be referred back to the European Court of Human Rights, as the Commission believes the State has adopted an unduly narrow approach to the category of 'victim'.⁸⁸ Further discussion of the remedies available in cases of historical abuses of women's rights are set out in section 3 of this report.

Example 2 – Compensation cap in equality cases

Irish equality law places an upper limit on the amount of compensation that may be awarded to a victim of discrimination.⁸⁹ Similar limitations on compensation in other EU Member States have been found to be incompatible with EU law.⁹⁰ This has led to Ireland's compliance with EU law being questioned, particularly

Ministers for the supervision of the execution of judgments and of the terms of friendly settlements. Available at: https://www.ihrec.ie/app/uploads/2016/10/O-Keeffe-v-Ireland_Communication-to-Committee-of-Ministers.pdf

⁸⁸ Communication of the Irish Human Rights and Equality Commission to the Committee of Ministers in the case of *O'Keeffe against Ireland* (Application No. 35810/09). Available: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b193c>

⁸⁹ Section 82(4) of the *Employment Equality Acts 1998–2015* provides that the maximum amount that can be paid in compensation is the greater of 104 weeks' pay or €40,000 where the complainant was in receipt of remuneration at the time of the referral of the claim or at the date of dismissal, or in any other case €13,000. Section 27(2) of the *Equal Status Acts 2000–2015* provides that the maximum amount of redress is the amount that may be awarded by the District Court, currently €15,000.

⁹⁰ In *Marshall v Southampton & South-West Hampshire Area Health Authority (No.2)* [1993] European Court Reports I-4367 the Court of Justice of the European Union held that the setting of a national upper limit on the award of compensation was not permissible as this could not properly fulfil the requirement that a remedy must be effective. EU equality law requires the provision of effective, proportionate and dissuasive remedies: Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, Article 17; Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 15; Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services, Article 14; Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), Article 25 – Article 18 of the Recast Directive also prohibits the fixing of a prior upper limit of compensation except in relation to cases involving access to employment.

⁸³ CEDAW (2015) *General Recommendation No. 33 on women's access to justice*.

⁸⁴ Sections 10(2)(b) and 30(1)(a)–(b) of the *Irish Human Rights and Equality Commission Act 2014*.

⁸⁵ IHRC (2014) *Irish Human Rights Commission 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*, pp. 13–14, available: <https://www.ihrec.ie/app/uploads/download/pdf/20140616113130.pdf>

⁸⁶ *O'Keeffe v Ireland* (App 35810/09), Decision of 28 January 2014.

⁸⁷ On 12 October 2015, the IHREC submitted a communication to the Council of Europe, in accordance with the Rules of the Committee of

in relation to the question of 'whether the legislation includes real and effective compensation'.⁹¹ In gender discrimination cases, the complainant may refer their case to Circuit Court,⁹² where compensation is not limited⁹³ but the individual may face other barriers such as increased costs, particularly if the claim is lost.

Example 3 – Effectiveness of equality framework to challenge legislation

The Commission also has concerns about the limitations of the equality framework in Ireland.⁹⁴ Section 14 of the *Equal Status Acts 2000–2015* precludes the equality framework from being used to challenge other laws that are discriminatory. This issue was raised in *G v Department of Social Protection*⁹⁵ relating to benefit payments to a woman who had a child by way of a surrogacy arrangement. In the High Court it was found that the appellant had been discriminated against because she could not bear her own child, but she was excluded from any redress for that discrimination by virtue of the fact that the payment she was seeking was created by statute, thus taking it outside the scope of the *Equal Status Acts*.⁹⁶

91 European Commission (2016) *Country report: Ireland – Gender equality: How are EU rules transposed into national law*, p. 47. Available at: http://ec.europa.eu/justice/gender-equality/files/ge_country_reports_d1/2015-ie-country_report_ge_final.pdf

92 Section 77(3)(b) of the *Employment Equality Acts 1998–2015*; Section 21(1A) of the *Equal Status Acts 2000–2015*.

93 Section 82(3) of the *Employment Equality Acts 1998–2015*; Section 27(5) of the *Equal Status Acts 2000–2015*.

94 These concerns were echoed by the Free Legal Advice Centres, an independent voluntary organisation promoting equal access to justice, in their written submission to the Commission's CEDAW consultation.

95 *G v Department of Social Protection* [2015] IEHC 419. The Equality Authority, later the IHREC, provided legal assistance to Ms. G in accordance with section 40 of the *Irish Human Rights and Equality Commission Act 2014*.

96 Irish Human Rights and Equality Commission press release, 'IHREC recommends changes to Equal Status Acts following High Court decision on maternity benefit claim'. Available at: <https://www.ihrec.ie/ihrec-recommends-changes-to-equal-status-acts-following-high-court-decision-on-maternity-benefit-claim/>

Example 4 – Effectiveness of human rights framework to challenge legislation

The European Convention on Human Rights Act 2003 provides for a particular set of remedies, including compensation and a declaration of incompatibility. Following the conclusion of a number of legal cases, the lawyer representing a trans woman in her application for a birth certificate made the following comments about the effectiveness of the available remedies:

The ECHR Act is inadequate to deliver that protection where the domestic law itself is at fault and where the only remedy is a Declaration of Incompatibility. A process that can take eight years to bring about change following a clear and unequivocal declaration by the High Court is neither effective nor acceptable. Provision for compensation with no publicly available criteria or rules of procedure is also unsatisfactory.⁹⁷

Following this case, the *Gender Recognition Act 2015* came into operation in September 2015, which represents a positive development for gender equality. However, the Act requires that an application be made to the Minister for Justice and Equality for a Gender Recognition Certificate on behalf of a 16 or 17 year old child and does not provide for the recognition of the preferred gender of a person under 16 years of age.⁹⁸ The Commission recommended in its parallel report to the UN Committee on the Rights of the Child that the legislation be amended to allow young people aged 16 and over to make an application under the legislation themselves, subject to appropriate safeguards and that research be undertaken on the needs of trans and intersex children to inform future policy on gender recognition.⁹⁹

97 Michael Farrell (2015) 'Foy case highlights need to strengthen European Convention on Human Rights Act' *PILA Bulletin*, available at: <http://www.pila.ie/resources/bulletin/2015/07/29/guest-article-by-flac-s-senior-solicitor-michael-farrell-foy-case-highlights-a-need-to-strengthen-european-convention-on>

98 Sections 8, 9 and 12 of the *Gender Recognition Act 2015*. Available at www.oireachtas.ie/documents/bills28/acts/2015/a2515.pdf During the Commission's consultation on CEDAW, representations were received from the Transgender Equality Network Ireland (TENI), a non-governmental organisation, on the impact of this legislation on trans young people.

99 IHREC (2015) *Report to the UN Committee on the Rights of the Child on Ireland's combined third and fourth periodic reports*, p. 15, available: https://www.ihrec.ie/app/uploads/download/pdf/ireland_and_the_united_nations_convention_on_the_rights_of_the_child.pdf

Recommendations:

The Commission reiterates the views set out in its submissions to the Council of Europe's Committee of Ministers and recommends that the State review its narrow interpretation of the O'Keeffe judgment to ensure that all victims of sexual abuse have the right to an effective remedy irrespective of whether there was a prior complaint of abuse.

The Commission recommends that the Department of Justice and Equality consider the following amendments of equality legislation:

- amend section 14 of the Equal Status Acts 2000–2015 to allow equality legislation to be used to challenge other potentially discriminatory laws; and
- amend section 82(4) of the Employment Equality Acts 1998–2015 and section 27(2) of the Equal Status Acts 2000–2015 to ensure that the amount of compensation that may be awarded by a court is not limited.

The Commission recommends that the State review the effectiveness of the remedies provided for in the European Convention on Human Rights Act 2003. The Commission suggests that section 5(3) of the 2003 Act may be amended to require parliamentary action, such as the holding of a parliamentary debate, on a declaration of incompatibility.

The Commission reiterates its recommendations to the UN Committee on the Rights of the Child, calling for the Gender Recognition Act 2015 to be amended to allow young people aged 16 and over to make an application under the legislation themselves, subject to appropriate safeguards.

2.3 Accessibility of Effective Remedies

Recalling General Recommendation No. 33 on access to justice, it is recommended that States remove economic barriers to justice by providing a legal aid system which is 'accessible, sustainable and responsive to the needs of women ... provided in a timely, continuous and effective manner at all stages of judicial or quasi-judicial proceedings'.¹⁰⁰

2.3.1 Civil legal aid

Legal advice and representation is provided by the Legal Aid Board, primarily in family law matters, subject to qualifying criteria.¹⁰¹ Legal aid is not provided free of charge in civil matters, which can prove to be a significant barrier for women, particularly in circumstances of domestic violence.¹⁰²

In 2013, despite the detrimental impact of austerity measures on those with low incomes, the minimum financial contribution for legal representation under the civil legal aid scheme was raised from €50 to €130.¹⁰³ Civil society organisations have noted that since the increase, legal aid has become inaccessible for many women, and that there have been more requests to charitable organisations to cover the fee.¹⁰⁴ While a fee waiver system is provided for in

cases of 'undue hardship', there is no automatic entitlement to this waiver for victims of domestic violence.¹⁰⁵ Applicants must wait for a decision in respect of their waiver application before court proceedings are filed, which is problematic for victims of domestic violence as any delay can present a real danger to their safety. Frontline services also report that public awareness of the waiver system is low.¹⁰⁶ In 2015, a total of 2,171 applications were made to the Legal Aid Board in connection with domestic violence remedies and 300 waivers were granted.¹⁰⁷

The Commission also notes that resource issues have led to long waiting times for access to legal aid.¹⁰⁸ The Commission also notes the recommendation of the Child Care Law Reporting Project that respondents should have the opportunity to obtain legal representation and the Legal Aid Board should provide such representation where appropriate.¹⁰⁹

2.3.2 Legal assistance for mothers with intellectual disability

Distinct from the legal aid system, other forms of legal assistance are provided to individuals in certain circumstances. Following a case concerning the rights of a mother with an intellectual disability in child care proceedings,¹¹⁰ the Legal Aid Board produced

100 CEDAW (2015) *Committee's General Recommendation No. 33 on women's access to justice*, para. 33.

101 For example an individual may qualify for legal aid if their disposable income is less than €18,000 per annum and disposable capital (other than the home) is less than €100,000. See further: http://www.legalaidboard.ie/lab/publishing.nsf/Content/Civil_Legal_Aid

102 In a submission to the Commission, the Free Legal Advice Centres, a non-governmental organisation, raised concerns about the ability of individuals in receipt of social welfare payments to afford the minimum legal aid contributions. This is discussed in greater detail in section 6.3.2 in relation to Gender Based Violence and legal aid.

103 Regulation 3(d) *Civil Legal Aid Regulations* (SI No 346 of 2013).

104 A number of organisations have expressed concerns regarding the financial imposition posed by civil legal aid fees for victims of domestic violence, including SAFE Ireland, Free Legal Advice Centres, Women's Aid and the Law Society of Ireland. See: Safe Ireland (2014) *Safety in a time of crisis: Priorities for protection women and children impacted by domestic violence*, Athlone: Safe Ireland, p 13; Free Legal Advice Centres (2016) *Accessing Justice in Hard Times*, Dublin: Free Legal Advice Centres, p. 18; Law Society of Ireland (2012) *Access to Justice: A Report of the Legal Aid Taskforce*, Dublin: Law Society of Ireland, p.18; Women's Aid (2014) *Submission to the Legal Aid Board Corporate Plan 2015 – 2018*, Dublin: Women's Aid, p.4.

105 Sections 24, 29(2) of the *Civil Legal Aid Act 1995*.

106 Free Legal Advice Centres expressly stated this in their submission to the Commission during our consultation on CEDAW. In 2015 Free Legal Advice Centres' telephone information service dealt with 330 calls on legal aid, see Free Legal Advice Centres (2016) *Annual Report 2015*, available: http://www.flac.ie/download/pdf/flac_annual_report_2015.pdf?issuul=ignore

107 Minister for Justice and Equality, Frances Fitzgerald TD, 'Written answers', Tuesday, 22 November 2016, available: <https://www.kildarestreet.com/wrans/?id=2016-11-22a.249&s=%22domestic+violence%22+speaker%3A114#g251.r>

108 Legal Aid Board, Annual Report, 2014. Available: [http://www.legalaidboard.ie/lab/publishing.nsf/650f3eec0dfb990fca25692100069854/ab5e7dce1995ba3d80257eba004b33b4/\\$FILE/Annual%20Report%202014.pdf](http://www.legalaidboard.ie/lab/publishing.nsf/650f3eec0dfb990fca25692100069854/ab5e7dce1995ba3d80257eba004b33b4/$FILE/Annual%20Report%202014.pdf)

109 Child Care Law Reporting Project (2015) Final report, Dublin, p. 52 (recommendations 15.3).

110 *Legal Aid Board v District Judge Patrick Brady and the Northern Area Health Board & Others* (March 2007) <http://www.ihrec.ie/legal/amicuscuriae/intellectualdis.html>. The Child Care Law Reporting Project found that 'A disproportionate number of those facing child protection proceedings suffer from cognitive disabilities or mental health problems'. See Child Care Law Reporting Project, 'Launch of final report on cases where children taken into state care', [Press Release], 30 November 2015. Available at <http://www.childlawproject.ie/media/child-care-law-reporting-project/>.

guidelines on assistance in such cases. The guidelines have subsequently been revised but they are not on a statutory footing. The Commission notes that the Child Care Law Reporting Project found that parents with an intellectual disability who came to the attention of social services were being subjected to parenting capacity assessments prior to an early cognitive assessment being carried out. The parent involved in such cases was usually the mother and therefore this practice has a negative impact on women with intellectual disabilities.

2.3.3 IHREC's legal assistance and information functions

In the State Report it is noted that the 'statutory functions of the IHREC include providing practical assistance to persons in vindicating their rights, which contributes to the accessibility of these remedies to disadvantaged groups of women'.¹¹¹ Under section 40 of the *Irish Human Rights and Equality Commission Act 2014*, a person may apply to the Commission for assistance in relation to legal proceedings involving human rights or equality. The Commission may decide to grant such assistance on certain criteria, including that the matter to which the proceedings relate raises a question of principle. Before making a decision as to the grant of assistance, the Commission must consider whether the assistance sought could be obtained under the *Civil Legal Aid Act 1995*, the *Criminal Justice (Legal Aid) Act 1962* or by any other means.¹¹²

The Commission also provides information on human rights and equality generally. In accordance with section 30 of the *Irish Human Rights and Equality Commission Act 2014* an information team within the Commission is responsible for providing information both on what the law says about a particular right and also information on the relevant redress mechanisms, including providing referrals to other bodies where this is appropriate. From 1 January 2016 to 1 December 2016 the information team dealt with a number of queries that had a gender dimension - 31 of the 331 queries (9 per cent) under the *Equal Status Acts 2000–2015* and 60 of the 292 queries (21 per cent) under the *Employment Equality Acts 1998–2015*.

¹¹¹ *Combined sixth and seventh periodic reports of States parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, 16 September 2016, para. 31.

¹¹² Section 40(3) of the *Irish Human Rights and Equality Commission Act 2014*.

Recommendations:

The Commission recommends that the minimum contribution fee for civil legal aid be reviewed, particularly in light of the Legal Aid Board's Public Sector Duty obligations, and that the Legal Aid Board be adequately resourced to ensure that waiting times are reduced.

The Commission recommends that the State review the Legal Aid Board's system of waiver to ensure it operates in a transparent and effective manner and does not prevent individuals from accessing legal aid due to their economic circumstances. It is recommended that this review be carried out with particular reference given to the situations of victims of domestic violence in order to ensure that they are able to access justice and protection in a timely way.

The Commission recommends that the *Civil Legal Aid Act 1995* be amended in order to place the Legal Aid Board's guidelines on assistance to persons with an intellectual disability on a statutory footing.

Section 3: Access to Justice in Relation to Historical Abuses of Women's Rights (Articles 2(c), 3, 5(a) and 15)

I am discriminated
now as I am outside
the remit of the
Mother and Baby
Home inquiry

In its List of Issues, the Committee asked about the provision of remedies for women who suffered abuse in Magdalene laundries and in mother and baby homes and for women who were subjected to symphysiotomy procedures. The Committee's questions echo many of the concerns and recommendations expressed by a number of UN treaty monitoring bodies in recent years.¹¹³ These concerns were also highlighted during the Commission's CEDAW consultation.¹¹⁴ The inadequacy of the steps taken by the State to provide effective remedies for victims was also documented in the Commission's submission to the Pre-Sessional Working Group in October 2015.¹¹⁵

3.1 State Obligations with Respect to Access to Justice and Effective Remedies

Recalling General Recommendation No. 33 on access to justice, the Committee recommends that State parties 'exercise due diligence to prevent, investigate, punish and provide reparation for all crimes committed against women, whether by State or non-State actors'.¹¹⁶ In its General Comment No. 31, the UN Human Rights Committee highlights 'the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies'.¹¹⁷ Article

13 of the European Convention on Human Rights requires a 'mechanism to be available for establishing any liability of State officials or bodies for acts or omissions in breach of the Convention and that compensation for the non-pecuniary damage flowing therefrom should also be part of the range of available remedies'.¹¹⁸ Article 47 of the Charter of Fundamental Rights of the European Union is modelled on Article 13 of the European Convention on Human Rights but 'is more extensive since it guarantees the right to an effective remedy before a court'.¹¹⁹ The right to an effective remedy was recognised as forming part of Irish constitutional law in *Efe v Minister for Justice, Equality and Law Reform*, where it was held that 'the combined effect of Articles 34.1, 34.3.1, 40.3.1 and 40.3.2, coupled with a wealth of case law, is to demonstrate that the Constitution provides litigants with such a remedy'.¹²⁰

The Commission notes that in order to fulfil the investigation element of providing an effective remedy, it is possible for the State to establish statutory independent investigations in accordance with the *Commissions of Investigation Act 2004*. This mechanism has been found to meet the standard identified by European Court of Human Rights for an effective remedy.¹²¹ The Commission maintains the view that human rights and equality considerations should be enshrined in the *Commissions of Investigation Act 2004*, in order to ensure that all investigations give due regard to human rights and equality.¹²² Recalling that much of the criticism of the State's approach to historical abuse has centred on the State's inconsistent approach to the establishment of inquiries, the Commission suggests that the *Commissions of Investigation Act 2004*

113 UN Human Rights Committee (2014) *Concluding Observations on Ireland*, para. 10–11; UN Committee against Torture (2011), *Concluding Observations on Ireland*, para. 21; UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations on Ireland*, para. 18.

114 These issues were highlighted during the Commission's regional consultation event in Castlebar, Co. Mayo and by the Irish Council for Civil Liberties and the Association for Improvements in Maternity Services Ireland in their written submissions to the Commission.

115 UN Committee on the Elimination of Discrimination against Women (2016) *List of issues and questions prior to the submission of the combined sixth and seventh periodic reports of Ireland*, CEDAW/C/IRL/QPR/6-7, pp. 7–10.

116 CEDAW (2015) *Committee's General Recommendation No. 33 on women's access to justice*, para. 14.

117 HRC (2004), *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjYoiCfMKoIRv2FVaVzRkMjT-njRO%2bfud3cPvrcM9YR0iW6Txagp3f9kUFpWoq%2fhW%2fTpKi2t-PhZsbEJw%2fGeZRASjdFuuJQRnbJEaUhby31WiQPI2mLFD6ZSwM->

MvmQGVHA%3d%3d

118 *O'Keeffe v Ireland* (App 35810/09), Decision of 28 January 2014.

119 FRA Charterpedia available: <http://fra.europa.eu/en/charterpedia/article/47-right-effective-remedy-and-fair-trial>. See also 'Explanations relating to the Charter of Fundamental Rights', *Official Journal of the European Union*, C303, 14 December 2007, pp. 29–30, available: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2007:303:TOC>.

120 [2011] IEHC 214, para 4.

121 *Nic Gibb v Ireland* (App 17707/10), para. 18. In *Nic Gibb v Ireland* the European Court of Human Rights held that the establishment of an inquiry under the *Commission of Investigations Act 2004* satisfies the requirements of Article 2 ECHR in relation to the provision of an effective remedy.

122 These concerns were raised by the Irish Human Rights Commission in its legislative observation on the *Commissions of Investigation Bill 2003*. See IHRC (2003) *Legislative observation on the Commissions of Investigation Bill 2003*.

should be amended to require a Minister to justify to parliament their decision not to establish a statutory inquiry under the Act.

The Commission notes the decision of Dáil Éireann (the lower house of parliament) on 2 February 2016 to establish a Commission of Investigation to inquire into the alleged abuse of a women with intellectual disabilities at a foster home in Waterford from 1989 to 2009. This follows the investigation of allegations by three separate reports – the final report on the matter highlighted significant gaps in oversight, protection and safeguarding mechanisms on the part of the State, which was recommended should be addressed by the Commission of Investigation.¹²³

Recommendation:

The Commission recommends that the State review the operation of the Commissions of Investigation Act 2004 in order to ensure that human rights and equality considerations are embedded into the statutory framework.

3.2 Magdalene Laundries

When the Government established the non-statutory Inter-Departmental Committee on Magdalene Laundries, it did not prescribe the terms of reference for the inquiry and permitted the Committee to set its own terms of reference, working methods and procedures.¹²⁴ The Commission regrets the State's position, noting in its report to the Committee that 'the Irish Government does not propose to set up a specific Magdalene inquiry or investigation'.¹²⁵

During the Commission's CEDAW consultation, the civil society organisation Justice for Magdalenes Research raised concerns in relation to the implementation of two pieces of legislation that are integral to the provision of redress for women, namely the *Redress for Women Resident in Certain Institutions Act 2015* and the *Assisted Decision-Making (Capacity) Act 2015*. According to Justice for Magdalene's Research, 40 women were deemed to lack capacity and therefore unable to access the Magdalenes Scheme – these applications will only be processed once the *Assisted Decision-Making (Capacity) Act 2015* is fully implemented. Justice for Magdalenes Research has also informed the Commission of its concerns that Magdalene survivors are not being provided with the same standard of healthcare under the *Redress for Women Resident in Certain Institutions Act 2015* that they would receive under the standard medical card procedure.

¹²³ Conor Dignam (2016) *Review of Certain Matters Relating to a Disability Service in the South East*, Department of Health. Available: <http://health.gov.ie/blog/publications/review-of-certain-matters-relating-to-a-disability-service-in-the-south-east/>

¹²⁴ See: [http://www.justice.ie/en/JELR/2013Magdalen-P%20I%20Chapter%20%20Mandate%20\(PDF%20-%20100KB\).pdf/Files/2013Magdalen-P%20I%20Chapter%20%20Mandate%20\(PDF%20-%20100KB\).pdf](http://www.justice.ie/en/JELR/2013Magdalen-P%20I%20Chapter%20%20Mandate%20(PDF%20-%20100KB).pdf/Files/2013Magdalen-P%20I%20Chapter%20%20Mandate%20(PDF%20-%20100KB).pdf)

¹²⁵ *Combined sixth and seventh periodic reports of the State parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, para. 42.

Recommendations:

Recalling the recommendations of various UN treaty monitoring bodies, the Commission urges the State to investigate fully, in line with international human rights standards, the situation of women who were institutionalised in the Magdalene laundries. Following such investigations the State should conduct any relevant criminal prosecutions and provide redress to the victims.

The Commission urges the State to commence the relevant provisions of the *Assisted Decision-Making (Capacity) Act 2015* without delay and to implement the relevant provisions of the *Redress for Women Resident in Certain Institutions Act 2015*.

3.3 Symphysiotomy

In its previous report to the Committee, the Commission noted the publication of the 'Walsh Report' to establish the facts about the use of symphysiotomy and the commencement of an ex gratia payment scheme.¹²⁶ Payment under this scheme required signature of a 'deed of waiver and indemnity' precluding the applicant from further legal recourse against a scheduled list of state and non-state actors, effectively excluding those women unwilling or unable to waive their entitlement to legal recourse.¹²⁷ The scheme concluded in November 2016, and a report published on the operation of the scheme stated that 191 applications out of 590 had been refused.¹²⁸ The Commission notes that this report has been subject to criticism for the tone of comments made with regard to certain applicants under the scheme, and to the actions of human rights defenders campaigning on the issue of symphysiotomy.¹²⁹

¹²⁶ IHREC (2015) Submission to UN CEDAW List of Issues Prior to Reporting on Ireland's Combined 6th and 7th Report under CEDAW, p. 9, available: https://www.ihrec.ie/app/uploads/download/pdf/ihrec_submission_to_cedaw_loipr_2015.pdf

¹²⁷ Symphysiotomy Payment Scheme, Schedule 1 – Deed of Waiver and Indemnity, p. 38. Available at: [http://www.payment-scheme.gov.ie/Symphisotomy/Symphisotomy.nsf/0/A8B200BE1D7D9A6880257D89003DDABA/\\$file/Terms%20of%20The%20Surgical%20Symphysiotomy%20Payment%20Scheme%20-%2010%20Nov%202014.pdf](http://www.payment-scheme.gov.ie/Symphisotomy/Symphisotomy.nsf/0/A8B200BE1D7D9A6880257D89003DDABA/$file/Terms%20of%20The%20Surgical%20Symphysiotomy%20Payment%20Scheme%20-%2010%20Nov%202014.pdf). The deed obliges the signatory to 'irrevocably [...] indemnify and hold harmless' the following scheduled parties: 'Ireland; The Attorney General; The Minister for Health; The Minister of any Government Department in the State; Any other organ of the State; The State Claims Agency; The Health Service Executive; All former Health Boards in the State; All local authorities in the State; All hospitals, nursing homes, former hospitals or former nursing homes in the State whether public, private or otherwise and/or their insurers; All doctors, consultants, obstetricians, surgeons, medical staff, midwives, nursing staff, administrative staff, Boards of Management, associated with all hospitals or nursing homes, former hospitals or former nursing homes in the State whether public, private or otherwise and/or their insurers; The Medical Defence Union and all or any of its members or former members; The Medical Protection Society and all or any of its members or former members; The Medical Missionaries of Mary and/or any Religious Order involved in the running of any hospital and/or their insurers.'

¹²⁸ See Department of Health: *The Surgical Symphysiotomy Ex-Gratia Payment Scheme: report to Minister for Health Simon Harris TD of Judge Maureen Harding Clark*, at <http://health.gov.ie/blog/publications/the-surgical-symphisotomy-ex-gratia-payment-scheme-report/>

¹²⁹ See, for example, Máiréad Enright, 'Notes on Judge Harding-Clark's Report on the Symphysiotomy Payment Scheme' [web page], Human Rights in Ireland, 24 November 2016 (Available at: <http://humanrights.ie/law-culture-and-religion/notes-on-judge-harding-clarks-report-on-the-symphisotomy-payment-scheme/>). Enright says: 'the language the judge uses to describe unsuccessful applicants is entirely inappropriate in a report of this kind. At worst they are chastised for buying into "conspiracy theories", for "unreasonable" reactions, for their anger and disappointment. At best, they are patronised as "suggestive personalities" "amenable to ... emotional

While the conclusion of the scheme does not preclude legal action by those who were not offered or did not accept a payment, the Commission observes that litigation has demonstrated that survivors of symphysiotomy have faced evidential barriers in obtaining an effective remedy through the courts system. The risk of incurring costs also represents a significant barrier to those seeking to obtain an effective remedy through the courts.¹³⁰

The Commission recalls its previous recommendations and the recommendations of the UN Human Rights Committee that the State: establish an independent investigation into symphysiotomy; prosecute those responsible for human rights violations; and provide redress to victims. The State's actions to date with regard to symphysiotomy have not met the standard for 'effective remedy' as per its obligations under Article 2.3 of the International Covenant on Civil and Political Rights.¹³¹ In that regard the Commission does not support the State's assertion in its report to the Committee that the establishment of the ex-gratia payment scheme and access to medical services

contagion" and subject to "acquired group memory" developed through involvement in campaigning organisations; or elderly women sent into "turmoil", not by their experience of symphysiotomy or by the government's attitude to it, but by irresponsible "media reports".' Enright also comments that 'The judge gives an impression of suspicion of campaigning organisations and their lawyers... [undermining] human rights campaigners, group organising, and social justice lawyering in one fell swoop, perhaps forgetting that without the work of these organisations the redress scheme – however flawed – would not have been set up at all, and many women would not have been able to access it'. A similar tone is evident in the media coverage surrounding the report's publication. See for example Paul Cullen, 'Symphysiotomy: the whitewash that never was', *Irish Times*, 23 November 2016, available at: <http://www.irishtimes.com/opinion/symphysiotomy-the-whitewash-that-never-was-1.2878271>

130 *Farrell v Ryan* [2016] IECA 281. This case concerned the performance of a 'prophylactic' antenatal symphysiotomy in 1963, which the plaintiff claimed 'was in the circumstances negligent and that as a result thereof, she has sustained significant personal injuries' (para 1.2). In rejecting the plaintiff's claim in the High Court, Cross J stated: 'I find that the practice of prophylactic symphysiotomy in 1963 was not a practice without justification. It was, indeed, a controversial practice but it was also strongly defended. I find the strength of this defence is such that it is impossible to conclude that the plaintiff has proved her case' (para 11.7). On 6 December 2016 it was reported that following a failed appeal to the Court of Appeal, the plaintiff in this case was ordered to pay the legal costs of the appeal to the defendant, a Dublin maternity hospital. See Mary Carolan, 'Pensioner must pay costs of failed symphysiotomy appeal', *Irish Times*, 6 December 2016, at <http://www.irishtimes.com/news/crime-and-law/courts/high-court/pensioner-must-pay-costs-of-failed-symphysiotomy-appeal-1.2894965>

131 See Human Rights Committee, General Comment No. 31, CCPR/C/21/Rev.1/Add.13, at para. 8. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.13&Lang=en

amounts to 'a comprehensive response to this issue'.¹³²

Recommendation:

Recalling the recommendations of various UN treaty monitoring bodies, the Commission urges the State to investigate fully, in line with international human rights standards, the situation of women who were subjected to the practice of symphysiotomy. Following such investigations the State should conduct any relevant prosecutions and provide redress to the victims.

132 *Combined sixth and seventh periodic reports of the State parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, para. 62.

3.4 Mother and Baby Homes

In 2014 the Commission welcomed the establishment of statutory investigation into mother and baby homes under the *Commissions of Investigation Act 2004*.¹³³ However, the Commission does not support the State's assertion in its report to the Committee that the scope of the investigation is 'broad'.¹³⁴ The Commission previously called for the inquiry to cover all 'Mother and Baby Homes, including Bethany Home, and any analogous institutions which provided for the care of women and their children'.¹³⁵ This also arose during the Commission's CEDAW consultation.¹³⁶

In that regard the Commission welcomes the broad scope of the Clann project – a joint project of the Justice for Magdalene's Research and the Adoption Rights Alliance, which was set up 'to help establish the truth of what happened to unmarried mothers and their children in 20th century Ireland'.¹³⁷ The project is offering legal assistance to anyone with experience of Ireland's treatment of unmarried mothers and their children, even if they do not fall under the list of 18 institutions initially being investigated by the Commission of Investigation.¹³⁸

Recommendation:

The Commission recommends that the scope of the Commission of Investigation into Mother and Baby Homes be widened to include the operation of similar institutions that do not currently fall within the Commission of Investigation's terms of reference. The Commission also calls upon the Commission of Investigation to take all statements submitted to it into consideration in its deliberations, irrespective of whether or not they relate to the 18 named institutions.

133 IHREC Designate (2014) *Submission to proposed commission of investigation to inquire into mother and baby homes* available at: https://www.ihrec.ie/download/pdf/ihrec_designate_submission_on_mother_baby_commission_investigation_june_2014.pdf

134 *Combined sixth and seventh periodic reports of the State parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, para. 49.

