

# Ireland and the Convention on the Elimination of Racial Discrimination

Submission to the United Nations Committee  
on the Elimination of Racial Discrimination on  
Ireland's Combined 5<sup>th</sup> to 9<sup>th</sup> Report

*October 2019*



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

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

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# Glossary

<b>BAI</b>	Broadcasting Authority of Ireland
<b>CEDAW</b>	Committee on the Elimination of Discrimination against Women
<b>CERD</b>	United Nations Convention on the Elimination of All Forms of Racial Discrimination
<b>Commission</b>	Irish Human Rights and Equality Commission
<b>Committee</b>	Committee on the Elimination of Racial Discrimination
<b>CSO</b>	Central Statistics Office
<b>ECRI</b>	European Commission against Racism and Intolerance
<b>EEA</b>	European Economic Area
<b>EROC</b>	Emergency Reception and Orientation Centre
<b>ESB</b>	Electricity Supply Board
<b>ESRI</b>	Economic and Social Research Institute
<b>EU</b>	European Union
<b>FGM</b>	Female Genital Mutilation
<b>GP</b>	General practitioner
<b>GRETA</b>	Council of Europe Group of Experts on Action against Trafficking in Human Beings

<b>HAP</b>	Housing Assistance Payment
<b>HRC</b>	Habitual Residence Condition
<b>HSE</b>	Health Service Executive
<b>IFPA</b>	Irish Family Planning Association
<b>INIS</b>	Irish Naturalisation and Immigration Service
<b>IPAT</b>	International Protection Appeals Tribunal
<b>IPO</b>	International Protection Office
<b>MRCI</b>	Migrant Rights Centre Ireland
<b>NHRI</b>	National Human Rights Institution
<b>OCO</b>	Ombudsman for Children's Office
<b>PD81</b>	Practice Direction 81
<b>PPS</b>	Personal Public Service number
<b>PULSE</b>	'Police Using Leading Systems Effectively' system
<b>UN</b>	United Nations
<b>UNHCR</b>	UN High Commissioner for Refugees
<b>WRC</b>	Workplace Relations Commission

Section 1

**Introduction  
by the Chief  
Commissioner**



## I am pleased, on behalf of the Irish Human Rights and Equality Commission (the Commission), to provide our independent report of Ireland's compliance with the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD), in advance of Ireland's examination in December 2019.

The Commission exercises a dual capacity as the 'A' status National Human Rights Institution (NHRI) and the national equality body for Ireland, provided for in primary legislation by the Irish Human Rights and Equality Commission Act 2014. In addition to the mandate consistent with any national human rights institution, the Commission has specific statutory functions to 'encourage the development of a culture of respect for human rights and equality, and intercultural understanding in the State', including by encouraging 'good practice in intercultural relations' and to 'promote tolerance and acceptance of diversity' in the State.

Much has changed since its last examination under CERD in 2011, with Ireland continuing its transformation into a diverse multiethnic and multinational society. In 2016, there were 535,475 people whose nationality was other than Irish (11.6% of the population) originating from 200 different countries, and a significant number of migrants have become Irish citizens. A growing population of young Irish people have

parents and grandparents of different nationalities. Although there is no official data available, it is also estimated that there are between 20,000 and 26,000 undocumented people in Ireland.

There have been several significant developments since 2011. These include the completion of the 2016 Census of Ireland, a measure of economic recovery following the recession, as well as the emergence of new human rights challenges, such as an unprecedented housing shortage and homelessness crisis. Several areas identified by the Committee in its 2011 Concluding Observations have not seen sufficient progress in the intervening period. In particular, the Commission is concerned with the lack of progress on review and reform of Ireland's legal framework on hate crime, the continuing and widespread institutional discrimination faced by Travellers, and the incompatibility of Ireland's international protection framework with its international human rights obligations.

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**Much has changed since its last examination under CERD in 2011, with Ireland continuing its transformation into a diverse multiethnic and multinational society.**

In addition to these ongoing challenges, Ireland's 2019 examination under CERD takes place in a period of our global history where our society and democracies are increasingly threatened by the 'snarl of belligerence and the smirk of dehumanisation.' We have witnessed in the past few years a worrying trend that has

seen many countries in Europe and further afield succumb to populism, unilateralism, racism, and an increasingly narrow and inward-looking vision of statehood, sovereignty, and national belonging.



