

Irish Human Rights and Equality Commission

**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**

October 2015



**Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas**

Irish Human Rights and Equality Commission

1. Introduction

1. The Irish Human Rights and Equality Commission ('the IHREC') was established by the *Irish Human Rights and Equality Commission Act 2014*.¹ It is the successor body to the Irish Human Rights Commission (IHRC) which contributed to the CEDAW Committee's examination of Ireland at the Committee's 33rd session in 2005.² As the successor to the IHRC, the IHREC is the national human rights institution for Ireland.³ It is also the designated Equality Body as required by EU Anti-discrimination directives.⁴

2. The IHREC welcomes the opportunity to provide this submission to inform the List of Issues Prior to Reporting that is being prepared by the United Nations Committee on the Elimination of All Forms of Discrimination Against Women ('the CEDAW Committee') in advance of its forthcoming examination of Ireland's compliance with the UN Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW'). Eleven years have passed since the State was last examined by the Committee.

3. The IHREC has a statutory remit 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. In addition, the IHREC is tasked with reviewing the adequacy and effectiveness of law, policy and practice relating to the protection of human rights and equality in Ireland, and with making recommendations to Government on measures to strengthen, protect and uphold human rights and equality accordingly.⁵ In accordance with section 10(2)(h) of the 2014 Act, the IHREC is also mandated to consult with international bodies or agencies with a knowledge or expertise in human rights or equality.

¹ 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.

² See Irish Human Rights Commission (2005) Submission of the Irish Human Rights Commission to the UN Committee on the Elimination of Discrimination Against Women in respect of Ireland's Combined 4th and 5th Periodic Reports under the Convention on the Elimination of all Forms of Discrimination Against Women. Last accessed from <http://www.ihrec.ie/publications/list/ihrc-report-on-irelands-record-on-womens-rights-20/> on 15 October 2015.

³ This is provided for in section 44 of the Irish Human Rights and Equality Commission Act 2014.

⁴ The EU Anti-discrimination directives requirement for EU Member States to set up Equality bodies is explained in the website of EQUINET (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'; see <http://www.equineteurope.org/-Equality-bodies> last accessed on 15 October 2015.

⁵ See Section 10(2)(b), Irish Human Rights and Equality Commission Act 2014, available at: <http://www.ihrec.ie/publications/list/ihrec-act-2014> last accessed on 15 October 2015.

2. Ireland's Human Rights and Equality Infrastructure (CEDAW, Articles 1, 2, 3, 4, 15)

2.1 The Irish Human Rights and Equality Commission

4. Since Ireland's last appearance before the CEDAW Committee, progress has been made in strengthening and resourcing Ireland's national human rights institution. The 2014 Act established a new Paris Principle compliant Commission, which enjoys increased institutional independence and accountability (including financial) to the Irish Parliament (Oireachtas).⁶

5. Confidence in the IHREC's independent standing is bolstered by the rigorous and transparent process undertaken to recruit the Chief Commissioner, as well as the appointment of the other members of the Commission by an independent selection panel. The inclusion in the legislation of an appointment process, compliant with the *UN Paris Principles*, for the appointment of future members of the Commission will also ensure that this independence is maintained in the longer term.⁷

6. An important development the 2014 Act is the provision of a Public Sector Duty under Section 42 of the same. Public sector bodies will have to include in their strategic plans an assessment of human rights and equality issues relevant to the functions of their body, and the incorporation of such issues in policies, plans and action plans. It is hoped that these new provisions will enhance the incorporation of standards about gender mainstreaming, gender proofing and the implementation of women's rights in society and the public sector.⁸

2.2 The Irish Constitution

7. In its Concluding Comments in relation to Ireland in 2005, the CEDAW Committee expressed concern at the persistence of traditional stereotypical views with regard to the social roles and responsibilities of women and men in the family and in society at large, reflected in Article 41.2 of the Irish Constitution.⁹ The IHREC regrets that Article 41.2 of the Irish Constitution continues to perpetuate stereotypical attitudes towards the role of women in Irish society despite repeated calls at both the national and international level to amend or remove it.¹⁰ The IHREC notes that there is

⁶ Section 9(2), Irish Human Rights and Equality Commission Act 2014.

⁷ Section 13, Irish Human Rights and Equality Commission Act 2014.

⁸ Section 42 of the 2014 Act outlines that the IHREC is tasked with assisting public bodies to perform their functions in a manner consistent with the section 42 obligation by providing guidance and encouraging public bodies in developing policies and by operating good practice and operational standards in this regard.

⁹ Concluding Comments of the Committee on the Elimination of Discrimination Against Women on Ireland's 4th and 5th Periodic Reports, A/60/38, para. 382.

¹⁰ The Convention on the Constitution was established by Government in 2012 to consider eight key constitutional issues as determined by the Oireachtas. It comprised 100 members, 33 legislators, 66 citizens randomly selected from the electoral register and an independent Chairperson. Among other measures, the Convention on the Constitution recommended amending the Constitution to strengthen economic, social and cultural rights; the removal of the specific

still a need for an all-embracing effective equality guarantee in the Irish Constitution, to bring the Constitution in line with Article 2(a) of the Convention.¹¹ The IHREC has recommended to the State to: (1) establish a specified timeframe for the replacement of Article 41.2 with gender-inclusive language as a matter of priority; (2) hold a referendum to amend Article 40.1 of the Constitution to guarantee equality to all and to proscribe discrimination (direct or indirect) in any area of law on non-exhaustive grounds.¹²

2.3 CEDAW Implementation into National Law

8. The Committee's Concluding Comments on Ireland's fourth and fifth periodic report recommended that the State Party take appropriate measures to incorporate all the provisions of the Convention into domestic law and to ensure that effective remedies are available to women whose rights are violated.¹³

9. In particular, the Committee recommended the inclusion of a definition of discrimination against women in line with Article 1 of the Convention, the principle of equality between women and men as set out in Article 2(a) of the Convention in the Constitution or other appropriate legislation.¹⁴ The IHREC notes that the Law Reform Commission (LRC) is currently examining the application of international obligations in domestic law, with specific reference to Article 29.6 of the Constitution of Ireland, as well as assessing the 'monitoring of and accountability for state obligations', including those in relation to ICESCR, in this context.¹⁵ The IHREC has noted the lack of progress made in incorporating an effective equality provision into the Constitution and the lack of progress in incorporating CEDAW into national legislation.¹⁶

offence of blasphemy under the Constitution; and the amendment of Article 41.2 in relation to the role of women in the home. For further information see www.constitution.ie

¹¹ The importance of having an all-embracing effective equality guarantee in the constitution was also previously identified by the former Irish Human Rights Commission (IHRC) in their shadow report to CEDAW in 2005. See Irish Human Rights Commission (2005) Submission of the Irish Human Rights Commission to the UN Committee on the Elimination of Discrimination Against Women in respect of Ireland's Combined 4th and 5th Periodic Reports under the Convention on the Elimination of all Forms of Discrimination Against Women, pp. 2,3,8. Last accessed from <http://www.ihrec.ie/publications/list/ihrc-report-on-irelands-record-on-womens-rights-20/> on 15 October 2015.

¹² See Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 5.1, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015; Irish Human Rights and Equality Commission (2015) Submission to the Second Universal Periodic Review Cycle for Ireland, September 2015, para. 3. In February 2013, the Convention on the Constitution recommended amending Article 41 by inserting an explicit provision on gender equality and including gender-neutral language in Article 41.2.1.

¹³ Concluding Comments of the Committee on the Elimination of Discrimination Against Women on Ireland's 4th and 5th Periodic Reports, A/60/38, para. 381.

¹⁴ *Ibid.*

¹⁵ See the website of the Law Reform Commission, <http://www.lawreform.ie/welcome/6-international-law.383.html>; last accessed on 15 October 2015.

¹⁶ See Irish Human Rights Commission (2008) Submission to the Irish Government in preparation of Ireland's report to the UN CEDAW Committee, available at <http://www.ihrec.ie/publications/list/ihrc-submission-to-the-irish-government-in-prepara> pp. 4-6; last accessed on 15 October 2015.

2.4 The Protection of Workers in Domestic Settings (CEDAW Articles 11, 15)

10. The former IHRC previously recommended that the Equality Act 2004¹⁷ should be amended to remove the exclusion of Domestic Workers from the prohibition of discrimination of accessing employment.¹⁸ The IHRC had also recommended that the Committee request the Irish State to provide information on the steps that it has taken to protect vulnerable groups of migrant workers, such as domestic workers in private households, who are predominantly women.

11. The IHREC notes the Employment Equality Acts 1998-2011, as amended by the Equality Act 2004, have not been revised to remove the exclusion of domestic workers from the prohibition of discrimination in accessing employment. The IHREC also notes the recent State's ratification of the International Labour Organisation (ILO) Decent Work for Domestic Workers Convention¹⁹ along with the issuance of guidelines for diplomatic staff living in Ireland who employ private domestic employees.²⁰ These guidelines outline the employment rights of domestic staff in embassies, as per Irish employment law.

12. The Government stated that the NERA (National Employment Rights Agency) has 'undertaken a programme of inspections involving domestic workers, and continues to respond to any complaints received from domestic workers. In addition, the Labour Relations Commission, in conjunction with the social partners, produced a Code of Practice for Protecting Persons Employed in Other People's Homes which recognises the unique circumstances that occur in the domestic work employment relationship and the employment rights of domestic workers.'²¹ In 2015, the IHREC raised concerns in relation to undocumented workers who may be victims of forced labour, or undocumented working women who are victims of domestic violence.²² It has also to be noted that the issue of

¹⁷ The Equality Act amended the Employment Equality Act 1998, Pensions Act 1990 and Equal Status Act 2000 for the purpose of incorporating better provisions in relation to equality of treatment in the workplace and elsewhere and to give effect to the Council Directive 2000/43/EC (the 'Race Directive', Council Directive 2000/78/EC ('Framework Directive'), and the European Communities Regulations 2001 in relation to the Burden of Proof in Gender Discrimination Cases; see <http://www.irishstatutebook.ie/2004/en/act/pub/0024>

¹⁸ See IHRC (2008) Submission to the Irish Government in preparation of Ireland's report to the UN CEDAW Committee, available at <http://www.ihrec.ie/publications/list/ihrc-submission-to-the-irish-government-in-prepara> at pp. 4-6; last accessed on 15 October 2015, p.16; see Section 26.2 of the Employment Equality Act 1998, available at <http://www.irishstatutebook.ie/eli/1998/act/21/section/26/enacted/en/html#sec26>

¹⁹ International Labour Organisation (ILO) Convention on Decent Work for Domestic Workers (No. 189). Ireland is one of three EU States to have ratified the Convention. Department of Jobs, Enterprise and Innovation, 'Minister Bruton announces ratification of ILO Convention on Decent Work for Domestic Workers' [media release] 9 July 2014. Last accessed from <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> on 15 October 2015.

²⁰ Department of Foreign Affairs and Trade (2014) 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/FINAL-GUIDELINES-RELATING-TO-THE-EMPLOYMENT-OF-PRIVATE-DOMESTIC-EMPLOYEES-BY-ACCREDITED-MEMBERS-OF-THE-MISSION.pdf> last accessed on 15 October 2015.

²¹ Department of Jobs, Enterprise and Innovation, 'Minister Bruton announces ratification of ILO Convention on Decent Work for Domestic Workers' [media release] 9 July 2014. Last accessed from <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> on 15 October 2015.