135 IHREC Designate (2014) *Submission to proposed commission of investigation to inquire into mother and baby homes*, at 15. Available at: https://www.ihrec.ie/download/pdf/ihrec_designate_submission_on_mother_baby_commission_investigation_june_2014.pdf

136 The Commission received a submission from an individual on the scope of the investigation.

137 See: <http://clannproject.org/about/>

138 More information available at: <http://clannproject.org/2016/06/14/launch-of-major-project-to-assist-with-mother-and-baby-homes-commission-of-investigation/>

Section 4: National Machinery for the Advancement of Women (Article 3)

Women were
disproportionately
affected by austerity
budgets - cuts to
carers allowance
disproportionately
affected women

General Recommendation No. 6 on effective national machinery and publicity describes the national machinery as follows:

Institutions and procedures at a high level of Government, and with adequate resources, commitment and authority to:

- (a) advise on the impact on women of all government policies;
- (b) monitor the situation of women comprehensively;
- (c) help formulate new policies and effectively carry out strategies and measures to eliminate discrimination.¹³⁹

In Ireland no single institution fulfils the functions of the national machinery. For example, the Commission has a broad statutory remit to protect and promote human rights and equality. The Commission also notes the function of the Gender Equality Division of the Department of Justice and Equality set out in the State Report in relation to monitoring national and international commitments with respect to gender equality.¹⁴⁰ The Commission also notes that a number of key agencies which formed part of the national machinery were closed during the reporting period, namely the Women's Health Council, the Combat Poverty Agency, and the National Consultative Committee on Racism and Interculturalism. During the Commission's CEDAW consultation, it was suggested that the State should consider establishing a Department for Women.¹⁴¹

4.1 Public Sector Duty

The Public Sector Duty, set out in section 42 of the *Irish Human Rights and Equality Commission Act 2014*, came into effect on 1 November 2014. It requires all public bodies in the performance of their functions, including budgetary functions, to eliminate discrimination, promote equality of opportunity and treatment, and protect human rights.¹⁴² In particular, public bodies are required to provide an assessment of the human rights and equality issues relevant to their functions in their strategy statements and are also required to provide an update on their activities in each annual report. In June 2016, the Irish Prison Service became the first public body to include an assessment of the human rights and equality issues relevant to the organisation in its Strategic Plan. This included a commitment to 'conform to international standards including those instruments set out by the United Nations as a minimum'.¹⁴³

In accordance with its statutory mandate, the Commission is working closely with public bodies to provide guidance on how they can best meet their statutory obligations. During its CEDAW consultation, the Commission received submissions recommending that the Public Sector Duty be utilised to promote the mainstreaming of gender equality in all areas and sectors.¹⁴⁴ The importance of consultation with civil society in the development of policy was also raised at the Commission's regional consultation events. The Commission is of the view that the Public Sector Duty presents an opportunity for the direct implementation of international human rights norms by public bodies. The Commission also considers that the gender mainstreaming work already undertaken, as outlined in the common core document,¹⁴⁵ may be continued as part of the Public Sector Duty.

¹³⁹ CEDAW (1988) *General recommendation No. 6: Effective national machinery and publicity*.

¹⁴⁰ *Combined sixth and seventh periodic reports of the State parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, para. 65.

¹⁴¹ This was suggested by an anonymous response to the Commission's online survey.

¹⁴² Section 42(1) of the *Irish Human Rights and Equality Commission Act 2014*.

¹⁴³ Irish Prison Service, *Strategic Plan 2016–2018*, p. 5.

¹⁴⁴ Written submission from the Free Legal Advice Centres.

¹⁴⁵ Common Core Document forming part of the reports of States parties: Ireland (2014), HRI/CORE/IRL/2014, paras. 170-173.

In that regard the Commission is of the view that the Public Sector Duty has the potential to become one of the most powerful mechanisms in the State's national machinery for the advancement of women.

Recommendation:

The Commission recommends that, where relevant, public bodies carry out an assessment of gender equality and women's rights issues relevant to their functions in consultation with civil society and report on their progress periodically in compliance with their obligations under section 42 of the Irish Human Rights and Equality Commission Act 2014.

4.2 National Women's Strategy

The *National Women's Strategy 2007–2016* contained three key themes dealing with access to employment, health and social services and participation in political and public life. The Commission is of the view that a number of these themes will remain relevant to the new national women's strategy, which will run until 2020. The Commission acknowledges the Department of Justice and Equality's consultation in the development of the new national women's strategy. The Commission notes the commitment in the State Report that the new integrated framework for social inclusion will draw on the new national women's strategy as well as other new and existing strategies. The Commission is of the view that it is essential that the various action plans and strategies in operation in the State speak to each other in order to ensure the advancement of women's rights and gender equality in a coherent manner.

Recalling the State's examination by the UN Committee on the Rights of the Child, the Commission reiterates the concerns of Committee members who noted that the State must be vigilant to ensure that the vast number of strategies and action plans are effectively implemented. While the implementation of the *National Women's Strategy 2007–2016* was overseen by a monitoring committee, the 2015 progress report did not include any explicit assessment of whether these actions undertaken by various government departments amounted to implementation of the strategy's objectives. Recalling General Recommendation No. 28 on the core obligations of States Parties, the Commission is of the view that the new national women's strategy should contain indicators, benchmarks, timelines, and a monitoring framework.¹⁴⁶

The Commission observes that the 2015 *Progress Report on the National Women's Strategy 2007–2016* noted only four of the 16 Government departments made explicit reference to gender equality in their strategy statements.¹⁴⁷ The Commission recalls that

¹⁴⁶ CEDAW (2010) *General Recommendation No. 28: the Core Obligations of States Parties under Article 2*, para. 24.

¹⁴⁷ Department of Justice and Equality (2015) *Implementing the National Women's Strategy 2007–2016, Progress Report as of 01/05/2015*, available at http://www.genderequality.ie/en/GE/NWS_PrgRpt_05_2015-FINAL.pdf/Files/NWS_PrgRpt_05_2015-FINAL.pdf

in accordance with Article 42(2) of the *Irish Human Rights and Equality Commission Act 2014*, public bodies are required to publish a statement of their efforts to eliminate discrimination, promote equality and protect human rights in their strategy statements. The Commission is of the view that the Public Sector Duty could inform how the gender equality measures to be undertaken in the new national women's strategy can be replicated in departmental strategic planning.

Recommendations:

The Commission recommends that the Department of Justice and Equality should incorporate its assessment of the implementation the National Women's Strategy 2007–2016 and the forthcoming concluding observations of the Committee into the National Women's Strategy 2017–2020. The Commission also recommends that the gender mainstreaming actions to be included in the National Women's Strategy 2017–2020 have regard to the Public Sector Duty.

Recalling General Recommendation No. 28, the Commission recommends that the new national women's strategy should be results oriented with indicators, benchmarks, timelines, and include a framework for monitoring and implementing policy which are adequately resourced.

4.3 Gender Proofing the Budgetary and Policy-Making Processes

The Commission has expressed concern about the impact of the State's austerity measures on groups at risk of poverty and social exclusion, including women, during the reporting period.¹⁴⁸ The Commission's concerns were echoed in a number of submissions received during the consultation on CEDAW.¹⁴⁹

The State Report refers to the commitment in the *Programme for a Partnership Government*¹⁵⁰ to put 'institutional arrangements in place to support equality and gender proofing'¹⁵¹ at both governmental and parliamentary level, which was welcomed by the Commission when it appeared before a temporary parliamentary committee on budget scrutiny in June 2016.¹⁵² While these arrangements were not fully operationalised for Budget 2017, the Commission noted the Government's continued commitment to procedural reform¹⁵³ and notes the publication of the social impact assessment (SIA) of Budget 2017.¹⁵⁴

148 IHREC (2015) *Submission to the Committee on Economic, Social and Cultural Rights*, section 3.1, available: https://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf. See also: F. McGinnity, H. Russell, D. Watson et al (2014) *Winners and Losers? The Equality Impact of the Great Recession in Ireland*, Equality Authority and ESRI, p. 5, available: <https://www.ihrec.ie/download/pdf/20141109163348.pdf>

149 A number of non-governmental organisations addressed this issue, namely the Free Legal Advice Centres, Dublin Rape Crisis Centre, and the Equality Budgeting Campaign.

150 *Programme for a Partnership Government*, p. 6, available: http://www.merrionstreet.ie/merrionstreet/en/imagelibrary/programme_for_partnership_government.pdf

151 *Combined sixth and seventh periodic reports of the State parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, para. 72.

152 Select Committee on Arrangements for Budget Scrutiny, <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/CAB2016062100002?opendocument#A00100> The Committee was also tasked with examining the recommendations of an OECD study: Ronnie Downes and Scherie Nicol (2016), 'Review of budget oversight by parliament: Ireland', *OECD Journal on Budgeting*, vol 16, no. 3, issue 1, pp. 65–111, available: <http://www.oecd-ilibrary.org/content/article/budget-16-5jlv0r0g8zd7>

153 IHREC (2016) *Statement from the Irish Human Rights and Equality Commission on Budget 2017*, available: <https://www.ihrec.ie/statement-irish-human-rights-equality-commission-budget-2017/>

154 Department of Social Protection (2016) *Social impact assessment of the welfare and income tax measures in Budget 2017*, available: <https://www.welfare.ie/en/downloads/SocialImpact2017.pdf>. See also:

The Commission has expressed concern about the limited use of social impact assessments and has recommended wider use of them.¹⁵⁵ In its 2005 Concluding Observations the Committee recommended that the State regularly conduct 'gender impact analysis of all social and economic policies'.¹⁵⁶ The Commission notes the commitment in the *Programme for a Partnership Government* on the 'use of impact assessments across Government, driven by a new specialised section within the Cabinet Secretariat' which will take account of impacts on rural Ireland and socio-economic factors.¹⁵⁷ The Commission is of the view that the development of new impact assessment guidelines, coupled with the Public Sector Duty, presents an opportunity for public bodies to develop and enhance their assessment tools, including social impact assessments and regulatory impact assessments, to ensure due consideration has been given to equality and human rights in the performance of budgetary functions.

Recommendations:

The Commission recommends that the recommendations of the Select Committee on Arrangements for Budgetary Scrutiny be implemented and a national budget proofing committee be established in order to advance the institutional framework for human rights and equality proofing.

Department of Public Expenditure and Reform (2015) *Staff Paper 2016 Social Impact Assessment Framework*, p.5, available: <http://budget.gov.ie/Budgets/2017/Documents/1.%20Social%20Impact%20Assessment%20Framework.pdf>

155 IHREC (2015) *Submission to the Committee on Economic, Social and Cultural Rights*, section 3.1, available: https://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf

156 UN Committee on the Elimination of Discrimination against Women (2005) *Concluding comments: Ireland*, CEDAW/C/IRL/CO/4-5, at para 35.

157 *Programme for a Partnership Government 2016*, p. 42, available: http://www.merriestreet.ie/merriestreet/en/imagelibrary/programme_for_partnership_government.pdf

The Commission recommends that the guidelines and standards for regulatory impact assessments and social and poverty impact assessments be reviewed and the findings, alongside the statutory obligations set out in the Public Sector Duty, be utilised to inform the development of the new impact assessment guidelines committed to in the *Programme for a Partnership Government*.

The Commission recommends that specific budgetary lines be defined by relevant government departments for the implementation of temporary special measures targeted at particular groups of women, such as Traveller and Roma women.

4.4 Public Procurement and Business and Human Rights

The Commission is concerned about the State's practice of subcontracting its functions to non-state actors, in particular the provision of accommodation to asylum seekers, given the potential for weakening of accountability mechanisms and lack of implementation of key human rights and equality principles such as gender equality.¹⁵⁸

Recalling General Recommendation No. 28 on the core obligations of States Parties, the Commission notes that State parties are also obliged to regulate the activities of private actors with regard to 'education, employment and health policies and

158 This is discussed in more detail in section 13.3 of this report. The Commission has previously expressed these concerns in the oral statement of the Commission's Chief Commissioner, Emily Logan, to the UN Committee on Economic, Social and Cultural Rights, June 2015.

practices, working conditions and work standards and other areas in which private actors provide services or facilities such as banking and housing'.¹⁵⁹ The Commission also notes that regulations, which give effect to European Union law that is directly applicable in Irish law, require non-state actors to comply with international agreements in the performance of a public contract.¹⁶⁰

Given the close cooperation between the Committee and the UN Committee on the Rights of the Child,¹⁶¹ the Commission believes that the work of the UN Committee on the Rights of the Child on business and human rights is instructive in this area. For example, in 2016 the Committee on the Rights of the Child recommended that the State 'establish and implement regulations to ensure that the business sector, including in the context of public procurement, complies with international and national human rights'.¹⁶²

The Commission regards the finalisation of the State's forthcoming National Action Plan on Business and Human Rights¹⁶³ as an opportunity for implementation of the treaty body recommendations on public procurement practices as well as the UN Guiding Principles on Business and Human Rights.¹⁶⁴ It also

affords public bodies the opportunity to fulfil Public Sector Duty obligations, which the Commission believes should be met regardless of whether the service is provided directly by the State, or through a non-state actor. In particular, the Commission notes that the National Action Plan presents an opportunity for State to formally commit, through good practices in line with international labour standards such as the ILO Decent Work Agenda, to its positive obligation to prevent labour exploitation. The Commission notes that the ILO Decent Work Agenda refers to discrimination, trafficking and domestic workers rights.¹⁶⁵

Recommendations:

The Commission recommends that the State should ensure that public bodies are aware of European Union law that requires non-state actors to comply with international agreements in the performance of a public contract.

The Commission recommends that the Government give due regard to the UN Guiding Principles on Business and Human Rights and consider the wider application of human rights-based procurement practices in the context of finalising the State's National Action Plan on Business and Human Rights.

159 CEDAW (2010) *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2*, para. 13.

160 Regulation 18(4)(a) of the *European Union (Award Of Public Authority Contracts) Regulations 2016* (SI No 284 of 2016) provides: 'In the performance of a public contract, an economic operator shall comply with applicable obligations in the fields of environmental, social and labour law ... established by European Union law, national law, collective agreements or by international, environmental, social and labour law'. Available: <http://www.irishstatutebook.ie/eli/2016/si/284/made/en/pdf>. These regulations have been in force since 18 April 2016.

161 The Commission is aware that the Committee was the first UN treaty monitoring body to develop a joint General Recommendation with another UN treaty monitoring body when it developed the Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices.

162 UN Committee on the Rights of the Child (2016) *Concluding Observations on the combined third and fourth periodic reports of Ireland*, CRC/C/IRL/CO/3-4, para. 24, available: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/039/97/PDF/G1603997.pdf?OpenElement>

163 Department of Foreign Affairs and Trade (2015) *Working Outline of Ireland's National Plan on Business and Human Rights 2016–2019*. Available: <https://businesshumanrightsireland.files.wordpress.com/2015/12/working-outline-of-irelands-national-plan-on-business-and-human-rights-10-dec-20151.pdf>

164 Office of the High Commissioner for Human Rights (2011) *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, available: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf Guiding principle 6 states: 'States should promote respect for human rights by business enterprises with which they conduct

commercial transactions'.

165 <http://www.ilo.org/global/topics/decent-work/lang--en/index.htm>.

Section 5: Stereotyping (Article 5)

It is embarrassing
that we still have
a Constitution that
pigeon-holes and
stereotypes women

In General Recommendation No. 28 on the core obligations of States Parties, the Committee states that:

Inherent to the principle of equality between men and women, or gender equality, is the concept that all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices.¹⁶⁶

During the Commission's CEDAW consultation women and girls frequently expressed the view that stereotyping, traditional gender roles and prejudice impacted adversely on their lives. The Commission was also informed that such negative experiences are exacerbated in the case of marginalised groups of women.

5.1 Article 41.2 of the Constitution of Ireland

In its List of Issues, the Committee has voiced its concern about the impact of Article 41.2 on 'women's educational choices and employment patterns, and ... low participation in political and public life'.¹⁶⁷ Article 41.2 of the Constitution of Ireland states:

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. 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.

The Commission is concerned that this provision perpetuates stereotypical attitudes towards the role of women in Irish society. The Commission notes repeated calls at both the national and international level to amend or remove Article 41.2 of the Constitution of Ireland.¹⁶⁸ As mentioned in section 2 of this report, both a parliamentary committee¹⁶⁹ and the Convention on the Constitution¹⁷⁰ considered

¹⁶⁷ CEDAW (2016) *List of Issues and questions prior to the submission of the combined sixth and seventh periodic reports of Ireland*, 4 March 2016, CEDAW/C/IRL/QPR/6-7, para. 10.

¹⁶⁸ Recommendations have been made by the following bodies: Commission on the Status of Women (1993) *Report of the Second Commission on the Status of Women*, Dublin: Government Publications, p. 27; Constitution Review Group (1996) *Report of the Constitution Review Group* Dublin: Government Publications, pp. 333–334; The All-Party Oireachtas Committee on the Constitution (2006) *Tenth Progress Report: The Family*, Dublin: Government Publications, p. 127; UN Human Rights Committee (2008), *Concluding Observations on Ireland's Third Periodic Report*, CCPR/C/IRL/CO/3, 2008, para. 10; UN Human Rights Committee (2014), *Concluding Observations on Ireland's Fourth Periodic Report*, CCPR/C/IRL/CO/4, para. 7; Committee on the Elimination of Discrimination against Women (2005) *Concluding Comments: Ireland*, CEDAW/C/IRL/CO/4-5, 2005, paras. 24–25; Irish Human Rights Commission (2005) *Report to the UN Committee on the Elimination of Discrimination against Women (CEDAW)*, Dublin: IHRC, p. 2; Irish Human Rights Commission (2014) *Submission to the UN Universal Periodic Review Mid-Term Report*, Dublin: IHRC, p. 3; IHREC Designate (2014) *Submission to the UN Human Rights Committee on the Examination of Ireland's Fourth Periodic Review under the International Covenant on Civil and Political Rights*, Dublin: IHREC Designate, paras. 36–37.

¹⁶⁹ All-Party Committee on the Constitution (2006) *Tenth Progress Report: The Family*, Dublin, Stationery Office, available at: <http://archive.constitution.ie/reports/10th-Report-Family.pdf>

¹⁷⁰ The Convention on the Constitution consisted of 100 individuals, 66 citizens selected at random, 33 politicians, and an independent chairperson. Convention on the Constitution (2013) *Second report of*

¹⁶⁶ CEDAW (2010) *General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/GC/28, para. 22.

Article 41.2 of the Constitution. The Convention on the Constitution recommended:

A change to the Constitution to amend the clause and, if making such a change, a majority recommended that it should be gender neutral to include other carers in the home and that it should also include carers beyond the home.¹⁷¹

As mentioned in section 2 of this report, a task force established by the Minister for Justice and Equality recommended two options for 'modernising the provisions of Article 41.2 of the Constitution, broadening their scope and introducing gender-neutral language'.¹⁷² The Commission notes that the options provided by the task force would require a referendum on amending the Constitution, which the Government has committed to in the *Programme for a Partnership Government* in 2016.¹⁷³ The Commission is of the view that constitutional reform is necessary in order to address stereotyping concerning the roles and responsibilities of women and men in the family and in society and encourages the Government to call a referendum on Article 41.2 of the Constitution of Ireland without delay.

Recommendation:

Recalling the State's commitment in the Programme for a Partnership Government in 2016, the Commission urges the State to publish a timeline with respect to the holding of a referendum on Article 41.2 of the Constitution of Ireland.

the Convention on the Constitution, available: <https://www.constitution.ie/AttachmentDownload.ashx?mid=268d9308-c9b7-e211-a5a0-005056a32ee4>

171 Convention on the Constitution (2013) *Second report of the Convention on the Constitution*, p. 4, available: <https://www.constitution.ie/AttachmentDownload.ashx?mid=268d9308-c9b7-e211-a5a0-005056a32ee4>

172 Department of Justice and Equality (2016) *Report of the Task Force on Implementation of the Recommendations of the Second Report of the Convention on the Constitution*, p. 24, available: http://www.justice.ie/en/JELR/TaskForceReport_Impl-2nd-Rpt-Conv-Constit.pdf/Files/TaskForceReport_Impl-2nd-Rpt-Conv-Constit.pdf

173 Commitments to constitutional reform are set out in *A Programme for a Partnership Government* (2016), p. 153.

5.2 Measures Taken to Address Stereotypes

In its 2005 Concluding Observations, the Committee recommended the State address the perpetuation of gender stereotypes through 'sensitisation and training of all educational actors and sustained awareness-raising campaigns'.¹⁷⁴ In its List of Issues, the Committee asked the State to report on measures undertaken during the reporting period to eliminate stereotypical attitudes towards women and girls. The Commission notes that the State Report refers to some activities undertaken by the former Equality Authority during the reporting period¹⁷⁵ but did not respond to the Committee's question on measures targeted at 'those who experience multiple forms of discrimination such as Traveller, Roma and migrant women'.¹⁷⁶

The Commission welcomes the efforts undertaken by the Defence Forces in 2016 to attract female recruits particularly through the use of social media and online and cinema advertising.¹⁷⁷ Although the Defence Forces is not a public body for the purposes of the Public Sector Duty,¹⁷⁸ the Commission is of the view that this recruitment campaign is a good practice example of the steps that public bodies may take to promote equality of opportunity which is required by the Public Sector Duty.

Recalling General Recommendation No. 33 on access to justice, the Commission notes that the Committee has recommended that States 'take measures, including awareness-raising and capacity-building programmes for all justice system personnel and law students, to eliminate gender stereotyping and

174 UN Committee on the Elimination of Discrimination against Women (2005) *Concluding comments: Ireland*, CEDAW/C/IRL/CO/4-5, para. 25.

175 *Combined sixth and seventh periodic reports of the State parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, para. 84.

176 CEDAW (2016) *List of Issues and questions prior to the submission of the combined sixth and seventh periodic reports of Ireland*, 4 March 2016, CEDAW/C/IRL/QPR/6-7, para. 10.

177 *Combined sixth and seventh periodic reports of the State parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, para. 85.

178 Section 2 of the *Irish Human Rights and Equality Commission Act 2014*.

incorporate a gender perspective into all aspects of the justice system'.¹⁷⁹ While the State Report provides information on the participation of women in the justice system, particularly at senior levels, it does not address the issue of stereotyping and gender bias in the justice system. A survey conducted by the Bar Council of Ireland in 2016 found that 67 per cent of female barristers encountered direct or indirect discrimination and a significant proportion reported either 'personal experience of, or an awareness of, casual sexism or sexual harassment'.¹⁸⁰ One respondent to the survey stated 'despite it being 2016 – it is still very much a male-dominated environment'.¹⁸¹ It was suggested by respondents to the survey that a set of guidelines should be published to tackle discrimination faced by female barristers and that effective complaint mechanisms and training be put in place.¹⁸²

Recommendations:

The Commission recommends that the Department of Justice and Equality include in its new National Women's Strategy educational and awareness-raising activities to tackle gender stereotypes, for both public servants and the general public.

In line with the Committee's General Recommendation No. 33, in particular the need to address gender stereotyping in the justice system, the Commission recommends that the Legal Services Regulatory Authority and the Minister for Justice and Equality consider the findings of the study by the Bar Council with a view to developing an action plan to address the issues identified.

179 CEDAW (2015) *General recommendation No. 33 on women's access to justice*, para. 29.

180 Aedamair Gallagher, 'Women's Issues?' (2016) *Bar Review* 21(2), p. 52, available: https://issuu.com/thinkmedia/docs/thebarreview_april2016_web-small/11?e=1242192/35062654

181 Aedamair Gallagher, 'Women's Issues?' (2016) *Bar Review* 21(2), p. 52, available: https://issuu.com/thinkmedia/docs/thebarreview_april2016_web-small/11?e=1242192/35062654

182 Aedamair Gallagher, 'Women's Issues?' (2016) *Bar Review* 21(2), p. 53, available: https://issuu.com/thinkmedia/docs/thebarreview_april2016_web-small/11?e=1242192/35062654

5.3 Gender Stereotyping in the Media and in Advertising

In its 2005 Concluding Observations, the Committee recommended that Ireland should 'encourage the media to project a positive image of women and of the equal status and responsibilities of women and men in the private and public spheres'.¹⁸³

There are a number of bodies that regulate advertising in Ireland. The advertising industry is self-regulated in Ireland by the Advertising Standards Authority of Ireland (ASAI). In 2007 the ASAI published updated guidelines on standards in advertising¹⁸⁴ which require marketing communications to respect the principle of gender equality and to avoid sex stereotyping and any exploitation or demeaning of men and women.

A 2007 study commissioned by the Equality Authority found that the manner in which goods are designed for and marketed at children can impact negatively on gender equality in the following areas: the sexualisation of girls; incitement of gender rivalry (extending in some cases to incitement to violence); practices of exclusion; casting of judgements; and limiting of possibilities.¹⁸⁵

The Commission considers that advertising should be regulated by a statutory regulator, such as the Broadcasting Authority of Ireland, in order to ensure that standards are implemented and that sanctions may be imposed. Gender stereotyping and discriminatory treatment should form a central part of the Broadcasting Authority of Ireland's Code of Programme Standards and General Advertising Code.¹⁸⁶

183 UN Committee on the Elimination of Discrimination against Women (2005) *Concluding comments: Ireland*, CEDAW/C/IRL/CO/4-5, para. 25.

184 Advertising Standards Authority for Ireland (2007) *Manual of Advertising Self-Regulation with the Code of Standards for Advertising, Promotional and Direct Marketing in Ireland*, available at: <http://www.asai.ie/asai-code/>

185 Maryann Valiulis, Aoife O'Driscoll and Jennifer Redmond (2007) *An Introduction to Gender Equality Issues in the Marketing and Design of Goods for Children*, Dublin: Equality Authority, available at: http://www.ihrec.ie/download/pdf/an_introduction_to_gender_equality_issues_in_the_marketing_and_design_of_goods_for_children.pdf

186 Department of Justice and Equality (2015) *Implementing the National Women's Strategy 2007–2016*, Progress Report as of

The Press Ombudsman was established in 2008 and it is independent of government and the media. The Press Council has 13 members. Seven members, including the chair, are independent members, who are appointed following a public competition. The remaining six members are drawn from the press industry.¹⁸⁷ The Code of Practice, governing the print media and associated digital press, includes the following statement on prejudice:

The press shall not publish material intended or likely to cause grave offence or stir up hatred against an individual or group on the basis of their race, religion, nationality, colour, ethnic origin, membership of the travelling community, gender, sexual orientation, marital status, disability, illness or age.¹⁸⁸

There are no positive action measures to require the press to portray positive images of women in the media. In its opinion on breaking gender stereotypes in the media, the European Commission's Advisory Committee on Equal Opportunities for Women and Men suggests that media organisations should adopt positive action measures to integrate a gender dimension into their work and national and EU institutions could develop media monitoring projects.¹⁸⁹

01/05/2015, p. 79 available at: http://www.genderequality.ie/en/GE/NWS_PrgRpt_05_2015-FINAL.pdf/Files/NWS_PrgRpt_05_2015-FINAL.pdf

187 See: <http://www.presscouncil.ie/office-of-the-press-ombudsman-164>.

188 Press Council of Ireland, *Code of Practice Principle 8 – Prejudice*, available at <http://www.presscouncil.ie/code-of-practice>

189 Advisory Committee on Equal Opportunities for Women and Men (2010) *Opinion on Breaking gender stereotypes in the media*, available: http://ec.europa.eu/justice/gender-equality/files/opinions_advisory_committee/2010_12_opinion_on_breaking_gender_stereotypes_in_the_media_en.pdf

Recommendations:

Recalling the 2007 report on Gender Equality Issues in the Marketing and Design of Goods for Children, the Commission recommends that the State consider introducing statutory guidelines on gender equality for the advertising and marketing industry.

Recalling the recommendations of the European Commission's Advisory committee on Equal Opportunities, the Commission recommends that the State undertake a media monitoring project, including social media, in order to assess the portrayal of women, particularly marginalised groups of women, in Irish media.

Section 6: Gender-Based Violence (Articles 2, 5, 11, 12 and 16)

There is a huge
problem with
unreported
sexual violence
in this country

The prevalence of violence against women in Ireland¹⁹⁰ featured prominently as an issue of concern throughout the Commission's CEDAW consultation.¹⁹¹ While Ireland was considered in an EU-wide survey,¹⁹² there has not been any comprehensive assessment of gender-based violence since the Sexual Abuse and Violence in Ireland Report (SAVI Report) in 2002.¹⁹³ In 2005 the Committee raised concerns about the prevalence of violence against women and urged the State to 'take all necessary measures to combat violence against women'.¹⁹⁴

The Commission acknowledges the legal,¹⁹⁵ policy¹⁹⁶ and institutional¹⁹⁷ measures taken to address violence against women during the reporting period, particularly the *Criminal Law (Sexual Offences) Bill 2015*¹⁹⁸ and the action plan towards ratification of the Council of Europe's Istanbul Convention.¹⁹⁹

190 According to statistics from SAFE Ireland, a non-governmental organisation, one in every three women experience severe psychological violence and one in every four experience physical and sexual violence from a male partner. Safe Ireland (2016) *The state we are in: Towards a safe Ireland for women and children*, p. 6, available at: <http://www.safeireland.ie/safeireland-docs/STATE-WE-ARE-IN-SAFE-IRELAND.pdf>

191 In the Commission's online survey, gender-based violence accounted for 10.1% of all issues that were raised.

192 EU Agency for Fundamental Rights (2014), *Violence against Women: An EU-wide Survey*, available at <http://fra.europa.eu/en/vaw-survey-results>

193 The Commission notes that when the Irish parliamentary Committee on Justice and Equality examined Ireland's implementation of the EU Victims' Directive, it called for a second report on SAVI to be commissioned. See: <http://www.oireachtas.ie/parliament/mediazone/pressreleases/2015/name-30065-en.html>. The Commission also notes that in 2016, Dublin City Council prepared a report on a scoping study on sexual harassment and other forms of sexual violence against women and girls in public space: *Report of scoping study for Dublin City Council safe city programme*, Dublin: 2016.

194 UN Committee on the Elimination of Discrimination against Women (2005) *Concluding comments: Ireland*, CEDAW/C/IRL/CO/4-5, para. 29. This has been reiterated by other UN treaty monitoring bodies following the examination of Ireland during the reporting period, see UN Human Rights Committee (2014) *Concluding observations on the fourth periodic report of Ireland*, CCPR/C/IRL/CO/4, para. 8.

195 *Combined sixth and seventh periodic reports of State parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, para. 88. The extension of the scope of the Domestic Violence Act 1996, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRL/CEDAW_C_IRL_6-7_5954_E.pdf

196 *Second National Strategy on Domestic, Sexual and Gender-Based Violence 2016–2021*, available at: <http://www.cosc.ie/en/COSC/Second%20National%20Strategy.pdf/Files/Second%20National%20Strategy.pdf>

197 In 2007 COSC, the National Office for the Prevention of Domestic, Sexual and Gender-based Violence, was established. See <http://www.cosc.ie/en/COSC/Pages/WP08000082>.

198 *Criminal Law (Sexual Offences) Bill 2015* available at <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2015/7915/document1.htm>

199 Ireland signed the Convention on 5 November 2015 and published

However, many issues remain and new challenges must be addressed, such as those posed by information and communication technologies as well as cyberspace.²⁰⁰

Recommendations:

Building on the survey carried out by the EU Agency for Fundamental Rights, the Commission recommends that the State commission and publish updated research on sexual abuse and violence in Ireland following on from SAVI 2002.

Recalling action 3.200 of the Second National Strategy on Domestic, Sexual and Gender-Based Violence 2016–2021, the Commission recommends that Cosc review the relevant concluding observations of the Committee and integrate them into the Strategy.

an accompanying action plan towards ratification. See: Department of Justice (2015) *Istanbul Convention Action Plan*. Available: <http://www.justice.ie/en/JELR/ActionPlanIstanbulConNovember.pdf/Files/ActionPlanIstanbulConNovember.pdf>

200 The European Commission's Advisory Committee on Equal Opportunities has identified cyber violence, cyberbullying, cyber harassment, cyberstalking and sexist hate speech as key challenges in the digital age, available at: http://ec.europa.eu/justice/gender-equality/files/opinions_advisory_committee/151126_final_digital_opinion_en.pdf. The Commission is aware that the Committee is currently updating General Recommendation 19 and has highlighted the challenges posed by ICT and cyberspace in that process. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/19/Add.1&Lang=en

6.1 Legal Framework on Gender-Based Violence

In its 2015 submission to the Committee, the Commission raised concerns about gaps in the legal framework, and the investigation and prosecution of offences.²⁰¹ Since then, research suggests that breaches of court orders to protect women from domestic violence 'go unpunished' and that 'discretion and stereotyping is integral to the way in which a women can be viewed and treated'.²⁰² The Commission considers that forthcoming legislation to implement the EU Victims' Directive,²⁰³ the draft *Criminal Justice (Victims of Crime) Bill*, presents an opportunity to address this since it aims to establish minimum standards on the rights, support and protection of victims of crime.²⁰⁴

A 2014 parliamentary report on domestic and sexual violence proposed law reform in this area,²⁰⁵ some of which could be advanced in the forthcoming Domestic Violence Bill. Reforms that could be made include: the need to enshrine a definition of

gender-based violence in statute; the criminalisation of psychological and emotional harm; and the introduction of emergency barring orders to ensure access to protection when the courts are not sitting.²⁰⁶ The Commission notes the commitment to consider the removal of the cohabitation requirement for Safety Orders, in order to provide protection for individuals in intimate dating relationships,²⁰⁷ and the introduction of an offence of forced marriage.²⁰⁸

In its 2005 Concluding Observations, the Committee remarked that insufficient information had been provided in respect of sexual harassment.²⁰⁹ According to the results of an EU-wide survey, young women (18–29 years old) are particularly at risk of cyberstalking and 11 per cent of survey respondents had been victims of cyber harassment at some time since the age of 15.²¹⁰ Respondents to the Commission's consultation were particularly concerned about the lack of a framework to deal with online forms of harassment and stalking.²¹¹ The Law Reform Commission has recommended that existing criminal law on harassment and the existing offence of sending threatening and intimidating messages be reformed to take account of online activity.²¹² The

201 IHREC (2015) *Submission to UN CEDAW List of Issues Prior to Reporting on Ireland's Combined 6th and 7th Report under CEDAW*, paras. 30–31. On the investigation of offences see: Garda Síochána Inspectorate (2014) *Report of the Garda Síochána Inspectorate: Crime Investigation Report*, p. 17, available: <http://www.gsinsp.ie/en/GSINSP/Crime%20Investigation%20-%20Full%20Report.pdf/Files/Crime%20Investigation%20-%20Full%20Report.pdf> Throughout the Commission's CEDAW consultation, concerns were raised regarding the statutory framework around gender-based violence and the adequacy and approaches of law enforcement in dealing with allegations. The civil society organisation Women's Aid focused on this in the written submission it provided.