**Emerging developments underscore the need for leadership across the State to ensure Ireland maintains its commitment to equality and non-discrimination and does not succumb to the regression in international human rights norms we have been witnessing in recent years.**

Sadly, we have a demonstrable history of chronic racism toward Travellers, a minority ethnic community that is indigenous to Ireland. More recently, the acute overt nature of racism, like many countries regionally and globally, is underpinned by economic inequalities. In the context of a housing crisis, for instance, we have witnessed the growth of a troubling anti-immigrant and anti-refugee discourse. These emerging developments underscore the need for leadership across the State to ensure Ireland maintains its commitment to equality and non-discrimination and does not succumb to the regression in international human rights norms we have been witnessing in recent years.

In recognition of this, in its *Strategy Statement 2019–2021*, the Commission has identified ‘combatting racism and promoting intercultural understanding’ as a key strategic priority in its programme

of activities. Alongside this, we have also placed particular priority on promoting access to justice; socio-economic rights and the social protection of all families and individuals, including in the areas of housing, health, and decent work; and disability.

The focus and structure of this submission reflect these strategic priorities and how they intersect, aligning them with the areas of competence and interest of the Committee.

Building on the information provided to the Committee in our submission on the List of Themes in August 2019, the Commission adopted a participatory and intersectional approach to developing this submission, and the views, insights, and experiences gathered are reflected throughout the sections below. Representatives from our legal and policy and research teams have conducted outreach work with newly arrived asylum seekers who are being accommodated in emergency accommodation, in order to hear about their experiences and promote awareness of the Commission. In March 2019, the Commission conducted a Be Heard on CERD consultation with a diverse group of young people, ranging in age from 16 to 24, to hear their experiences of racial discrimination and their views of how Ireland can better meet its obligations under CERD. The perspectives and insights garnered during this consultation are referred to throughout this submission. In May 2019, the Commission also held a national Civil Society Forum, which involved consultation on the views of civil society organisations on the issues that should be raised in our engagement with the reporting process. In addition to our participatory and consultation work, this submission has been informed by the Commission’s day-to-day interaction with rights-holders and civil society organisations as part of its ongoing work

programme, including through its provision of legal assistance, *amicus* submissions, the Your Rights information service, and the Human Rights and Equality Grant Scheme, as well as by our programme of research with the Economic and Social Research Institute (ESRI), which has made significant findings about experiences of racial discrimination and attitudes to diversity.

I would particularly like to acknowledge the work of Irish civil society in combatting racism in Ireland, and the wealth of invaluable expertise and insight that they will bring to the Committee during its examination of Ireland. As the NHRI, we benefit from these insights and referrals on an ongoing basis at a domestic level. We see our work as complementary to the work of civil society and hope that it will add to the richness of understanding of Ireland's current record on combatting racism.

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

A handwritten signature in black ink that reads "Emily Logan". The signature is written in a cursive style and is positioned above a solid blue horizontal line.

Emily Logan  
Chief Commissioner

# Section 2

**Key**

**Recommendations**



The Commission welcomes the opportunity to provide this submission to the Committee in advance of Ireland's examination under CERD in December 2019.

Noting the publication of the Committee's List of Themes on 8 October 2019,<sup>1</sup> this summary outlines some of the key observations and recommendations made in this submission, which are particularly relevant to the thematic areas highlighted by the Committee. A full schedule of recommendations made in this submission is in the Appendix.

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<sup>1</sup> CERD (8 October 2019), *List of Themes in Relation to the Combined Fifth to Ninth Reports of Ireland*, CERD/C/IRL/Q/5-9.

## Ratifications, reservations, and domestic incorporation of CERD

The Commission is concerned that since 2011, Ireland has yet to ratify several international treaties of relevance to racial discrimination.<sup>2</sup> The Commission recommends that the State ratify these treaties and protocols as a matter of priority.

Ireland's reservation/interpretive declaration to Article 4 of the Convention remains, with the State indicating it has no plans to withdraw it. In light of the settled view that Article 4 is compatible with and complementary to the right to freedom of expression, as well as the growing body of evidence about significant levels of discrimination against, and troubling attitudes towards, ethnic minorities in Ireland, the Commission is of the view that the State's reservation is unnecessary, out of date, and should be withdrawn as a matter of priority.

The State has yet to incorporate CERD into domestic law, meaning that rights-holders remain unable to rely directly on the provisions of CERD before the Irish courts. The Commission is of the view that the State should take immediate steps to incorporate CERD into domestic law.

While discussions have been held in Parliament in recent years about aspects of human rights treaty ratification and

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<sup>2</sup> For example, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the Optional Protocol to the Convention Against Torture; the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography; Protocol No. 12 to the European Convention on Human Rights; and the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature.

implementation through a temporary sub-committee, there is yet to be an established parliamentary organ dedicated to this purpose. Through engagement with the Ceann Comhairle (Chairman of Dáil Éireann) in 2016, the Commission has highlighted its support for a full parliamentary committee with a dedicated and expansive human rights and equality mandate and recommends that such a committee be established.