²² See Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social

domestic workers who have become undocumented is not clearly addressed in labour inspections, as employers are not subject to clear sanctions while undocumented workers face the risk of deportation.²³ It is estimated that 32.5% of all undocumented workers are domestic workers, including care givers and home care providers.²⁴

2.5 National Women's Strategy 2007-2016

13. The CEDAW Committee's Concluding Comments on Ireland's 4th and 5th Periodic Reports recommended that the national machinery for gender equality be fully empowered, staffed and funded to pursue effectively coordination and monitoring of the National Women's Strategy, while promoting gender mainstreaming into all areas and sectors of governance and maintaining at the same time women-targeted projects aimed at gender equality.²⁵

14. The former IHRC had recommended to the Government to provide further information on the specific targets and timeframes in place, in order to ensure the effective implementation of the National Women's Strategy. In addition, in light of General Recommendations 9 and 17 of the CEDAW Committee, the former IHRC had recommended that the Government incorporated gender disaggregated statistical data concerning the situation of women in Ireland in its next periodic report.²⁶

15. According to the latest Progress Report by the Department of Justice and Equality on the implementation of the National Women's Strategy 2007-2016, only four of the 16 government departments have made explicit references in their current strategy statements on gender equality or indeed on the National Women's Strategy.²⁷

and Cultural Rights, May 2015, sections 6.2.1; 7.1.4.

²³ See Migrant Rights Centre of Ireland (2010) "Ending the Race to the Bottom", last accessed from <http://www.mrci.ie/resources/publications/policy-briefing-papers-submissions/ending-the-race-to-the-bottom-changing-the-balance-for-migrant-workers-in-ireland/> on 15 October 2015, in which it states, at p.2, '...it is NERA's policy not to seek unpaid wages for undocumented workers due to the determination that their contract of employment is illegal. If undocumented workers have no right to redress, then employers who employ them have little to fear in exploiting them.'

²⁴ See Migrant Rights Centre of Ireland (2014) 'Ireland is Home', last accessed from http://www.mrci.ie/wp-content/uploads/2014/11/MRCI_policy-paper_FINAL.pdf on 15 October 2015.

²⁵ Concluding Comments of the Committee on the Elimination of Discrimination Against Women on Ireland's 4th and 5th Periodic Reports, A/60/38, para. 385.

²⁶ The former IHRC previously expressed concern on this issue in their shadow report to CEDAW in 2005. See Irish Human Rights Commission (2005) Submission of the Irish Human Rights Commission to the UN Committee on the Elimination of Discrimination Against Women in respect of Ireland's Combined 4th and 5th Periodic Reports under the Convention on the Elimination of all Forms of Discrimination Against Women, p. 26. Last accessed from <http://www.ihrec.ie/publications/list/ihrc-report-on-irelands-record-on-womens-rights-20/> on 15 October 2015.

²⁷ Department of Justice and Equality, Implementing the National Women's Strategy 2007-2016, Progress Report as of 01/05/2015, last accessed from http://www.genderequality.ie/en/GE/NWS_PrgRpt_05_2015-FINAL.pdf/Files/NWS_PrgRpt_05_2015-FINAL.pdf on 15 October 2015.

3. Access to Justice

3.1 Historical Institutional Gender Discrimination and Human Rights Violations

16. The IHREC notes that the cross-cutting prohibition on gender-based discrimination is a right clearly defined in CEDAW amongst other relevant human rights instruments to which the Irish State is a party. Such right has been central to a number of historical situations related to the institutional abuse and discrimination of women. The IHREC has expressed its concerns at the mistreatment of thousands of women in different institutional contexts, a situation which has had long-lasting and continuing repercussions with regard to the enjoyment of their full range of human rights, including the rights to health, social security and education and labour-related rights.²⁸

3.2 Magdalen Laundries

17. The IHREC is concerned that the rights of more than 11,000 women were systematically violated while living in institutions known as Magdalen Laundries. The IHREC is of the view that these women and girls were subjected to mistreatment and were victims of forced or compulsory labour in contravention of Ireland's obligations under the International Labour Organisation (ILO) Forced Labour Convention and, as a result, were denied their basic rights to education, fair wages and social security. The IHREC also notes that while an Inter-Departmental Committee (IDC) to establish the facts of the State involvement with the Magdalen Laundries, was established in 2011 on foot of a recommendation by the UN Committee Against Torture, it fell short of the full independent statutory mechanism to investigate the State's role in the Laundries as recommended by the former IHRC in its initial assessment of the system.²⁹

18. In respect of conducting an independent investigation into all allegations of abuse, the Government stated that the report of the Inter-Departmental Committee chaired by Senator Martin McAleese has been fully accepted by the Government as a comprehensive and objective report and that no factual evidence to support allegations of systematic torture or ill-treatment of a criminal

²⁸ See Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 5.1, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015.

²⁹ Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 5.1, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015; Irish Human Rights Commission (2014) Submission to the UN Human Rights Committee on the Examination of Ireland's Fourth Periodic Report under the International Covenant on Civil and Political Rights, last accessed from <http://www.ihrec.ie/download/pdf/20140616113130.pdf> on 15 October 2015; Irish Human Rights Commission (2013) Follow-up Report on State Involvement with Magdalen Laundries, last accessed from <http://www.ihrec.ie/publications/list/ihrc-followup-report-on-state-involvement-with-mag/> on 15 October 2015; Irish Human Rights Commission (2010) Assessment of the Human Rights Issues Arising in Relation to the Magdalen Laundries, last accessed from http://www.ihrec.ie/download/pdf/ihrc_assessment_of_the_human_rights_issues_arising_in_relation_to_the_magdalen_laundries_nov_2010.pdf on 15 October 2015.

nature was found. The IHRC submitted in 2014 that the report of the McAleese Inter-Departmental Committee was insufficient to meet the state's human rights obligations³⁰. The IHRC also recommended that the Magdalen Laundries' victims should have their right to effective legal remedies respected.³¹

19. The IHREC notes that the Government's one-year follow-up report on the ICCPR provides information on the introduction of the *ex gratia* scheme for payments to women.³² The Irish Human Rights and Equality Commission recommended the revision of the *ex-gratia* scheme for payments to women who had worked in the laundries. The IHREC considers the scheme does not meet human rights standards, as it does not provide an individualised approach to compensation, and does not provide the full range of measures necessary to ensure the restitution and rehabilitation of the women to the greatest extent possible.³³

3.3 Mother and Baby Homes

20. The IHREC notes that the stigmatisation and treatment of unmarried mothers and their children was a direct result of gender-based discrimination by the State, in clear violation of Article 2 of the CEDAW. In some instances, the Irish State operated directly some of the homes for unmarried mothers and their children; there is also significant evidence of the State's involvement in the operation and oversight of the homes required to register under the Maternity Homes Act 1934. In its 2010 report on the Magdalen Laundries, the former IHRC noted that women were sent from the Mother and Baby Homes to the Magdalen Laundries for long periods of time.³⁴

21. The IHREC welcomed the establishment in 2014 of a Commission of Investigation to inquire into Mother and Baby Homes. The IHREC recommends that the State ensures that all Government Departments cooperate in full with the investigation, and that, where further resources are necessitated by the widening of the IHREC's remit, that such resources are provided.³⁵ The IHREC

³⁰ Irish Human Rights Commission (2014) Submission to the UN Human Rights Committee on the Examination of Ireland's Fourth Periodic Report under the International Covenant on Civil and Political Rights, paras 58-69, last accessed from <http://www.ihrec.ie/download/pdf/20140616113130.pdf> on 15 October 2015.

³¹ *Ibid.*

³² Follow-up material to the Concluding Observations of the UN Human Rights Committee on the Fourth Periodic Review of Ireland under the International Covenant on Civil and Political Rights, Geneva, 14–1, July 2014. Last accessed from <http://www.justice.ie/en/JELR/201507replytoUNHRCCommittee.pdf/Files/201507replytoUNHRCCommittee.pdf> on 15 October 2015.

³³ See Irish Human Rights and Equality Commission (2015) Submission to UN Human Rights Committee on Ireland's One-Year Follow-up Report to its Fourth Periodic Review under ICCPR, September 2015, paras 5-10, last accessed from http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRL/INT_CCPR_NGS_IRL_21802_E.pdf on 15 October 2015.

³⁴ Irish Human Rights Commission (2010) Assessment of the Human Rights Issues Arising in Relation to the Magdalen Laundries, paras 3-10. Last accessed from http://www.ihrec.ie/download/pdf/ihrc_assessment_of_the_human_rights_issues_arising_in_relation_to_the_magdalen_laundries_nov_2010.pdf on 15 October 2015.

³⁵ See Irish Human Rights and Equality Commission (Designate), Submission on Proposed Commission of Investigation to Inquire into Mother and Baby Homes Submission, June 2014, last accessed from <http://www.ihrec.ie/publications/list/ihrec-designate-submission-on-mother-baby-home-com/> on 15 October 2015; and

recommended that the terms of reference of the Commission of Investigation should meet Ireland's human rights obligations by ensuring effective remedies, including redress for victims and the prosecution of perpetrators of criminal offences, where appropriate.³⁶

3.4 Symphysiotomy

22. The IHREC notes the lack of an effective redress mechanism for survivors of symphysiotomy, a practice used on some pregnant women in the State between the 1940s and the 1980s, which had long-lasting consequences on their right to health. The Department of Health commissioned a report in 2011 (the 'Walsh Report') to establish the facts about the use of the practice both in Ireland and overseas, and to determine whether the procedure was used appropriately. The Irish Human Rights and Equality Commission Designate wrote to the Government on 1 October 2014 recommending that the Government take steps to address the human rights of the survivors of symphysiotomy procedures.

23. The State announced the commencement of an *ex gratia* scheme in November 2014, but allowed only 20 days for receipt of applications with an extension until mid-January in exceptional circumstances. In addition, the scheme required a waiver of legal rights. The IHREC also notes that women who underwent a symphysiotomy have had difficulties in securing hospital records to support their claims to the *ex gratia* scheme. The IHREC has recommended that the State revises the terms of its redress scheme *vis-à-vis* their lack of compliance with human rights law and provides a fair and effective remedy through the establishment of a statutory, independent and thorough investigation into cases of symphysiotomy.³⁷

24. The IHREC considers the State's response to be inadequate, as it fails to provide an effective remedy or accountability as recommended by the UN Human Rights Committee in July 2014, namely, it does not address the need for a prompt, independent and thorough investigation into these cases, nor does it establish a process whereby perpetrators (including medical personnel) can be prosecuted and punished where violations of human rights occurred.

4. Gender Stereotyping (CEDAW Articles 1, 2, 5, 10, 15)

25. In light of Articles 2 and 5 of CEDAW and the Concluding Comments of the CEDAW Committee, both in the examination of Ireland's compliance under the combined 2nd and 3rd periodic report and under the combined 4th and 5th periodic report, the IHREC Designate recommended that the

Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 9, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015.

³⁶ See Irish Human Rights and Equality Commission (2015) Submission to UN Human Rights Committee on Ireland's One-Year Follow-up Report to its Fourth Periodic Review under ICCPR, September 2015, Paras 15-19, last accessed from http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRL/INT_CCPR_NGS_IRL_21802_E.pdf on 15 October 2015.

³⁷ *Ibid.*, paras 20-25.

Government should set out its intentions to amend Article 41.2 of the Constitution and give details as to what priority will now be afforded to this issue.³⁸

26. The CEDAW Committee also recommended that the Government should take additional measures to eliminate traditional stereotypical attitudes through training programmes, sustained awareness raising campaigns directed at men and women, and through encouraging 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.³⁹

27. The IHREC notes that the Advertising Standards Authority of Ireland (ASAI), which is the independent self-regulatory body set up and financed by the advertising industry, has issued a Manual of Advertising Self-Regulation with the Code of Standards for Advertising, Promotional and Direct Marketing in Ireland (updated in 2007) which requires marketing communications to respect the principle of gender equality and to avoid sex stereotyping and any exploitation or demeaning of men and women. The IHREC considers that the Broadcasting Authority of Ireland should address gender stereotyping and discriminatory treatment through its 'Code of Programme Standards' and 'General Advertising Code'.⁴⁰

5. Violence against women (CEDAW Articles 1, 2, 5, 6, 15)

5.1. National Strategy on Domestic, Sexual and Gender-based Violence

28. The IHREC notes the government has published a 'General Scheme of a Reformed and Consolidated Domestic Violence Bill'.⁴¹ The IHREC notes that the government has taken steps to progress the formulation of a new and updated National Strategy for Tackling Domestic, Sexual and Gender-based violence, through consultations and written submissions. The IHREC recommends that the government continues to prioritise this Strategy, and that the Strategy will be given the necessary supports and resources for implementation.⁴²

³⁸ Irish Human Rights Commission (2014) Submission to the UN Human Rights Committee on the Examination of Ireland's Fourth Periodic Report under the International Covenant on Civil and Political Rights, paras 36-37, last accessed from <http://www.ihrec.ie/download/pdf/20140616113130.pdf> on 15 October 2015.