202 Safe Ireland (2016) *The state we are in 2016: Towards a safe Ireland for women and children*, p. 16, available: <http://www.safeireland.ie/safeireland-docs/STATE-WE-ARE-IN-SAFE-IRELAND.pdf>

203 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, *Official Journal of the European Union*, L 315, 14 November 2012, pp. 57–73.

204 Articles 22 and 23 of the Directive allow for special measures to be put in place for victims of gender-based violence. The draft legislative proposal, the *General Scheme of the Criminal Justice (Victims of Crime) Bill*, does not currently refer to any specific supports for victims of gender-based violence, available: [http://www.justice.ie/en/JELR/CRIMINAL%20JUSTICE%20\(Victims%20of%20Crime\)%20BILL%202015.pdf/Files/CRIMINAL%20JUSTICE%20\(Victims%20of%20Crime\)%20BILL%202015.pdf](http://www.justice.ie/en/JELR/CRIMINAL%20JUSTICE%20(Victims%20of%20Crime)%20BILL%202015.pdf/Files/CRIMINAL%20JUSTICE%20(Victims%20of%20Crime)%20BILL%202015.pdf)

205 Joint Committee on Justice, Equality and Defence (2014), *Report on hearings in relation to domestic and sexual violence*, available: http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/about/31stdail/jde-committee/reports/

206 Joint Committee on Justice, Equality and Defence (2014), *Report on hearings in relation to domestic and sexual violence*, available: http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/about/31stdail/jde-committee/reports/

207 The Minister for Justice and Equality stated in response to a parliamentary question that this was under consideration by her Department, available: <https://www.kildarestreet.com/wrans/?id=2016-09-28a.97&s=Bill+speaker%3A114#g99>. This has been identified as an area of concern for both legal practitioners and service providers. See: Bergin-Cross (2013) 'Anomalies of the Domestic Violence Act 1996 and the need for reform', 176(4) *Irish Journal of Family Law*, pp. 117–123, at 120. Women's Aid made a written submission to the IHREC's consultation on CEDAW and highlighted the fact that 38 women who availed of their one-to-one services in 2015 were in a dating relationship and had never cohabited with the abuser.

208 Fiach Kelly, 'Cabinet approval sought to make forced marriage a crime', *Irish Times*, 4 October 2016, available: <http://www.irishtimes.com/news/politics/cabinet-approval-sought-to-make-forced-marriage-a-crime-1.2815377>

209 UN Committee on the Elimination of Discrimination against Women (2005) *Concluding comments: Ireland*, CEDAW/C/IRL/CO/4-5, para. 28.

210 European Union Agency for Fundamental Rights (2014) *Violence against women: an EU-wide survey – Main results*, Luxembourg: Publications Office of the European Union.

211 For example, Women's Aid, a national organisation working to stop domestic violence, raised this issue. This was also raised in responses received to the Commission's online survey and it was raised during regional meetings.

212 Law Reform Commission (2016) *Report on Harmful Communications and Digital Safety*, available at: http://www.lawreform.ie/_fileupload/Reports/Full%20Colour%20Cover%20Report%20on%20Harmful%20Communications%20and%20Digital%20Safety.pdf

Law Reform Commission also recommended the introduction of two new criminal offences to deal with the posting online of intimate images without consent, including intentional victim-shaming activities such as 'revenge porn', and 'upskirting' or 'down-blousing', which are described as new types of voyeurism.²¹³

The Commission is also concerned about the vulnerability of migrant women who are victims of domestic violence given the lack of a clear legal framework that allows women to apply for an independent immigration status and provides pathways to lawful residence for women who become undocumented.²¹⁴ In light of this, the Commission regrets that Ireland has decided not to opt-in to the EU Directive on the Right to Family Reunification,²¹⁵ and that the Government has not yet revised the immigration law framework, despite repeated commitments to do so.²¹⁶

This report also considered the 2014 Report of Internet Content Governance Advisory Group. See Department of Communications, Energy and Natural Resources (2014) *Report of Internet Content Governance Advisory Group*, available at: <http://www.dccae.gov.ie/communications/Lists/Publications%20Documents/InternetContentGovernanceAdvisoryGroupReport.pdf>

213 Law Reform Commission (2016) *Report on Harmful Communications and Digital Safety*, Dublin: Law Reform Commission, available: http://www.lawreform.ie/_fileupload/Reports/Full%20Colour%20Cover%20Report%20on%20Harmful%20Communications%20and%20Digital%20Safety.pdf

214 Section 4(7) of the *Immigration Act 2004* provides that an application for residence may be made to the Minister for Justice which may be granted only at the Minister's discretion.

215 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, *OJ L 251, 3.10.2003, p. 12–18*. Article 15 of the Directive provides for an autonomous residence permit to be granted to a family member independent of that of the sponsor following a period of residence up to five years.

216 *Programme for a Partnership Government* (2016), p. 103. The Government committed to introducing a 'comprehensive Immigration and Residency Reform Bill, aimed at modernising Ireland's visa and residency systems'.

Recommendations:

The Commission recommends that the Government publish and enact necessary legislation, namely the Criminal Justice (Victims of Crime) Bill and the Domestic Violence Bill, to ensure timely ratification of the Council of Europe's Istanbul Convention. Forthcoming legislation should include clear definitions of gender-based violence, introduce emergency barring orders, and afford protection to all individuals, including those who are not cohabiting with the perpetrator.

The Commission recommends that the proposals to reform the law on harassment that are set out in the Law Reform Commission's 2016 Report on Harmful Communications and Digital Safety be taken into account in the development of a legal response to the issue of cyber harassment and abuse.

The Commission recommends that Ireland opt-in to the EU Directive on Family Reunification and introduce implementing legislation in order to ensure that victims of domestic violence may be granted autonomous residence permits. Legal arrangements for undocumented women who are victims of domestic violence should also be considered.

6.2 Availability and Accessibility of Accommodation for Victims of Domestic Violence

The Commission notes that the recognition of victims of gender-based violence as a specific group in the EU Victims' Directive²¹⁷ has been described as a strength of the Directive because it creates an opportunity to ensure that specialist services are fully accessible.²¹⁸ During the reporting period, a number of UN treaty monitoring bodies have called on the State to increase accessibility and availability of support services for victims of domestic violence.²¹⁹ While funding to specialist services was increased in 2016, it is estimated that an additional annual investment of €30 million is required to address gaps in services following cuts endured by the sector during the recession.²²⁰

217 Article 9(3) of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime recognises that specialist support services 'shall develop and provide: (a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation;

(b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.' Recital 17 of the Directive also recognises that 'women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence'.

218 European Institute for Gender Equality (2016) *An analysis of the Victims' Rights Directive from a gender perspective*, p. 32, available: http://eige.europa.eu/sites/default/files/documents/mh0115698enn_0.pdf

219 In its 2011 Concluding Observations, the UN Committee against Torture urged the State to enhance its support and funding of support services provided to victims. Additionally, in July 2015, the UN Committee on Economic, Social and Cultural Rights called on Ireland 'to strengthen supports, including legal aid, for victims of domestic violence'. During Ireland's May 2016 examination under the Universal Periodic Review mechanism, seven UN member states recommended that state legal aid services for victims of domestic violence in Ireland be strengthened.

220 Safe Ireland (2016) *The State we are in: Towards a safe Ireland for women and children*, p. 11, available at: <http://www.safeireland.ie/safeireland-docs/STATE-WE-ARE-IN-SAFE-IRELAND.pdf> The Dublin Rape Crisis Centre informed the Commission during its CEDAW consultation that the organisation had endured 7 years of consecutive funding cuts.

6.2.1 Emergency Accommodation

In 2016 it was reported that women are now living in refuges for up to 18 months due to a number of factors, including lack of supply in the Irish housing market. This has resulted in 4,831 unmet requests for emergency accommodation.²²¹ Service providers attending the Commission's regional consultation meetings also echoed this experience.²²²

The Commission notes that the State Report states that current provision is in compliance with international standards.²²³ In its 2016 Concluding Observations, the UN Committee on the Rights of the Child expressed concern about the 'insufficient refuge accommodation for victims of domestic violence' and recommended that the State provide 'sufficient 24-hour refuge accommodation'.²²⁴ During the Commission's CEDAW consultation, it became apparent that the lack of emergency accommodation in a number of regions in the State may lead to multiple discrimination against rural women who are victims of domestic violence. Adequate provision is required by the Istanbul Convention.²²⁵ For example, at a regional consultation event in Co. Monaghan, in one of five regions that does not have a refuge, a domestic violence support worker informed the Commission that on an occasion in 2016 the closest available emergency accommodation was 165 kilometres from a victim's home.

221 Safe Ireland (2016) *The state we are in: Towards a safe Ireland for women and children*, p. 6, 15–16, available at: <http://www.safeireland.ie/safeireland-docs/STATE-WE-ARE-IN-SAFE-IRELAND.pdf>

222 This was discussed in depth at each of regional meetings, in Letterkenny, Tralee, Castlebar and Monaghan.

223 *Combined sixth and seventh periodic reports of the State parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, para. 100.

224 UN Committee on the Rights of the Child (2016) *Concluding Observations on the combined third and fourth periodic reports of Ireland*, CRC/C/IRL/CO/3-4, paras. 38(b)–(c).

225 Article 23 of the Istanbul Convention states: 'Parties shall take the necessary legislative or other measures to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children.' The *Explanatory Report to the Istanbul Convention* explains that 'sufficient numbers' means recommends 'safe accommodation in specialised women's shelters, available in every region, with one family place per 10 000 head of population'. Available: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a>

The Commission regrets that, in response to a parliamentary question, the relevant Minister has stated that there are no plans to provide refuges in the Monaghan region.²²⁶

During its CEDAW consultation, the Commission was informed of specific barriers facing victims of domestic violence with specific needs which lead to multiple discrimination. For example, women with addiction issues have been refused access to refuges²²⁷ and Deaf women are not always provided with interpreters when accessing domestic violence services.²²⁸ The Commission has also received information that due to demands on services, eligibility for social security is used as a criterion for access to emergency accommodation, which presents difficulties for migrant women, Traveller women and Roma women who cannot satisfy a test, known as the 'habitual residence condition'.²²⁹

Recommendations:

The Commission recommends that the State increase the number and geographical spread domestic violence refuges. The Commission reiterates its previous recommendations to the UN Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights that 'necessary welfare and supports services should be provided to particularly vulnerable victims of domestic violence; and, where relevant, separate residence permits should be provided'.²³⁰

226 Minister for Children and Youth Affairs, Katherine Zappone TD, 'Written answer: Domestic Violence Refuges Provision', 27 September 2016, available: <https://www.kildarestreet.com/wrans/?id=2016-09-27a.2674&s=%22domestic+violence%22+AND+%22funding%22#g2676.r>

227 This issue arose during a focus group meeting with women accessing the SAOL Project's services. The SAOL Project is a person-centered, community based programme for women in treatment for drug addiction.

228 This was raised in our consultation in a submission from National Deaf Women of Ireland Association.

229 This concern was expressed by non-governmental organisations working directly with migrant women, Traveller women and Roma women, namely the Immigrant Council of Ireland, Nasc The Irish Immigrant Support Centre, and Migrant Rights Centre Ireland.

230 IHREC Designate (2014) *Irish Human Rights Commission Submission*

6.2.2 Social housing

During the Commission's CEDAW consultation, it emerged that the ongoing housing and homelessness crisis is having a disproportionately negative effect on victims of domestic violence.²³¹ A parliamentary committee on housing and homelessness has recommended that housing authorities develop policies regarding the victims of domestic violence, and that they address their needs with 'flexibility and fluidity'.²³²

Domestic violence is not a specific factor housing authorities must consider in the assessment of an applicant as being homeless under the *Housing Act 1988*.²³³ As a result of this omission, housing authorities have taken disparate approaches to assessing the applications of victims of domestic violence, with some not considering their situations as emergency cases.²³⁴ Regulations under the *Housing Acts 1966–2009* state that a person shall be ineligible for social housing if they have alternative accommodation that they could reasonably be expected to use to meet their housing need.²³⁵

This covers situations where the alternative accommodation is owned or co-owned by them and it is vacant. Where the alternative accommodation is occupied, the person is still expected to use this to meet their housing need, unless they were married to the current occupant and are now divorced or legally separated. The Commission is of the view

to the UN Human Rights Committee on the Examination of Ireland's Fourth Periodic Report under the International Covenant on Civil and Political Rights, Dublin: IHREC Designate, pp. 21–22, available: <https://www.ihrec.ie/download/pdf/20140616113130.pdf>; IHREC (2015) *Ireland and the International Covenant on Economic, Social and Cultural Rights*, section 7.1.4 and section 8.2.

231 This was raised in written submissions from Women's Aid and Focus Ireland and at regional consultation meetings, which were attended by service providers. This has also been criticised by UN treaty monitoring bodies during the reporting period: IHREC (2015) *Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review*, para. 7.1.4; IHREC Designate (2014) *Report on Ireland's 4th Periodic Report under the International Covenant on Civil and Political Rights*, Dublin: IHREC Designate, pp. 21–22.

232 Committee on Housing and Homelessness (2016) *Report of the Committee on Housing and Homelessness* June 2016 p. 121. This temporary parliamentary committee was established to address the housing and homelessness crisis in Ireland.

233 Section 2 of the *Housing Act 1988*.

234 SAFE Ireland (2014) *Safety in a time of crisis: Priorities for protecting women and children impacted by domestic violence*, p. 10, available at <http://www.safeireland.ie/wp-content/uploads/Safe-Ireland-Safety-in-a-Time-of-Crisis-.pdf>

235 *Social Housing Assessment Regulations 2011* (SI No 84 of 2011).

that the operation of the alternative accommodation condition is unreasonable since it fails to take into account situations where accommodation is unsafe on account of risk of domestic violence.

Regulations on the provision of social housing require a person to apply to the housing authority in whose functional area they either have normal residency, or to which they have a local connection.²³⁶ Housing authorities are permitted to assess applications from people who do not meet these criteria, but this remains at their discretion. These requirements of residency or local connection conflict with the needs of victims, as considerable distance from their former residence may be necessary to ensure their safety.

Recommendations:

The Commission recommends that housing authorities develop clear policies in relation to applications for social housing from victims of domestic violence. In assessing these, the conditions pertaining to residency or local connection should be disregarded, and victims' housing needs should be prioritised.

The Commission recommends that section 2 of the *Housing Act 1988* be amended to require housing authorities to consider domestic violence when assessing applicants' homelessness. Further, regulations under the *Housing Acts 1966–2009* should be amended to the effect that 'alternative accommodation' for the purposes of housing needs assessment excludes accommodation that is unsafe because of risk of domestic violence.

6.3 Multiple Discrimination and Violence Motivated by Prejudice

Research carried out by the Immigrant Council of Ireland on Muslim communities in Dublin found that Muslim women are three times more likely to suffer from verbal and physical violence in public spaces than Muslim men.²³⁷

In a study of hate crime in Ireland, it was found that 'in expressing their gender trans women also encounter sexism and a system that debases femininity'.²³⁸ A self-reporting mechanism revealed that 18 victims, of whom 17 respondents identified themselves as trans, non-binary or agender, identified themselves as a target of transphobia in 2015.²³⁹

The Commission acknowledges that while the Office for the Promotion of Migrant Integration (OPMI) monitors racially motivated incidents, it is unclear how the OPMI uses this information in the absence of a clear anti-racism and integration strategy to underpin its activities.²⁴⁰ While the Commission also notes that the Department of Justice and Equality is currently reviewing the operation of the *Prohibition on Incitement to Hatred Act 1989*,²⁴¹ the Commission remains concerned the National Action Plan Against Racism lapsed in 2008. However, legislative and policy reform is urgently required to address all incidents of hate crime.²⁴²

²³⁷ Carr (2016), *Islamophobia in Dublin: Experiences and how to respond*, Dublin: Immigrant Council of Ireland.

²³⁸ Jennifer Schweppe & Dr. Amanda Haynes (2016) 'LGB and T? Distinctions between sexuality and gender with regard to the specificity of transphobic hate crime', in Haynes, Schweppe, and Taylor (eds.) *Critical Perspectives on Hate Crime: An Irish Perspective*, London: Palgrave Macmillan. (forthcoming).

²³⁹ Information provided by the Transgender Equality Network Ireland during the Commission's CEDAW consultation.

²⁴⁰ See further IHREC (2015) *Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review*, at section 4.3.

²⁴¹ Minister for Justice and Equality Frances Fitzgerald TD, Parliamentary Questions: Written Answers, [12935/16], 31 May 2016. Available: <https://www.kildarestreet.com/wrans/?id=2016-05-31a.487&s=review+incitement+to+hatred#g489.r>. In *The Prohibition of Incitement to Hatred Act 1989* the word 'hatred' is defined as 'hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation'.

²⁴² Jennifer Schweppe & Dr. Amanda Haynes (2015) *Out of the*

²³⁶ *Social Housing Assessment Regulations 2011*, (SI No 84 of 2011).

Recommendation:

The Commission recommends that law, policy and practice be reformed in order to ensure hate crimes are robustly addressed in the State. Equality and hate crime legislation should also be amended to cover acts targeted at individuals based on actual or perceived sex characteristics, gender identity and gender expression.

6.4 Female Genital Mutilation

The Commission welcomes a number of legal, policy and institutional developments put in place during the reporting period to address female genital mutilation (FGM) in Ireland. In particular the *Criminal Justice (Female Genital Mutilation) Act 2012*²⁴³ criminalises the commission of FGM on a girl or woman in Ireland and it is also an offence to remove a girl or woman to a place outside the State for the purpose of FGM. However, concerns were expressed by Action Aid during the Commission's CEDAW consultation that it is difficult to monitor the implementation of the legislation, particularly the extraterritorial application of the Act. In September 2016 it was reported that a man was arrested under section 4 of the Act in relation to an alleged incident.²⁴⁴

The Commission also welcomes the establishment in 2014 of a dedicated clinic to treat girls and women who have undergone FGM, which was opened by the Irish Family Planning Association at the Everywoman Centre in Dublin city centre. However,

Shadows: Legislating for Hate Crime in Ireland, ICCL & University of Limerick.

²⁴³ *Criminal Justice (Female Genital Mutilation) Act 2012* Available at: <http://www.irishstatutebook.ie/eli/2012/act/11/enacted/en/html>

²⁴⁴ Alan O'Keeffe, 'Gardai arrest man as part of investigation into alleged case of female genital mutilation' *Irish Independent*, 23 September 2016, available at: <http://www.independent.ie/irish-news/gardai-arrest-man-as-part-of-investigation-into-alleged-case-of-female-genital-mutilation-35074821.html>

the Commission notes the concerns raised during its CEDAW consultation that the only such clinic is based in Dublin and is not easily accessible for individuals living outside the capital, particularly in relation to asylum seeking women and girls living in direct provision centres who face barriers in relation to transport costs in light of the small cash allowance provided to them by the State.²⁴⁵

The Commission also acknowledges the efforts of civil society in laying the groundwork for the development of a national action plan to address FGM²⁴⁶ but is not aware of this work being implemented by any government department to date.

Recommendations:

The Commission recommends that the relevant government department review the operation of the FGM clinic in order to assess the demand for access to similar services elsewhere in Ireland and consider whether women can be supported to travel to the specialised clinic where necessary.

The Commission recommends that the relevant government department review the work carried out by civil society in order to advance the publication of a national action plan on FGM.

²⁴⁵ Adults who are living in direct provision centres receive €19.10 per week.

²⁴⁶ The civil society members of the National Steering Committee published two documents: *Ireland's National Action Plan to Address FGM 2008–2011 and Towards a National Action Plan 2016–2019*.

Section 7: Trafficking and Exploitation of Prostitution (Article 6)

Banning the purchase of sex won't eliminate the abuses of the sex industry – Public education campaigns are needed to discourage men from buying sex

In its 2005 Concluding Observations, the Committee expressed concern about the lack of information on the extent of trafficking in women and girls into Ireland and called on the State to introduce a comprehensive strategy and put in place the necessary measures to support victims of trafficking.²⁴⁷ The Commission welcomes the progress in this area during the reporting period, which includes the transposition of the EU Directive on trafficking into domestic law²⁴⁸ and the implementation of the first national action plan.²⁴⁹ Ireland has also undergone its First Evaluation Round by the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA)²⁵⁰ and the Second Evaluation Round occurs at the end of 2016.²⁵¹

7.1 Legal and Policy Framework on Human Trafficking

In its submission to the Committee during the List of Issues Prior to Reporting process, the Commission highlighted gaps in the legislative and policy framework on human trafficking, particularly in relation to the identification and non-punishment of victims as well as legal support and remedies for victims.²⁵² These concerns were echoed by individuals and organisations during the Commission's CEDAW consultation.²⁵³

On 17 October 2016, the Second National Action Plan to Prevent and Combat Human Trafficking in Ireland was published.²⁵⁴ The Plan contains 65 actions and includes commitments to review existing practice and procedure in relation to supports provided to victims²⁵⁵ as well as the possibility of putting a National Rapporteur in place.²⁵⁶ The commitment to review the identification process is to be welcomed,²⁵⁷ but the Commission remains concerned about the operation of the administrative immigration arrangements, which was found to be inadequate by the High Court for the purpose of transposing the EU Directive on Trafficking.²⁵⁸

²⁵² IHREC (2015) *Submission to the Committee on the Elimination of All Forms of Discrimination against Women*, available: https://www.ihrec.ie/app/uploads/download/pdf/ihrec_submission_to_cedaw_loipr_2015.pdf

²⁵³ The issue of human trafficking was raised in written submissions from the civil society organisations Ruhama, Migrant Rights Centre Ireland, the Immigrant Council of Ireland, and Nasc The Irish Immigrant Support Centre.

²⁵⁴ Department of Justice and Equality (2016) *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland*, Dublin: Department of Justice and Equality, available: http://justice.ie/en/JELR/2nd_National_Action_Plan_to_Prevent_and_Combat_Human_Trafficking_in_Ireland.pdf/Files/2nd_National_Action_Plan_to_Prevent_and_Combat_Human_Trafficking_in_Ireland.pdf

²⁵⁵ Actions 23 and 24 Department of Justice and Equality (2016) *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland*.

²⁵⁶ Action 65 Department of Justice and Equality (2016) *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland*. The establishment of a National Rapporteur is required by Article 19 of the EU Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

²⁵⁷ Department of Justice and Equality (2016) *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland*.

²⁵⁸ *P v The Chief Superintendent of the Garda National Immigration Bureau & Ors* [2015] IEHC 222. See also: Irish Human Rights and Equality

²⁴⁷ UN Committee on the Elimination of Discrimination against Women (2005) *Concluding comments: Ireland*, CEDAW/C/IRL/CO/4-5, paras. 30–31.

²⁴⁸ *Criminal Law (Human) Trafficking Act 2008*, as amended by the *Criminal Law (Human Trafficking) (Amendment) Act 2013*.

²⁴⁹ Department of Justice and Equality (2009) *National Action Plan on the Prevention and Combatting of Human Trafficking 2009–2012*.

²⁵⁰ GRETA (2013) *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: first evaluation round*, GRETA(2013)15, available: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680631cbe>

²⁵¹ IHREC (2016) *Submission to GRETA in advance of its Second Evaluation Round of Ireland*, available: <https://www.ihrec.ie/app/uploads/2016/12/IHREC-Submission-to-GRETA-2016.pdf>

The Commission also welcomes the commitment to ratification of the Protocol to the International Labour Organisation's Convention No. 29 on Forced Labour, which provides for access to compensation to victims of forced labour irrespective of immigration status.²⁵⁹ During the reporting period, this issue came before the Irish courts and ultimately resulted in the award of compensation to an undocumented migrant.²⁶⁰ The Commission is concerned that victims of labour exploitation are currently not afforded representation for cases before the Workplace Relations Commission under the *Civil Legal Aid Act 1995*.

Recommendations:

The Commission recommends that the identification process be placed on a statutory footing, which should include a clear statement regarding the rights and entitlements that flow from a positive decision. Fair procedures must be afforded to the potential victim throughout the process.

The Commission recommends that statutory rights to assistance, including legal aid, protection and compensation should be available to all potential victims of trafficking, regardless of the potential victim's nationality or immigration status.

Commission (2015) *Outline Submissions of the Amicus Curiae* in the case of: *P v The Chief Superintendent of the Garda National Immigration Bureau, the DPP, Ireland and the Attorney General*, Dublin: Irish Human Rights and Equality Commission, available at: <http://www.ihrec.ie/publications/list/p-v-chief-superintendent-of-the-garda-national-im/>

259 International Labour Organisation (2014) *Protocol of 2014 to the Forced Labour Convention, 1930* http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:3174672:NO

260 *Hussein v The Labour Court* [2015] IESC 58, available: <http://www.courts.ie/Judgments.nsf/597645521f07ac9a80256ef30048ca52/67B-523D012E20C6280257E6F0053FABF?opendocument>. For commentary on the case see: <http://humanrights.ie/economic-rights/mohammad-younis-succeeds-in-the-supreme-court/#more-22032>

7.2 Accommodation of Victims of Trafficking in Direct Provision Centres

As noted in the State Report, accommodation is provided to both victims of human trafficking who are in the asylum system as well as victims who are not provided with accommodation by the Reception and Integration Agency, which is the body responsible for accommodating asylum seekers. This practice has been criticised in the international arena.²⁶¹

In the Commission's view, victims of trafficking should be accommodated in appropriate, single-gender facilities with access to a range of necessary support services, in keeping with the State's obligations of prevention and obligations to provide support services to victims.²⁶² The Commission notes that this issue was raised during the Review of the First National Action Plan 2009–2012²⁶³ and that at a Roundtable on Identification of Victims it was suggested:

261 UN Human Rights Committee (2014) *Concluding Observations on the Fourth Periodic Report of Ireland*, CCPR/C/IRL/CO/4, para. 20, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f4&Lang=en. Council of Europe Group of Experts on Action against Trafficking in Human Beings (2013) *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: First Evaluation Round*, GRETA(2013)15, p. 45, available at: <http://www.coe.int/en/web/anti-human-trafficking/ireland>. OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings (2013) *Report by Maria Grazia Giammarinaro, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, following her visit to Ireland from 30 January to 02 February 2012*, Vienna: Organisation for Security and Cooperation in Europe, p. 5, available at: <http://www.osce.org/cthb/99775>. United States Department of State (2016) *Trafficking in Persons Report 2016*, p. 192, available at: <http://www.state.gov/j/tip/rls/tiprpt/2016/index.htm>.

262 Irish Human Rights and Equality Commission (2014) *Policy Statement on the System of Direct Provision in Ireland*, Dublin: Irish Human Rights and Equality Commission, recommendation No.5, available at: http://www.ihrec.ie/download/pdf/ihrec_policy_statement_on_direct_provision_10dec14.pdf

263 Department of Justice and Equality (2014) *Review of the National Action Plan to Prevent and Combat Trafficking in Human Beings 2009–2012*, Dublin: Department of Justice and Equality, available at: [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/RADN-95REJP1041313-en/\\$File/Review of the National Action Plan Final.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/RADN-95REJP1041313-en/$File/Review%20of%20the%20National%20Action%20Plan%20Final.pdf)

The option of referral to care centres established and equipped to shelter and support crime victims – and by enabling access to existing women’s shelters and supported housing run by charities already in existence or by supporting the establishment of new shelters – should be explored in any new system of identification.²⁶⁴

During its CEDAW consultation, the Commission visited two direct provision centres, including the State’s one female-only accommodation centre, Park Lodge in Killarney, Co. Kerry. Many of the women spoke of the impact of their surroundings on their mental health, which echoes concerns raised in the consultations carried out by the Working Group on Improvements to the Protection Process, including direct provision and Supports to Asylum Seekers.²⁶⁵ A number of organisations also made submissions to the Commission’s CEDAW consultation in relation to the inappropriateness of direct provision centres for the accommodation of victims of human trafficking.²⁶⁶

Recommendation:

The Commission reiterates that direct provision accommodation does not respect the rights of victims of trafficking in human beings and does not comply with the Convention. It recommends that victims of trafficking be accommodated in appropriate single gender facilities with access to the necessary support services, in keeping with the State’s obligations under the Convention of prevention and to provide support services to victims.

²⁶⁴ See Department of Justice and Equality *Report on the Roundtable on Identification of Victims of Human Trafficking* 15th December 2015, Dublin: Department of Justice and Equality, available at: [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/0/C8946B6E562E812080257F650054E6E3/\\$File/Roundtable_report_Dec_2015_%20.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/0/C8946B6E562E812080257F650054E6E3/$File/Roundtable_report_Dec_2015_%20.pdf)

²⁶⁵ The experiences of women living in direct provision are discussed in greater detail in section 13.3. See also: *Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers*, Dublin: Department of Justice and Equality, p. 171, available at: <http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf>

²⁶⁶ These are non-governmental organisations working directly with victims of human trafficking, namely, Migrant Rights Centre Ireland, Ruhama and the Immigrant Council of Ireland.

7.3 Exploitation of Prostitution

The Commission notes the progress of the *Criminal Law (Sexual Offences) Bill 2015* through parliament.²⁶⁷

The proposed law provides for the criminalisation of the purchase of sex and the creation of a separate offence of making a payment for the prostitution of a trafficked person.²⁶⁸ In its report to the Committee, the State party outlines the consultation carried out by a parliamentary committee on the proposed reform. During its CEDAW consultation, the Commission received submissions which expressed views both in favour of and against the proposed reform set out in section 20 of the *Criminal Law (Sexual Offences) Bill 2015*.²⁶⁹

The Commission observes that there is no conclusive evidence that any one legislative approach has the definitive effect of reducing trafficking in human beings for sexual exploitation. In this context, the Commission stresses the need for holistic and multi-agency strategies such as exit assistance for persons seeking to leave prostitution and to re-enter the labour market, together with mechanisms to reduce vulnerability to exploitation. Exit strategies and related supports must be properly resourced. The Commission notes that recent legislative reforms in Northern Ireland, which are currently the subject of a legal challenge,²⁷⁰ required relevant government departments to develop a strategy that would

267 The *Criminal Law (Sexual Offences) Bill 2015* was published on 23 September 2015 and passed the upper house of the Irish Parliament (Seanad Éireann) on 21 January 2016. On 5 October 2016 the Minister for Justice and Equality introduced the Bill to the lower house of Parliament (Dáil Éireann) and at the time of writing, its deliberations had not concluded.

268 Section 26 of the *Criminal Law (Sexual Offences) Bill 2015*, as passed by Seanad Éireann proposes an amendment to section 5 of the *Criminal Law (Human Trafficking) Act 2008*.

269 The organisations that were in favour of the reforms proposed by section 20 of the *Criminal Law (Sexual Offences) Bill 2015* are members of a national coalition campaigning to criminalise the purchase of sex, namely, Nasc The Irish Immigrant Support Centre, Dublin Rape Crisis Centre, Women's Aid, Space International, and Ruhama. One organisation, Migrant Rights Centre Ireland, called for independent research to be carried out on the impact of such legislation on the wellbeing, including health status, of sex workers prior to enactment.

270 Alan Erwin, 'Sex worker challenges NI law criminalising clients of prostitutes' *Irish Times*, 28 September 2016, available: <http://www.irishtimes.com/news/crime-and-law/sex-worker-challenges-ni-law-criminalising-clients-of-prostitutes-1.2809022>

introduce a programme of assistance and support for those seeking to leave prostitution, in recognition of the barriers faced by people who want to exit prostitution.²⁷¹ The Northern Ireland Department of Health published an initial Programme of Assistance and Support to connect those wishing to leave prostitution with advice services and support they may require.²⁷²

An approach which incorporates administrative, educational, social and cultural measures would assist in achieving greater compliance with obligations to discourage demand under Article 6 of the Council of Europe's Convention on Action against Trafficking in Human Beings. The Commission welcomes the measures already undertaken to address trafficking set out in the State Report.²⁷³

Recommendations:

The Commission recommends that proposed reforms under the Criminal Law (Sexual Offences) Bill 2015 are accompanied by holistic and comprehensive support and awareness strategies, including a sufficiently resourced exit strategy.

The Commission recommends that any changes in the law should be monitored closely to measure their effectiveness in discouraging demand, in the provision of protection and assistance to victims of trafficking, and in relation to the effective prosecution of traffickers.