## Experiences of discrimination and disadvantage

The Commission has produced extensive research demonstrating consistent and significant levels of discrimination against minority ethnic groups in Ireland, as well as troubling attitudes to particular groups in society. Minority ethnic groups also face significant disadvantage across multiple arenas, including in access to labour, access to services, housing, education, and health. Travellers, Roma, and people of African descent experience significant barriers to accessing employment.

Examples of such discrimination and disadvantage, and specific recommendations to address them are referred to throughout this report.

Noting the announcement of plans to establish a new anti-racism committee to review and make recommendations on strengthening the government's approach to combatting racism, the Commission recommends that the anti-racism committee's work be grounded in human rights and equality standards. The Commission also recommends that the State should put in place a new national action plan against racism and adopt public awareness-raising and education measures to address discrimination and prejudice.

## Disaggregation of data

Ireland does not have sufficient disaggregated data to allow an adequate and regular assessment of the extent to which it is meeting its obligations under international law across a range of sectors. There continue to be significant gaps in the national survey and administrative data available on minority ethnic groups, and concerns about its availability, quality, and use. With only a few exceptions, Irish data collection instruments do not collect information on ethnicity as standard, and there is a lack of coordination and integration in the approach to the data that is collected. Overall, this makes it difficult for authorities, policy-makers, and civil society organisations to fully assess the scope, reach, and dynamics of the issues faced by minority ethnic groups.

The Commission has identified deficits in the availability of disaggregated and appropriately collated data under each area covered by this submission, highlighting the pervasiveness of this issue across different sectors and State agencies. The Commission recommends that the State improves its collection and reporting of human rights and equality data on minority ethnic groups across all sectors to inform policy-making, legislative reform, and service provision.

## Hate speech, hate crime, and monitoring

In keeping with the Committee's approach in General Recommendation No. 35, the Commission is of the view that the State's response to hate speech should not only make use of criminal law, but should also encompass other policy and regulatory measures to encourage non-discriminatory discourse, educate the public on the harm

of hate speech, and ensure that its extent and impact are adequately tracked.

In the area of criminal law, the Commission is of the view that the Prohibition of Incitement to Hatred Act 1989 is inadequate to effectively address hate speech that calls for a response in criminal law. The Commission is also concerned that the State's current reliance on judicial discretion in sentencing for hate motivated offences places limitations on the justice system's ability to deal with hate crime. The Commission is concerned that insufficient urgency is being placed by the State on advancing reform on hate crime in Ireland, and recommends that the State develop and commit to a clear, time-bound action plan for review and modernisation of hate crime law and practice in Ireland to bring it in line with its international obligations.

Outside the criminal sphere, the Commission is of the view that significant reform of the regulatory and policy environment is essential to address the contemporary problem of the circulation of racist and hate speech in the public sphere, both online and offline. The Commission also notes the centrality of education in combatting prejudicial and discriminatory content and hate speech online and recommends that the State promote and advance digital literacy as a core skill for people of all ages.

In the modern media environment, a strong link can be observed between editorial decisions and the emergence of online and real-world hate speech and incidents. In light of this link and the fundamental role a free media plays in promoting an open, democratic, and equal society, the Commission recommends that the State encourage the media to ensure that their codes of professional ethics and press codes are responsive to the modern media environment and

incorporate the principles of CERD and other fundamental human rights standards.

## The Traveller community

There is a demonstrable history of chronic racism and discrimination against Travellers in Ireland. The recognition of Travellers as an ethnic minority on 1 March 2017 by the Taoiseach (Prime Minister) in Parliament, was a welcome and long-overdue development. The adoption of the National Traveller and Roma Integration Strategy 2017–2021 is also to be welcomed.

However, Travellers continue to experience systemic discrimination in Irish society and face significant barriers to the enjoyment of the rights to healthcare, adequate and culturally appropriate housing, education, and decent work. Negative stereotypes of Travellers in public discourse reinforce barriers to public services and exacerbate the disadvantages they face.

Examples of these barriers are raised throughout this report, as are specific recommendations to address them. In the Commission's view, the persistence of systemic institutional racism against Travellers and the continued and widespread existence within Irish society of discriminatory attitudes towards Travellers remain among the most significant areas where the State is failing to meet its obligations under the Convention.