See also Convention on the Constitution which recommended the amendment of Article 41.2 in relation to the role of women in the home. The Convention on the Constitution was established by Government in 2012 to consider eight key constitutional issues as determined by the Oireachtas. For further information see www.constitution.ie.

³⁹ Concluding Comments of the Committee on the Elimination of Discrimination Against Women on Ireland's 4th and 5th Periodic Reports, A/60/38, para. 383.

⁴⁰ Department of Justice and Equality, 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; last accessed on 15 October 2015, p. 79

⁴¹ Available at:

http://www.justice.ie/en/JELR/Pages/General_Scheme_of_a_reformed_and_consolidated_domestic_violence_bill

⁴² Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 8.1, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cult

5.2 Protection against Domestic Violence

29. The IHREC notes that the General Scheme of the Reformed and Consolidated Domestic Violence Bill proposes to consolidate Ireland's legislation in this area and to provide for additional protection (interim barring orders, additional supports for victims, including child victims of domestic violence). The IHREC further notes that this legislation will move Ireland closer to its ratification of the Council of Europe's Convention on preventing and combating violence against women and domestic violence ('Istanbul Convention').⁴³ Currently the Domestic Violence Acts 1996 - 2002 (the 'Domestic Violence Acts') provide civil remedies for victims of domestic violence, but there continues to be no specific criminal code dealing with the crime of domestic violence and no statutory definition of domestic violence in the Irish legal framework.⁴⁴

30. The IHREC is also concerned that despite the prevalence of domestic violence in Ireland, the 2014 Garda Inspectorate Report found that crimes of domestic violence are not always correctly recorded, and that there was a 'high number of calls to domestic incidents with a low volume of arrests recorded'.⁴⁵ The IHREC has noted that funding for domestic violence support services has been severely reduced during the recession with refuges reporting a lack of spaces despite an increase for demand. The IHREC regrets that the number of spaces that are currently available in the State is less than a third of the number recommended by the Council of Europe Taskforce to Combat Violence against Women. Furthermore, affordability remains an issue for women on little or no incomes who require legal assistance as does a lack of consistency in relation to legal proceedings despite amendments to the *in camera* rule which now allow for anonymised reporting by the of family law cases.⁴⁶

31. The IHREC has recently recommended that the Government 1) prioritises further reforms to the legislative framework in order to allow a swift ratification of the Istanbul Convention; 2) that adequate funding is provided to refuges; 3) that adequate training is given to An Garda Síochána officers to ensure accurate statistical records in relation to domestic violence; 4) that civil legal aid is made truly accessible to women who require legal assistance.⁴⁷

[ural_rights.pdf](#) on 15 October 2015. See also the website of the National Office for the Prevention of Domestic, Sexual and Gender-based Violence (COSC) at www.cosc.ie

⁴³ Safe Ireland (2014) 'The lawlessness of the home': Women's experiences of seeking legal remedies to domestic violence and abuse in the Irish legal system', p.74. Last accessed from <http://www.safeireland.ie/wp-content/uploads/SAFE-IRELAND-The-Lawlessness-of-the-Home.pdf> on 15 October 2015.

⁴⁴ *Ibid.*

⁴⁵ Garda Síochána Inspectorate (2014), Report of the Garda Síochána Inspectorate: Crime Investigation Report, p.17. Last accessed from http://www.gsinsp.ie/index2.php?option=com_docman&task=doc_view&gid=243&Itemid=152 on 15 October 2015.

⁴⁶ Women Against Violence Europe (WAVE) (2014), Country Report 2014: Ireland. Last accessed from http://www.wave-network.org/sites/default/files/IRELAND_2014.pdf on 15 October 2015. In 2014 there were 21 women's shelters and 141 family spaces/units in the State.

⁴⁷ See Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 8.2, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015.

32. The IHREC welcomes the recent publication of the Heads of Criminal Justice (Victims of Crime) Bill ⁴⁸ which proposes to transpose the EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (the 'Victims' Directive').⁴⁹

5.3 The Impact of the Habitual Residence Condition on Victims of Domestic Violence

33. The Habitual Residence Condition ('the HRC') is an extra qualifying condition for means-tested social welfare payments which stipulates that a person satisfy a number of factors to demonstrate a connection to Ireland, in order to qualify for certain social welfare payments. These factors include: the length of time spent in Ireland or another country; the person's employment pattern; intention to remain in the State; the person's 'centre of interest', taking into consideration family ties; the person's home and other relevant circumstances. The IHREC has noted that, as a result of the HRC, women who are both migrants and victims of domestic violence may face multiple barriers in accessing social security payments in their own right. As a result of not being deemed eligible to satisfy the HRC, and being without an independent right of residence, this vulnerable category of women may be forced to choose between remaining in a violent situation or being refused a payment on this basis, which in turn could result in potential destitution and homelessness.⁵⁰ Furthermore, migrant women who are victims of domestic violence are still required to pay the normal € 300 fee if their application for an independent residence visa is successful.⁵¹

34. The IHREC has highlighted that 'necessary welfare and support services should be provided to particularly vulnerable victims of domestic violence; and, where relevant, separate residence permits should be provided.'⁵²

⁴⁸ Department of Justice and Equality, 'Minister Fitzgerald publishes Heads of Criminal Justice (Victims of Crime) Bill' [media release] 14 July 2015, last accessed from <http://www.justice.ie/en/JELR/Pages/PR15000412> on 15 October 2015.

⁴⁹ Irish Human Rights and Equality Commission (2015) Submission to the Second Universal Periodic Review Cycle for Ireland, September 2015, paras 9, 11. Last accessed from <http://www.ihrec.ie/publications/list/ihrec-universal-periodic-review-submission-irela/> on 15 October 2015.

⁵⁰ Irish Human Rights Commission (2014) Submission to the UN Human Rights Committee on the Examination of Ireland's Fourth Periodic Report under the International Covenant on Civil and Political Rights, paras 49-57, last accessed from <http://www.ihrec.ie/download/pdf/20140616113130.pdf> on 15 October 2015. Significant barriers for migrant women may include not being an English-language speaker; a lack of resources for payment of a registration fee; a lack of information about the administrative processes; or a lack of support in making applications related to both her immigration status as well as her entitlement to a social security payment.

⁵¹ The IHREC notes that victims of domestic violence can apply for an independent immigration status under Section 4(7) of the Immigration Act 2004, and notes the publication of guidelines by the Irish Immigration and Naturalisation Service (INIS) in 2012. These guidelines do not apply to women at risk who have become undocumented (*Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights*, May 2015, Section 7.1.4.

⁵² See Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 7.1.4, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015. See also UN Human Rights Committee (2014) Concluding Observations on Ireland's Fourth Periodic Report, CCPR/C/IRL/CO/4, at para. 8, which expressed concern about the effects of the Habitual Residence Condition on the protection of women from perpetrators of violence.

5.4 Sexual Harassment

35. In their Concluding Comments on Ireland's combined fourth and fifth periodic report the CEDAW Committee expressed concerns that insufficient information had been provided by the Government on the question of sexual harassment, despite the Committee's previous request for this information in their Concluding Comments on Ireland's combined second and third periodic report.⁵³ The Committee recommended that the Government closely monitor the incidence of all forms of violence against women, including sexual harassment.⁵⁴

36. In a recent EU-wide survey on Violence against Women, carried out by the EU Fundamental Rights Agency (FRA), national results for Ireland showed that 48% of the Irish respondents reported to have experienced sexual harassment since the age of 15.⁵⁵ The IHREC notes in this regard that the latest progress report on the National Women's Strategy by the Department of Justice and Equality does not present any specific national statistics on sexual harassment, as recommended by the CEDAW Committee.⁵⁶

6. Human Trafficking, Forced Labour and Exploitation (CEDAW Articles 2, 6, 15)

6.1 Legislative and Policy Framework

37. The IHREC notes the progress made in relation to the State's first *National Action Plan on the Prevention and Combating of Human Trafficking 2009–2012* and welcomes the publication of the *Draft Second National Action Plan to Prevent and Combat Human Trafficking 2015* ('Second National Action Plan') for consultation. The draft plan reports that less than 300 alleged victims of human trafficking were reported between 2009 and 2013. However, the Minister for Justice and Equality has recognised that 'these figures are no doubt an underestimate'.⁵⁷

38. The legislative framework on human trafficking in Ireland is outlined in sections 1 to 4 of the Criminal Law (Human Trafficking) Act 2008 (as amended by the Criminal Law (Human Trafficking) (Amendment) Act 2013).⁵⁸ In the recent High Court decision of *P v. The Chief Superintendent of the*

⁵³ Concluding Comments of the Committee on the Elimination of Discrimination Against Women on Ireland's 2nd and 3rd Periodic Reports, A/54/38, para. 188.

⁵⁴ Concluding Comments of the Committee on the Elimination of Discrimination Against Women on Ireland's 4th and 5th Periodic Reports, A/60/38, para. 387.

⁵⁵ Fundamental Rights Agency, Violence Against Women: An EU-wide Survey, March 2014; available at <http://fra.europa.eu/en/vaw-survey-results> last accessed on 15 October 2015.

⁵⁶ Department of Justice and Equality, 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_2015FINAL.pdf/Files/NWS_PrgRpt_05_2015-FINAL.pdf last accessed on 15 October 2015.

⁵⁷ Department of Justice and Equality (2015) National Action Plan to Prevent and Combat Human Trafficking 2015 (Draft), p. 18.

⁵⁸ Section 1 of the Criminal Law (Human Trafficking) (Amendment) Act 2013 amends s.1 of the 2008 by expanding the definition of exploitation to include labour exploitation, exploitation for the removal of organs as well as forced begging.

Garda National Immigration Bureau, the DPP, Ireland and the Attorney General ('the P. case'),⁵⁹ in which the IHREC appeared as *amicus curiae*, the High Court found that the current administrative scheme for the identification and protection of victims of human trafficking is 'inadequate in terms of the transposition of the EU Directive'. This case demonstrates the desirability of placing the current administrative arrangements for identification of victims on a statutory basis, in line with the recommendations of the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA).

39. Analysis of data gathered between 2009 and 2013 shows that trafficking for the purposes of sexual exploitation continues to be the most prevalent form of human trafficking detected in Ireland accounting for almost 70% of those reported, while trafficking for the purposes of labour exploitation accounts for approximately 20%. Adults account for 70% of those detected while minors account for 30%. Women account for almost 80% of those trafficked while men account for approximately 20%.⁶⁰

40. Forced labour is prohibited in Irish law under the same Criminal Law (Human Trafficking) Act 2008 as amended by the Criminal Law (Human Trafficking) (Amendment) Act 2013.

41. The IHREC noted the concerns of the CEDAW committee with regard to lack of detailed data in relation to trafficking in women, and reiterated its concern at the low number of victims of labour exploitation identified since the relevant law was first enacted in 2008, as well as the failure on the part of the State to prosecute or convict any traffickers under this legislation.⁶¹

6.2 Identification of Potential Victims of Trafficking

41. The Draft Second National Action Plan states that there will be a fundamental review of the formal identification process for potential victims of trafficking in light of the necessity to do so on foot of the decision of the High Court in the P. case. The identification process for victims of trafficking is vital for determining the status and rights of potential victims, and also for combating trafficking and criminalising the perpetrators. Thus, the State's approach to the identification of victims of human trafficking should be a proactive one that invites victims and their supporters to come forward to be identified, in order to receive appropriate protection from the State, and trigger a criminal investigation. The IHREC notes that the current Second Draft National Strategy does not

⁵⁹ *P. v The Chief Superintendent of the Garda National Immigration Bureau, the DPP, Ireland and the Attorney General* [2015] IEHC 222. In this case, the applicant had spent almost three years in detention in the Dóchas Centre, much of that time waiting for a decision on her application to be recognised as a victim of human trafficking. See IHREC, 'IHREC calls for immediate action to protect victims of human trafficking following High Court Judgment', [media release], 15 April 2015, last accessed from <http://www.ihrec.ie/news/2015/04/> on 15 October 2015.