271 Department of Health, Social Services and Public Safety (2015) *Leaving Prostitution: a strategy for help and support*, December 2015, available at: <https://www.health-ni.gov.uk/publications/leaving-prostitution-strategy-help-and-support> The strategy must be reviewed after three years.

272 Department of Health (2016) *Leaving Prostitution: A Programme of Assistance and Support*, July 2016, available here: <https://www.health-ni.gov.uk/publications/leaving-prostitution-strategy-help-and-support>

273 *Combined sixth and seventh periodic reports of the State parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, paras. 126–128.

**Section 8: Participation in Public Life, Civil Society and Sport
(Articles 4, 7, 8 and 13)**

There are fewer
seats at
decision-making
tables for women,
and even fewer for
women from a
minority background

8.1 Participation in Politics (Article 7(a))

The Commission welcomes the increase in women's representation in local government and in parliament following the elections in, respectively, 2014 and 2016. While these elections resulted in record highs, participation rates in Ireland are still below the European Union average rates. Many respondents to the Commission's CEDAW consultation raised concerns about the low levels of women's participation in public, particularly in relation to Traveller and migrant women.²⁷⁴

Research suggests that these increases have been due to the commencement of the *Electoral (Amendment) (Political Funding) Act 2012*, which provided that in order to secure State funding, political parties would be required to ensure that 30 per cent of their candidates in the general election be female.²⁷⁵ The Commission welcomes this legislation. While the legislation was the subject of a legal challenge before the 2016 General Election, the Commission is encouraged by the fact that the State relied on the Committee's 2005 Concluding Observations in its defence, in particular referencing the Committee's recommendation to use temporary special measures to increase the representation of women.²⁷⁶

An analysis of the general and local elections highlighted notable geographical differences in female candidacy and election, with women more likely to run and win seats in more urbanised areas of the country.²⁷⁷ This is concerning given that research

demonstrates that local government experience is statistically more significant for women than men in the political career development of women politicians in Ireland.²⁷⁸ It has been argued that 'without a targeted geographical strategy, quotas may not necessarily change all constituencies and many parts of rural Ireland could remain male-dominated for the foreseeable future'.²⁷⁹ Recalling General Recommendation No. 34 on the rights of rural women,²⁸⁰ the Commission is of the view that the gender balance requirements in the *Electoral (Amendment) (Political Funding) Act 2012* should be extended to local government elections.

The Commission recognises that the legislation does not address all of the barriers to female political participation identified by a parliamentary committee examining women's participation in politics, namely childcare, cash, confidence, culture and candidate selection procedures.²⁸¹ It has also been suggested that the perpetuation of gender stereotypes in care work can act as an inhibitor.²⁸² 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.²⁸³ The Convention on the Constitution considered that education is required to change societal and cultural attitudes in relation to female participation in politics.²⁸⁴

Irish Elections: Geography, Facts and Analyses [web page] <https://adriankavanaghelections.org/2016/02/29/female-candidates-at-the-2016-general-election/>

278 Fiona Buckley, Mack Mariani, Claire McGing, and Timothy White (2015) 'Is local office a springboard for women to Dáil Éireann?', *Journal of Women, Politics & Policy*, Vol. 36, No. 3, pp. 311–335.

279 Claire McGing (2015) 'Women's representation in Ireland: Why do so few rural women enter Dáil Éireann?' Presentation to 5050 Group/Longford Women's Link seminar.

280 CEDAW (2016) Committee's General Recommendation No. 34 on the rights of rural women, para 54(a) states: State parties should establish quotas and targets for rural women's representation in decision-making positions, specifically in parliaments.

281 Houses of the Oireachtas (2009) *Joint Committee on Justice, Equality, Defence and Women's Rights: Second Report – Women's Participation in Politics*, <http://opac.oireachtas.ie/AWDData/Library3/Library2/DL100271.pdf>

282 Yvonne Galligan (2010). 'Women in politics', in: J Coakley & M Gallagher (eds), *Politics in the Republic of Ireland* (5th edn) pp. 263–291. London: Routledge

283 Fiona Buckley and Caroline Hofman (2015) 'Women in local government: Moving in from the margins', *Administration*, vol. 63, no. 2, pp. 79–99 <https://www.degruyter.com/view/j/admin.2015.63.issue-2/admin-2015-0011/admin-2015-0011.xml?format=INT>.

284 Section 5.3, available: <https://www.constitution.ie/AttachmentDownload.ashx?mid=268d9308-c9b7-e211-a5a0-005056a32ee4>

274 The issue of women's participation in politics and public life was raised 34 times in responses to the online survey.

275 Fiona Buckley (2016) 'The implementation of gender quotas in Ireland: opportunities, challenges, controversies and success. Comments paper for 'The EU Mutual Learning Programme in Gender Equality. Women in political decision-making', Slovenia, 15–16 June 2016, available: http://ec.europa.eu/justice/gender-equality/files/exchange_of_good_practice_si/ie_comments_paper_si_2016_en.pdf

276 *Mohan v Ireland* [2016] IEHC 35, para. 39. See UN Committee on the Elimination of Discrimination against Women (2005) *Concluding comments: Ireland*, CEDAW/C/IRL/CO/4-5, para. 33.

277 Fiona Buckley and Caroline Hofman (2015) 'Women in local government: Moving in from the margins', *Administration*, vol. 63, no. 2, pp. 79–99 <https://www.degruyter.com/view/j/admin.2015.63.issue-2/admin-2015-0011/admin-2015-0011.xml?format=INT>. Adrian Kavanagh (2016) 'Female candidates in the 2016 General Election',

Recommendations:

The Commission recommends that the Electoral (Amendment) Political Funding Act 2012 be amended to apply to local government elections.

The Commission recommends that the State monitor political party gender recruitment practices including female party membership rates, the level of female party office-holders, party spend on the promotion of women, and the implementation of gender quotas at election time.

The Commission recommends that capacity training and mentoring workshops be provided for rural women, migrant women and Traveller women to redress the underrepresentation of these groups of women in politics.

8.2 Participation in Formulation of Government Policy (Article 7(b))

The Commission acknowledges the increased levels of participation of women in government, the judiciary, the diplomatic service and in senior positions in the civil service.²⁸⁵ The Commission notes that the statistics in the State Report reveal that women are concentrated at middle management in the civil service. With regard to participation rates in Cabinet the Commission notes that there has not been any improvement in the female participation rates in the 2016 Cabinet from the 2011 Cabinet, despite a pledge by the Taoiseach (Prime Minister) Enda Kenny TD to have an equal number of men and women in the Cabinet.²⁸⁶

The Commission welcomes the new model and guidelines for State Board appointments and the increase in female representation of 37.5 per cent towards the 40 per cent gender balance target.²⁸⁷ The *Irish Human Rights and Equality Commission Act 2014* is an example of good practice in this regard as it requires not less than a half of the members of the Commission to be women.²⁸⁸

Recommendation:

The Commission recommends that the State should place the requirement to have gender balance on State Boards on a statutory footing.

²⁸⁵ *Combined sixth and seventh periodic reports of States parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, paras. 142–149.

²⁸⁶ 'Taoiseach wants equal number of men and women in next cabinet', Irish Times, 26th December 2015. <http://www.irishtimes.com/news/politics/taoiseach-wants-equal-number-of-men-and-women-in-next-cabinet-1.2477506>

²⁸⁷ *Combined sixth and seventh periodic reports of States parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, para. 144.

²⁸⁸ Section 12(b) *Irish Human Rights and Equality Commission Act 2014*.

8.3 Participation in Civil Society (Article 7(c))

In its parallel report to the UN Committee on Economic, Social and Cultural Rights, the Commission expressed concern about the damaging impact of the economic recession on Irish civil society which resulted in funding cuts, structural changes and significant staff losses.²⁸⁹ The Commission is particularly concerned that between 2008 and 2014 government funding to women's organisations was cut by 48.7 per cent from €585,000 to €300,000.²⁹⁰

The Commission has also expressed concern about changes brought about by the *Local Government (Reform) Act 2014* which vested more power in local government structures, rather than the established community development programmes.²⁹¹ It is particularly concerning that the replacement of Local Community Development Programme (LCDP) with the Social Inclusion and Community Activation Programme (SICAP) resulted in the removal of 'disadvantaged women' as a target group. Information was provided to the Commission by a women's community development organisation that many groups lost funding during this transition despite the fact that the projects they were delivering aimed to address social inclusion, poverty and inequality.²⁹²

The Commission also notes that the State's new framework policy for engagement with the local and community development sectors did not contain any reference to gender equality.²⁹³

289 IHREC (2015) *Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review*, section 3.1. https://www.ihrec.ie/app/uploads/download/pdf/icescr_report.pdf

290 Brian Harvey (2014) *Scoping of Need in Social Justice Sphere*, p. 27, available <http://www.philanthropy.ie/wp-content/uploads/2011/10/Scoping-of-Need-in-Social-Justice-Sphere-2014.pdf>

291 IHREC (2015) *Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review*. Office of Social Inclusion (2014) *Report of the Social Inclusion Forum 2014*, Dublin: Department of Social Protection, pp.25–28, available http://www.socialinclusion.ie/documents/2014_SIFReport_EnglishVersion.pdf

292 Written submission from Longford Women's Link.

293 Department of Environment, Community and Local Government (2015), *Our Communities: A Framework Policy for Local and Community Development in Ireland*, available: http://ildn.ie/files/page_files/Draft_Framework_Policy_Local_Community_Dev..pdf. Submissions received during the consultation process highlighted the need for the inclusion of gender – see: Department of Environment, Community and Local

Further, the Commission notes that guidelines for the establishment of Local Community Development Committees (LCDCs) contain only a weak commitment to gender equality, stating that 'every effort should be made to ensure an equitable gender balance'.²⁹⁴ This is regrettable because the LCDCs were established as the primary participative decision-making and coordinating bodies at local level for all local and community development interventions and activities in local government reform.²⁹⁵ The Commission considers that meaningful participation in decision-making at local level is essential when designing policies and the State has 'a legal obligation to implement inclusive, meaningful and non-discriminatory participatory processes and mechanisms, and to engage constructively with the outcomes'.²⁹⁶

Cuts to funding and changes to local government and community development have been described as follows: 'Voices that defend women's rights are significantly weakened and the considerable community solidarity and development work carried out by women is no longer possible'.²⁹⁷ This echoes the voices of those working in the women's sector who participated in the Commission's CEDAW consultation in the preparation of this report, particularly the organisations attending the regional consultation

Government (2015), *Public Consultation Synopsis on: Our Communities: A Framework Policy for Local and Community Development in Ireland*, available: http://www.housing.gov.ie/sites/default/files/attachments/public_consultation_synopsis.pdf

294 Department of Environment, Community and Local Government (2014), *Guidelines for the Establishment and Operation of Local Community Development Committees*, p. 18, available http://www.housing.gov.ie/sites/default/files/publications/files/guidelines_for_the_establishment_and_operation_of_lcdcs.pdf

295 The reforms outlined in 2012 in *Putting People First: Action Programme for Effective Local Government* position local government as the primary vehicle of governance and public service at local level and include measures for more inclusive policy making processes and for local authorities to secure greater community engagement and involvement in these processes; available http://www.housing.gov.ie/sites/default/files/publications/files/putting_people_first.pdf. See also: Department of Environment, Community and Local Government (2015), *Our Communities: A Framework Policy for Local and Community Development in Ireland* p. 12.

296 UN Human Rights Council (2013) *Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona*, 11 March 2013, para. 24, available <http://www.un.org/esa/socdev/egms/docs/2013/EmpowermentPolicies/Report%20of%20the%20Special%20Rapporteur%20on%20extreme%20poverty%20and%20human%20rights.pdf>

297 Rory Hearne and Cian McMahon, eds, (2016) *Cherishing All Equally 2016: Economic Inequality in Ireland*, Dublin: TASC, p. 193, available: http://www.tasc.ie/download/pdf/tasc_inequalityreport_2016_web.pdf

meetings.²⁹⁸ The Commission was also informed of difficulties in securing funding for organisations working to address gender inequality within migrant communities and the Traveller community.²⁹⁹

Recommendations:

The Commission recommends that the Guidelines for the Establishment and Operation of Local Community Development Committees be amended to include a mandatory gender balance requirement on each Committee.

The Commission recommends that the Minister for Social Protection amend the terms of the Social Inclusion and Community Activation Programme (SICAP) to include women, particularly women who may experience multiple discrimination, as a target group in order to ensure that gender equality projects are supported.

8.4 Participation in Sport **(Article 13(c))**

During the Commission's CEDAW consultation, concerns were expressed about inequality facing women in sport.³⁰⁰ Since the Irish Sports Monitor began in 2007, it has been evident that there is a gender gap in sport participation rates.³⁰¹ This research has also demonstrated that there is a gender gap in relation to the types of roles undertaken by women and men when volunteering in sports with male volunteers being twice as likely to be involved in coaching and women twice as likely to provide transport.³⁰² The Commission welcomes the €600,000 allocated to the twenty six national governing bodies in the State through Women in Sport programme.³⁰³ In particular, this programme aims to support women's roles within sports organisations. However, during its CEDAW consultation, concerns were expressed to the Commission about the way in which State funding is allocated to sports organisations.³⁰⁴

³⁰⁰ At the National Ploughing Championships, 33 per cent of views gathered raised the issue of participation, and within that cohort 68 per cent of the views related to women in sport. In addition, of those who raised issues related to participation in response to the online survey (13 per cent of the overall total), 37 per cent raised the issue of sport. This issue was also strongly highlighted at the Commission's regional consultation meetings in Castlebar, Co Mayo and Tralee, Co Kerry.

³⁰¹ Research also demonstrates that while almost all primary schoolchildren engage in regular sporting activity many drop out of regular activity during the second-level years, especially girls. See Economic and Social Research Institute (2013) *Keeping Them in the Game*, available: <https://www.esri.ie/pubs/RS33.pdf>

³⁰² Irish Sports Council (2015) *Irish Sports Monitor Annual Report 2015*, p. 42, available: <http://www.sportireland.ie/Research/Irish-Sports-Monitor-Annual-Report-2015/Irish-Sports-Monitor-Annual-Report-2015.pdf>

³⁰³ Sport Ireland (2016) *Sports Investment*, available http://www.sportireland.ie/Media/Latest_News/2016/February/Download_Investment_2016.pdf

³⁰⁴ For example, in 2015 the Gaelic Athletic Association (GAA), which is the governing body for male participation in traditional Gaelic games, received over €2.8 million in State funding, which included funding from the Broadcasting Authority of Ireland. In the same year, the bodies governing women's Gaelic games were awarded €763,174, which increased to €795,000 in 2016. See: GAA (2015) *Financial Statements for the year ended 31 October 2015* [http://www.gaa.ie/mm/Document/TheGAA/Administration/12/47/63/GAA012_Annual_Report_2015_Financials_for_WEB\(1\)_English.pdf](http://www.gaa.ie/mm/Document/TheGAA/Administration/12/47/63/GAA012_Annual_Report_2015_Financials_for_WEB(1)_English.pdf). The Ladies Gaelic Football Association was awarded €384,655 and the Camogie Association was awarded €378,519. See: Irish Sports Council (2015) *Report and Financial Statements 2014*.

²⁹⁸ The Commission held four regional consultation meetings in Mayo, Donegal, Monaghan and Kerry. The Commission also held a focus group meeting with the Waterford branch of the National Network of Community-based Women's Networks (NNCWN).

²⁹⁹ Written submissions from National Traveller Women's Forum and Pavee Point. This issue also arose in a focus group meeting with migrant and undocumented women hosted by Migrant Rights Centre Ireland.

The Commission notes the commitment by the Minister of State for Tourism and Sport to introduce a 30 per cent gender quota for sporting bodies. At the time of writing, only one woman had been appointed to a possible 50 positions on boards of the most popular sports in the country.³⁰⁵ Further only four of the top twenty most-heavily State funded national governing bodies have 40 per cent of women on their boards.

Recommendations:

The Commission recommends that Sport Ireland review its approach to sports investment in order to ensure that State funding for participation in sport is allocated in a manner that promotes equal participation irrespective of gender.

The Commission recommends that the Minister of State for Tourism and Sport fulfil his commitment to introduce a 30 per cent gender quota for sporting bodies in receipt of State funding.

Building on the Women in Sport Initiative, the Commission recommends that the Minister for Transport, Tourism and Sport work in conjunction with the Minister for Education and Skills and the Minister for Communications, Climate Action and Environment to develop and implement an action plan to encourage more girls to participate in sport and ensure a more equal representation of women's sport in the media.

³⁰⁵ Mary Quinn was appointed to the committee of the Irish Rugby Football Union in October 2014, the first woman to sit on it in the 137-year history of the union. Women do not hold any board or executive committee positions in the Football Association of Ireland, regulating soccer, are the Gaelic Athletic Association, regulating Gaelic games.

Section 9: Women, Peace, Security and International
Protection (Articles 1–3, 5 (a) and 15)

We are women,
we need to be
empowered to
take charge.
You don't get
empowered here

The Commission welcomes the State's commitment to the implementation of UN Security Council Resolution 1325 on women and peace and security (UNSCR 1325), in particular its *National Action Plan on Women, Peace and Security 2015–2018*³⁰⁶ and the establishment in 2007 of the Conflict Resolution Unit within the Department of Foreign Affairs and Trade.³⁰⁷ The Commission also notes that gender equality, including tackling gender-based violence, is a key priority of Irish Aid, the division in the Department of Foreign Affairs and Trade that is tasked with delivering Ireland's international development policy and overseas aid programme.³⁰⁸

9.1 UNSCR 1325 and Northern Ireland

The Commission notes the inclusion of post-conflict reconciliation on the island of Ireland in the *National Action Plan on Women, Peace and Security 2015–2018*.³⁰⁹ The Commission also notes that support provided by the Department of Foreign Affairs and Trade for an inquiry into the low levels of women's participation in the Northern Ireland post-conflict situation. This is to be welcomed in light of concerns expressed by the Committee during its examination of the United Kingdom in 2013 in relation to the implementation of UNSCR 1325 in Northern Ireland.³¹⁰

The Commission is of the view that women's participation in the protection and promotion of human rights and equality is essential to the success of the peace process in Northern Ireland. The Commission works to advance gender equality in conjunction with its sister organisation, the Northern Ireland Human Rights Commission (NIHRC), within the context of the IHREC–NIHRC Joint Committee,³¹¹ where common areas of human rights concern have been discussed, including reproductive rights, human trafficking, exit supports from prostitution, marriage equality and homelessness.

Recommendation:

The Commission recommends that the Department of Foreign Affairs and Trade publish the results of the inquiry into the low levels of women's participation in the Northern Ireland post-conflict situation and to implement relevant actions.

³⁰⁶ *Combined sixth and seventh periodic reports of States parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, para. 153.

³⁰⁷ See <https://www.dfa.ie/our-role-policies/international-priorities/peace-and-security/conflict-resolution/>

³⁰⁸ The work of Irish Aid is set out in more detail in the common core document. See: *Common core document forming part of the reports of States parties: Ireland (2014)*, HRI/CORE/IRL/2014, paras. 143 and 158–159.

³⁰⁹ *Combined sixth and seventh periodic reports of States parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, para. 153.

³¹⁰ CEDAW (2013) *Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland*, CEDAW/C/GBR/CO/7, paras. 42–43.

³¹¹ Under its founding legislation the IHREC is required to participate in the Joint Committee with the NIHRC in accordance with the Multi-Party Agreement annexed to the British-Irish Agreement (within the meaning of the British Irish Agreement Act 1999).

9.2 Law and Policy

Framework on International Protection

The Commission notes Ireland's leading role in chairing the New York Declaration process which resulted in a resolution that includes a strong gender equality component and calls for the empowerment of all women and girls in States' responses to migration.³¹² Recalling General Recommendation No. 33 on access to justice, the Committee has observed that 'many asylum systems continue to treat the claims of women through the lens of male experiences, which can result in their claims to refugee status not being properly assessed or being rejected'.³¹³

The *International Protection Act 2015* significantly altered the legislative framework on international protection.³¹⁴ When it was being debated by the Irish parliament, the Commission recommended the development of statutory guidelines on gender and law reform related to family reunification.³¹⁵ During the Commission's CEDAW consultation, concerns were expressed about the lack of gender guidelines in Ireland's international protection framework.³¹⁶ Concerns have been expressed about the use of male interpreters for female applicants in the Irish international protection system.³¹⁷ Following its visit

to direct provision centres where accommodation is provided to asylum-seekers, the Commission is of the view that a gender-sensitive approach should be taken into account in the design and delivery of such facilities and services.³¹⁸ Therefore, the Commission is of the view that gender-sensitive approaches should be at the forefront of the State's international protection process.

The Commission notes that research carried out by the EU Agency for Fundamental Rights indicates that almost half of the EU Member States have developed guidelines for identifying and dealing with victims of gender based violence.³¹⁹ This is a development which should be followed in light of UNHCR reports of the increased risks of sexual and gender-based violence faced by women and girls forcibly displaced as a result of the current crisis of refugee protection and conflicts in Middle East and parts of Africa.³²⁰

The Commission notes that the European Parliament has called upon States to establish safe migration routes in order to counter smuggling and protect women and girls from trafficking and exploitation.³²¹ The Commission is of the view that safe and legal routes of migration should be established as a means of tackling trafficking and exploitation of women and girls.

312 United Nations General Assembly (2016) *Draft resolution referred to the high-level plenary meeting on addressing large movements of refugees and migrants by the General Assembly at its seventieth session*, p. 7, available http://www.un.org/ga/search/view_doc.asp?symbol=A/71/L.1

313 CEDAW (2014) *General Recommendation No.32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, para. 16.

314 The legislation was enacted on 30 December 2015 but most of the provisions are not yet operational as they have not yet been commenced by the relevant minister.

315 IHREC (2015) *Legislative Observations on the General Scheme of the International Protection Bill 2015*, available http://www.ihrec.ie/download/pdf/ihrec_recs_general_scheme_international_protection_bill_26_june_2015.pdf. In particular, at page 17 of its observations, the Commission makes four specific recommendations related to the reform of legal procedures which individuals must undergo for the purposes of family reunification.

316 This issue was raised by Nasc The Irish Immigrant Support Centre in its submission to the Commission's CEDAW consultation.

317 *Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers*, p. 291. Dublin: Department of Justice and Equality, available at: <http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20>

[to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf](http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf)

318 The experiences of women living in direct provision are discussed further in section 13.3.

319 EU Agency for Fundamental Rights (2016) *Monthly data collection on the current migration situation in the EU: June 2016 monthly report*, p. 8, available: http://fra.europa.eu/sites/default/files/fra_uploads/fra-june-2016-monthly-migration-gender-based-violence_en.pdf. The European Parliament has also called upon States to implement gender-sensitive approaches to credibility assessments in a resolution of 8 March 2016 on the situation of women refugees and asylum seekers in the EU (2015/2325(INI)) <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0073+0+DOC+PDF+V0//EN>

320 United Nations Refugee Agency, United Nations Population Fund and Women's Refugee Commission (2016) *Initial Assessment Report: Protection Risks for Women and Girls in the European Refugee and Migrant Crisis*, available: <http://www.unhcr.org/569f8f419.html>

321 European Parliament resolution of 8 March 2016 on the situation of women refugees and asylum seekers in the EU (2015/2325(INI)) <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0073+0+DOC+PDF+V0//EN>

Recommendations:

The Commission recommends that the International Protection Act 2015 be amended to provide the power to the Minister for Justice and Equality to develop statutory guidelines on gender-sensitive approaches to credibility assessment and the promotion of gender equality throughout the international protection process, including in the provision of accommodation.

The Commission recommends the establishment of safe and legal routes of migration to Ireland as a means of addressing trafficking and exploitation of women and girls.

Section 10: Education (Article 10)

I feel like being
in an all-girls
school is very
limiting – what
if I want to
become an engineer?

10.1 Stereotyping in Education

The Commission welcomes the commitment in the national children's strategy to combatting gender stereotypes in subject choices in school³²² but notes that no reference has been made to the progression of this objective in the annual implementation reports.³²³ The Commission also notes the initiatives taken during the reporting period to promote science subject choices.³²⁴

The Commission notes that it has been found that 'school policy regarding subject provision, subject packaging and timetabling can serve to either reinforce or challenge existing gendered patterns of subject take-up'.³²⁵ This aligns with submissions received by the Commission to its consultation which highlighted a lack of subject choice in single-sex schools, particularly the traditionally 'male' technological subjects, and the lack of adequate support for girls to participate in certain subjects.³²⁶ The Commission agrees with the conclusions of a study by the Economic and Social Research Institute that schools have an important role to play in

'reducing gender stereotyping through the nature of subject provision and the way in which the choice process is constructed for students'.³²⁷

Recommendation:

The Commission recommends that the Department of Education and Skills, in line with its Public Sector Duty obligations, develop and provide guidance to schools on the choice process in relation to subject provision in order to reduce gender stereotyping.

³²² Department of Children and Young People (2015) *Better Outcomes, Brighter Futures: The National Policy Framework for children and young people, 2014–2020*, available http://www.dcy.gov.ie/documents/cypp_framework/BetterOutcomesBetterFutureReport.pdf

³²³ Department of Children and Youth Affairs (2015) *Better Outcomes, Brighter Futures: The National Policy Framework for children and young people, 2014–2020. Annual Report for the first year of implementation, April 2014–2015*. Dublin: Government Publications, available at: www.dcy.gov.ie; Department of Children and Youth Affairs (2015) *Better Outcomes, Brighter Futures: The National Policy Framework for children and young people, 2014–2020. Annual Report for the second year of implementation, April 2015–2016*, Dublin: Government Publications, available at: www.dcy.gov.ie.

³²⁴ *Combined sixth and seventh periodic reports of the State parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, paras. 163–166.

³²⁵ Emer Smyth and Merike Darmody (2007) "'Man enough to do it'? Girls and non-traditional subjects in lower secondary education', ESRI Working Paper No. 198, p. 23, available: <https://www.esri.ie/pubs/WP198.pdf>.

³²⁶ This specific issue was referred to eight different times in our consultation at the National Ploughing Championships. This issue also arose during a focus group session with Future Voices Ireland, a non-governmental organisation committed to empowering and supporting young people coming from the most disadvantaged communities across Ireland. In our online survey, subject options formed 9.5 per cent of the issues raised in relation to education.

³²⁷ Economic and Social Research Institute (2007), "'Man enough to do it'? Girls and non-traditional subjects in lower secondary education', ESRI Working Paper No. 198, p. 23, available: <https://www.esri.ie/pubs/WP198.pdf>.

10.2 Sexual and Reproductive Health Education in Schools

The Commission notes that a study on teenage sexuality found that only half of young people (18–25 years) who had received sex education reported that they had been given information on sexual feelings, relationships and emotions; 66 per cent on safer sex and sexually transmitted infections; and 70 per cent on contraception.³²⁸ During its CEDAW consultation, concerns were expressed to the Commission by girls in the education system on the quality of sex education in schools.³²⁹ Sex education was also identified as an area of concern for young people in a youth report to the UN Committee on the Rights of the Child.³³⁰

In its 2016 Concluding Observations the UN Committee on the Rights of the Child recommended that the State 'ensure that sexual and reproductive health education is part of the mandatory school curriculum and targeted at adolescent girls and boys, with special attention to the prevention of early pregnancy and sexually transmitted infections'.³³¹ In that regard, the Commission notes the introduction of a new short course in Social, Personal and Health Education (SPHE) for the Junior Cycle, but regrets that this subject is not mandatory.

The Commission also notes that in its 2016 Concluding Observations, the UN Committee on the Rights of the Child recommended that the State 'develop and implement a policy to protect the rights of pregnant teenagers, adolescent mothers and their children and combat discrimination against them'.³³²

Recommendations:

The Commission recommends that the Department of Education and Skills consider making the new Junior Cycle course on Social, Personal and Health Education a mandatory course and train teachers to ensure that they are adequately equipped to deliver sexual and reproductive health education in line with the curriculum.

The Commission recommends that the Department of Education and Skills, in conjunction with the Department of Children and Youth Affairs, implement the recommendations of the UN Committee on the Rights of the Child, and develop a policy to support pregnant students to continue their education during pregnancy.

³²⁸ Crisis Pregnancy Agency (2012) *Research on Teenage Sexuality*, p. 2, available <http://www.crisispregnancy.ie/wp-content/uploads/2012/10/Research-on-teenage-sexuality-2012-SEPARATE-PAGES.pdf>

³²⁹ The issue of sex education was raised frequently by girls in secondary schooling at the National Ploughing Championships. This issue also arose during a focus group session with Future Voices Ireland, a non-governmental organisation committed to empowering and supporting young people coming from the most disadvantaged communities across Ireland. This issue was also raised in written submissions from the Irish Family Planning Association and from Atheist Ireland.

³³⁰ Children's Rights Alliance and UNICEF Ireland (2015) *Picture Your Rights, A report to the UN Committee on the Rights of the Child from children living in Ireland*, available at: http://www.childrensrights.ie/sites/default/files/submissions_reports/files/PictureYourRights0515.pdf

³³¹ UN Committee on the Rights of the Child (2016) *Concluding Observations on the combined third and fourth periodic reports of Ireland*, CRC/C/IRL/CO/3-4, para. 58(c).

³³² UN Committee on the Rights of the Child (2016) *Concluding Observations on the combined third and fourth periodic reports of Ireland*, CRC/C/IRL/CO/3-4, para. 58(b).

10.3 Women in Leadership Positions in Academia

The Commission welcomes the steps taken during the reporting period to address the gender imbalance in the higher education sector, particularly the publication of the Higher Education Authority's *Gender Equality Review* in 2015.³³³ The Commission views this review as an important step in the Higher Education Authority's fulfilment of its obligations under the Public Sector Duty and believes that this presents the opportunity to embed such initiatives in the daily operation of institutions in the higher education sector.

The Commission notes the commitment by three Irish research funding agencies to make gender equality accreditation in higher education institutions a condition of funding by the end of 2019, in line with the Review's recommendations.³³⁴

Recommendation:

The Commission recommends that the Higher Education Authority, in conjunction with relevant stakeholders, advance the recommendations set out in its Gender Equality Review in line with its Public Sector Duty obligations.

³³³ Higher Education Authority (2016) *National Review of Gender Equality in Irish Higher Education Institutions*. Available: http://www.heai.ie/sites/default/files/hea_review_of_gender_equality_in_irish_higher_education.pdf

³³⁴ See Higher Education Authority, 'Only colleges addressing gender inequality will get funding in new move by Irish agencies', [Press Release], 12 December 2016. Available at <http://www.heai.ie/news/only-colleges-addressing-gender-inequality-will-get-funding-new-move-irish-agencies>.

10.4 Access to Education

In its List of Issues, the Committee requested information about the 'obstacles that Traveller, Roma and migrant women and girls face in accessing education'.³³⁵ This issue arose frequently throughout the Commission's CEDAW consultation.³³⁶ During the reporting period a number of UN treaty monitoring bodies also recommended that the State prohibit discrimination in relation to school admissions and increase the number of non-denominational schools.³³⁷ In its 2016 Concluding Observations the UN Committee on the Rights of the Child recommended that the State 'amend the existing legislative framework to eliminate discrimination in school admissions, including the *Equal Status Act*'.³³⁸

10.4.1 Education (Admission to Schools) Bill 2016

In its List of Issues, the Committee requested information on the impact of proposed legislation related to preferential enrolment treatment on 'access to education by Traveller, Roma and migrant women and girls'.³³⁹ The *Education (Admission to Schools) Bill 2016*³⁴⁰ was presented to parliament in July 2016 and it largely mirrors the *Education*

³³⁵ UN Committee on the Elimination of Discrimination against Women (2016) *List of issues and questions prior to the submission of the combined sixth and seventh periodic reports of Ireland*, CEDAW/C/IRL/QPR/6-7, para. 19.

³³⁶ This was raised in a written submissions from Pavee Point, the National Traveller Women's Association and Atheist Ireland. This issue was also raised by Traveller women at regional meetings held in Castlebar, Letterkenny and Monaghan.

³³⁷ UN Human Rights Committee, *Concluding Observations on Ireland's Third Periodic Report*, CCPR/C/IRL/CO/3, para 22, CERD, *Concluding Observations on Ireland's second periodic report*, CERD/C/IRL/CO/2, 2011, para 18. CESCR, *Concluding Observations: Ireland UN Doc. E/C.12/IRL/CO/3, 2015*, para 31. UN Committee on the Rights of the Child, *Concluding Observations on the combined third and fourth periodic reports of Ireland*, CRC/C/IRL/CO/3-4, para. 64. In 2011 the Irish Human Rights Commission recommended that school provision should reflect the range of religious and non-religious convictions now represented in Ireland

³³⁸ UN Committee on the Rights of the Child (2016) *Concluding Observations on the combined third and fourth periodic reports of Ireland*, CRC/C/IRL/CO/3-4, para. 64(a).

³³⁹ UN Committee on the Elimination of Discrimination against Women (2016) *List of issues and questions prior to the submission of the combined sixth and seventh periodic reports of Ireland*, CEDAW/C/IRL/QPR/6-7, para. 19.