## Cultural competency in Ireland's public service

The Commission is of the view that cultural competency and intercultural awareness are fundamental to the public service's

ability to meet its obligations under the Public Sector Equality and Human Rights Duty. The Commission is further of the view that to better serve the public, the State, as an employer and service provider, must better reflect the diversity of Irish society and should set specific targets for diversity in their recruitment procedures. The Commission is concerned that currently, public services in Ireland are not yet sufficiently responsive and sensitive to the needs of minority communities.

In the area of criminal justice and policing, reports indicate that minority ethnic communities can be under-protected and over-policed, including due to racial profiling. The 2018 report of the Commission on the Future of Policing also highlighted the continuing shortcomings in the professional development and training practices in An Garda Síochána. The Commission welcomes the subsequent launch by the government of a four-year plan for the implementation of the report findings, which embraces as a first principle that 'human rights are the foundation and purpose of policing' and the creation of a human rights unit within An Garda Síochána.

The Commission recommends that human rights and equality standards, intercultural awareness, and cultural competency are central to the initial and continuous training of all members of An Garda Síochána, as well as personnel in the wider criminal justice system, including staff within the Office of the Director of Public Prosecutions, the Prison Service, and detention centres. The Commission also recommends that racial profiling is dealt with appropriately, including through legislative measures.

A significant barrier to cultural competency and appropriate service provision within the public service is the lack of accredited

training, quality assurance mechanisms, and regulations for interpreting services in Ireland. This has resulted in the limited availability of appropriately trained interpreters with technical expertise to facilitate access to the justice system and health services. The Commission recommends that interpreting services in Ireland are professionalised and regulated, including through the development of a system of accreditation and training.

In the health sector, there are significant barriers to accessing services and minority ethnic groups in Ireland experience inequitable health outcomes. One of the strongest themes arising from the Commission's recent consultations is the significant impact of racial discrimination and prejudice on the mental health of minority ethnic communities. The Commission recommends that the prevalence of mental health issues among minority ethnic communities, the barriers they face in accessing services, and the public health challenges of addressing the social determinants of mental ill-health are fully reflected in future legislative and policy developments. The Commission also recommends that the State introduce measures to progress and evaluate the delivery of cultural competency training across frontline health services and ensure that the workforce fully reflects the diversity of the population.

In the area of housing, provision by local authorities of culturally appropriate accommodation for Travellers has been characterised by discrimination and inertia. There continues to be a widespread failure by local authorities to provide Traveller-specific accommodation, with Traveller-specific accommodation budgets subject to persistent underspending. Many Travellers continue to live in unacceptable conditions, and many others face persistent



discrimination in the private rental sector. The Commission recommends the introduction of dissuasive sanctions for local authorities who fail to provide Traveller-specific and culturally appropriate accommodation in areas where there is a stated need.

Finally, the Commission has highlighted several areas where the education system is not currently meeting the needs of minority ethnic communities. The application of a past pupil criterion on oversubscribed schools acts as a barrier, particularly for children from Traveller families and families of migrant origin, in accessing education and may result in their segregation in specific schools. The Commission recommends the prohibition of such a criterion.

The Commission is further concerned at the lack of supports for Traveller and Roma children. There are consistent reports that reduced timetables are routinely applied to Traveller children, exacerbating their exclusion from mainstream education. The Commission recommends that targeted educational supports must be available for Traveller and Roma children from their early years and throughout school, and that reduced timetabling is not used in lieu of such reports. The Commission also recommends the introduction of mandatory programmes on promoting understanding and combatting racism in initial and continuous teacher education programmes.

## Participation in public life

The Commission notes that the ability of the State and its public services to respond to the needs of minority communities will be improved through the wider participation in public life of minority ethnic communities, including Travellers. The Commission has recommended that the government's

proposed electoral commission be mandated to promote more equal political participation of groups including such communities.

The Commission recommends that the State undertake positive action measures to enable the political participation of minority ethnic groups, such as the introduction of reserved seats in Parliament and local government, and the introduction of a quota system for minority ethnic candidates in political party candidate selection. Special measures to support engagement in public and political life should be designed and implemented with the active participation of the communities they concern and should include targeted interventions for specific groups, for example, minority ethnic women.

## International protection

The Commission remains concerned at significant human rights issues relating to Ireland's international protection system.

Direct provision centres are experiencing significant capacity issues that are being exacerbated by the housing crisis. The State has been providing emergency accommodation to international protection applicants in hotels and guesthouses since September 2018 because of the capacity issues. The Commission is of the view that emergency accommodation does not adequately protect the rights of international protection applicants and that its use should cease as soon as possible.