⁶⁰ European Commission, Together against Trafficking of Human Beings, Ireland Country Information; available at https://ec.europa.eu/anti-trafficking/member-states/ireland-1-general-information_en last accessed 15 October 2015.

⁶¹ See Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 6.3, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015; S. Mullally (2015) Submission on Second National Action Plan to Prevent and Combat Human Trafficking in Ireland, UCC School of Law, July 2015.

provide specific details in relation to the reform of the identification process, and does not indicate that it will be placed on a statutory footing. In this regard the IHREC submits that the proper test for identification as a victim of human trafficking must be set out in clear and precise terms, preferably in primary legislation, providing clarity as to the standard of proof required and who bears the onus of proof at each stage of the process.

42. In addition, in establishing an appropriate mechanism for the identification of victims of human trafficking, it is essential, taking into account the judgment in the P. case, that the mechanism is free of any perceived or real conflict of interest. This is particularly important where the alleged victim may have been discovered in the course of a criminal investigation. The IHREC emphasises, that the fact that an alleged victim was also involved in the commission of a crime, does not deprive them of the status of a suspected or actual victim of human trafficking. In addition, the potential victim should be accorded fair procedures throughout the decision making process, and any decision should be made in writing with reasons provided to the person. The IHREC considers that if the formal identification process is put on a statutory footing, this would be inevitable given that the legislation would have to comply with all necessary constitutional protections and the obligations that arise under section 3 of the European Convention on Human Rights Act 2003.⁶²

6.3 Non-Punishment of Victims of Trafficking

43. It is clear that under international instruments relating to potential victims of trafficking, a person who may be considered to have committed an offence in the course of being trafficked should not be held responsible nor punished for the offence as they cannot be considered to have acted freely. This is a principle that has been reiterated by the UN Special Rapporteur on trafficking in persons, especially women and children.⁶³

44. The IHREC welcomes the recognition in the Draft Second National Action Plan that there is 'increasing concern' in other jurisdictions about the different types of exploitation for which people may be trafficked and the range of criminal activities they may be forced to undertake, including forced labour. The IHREC notes with concern that in recent years, there have been a number of cases of cannabis cultivation in Ireland where the Courts have found that the person who has been prosecuted for committing a crime, is in fact a potential victim of trafficking and should be treated as such.⁶⁴ In these cases, the victims had already served part of their sentence before they were identified as a victim of trafficking despite the existence of guidelines for dedicated personnel of the

⁶² In the case of *The Queen (on the application of Hoang Anh Minh) v. The Secretary of State for the Home Department*, it was found that flaws in the decision-makers approach to the reasonable grounds decision were found to constitute a breach of the positive obligation of 'reasonable investigation' pursuant to Article 4 ECHR.

⁶³ UN General Assembly, Report of the Special Rapporteur on Trafficking in Persons, especially women and children, A/69/33797, 28 July 2014.

⁶⁴ *P. v The Chief Superintendent of the Garda National Immigration Bureau, the DPP, Ireland and the Attorney General* [2015] IEHC 222. See also Migrant Rights Centre of Ireland, 'Suspected victims of trafficking acquitted and freed after a year in jail in Ireland', [media release], 11 March 2015 relation to case L00295/0112 (Legal Aid) *The DPP. v. Hung Ba Tran and The DPP. v. Hoang Hu Vo*. See also *DPP v. Nguyen & anor* [2014] IECA 55. Last accessed from <http://www.mrci.ie/press-centre/suspected-victims-of-trafficking-acquitted-and-freed-after-a-year-in-jail-in-ireland/> on 15 October 2015.

Office of the Director of Public Prosecutions as noted by GRETA. These guidelines instruct them to exercise discretion when considering whether it is in the public interest to prosecute suspected trafficking victims for crimes which they were compelled to carry out.⁶⁵

6.4 Legal Support for Victims of Trafficking

45. The IHREC notes that legal assistance and representation is provided free of charge to victims of trafficking by the Refugee Legal Service, a dedicated section of the Legal Aid Board (LAB), and welcomes that this arrangement was put on a statutory footing through an amendment in 2011 to the Civil Legal Aid Act 1995.⁶⁶ The UN Human Rights Committee, in its 2014 Concluding Observations expressed concern at the ‘inadequacies in the legal support provided to victims of trafficking’⁶⁷ following an *Interim Review of the National Action Plan to Prevent and Combat Human Trafficking* in which NGOs highlighted that ‘... quality, early legal representation is not available, only once off information is provided, legal advice not enough to navigate the immigration system, and lack of representation throughout the criminal investigation and prosecution process’.⁶⁸

46. By the end of 2013, a total of 81 potential victims of trafficking had been referred to the LAB, the majority of whom were potential victims of sexual exploitation.⁶⁹ However, the IHREC has concerns that the number of potential victims availing of assistance from the LAB does not correlate to the overall number of potential victims of trafficking identified over the same period as the Second National Action Plan indicates that by the end of 2013, almost 300 potential victims of trafficking had come to the attention of the authorities.

47. The IHREC notes that the Legal Aid Board will provide legal advice to a person who has been identified by the Gardaí as a ‘potential’ or ‘suspected victim of trafficking’ on how to obtain legal redress. The LAB is also able to support victims of trafficking in their capacity as witnesses in any related criminal proceedings.⁷⁰ However, as demonstrated in the P. case, it may take some time before a person is officially identified as such and it is not clear that any assistance will be provided to a person in advance of this identification process. GRETA noted the concerns of NGOs that ‘... considering the lengthy identification process and the fact that legal aid to victims is limited to legal

⁶⁵ Office of the Director of Public Prosecutions (DPP) (2010) Guidelines for Prosecutors (Revised) p. 16. Last accessed from http://www.dppireland.ie/filestore/documents/GUIDELINES_-_Revised_NOV_2010_eng.pdf on 15 October 2015.

⁶⁶ Section 3, Civil Law (Miscellaneous Provisions) Act 2011 amended s.26 of the Civil Legal Aid Act 1995.

⁶⁷ UN Human Rights Committee (2014) Concluding Observations on Ireland’s Fourth Periodic Report, CCPR/C/IRL/CO/4, para. 20. Last accessed from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CCPR%2fC%2fIRL%2fCO%2f4&Lang=en on 15 October 2015.

⁶⁸ Department of Justice and Equality (2012) *Review of the National Action Plan to Prevent and Combat Trafficking in Human Beings*, p. 56.

⁶⁹ Legal Aid Board (2014) *Annual Report 2013*, p. 26.

⁷⁰ Legal Aid Board (2012) *Information Leaflet for Potential Victims of Trafficking*, p. 4.

information and advice, there is a danger that unidentified victims could be prosecuted as a result of being trafficked'.⁷¹

48. In relation to cases of potential victims of trafficking for labour exploitation, the LAB is prevented from providing full legal representation before the various Labour Relations appellate bodies, including the Employment Appeals Tribunal, due to specific exclusions in the Civil Legal Aid Act.⁷² The IHREC recommends that all potential victims of trafficking should be provided with adequate legal support in order to avail of an effective remedy and appropriate redress for any harm caused to them. The IHREC considers that the State should consider expanding the remit of the Legal Aid Board in cases where a person is the victim of trafficking for labour exploitation and requires legal representation to obtain redress from a tribunal such as the Employment Appeals Tribunal.

6.5 Remedies for Victims of Trafficking

49. In the context of its reports on Ireland, the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) also highlighted the lack of access to adequate remedies for victims of trafficking, including compensation and recommended that appropriate measures should be put in place. GRETA and the UN Human Rights Committee have expressed concern at the accommodation of victims of trafficking in Direct Provision Centres⁷³ for Asylum Seekers where they may be placed at further risk of harm.⁷⁴

⁷¹ GRETA (2013) Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: First Evaluation Round, p. 57. Last accessed from http://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2013_15_FGR_IRL_public_en.pdf on 15 October 2015.

⁷² Section 28(9)(a) of the Civil Legal Aid Act 1995 excludes a number of areas from the scope of the legislation: defamation; disputes concerning rights and interests in or over land; civil matters within the jurisdiction of the Small Claims Court; licensing; conveyancing (other than where it is connected to a matter in respect of which legal aid or advice has already been given); election petitions; claims made in a representative, fiduciary or official capacity; claims brought by a person on behalf of a group of persons to establish a precedent on a particular point of law and any other group or representative action. This point was also highlighted in the Department of Justice and Equality (2012) Review of the National Action Plan to Prevent and Combat Trafficking in Human Beings, p. 56. Last accessed from [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) on 15 October 2015.

⁷³ The system of Direct Provision commenced on 10 April, 2000 from which time asylum seekers have received full board accommodation and personal allowances of €19.10 per adult and €9.60 per child per week. See website of Reception and Integration Agency at http://www.ria.gov.ie/en/RIA/Pages/Direct_Provision_FAQs last accessed on 15 October 2015.

⁷⁴ GRETA (2013) Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: First Evaluation Round, p. 52-53. Last accessed from http://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2013_15_FGR_IRL_public_en.pdf on 15 October 2015.

6.6 The Accommodation of Victims of Trafficking in Direct Provision Centres

50. In its *Policy Statement on Direct Provision*,⁷⁵ the IHREC echoed the concerns of a number of international human rights bodies that victims of trafficking are inappropriately accommodated within the Direct Provision system.⁷⁶ The IHREC does not deem Direct Provision accommodation to be suitable for victims of trafficking and recommends that they 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.⁷⁷

7. Participation in political and public life (CEDAW Articles 4, 7, 9, 11)

7.1 Women in Leadership Positions

51. The IHREC welcomes the enactment of the Electoral (Amendment) Political Funding Act 2012 ('2012 Act') which provides that State funding received by a political party will be reduced by five per cent, unless at least 30 per cent of its candidates at the preceding general election were women and at least 30 per cent were men. The 2012 Act also provides for a further increase to a minimum 40 per cent of candidates of each gender seven years, after the general election where this provision first applies. Given the current situation where only 16 per cent of elected representatives in the Dáil (Lower House) and 27 per cent of Cabinet Ministers are women,⁷⁸ the IHREC regrets the delay in implementing an increase in gender quotas in subsequent elections.⁷⁹

52. Despite the State's commitment in 1993 to increase the proportion of women on corporate and State boards to 40 per cent, this figure has remained static at 34 per cent for a number of years, and

⁷⁵ Irish Human Rights and Equality Commission (2014) *Policy Statement on the System of Direct Provision in Ireland*, recommendation no.5. Last accessed from http://www.ihrec.ie/download/pdf/ihrec_policy_statement_on_direct_provision_10dec14.pdf on 15 October 2015.

⁷⁶ UN Human Rights Committee (2014) *Concluding Observations on Ireland's Fourth Periodic Report*, CCPR/C/IRL/CO/4, para. 20. Last accessed from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f4&Lang=en on 15 October 2015.

⁷⁷ Irish Human Rights and Equality Commission (2014) *Policy Statement on the System of Direct Provision in Ireland*, recommendation no.5. Last accessed from http://www.ihrec.ie/download/pdf/ihrec_policy_statement_on_direct_provision_10dec14.pdf on 15 October 2015.

⁷⁸ European Commission (2015) *Report on Equality between Women and Men 2014*, p.59. Last accessed from http://ec.europa.eu/justice/gender-equality/files/annual_reports/150304_annual_report_2014_web_en.pdf on 15 October 2015.