³⁴⁰ See IHREC (2016) *Observations on the Education (Admission to Schools) Bill 2016*, available: <https://www.ihrec.ie/app/uploads/2016/11/Observations-on-Education-Admission-to-Schools-Bill-2016.pdf>

(*Admission to Schools*) Bill 2015, which lapsed with the 2016 general election.³⁴¹ The Bill makes no change to the underlying substantive law on school admissions but it would require a school in its admission policy to state that all applicants will be admitted unless the school receives more applicants than it has places.³⁴² While the Bill does not currently regulate preferential enrolment treatment on the basis of a parent's connection with the school, the Minister for Education and Skills has indicated his intention to introduce amendments to deal with this during the legislative process.³⁴³ In its observations on the Bill, the Commission raised concerns about the provision in the current law which allows schools to give preferential treatment to students on the basis of religion. The Commission recommended that the *Equal Status Acts 2000–2015* be amended to give effect to the principle that no child should be given preferential access to a publicly funded school on the basis of their religion.³⁴⁴

In its observations on the Bill, the Commission also noted the impact of preferential enrolment policies on particular groups of children. For example, the Commission stated that migrant children may be 'segregated out' of certain schools. Similarly, the Commission observed that given the historical absence from schools of Travellers, the application of a rule by some schools that gives preference in admission to the children of past pupils of the school inevitably will result in the segregation of Travellers into other schools.³⁴⁵ Further, the Commission expressed concerns that the children of people with a disability will also experience exclusion from such schools given the historical practice of the

341 In November 2015, the Commission published observations on the 2015 Bill, IHREC (2015) *Observations on the Education (Admission to Schools) Bill 2015*, available at https://www.ihrec.ie/download/pdf/ihrec_observations_on_education_admission_to_schools_bill_2015.pdf

342 This is in the new section 62(6)(c) to be inserted into the *Education Act 1998*. However, there is no provision requiring schools to act in this way.

343 Minister for Education and Skills, Richard Bruton TD, 'Questions on Proposed Legislation', *Parliamentary Debates: Dáil Éireann*, 7 July 2016, p. 11.

344 Section 7 of the *Equal Status Acts 2000–2015*.

345 During the reporting period a legal challenge was taken by mother of a Traveller child arguing that her son had experienced indirect discrimination and a particular disadvantage in accessing a school on the basis of his membership of the Traveller community. When the case reached the Supreme Court, it was dismissed on the basis of insufficient evidence – see *Stokes v Christian Brothers High School Clonmel & anor* [2015] IESC 13.

segregation of children with disabilities and their exclusion from school.³⁴⁶ Thus, the Commission recommends 'that the forthcoming amendment should prohibit the use of a connection with a former student of the school as a criterion in the admission of a student'.³⁴⁷

Recommendation:

The Commission recommends that the Equal Status Acts 2000–2015 be amended to prohibit the use of a connection with a former student of the school as a criterion in the admission of a child and ensure that no child should be given preferential access to a publicly funded school on the basis of their religion.

10.4.2 Traveller and Roma women and girls

In addition to the barriers in school admissions set out above, the Commission was informed during its CEDAW consultation of the specific barriers facing Traveller and Roma women and girls in accessing education. According to research, attainment levels and progression through second level for Traveller girls remain lower compared with girls in the general population.³⁴⁸ Research has also demonstrated that Traveller girls can often still be faced with a choice between staying in school and getting married and some girls leave school at 16 or 17 to 'prepare' for marriage.³⁴⁹ According to a submission received from a Traveller and Roma organisation, this trend of early family creation is also evident in Roma communities.³⁵⁰ During its CEDAW consultation,

346 Anne Lodge and Kathleen Lynch (editors) (2004) *Diversity at School*. Dublin: Institute of Public Administration, p. 79, available at: https://www.ihrec.ie/download/pdf/diversity_at_school.pdf

347 IHREC (2016) *Observations on the Education (Admission to Schools) Bill 2016*, p. 14, available: <https://www.ihrec.ie/app/uploads/2016/11/Observations-on-Education-Admission-to-Schools-Bill-2016.pdf>

348 National Traveller Women's Forum (2013) *Traveller Women and Employment*, <http://www.ntwf.net/wp-content/uploads/2013/10/NTWF-Traveller-Women-and-Employment.pdf>.

349 Cormac Forkan (2006) 'Traveller Children and Education', as cited in written submission from Pavee Point.

350 Amalipe Center for Interethnic Dialogue and Tolerance, *Preventing*

the Commission was also informed that education courses offered for Traveller women do not provide sustainable progression paths and that there are low expectations of Traveller women.³⁵¹

10.4.3 Migrant, refugee and asylum-seeking women and girls

As already noted the Commission has expressed concerns that migrant children may be 'segregated out' of schools on the basis of enrolment policies that give preference to the children of past pupils. During its CEDAW consultation, the Commission received information about the barriers facing migrant, refugee and asylum-seeking women and girls in accessing education.

Access to third-level education is commonly available to many in Ireland by way of free third-level fees.³⁵² The high cost of fees would otherwise prove to be widely prohibitive. Access to the Free Fees Initiative is subject to criteria pertaining to nationality or immigration status,³⁵³ along with an ordinary residence requirement of three out of five years preceding entry to third-level education. A Pilot Support Scheme, initiated in 2015, can cover third-level education fees for those in the protection system (that is, living in direct provision) who are awaiting a decision or at the 'Leave to Remain' stage of the protection process, provided they have been in Irish education system for at least five years.³⁵⁴ Additionally, applicants must have completed their Leaving Certificate, and been accepted onto a third-level course. Should they meet each criterion, it is possible for the cost of third-level fees to be covered

by this scheme. Regrettably, the scheme's effect is significantly limited due to the onerous requirement of five years spent in the Irish education system. It has been reported that only two asylum seekers benefitted from the scheme in 2015–2016.³⁵⁵

Undocumented migrants' lack of legal status acts as a barrier to pursuing third-level education. During its CEDAW consultation, the Commission was presented with examples of young undocumented migrants who complete the Leaving Certificate and obtain a place in third-level education, but who cannot afford to pay the fees.³⁵⁶ While they may meet or exceed the ordinary residence requirement, their undocumented status means they do not enjoy the same treatment as those whose nationality or immigration status qualify them for the Free Fees Initiative or the Pilot Support Scheme.

Recommendations:

The Commission recommends that the Pilot Support Scheme for free fees be altered to remove the criterion of having spent five years in the Irish education system as this presents for many an insurmountable barrier to accessing affordable third level education.

The Commission recommends that the State consider implementing a policy similar to the Pilot Support Scheme to facilitate undocumented persons' access third-level education.

Early Marriages, ASTARTA Plovdiv, 2011, www.amalipe.com, cited in written submission from Pavee Point.

351 Views expressed during regional consultation meeting in Monaghan.

352 The Free Fees Initiative is an initiative of the Higher Education Authority. Available at: <http://www.studentfinance.ie/mp9377/course-fees/index.html>

353 The Free Fees Initiative is open to persons who (i) have nationality of an EU or EEA member state, or (ii) have Swiss nationality, or (iii) have been granted refugee status, subsidiary protection, or humanitarian leave to remain (stemming from rights set out in Section 3(2)(a) of the *Refugee Act 1996* and the *European Union (Subsidiary Protection) Regulations 2013* (SI No 426 of 2013).

354 Pilot Support Scheme for students who are in the Protection System or at the Leave to Remain (but not deportation order) stage and who are pursuing an approved Post Leaving Certificate course or an approved undergraduate course for the academic year 2016/17. Available at: <http://www.education.ie/en/Learners/Services/Pilot-Support-Scheme/Higher-Education-Pilot-Support-Scheme.pdf>

355 Niall Murray (2016) 'Irish Refugee Council: 'Reform aid scheme for asylum seeker students'', *Irish Examiner*, 27 August 2016, available: <http://www.irishexaminer.com/ireland/irish-refugee-council-reform-aid-scheme-for-asylum-seeker-students-418049.html>

356 This issue was raised during a focus group meeting with women availing of the Migrants Rights Centre of Ireland's services.

Section 11: Employment and Social and Economic Life
(Articles 11 and 13)

We are doing the
jobs nobody else
wants to do – we
are filling the
childcare provision
gap for the
Government

11.1 Gender and Participation in the Labour Market (Article 11)

In its 2005 Concluding Observations, the Committee raised concerns about the concentration of women in part-time and low paid work.³⁵⁷ The Commission regrets that the gender pay gap of 14 per cent and the gender pension gap of 38 per cent remain to be addressed in Ireland and notes that of the issues in relation to employment that were raised in the online survey component of the Commission's consultation, 42 per cent pertained to the gender wage gap. The Commission also reiterates concerns raised in relation to the prevalence of employment contracts with unspecified hours of work, more commonly referred to as 'zero hour' contracts, in the home care sector.³⁵⁸ The Commission notes that the Low Pay Commission has examined the issue of the prevalence of women in minimum wage jobs and urges the Government to give due consideration to this work.³⁵⁹

The Commission also raised concerns in its previous submission to the Committee about the increase in pregnancy-related workplace discrimination during the reporting period.³⁶⁰ While this is prohibited by the *Employment Equality Acts 1998–2015*, in accordance with Article 11(2)(a) of the Convention, female employees reported discrimination following disclosure of pregnancy in a range of areas including: job offers being rescinded; being placed on reduced hours; unfair selection for redundancy; negative impact on work performance rating; and lack of promotion.³⁶¹ Research into this trend has

recommended that a study should be undertaken on employers' knowledge of and attitudes towards maternity protection legislation and health and safety regulations and the difficulties they face in implementing such legislation.³⁶²

The Commission is also concerned about the lower participation rates in the labour market of particular groups of women and discrimination faced by them. For example, research has found that women with a disability are less likely than men with a disability to be active in the labour market and, when in employment, women in this group are more likely to be working on a part-time basis, which has been linked to caring responsibilities.³⁶³ During the CEDAW consultation, concerns were raised by women with disabilities about access to the labour market and loss of social supports when in employment.³⁶⁴ Research has shown that 81.2 per cent of Traveller women are unemployed.³⁶⁵ During its CEDAW consultation, the Commission was informed that Traveller women face dual discrimination within their own community for engaging in work outside the home.³⁶⁶ The Commission has also been informed that trans women typically experience high levels of discrimination in employment for expressing trans identity. For example, the Equality Tribunal held a trans woman suffered discriminatory treatment on the grounds of gender and disability after she was constructively dismissed having endured intolerable working conditions following a disclosure of her gender identity.³⁶⁷

357 UN Committee on the Elimination of Discrimination against Women (2005) *Concluding comments: Ireland, CEDAW/C/IRL/CO/4-5, para 36*.

358 IHREC (2015) *Submission to UN CEDAW List of Issues Prior to Reporting on Ireland's Combined 6th and 7th Report under CEDAW*, paras. 19–22. Available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRL/INT_CEDAW_IFR_IRL_21992_E.pdf

359 Low Pay Commission (2016) *The preponderance of women on the National Minimum Wage*. Available: <http://www.lowpaycommission.ie/publications/women-on-nmw-report.pdf>

360 IHREC (2015) *Submission to UN CEDAW List of Issues Prior to Reporting on Ireland's Combined 6th and 7th Report under CEDAW*, para 58. Available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRL/INT_CEDAW_IFR_IRL_21992_E.pdf

361 Helen Russell and Joanne Banks (2011) *Pregnancy and Employment: A Literature Review*; Helen Russell, Dorothy Watson and Joanne

Banks (2011) *Pregnancy at Work: A National Survey*; Joanne Banks and Helen Russell (2011) *Pregnancy Discrimination in the Workplace: Legal Framework and Review of Legal Decisions 1998–2008*; all available at www.ihrec.ie

362 Helen Russell, Dorothy Watson & Joanne Banks (2011) *Pregnancy at Work: A National Survey*, available at https://www.ihrec.ie/download/pdf/pregnancy_at_work_a_national_survey.pdf

363 Dorothy Watson and Brian Nolan (2011) *Social Portrait of People with Disabilities in Ireland*, p.23. Available at <https://www.welfare.ie/en/downloads/SocialPortraitPeopleWithDisabilities.pdf>

364 This issue was raised at a focus group meeting with Inclusion Ireland.

365 National Traveller Women's Forum (2012), *Traveller Women and Employment*, available at: <http://www.ntwf.net/wp-content/uploads/2013/10/NTWF-Traveller-Women-and-Employment.pdf>.

366 This view was expressed by a Traveller woman at the Commission's regional consultation event in Castlebar, Co. Mayo.

367 *Louise Hannon v First Direct Logistics Ltd*, Decision No. DEC-E2011-066.

Recommendations:

The Commission recommends that the Minister for Jobs, Enterprise and Innovation take account of the forthcoming report of the Low Pay Commission on the preponderance of women in low paid jobs.

The Commission recommends that the Minister for Jobs, Enterprise and Innovation commission a survey of employers' knowledge of and attitudes towards maternity protection legislation in order to effect any necessary change to law and practice to protect pregnant women from workplace discrimination.

The Commission recommends that the Minister for Jobs, Enterprise and Innovation commission a study to investigate the barriers to labour market participation faced by marginalised groups of women and that any recommendations arising from this study be implemented.

11.2 Migrant Women Workers (Article 11)

Article 11(1)(a) of the Convention describes the right to work as 'an inalienable right of all human beings'. The Commission regrets the continued denial of the right to work to women seeking asylum,³⁶⁸ and observes that migrant women workers face barriers accessing this right. In its 2005 Concluding Observations, the Committee expressed concern about 'the precarious situation of migrant domestic workers'.³⁶⁹ Recalling General Recommendation No. 26 on women migrant workers, it is recommended that States ensure that visa schemes are not indirectly discriminatory by 'restricting permission to women migrant workers to be employed in certain job categories where men predominate'.³⁷⁰ The Commission notes that the majority of eligible occupations listed under the State's Critical Skills Employment Permit include ICT professionals, professional engineers and technologists.³⁷¹ Males currently outnumber females in these professions according to the table on occupational segregation in the State Report.³⁷² The list of ineligible occupations for the purposes of obtaining a work permit includes a wide range of care work occupations, including domestic work.³⁷³

³⁶⁸ Section 9(4) *Refugee Act 1996*. This is discussed further in section 13 which reflects on the experiences of women living in direct provision following the Commission's visits to two centres during its CEDAW consultation.

³⁶⁹ UN Committee on the Elimination of Discrimination against Women (2005) *Concluding comments: Ireland*, CEDAW/C/IRL/CO/4-5, para. 36.

³⁷⁰ CEDAW (2008) *General Recommendation No. 26 on women migrant workers*.

³⁷¹ 'Critical skills employment permits' [web page] <https://www.djei.ie/en/What-We-Do/Jobs-Workplace-and-Skills/Employment-Permits/Permit-Types/Critical-Skills-Employment-Permit/>

³⁷² *Combined sixth and seventh periodic reports of the State parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, Table 16 of Annex, available: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRL/INT_CEDAW_ADR_IRL_25236_E.pdf

³⁷³ 'Ineligible categories of employment for employment permits' [web page] <https://www.djei.ie/en/What-We-Do/Jobs-Workplace-and-Skills/Employment-Permits/Employment-Permit-Eligibility/Ineligible-Categories-of-Employment/>

While there have been some positive developments during the reporting period, for example the ratification of the International Labour Organisation's (ILO) Convention on Domestic Workers³⁷⁴ and the development of guidelines on the employment of domestic workers in diplomatic households,³⁷⁵ the Commission remains concerned about the treatment of domestic migrant workers.³⁷⁶ In particular, the Commission regrets that the Committee's 2005 recommendation has not yet been implemented and domestic workers continue to be excluded from equality protections with respect to recruitment, which places them at risk of discrimination.³⁷⁷ There is also an absence of a system for the inspection of labour standards in private household settings. Research has highlighted that migrant women are over-represented in the care and domestic work sector with many women working in vulnerable employment conditions.³⁷⁸ During its CEDAW consultation, it was reported to the Commission that racism and discrimination experienced by migrant women workers is often closely linked to the worker's immigration status, particularly in the case of undocumented workers.³⁷⁹ The Commission is of the

view that the value of migrant women workers' labour must be recognised through the introduction of a regularisation scheme for undocumented migrants in order to ensure that all migrant women workers are protected from discrimination.

Recommendations:

The Commission recommends that asylum seeking women be permitted and supported to work in Ireland.

The Commission recommends that the Minister for Jobs and Enterprise conduct a review of the State's Critical Skills Employment Permit from a gender perspective. In particular, the Minister should consider the creation of permits for domestic work.

The Commission recommends that the Employment Equality Acts 1998–2015 be amended to ensure that domestic workers are protected from discriminatory recruitment practices.

The Commission recommends that the State consider the development of a regularisation scheme for undocumented migrants.

374 *The International Labour Organization Convention concerning decent work for domestic workers*, 2011, No. 189. Ireland is one of three EU States to have ratified the Convention. Department of Jobs, Enterprise and Innovation; see press release: 'Minister Bruton announces ratification of ILO Convention on Decent Work for Domestic Workers' [press release] 9 July 2014, available <https://www.djei.ie/en/News-And-Events/Department-News/2014/July/Minister-Bruton-announces-ratification-of-ILO-Convention-on-Decent-Work-for-Domestic-Workers-.html>. Convention 189 is available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:2551460

375 Department of Foreign Affairs and Trade (2016) 'Guidelines relating to the employment of private domestic employees by accredited members of the mission', available at: <https://www.dfa.ie/media/dfa/alldfawebstimedia/newspress/publications/Guidelines-on-the-Employment-of-Private-Domestic-Employees-by-Accredited-Members-of-the-Mission-OCT15.pdf>

376 It is estimated that 32.5 per cent of all undocumented workers are domestic workers, including care givers and home care providers. See Migrant Rights Centre Ireland (2014) *Ireland is Home*, available at http://www.mrci.ie/wpcontent/uploads/2014/11/MRCI_policy-paper_FINAL.pdf.

377 UN Committee on the Elimination of Discrimination against Women (2005) *Concluding comments: Ireland*, CEDAW/C/IRL/CO/4-5, para. 37. *Section 2 of the Employment Equality Acts 1998–2015*.

378 Migrant Rights Centre Ireland (2015) *Migrant Workers in the Home Care Sector: Preparing for the Elder Boom in Ireland*, available at <http://www.mrci.ie/resources/publications/migrant-workers-in-the-home-care-sector-preparing-for-the-elder-boom-in-ireland/>

379 This was raised in written submissions from Nasc The Irish Immigrant Support Centre, Migrant Rights Centre Ireland, and the Immigrant Council of Ireland. The Commission also held a focus group meeting with migrant women where this issue was raised. See also Migrant Rights Centre Ireland (2012) *Who cares? The Experience of Migrant Care Workers in Ireland*, available at <http://www.mrci.ie/resources/publications/leaflets-reports/who-cares-the-experience->

[of-migrant-care-workers-in-ireland-nov-2012/](http://www.mrci.ie/resources/publications/leaflets-reports/who-cares-the-experience-of-migrant-care-workers-in-ireland-nov-2012/)

11.3 Right to Social Security and the Provision of Social Supports (Articles 11(1)(e) and 11(2)(c))

11.3.1 Gender, intersectionality and the Irish social security system

The Commission is concerned about the gendered nature of the Irish social security system, which may be characterised as a 'male breadwinner model'.³⁸⁰ For example, although both spouses may be eligible for an unemployment payment, the value of the welfare payment is limited to that of an adult plus an adult dependent. It has been stated that the qualified adult condition 'discouraged women from becoming labour market active and led to household formation barriers for low income couples' as well as leading to a loss of economic independence.³⁸¹

'Qualified adults', the majority of whom are reported to be women,³⁸² are not recorded in official unemployment statistics. This is of particular significance since following the economic crisis, there is evidence of social protection policy shifting towards labour market activation – for example, changes to the One Parent Family Payment introduced in 2010 and 2013 were aimed at labour market activation of lone parents.³⁸³ During its CEDAW consultation,

380 Ursula Barry and Maggie Feely (2016) 'Gender and economic inequality in Ireland', in Rory Hearne and Cian McMahon, eds, (2016) *Cherishing All Equally 2016: Economic Inequality in Ireland*, Dublin: TASC, p. 49, available: http://www.tasc.ie/download/pdf/tasc_inequalityreport_2016_web.pdf

381 Mary P Murphy (2014) 'Ireland's lone parents, social welfare and recession', *The Irish Community Development Law Journal*, vol. 3(2), pp. 6–21, available: http://www.communitylawandmediation.ie/_fileupload/The%20Journal/CLM-eJournal-Issue-2-Volume-3%20%28December%202014%29.pdf

382 National Women's Council of Ireland (NWC) & Services Industrial Professional and Technical Union (SIPTU) (2012) *Careless to Careful Activation – Making Activation Work For Women*, Dublin: NWC & SIPTU, available http://www.nwci.ie/download/pdf/carelesscarefulactivationreport_final.pdf

383 Mary P Murphy (2014) 'Ireland's lone parents, social welfare and recession', *The Irish Community Development Law Journal*, vol.

community workers informed the Commission that once a woman is classified as a qualified adult and absent from official unemployment records, she is excluded from a range of social supports, such as funding for higher education.³⁸⁴ The system has been described as one which 'renders some women invisible, taking the magnitude of their unpaid care labour for granted, and disempowers others from making independent choices about their lives'.³⁸⁵

Recalling the Committee's assertion that 'intersectionality is a basic concept for understanding the scope of the general obligations of State parties',³⁸⁶ the Commission regrets that women from particular societal groups face additional barriers within the social security system. Recalling repeated recommendations of UN treaty monitoring bodies³⁸⁷ and views expressed during its CEDAW consultation, the Commission reiterates its previous recommendation to the Government to review the habitual residence condition in order to eliminate its discriminatory impact on access to social security payments and supports, particularly among marginalised groups such as migrant women, Roma women, and Traveller women.³⁸⁸ This recommendation featured frequently during the Commission's CEDAW consultation.³⁸⁹

3(2), pp. 6–21, available: http://www.communitylawandmediation.ie/_fileupload/The%20Journal/CLM-eJournal-Issue-2-Volume-3%20%28December%202014%29.pdf

384 This issue was raised at a regional consultation in Monaghan. In its submission to the Commission, the Free Legal Advice Centres also raised concerns about the potential negative impact of the 'qualified adult' condition on women.

385 Ursula Barry and Maggie Feely (2016) 'Gender and economic inequality in Ireland', in: Rory Hearne and Cian McMahon, eds, (2016) *Cherishing All Equally 2016: Economic Inequality in Ireland*, Dublin: TASC, p. 49, available: http://www.tasc.ie/download/pdf/tasc_inequalityreport_2016_web.pdf

386 CEDAW (2010) *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2*.

387 CESCR (2015) *Concluding Observations on Ireland, E/C.12/IRL/CO/3, para. 21*. See also: *CRC (2016) Concluding observations on the combined third and fourth periodic reports of Ireland, CRC/C/IRL/CO/3-4*, paras. 69–70.

388 IHREC (2015) *Submission to UN CEDAW: List of Issues Prior to Reporting on Ireland's Combined 6th and 7th Report under CEDAW*, available: https://www.ihrec.ie/app/uploads/download/pdf/ihrec_submission_to_cedaw_loipr_2015.pdf

389 This issue was raised in written submissions from Free Legal Advice Centres, Migrant Rights Centre Ireland, the Immigrant Council of Ireland, and Nasc The Irish Immigrant Support Centre.

Recommendations:

The Commission recommends that the State conduct a comprehensive review of welfare policy from a gender perspective in order to eliminate indirect discrimination on the grounds of gender.

Recalling the previous recommendations of UN treaty monitoring bodies, the Commission recommends that the State review the operation of the habitual residence condition in order to eliminate discriminatory impact on migrant women, Traveller women, and Roma women.

11.3.2 Access to State Pensions for older women

The Commission acknowledges that the State pension was increased by €5 per week in Budget 2017 but notes that this blanket policy was implemented without any consideration of gender. In Ireland, women over the age of 65 are more likely to depend on the social security system as their primary source of income in the form of a non-contributory pension.³⁹⁰ They are also less likely to be in receipt of either an occupational pension or a contributory State pension due to the increased likelihood of career interruptions.³⁹¹

The Commission notes with concern that access to the contributory State pension has become more difficult during the reporting period. In 2012 the minimum number of contributions required doubled.³⁹² Prior to the changes, only 27 per cent

390 Central Statistics Office (2013) Survey on Income and Living Conditions (SILC): Thematic Report on the Elderly 2004, 2009, 2010 (revised) and 2011, Cork: CSO, p. 6, available <http://www.cso.ie/en/media/csoie/releasespublications/documents/silc/2011/elderly040910and11.pdf>.

391 Organisation for Economic Cooperation and Development (OECD) (2014) OECD Reviews of Pensions System: Ireland, Paris OECD Publishing, available <http://www.welfare.ie/en/downloads/oecd-review-of-the-irish-pensions-system.pdf>.

392 From 6 April 2012 the minimum number contributions required to qualify increased from 260 to 520 – see: section 364(2)(c) of the *Social*

of those in receipt of the maximum State Pension (Contributory) were women and the Commission is therefore concerned about the impact of older women's standard of living.³⁹³ As a general rule, entitlement is measured from the year of first contribution up until the year of retirement and does not take years out of the workforce into account. The Homemaker's Scheme allows up to twenty years out of the workforce to be discounted from the assessment. While this scheme has benefitted women who may have had career interruptions in order to care for families, it has not been of equal benefit to all as only those who took career breaks after 6 April 1994 are covered by this scheme. The Commission has received numerous communications from older women, both through its information function and during its CEDAW consultation, whose standard of living has been negatively impacted due to their exclusion from this scheme, particularly those who were affected by the 'marriage bar' which required women in public service jobs to leave their employment upon marriage.³⁹⁴ Recalling the Committee's 2005 Concluding Observations, the Commission is of the view that the State should 'consider allowing for the Homemaker's Scheme (1994) to be applied retroactively so as to benefit older women'.³⁹⁵

Recommendations:

The Commission recommends that the policy decision to double the minimum number of contributions required to qualify for the contributory State Pension be reviewed, employing a gender impact analysis.

Welfare Consolidation Act 2005.

393 Nata Duvvury, Áine Ni Léime, Aoife Callan, Linda Price and Mark Simpson (2012) *Older Women Workers' Access to Pensions: Vulnerabilities, Perspectives and Strategies*, Galway: Irish Centre for Social Gerontology, National University Ireland Galway, available http://www.icsg.ie/sites/www.icsg.ie/files/personfiles/oww_report_.pdf

394 The marriage bar ended in 1973 when Ireland joined the European Union (then the European Economic Community).

395 UN Committee on the Elimination of Discrimination against Women (2005) *Concluding comments: Ireland*, CEDAW/C/IRL/CO/4-5, para. 35, available: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=dtYoAzPhJ4NMMy4Lu1TOebCwhwRbA%2bDSKmQePpgH-FEEeS0UGxsHvXM%2bJmPds%2bkwcgsvBT6e8FToT%2b13kubDcd-jCRIDwadgziT9y9EBrtysmJ4C%2fkeTzQAlmEJw9Uc7aCW>

The Commission recommends that the Homemaker's Scheme (1994) be applied retrospectively by the State immediately, in order to ensure equitable access to the contributory State Pension.

11.3.3 Access to Maternity Benefit in cases of surrogacy (Articles 11(2)(b) and 11(3))

Litigation has demonstrated that Ireland's social security and equality legislation is not adequately equipped to ensure equality for those availing of surrogacy services. In *G v The Department of Social Protection*³⁹⁶ the High Court found that an Irish woman who had a child by means of a surrogacy arrangement in the USA had no redress in relation to exclusion from entitlement to a payment equivalent to maternity benefit. In *Z v A Government Department*³⁹⁷ the complainant was refused an application for leave equivalent to maternity or adoptive leave in circumstances where the child was born through a surrogacy arrangement.

The Commission notes that Article 11(3) of the Convention requires States to review legislation 'periodically in the light of scientific and technological knowledge'. In order to comply with its Convention obligations and address the finding of the High Court, the Commission is of the view that the State should introduce legislative proposals to ensure that all mothers have access to maternity leave with pay.

396 *G v The Department of Social Protection* [2015] IEHC 419. See IHREC (2015) 'IHREC recommends changes to Equal Status Acts following High Court decision on maternity benefit claim' [press statement] 8 July 2015, available: <http://www.ihrec.ie/news/2015/07/08/ihrec-recommends-changes-to-equal-status-acts-foll/>. The complainant was provided legal assistance by the Equality Authority.

397 *Z v A Government Department* DEC-E2014-050. The Equality Authority provided legal assistance in this case. The former Equality Tribunal (now the Workplace Relations Commission) has been commended on its understanding in this case of EU equality law and procedures, including the Charter of Fundamental Rights of the European Union. See: Liam Thornton and Suzanne Kingston (2015) *A Report on the Application of the European Convention on Human Rights Act 2003 and the European Charter of Fundamental Rights: Evaluation and Review*, at p. 154. Available: <https://www.lawsociety.ie/Documents/committees/hr/ECHRRReport30July2015.pdf>.

Recommendation:

The Commission recommends that the Maternity Benefit scheme be amended to ensure that all mothers, including those who have children by means of a surrogacy, have access to the benefit.

11.3.4 Gender and care work

It has been stated that 'gender stereotyped patterns of care are rooted in the Irish Constitution', where references to 'mother' and 'women' are interchangeable, and as a result it is claimed that 'the gendered division of care labour is deeply embedded in the legislative and policy fabric of Irish society'.³⁹⁸ In its 2015 parallel report to Committee on Economic, Social and Cultural Rights, the Commission expressed concern about cuts to the Respite Care Grant and access to social supports for carers and called for State to recognise the value of the work carried out by women and men in caring roles.³⁹⁹ During its CEDAW consultation, concerns were expressed to the Commission, particularly in focus groups with older women and women with disabilities, about the lack of recognition for the work of carers.⁴⁰⁰ The Commission is of the view that adequate support, including social security payments, state facilities and services, should be provided to support carers and those they care for.

Article 11(2)(c) of the Convention requires the State to develop 'a network of child-care facilities'. During its CEDAW consultation, the Commission received numerous representations about the deficiencies in the childcare infrastructure in Ireland, particularly in rural areas where access to community facilities is limited. The Commission remains concerned about the high cost of childcare in Ireland, which

398 Rory Hearne and Cian McMahon, eds, (2016) *Cherishing All Equally 2016: Economic Inequality in Ireland*, Dublin: TASC. Available: http://www.tasc.ie/download/pdf/tasc_inequalityreport_2016_web.pdf

399 IHREC (2015) *Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review*, para. 7.2.1, available https://www.ihrec.ie/app/uploads/download/pdf/icescr_report.pdf

400 This was raised in consultations with older women hosted by Age Action Cork and women with disabilities hosted by Inclusion Ireland. These issues were also raised in written submissions from the Alzheimer Society of Ireland and Tomhaggard Women's Shed.

has been criticised nationally and internationally.⁴⁰¹ In particular, the Commission is concerned by the inequitable access to childcare facilities by women living in rural areas.

The Commission recognises the measures taken by the State during the reporting period to support parents with childcare responsibilities. In particular, the Commission welcomes the introduction of Paternity Leave and Paternity Benefit in September 2016 as well as the intended publication of a Family Leave Bill⁴⁰² as a measure to promote the sharing of parenting responsibilities between men and women, and notes that these issues arose frequently in response to the Commission's online survey.⁴⁰³ The Commission also notes the announcement of a Single Affordable Childcare Scheme⁴⁰⁴ and welcomes the fact that Department of Children and Youth Affairs has included female labour market participation as an objective of this policy.⁴⁰⁵

Recommendations:

The Commission recommends that the State improve supports for care services for older people and persons with disabilities. The Commission also reiterates its previous recommendations to the Committee on Economic, Social and Cultural Rights in relation to the

401 For low income families including lone parents, childcare can cost up to 40 per cent of their total income compared with 24 per cent of the income of a family with two incomes; however, even this lower percentage is still double that of the EU average. See OECD (2014) *Benefits and Wages Statistics*, available: <http://www.oecd.org/els/benefits-and-wages-statistics.htm>; European Commission (2015) *Country Report Ireland Including an In-Depth Review on the Prevention and Correction of Macroeconomic Imbalances*, p. 2; Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations on the third period report of Ireland* UN Doc. E/C.12/IRL/CO/3, para. 23, available <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/150/67/PDF/G1515067.pdf?OpenElement>; Irish Congress of Trade Unions (2016) *Who Cares? Report on Childcare Costs & Practices*, available http://www.ictu.ie/download/pdf/report_on_childcare_costs_practices_congress_2016.pdf

402 Minister of State for New Communities, Culture and Equality, Aodhán Ó Riordáin TD, Parliamentary Questions: Written Answers [13279/15], 31 March 2015.

403 One in three issues raised in relation to employment related to maternity and paternity leave.

404 Department of Children and Youth Affairs (2016) 'Single Affordable Childcare Scheme' [web page], available <http://www.dcy.gov.ie/viewdoc.asp?DocID=4004>

405 Department of Children and Youth Affairs (2016) *Policy Paper on Affordable Childcare Scheme*, p. 14, available: <http://www.dcy.gov.ie/documents/earlyyears/20161028PolicyPaper.pdf>

recognition of the unpaid care work of women in Ireland through the provision of adequate social supports.

The Commission recommends that the State implement the new Affordable Childcare Scheme without delay in order to ensure that lack of access to affordable, quality childcare is no longer a barrier to female labour market participation, particularly for women living in rural areas.

11.4 Gender, Poverty and Homelessness (Article 13)

Article 13 of the Convention requires State parties to take all appropriate measures to eliminate discrimination against women in the area of economic and social life. The Committee on Economic, Social and Cultural Rights has also stated that 'the social construction of gender stereotypes, prejudices and expected roles, ... have created obstacles to the equal fulfilment of economic, social and cultural rights'.⁴⁰⁶ During its CEDAW consultation, the Commission received submissions on the issues faced by women who are living in poverty, dealing with addiction and experiencing homelessness.⁴⁰⁷

In its 2005 Concluding Observations, the Committee raised concerns about 'the situation of vulnerable groups of women who are considered to be at high risk of consistent poverty and social exclusion' and recommended that the State conduct a gender

406 CESCR (2009) *General Comment No. 20 on Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/20, para. 20, available: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1a0Szab0oXTdlmnsJZZVQdqX-gncKnylFC%2blzJlZGhsosnD23NsgR1Q1NNNGs2QltnHpLzG%2fB-mxPjJUVNxAedgozixcbEW9WMvnSFEiU%2fV>

407 The Commission met the SAOL Project, with women in detention, and with a representative from Focus Ireland, a homelessness charity. The Commission also received a written submission from Focus Ireland.

impact analysis of its anti-poverty measures.⁴⁰⁸ The Commission observes that, while the State Report refers to poverty reduction it does not contain any analysis from a gender perspective of the anti-poverty measures or indeed austerity measures taken during the reporting period.⁴⁰⁹

In its 2015 parallel report to the Committee on Economic, Social and Cultural Rights, the Commission outlined the detrimental impact of austerity measures on particular societal groups, including women.⁴¹⁰ For example, research on the labour market crisis in Ireland found that the austerity measures 'had a strong gender dimension' which resulted a 'levelling down' of employment rates between men and women rather than an increase in female employment.⁴¹¹ This research also highlighted that income poverty and deprivation was highest for lone parents, among whom 30 to 32 per cent were in income poverty and 44 to 49 per cent were materially deprived.⁴¹² During the reporting period, changes to the One Parent Family Payment (OPFP) restricted access to the payment through the reduction of income disregards and the introduction of a condition related to the age of the children.⁴¹³ While the stated aim of this policy change is to increase labour market participation of lone parents in order to tackle child poverty, the Commission is concerned that these changes did not take the full

range of employment and childcare supports into account in order to ensure effective activation.⁴¹⁴

The economic recession has also had an impact on housing and homelessness, and concerns about child and family homelessness were expressed by UN treaty monitoring bodies in 2015 and 2016.⁴¹⁵ In its parallel report to the Committee on the Rights of the Child, the Commission expressed its concern with the State's slow progress in addressing the housing crisis.⁴¹⁶ The Commission acknowledges the State's efforts to address the housing crisis in 2016 through the establishment of a temporary parliamentary committee to 'review the implications of the problems of housing and homelessness, and make recommendations thereon'⁴¹⁷ and the publication of *Rebuilding Ireland: An Action Plan for Housing and Homelessness*.⁴¹⁸

In *Rebuilding Ireland* the Government acknowledges that the impact of the recession has signalled a move away from the traditional phenomenon of single adult male homelessness and 'resulted in a new homelessness dynamic'.⁴¹⁹ Data provided to the Commission highlighted that 65 per cent of families currently experiencing homelessness engaging with the homelessness organisation Focus Ireland are single parent families, the majority of which (98 per cent) are female-headed households.⁴²⁰

408 UN Committee on the Elimination of Discrimination against Women (2005) *Concluding comments: Ireland*, CEDAW/C/IRL/CO/4-5, para. 35.

409 *Combined sixth and seventh periodic reports of the State parties due in 2016: Ireland*, CEDAW/C/IRL/6-7.

410 IHREC (2015) *Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to the Committee on Economic, Social and Cultural Rights on the Examination of Ireland's Third Periodic Report*, available at https://www.ihrec.ie/app/uploads/download/pdf/icescr_report.pdf

411 Frances McGinnity, Helen Russell, Dorothy Watson, Gillian Kingston and Elish Kelly (2014) *Winners and Losers? The Equality Impact of the Great Recession in Ireland*, Dublin: Equality Authority & Economic and Social Research Institute, p. 7, available: <https://www.ihrec.ie/app/uploads/download/pdf/20141109163348.pdf>

412 Frances McGinnity, Helen Russell, Dorothy Watson, Gillian Kingston and Elish Kelly (2014) *Winners and Losers? The Equality Impact of the Great Recession in Ireland*, Dublin: Equality Authority & Economic and Social Research Institute, p. xi, available: <https://www.ihrec.ie/app/uploads/download/pdf/20141109163348.pdf>

413 Mary Murphy (2014) 'Ireland's lone parents, social welfare and recession', *The Irish Community Development Law Journal*, vol. 3(2), pp. 6-21, available: http://www.communitylawandmediation.ie/_fileupload/The%20Journal/CLM-eJournal-Issue-2-Volume-3%20%28December%202014%29.pdf.

414 A 2016 study recommends that a package of supports, including pre-employment supports, employment supports, financial support and childcare support, is required. See Michelle Millar and Rosemary Crosse (2016) *Lone Parents and Activation, What Works and Why: A Review of the International Evidence in the Irish Context*, UNESCO Child & Family Resource Centre Galway, p. 70, available <http://www.childandfamilyresearch.ie/media/ilascfrc/reports/Millar-and-Crosse-Activation-Report.pdf>

415 Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations on the third periodic report of Ireland*; UN Committee on the Rights of the Child, *Concluding Observations on the combined third and fourth periodic reports of Ireland*, CRC/C/IRL/CO/3-4, paras. 61-62.

416 IHREC (2015) *Report to the UN Committee on the Rights of the Child on Ireland's Combined third and fourth periodic reports*, p. 26, available: https://www.ihrec.ie/app/uploads/download/pdf/ireland_and_the_united_nations_convention_on_the_rights_of_the_child.pdf

417 *Establishment Order of the Committee, 14 April 2016*. See: *Houses of the Oireachtas (2016) Report of the Committee on Housing and Homelessness, Appendix 1*, available: http://opac.oireachtas.ie/AWDData/Library3/Committee_on_Housing_and_Homelessness_Final_Report_17062016_094736.pdf.

418 *Action Plan for Housing and Homelessness: Rebuilding Ireland*, <http://rebuildingireland.ie/>

419 *Action Plan for Housing and Homelessness: Rebuilding Ireland*, http://rebuildingireland.ie/Rebuilding%20Ireland_Action%20Plan.pdf, p. 34.

420 See Focus Ireland (2016) *Insights into Family Homelessness: Insight 1*, available <https://www.focusireland.ie/wp-content/uploads/2016/04/Insight-into-Family-Homelessness-No-1-2016-Snapshot-Profile-of->

Further research conducted by that organisation also highlighted that 11 of 72 families presenting as homeless in March 2016 cited domestic violence as the main cause and a further five families reported that this had been a factor in the past.⁴²¹ The Commission is of the view that this data and other research highlighting the marginalisation, stigmatisation and social isolation of women living in long term or 'chronic' homelessness, demonstrates a strong gender dimension to the current homelessness crisis, which is concerning.⁴²²

The gendered nature of homelessness is particularly apparent when women's pathways into homelessness are considered. The link between homelessness and gender-based violence is mentioned elsewhere in this report.⁴²³ During its consultation, the Commission was also informed that the gaps in policy and practice in relation to aftercare provision render young women leaving care vulnerable to homelessness.⁴²⁴ The Commission welcomes the steps that have been taken to provide additional emergency accommodation for victims of domestic violence and young people leaving care.⁴²⁵ However, the Commission notes that measures have not yet been taken to assist individuals with addiction issues who are experiencing homelessness. During its CEDAW consultation, the Commission was informed that women experiencing homelessness and addiction are often excluded from emergency accommodation.⁴²⁶

Children-residing-in-Emergency-Accommodation-in-Dublin-Region.pdf

421 Focus Ireland (2016) *Insights into Family Homelessness Number 4*, available <https://www.focusireland.ie/wp-content/uploads/2016/04/Insight-into-Family-Homelessness-No-4-2016-Telephone-Survey-of-Families-that-Became-Homeless-during-March-2016.pdf>

422 Paula Mayock, Sarah Sheridan and Sarah Parker (2015) *The Dynamics of Long-term Homelessness among Women in Ireland*, Dublin: Dublin Region Homeless Executive, available: <http://www.drugs.ie/resourcesfiles/ResearchDocs/Ireland/2015/TheDynamicsOfLongTermHomelessnessAmongWomenInIreland.pdf>; Paula Mayock and Sarah Sheridan (2012) Women's 'Journeys' to Homelessness: *Key Findings from a Biographical Study of Homeless Women in Ireland*, Women and Homelessness in Ireland Research Paper 1. Dublin: School of Social Work and Social Policy and Children's Research Centre, Trinity College Dublin, available https://www.tcd.ie/childrensresearchcentre/assets/pdf/Publications/research_paper_one_women_and_homelessness_in_ireland.pdf

423 See section 6.2.

424 This arose in the course of our consultation in a written submission from EPIC.

425 *Action Plan for Housing and Homelessness: Rebuilding Ireland – First Quarterly Progress Report*, November 2016, available: <http://rebuildingireland.ie/First-Progress-Report.pdf>

426 This issue arose in our consultation in a focus group with women

Recommendations:

The Commission recommends that the Minister for Social Protection implement the Committee's 2005 recommendation in order to ensure that a gender perspective is built into all anti-poverty measures. The Minister should also conduct a gender impact analysis of austerity measures and undertake actions to reverse any negative impacts on women's economic and social rights.

The Commission recommends that the Minister for Social Protection review the changes to the One Parent Family Payment and undertake to implement the necessary support to ensure that lone parents' right to an adequate standard of living is progressively realised.

The Commission recommends that the Minister for Housing, Planning, Community and Local Government adopt a gender-sensitive approach to the implementation of the relevant actions of Rebuilding Ireland in order to support women experiencing homelessness.

in the SAOL Project. See also, Paula Mayock, Sarah Sheridan and Sarah Parker (2015) *The Dynamics of Long-term Homelessness among Women in Ireland*, Dublin: Dublin Region Homeless Executive, available <http://www.drugs.ie/resourcesfiles/ResearchDocs/Ireland/2015/TheDynamicsOfLongTermHomelessnessAmongWomenInIreland.pdf>

Traveller women
are not given
the choice
to breastfeed
– we are
handed a bottle

12.1 Health Inequalities, Access to Services and Health Policy

Recalling General Recommendation No. 24 on women and health, the Commission notes that the Committee requires 'special attention' to be paid to the health needs of marginalised groups of women.⁴²⁷ The Commission also notes that research from the European Union Agency for Fundamental Rights (FRA) has demonstrated that persons with certain combined protected characteristics may experience structural barriers in accessing healthcare, such as the lack of translation and interpretation services for migrants or the lack of communication support services for persons with intellectual and sensory disabilities. During its CEDAW consultation, the Commission received a number of submissions which echoed this point.⁴²⁸ For example, the Commission was informed that Deaf women with medical cards are usually provided with an interpreter for a visit to a general practitioner (GP), but those without medical cards are not.⁴²⁹

The FRA's research also highlighted the need for comprehensive national integration strategies to tackle individual experiences of unfair or undignified treatment in healthcare.⁴³⁰ The Commission notes that Ireland's National Intercultural Health Strategy 2007–2012 has not been renewed.⁴³¹ In its previous submission to the Committee, the Commission expressed concerns about the barriers and inequitable health outcomes experienced by Traveller women and trans women.⁴³² These concerns

427 CEDAW (1999) *General recommendation No. 24: Article 12 of the Convention (women and health)*, para. 6.

428 During the Commission's CEDAW consultation this issue was raised at consultation events by organisations supporting migrants.

429 Written submission from National Deaf Women's Association of Ireland.

430 European Union Agency for Fundamental Rights (2013) *Inequalities and Multiple Discrimination in Access to and Quality of Healthcare*, Vienna: FRA, available: http://fra.europa.eu/sites/default/files/inequalities-discrimination-healthcare_en.pdf

431 Health Service Executive, *National Intercultural Health Strategy 2007–2012*, available: https://www.hse.ie/eng/services/Publications/SocialInclusion/National_Intercultural_Health_Strategy_2007_-_2012.pdf

432 IHREC (2015) *Submission to UN CEDAW List of Issues Prior to Reporting on Ireland's Combined 6th and 7th Report under CEDAW*, available: https://www.ihrec.ie/app/uploads/download/pdf/ihrec_

were also raised during the Commission's CEDAW consultation, as were reports of racism and transphobia experienced by Traveller and Roma women and trans women.⁴³³ The Commission was also made aware of cases of migrant women being refused a Personal Public Service Number (PPSN), despite fulfilling the eligibility requirements, and therefore these women have been refused cancer screening tests which are freely available to women with a PPSN.⁴³⁴

Following its regional consultation events and visits to detention facilities and direct provision centres, the Commission also found that geographical and living conditions play a pivotal role in women's health issues. For example, gross regional variations persist in the Irish health care system, which give rise to inequitable access to services, particularly for women living in rural areas.⁴³⁵ Women living in direct provision centres and detention facilities reported a lack of choice and inadequate mental health services.⁴³⁶

The Commission recalls that General Recommendation No. 24 on women and health recommends that States 'place a gender perspective at the centre of all policies and programmes affecting women's health'.⁴³⁷ The Commission notes that while gender-sensitive health services were a key objective in the *National Women's Strategy 2007–2016*, gender mainstreaming⁴³⁸ does not feature strongly in key policy documents such as *Healthy Ireland*⁴³⁹ and a

submission_to_cedaw_loipr_2015.pdf, pp. 29–30.

433 Traveller women's health was repeatedly raised, both at the Commission's regional meetings and in written submissions from Pavee Point and the National Traveller Women's Forum. The health of trans women was highlighted in a written submission from the Transgender Equality Network of Ireland (TENI).

434 This issue arose during a consultation meeting with a group of migrant women facilitated by Migrant Rights Centre Ireland.

435 This was raised consistently at regional consultation events and in a written submission from AIMSI, the Association for Improvements in the Maternity Services Ireland.

436 This was raised during our consultation visits as well as in a written submission from the Irish Penal Reform Trust. The mental health of asylum seeking and refugee women is discussed further in section 13.3 below.

437 CEDAW (1999) *General Recommendation No. 24 women and health*, para. 31(a).

438 The Commission acknowledges the development of the HSE Gender Mainstreaming Framework in collaboration with the National Women's Council of Ireland.

439 *A Framework for Improved Health and Wellbeing 2013–2025*, available <http://www.hse.ie/eng/services/publications/corporate/hieng.pdf>; *Implementation Plan 2015–2017*, <http://www.hse.ie/eng/health/hl/hi/HIDocs/HIimplementationplanWeb.pdf>

Vision for Change.⁴⁴⁰ In particular, the national mental health policy, *A Vision for Change*, does not adequately address gender-specific aspects of mental health such as the impact of gender-based violence, post-natal and peri-natal wellbeing, childcare needs during treatment and fear of children being taken into care after seeking help.⁴⁴¹ During its CEDAW consultation, it was also reported to the Commission that there is a focus on suicide prevention in mental health policy and discourse in the State at the moment, and the Commission is of the view that this focus should be widened to include eating disorders and self-harm which poses a higher female mortality risk.⁴⁴²

The Commission is of the view that the implementation of the Public Sector Duty provides an opportunity for policy-makers and health service providers, including private companies delivering State services, to work together to ensure that to the right to an adequate standard of health is realised for all women.

Recommendations:

The Commission recommends the State support the implementation of the HSE Gender Mainstreaming Framework in order to ensure its effective rollout and integrate these activities into its broader Public Sector Duty obligations.

The Commission recommends that a gender lens be adopted in the forthcoming review of *A Vision for Change* in order to ensure that mental health policy and services adequately provide for women's rights.

440 *A Vision for Change*, available http://www.hse.ie/eng/services/publications/Mentalhealth/Mental_Health_-_A_Vision_for_Change.pdf

441 A number of these issues were raised in the Commission's regional consultation meetings in Letterkenny, Co. Donegal and Tralee, Co. Kerry as well as in written submissions from St. Patrick's Mental Health Services and the AIMSI, the Association for Improvements in the Maternity Services Ireland.

442 This was raised in a written submission from St. Patrick's Mental Health Services.

12.2 Sexual and Reproductive Health

12.2.1 Policy framework

During the reporting period, the State published its first *National Sexual Health Strategy* and first *National Maternity Strategy*.⁴⁴³ The *National Maternity Strategy* recognises a number of issues within the maternity services, including an over-medicalised model of childbirth and poor breastfeeding support in the hospital and community. Both of these issues featured strongly in the Commission's CEDAW consultation.⁴⁴⁴ In relation to breastfeeding, the Commission is concerned that Ireland has one of the lowest rates in Europe. Recalling the 2016 Concluding Observations of the Committee on the Rights of the Child, the Commission urges the State to:

- (a) Strengthen its efforts to promote exclusive and continued breastfeeding by providing access to materials and raising awareness concerning the importance of breastfeeding and the risks of formula feeding; in particular, measures for the Traveller community should be included;
- (b) Review and strengthen training for health-care professionals on the importance of exclusive breastfeeding;
- (c) Further increase the number of hospitals certified as baby-friendly;
- (d) Develop and implement a national strategy on the breastfeeding of infants; and in doing so, consider implementing the International Code of Marketing of Breast-milk Substitutes, along with adequate measures for its enforcement.⁴⁴⁵

443 Healthy Ireland and the Department of Health (2015) *National Sexual Health Strategy 2015–2020*, available: <http://health.gov.ie/wp-content/uploads/2015/10/National-Sexual-Health-Strategy.pdf>

444 This issue arose at regional consultation events as well as in written submission from AIMSI, the Association for Improvements in the Maternity Services Ireland.

445 UN Committee on the Rights of the Child, *Concluding Observations on the combined third and fourth periodic reports of Ireland*, CRC/C/IRL/CO/3-4, para. 51.

Recommendation:

The Commission recommends that the National Sexual Health Strategy and the National Maternity Strategy be fully resourced in order to ensure full implementation. The Commission also recommends that paragraph 51 of Concluding Observations of the Committee on the Rights of the Child be implemented in full in order to support mothers to breastfeed.

12.2.2 Legal framework regulating access to lawful terminations

In its List of Issues, the Committee sought detailed information on the legal framework in relation to abortion services as well as the constitutional provision on the right to life. The Commission recalls that various UN treaty monitoring bodies have examined this framework during the reporting period.⁴⁴⁶ The Commission has endorsed the Concluding Observations arising from these examinations. This section provides a brief overview of the Irish legal framework that regulates reproductive rights in the context of international human rights law, in particular drawing on the Committee's General Recommendation No. 24 on women and health.

⁴⁴⁶ See IHREC (2015) *Submission to the Second Universal Periodic Review Cycle for Ireland*, at section 12: 'the Commission endorses recommendations by various UN treaty monitoring bodies that the State take all necessary measures to revise its legal framework on abortion to ensure that it is in line with international human rights law'. Available: <http://www.ihrec.ie/news/2015/10/01/ihrec-publish-submission-to-un-human-rights-council/>. Recommendations from UN treaty monitoring bodies include that of the Committee on Economic, Social and Cultural Rights that 'the State party take all necessary steps, including a referendum on abortion, to revise its legislation on abortion' (Concluding Observations on the Third Periodic Report on Ireland, E/C.12/IRL/CO/3, 19 June 2015 at para. 30); the recommendation of the Human Rights Committee that the State 'revise its legislation on abortion, including its Constitution' (Concluding Observations on the Fourth Periodic Report on Ireland, CCPR/C/IRL/CO/4, 19 August 2014 para 9); and the recommendation of the Committee on the Rights of the Child that the State 'decriminalize abortion in all circumstances and review its legislation with a view to ensuring access by children to safe abortion and post-abortion care services' (Concluding observations on the combined third and fourth periodic reports of Ireland, CRC/C/IRL/CO/3-4, February 2016).

Article 40.3.3 of the Constitution of Ireland (Bunreacht na hÉireann)

The Eighth Amendment to the Constitution of Ireland introduced the following text which is now enshrined in Article 40.3.3:

The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.

Since its entry into force in 1983, Article 40.3.3 has been amended twice, by the Thirteenth and Fourteenth Amendments to the Constitution of Ireland, to provide that Article 40.3.3 does not limit the freedom to travel or to obtain information on services available in another state. The Commission notes the constraints currently placed upon the State by Article 40.3.3 of the Constitution of Ireland in introducing legislation regarding termination of pregnancy. This issue was repeatedly raised via the various methods of consultation undertaken by the Commission in the preparation of this report.⁴⁴⁷

⁴⁴⁷ Views expressed to Commission during its consultation specifically in relation to whether Article 40.3.3 of the Constitution of Ireland should be retained or repealed may be summarised as follows: 10 written submissions received from civil society organisations (Action Aid; AIMSI, the Association for Improvements in the Maternity Services Ireland; Abortion Rights Campaign; Irish Council for Civil Liberties; Galway Pro Choice; Irish Family Planning Association; Irish Penal Reform Trust; Migrants Rights Centre Ireland; Tomhaggard Women's Shed; and one woman writing in an individual capacity) called for the repeal of Article 40.3.3 of the Constitution of Ireland and no submissions were received in support of this provision; 155 responses to the online survey called for repeal of Article 40.3.3 of the Constitution of Ireland and no submissions were received in support of this provision; participants at three of the four regional meetings held throughout the country called for the repeal of Article 40.3.3 of the Constitution of Ireland and no views were expressed in support of this provision; 40 views were recorded in conversation with individuals at the National Ploughing Championships calling for repeal of Article 40.3.3 of the Constitution of Ireland and 5 supported the retention of Article 40.3.3 in the Constitution in its current form. Recent opinion polls have also suggested an increase in public support for the amendment or repeal of Article 40.3.3. See, for example, the Irish Times/ Ipsos MRBI poll conducted in October 2016, where 18 per cent of respondents supported Article 40.3.3 in its current form, 55 per cent favoured repeal in order 'to allow limited access to abortion in the case of rape or fatal foetal abnormality', and 19 per cent favoured repeal 'to allow abortion in all cases requested, as in Britain'. Eight per cent had no opinion. See Stephen Collins, 'Irish Times' poll: Majority want repeal of Eighth Amendment', Irish Times, 7 October 2016. Available at <http://www.irishtimes.com/news/social-affairs/irish-times-poll-majority-want-repeal-of-eighth-amendment-1.2819814>.

Recalling the Committee's 2005 Concluding Observations that the State 'facilitate a national dialogue on women's right to reproductive health',⁴⁴⁸ the Commission notes that on 26 and 27 November 2016 the Citizens' Assembly held its first meeting on Article 40.3.3 of the Constitution of Ireland. In July 2016 the Houses of the Oireachtas passed a motion to establish a Citizens' Assembly which instructed the Assembly to 'make a report and recommendation on the matter [Article 40.3.3] ... to the Houses of the Oireachtas, which on receipt will refer the report for consideration to a Committee of both Houses which will in turn bring its conclusions to the Houses for debate'.⁴⁴⁹ During the Commission's CEDAW consultation, concerns were expressed about the composition of the Assembly and the process and procedures in relation to reporting to the Houses of the Oireachtas.⁴⁵⁰

Recommendation:

The Commission recommends that the Citizen's Assembly and the parliamentary committee tasked with considering its Report on Article 40.3.3 of the Constitution should ensure that the relevant aspects of the Committee's concluding observations, as well as the findings of other UN treaty monitoring bodies, are given due consideration.

448 UN Committee on the Elimination of Discrimination against Women (2005) *Concluding comments: Ireland*, CEDAW/C/IRL/CO/4-5, para. 39.

449 'Citizens' Assembly: Motion' *Parliamentary Debates: Dáil Éireann*, 13 July 2016, available at: <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016071300051?opendocument#YY00400>; 'Citizens' Assembly: Motion' *Parliamentary Debates: Seanad Éireann*, 15 July 2016, available at: <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/seanad2016071500002?opendocument#T00100>.

450 Concerns were raised by the Irish Council for Civil Liberties in a written submission to the Commission.

The Protection of Life During Pregnancy Act 2013

Recalling General Recommendation No. 24 on women and health, the Committee has stated that 'it is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women'.⁴⁵¹ The *Protection of Life During Pregnancy Act 2013* allows for terminations of pregnancy in limited circumstances,⁴⁵² and subject to a detailed clinical assessment and certification process⁴⁵³ where there is a real and substantive risk to the life of the mother, including in circumstances where the mother is suicidal.

During Ireland's examination by the Committee on the Rights of the Child, the State confirmed that the Act applies in full to pregnant girls.⁴⁵⁴ In its 2013 observations on the *Protection of Life During Pregnancy Bill*, the Irish Human Rights Commission highlighted the absence from the Bill of provision for 'accessible age-appropriate sexual and reproductive health services without discrimination'.⁴⁵⁵ However no

451 CEDAW (1999) *General Recommendation No. 24*, para. 11.

452 The Act was designed to respond to the judgment of the European Court of Human Rights in the case of *A, B and C v Ireland* (2010), No. 25579/05. The Court found that there was 'striking discordance between the theoretical right to a lawful abortion in Ireland on grounds of a relevant risk to a woman's life and the reality of its practical implementation', para. 264. The legislation was also enacted in the aftermath of the death of from sepsis during pregnancy of Savita Halappanavar in Galway University Hospital in October 2012. The report into Ms Halappanavar's death, conducted for the Health Service Executive (HSE) by Sir Sabaratnam Arulkumaran, a UK-based professor of obstetrics and gynaecology, noted that 'concerns about the law, whether clear or not, impacted on the exercise of clinical professional judgment', and that 'interpretation of the law related to lawful termination in Ireland ... [was] ... a material contributory factor' in the case. The report went on to remark: 'there is an immediate and urgent requirement for a clear statement of the legal context in which clinical professional judgement can be exercised in the best medical welfare interests of patients.... We recommend that the clinical professional community, health and social care regulators, and the Oireachtas consider the law including any necessary constitutional change and related administrative, legal and clinical guidelines in relation to the management of inevitable miscarriage.... These guidelines should include good practice guidelines in relation to expediting delivery for clinical reasons including medical and surgical termination.' See: Health Service Executive (2013) *Final Report: Investigation of Incident 50278 from time of patient's self-referral to hospital on the 21st of October 2012 to the patient's death on the 28th of October, 2012*, pp. 69–74, available <http://www.lenus.ie/hse/handle/10147/293964>.

453 Sections 7–9 of the *Protection of Life During Pregnancy Act 2013*. See also: Department of Health (2014) *Implementation of the Protection of Life During Pregnancy Act 2013: Guidance Document for Health Professionals*, sections 2–5, available <http://health.gov.ie/blog/publications/implementation-of-the-protection-of-life-during-pregnancy-act-2013-guidance-document-for-health-professionals/>.

454 *Replies of Ireland to the list of issues*, CRC/C/IRL/Q/3-4/Add.1, para 69, available: http://www.childrensrightrights.ie/sites/default/files/submissions_reports/files/CRC-ListofIssuesResponse101115.pdf

455 Irish Human Rights Commission (2013) *Observations on the*

amendments were made to the legislation as enacted to address this recommendation.

Recent reports of the application of the Act suggest that improvements to both the legislation and the Department of Health *Guidance Document* on its implementation⁴⁵⁶ will be necessary to render procedures better-suited to the circumstances of vulnerable groups of women and girls.⁴⁵⁷ For example, in August 2014, media reports revealed that a young woman seeking asylum, who has been called Ms. Y, is an alleged victim of rape in her country of origin, and who, despite asking for a termination of her unwanted pregnancy, was told her only available option was to deliver the baby at 24 weeks by Caesarean section. Her case was reviewed by a panel of medical experts convened under the Act and although deemed suicidal, media reports suggest she was refused a termination because the pregnancy was too far progressed. It is not yet clear what information was provided to the young woman about her right to access a termination under the relevant legislation. The Health Service Executive began an enquiry into the matter, which was halted following legal action by lawyers acting on behalf of Ms. Y, who have also indicated they will be initiating personal injury proceedings.⁴⁵⁸ Also in 2014, the High Court considered the case of a woman who was 15 weeks pregnant when she was declared clinically dead. There was no genuine prospect of the baby being born alive and the woman's family did not wish to prolong life support measures. However, doctors were concerned that they were obliged to protect the life of the unborn under Article 40.3.3.

The order for discontinuing life support was granted on the basis that it was in the 'best interests of the unborn child'.⁴⁵⁹

General Recommendation No. 24 also states that 'legislation criminalising abortion should be amended in order to withdraw punitive measures imposed on women who undergo abortion'.⁴⁶⁰ Section 22 of the *Protection of Life During Pregnancy Act 2013* contains an offence of intentional destruction of unborn human life which is punishable by up to 14 years imprisonment upon conviction on indictment. In its observations on the *Protection of Life During Pregnancy Bill 2013*, the IHRC recommended that a statutory duty be placed on the Director of Public Prosecutions to promulgate guidelines as to the factors that will be taken into account in deciding when a prosecution should be initiated by the DPP under those provisions.⁴⁶¹ In its 2016 Concluding Observations, the Committee on the Rights of the Child, recommended that the State 'decriminalise abortion in all circumstances and review its legislation'.⁴⁶²

Protection of Life During Pregnancy Bill 2013, para 118, available: http://www.ihrec.ie/download/pdf/ihrc_observations_protection_of_life_in_pregnancy_bill_2013.pdf

456 Available: <http://health.gov.ie/wp-content/uploads/2014/09/Guidance-Documents-Final-September-2014.pdf>

457 The IHREC has highlighted the concern that the current legal position has a disproportionate impact on the bodily autonomy of women from lower socio-economic backgrounds and migrant women. See IHREC (2015) *Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to the UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review*, May 2015 at section 10.8.1 and IHREC (2015) *Submission to UN Committee on the Elimination of all forms of Discrimination against Women: List of Issues Prior to Reporting on Ireland's Combined 6th and 7th Report under CEDAW*, para 73.

458 See "'Ms Y' court challenge to stop HSE inquiry into her care is struck out', *Irish Times*, 3 November 2015. Available: <http://www.irishtimes.com/news/crime-and-law/courts/high-court/ms-y-court-challenge-to-stop-hse-inquiry-into-her-care-is-struck-out-1.2415545>

459 See *PP v HSE* [2014] IEHC 622, available at <http://www.bailii.org/ie/cases/IEHC/2014/H622.html>

460 CEDAW (1999) *General Recommendation No. 24 on Article 12 of the Convention (women and health)*, para. 31(e).

461 Irish Human Rights Commission (2013) *Observations on the Protection of Life During Pregnancy Bill 2013*, available https://www.ihrec.ie/download/pdf/ihrc_observations_protection_of_life_in_pregnancy_bill_2013.pdf

462 UN Committee on the Rights of the Child, *Concluding Observations on the combined third and fourth periodic reports of Ireland, CRC/C/IRL/CO/3-4*, para. 58.

Impact of the legal framework on women's right to sexual and reproductive health

The Commission notes the publication in June 2016 of the Human Rights Committee's views on termination of pregnancy in a foreign country in *Mellet v Ireland*.⁴⁶³ In her communication, Ms. Mellet made four claims under Articles 7, 17, 19 and 2(1), 3, and 26 of the International Covenant on Civil and Political Rights. Ms Mellet had been informed in 2011 that her foetus would die *in utero* or shortly after birth and that she would have to travel to access a termination. The Committee concluded that 'the failure of the State party to provide services to the author that she required constituted discrimination and violated her rights under article 26 of the Covenant'.⁴⁶⁴

The Commission notes that on 10 August 2016, the Health Service Executive published *Guidelines on Standards for Bereavement Care Following Pregnancy Loss and Perinatal Death*, which offers anticipatory bereavement support to all families upon diagnosis of a life-limiting condition or a foetal anomaly that may prove fatal. Such support or information will be provided subject to 'provisions of relevant legislation such as the *Regulation of Information (Services Outside the State for Termination of Pregnancies) Act 1995*'.⁴⁶⁵

The Commission is concerned that the current legal position not only puts in place barriers which impede a woman's right to bodily autonomy as outlined in the Committee's interpretation of the right to health, but also that it has a disproportionate impact on women who may face barriers to travelling, including women from lower socio-economic backgrounds,⁴⁶⁶ women living in detention, migrant women, including undocumented migrants and asylum-seeking women whose inability to travel may be circumscribed due to

their immigration status. The impact of the current legal framework on these groups of marginalised women was raised during the Commission's CEDAW consultation. In addition, in its 2016 Concluding Observations, the Committee on the Rights of the Child also called on the state to 'ensure that the views of the pregnant girl are always heard and respected in abortion decisions'.⁴⁶⁷ Recalling the Committee on Economic, Social and Cultural Rights' General Comment No. 22, it is recommended that States take special measures to address barriers faced by particular women 'given their additional vulnerability by condition of their detention or legal status'.⁴⁶⁸

463 *Mellet v Ireland* (Communication No. 2324/2013), Human Rights Committee, 17 November 2016, CCPR/C/116/D/2324/2013.