⁷⁹ Irish Human Rights and Equality Commission (2015) *Report to the UN Committee on Economic, Social and Cultural Rights*, May 2015, Section 5.4, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015.

women continue to be under-represented in economic portfolios.⁸⁰ The 2014 Act which established the Irish Human Rights and Equality Commission is an example of best practice in this regard as it sets out that, of the members of the Commission, not less than a half shall be women.⁸¹

53. The IHREC also notes that, while women make up 45 per cent of the work force, less than one-third of them are employed in senior positions as managers, directors or senior officials and less than one-fifth of Local Authority elected representatives are women.⁸² In the Gender Equality Index 2015 produced by EIGE (European Institute for Gender Equality), Ireland has received the 15th position on power (31.4 compared with EU average of 39.6) with regard to the low level of representation of women across the decision making systems.⁸³

8. Socio-Economic Inequalities (CEDAW Articles 10, 11, 12, 13, 14)

8.1 Equal Access to Employment and the Gender Pay Gap

54. The IHREC notes that research published by the Economic and Social Research Institute (ESRI) and the former Equality Authority in 2014 found that the dramatic increase in unemployment displayed a 'strong gender dimension' as male-dominated industries, including the agriculture, manufacturing and the construction industries, were particularly impacted.⁸⁴ While the gap between employment rates for men and women has narrowed since the onset of the recession, this has been described as a 'levelling down' rather than signifying progress in achieving greater gender equality in the labour market.⁸⁵ The IHREC notes that access to gender equality in employment continues to be an issue for women seeking to exercise their right to work and receive fair pay. Although a key objective of the National Women's Strategy 2007-2016 is to reduce the gender pay gap, the IHREC is

⁸⁰ Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 5.4, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015.

⁸¹ Section 12 (b), Irish Human Rights and Equality Commission Act 2014.

⁸² A Central Statistics Office publication, (29 July 2014) 'Women and Men in Ireland 2013', presents different sets of statistical data relevant to gender equality; available at www.cso.ie/en/releasesandpublications/ep/p-wamii/womenandmeninireland2013/socialcohesionlifestyleslist/socialcohesionlifestyles/#d.en.65645 last accessed on 15 October 2015.

⁸³ See Gender Equality Index 2015: Measuring gender equality in the European Union 2005-2012 - Country profiles; available at <http://eige.europa.eu/rdc/eige-publications/gender-equality-index-2015-measuring-gender-equality-european-union-20052012-report> last accessed on 15 October 2015.

⁸⁴ Gender impact assessments were not carried out on the two agreements on pay and working conditions in the public service, the *Croke Park Agreement 2010 – 2014* and the *Haddington Road Agreement 2013 – 2016* despite the high number of women who would be affected by changes to their terms of employment. H. Russell, F. McGinnity and G. Kingston (2014) *Gender and the Quality of Work: From Boom to Recession*, Equality Authority & the Economic and Social Research Institute, p. 54.

⁸⁵ F. McGinnity, H. Russell, D. Watson, G. Kingston & E. Kelly (2014) *Winners and Losers? The Equality Impact of the Great Recession in Ireland*, Equality Authority & Economic and Social Research Institute, pp. 7 & 14.

concerned that it has instead increased from 12.6 per cent in 2008 to 14.4 per cent in 2014.⁸⁶ Notably, 60 per cent of low paid workers are women and women face a 34 per cent risk of earning below the 'low pay threshold'.⁸⁷

55. The pay differential for women in the public sector is much lower than in the private sector, and while the IHREC notes that women form almost two-thirds of the civil service workforce, it is concerned that the vast majority of better-paid senior positions at the top four civil service grades are filled by men.⁸⁸ The IHREC has noted that this suggests the continued existence of a glass ceiling in the public sector.⁸⁹ Thirty-four per cent of women continue to work part-time compared with only 12.7 per cent of men. Women continue to be overrepresented in clerical roles, while only a third of employees in management roles are women. This inevitably leads to women being paid less due to the nature of the work.⁹⁰

56. The IHREC has recommended the State should adopt measures to equalise the participation of women and men in the labour force. The State should also take steps to close the gender pay gap and ensure that women receive equal pay for equal work.⁹¹ In order to ensure effective equality monitoring, the IHREC has recommended that the State put in place a system to collate gender disaggregated data on key indicators to inform policy-making aimed at improving gender disparities in employment.⁹² The Beijing Declaration and Platform for Action identified inequality between women and men in power and decision-making at all levels, as a critical area of concern. Twenty years later, these concerns remain. The Department of Justice and Equality's 2013 Report on gender parity as part of the National Women's Strategy highlights the continuing difficulties in securing greater representation of women in decision-making and leadership positions.⁹³

⁸⁶ Eurostat, 'Women earned on average 16% less than men in 2013 in the EU', [media release], 5 March 2015. Last accessed from <http://ec.europa.eu/eurostat/documents/2995521/6729998/3-05032015-AP-EN.pdf> on 15 October 2015.

⁸⁷ Nevin Economic Research Institute (NERI) (2015) *Quarterly Economic Observer: Spring 2015*, p.41.

⁸⁸ Central Statistics Office (2014) Men and Women in Ireland 2013: Civil Service general service grades, [online statistics]. Last accessed from <http://www.cso.ie/en/releasesandpublications/ep/p-wamii/womenandmeninireland2013/socialcohesionlifestyleslist/socialcohesionlifestyles/#d.en.65645> on 15 October 2015.

⁸⁹ Central Statistics Office (2014) Men and Women in Ireland 2013: Civil Service general service grades, [online statistics]. Last accessed from <http://www.cso.ie/en/releasesandpublications/ep/p-wamii/womenandmeninireland2013/socialcohesionlifestyleslist/socialcohesionlifestyles/#d.en.65645> on 15 October 2015.

⁹⁰ Eurostat, 'International Women's Day: 8 March 2015, Women earned on average 16% less than men in 2013 in the EU' [media release], 5 March 2015. Last accessed from <http://ec.europa.eu/eurostat/documents/2995521/6729998/3-05032015-AP-EN.pdf> on 15 October 2015.

⁹¹ Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 5.2, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015.

⁹² H. Russell, F. McGinnity and G. Kingston (2014) *Gender and the Quality of Work: From Boom to Recession*, Equality Authority & the Economic and Social Research Institute, p. vii.

⁹³ Department of Justice and Equality (2013) Towards Gender Parity in Decision-Making in Ireland: An Initiative Of The National Women's Strategy 2007 – 2016. See also Department of Justice and Equality (2014) Towards True Gender Equality in Ireland, Implementing the UN Beijing Platform for Action 1995, Periodic Report for Beijing +20, United Nations Economic Commission for Europe, April 2014, Gender Equality Division.

57. In November 2014, a landmark equality case in relation to gender inequalities in the University Sector was brought by a female member of academic staff who had been discriminated against for promotion due to her gender.⁹⁴ In December 2014, the Higher Education Authority published a detailed breakdown of the gender divide of senior academic posts across publicly funded higher education institutions, which confirmed that while the overall academic staff divide in higher education is 50/50, males significantly outnumber females in senior posts, with peaks of over 80% of male staff among university professors.⁹⁵

58. In January 2015, the Irish Government launched Ireland's National Action Plan on Women, Peace and Security. The plan runs from 2015 to 2018, and has an increased focus on the empowerment and participation of women in conflict resolution and peace building. This plan stems from the United Nations Security Council Resolution 1325 (UNSCR 1325) on Women, Peace and Security adopted in October 2000. This landmark resolution highlighted the distinct negative impact of conflict on women and girls, and the importance of women's participation in leadership and decision-making in conflict and post-conflict situations. This will include actions by the Department of Foreign Affairs and Trade, the Department of Justice and Equality, the Department of Defence, the Defence Forces, An Garda Síochána, the Health Services Executive, and Tusla (the Child and Family Agency).⁹⁶ In response to a recent parliamentary question, the Government has indicated that it intends to put in place equal opportunities policies and measures for increasing women's representation in the army. The number of serving females at 31 December 2013 amounted to 546, which represented 5.9% of the overall strength of the Permanent Defence Force at that date.⁹⁷

59. The period of austerity saw an immediate rise in the queries related to pregnancy-related discrimination by the former Equality Authority and also in cases brought to the Equality Tribunal. Queries referred to female employees being put on reduced hours following disclosure of pregnancy; or pregnant women being unfairly selected for redundancy or being dismissed; women not being promoted because of pregnancy or maternity leave; work performance rating not taking account of absence on maternity leave; job offers being rescinded following disclosure of pregnancy. These issues are documented in various pieces of research commissioned by the former Equality Authority.⁹⁸

⁹⁴ See IHREC (2014) "Equality Review in the Higher Education Sector", [media release], 20 June 2015. Last accessed from <http://www.ihrec.ie/news/2015/06/30/equality-review-in-the-higher-education-sector> on 15 October 2015.

⁹⁵ See Higher Education Authority, last accessed from <http://www.hea.ie/news/gender-and-academic-staff> on 15 October 2015.

⁹⁶ Department of Foreign Affairs and Trade, 'Government launches Ireland's National Action Plan on Women, Peace and Security' [media release] 14 January 2015. Last accessed from <https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2015/january/national-action-plan-women,-peace-and-security/> on 15 October 2015.

⁹⁷ Department of Defence and Defence Forces, Annual Report 2013, p. 24 Last accessed from http://www.military.ie/fileadmin/user_upload/images/Info_Centre/documents/Annual_Reports/2013_Annual_Report_English_Version.pdf on 15 October 2015.

⁹⁸ Equality Authority (2012), Selected issues in Case Law 2008-2011, p.8; p. 59; p.91, available at www.ihrec.ie; 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

8.2 The Pension Gender Gap

60. The pension gender gap stands at 38.2 per cent, up almost 6 percentage points since 2008.⁹⁹ Older women are largely dependent on non-contributory pensions as a result of historical factors which excluded them from participating in the labour force. This issue was addressed by the CEDAW Committee in 2005, whereby it recommended that the Government should give consideration to allowing the Homemaker's Scheme (1994) to be applied retroactively so as to benefit older women.¹⁰⁰ The former IHRC had recommended that the Government provide an account, in its sixth periodic report, of the tangible steps being taken to advance this objective and to give consideration to applying the Homemaker's scheme (1994) retroactively.¹⁰¹

61. The IHREC notes that older women who worked in the civil or public service prior to 1973 were required to retire upon their marriage due to the operation of the discriminatory 'marriage bar' which was lifted when Ireland became a member of the EU.¹⁰² While this may be considered a legacy issue, the IHREC notes that it may have real repercussions for women who are currently of pensionable age and interfere with their right to social security. The IHREC has therefore recommended that the State address the repercussions of the operation of the former marriage bar and ensure that older women forced to leave the workforce due to its operation, are not put at any further disadvantage by the lack of access to a pension caused by insufficient social insurance contributions.¹⁰³

⁹⁹ European Commission (2015), report on Equality between Women and Men 2014, p.58, last accessed from http://ec.europa.eu/justice/gender-equality/files/annual_reports/150304_annual_report_2014_web_en.pdf on 15 October 2015.

¹⁰⁰ Concluding Comments of the Committee on the Elimination of Discrimination Against Women on Ireland's 4th and 5th Periodic Reports, A/60/38, para. 393.

¹⁰¹ See Irish Human Rights Commission (2008) Submission to the Irish Government in preparation of Ireland's report to the UN CEDAW Committee, available at <http://www.ihrec.ie/publications/list/ihrc-submission-to-the-irish-government-in-prepara> pp. 4-6; last accessed on 15 October 2015.

¹⁰² On 31 July 1973 the Civil Service (Employment of Married Women) Act, 1973 ended the 'marriage bar' in the civil servants, which had prevented married women from becoming civil servants and had required previously single women to resign from the civil service on getting married; see <http://www.irishstatutebook.ie/1973/en/act/pub/0017/>. <http://www.irishstatutebook.ie/1973/en/act/pub/0017/>; Government of Ireland (2010) National Pensions Framework, p.25. Last accessed from http://www.welfare.ie/en/downloads/nationalpensionsframework_en.pdf on 15 October 2015. The report states that, 'It is estimated that 47,000 older people, mainly former public servants, self-employed people and their spouses or partners, are affected and as a result do not receive any income support through the State pension system'.