464 *Mellet v Ireland* (Communication No. 2324/2013), Human Rights Committee, 17 November 2016, CCPR/C/116/D/2324/2013, para. 7.11.

465 Health Service Executive (2016) *Guidelines on Standards for Bereavement Care Following Pregnancy Loss and Perinatal Death* available at: <http://www.hse.ie/eng/about/Who/acute/bereavementcare/standardsBereavementCarePregnancyLoss.pdf>

466 UN Human Rights Committee (2014) *Concluding Observations on Ireland's Third Periodic Report*, CCPR/C/IRL/CO/3. The Human Rights Committee highlighted its concern at 'the discriminatory impact of the Act on women who are unable to travel abroad to seek abortions' and the State during its examination under ICCPR could offer 'no solution' to this issue.

467 UN Committee on the Rights of the Child (2016) *Concluding Observations on the combined third and fourth periodic reports of Ireland*, CRC/C/IRL/CO/3-4, para. 57(a).

468 CESCR (2016) *General Comment No. 22 on the right to sexual and reproductive health*, paras. 30–31.

Recommendations:

The Commission reiterates its endorsement of recommendations by various UN treaty monitoring bodies during the reporting period, including the 2016 Concluding Observations of the Committee on the Rights of the Child, that the State take all necessary measures to revise its legal framework on abortion.⁴⁶⁹

The Commission also reiterates its earlier recommendations that the State ensure that clear, comprehensive and authoritative guidance as to what constitutes 'real and substantive risk' be provided to allow women and girls, particularly those from more vulnerable backgrounds, to access the medical services to which they are entitled.

⁴⁶⁹ This is the majority view of the Irish Human Rights and Equality Commission.

**Section 13: Issues Affecting Specific Groups of Women
(Articles 1–3, 5 (a), 14 and 15)**

In here I have a
bed, I have a roof
over my head –
out there, you're
sent out to nothing

In General Recommendation No. 28 on the core obligations of States Parties, the Committee recognises:

Certain groups of women, including women deprived of their liberty, refugees, asylum-seeking women and migrant women, stateless women, lesbian women, disabled women, women victims of trafficking, widows and elderly women, are particularly vulnerable to discrimination through civil and penal laws, regulations, and customary law and practice.⁴⁷⁰

Throughout this report, the Commission highlights the impact of law and practice on specific groups of women, particularly by referencing its CEDAW consultation. This demonstrates the breadth of the role played by intersectionality in the experiences of women living in Ireland in 2016. In this section the Commission wishes to highlight a range of issues affecting specific groups of women which were identified as a result of the Commission's direct engagement with women in detention,⁴⁷¹ women living in direct provision,⁴⁷² and rural women. The Commission also wishes to highlight deficiencies in the legal framework protecting the rights of Traveller women and women with disabilities, namely the recognition of Traveller ethnicity and the ratification of the UN Convention on the Rights of Persons with Disabilities. These gaps in Ireland's human rights and equality framework have been repeatedly criticised by UN treaty monitoring bodies during the reporting period.

470 CEDAW (2010) *General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/GC/28, para. 31.

471 In July 2016, the Chief Commissioner and members of staff visited the two places of detention for women in Ireland, namely Limerick Prison and the Dóchas Centre in Mountjoy Prison, Dublin. 'Dóchas' is a word in the Irish language (Gaeilge) meaning 'hope'.

472 In July 2016, the Chief Commissioner and members of staff visited two direct provision centres, in Salthill, Co. Galway and Killarney, Co. Kerry. The centre in Killarney, Co. Kerry is the only female-only centre in the State and it is a State-owned centre managed by a private company that provides facilities management services. The centre in Galway is commercially owned and operated.

13.1 Traveller Women

(Articles 1–3, 5(a) and 15)

13.1.1 Recognition of Traveller ethnicity

During the reporting period, there have been repeated calls from national and international bodies for the State to formally recognise Irish Travellers as an ethnic minority.⁴⁷³ The Commission has observed that the lack of recognition has had a profound impact on the human rights situation of Traveller women in Ireland, which is referred to throughout this report, particularly with respect to Traveller women's health, access to employment, and access to education. This view was echoed by the many Traveller women who engaged with the Commission's CEDAW consultation.⁴⁷⁴

Appearing before a parliamentary committee in October 2016, the Commission stated there is no legal impediment to Traveller ethnicity recognition and called for political leadership on the issue.⁴⁷⁵ In light of this, the Commission welcomes media reports that the Government will take steps towards Traveller ethnicity recognition in 2017.⁴⁷⁶

473 UN Committee on the Elimination of all forms of Racial Discrimination (2011) *Concluding Observations of the Committee on the Elimination of all forms of Racial Discrimination: Ireland*, CERD/C/IRL/CO/3-4; UN Office of the High Commissioner for Human Rights (OHCHR) (2011) *Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona: Mission to Ireland*, Geneva: OHCHR; former Council of Europe Commissioner for Human Rights, Thomas Hammarberg, 2008 and 2011 Reports on his visits to Ireland, Strasbourg: Council of Europe; European Commission against Racism and Intolerance (2013) *ECRI Report on Ireland (fourth monitoring cycle)*, Strasbourg: Council of Europe; and the UN Human Rights Committee (2014) *Concluding Observations on Ireland's Fourth Periodic Report*, CCPR/C/IRL/CO/4, Geneva: OHCHR. See also Joint Committee on Justice, Defence and Equality (2014) *Report on the Recognition of Traveller Ethnicity*, p. 16, available: http://opac.oireachtas.ie/AWDData/Library3/Full_Report_14_171808.pdf. The Joint Oireachtas Committee on Justice, Defence and Equality published this report following three public hearings.

474 The Commission received two written submissions from Traveller organisations, Pavee Point and the National Traveller Women's Forum, and attended a consultation event hosted by these two organisations. The Commission also met Traveller women at its regional consultation events in Co Mayo, Co Donegal and Co Kerry.

475 IHREC (2016) 'Commission Challenges Government to Recognise Traveller Ethnicity' [press release] <https://www.ihrec.ie/ihrec-challenges-government-recognise-Traveller-ethnicity/>

476 Pat Leahy (2016) 'Traveller ethnicity recognition to be backed by Taoiseach', *Irish Times*, 23 November 2016, available: <http://www.>

Recommendation:

The Commission recommends that the State provide a detailed outline of the steps it intends to take in order to formally recognise Traveller ethnicity in 2017.

13.1.2 Traveller accommodation

The Commission is of the view that the State's failure to recognise Traveller ethnicity has led to the lack of culturally appropriate accommodation to Travellers. Recalling the Committee on Economic, Social and Cultural Rights' General Comment No. 4, the Commission notes that the right to housing includes an obligation to ensure that accommodation is culturally adequate and 'appropriately enable[s] the expression of cultural identity'.⁴⁷⁷

In response to the Committee's question in relation to the *Housing (Traveller Accommodation) Act 1998*, the Commission notes that there has not been any amendments to that legislation. However, in a case related to the accommodation of a disabled Traveller girl, the Supreme Court held that local authorities have a statutory duty under the *Housing (Traveller Accommodation) Act 1998* to provide a serviced halting site.⁴⁷⁸

During its CEDAW consultation, the Commission was informed that Traveller women bear the primary responsibility for children and the home. In addition, while research had indicated that the lack of available culturally appropriate accommodation had led to an increased uptake of private rented accommodation,⁴⁷⁹ the Commission has been informed that the increased rents in the private rental sector have led to

[irishtimes.com/news/politics/Traveller-ethnicity-recognition-to-be-backed-by-taoiseach-1.2879805](http://www.irishtimes.com/news/politics/Traveller-ethnicity-recognition-to-be-backed-by-taoiseach-1.2879805)

477 Committee on Economic, Social and Cultural Rights (1991) General Comment No. 4: The right to adequate housing (Art. 11(1) of the Covenant), para. 8(g).

478 *O'Donnell v South Dublin County Council* [2015] IESC 28, available: <http://www.bailii.org/ie/cases/IESC/2015/S28.html>

479 K.W. Research and Associates (with data analysis by Simon Williams) (2014) *Why do Travellers leave Traveller-specific Accommodation? A Research Report*, Dublin: National Traveller Accommodation Consultative Committee and the Housing Agency, available: <http://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/DevelopmentandHousing/Housing/FileDownload,37993,en.pdf>

Traveller women and their families relocating to sites that are overcrowded and unsafe.⁴⁸⁰

In 2015 ten people from two Traveller families died in a fire that broke out at a Dublin halting site, where the residents had been living with only basic services for over seven years.⁴⁸¹ Following that incident, the Commission wrote to local authorities to remind them of their Public Sector Duty obligations.⁴⁸²

Recommendation:

The Commission recommends that the State should take further steps to progressively realise the right to culturally appropriate housing for Traveller families in consultation with each individual family.

480 Written submission from Pavee Point.

481 Dean Ruxton and Ciarán D'arcy, 'Dublin fire: Six-month-old baby among 10 killed in tragic halting site blaze', *Irish Times*, 11 October 2015. Available: <http://www.irishtimes.com/news/ireland/irish-news/dublin-fire-six-month-old-baby-among-10-killed-in-tragic-halting-site-blaze-1.2387124>. The Commission regrets that following the tragedy, members of the settled community objected to the rehousing of Travellers who had lost their homes, see: Kitty Holland, 'Objections to site chosen to house Carrickmines fire survivors', *Irish Times*, 13 October 2015. Available: <http://www.irishtimes.com/news/social-affairs/objections-to-site-chosen-to-house-carrickmines-fire-survivors-1.2390662>.

482 IHREC (2015) *Statement by the Irish Human Rights and Equality Commission in response to recent tragedies at a temporary Traveller halting site at the Glenamuck Road in South Dublin*, available at: <https://www.ihrec.ie/statement-by-the-irish-human-rights-and-equality-commission-in-response-to-recent-tragedies-at-a-temporary-Traveller-halting-site-at-the-glenamuck-road-in-south-dublin/>

13.2 Women with Disabilities (Articles 1–3, 5(a) and 15)

13.2.1 Ratification of the Convention on the Rights of Persons with Disabilities

During its consultation, the Commission repeatedly heard the call for increased support for independent living for women with disabilities, along with greater protection of their family and private lives.⁴⁸³ The Commission is of the opinion that the ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD) presents an opportunity to achieve this, and welcomes the State's commitment, expressed in its report to the Committee, to ratify that Convention by the end of 2016.⁴⁸⁴ In anticipation of this, several notable legislative and policy measures had been achieved or were in development.⁴⁸⁵ Among these is the publication for consultation of the General Scheme of the Equality/ Disability (Miscellaneous Provisions) Bill,⁴⁸⁶ a wide-ranging piece of legislation, the intent of which is to reform multiple facets of Irish law in order to permit ratification.

⁴⁸³ This was raised in particular during our consultation with Inclusion Ireland, an advocacy organisation which promotes the rights of people with an intellectual disability.

⁴⁸⁴ *Combined sixth and seventh periodic reports of the State parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, para. 279, available: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRL/CEDAW_C_IRL_6-7_5954_E.pdf

⁴⁸⁵ The State's proposed actions to prepare for ratification were outlined by the Department of Justice and Equality in 2015 in *Roadmap to Ratification of the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD)* (available: <http://www.justice.ie/en/JELR/Roadmap%20to%20Ratification%20of%20CRPD.pdf/Files/Roadmap%20to%20Ratification%20of%20CRPD.pdf>). They included, for example, the *Assisted Decision-Making (Capacity) Act 2015*, which was designed to ensure compliance with Article 12 of CRPD and the standards it requires in relation to legal capacity.

⁴⁸⁶ A general scheme of a bill is a pre-legislative draft, prepared by the policy maker, setting out the detailed intended provisions, though not necessarily in legal language. The final general scheme is provided to the parliamentary drafter to prepare the actual bill. A number of general schemes are published for public consultation or parliamentary scrutiny so that they can be revised before a final general scheme is provided to the legal drafter.

In November 2016, the Commission submitted a suite of recommendations to members of the Houses of the Oireachtas regarding the General Scheme.⁴⁸⁷

Article 33 CRPD requires the presence of national mechanisms (i) to implement and coordinate and (ii) to monitor the State's progress in achieving the aims of the convention, and further requires the full participation of persons with disabilities and their representative organisations in those processes. The General Scheme proposed that the Commission's functions be expanded to allow it to act as the 'independent mechanism' under Article 33.2 CRPD to promote, protect and monitor implementation of the CRPD. The General Scheme further proposes that the Commission be mandated to appoint an advisory committee that includes members with lived experience of disability to support the independent mechanism. The Commission welcomes this general approach, while stressing the need for the State to ensure that these proposed reforms be underpinned by a State-led participatory process to elicit the views people with disabilities, in line with Article 4.3 CRPD. General Comment No. 3 of the Committee on the Rights of Persons with Disabilities⁴⁸⁸ highlights the 'multiple and intersecting forms of discrimination against women and girls with disabilities'. It is therefore imperative that a gender perspective is applied to any such consultative and participatory processes.

Recommendation:

The Commission recommends that in putting the necessary legislative and policy measures in place for the ratification of CRPD, particularly establishing the national monitoring mechanism and the implementation mechanism under Article 33, the state engage in a participatory process to elicit the views people with disabilities.

⁴⁸⁷ Irish Human Rights and Equality Commission (2016) *Observations on the General Scheme of the Equality / Disability (Miscellaneous Provisions) Bill*, available: <https://www.ihrec.ie/app/uploads/2016/11/Observations-on-the-General-Scheme-Equality-Disability-Miscellaneous-Provisions-Bill.pdf>

⁴⁸⁸ Committee on the Rights of Persons with Disabilities (2016) *General Comment No. 3 on Article 6: Women and girls with disabilities*

The State should further ensure that this process adopts a gender perspective in order to reflect the needs of women with disability.

13.2.2 Recognition of Irish Sign Language

Throughout its consultation, the Commission saw repeated demands for the recognition of Irish Sign Language (ISL) as a national language.⁴⁸⁹ Non-recognition of ISL was presented as a cross-cutting issue to the Commission which acts as a barrier both to participation in society and to access to services. The Commission was concerned to learn of the range of situations where deaf women met with difficulty, including: accessing emergency services following domestic and sexual violence; negative responses on account of their need to be provided with an interpreter when accessing education, health and legal services; and maintaining relationships with children in foster care which was insensitive to their family's cultural background.⁴⁹⁰ Numerous articles of CRPD make it clear that recognition of ISL is necessary for full, meaningful ratification.⁴⁹¹ In July 2016 the Recognition of Irish Sign Language for the Deaf Community Bill 2016 was introduced to the upper house of parliament (Seanad Éireann), and is due to go to Committee Stage in January 2017.⁴⁹²

Recommendation:

The Commission welcomes the introduction of the Recognition of Irish Sign Language for the Deaf Community Bill 2016, and recommends that, through the forthcoming legislative debates, its provisions are suitably future-proofed to provide for all of the rights in CRPD that the State has committed to ratify.

489 This was raised in a written submission from the National Women's Deaf Association (NWD) and at the Commission's CEDAW regional consultation events in Monaghan, Co. Monaghan and Tralee, Co. Kerry.

490 These instances were highlighted to the Commission in the National Women's Deaf Association's written submission.

491 Article 21 CRPD seeks to ensure that persons with disabilities can exercise the right to freedom of expression and opinion including by 'recognizing and promoting the use of sign languages', Article 30 similarly requires recognition and support of persons with disabilities' 'specific cultural and linguistic identity, including sign languages and deaf culture'.

492 Senator Mark Daly, 'Recognition of Irish Sign Language for the Deaf Community Bill 2016: Second Stage', *Parliamentary Debates: Seanad Éireann*, 19 October 2016, available: <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/seanad2016101900002?opendocument#X00100>

13.3 Rural Women (Articles 1–3, 5(a), 14 and 15)

In General Recommendation No. 34 on the rights of rural women, the Committee recognises that rural women's rights are ignored or insufficiently addressed in national and local policies and strategies.⁴⁹³ In its List of Issues, the Committee asked the State to provide information on the incorporation of a gender perspective in its rural development strategy, on the provision of support to increase rural women's access to health, education, justice, employment, economic development initiatives, and ownership of land, and on measures taken to ensure an adequate standard of living for women and their families living in rural areas. The perspectives of rural women in relation to some of these issues are discussed elsewhere in this report, and this section briefly outlines the position of rural women in the State's policies on rural development, land ownership and standard of living.

Noting that the Committee also asked the State to provide information on rural women's awareness of their rights,⁴⁹⁴ the Commission made every effort to encourage women living in 'aggregate rural areas' to participate in its CEDAW consultation.⁴⁹⁵ The Central Statistics Office⁴⁹⁶ has defined an 'aggregate rural area' as a population residing in an area outside a cluster of 1,500 inhabitants. According to the figures from the Census of Population 2011 there were 857,831 females and 883,539 males living in such areas.⁴⁹⁷

493 Committee on the Elimination of Discrimination against Women (2016) *General Recommendation No. 34 on the rights of rural women*, para. 4.

494 UN Committee on the Elimination of Discrimination against Women (2016) *List of issues and questions prior to the submission of the combined sixth and seventh periodic reports of Ireland*, CEDAW/C/IRL/QPR/6-7, para. 23.

495 During its CEDAW consultation, the Commission held regional consultations in towns around the country and spoke to a number of women, including farmers, at a national outdoor agricultural exhibition, the National Ploughing Championships. The Commission also received written submissions from a member of the Irish Countrywomen's Association and Tomhaggard Women's Shed, a rural community development project.

496 The Central Statistics Office (CSO) is the State's statistics authority.

497 CSO (2012) *Census of Population 2011*, [online database] StatBank / Profile 1 - Geography / CD112 / Select from table CD112, available at <http://cso.ie/px/pxeirestat/Statire/SelectVarVal/Define.asp?maintable=CD112&PLanguage=0>

13.3.1 Gender and rural development policy

According to the State Report, anti-discrimination and equality were carefully considered in the preparation of the Rural Development Programme (2014–2020).⁴⁹⁸ The Commission notes that there is one reference to gender inequality in the programme⁴⁹⁹ which is concerning since many other policies flow from this programme.⁵⁰⁰ The programme recognises that the fact that men account for more than 90 per cent of farm holders may be 'detrimental in terms of the human capital capacity of the sector and may also inhibit technology uptake and structural change,'⁵⁰¹ yet it does not propose any action to address this gender imbalance. The Commission is of the view that the mid-term review promised in the Programme for a Partnership Government should consider how to address this gender imbalance.⁵⁰²

Recommendation:

The Commission recommends that the State ensure the integration and mainstreaming of a gender perspective in all rural development policies, strategies, plans and programmes, particularly in the mid-term review of the Rural Development Programme.

498 *Combined sixth and seventh periodic reports of the State parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, para. 243.

499 Department of Agriculture, Food and the Marine (2014) *Ireland's Rural Development Programme 2014–2020*, p. 29, available: <https://www.agriculture.gov.ie/ruralenvironment/ruraldevelopmentprogrammerdp2014-2020/>

500 For example, the report of the Commission for the Economic Development of Rural Areas (CEDRA) makes only one reference to women, in relation to their increase in the in the labour force, particularly in professional services jobs. See: CEDRA (2014) *Energising Ireland's Rural Economy: Report of the Commission for the Economic Development of Rural Areas*, Athenry, Co. Galway: CEDRA, p. 31, available: http://www.agresearch.teagasc.ie/erc/CEDRA/CEDRA_Report.pdf

501 Department of Agriculture, Food and the Marine (2014). *Ireland's Rural Development Programme 2014–2020* (2014), p. 29. The only reference to women in the Charter for Rural Ireland is in relation to the Rural Development Programme's measures to address structural issues such as the age and gender profile of the sector. See: Department of Community, Environment and Local Government (2016). *Charter for Rural Ireland. A statement of Government commitment to support Rural Ireland's regeneration and to underpin the future sustainable development of Ireland's rural communities*. p. 13, available: http://test.ahg.gov.ie/app/uploads/1970/01/charter_for_rural_ireland-1.pdf.

502 *Programme for a Partnership Government* (2016) p. 110,

13.3.2 Women in agriculture and ownership of land

In its List of Issues, the Committee asked the State to provide information on 'targeted support for rural women to increase their ... ownership of land'.⁵⁰³ The Commission notes that the State Report fails to address the Committee's request for information on supports provided to rural women to increase their ownership of land. Women currently account for 10 per cent of employees in the agricultural sector⁵⁰⁴ with 13 per cent of Ireland's 111,134 farmers being women. Further, these women are slightly older than their male counterparts with an average age of 62 compared to 56 for men.⁵⁰⁵

At a conference on Women and Agriculture in 2014, it was stated that not owning land was a critical barrier to aspiring female farmers because it made them invisible when decisions were being taken about issues such as agricultural education. It also affected their access to credit from banks, and gave them fewer options if they were seeking protection from domestic violence.⁵⁰⁶ This echoes the voices of rural women who participated in the Commission's CEDAW consultation.⁵⁰⁷ It was also stated during the conference that women in Ireland tend to acquire land through marriage, which is confirmed by research that highlights that gender stereotypes continue to play a role in Irish farm households.⁵⁰⁸

503 UN Committee on the Elimination of Discrimination against Women (2016) *List of issues and questions prior to the submission of the combined sixth and seventh periodic reports of Ireland*, CEDAW/C/IRL/QPR/6-7, para. 23.

504 Central Statistics Office (2016), *Quarterly National Household Survey Q2 2016*, available: <http://www.cso.ie/en/releasesandpublications/er/qnhs/quarterlynationalhouseholdsurveyquarter2016>

505 Department of Agriculture, Food and the Marine (2016) *Annual Review and Outlook for Agriculture Food & the Marine 2015–2016*. Of the female sole owners of farms, 43 per cent (5,783) were aged over 65, and 30 per cent were over 80 years of age, suggesting they received the farm when widowed. In comparison only 28 per cent of total male farmers were more than 65 years of age. Available: <https://www.agriculture.gov.ie/media/migration/publications/2016/AnnualReviewOutlook20152016200716.pdf>

506 Alison Healy (2014) 'Women own just 12% of farms in Ireland, forum hears', *Irish Times*, 23 October 2014, available: <http://www.irishtimes.com/life-and-style/women-own-just-12-of-farms-in-ireland-forum-hears-1.1973345>

507 The Commission received a written submission from a woman living in the west of Ireland who provided her account of a negative experience impacting on her quality of life following her inheritance of land.

508 Alison Healy (2014) 'Women own just 12% of farms in Ireland, forum hears', *Irish Times*, 23 October 2014, <http://www.irishtimes.com/life-and-style/women-own-just-12-of-farms-in-ireland-forum-hears-1.1973345>; Sally Shortall (forthcoming) 'Changing Gender Roles in Irish Farm Households: Continuity and Change'.

Recalling General Recommendation No. 34 on the rights of rural women,⁵⁰⁹ the Commission is of the view that further research is required in order to fully assess the barriers to female land ownership in Ireland, particularly since female land ownership in comparable European Union countries amounts to 50 per cent.⁵¹⁰

Recommendation:

Recalling General Recommendation No. 34, the Commission recommends that the Minister for Agriculture, Food and the Marine commission research into the barriers to women owning land and to implement any recommendations arising from such research in a timely fashion.

13.3.3 Standard of living

The State's response to the list of issues fails to provide any information in relation to measures taken to ensure an adequate standard of living for women and their families in rural areas.⁵¹¹ Research carried out in 2013 identified a number of groups, including farm women, as being at risk of poverty and concluded that many of the groups have 'an important gender dimension'.⁵¹² Research suggests that while older women living in rural areas may be more socially connected, they are also more likely to live alone, be more economically vulnerable and to lack transport.⁵¹³

509 Committee on the Elimination of Discrimination against Women (2016) *General recommendation No. 34 (2016) on the rights of rural women*, CEDAW/C/GC/34, available: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/34&Lang=en.

510 Department of Agriculture, Food and the Marine, *Annual Review and Outlook for Agriculture Food & the Marine 2015–2016*, p. 58, available: <https://www.agriculture.gov.ie/media/migration/publications/2016/AnnualReviewOutlook20152016200716.pdf>

511 UN Committee on the Elimination of Discrimination against Women (2016) *List of issues and questions prior to the submission of the combined sixth and seventh periodic reports of Ireland*, CEDAW/C/IRL/QPR/6-7, para. 23.

512 Walsh & Harvey (2013) 'Employment and social inclusion in rural areas: a fresh start', p. 15, available: <https://www.pobal.ie/Publications/Documents/Employment%20and%20Social%20Inclusion%20in%20Rural%20Areas%20-%20A%20Fresh%20Start.pdf>

513 Ni Leime, Finn, Healy, Ward, (2013) *Gender and Rural Ageing in Ireland: Profile and Key Issues*, Irish Centre for Social Gerontology, NUI Galway. Rural Ageing Observatory Working Paper 4.

Many of the rural women who participated in the Commission's consultation spoke about the impact of rural isolation and social exclusion on the realisation of their rights.⁵¹⁴ The Commission was also informed of Deaf women's experience of isolation living in rural areas.⁵¹⁵ In particular, some consultees spoke of the detrimental impact of the economic recession on families in rural areas due to men leaving the country to find work and leaving mothers alone to care for the family.⁵¹⁶ Women living close to the border with Northern Ireland also raised concerns about their further isolation in light of the United Kingdom's pending departure from the European Union following a popular vote on the matter.⁵¹⁷

Research has shown that access to transport in rural communities impacts on access to services, including healthcare,⁵¹⁸ training and employment.⁵¹⁹ In particular, transport was identified as a barrier to participation in further education and training for lone parents living in rural areas.⁵²⁰ As noted elsewhere in this report, transport has also been identified as a factor inhibiting rural women's participation in politics.⁵²¹ Statistics from Census 2011 show that car ownership is higher in rural areas than in urban areas, across all age groups, which has been attributed to a lack of effective public transport.⁵²² These findings echo the voices of participants in the Commission's consultation in preparation of this report. The Commission is of the view that the Government

should incorporate these findings, particularly from a gender perspective, in its review of the accessibility of existing bus routes, which it committed to in the *Programme for a Partnership Government*.⁵²³ The Commission also notes that the Government has committed to 'rural proofing' forthcoming budgets and policies, and welcomes this as a step towards the realisation of the Public Sector Duty.

Recommendation:

Recalling General Recommendation No. 34 and the commitment in the Programme for a Partnership Government, the Commission recommends that the Minister for Transport, Tourism and Sport undertake a review of the gender-differentiated demands for transport services in rural areas in order to ensure that policy reflects the mobility needs of rural women and provides them with safe, affordable and accessible means of transport.

514 Written submission from Longford Women's Link and Tomhaggard Women's Shed. This was also raised strongly at regional consultation meetings.

515 Submission from National Deaf Women's Association of Ireland.

516 This was raised by a participant in the regional consultation in Tralee, Co. Kerry. See also Irish Rural Link (2016) *Poverty and Social Inclusion. The Case for Rural Ireland*. Available: <http://www.irishrurallink.ie/wp-content/uploads/2016/10/Poverty-and-Social-Inclusion-The-Case-for-Rural-Ireland.pdf>

517 These concerns were raised at the Commission's regional consultation meetings in Letterkenny, Co. Donegal and Monaghan.

518 Department of Social and Family Affairs (2008) *A Social Portrait of Communities in Ireland*, p. 21. Available: <http://www.socialinclusion.ie/publications/documents/SocialPortraitOfCommunities.pdf>

519 Irish Rural Link (2016) *Poverty and Social Inclusion. The Case for Rural Ireland*. p.24. Available: <http://www.irishrurallink.ie/wp-content/uploads/2016/10/Poverty-and-Social-Inclusion-The-Case-for-Rural-Ireland.pdf>

520 Society of St Vincent de Paul (2015), 'Supporting Pathways to Parental Employment'. Available: <https://www.svp.ie/getattachment/1e859c0d-3bed-4a57-ba57-4f30e3dac546/Supporting-Pathways-to-Parental-Employment-for-One.aspx>

521 See section 8.1. Buckley, Hofman, (2015) 'Women in local government: Moving in from the margins' *Administration*, 63(2), pp.79–99, p.89.

522 Irish Rural Link (2016) *Poverty and Social Inclusion. The Case for Rural Ireland*, p.15.

523 *Programme for a Partnership for Government*, p. 50.

13.4 Asylum-Seeking and Refugee Women in Direct Provision (Articles 1–3, 5(a) and 15)

The Commission notes that the common core document does not explain the system of direct provision, which is referred to twice in the State Report.⁵²⁴ The system of direct provision was established in the year 2000 to provide direct support to asylum seekers while their applications for protection are processed by way of accommodation, food and a weekly allowance of €19.10 per week for an adult. The weekly allowance for children was increased in January 2016 from €9.60 per week to €15.60 per week.⁵²⁵ The system has attracted criticism from a number of UN treaty monitoring bodies⁵²⁶ as well as by the courts in the neighbouring jurisdiction of Northern Ireland.⁵²⁷

In October 2014 the government announced the terms of reference of a 'Working Group to report to Government on improvements to the protection process, including Direct Provision and supports to asylum seekers'.⁵²⁸ The Working Group agreed a work

programme and working methods and set up three thematic sub-groups to identify recommendations for consideration, including a group on improvements to direct provision. The report of the Working Group ('the Working Group Report'), published in 2015, made 173 recommendations, many of which suggest reforms to the direct provision system.⁵²⁹

The Commission has criticised a number of aspects of the direct provision system, including the lack of redress to the Ombudsman,⁵³⁰ and has recommended that while the system remains in place, it should be placed on a statutory footing and a time limit should be introduced (6–9 months) after which any person who has not yet received a decision, on either first instance or appeal, should be able to leave direct provision, live independently, access relevant social welfare payments and employment.⁵³¹

In preparation for this report, the Commission visited two direct provision centres in July 2016: Park Lodge in Killarney, Co. Kerry and the Eglinton Hotel in Salthill, Co. Galway.⁵³² During its visits the Commission engaged directly with asylum-seeking and refugee women living in the centres as well as with relevant

including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf

529 The Commission met the Working Group during its preparation of the report. See: *Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers*, Dublin: Department of Justice and Equality, available at: <http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf>

530 This was also recommended by a parliamentary committee: Joint Committee on Public Service Oversight and Petitions (2015) *Report on the extension of the remit of the Ombudsman to cover all aspects and bodies associated with the Direct Provision System (DPS) and the extension of the remit of Freedom of Information to cover all aspects and services, whether from the Private or Public Sectors*, available http://opac.oireachtas.ie/AWDData/Library3/HOSDOCLD07052015_093553.pdf. The Commission also notes the progress in this area: Ombudsman for Children, Dr Niall Muldoon, and Ombudsman, Peter Tyndall (2016) 'Commitment to allowing residents in Direct Provision to make complaints to Ombudsman offices welcomed' [press statement], available <https://www.ombudsman.gov.ie/en/News/Media-Releases/2016-Media-Releases/Direct-Provision-complaints.html>

531 Irish Human Rights and Equality Commission (2014) *Policy Statement on the System of Direct Provision in Ireland*, available: https://www.ihrec.ie/download/pdf/ihrec_policy_statement_on_direct_provision_10dec14.pdf

532 The Commission had also previously visited direct provision centres in Athlone and Cork.

524 *Common core document forming part of the reports of States parties: Ireland (2014)*, HRI/CORE/IRL/2014, paras. 233–251. *Combined sixth and seventh periodic reports of the State parties due in 2016: Ireland*, CEDAW/C/IRL/6-7, paras. 121 and 232.

525 Department of Social Protection (2016) 'Government announces increase to the Direct Provision Allowance for Children' [press release] <https://www.welfare.ie/en/pressoffice/Pages/pa050116.aspx>

526 For example, UN Committee on the Rights of the Child, *Concluding Observations on the combined third and fourth periodic reports of Ireland*, CRC/C/IRL/CO/3-4, para. 66; Committee on Economic Social and Cultural Rights (2015) *Concluding Observations on Ireland*, para. 14; Human Rights Committee (2014) *Concluding Observations on Ireland*, para. 19; Committee on the Elimination of Racial Discrimination (2011) *Concluding Observations on Ireland*, para. 20. The State has also committed to reforming the direct provision system during the second cycle of the Universal Periodic Review – see Human Rights Council (2016) *Report of the Working Group on the Universal Periodic Review: Ireland*, A/HRC/33/17/Add.1, para. 136.89.

527 *In the Matter of an Application for Judicial Review by ALJ and A, B and C* [2013] NIQB 88, available: http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2013/%5B2013%5D%20NIQB%2088/j_j_STE8712Final.htm.

528 *Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers*, Dublin: Department of Justice and Equality, available at: <http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf>

Government officials and private contractors running the facilities. The purpose of these visits was to gain a greater understanding of the experiences of refugee and asylum-seeking women living in direct provision. Refugee and asylum-seeking women also shared their experiences of the direct provision system with the Commission at its regional consultation events. The Commission also notes the research carried out by the civil society organisation AkidWa on the experiences of women in direct provision, which was based on engagement with 121 participants in focus group settings.⁵³³

While the Commission acknowledges that work is ongoing to implement the recommendations arising from the Working Group Report,⁵³⁴ following the Commission's visits to the direct provision centres it is concerned about the impact of direct provision on asylum-seeking and refugee women's rights. This section draws on the Commission's engagement with women living in direct provision in order to highlight particular issues of concern.

13.4.1 The impact of direct provision on refugee and asylum seeking women's rights

Following the Commission's visits to two direct provision centres and from the submissions received from organisations working with asylum-seeking and refugee women,⁵³⁵ it is clear that the direct provision system negatively impacts on a wide range of women's rights. The Commission observes that the system inhibits participation in society through the denial of the right to work, through the provision of an insufficient weekly allowance, through barriers to the pursuit of meaningful further education opportunities,⁵³⁶ and through rural isolation (because many of the 34 direct provision centres are based in rural areas).⁵³⁷ The women living in direct provision informed the Commission that the lack of activities and employment led them to regress personally and cited the provision of classes only in basic English as an example of how they are not encouraged to progress their education while waiting on a legal decision in relation to their refugee status. During the Commission's visits to centres, asylum-seeking and refugee women also informed the Commission that they did not have adequate access to information, particularly in relation to the legal process and in relation to the support groups and services available in their local areas.

The Working Group Report noted that anxiety, sleeplessness and feelings of anger, shame, and desperation were common amongst asylum-seekers and refugees living in the direct provision system.⁵³⁸ The Commission is particularly concerned about the impact of the system on the mental health and wellbeing

⁵³³ AkidWa (2010) *Am Only Saying it Now: Experiences of Women Seeking Asylum in Ireland*, available: <http://akidwa.ie/publications/AmOnlySayingItNowAkiDwA.pdf>. AkidWa is an ethnic minority led national network of African and migrant women living in Ireland.

⁵³⁴ Department of Justice and Equality (2016) 'Position as at 16 June, 2016 in respect of the 173 Recommendations of the Working Group', available: <http://www.justice.ie/en/JELR/Working-Group-to-Report-to-Government-on-Improvements-to-the-Protection-Process-including-Direct-Provision-and-Supports-to-Asylum-seekers.pdf/Files/Working-Group-to-Report-to-Government-on-Improvements-to-the-Protection-Process-including-Direct-Provision-and-Supports-to-Asylum-seekers.pdf>

⁵³⁵ Written submissions from Nasc The Irish Immigrant Support Centre, Migrant Rights Centre Ireland, and the Immigrant Council of Ireland. These issues were also raised at regional consultation events, particularly in locations where direct provision centres are located.

⁵³⁶ See section 10.4.3 for further discussion.

⁵³⁷ This issue was raised by a refugee woman who had lived in a direct provision centre in a rural area at the Commission's regional consultation meeting in Castlebar, Co. Mayo.

⁵³⁸ *Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers*, at p. 345. Dublin: Department of Justice and Equality, available at: <http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf>

of mothers. From its observations in the family law courts, the Child Care Law Reporting Project highlighted cases where mothers in direct provision suffered from severe episodes of mental illness, sometimes resulting in detention in psychiatric hospitals and leading to their children being taken into care.⁵³⁹ In response to this it was recommended that the work of the Migrant Family Support Service and the Child and Family Agency to provide guidance and support to families in direct provision be expanded. During its consultation visits, the Commission also heard residents complain of negative impacts on mental health arising from the conditions in direct provision. Residents made particular reference to the length of time spent in the system, inadequate information about the process, the lack of privacy and autonomy, and the inability to prepare and to cook their own food.

During the Commission's visits to direct provision centres, residents expressed concerns about access to mental health and maternity services, particularly the lack of information exchange and effective communication between medical professionals and women seeking asylum. The Commission notes the ongoing progress in relation to the Working Group's recommendations, in particular efforts to improve the situation of pregnant and breastfeeding women. For example, the Implementation Report on the Working Group's recommendations states that the recommendation to carry out a nutrition audit has been partially implemented.⁵⁴⁰ The purpose of this audit is to ensure that the food served meets the required standards, including for children, pregnant and breastfeeding women. Despite this, the Commission is concerned by reports of a breastfeeding woman being refused extra food.⁵⁴¹

539 Child Care Law reporting Project (2015) *Final Report*, pp. 24 and 45, available: http://www.childlawproject.ie/wp-content/uploads/2015/11/CCLRP-Full-final-report_FINAL2.pdf

540 Department of Justice and Equality (2016) 'Position as at 16 June, 2016 in respect of the 173 Recommendations of the Working Group', entry for recommendation no. 4.102 on p. 40, available: <http://www.justice.ie/en/JELR/Working-Group-to-Report-to-Government-on-Improvements-to-the-Protection-Process-including-Direct-Provision-and-Supports-to-Asylum-seekers.pdf/Files/Working-Group-to-Report-to-Government-on-Improvements-to-the-Protection-Process-including-Direct-Provision-and-Supports-to-Asylum-seekers.pdf>.

541 This alleged incident was reported on a blog: 'RIA, Direct Provision and State Violence', 26 September 2016, available: <https://soundmigration.wordpress.com/2016/09/20/ria-direct-provision-and-state-violence/>. It was also reported in print media and on a national radio station – see: <http://www.irishmirror.ie/news/irish-news/mum-living-direct-provision-allegedly-8908473> <http://www.rte.ie/radio1/liveline/programmes/2016/0920/817834->

Recommendation:

The Commission strongly recommends that the State fully implement the recommendations of the Working Group on the Protection Process without delay.

13.4.2 Harassment of women living in direct provision

During its visits to direct provision centres, the Commission was struck by reports of harassment of women living in direct provision. The women who engaged with the Commission during its CEDAW consultation spoke about their experiences of catcalling, verbal abuse and men propositioning women for sex, in one case in the presence of her son. As a result of this harassment many women indicated that they feared for their safety and felt that this was exacerbated by the fact that the centres are often located in rural areas where the women are easily identified by others in the community. Some women also informed the Commission that they had been victims of sexual violence and exploitation in the past and these experiences of harassment had a detrimental impact on their wellbeing.

These experiences also feature in the Working Group Report, which reported that that 'some Irish men treat them like prostitutes and offer them money' and 'female victims of trafficking reported sexual advances or inappropriate behaviour/ comments from other residents'.⁵⁴² AkiDwa's research on women's experiences of direct provision includes reports of women being followed by local men in the community and being asked if they do sex work – 'women from one region reported a man in a van who allegedly waits, parked inside the centre's gates, and approaches women'.⁵⁴³ These

liveline-tuesday-20-september-2016/?clipid=2288067

542 *Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers*, at pp. 331 and 346. Dublin: Department of Justice and Equality, available at: <http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf>.

543 AkiDwa (2010) *Am Only Saying it Now: Experiences of Women Seeking Asylum in Ireland*, p. 20, available: <http://akidwa.ie/publications/AmOnlySayingItNowAkiDwa.pdf>.

experiences are of particular concern given the fact that women living in direct provision reported that they did not have access to appropriate mental health services.

The Commission welcomes the development by the RIA, in conjunction with civil society, of guidelines on sexual harassment and sexual violence.⁵⁴⁴ However, during the Commission's CEDAW consultation, concerns were raised about the implementation of these guidelines.⁵⁴⁵

Recommendations:

The Commission recommends that counselling services and support services be provided to women living in direct provision, particularly to victims of gender-based violence, including harassment, and victims of human trafficking.

The Commission recommends that implementation of the Reception and Integration Agency's (RIA) guidelines on sexual violence be monitored as part of RIA inspections and that a statement of compliance be included in each inspection report.

13.4.3 The provision of accommodation by private companies

The accommodation of asylum seekers in the direct provision system is managed by the Reception and Integration Agency (RIA), which is a functional unit of the Irish Naturalisation and Immigration Service (INIS), which in turn is a division of the Department of Justice and Equality. At the time of writing, 27 of the 34 centres providing accommodation to asylum-seekers and refugees are owned and operated by private companies. While the State owns the other seven centres, they are operated by private companies.⁵⁴⁶ In the five years between 2011 and 2015, commercial providers of direct provision centres have been paid a total of €251 million.⁵⁴⁷

The Commission recalls General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, in particular paragraph 7 which provides that: 'State parties bear the primary responsibility for ensuring that asylum-seeking women ... are not exposed to violations of their rights under the Convention, including when such violations are committed by private persons and non-State actors'.⁵⁴⁸ The Commission also recalls that General Recommendation No. 28 on the core obligations of States Parties notes that Article 2 of the Convention 'imposes a due diligence obligation on State parties to prevent discrimination by private actors'.⁵⁴⁹ Prior to visiting the centres, the Commission also examined the reports of inspections carried out by and on behalf of the RIA. The Commission notes that these reports primarily consider health and safety issues and do not take account of human rights or equality

⁵⁴⁶ Reception and Integration Agency, *Annual Report 2014*, p. 43, available: <http://www.ria.gov.ie/en/RIA/RIA%20Annual%20Report%202014.pdf/Files/RIA%20Annual%20Report%202014.pdf>

⁵⁴⁷ Comptroller and Auditor General (2016) *Report on the Accounts of the Public Services 2015*, para. 6.26, available http://www.audgen.gov.ie/documents/annualreports/2015/report/en/Report_Accounts_Public_Services_2015.PDF

⁵⁴⁸ Committee for the Elimination of Discrimination against Women (2014) *General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, para. 7.

⁵⁴⁹ Committee on the Elimination of Discrimination against Women (2010) *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women* CEDAW/C/2010/47/GC.2, para. 13.

⁵⁴⁴ Reception and Integration Agency (2014) *RIA Policy and Practice Document on safeguarding RIA residents against Domestic, Sexual and Gender-based Violence & Harassment*, available: <http://www.ria.gov.ie/en/RIA/Pages/SGBVDoc>.

⁵⁴⁵ Nasc The Irish Immigrant Support Centre

issues.⁵⁵⁰ The Commission is of the view that such inspection reports should provide evidence of having consulted with the residents living in direct provision centres in order to assess whether human rights and equality are being respected and protected.

Reflecting its visits to direct provision centres, the Commission is concerned that, depending on where they are placed, residents may have diverging experiences of direct provision. In order to ensure uniformity of experience, the Commission is of the view that the private companies providing accommodation should comply with the requirements of the Public Sector Duty.⁵⁵¹ The Commission is of the view that if private companies providing accommodation were required to implement the Public Sector Duty, they would be likely to have a better understanding of the issues facing women in direct provision and residents would receive a uniform experience irrespective of which of the 34 centres they were living in.

Recommendations:

The Commission recommends that all staff employed by both publicly and commercially owned centres be trained in gender equality and human rights.

The Commission recommends that the Reception and Integration Agency include a provision in its Service Level Agreements with commercial contractors in relation to compliance with the Public Sector Duty. The Commission further recommends that the Reception and Integration Agency's inspection reports should refer to actions taken by such contractors to comply with the Public Sector Duty.

⁵⁵⁰ The published inspection reports are available on the RIA's website at <http://www.ria-inspections.gov.ie/>

⁵⁵¹ See the discussion of public procurement in section 4.4 of this report.

13.5 Women in Detention

(Articles 2 and 15)

In preparation for this report, in July 2016 the Commission visited the two women's detention facilities in Ireland, namely Limerick Prison and the Dóchas Centre at Mountjoy Prison in Dublin. During these visits, the Commission held focus group consultations with women in detention. These consultations were conducted in a confidential setting without the presence of prison officials. While the women were naturally tentative at the start of the consultation, the consultation exercise soon developed into a discussion led by the women themselves.

During its visits to the prisons, the Commission also met prison management and appreciates the openness with which they engaged in the process. The Commission notes that the Irish Prison Service has begun to recognise and acknowledge the complex needs of women living in detention, particularly in light of the Joint Strategy mentioned in the State Report⁵⁵² and the 2010 Bangkok Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.⁵⁵³

As part of its consultation the Commission also met community groups working with women and families who have been affected by imprisonment.⁵⁵⁴ The Commission also received a comprehensive submission from the Irish Penal Reform Trust, a civil society human rights organisation which has carried out extensive research on penal policy.

552 Irish Prison Service and Irish Probation Service (2014) *Joint Probation Service – Irish Prison Service Strategy 2014–2016: An Effective Response to Women Who Offend*, available: http://www.irishprisons.ie/images/pdf/women_strat_2014.pdf

553 *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)* A/C.3/65/L.5, Rule 41(a), available: <http://www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf>.

554 Focus group meeting with women living in inner city Dublin accessing services run by the SAOL Project who have experienced poverty, homelessness, addiction and imprisonment. The Commission also held a meeting with Bedford Row Family Project in Limerick.

This section has been informed by the Commission's visits to prisons and as such reflects the concerns of the women who engaged with the Commission's consultation. This section highlights issues related to the prison regime and conditions, the impact of detention on women's rights, particularly the impact of specific groups of women, and reflects on the use of remand and alternatives to custody. Recalling General Recommendation No. 33 on access to justice, it is recommended that States 'ensure that mechanisms are in place to monitor places of detention, pay special attention to the situation of women prisoners and apply international guidance and standards on the treatment of women in detention'.⁵⁵⁵

13.5.1 Prison regime and conditions

Facilities

Reflecting on its visits to the two female detention facilities in the State, the Commission was struck by the difference in the conditions at each facility, particularly since the facility in Limerick was built in the early 1800s. While the Commission notes that a new facility is under construction, the Commission is acutely aware of the continued need to improve conditions for the women currently living in Limerick Prison.

The Commission is also concerned by reports from the Mental Health Review Board about the disparity in accommodation facilities at the Central Mental Hospital for male and female patients.⁵⁵⁶ It was reported that all female patients are accommodated in one unit, regardless of the nature of their diagnosis and treatment, whereas male patients are accommodated on a stratified basis relating to the degree of their care.

555 Committee for the Elimination of Discrimination against Women (2015) *General Recommendation No. 33 on access to justice*, para. 51.

556 Mental Health (Criminal Law) Review Board (2016) *Annual Report 2015*, available: [http://justice.ie/en/JELR/Pages/Mental-Health-\(Criminal-Law\)-Review-Board-Annual-Report-2015](http://justice.ie/en/JELR/Pages/Mental-Health-(Criminal-Law)-Review-Board-Annual-Report-2015).

Prison Regime

The Commission also spoke to women about the regime for women as compared with the regime for men. Women serving life sentences pointed out that there are no 'step-down' facilities available for them, yet male prisoners may avail of step-down halfway houses and open prisons. The Strategic Review of Penal Policy also criticised the lack of open prisons for women.⁵⁵⁷ The Commission is of the view the difference in provision of facilities for men and women is unacceptable, particularly given the complex needs of women living in detention and the impact of prison on their rights.

Overcrowding

During its visits to both detention facilities, the Commission was informed by both staff and the women in their care that the prisons were overcrowded.⁵⁵⁸ Overcrowding in these facilities led to women having to share cells. The Commission was informed by women that this can increase personal anxiety and tension within the facilities. Concerns were also expressed about the safety of women at night and it was reported that prison officers do not always respond promptly when the emergency buzzer is sounded by women in their cells. Given the mental health difficulties experienced by many of the women who engaged with the Commission's consultation, this can cause undue stress. The Strategic Review of Penal Policy published in 2014 stated that 'it is clear ... that women's prisons are now the most overcrowded in the State'.⁵⁵⁹

Integration and Post-Release Support

Further, the majority of women reported that there was inadequate structured support for women leaving prison. The lack of integration and post-release facilities in the State was also echoed in the written submissions received.⁵⁶⁰ While the Commission acknowledges the efforts of community-based projects, the Commission is of the view that integration supports should be designed into the prison regime and should be available to all women.

Recommendation:

The Commission recommends that the Minister for Justice and Equality, in conjunction with the Irish Prison Service, review the operation of prison and detention facilities provided to women in the context of those provided to men in order to ensure equal treatment. The Commission further recommends that gender-sensitive approaches and facilities should be offered to women who are committed to detention in the State.

⁵⁵⁷ Cross-agency Review Group (2014) *Strategic Review of Penal Policy*, Dublin: Department of Justice and Equality, available: <http://www.justice.ie/en/JELR/Pages/PB14000244>.

⁵⁵⁸ The Irish Prison Service publishes daily statistics on the number of prisoners in all of the prisons in the State: <http://www.irishprisons.ie/index.php/information-centre/statistics-information/2015-daily-prisoner-population/2016b-prisoner-population/>. Taking as a random example, the situation on 1 September 2016 (a Thursday), the Irish Prison Service reports that occupancy of the Dochas Centre in Dublin was at 109 per cent of bed capacity and that the occupancy in the women's prison in Limerick was at 118 per cent of bed capacity; data available: http://www.irishprisons.ie/wp-content/uploads/documents_pdf/01_September_2016.pdf.

⁵⁵⁹ Cross-agency Review Group (2014) *Strategic Review of Penal Policy*, Dublin: Department of Justice and Equality, available: <http://www.justice.ie/en/JELR/Pages/PB14000244>.

⁵⁶⁰ This was raised in a written submission from the Irish Penal Reform Trust.

13.5.2 Impact of detention on women's rights

In its previous submission to the Committee, the Commission raised concerns about the socio-economic inequalities that lead women to be in prison and the exacerbation of those inequalities by the prison system.⁵⁶¹ This was also echoed by the women who engaged in the Commission's CEDAW consultation in prisons as well as women who have been released from prison. During its visits to prisons, the key issues of concern related to health, education and family life.

Health

The Commission notes the statement in the State Report that health services in prison are equivalent to those provided in the community. During its visits to prisons, women reported that they had not received the same treatment or medication that they had received while in the community. Some women expressed the view that they felt a two-tier health system was in operation within the prison because of a refusal of dental treatment despite the fact that they were willing to pay for it. Some women also informed the Commission that they had been accessing specific counselling services in the community and this specific targeted support is not available in prison. Women spoke positively of their experience of visits by Alcoholics Anonymous and Narcotics Anonymous, two civil society organisations, but indicated that these visits are irregular.

During the Commission's visits, some women reported limited access to doctors, particularly female doctors. In addition, the Commission is particularly concerned by a report of a woman being taken in handcuffs to a pregnancy scan.

It was also reported that the physical layout of services can inhibit the use of counselling services because women do not have a discreet pathway back to the cells. This is particularly concerning given the impact of the prison regime on women's mental health – during one visit the Commission

⁵⁶¹ IHREC (2015) *Submission to UN CEDAW List of Issues Prior to Reporting on Ireland's Combined 6th and 7th Report under CEDAW*, available: https://www.ihrec.ie/app/uploads/download/pdf/ihrec_submission_to_cedaw_loipr_2015.pdf

was informed of the high uptake of a peer women's listening service. The Commission gave feedback to the Governor of Limerick Female Prison raising some of these concerns.

Education

During its visits the Commission was informed about the difficulties women encountered when undertaking education or training opportunities. It was reported that sometimes courses can take longer to complete due to the cancellation of classes. The Commission was also informed that the cancellation of classes can have a negative impact on mental wellbeing because it causes disruption to routine. In 2015, the Dóchas Visiting Committee noted that frequent staff shortages have had a negative impact on education programmes, which were cancelled repeatedly.⁵⁶²

Family and private life

During its visits to the detention facilities, many women raised concerns about visiting arrangements, particularly the impact of visiting prison on a child and the last minute cancellation of visits on families who travel long distances to the facilities. Research has also demonstrated that the separation of a child from their imprisoned parent can lead to a breakdown of the parental-child relationship.⁵⁶³ These experiences are also echoed in research conducted by the Irish Penal Reform Trust.⁵⁶⁴ The Commission was also informed of severe delays in the receipt of postal communications from family which can cause distress to women in detention.

⁵⁶² Dóchas Visiting Committee (2016) *Report of the Visiting Committee 2015* Dochas Centre, available: http://www.justice.ie/en/JELR/D%C3%B3chas_VC_Annual_Report_2015.pdf/Files/D%C3%B3chas_VC_Annual_Report_2015.pdf.

⁵⁶³ Irish Penal Reform Trust (2012) *Picking up the Pieces: The Rights and Needs of Children and Families Affected by Imprisonment*, Dublin: Irish Penal Reform Trust, available http://www.iprt.ie/files/IPRT_Children_of_Imprisoned_Parents2.pdf.

⁵⁶⁴ Irish Penal Reform Trust (2012) *Picking up the Pieces: The Rights and Needs of Children and Families Affected by Imprisonment*, p. 21, Dublin: Irish Penal Reform Trust, available http://www.iprt.ie/files/IPRT_Children_of_Imprisoned_Parents2.pdf. Sinead O'Malley and Carmel Devaney, 'Maintaining the mother-child relationship within the Irish prison system: the practitioner perspective', *Child Care in Practice*, Vol. 22 no. 1, pp. 20–34.

The Commission is concerned by the disparity in facilities available to accommodate families in the two female prisons in the State. In preparation for this report, the Commission also met the Bedford Row Family Project, a community project in Limerick that provides an 'access out' visiting scheme for families of prisoners in Limerick, which was highly regarded by the women who use the service. While recognising, as others have, that 'the imprisonment of mothers and young babies is never ideal',⁵⁶⁵ the Commission notes that there is no mother and baby unit available in Limerick Prison.

Recommendations:

The Commission recommends that contact between female prisoners and their children be facilitated and encouraged, including outside prison where possible.

The Commission recommends that the Irish Prison Service undertake a review of its postal service to ensure that communications are delivered in a timely fashion.

13.5.3 Impact of detention on particular groups of women

Traveller women

In its previous submission to the Committee, the Commission expressed concern about the over-representation of Traveller women in prisons. Research has demonstrated that within prison, Traveller women continue to face discrimination and social isolation, and often struggle to access education and support services, while upon release

they may face stigma and shunning by their family.⁵⁶⁶ In its List of Issues the Committee asked specifically about the impact of stereotyping on the incarceration rates of Traveller women.⁵⁶⁷ During its visit to one of the women's prisons in the State, the Commission met a Traveller mother and adult daughter who had been approved for release from custody by the prison authorities but they claimed this release was blocked by other actors in the criminal justice system based on prejudice.

The Commission notes that the Irish Prison Service has committed to delivering 'improved services for all Travellers within the system' and to 'examine particular issues faced by female Travellers in custody'.⁵⁶⁸ It has been suggested that targeted reintegration supports are also required to ensure that Traveller women have access to accommodation, employment and support.⁵⁶⁹

Trans women

During its CEDAW consultation, the Commission was informed that a number of trans women have been required to serve a custodial sentence in a male prison.⁵⁷⁰ The Commission is concerned that Ireland has no specific policies on the accommodation or placement of trans prisoners, particularly in light of the *Gender Recognition Act 2015*. The Commission notes that the Irish Prison Service, in its Strategic Plan 2016–2018, has committed to developing such as policy.⁵⁷¹ The Commission is of the view that such a policy should be developed in line with the Yogyakarta Principles to ensure the protection of trans women's rights.⁵⁷²

⁵⁶⁶ Irish Penal Reform Trust (2014) *Travellers in the Irish Prison System*, p. 8, Dublin: Irish Penal Reform Trust, available: <http://www.iprt.ie/contents/2624>

⁵⁶⁷ UN Committee on the Elimination of Discrimination against Women (2016) *List of issues and questions prior to the submission of the combined sixth and seventh periodic reports of Ireland*, CEDAW/C/IRL/QPR/6-7, para. 24.

⁵⁶⁸ Irish Prison Service (2016) *Strategic Plan 2016*, Dublin: Irish Prison Service, p. 28.

⁵⁶⁹ Written submission from St. Stephen's Green Trust Initiative.

⁵⁷⁰ Written submission from TENI.

⁵⁷¹ Irish Prison Service (2016) *Strategic Plan 2016*, Dublin: Irish Prison Service, p. 29.

⁵⁷² Yogyakarta Principles, 2006, Principle 9. All states should ensure 'that all prisoners participate in decisions regarding the place of detention appropriate to their sexual orientation and their gender identity' and need to ensure that 'placement in detention avoids further marginalising persons on the basis of sexual orientation or gender identity or subjecting them to risk of violence, ill-treatment or physical, mental or sexual abuse', available: <http://www.yogyakartaprinciples.org/>

⁵⁶⁵ Dóchas Visiting Committee (2016) *Report of the Visiting Committee 2015 Dochas Centre*, available: http://www.justice.ie/en/JELR/D%C3%B3chas_VC_Annual_Report_2015.pdf/Files/D%C3%B3chas_VC_Annual_Report_2015.pdf; Dóchas Visiting Committee, *Annual Report 2014*, available: http://www.justice.ie/en/JELR/PrisonVisitingCommitteesAnnualReports2014_Dochas.pdf/Files/PrisonVisitingCommitteesAnnualReports2014_Dochas.pdf.

Recommendations:

The Commission recommends that the Irish Prison Service develop an action plan, in consultation with the Traveller community, to improve conditions for Traveller women in detention.

The Commission recommends that the Irish Prison Service introduce a policy, in line with the Yogyakarta Principles, in relation to the detention of trans women.

13.5.4 The use of remand and alternatives to custody

The Commission welcomes the legislative measures enacted to provide alternatives to custody during the reporting period.⁵⁷³ However, in 2014 concerns were reported in the Strategic Penal Policy Review in relation to the under-use of alternative community programmes for women.⁵⁷⁴ Concerns were also expressed to the Commission that Community Service Orders are not gender-specific and thus do not adequately support the complex needs of these highly vulnerable women.⁵⁷⁵

According to the State Report the increase in female incarceration has been due to an increase in road and traffic offences. However, it is noted that between 2011 and 2014, the numbers of non-custodial sanctions imposed on women has declined: there was a 7.4 per cent decline in the numbers of women subject to probation orders and a 9 per cent decline in the numbers of women subject to community service orders in that time frame.⁵⁷⁶ During its visits to prisons, the Commission was continually reminded that the majority of women being detained in Ireland have not been convicted of a violent criminal

offence. The Commission therefore recalls the 2010 Bangkok Rules, which requires a gender-sensitive risk assessment and classification of prisoners to 'take into account the generally lower risk posed by women prisoners to others, as well as the particularly harmful effects that high security measures and increased levels of isolation can have on women prisoners'.⁵⁷⁷

The Commission is concerned about the over-use of remand in cases involving women and considers remand to be an inadequate way of dealing with vulnerable women who have complex needs. During its visit to the Dóchas Centre, the Commission met women who were on remand and is of the view that it is inappropriate for women on remand to be accommodated alongside women who have been sentenced to imprisonment following conviction of a criminal offence. The Commission also notes that the Dóchas Centre Visiting Committee expressed the view that 'women are sent to the Dóchas Centre from the courts when non-custodial, medical or therapeutic intervention could deal with their needs more appropriately and effectively'.⁵⁷⁸

Recommendation:

The Commission recommends that the State develop further gender sensitive alternatives to custody.

⁵⁷³ *Combined sixth and seventh periodic reports of the State parties due in 2016: Ireland, CEDAW/C/IRL/6-7*. The State Report refers to the *Fines (Payment and Recovery) Act 2014*, the *Criminal Justice (Community Service) (Amendment) Act 2011* and the *Civil Debt (Procedures) Act 2015*.

⁵⁷⁴ Cross-agency Review Group, *Strategic Review of Penal Policy*, Dept. of Justice and Equality: Dublin, 2014.

⁵⁷⁵ Written submission from the IPRT.

⁵⁷⁶ This information was provided to the Commission in a written submission from the Irish Penal Reform Trust (IPRT). Irish Probation Service, *Probation Service Annual Report 2014*.

⁵⁷⁷ *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)* A/C.3/65/L.5, Rule 41(a), available: <http://www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf>.

⁵⁷⁸ Dóchas Visiting Committee, *Annual Report*, 2014.

Appendix 1

List of organisations that made submissions

Action Aid
Adoption Rights Alliance
Association for Improvements in the Maternity Services Ireland
Alzheimer Society of Ireland
Atheist Ireland
Cork Equal and Sustainable Communities Alliance (CESCA)
Dublin Rape Crisis Centre
EPIC – Empowering People in Care
Equality Budgeting Campaign
Focus Ireland
Free Legal Advice Centres
Galway Pro Choice
Immigrant Council of Ireland
Irish Council for Civil Liberties
Irish Family Planning Association
Irish Penal Reform Trust
Longford Women’s Link
Justice for Magdalenes Research
Migrant Rights Centre Ireland
Nasc The Irish Immigrant Support Centre
National Deaf Women of Ireland
National Traveller Women's Forum
Pavee Point
Ruhama
Space International
St Patrick’s Mental Health Services
TENI – Transgender Equality Network Ireland
Tomhaggard Women’s Shed
Women’s Aid

The Commission received five written submissions from individual members of the public on a range of issues including domestic violence, historical abuse and issues affecting rural women.

Organisations that contributed to the Commission’s consultation process

Age Action Dublin and Cork
Bedford Row Family Project, Limerick
Dóchas Centre, Mountjoy Prison
Eglinton Hotel, direct provision centre, Salthill, Co. Galway
Future Voices Ireland
Inclusion Ireland
Irish Rural Link
Irish Prison Service
Limerick Prison
National Advocacy Service
National Women’s Council of Ireland
Park Lodge, direct provision centre, Killarney, Co. Kerry
Reception and Integration Agency
SAOL Project
St. Stephen's Green Trust, Travellers in Prison Initiative

Appendix 2 – Legislative Process in Ireland

In general, government departments produce the majority of legislative proposals in the State. These proposals are sometimes published by the relevant Government department in early draft form, which is known as Heads of a Bill. A more advanced draft may also be published, which is known as the General Scheme of a Bill. Once the legislative proposal is at an advanced stage of drafting it may be presented to the parliament by the relevant Minister as a Bill.

Parliament has a significant role to play in the scrutiny of legislative proposals, including early drafts through pre-legislative scrutiny carried out by parliamentary committees.⁵⁷⁹ Both houses of parliament must consider the Bill during five separate stages, which allows opportunity for debate and amendments to be made. The Bill passed by parliament is then presented to the President of Ireland for signature. Once the President signs a Bill, it becomes an Act and is enacted into law, in accordance with Article 13.3.1 of the Constitution.

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

For example, the *Children and Family Relationships Act 2015* was enacted in April 2015 to amend a range of pieces of primary legislation on guardianship, families and children. However, a number of parts of the Act have not yet been commenced, in particular the provisions dealing with donor-assisted human reproduction and adoption by same-sex couples.⁵⁸⁰

Once enacted, legislation is made publically available on the online Irish Statute Book.⁵⁸¹ However, when a piece of legislation is amended or repealed, this is not reflected in the text of the legislation on the online Irish Statute Book; instead, a table of amendments is produced which is linked to the text of the legislation. This practice leads to the inaccessibility of the law currently in force, particularly for non-lawyers.

The Commission is aware that the Law Reform Commission, which has a small team of researchers, produces consolidated versions of legislation. However, these consolidations are not admissible in court. While these consolidations are a useful resource for both practitioners and lay litigants alike, the initial exercise of tracking amendments must be presented to the court.

⁵⁷⁹ Houses of the Oireachtas Library and Research Service (2014) *Spotlight on pre-legislative scrutiny*, available, http://www.oireachtas.ie/parliament/media/housesoftheoireachtas/libraryresearch/spotlights/Final_Spotlight_PLS_17Dec2014_172050.pdf

⁵⁸⁰ See Part 2 (ss. 4–23) and Part 3 (ss. 24–42) of the *Children and Family Relationships Act 2015*.

⁵⁸¹ www.irishstatutebook.ie

Table 1: Status of legislation and legislative proposals referred to in this report

Name	Type of Legislative Proposal	Status 28 November 2016
Criminal Law (Sexual Offences) Bill 2015	Bill	Referred to Dáil Éireann select committee
Education (Admissions to Schools) Bill 2016	Bill	Dáil Éireann, First Stage
Criminal Justice (Victims of Crime) Bill	General Scheme	Publication of Bill pending, post pre-legislative scrutiny
Domestic Violence Bill	General Scheme	Publication of Bill pending
Equality/Disability (Miscellaneous Provisions) Bill	General Scheme	Publication of Bill pending
Judicial Council Bill	General Scheme	Publication of Bill pending
Assisted Decision-Making (Capacity) Act 2015	Act	Partially commenced
Children and Family Relationships Act 2015	Act	Partially commenced
International Protection Act 2015	Act	Partially commenced
Recognition of Irish Sign Language for the Deaf Community Bill 2016	Private Members Bill	Referred to Committee Stage



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