¹⁰³ The marriage bar has been cited as a possible reason why older women were more likely to have been obliged to retire from their jobs, see H. Russell and T. Fahey (2004) *Ageing and Labour Market Participation*, Economic and Social Research Institute, p.28; H. Russell, F. McGinnity, T. Callan and C. Keane (2009) *A Woman's Place: Female Participation in the Irish Labour Market*, Equality Authority & the Economic and Social Research Institute, p.16; D. Watson, P. Lunn, E. Quinn and H. Russell (2011) *Multiple Disadvantage in Ireland: An Equality Analysis of Census 2006*, Equality Authority & the Economic and Social Research Institute, p.45; Government of Ireland (2010) *National Pensions Framework*, p.25. The report states that, 'It is estimated that 47,000 older people, mainly former public servants, self-employed people and their spouses or partners, are affected and as a result do not receive any income support through the State pension system'.

8.3 Access to Affordable Child Care

62. The high cost of quality childcare in Ireland has detrimental consequences for women's enjoyment of the right to work as well as impeding their opportunities for promotion. In this context, the European Commission has identified 'limited access to affordable and quality childcare' as 'a barrier to increased female labour market participation'¹⁰⁴. Notably, Ireland has the highest childcare costs in the European Union as a percentage of family income.¹⁰⁵ Furthermore, the IHREC has noted that the lack of affordable childcare affects women of all socio-economic backgrounds.¹⁰⁶

63. In relation to 'mothers who wish to engage in activities including the long hours culture associated with management, corporate and State Board commitments and politics', the Department of Justice and Equality has noted that there are concerns that these mothers are impeded in advancing their careers by the lack of childcare arrangements to cover atypical hours.¹⁰⁷ The IHREC has recommended that the State put in place effective measures to ensure the supply of adequate, affordable, flexible and high-quality childcare services for children under the mandatory school age with a view to facilitate the participation of more women in the labour force.¹⁰⁸

8.4 Lone Parents

64. A series of changes to the eligibility criteria for the One Parent Family Payment (OPFP), which is designed to support single parents on low incomes, has significantly affected these parents, the majority of whom are women.¹⁰⁹ In 2015, the Government ceased access to the payment for lone parents whose youngest child is seven years or over.¹¹⁰ Lone parents whose youngest child is

¹⁰⁴ European Commission (2015) *Country Report Ireland Including an In-Depth Review on the Prevention and Correction of Macroeconomic Imbalances*, Brussels: European Commission, p.2.

¹⁰⁵ For low income families including lone parents, childcare can cost up to 40 per cent of their total income compared to 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* [online database]. Last accessed from <http://www.oecd.org/els/benefitsandwagesstatistics.htm> on 15 October 2015.

¹⁰⁶ Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 5.3, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015

¹⁰⁷ Department of Justice and Equality (2013) *Towards Gender Parity in Decision-Making in Ireland: An Initiative of the National Women's Strategy 2007 – 2016*, para 69. Last accessed from <http://www.justice.ie/en/JELR/FINALTowardsGenderParity.pdf/Files/FINALTowardsGenderParity.pdf> on 15 October 2015.

¹⁰⁸ Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 5.3, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015

¹⁰⁹ Government of Ireland (2012) *Census 2011 Profile 5: Households and Families*, p.22. Last accessed from http://www.cso.ie/en/media/csoie/census/documents/census2011profile5/Profile_5_Households_and_Families_full_doc_sig_a_mended.pdf on 15 October 2015. Census 2011 recorded 215,315 single-parent families of which 186,284 were headed by mothers and 29,031 were headed by fathers.

¹¹⁰ OPFP is a means-tested payment for men and women under the age of 66 who are bringing up children without the support of a partner. Prior to the introduction of changes in 2012, a lone parent could qualify for the payment up until his or her youngest child reached the age of 18. Since the introduction of the amendments to the scheme, the age threshold

fourteen or older will be required to seek and accept full-time work under the same condition and rules that apply to single people with no children. The IHREC is concerned that in the absence of adequate childcare arrangements to support many of these parents attempting to re-enter the workforce, the stated objective of reducing 'long-term dependence on social security' will be undermined and will instead result in making it 'harder for lone parents to engage in economic activity' when faced with a choice 'between low paid full-time work and full-time care'.¹¹¹

65. The IHREC considers these steps to be regressive in nature and the decision to implement these reforms has not been considered from a gender perspective.¹¹²The IHREC has therefore recommended that the State reverse the reforms to the OPFP in the absence of an adequate and affordable childcare system being in place. While these reforms remain in place, their effect should be closely monitored by the State, in particular in relation to the poverty and deprivation rates for single-parent headed households.¹¹³

8.5 Maternity Leave and Parental Leave

66. Although there is currently a statutory right to paid maternity leave for 26 weeks with a further entitlement to 16 weeks unpaid leave, the IHREC notes that Ireland is one of several EU countries that does not have any statutory entitlement to paid paternity leave, although some employers do grant it. In 2013, Maternity Benefit became subject to tax, while a further regressive step standardised the rate of payment to the lower rate for all mothers of new-born children. The IHREC notes that the State opted for unpaid parental leave rather than paid leave meaning that 'many parents cannot afford to avail of leave, and also that men are less likely to avail of it'.¹¹⁴

67. The IHREC welcomes the intended publication of a Family Leave Bill expected in late 2015 to 'provide for the consolidation into one piece of legislation of the current provisions regarding

for the youngest child of new applicants reduced from 18 to 14 years in 2012, 12 years in 2013, 10 years in 2014 and it is due to fall to 7 years in July 2015. At the end of January 2015 there were approximately 69,700 OPFP recipients and it is expected that 30,200 will lose entitlement to the payment in July 2015, although it is expected that the majority of them will transition onto another payment such as Family Income Supplement (FIS) paid to low income families or Jobseekers Allowance. For details see Minister for Social Protection, Joan Burton TD, Parliamentary Questions: Written Answers, [9291/15], 5 March 2015. Last accessed from <http://oireachtasdebates.oireachtas.ie/debates/authoring/debateswebpack.nsf/takes/dail2015030500053#WRB00600> on 15 October 2015.

¹¹¹ Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 7.2.2, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015.

¹¹² Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 7.2.2, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015.

¹¹³ *Ibid.*

¹¹⁴ F. McGinnity, A. Murray and S. McNally (2013) Growing up in Ireland: Mothers' Return to Work and Childcare Choices for Infants in Ireland – Infant Cohort Report 2, p.21. Last accessed from http://www.growingup.ie/fileadmin/user_upload/documents/Second_Infant_Cohort_Reports/GUI_Infant_Mothers_Work_Final_Report.pdf on 15 October 2015.

maternity, adoptive, parental and carer's leave'.¹¹⁵ The IHREC has recommended that the State publish and enact this legislation as soon as possible, in order to consolidate legislative provisions relating to maternity, adoptive, parental and carer's leave. The IHREC also recommends the State monitor the potential negative impact of the overall reductions in Maternity Benefit for new mothers.¹¹⁶

68. A recent High Court decision¹¹⁷ decided on the exclusion from entitlement to a payment equivalent to maternity benefit to an Irish woman who had a child by means of a surrogacy arrangement in the US. Following this case, the IHREC has recommended that the Equal Status Acts be amended to ensure protections for all mothers claiming maternity benefit. The IHREC also recommended the provisions of parental leave to include leave for parenthood through surrogacy.¹¹⁸

9. Health (CEDAW Articles 10, 12 and 14)

9.1 Right to Reproductive Health¹¹⁹

69. Article 40.3.3 of the Irish Constitution recognises the right to life of the 'unborn' and provides protection for that right 'as far as practicable' with 'due regard to the equal right to life of the mother'. The IHREC notes Paragraph 31 of General Recommendation No. 24 of the CEDAW Committee, which states, at (b) and (c):

31. States parties should also, in particular:

[...]

(b) Ensure the removal of all barriers to women's access to health services, education and information, including in the area of sexual and reproductive health, and, in particular, allocate resources for programmes directed at adolescents for the prevention and treatment of sexually transmitted diseases, including HIV/AIDS.

(c) Prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When possible, legislation criminalizing abortion should be

¹¹⁵ Minister of State for New Communities, Culture and Equality, Aodhán Ó Ríordáin TD, Parliamentary Questions: Written Answers, [13279/15], 31 March 2015. Last accessed from <http://oireachtasdebates.oireachtas.ie/debates/authoring/debateswebpack.nsf/takes/dail2015033100064#WRN01900> on 15 October 2015.

¹¹⁶ Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 8.3, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015.

¹¹⁷ Irish Human Rights and Equality Commission (2015) '*G v The Department of Social Protection*', [media release] 8 July 2015. Last accessed from <http://www.ihrec.ie/news/2015/07/08/ihrec-recommends-changes-to-equal-status-acts-foll/> on 15 October 2015.

¹¹⁸ Irish Human Rights and Equality Commission (2015) 'IHREC recommends changes to Equal Status Acts following High Court decision on maternity benefit claim' [media release] 8 July 2015, last accessed from <http://www.ihrec.ie/news/2015/07/08/ihrec-recommends-changes-to-equal-status-acts-foll/> on 15 October 2015.

¹¹⁹ Two members of the Commission did not support paragraphs 69-73 in this Section.

amended, in order to withdraw punitive measures imposed on women who undergo abortion.¹²⁰

In its concluding observations in relation to Ireland in 2005, the CEDAW Committee expressed its ‘concern about the consequences of the very restrictive abortion laws under which abortion is prohibited except where it is established as a matter of probability that there is a real and substantial risk to the life of the mother’ and encouraged the state to facilitate a national dialogue on this issue.¹²¹

70. Since CEDAW’s examination of Ireland in 2005, the Protection of Life During Pregnancy Act 2013 (2013 Act) has been enacted. The 2013 Act was enacted to respond to the finding of the European Court of Human Rights in the case of *A, B and C v. Ireland*.¹²² This Act allows for terminations in limited circumstances where there is a ‘real and substantial’ risk to the life of the mother, including in circumstances where the mother is suicidal.¹²³ The 2013 Act does not provide for lawful abortion where a pregnancy poses a risk to the health of the woman, or situations where the pregnancy is the result of a crime, such as rape or incest. Furthermore, in cases where there is an established fatal foetal abnormality or where it has been established that the foetus will not survive outside the womb, a woman cannot terminate the pregnancy in Ireland.¹²⁴ The IHREC notes that in the context of the 2013 Act and in subsequent Parliamentary debates on this issue, the Government has stated that legislation extending access to lawful abortion on grounds such as fatal foetal abnormality would not survive scrutiny by the Irish Courts in light of Article 40.3.3 of the Constitution.¹²⁵ In September 2015, the Taoiseach (Prime Minister) stated that he will not commit to holding a referendum on the issue.¹²⁶

71. In a recent submission to the Universal Periodic Review process, the IHREC endorsed Concluding Observations by the UN Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights recommending that the Irish State ‘take all the steps necessary, including a referendum on abortion, to revise its legislation on abortion, including the Constitution and the Protection of Life During Pregnancy Act 2013, in line with international human rights standards’.¹²⁷

¹²⁰ CEDAW General Recommendation No. 24, Women and Health, CEDAW 20th Session, 1999.

¹²¹ CEDAW, Concluding Comments in relation to Ireland, 22 July 2005, CEDAW/C/IRL/CO/4-5.

¹²² *A, B and C v. Ireland* (2010), No. 25579/05; European Court of Human Rights, last accessed from <http://www.bailii.org/eu/cases/ECHR/2010/2032.html> on 15 October 2015

¹²³ See further Irish Human Rights Commission (2013) Observations on the Protection of Life During Pregnancy Bill 2013. Last accessed from <http://www.ihrec.ie/publications/list/ihrc-observations-protection-of-life-during-pregna/> on 15 October 2015.

¹²⁴ *Ibid.* at pp.46-48.

¹²⁵ See Select Sub-Committee on Health debates on the Protection of Life During Pregnancy Bill, 2 July 2013, former Minister for Health, James Reilly; see Second Stage Dáil Debate on the Protection of Life During Pregnancy (Amendment) Bill 2015 (Private Members Bill), 5 March 2015, statement by Minister for Health Leo Varadkar.

¹²⁶ See Irish Times (2015) ‘Taoiseach Refuses to commit to referendum on abortion’, 11 September 2015. Last accessed from <http://www.irishtimes.com/news/politics/taoiseach-refuses-to-commit-to-referendum-on-abortion-1.2348788> on 15 October 2015.

¹²⁷ This endorsement was a majority view of the Commission. See Irish Human Rights and Equality Commission (2015) Submission to the Second Universal Periodic Review Cycle for Ireland, September 2015. See also UN Committee on Economic, Social and Cultural Rights (2015) Concluding Comments in relation to Ireland,

In the context of its comments on the 2013 Act at Bill stage, the IHREC has recommended revising the legislation to clarify situations where a pregnancy poses a risk to the health, as well as the life, of the pregnant woman, including where it may 'unduly increase her risk of mental anguish or suffering'. Specifically, the IHREC recommended that insofar as the Bill does not provide for access to a lawful abortion for women or girls in a crisis pregnancy with a fatal foetal abnormality or following rape, consideration should be given to reassessing of the Constitutional position as it prohibits access to a lawful abortion for women and girls in such situations.¹²⁸

72. The IHREC reiterates its concern that although the 2013 Act repealed Sections 58 and 59 of the Offences Against the Person Act 1861, a woman who undergoes an unlawful abortion in Ireland could face a fine or up to 14 years imprisonment or both.¹²⁹ The IHREC reiterates its recommendation that the State ensure that clear, comprehensive and authoritative guidance as to what constitutes 'real and substantive risk' to life under the 2013 Act is provided to allow women and girls, particularly those from ethnic or non-English speaking backgrounds and with intellectual disabilities, a clear pathway to access medical services through appropriate supports.¹³⁰

73. Overall, the IHREC has expressed its concern that the current legal position in relation to abortion not only puts in place barriers which impede a woman's right to bodily autonomy, but also that it has a disproportionate impact on women from lower socio-economic backgrounds and in particular, asylum seeking women and migrant women whose ability to travel may be circumscribed due to their immigration status.¹³¹ It is in the context of these concerns and the relevant international human rights law, that the IHREC has endorsed the recommendations of the UN Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights that the

E/C.12/IRL/CO/3, 8 July 2015; UN Human Rights Committee (2014) Concluding Comments in relation to Ireland, CCPR/C/IRL/CO/4.

¹²⁸ See further Irish Human Rights Commission (2013) Observations on the Protection of Life During Pregnancy Bill 2013, pp. 46-54. Last accessed from <http://www.ihrec.ie/publications/list/ihrc-observations-protection-of-life-during-pregna/> on 15 October 2015. The IHREC decision on the Protection of Life in Pregnancy Bill was a majority one.

¹²⁹ See further Irish Human Rights Commission (2013) Observations on the Protection of Life During Pregnancy Bill 2013, pp. 42-46. Last accessed from <http://www.ihrec.ie/publications/list/ihrc-observations-protection-of-life-during-pregna/> on 15 October 2015.

¹³⁰ Ibid. at pp. 51-54.

¹³¹ Ibid. Specific examples of the operation of the legislation in practice include the following: In August 2014, media reports revealed that a young asylum seeking woman who has been called Ms. Y, a victim of an alleged rape in her country of origin, 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. She was reviewed by a panel of medical experts convened under the legislation and although deemed suicidal, media reports suggest she was refused a termination as 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. A senior barrister has been appointed by the Health Service Executive to undertake an enquiry into the matter. Also, lawyers acting on behalf of Ms. Y have indicated they will be initiating personal injury proceedings, see Kitty Holland, 'Ms Y to sue 11 respondents over abortion refusal', Irish Times, 19 September 2015. Last accessed from <http://www.irishtimes.com/news/social-affairs/ms-y-to-sue-11-respondents-over-abortion-refusal-1.2357456> on 15 October 2015. A further example of the operation of the legislation in practice concerned a case where a regime of measures to support foetal life on the body of a woman after brain stem death was declared when she was 15 weeks pregnant. The measures were maintained against the wishes of her family, and were only discontinued after a ruling of the High Court. See Mary Carolan, 'Continuing to treat woman on life support 'grotesque'', Irish Times, 23 December 2014. Last accessed from <http://www.irishtimes.com/news/crime-and-law/courts/high-court/continuing-to-treat-woman-on-life-support-grotesque-1.2047808> on 15 October 2015.

State take all the steps necessary, including a referendum on abortion, to revise its law to bring it in line with international human rights standards.

9.2 Gender-Specific Healthcare Provision

74. Improving women's overall health, including their physical, mental and reproductive health, remains a key objective of the National Women's Strategy 2007 -2016. In this context, the IHREC regrets the dissolution in 2009 of two statutory bodies with a gender-specific health focus, namely the Women's Health Council, and the Crisis Pregnancy Agency. The IHREC notes the development of the HSE Gender Mainstreaming Framework in collaboration with the National Women's Council of Ireland (NWC). The IHREC has recommended the State to adequately resource the implementation of the HSE Gender Mainstreaming Framework, in order to ensure its effective rollout.¹³²

75. The IHREC wishes to note significant initiatives to address the health issues caused by Female Genital Mutilation (FGM) in Ireland including the enactment in 2012 of legislation to prohibit the practice,¹³³ the development of a *National Plan of Action to Address Female Genital Mutilation* as well as the establishment in 2014 of a dedicated clinic to treat girls and women who have undergone the practice.¹³⁴

76. A particular concern has arisen in relation to a number of maternity services in the State, which has led to investigations by the Health Information and Quality Authority (HIQA),¹³⁵ the Chief Medical Officer¹³⁶ and in some cases internal reviews by hospital management.¹³⁷ An independent

¹³² Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 10.3.1, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015.

¹³³ The Criminal Justice (Female Genital Mutilation) Act 2012 makes it an offence to carry out FGM on a girl or women in Ireland or to remove a girl or woman to a place outside the State for this purpose. It is estimated that there are more than 2,500 girls and women living in Ireland who have undergone an FGM procedure.

¹³⁴ See Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 10.3.1, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015

¹³⁵ See HIQA (2013) Investigation into the safety, quality and standards of services provided by the Health Service Executive to patients, including pregnant women, at risk of clinical deterioration, including those provided in University Hospital Galway, and as reflected in the care and treatment provided to Savita Halappanavar. Last accessed from <http://www.hiqa.ie/system/files/Patient-Safety-Investigation-UHG-Summary.pdf> on 15 October 2015. In the case of Savita Halappanavar, Ms Halappanavar died from an infection while pregnant following failures in basic patient care provided to her.

¹³⁶ Dr T. Holohan, Chief Medical Officer (2014) HSE Midland Regional Hospital, Portlaoise Perinatal Deaths (2006 to date): Report to Dr James Reilly TD. Last accessed from http://health.gov.ie/wp-content/uploads/2014/03/portlaoise_perinatal_deaths.pdf on 15 October 2015.

¹³⁷ Saolta University Health Care Group 'Statement from Dr Patrick Nash, Clinical Director University Hospital Galway and Commissioner of the Enquiry into the Death of Ms Savita Halappanavar, 13 June 2013. Last accessed from <http://www.wnwhg.ie/article/statement-dr-patrick-nash-clinical-director-university-hospital-galway-and-commissioner> on 15 October 2015.

investigation undertaken by HIQA was published in May 2015.¹³⁸ The IHREC notes HIQA's recommendation for the urgent development of a national maternity strategy in order to ensure that maternity services meet the needs of women in Ireland.¹³⁹

9.3 Access to Health Services for Transgender Persons

77. The IHREC notes with concern the limited provision of specialised health services for Transgender people in the State. There are no centres providing gender reassignment surgery in Ireland and instead, people requiring the surgery are referred to facilities in other countries. The expense of having to travel abroad for surgery is compounded by the prohibitive cost of non-surgical gender reassignment treatment. Between 2005 and the beginning of 2014, 218 individuals were referred to the only specialised endocrine service in the State for hormone therapy, but this service is subject to resource constraints despite a year-on-year increase in the number of referrals.¹⁴⁰

78. In a survey carried out by the Transgender Network of Ireland (TENI) in 2013, almost 80% of participants had considered suicide, and half of those had made at least one attempt.¹⁴¹ A high rate of mental health issues has been reported amongst the Trans community although the 'true prevalence may be difficult to assess due to patient worries regarding stigma and societal acceptance of the condition'.¹⁴²

79. The Gender Recognition Act 2015 came into force in Ireland in September 2015. The IHREC maintains its reservations about the legal situation of young Transgender people who wish to apply to be recognised in their preferred gender. The IHREC has recommended that the State put in place a strategy to adequately address the health concerns and needs of Transgender people to ensure that they can access any necessary treatment in a timely way without facing significant financial barriers or undergoing unnecessary psychological distress.¹⁴³

¹³⁸ HIQA (2015) Report of the investigation into the safety, quality and standards of services provided by the Health Service Executive to patients in the Midland Regional Hospital, Portlaoise. Last accessed from www.hiqa.ie/publications/report-investigation-safety-quality-and-standards-services-provided-health-service-exec on 15 October 2015.

¹³⁹ See HIQA (2015) [media release] 8 May 2015, 'Patient safety investigation report published by the Health Information and Quality Authority', last accessed from <http://www.hiqa.ie/press-release/2015-05-08-patient-safety-investigation-report-published-health-information-and-qualit>

¹⁴⁰ See Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 10.6.1, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015

¹⁴¹ TENI (Transgender Network of Ireland) 'New Survey Reveals that nearly 80% of Trans People have considered suicide'; [media release] 2 December 2013, available at www.teni.ie

¹⁴² C. Judge, et al. 'Gender Dysphoria – Prevalence and Co-Morbidities in an Irish Adult Population', *Frontiers in Endocrinology* 5 (2014): 87. *PMC*. Web. Last accessed from <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4056308/pdf/fendo-05-00087.pdf> on 15 October 2015.

¹⁴³ Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 10.6.1, last accessed from

10. Traveller and Roma Women

80. The IHREC has welcomed the commitment by the State to formally recognise Travellers as an ethnic minority and recommended the Government to do so as a matter of priority.¹⁴⁴ Low rates of paid employment among Traveller women remain a concern. In the 2011 Census 81.2 per cent of Traveller women were without work.¹⁴⁵ Lower educational attainment rates for Traveller women, as compared to the majority population, are also a concern.¹⁴⁶

81. The publication of the National Intercultural Health Strategy 2007-2012 was a welcome development. Its primary aim was ensuring the availability of culturally appropriate healthcare for ethnic minorities, including Travellers and Roma, living in Ireland. The IHREC notes that there are no plans to renew the strategy. However, a HSE Intercultural Health Governance Group is now responsible for reviewing and implementing any outstanding recommendations.¹⁴⁷

82. The IHREC notes with concern the findings of the 2010 All Ireland Traveller Health Study, which reports that Traveller women live on average 12 years less than their settled peers. Traveller women had more than double the national rate of stillbirth and infant mortality rates was three times higher than the national rate. A report on Roma Maternal Health in Ireland, produced by Pavee Point in 2014, highlights similar issues for Roma women in Ireland, as well experiences of racism, prejudice and inappropriate treatment by health care practitioners.¹⁴⁸

http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015.

¹⁴⁴ Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 12.1, last accessed from

http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015.

¹⁴⁵ According to Census 2011 statistics, 17.7 per cent of the Traveller community had no formal education compared to 1.4 per cent of the general population and almost 70 per cent of Travellers were educated to primary level or lower including 507 young people aged 15-19. See Government of Ireland (2012) Census 2011 Profile 7 – Religion, Ethnicity and Irish Travellers, p. 33. Last accessed from

http://www.cso.ie/en/media/csoie/census/documents/census2011profile7/Profile,7,Education,Ethnicity,and,Irish,Traveller_entire_doc.pdf on 15 October 2015.

¹⁴⁶ According to Census 2011 statistics, only 3.1 per cent of Irish Travellers continued their education past the age of 18 compared with 41.2 per cent for the general population. Irish Traveller females stayed longer in school than their male counterparts with 15 per cent of females ceasing their education at age 17 or over compared with 11 per cent of males.

See Government of Ireland (2012) Census 2011 Profile 7 – Religion, Ethnicity and Irish Travellers, p. 32. Last accessed from http://www.cso.ie/en/media/csoie/census/documents/census2011profile7/Profile,7,Education,Ethnicity,and,Irish,Traveller_entire_doc.pdf on 15 October 2015.

¹⁴⁷ See Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 10.3.2, last accessed from

http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015

¹⁴⁸ School of Public Health, Physiotherapy and Population Science, University College Dublin, All Ireland Traveller Health Study, Our Geels, (2010) Summary of Findings; Pavee Point (2014), Challenging Barriers and Misconceptions: Roma Maternal Health in Ireland, Roma Seminar Series Theme Two.

11. Asylum Seeking and Refugee Women

83. The system of 'Direct Provision' was established in the year 2000 to provide direct support to asylum seekers¹⁴⁹ by way of accommodation, food and a weekly allowance while their applications for protection are processed.¹⁵⁰ The IHREC welcomed the establishment, in October 2014, of a Working Group tasked with identifying actions and making recommendations to improve existing arrangements for asylum seekers to ensure 'greater respect for the dignity of persons in the system and improving their quality of life by enhancing the support and services currently available'.¹⁵¹ The IHREC notes that the Working Group was financially restrained in terms of its recommendations to Government.¹⁵² The IHREC has welcomed the publication of the General Scheme of the International Protection Bill 2015 which it hopes will address the delays in the asylum determination procedure by introducing a single procedure.¹⁵³

84. Serious concerns remain at the poor living conditions and the lengthy stays of asylum seekers in Direct Provision Centres.¹⁵⁴ The IHREC is concerned at the lack of protection for the right to private and family life and for children and has recommended that families should be moved out of Direct Provision Centres and enabled to access self-catering accommodation.¹⁵⁵ The IHREC is concerned at the particularly difficulties faced by single parents, who are mostly women, within the Direct Provision accommodation. There is an absence of female only accommodation, particularly for who have experienced sexual or gender based violence.¹⁵⁶ In its *Policy Statement on Direct Provision*, the

¹⁴⁹ See Irish Human Rights and Equality Commission (2014) Policy Statement on the System of Direct Provision in Ireland, recommendation no.5. Last accessed from http://www.ihrec.ie/download/pdf/ihrec_policy_statement_on_direct_provision_10dec14.pdf on 15 October 2015.

¹⁵⁰ The system of Direct Provision commenced on 10 April, 2000 from which time asylum seekers have received full board accommodation and personal allowances of €19.10 per adult and €9.60 per child per week. See website of Reception and Integration Agency at http://www.ria.gov.ie/en/RIA/Pages/Direct_Provision_FAQs last accessed on 15 October 2015.

¹⁵¹ See Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 9.1.3, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015.

¹⁵² Department of Justice and Equality (2015) Working Group Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers. The report lists over 170 recommendations. See http://www.justice.ie/en/JELR/Pages/Working_Group_on_Improvements_to_the_Protection_Process

¹⁵³ Under the current arrangements, in order to gain international protection in Ireland a person has to make claim asylum under the Refugee Act 1996 and if that claim is unsuccessful, he or she has to apply for subsidiary protection afterwards. Ireland is the only EU Member State without a single procedure to determine claims for refugee status and subsidiary protection at the same time in order to issue one single decision on a person's claim for protection. See UNCHR Ireland, 'UNHCR welcomes Single Procedure Scheme' [media release], 25 March 2015. Last accessed from <http://www.unhcr.ie/news/irish-story/unhcr-welcomes-single-procedure-scheme> on 15 October 2015.

¹⁵⁴ UN Committee on Economic Social and Cultural Rights, Concluding Observations on the third periodic report of Ireland, E/C.12/IRL/CO/3, at para 14. states 'These centres have a negative impact on the family life, their mental health and their children's best interest'.

¹⁵⁵ Irish Human Rights and Equality Commission (2014) Policy Statement on the System of Direct Provision in Ireland, p.18. Last accessed from http://www.ihrec.ie/download/pdf/ihrec_policy_statement_on_direct_provision_10dec14.pdf on 15 October 2015.

¹⁵⁶ The IHREC notes that the Reception and Integration Agency (RIA) intends to establish a woman-only

IHREC strongly recommended that the weekly allowance be increased to a realistic amount that ensures dignity, respect and autonomy for individuals.¹⁵⁷ The IHREC notes that the Government's recent budget does not make any provision for the increase of the weekly allowance.¹⁵⁸

12. Women in Prison

85. Recent research highlights how socio-economic inequalities continue to affect women in relation to their imprisonment and prosecution.¹⁵⁹ The number and proportion of women in the Irish prison population has increased significantly in recent years and many women are committed to prison for non-violent offences, such as non-payment of fines. This situation has caused overcrowding in the Irish women prison system. Women offenders tend to come from a background of social disadvantage and poverty, and often suffer from mental health problems, substance dependency, accommodation problems and poor family relationships. The situation of women in the prison system appears to perpetuate the nature of structural socio-economic gender inequalities, affecting women's health, mental health, employment prospects and capacity to care for their children in the long term, and exacerbating the risk of homelessness and substance abuse.¹⁶⁰

86. This set of findings is supported by other pieces of research, such as the All Ireland Traveller Health Survey, 2010 which reports specific findings on Traveller women and imprisonment. Based on the Irish Prison System estimate of Traveller prisoners, the risk of a Traveller being imprisoned was 11 times that of a non-Traveller, and for Traveller women the risk was 18 to 22 times that of non-Traveller women. The relative risk of imprisonment was higher for female Travellers than for males in two types of analyses. Traveller women were particularly over-represented in the Irish prison system.¹⁶¹

13. Family Carers

87. The right to social security in terms of people with disabilities also extends to those who care for them, the vast majority of whom are women and unpaid. In light of this, the IHREC notes that despite the higher percentage of people with disabilities increasing with age, fewer than half of their

accommodation centre. See Department of Justice and Equality (2015) Working Group Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, p. 195.

¹⁵⁷ Irish Human Rights and Equality Commission (2014) Policy Statement on the System of Direct Provision in Ireland, p.19. Last accessed from http://www.ihrec.ie/download/pdf/ihrec_policy_statement_on_direct_provision_10dec14.pdf on 15 October 2015.

¹⁵⁸ See <http://www.budget.gov.ie/Budgets/2016/2016.aspx>

¹⁵⁹ Irish Prison Reform Trust (IPRT) Position Paper 10, Women in the Criminal Justice System: Towards a non-custodial approach, November 2013, p. 13. Last accessed from <http://www.iprt.ie/contents/2571> on 15 October 2015.

¹⁶⁰ Ibid., pp. 6-7.

¹⁶¹ School of Public Health, Physiotherapy and Population Science, University College Dublin (2010) All Ireland Traveller Health Study, Our Geels, pp. 110-111

carers are in receipt of a carer's payment, compared with the carers of children and younger people.¹⁶²

88. The impact of previous cuts to the Respite Care Grant had a disproportionate negative impact on women carers and on people with disabilities.¹⁶³ The IHREC has recommended the recognition of the role of women in caring roles, to ensure that they receive adequate payments and supports, including an adequate carer's grant, to support them in this work.¹⁶⁴ The IHREC notes the Government's stated intention to ratify the United Nations Convention on the Rights of Persons with Disabilities (CRPD). A lack of reasonable accommodation in relation to access to employment for people with disabilities, as well as lack of supports for children with disabilities, has impacted both on women and girls with disabilities, as well as their primary carers which are mostly women.

14. Employment Rights for Home Care Workers

89. Research has highlighted the over-representation of migrants, and in particular migrant women, in care and domestic work with many women working in vulnerable employment conditions.¹⁶⁵ Migrant workers experience a heightened risk of racism and discrimination as families/ clients exercise a 'choice to discriminate', refusing services from workers based on their race, skin colour and ethnicity.¹⁶⁶ Employment contracts with unspecified hours of work, more commonly referred to as 'zero hour' contracts, have become common in the home care sector. The IHREC is concerned that the lack of specified and secure hours of work is leading to insecurity of income and uncertain employment situations for many employees working under these conditions, many of whom are recorded as underemployed part-time workers.¹⁶⁷

¹⁶² Y. Kamiya, C. Murphy, G. Savva and V. Timonan (2012) Profile of Community-Dwelling Older People with Disability and their Caregivers in Ireland, The Irish Longitudinal Study on Ageing, p. 18. Last accessed from http://tilda.tcd.ie/assets/pdf/Carer_Report.pdf on 15 October 2015.

¹⁶³ It was announced in Budget 2016 that the Respite Care Grant would be restored to its previous full value. On the impact of previous cuts, see Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 7.2.1. Last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015.

See also the Convention on the Constitution which recommended that Article 41.2 (on the role of women) should be made gender-neutral to include other carers both 'in the home' and 'beyond the home' and Article 41.2.2 (the state's support for carers) the state should provide 'a reasonable level of support'.

¹⁶⁴ Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 7.2.1, last accessed from http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015.

¹⁶⁵ Migrant Rights Centre (MRCI) (2015) Migrant Workers in the Home Care Sector: Preparing for the Elder Boom in Ireland, Policy briefing; available at <http://www.mrci.ie/resources/publications/migrant-workers-in-the-home-care-sector-preparing-for-the-elder-boom-in-ireland>

¹⁶⁶ Migrant Rights Centre (MRCI) (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>

¹⁶⁷ Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 6.1.2, last accessed from

15. The Human Right and Equality Impact of the Habitual Residency Condition

90. The Habitual Residence Condition ('HRC') is an extra qualifying condition for means-tested social welfare payments which stipulates that a person satisfy a number of factors to demonstrate a connection to Ireland. This condition was introduced in 2004 in the context of EU enlargement. It has been amended on a number of occasions since its introduction. Most recently, the introduction of a 'right to reside' clause in Section 15 of the Social Welfare and Pensions Act 2009 stipulates that a person who does not have a right to reside in the State shall not be regarded as being habitually resident for the purposes of the HRC.

91. The ongoing application of the HRC may have negative impacts on disadvantaged populations including migrant families, asylum seekers, lone parents, victims of domestic violence, Travellers and Roma minority ethnic groups, and women with disabilities. The IHREC has expressed concern in relation to the rise in homelessness, in particular family homelessness and the lack of availability of adequate social housing. The IHREC has therefore recommended the revision of the adequacy of social welfare payments to groups experiencing multiple discrimination and particular disadvantage with a specific gender perspective; the State should review its guidelines implementing the 'right to reside' clause of the HRC and adequate training should be provided to decision makers to prevent indirect discrimination in its application; (3) the application of the HRC to asylum seekers should be reviewed; (4) the State should take measures to ensure that affordable housing is available and of sufficient quality; (5) the State should consider the introduction of rent limits to reduce the financial pressure on low income individuals and families; (5) the State should consider increasing rent supplement limits.¹⁶⁸

http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015.

¹⁶⁸ Irish Human Rights and Equality Commission (2015) Report to the UN Committee on Economic, Social and Cultural Rights, May 2015, Section 7.1, last accessed from

http://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf on 15 October 2015; Irish Human Rights and Equality Commission (2015) Submission to the Second Universal Periodic Review Cycle for Ireland, September 2015, para. 14. Last accessed from <http://www.ihrec.ie/publications/list/ihrec-universal-periodic-review-submission-irela/> on 15 October 2015.