Regarding the direct provision system more widely, its negative long-term impact on the rights of individuals seeking international protection in Ireland has been well documented by national and international bodies. The Commission has highlighted the impact of direct provision on the right to

family life, private life, and health in particular, as well as its impact on the rights of specific groups such as women and children.

The Commission is of the view that the policy of direct provision and dispersal does not protect the rights of international protection applicants, and that its impact in practice amounts to a failure on the part of the State to prevent racial segregation, contrary to Article 3 of CERD.

In light of concerns at the operation of direct provision by private non-State actors at considerable expense to the State, and subject to weak accountability mechanisms, the Commission recommends that the State move away from the current for-profit model of direct provision. In the long term, the Commission recommends the complete phasing out of direct provision.

The Commission has serious concerns regarding retrogressive measures on family reunification introduced in the International Protection Act 2015 that limit the statutory right to family reunification to members of the nuclear family, and requires family reunification applications to be made within 12 months of the grant of refugee or subsidiary protection status – a timeframe that is impossible for many refugees. The Act also excludes refugees who acquire citizenship by naturalisation from its purview. The Commission has recommended that the Act be amended to define a family member in sufficiently broad terms to reflect the understanding of family as articulated in international human rights law. The Commission is also of the view that naturalised refugees should not be excluded from the statutory family reunification regime.

## Human trafficking

Human trafficking is a significant concern for the Commission. It has been identified that Ireland is both a destination and source country for human trafficking, including people trafficked for sexual exploitation, domestic work, fishing, agriculture, the restaurant industry, waste management, and car washing services. There are significant deficiencies in the State's approach to combatting human trafficking, both in the area of investigation and prosecution and in that of victim identification and assistance.

Overall, there have been no convictions for trafficking for sexual or labour exploitation since the relevant legislative framework was introduced in 2013. The Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) has raised its concerns that the absence of appropriate convictions and sentences creates a sense of impunity and undermines efforts to support victims to testify.

The Commission appeared as *amicus curiae* in the case of P. v The Chief Superintendent of the Garda National Immigration Bureau & Ors in 2015, wherein the High Court criticised the limited application of the administrative arrangements in place, the failure to formally set out the nature and detail of the identification process, and the lack of clarity and transparency in decision-making.

However, despite this, the State continues to rely on an inadequate administrative scheme for the recognition and protection of victims of trafficking. While committing to 'carry out a fundamental review' of the formal identification process for victims of trafficking, the State's efforts to date have been limited to engagement with the police, State bodies, and civil society, and reviewing the administrative documents that

guide identification. The US Department of State classified Ireland as 'Tier 2' status in its 2018 and 2019 Trafficking in Persons reports, citing 'chronic deficiencies' in the victim identification process.

The Commission is concerned that the State has yet to adequately recognise the seriousness of human trafficking as a human rights violation in Ireland and afford sufficient priority to combatting it and identifying and supporting its victims. The Commission recommends that the victim identification process, the non-punishment principle when dealing with victims of trafficking, and the provision of specialised services and assistance to victims, all be placed on a statutory footing.

Section 3

**National Machinery  
for the Promotion  
of Race Equality**

*(Articles 2, 20.3)*



## Gaps in the ratification of international human rights standards

The Commission is concerned that Ireland has yet to ratify several international treaties and protocols of relevance to racial discrimination and the promotion of race equality. These include the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the Optional Protocol to the Convention Against Torture;<sup>3</sup> the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography;<sup>4</sup> Protocol No. 12 to the European Convention on Human Rights; and the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature.<sup>5</sup>



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

<sup>3</sup> The government has committed to introducing legislation by the end of 2019, the General Scheme of the Inspection of Places of Detention Bill, as a vehicle to implement the Optional Protocol to the Convention against Torture. See Department of Justice and Equality (13 June 2019), *Prison Visiting Committee Data*.

<sup>4</sup> The Minister for Children and Youth Affairs recommended in January 2019 that Ireland meets all the legal requirements and should move quickly to ratify this Protocol. See Department of Children and Youth Affairs (2 January 2019), *'Ireland joining international stand against sale of children, child pornography and child prostitution: Minister Zappone says all legal requirements now in place'*.

<sup>5</sup> For further information on Ireland's ratification of international instruments, see <https://indicators.ohchr.org/>.



Ireland has yet to ratify several international treaties and protocols of relevance to racial discrimination and the promotion of race equality.

## Domestic incorporation of and reservations to CERD

In its 2011 Concluding Observations, the Committee recommended that Ireland incorporate CERD into its legal system to ensure its application before the Irish Courts.<sup>6</sup> However, CERD has not been incorporated,<sup>7</sup> and the State report indicates that 'because all the Convention's obligations are provided for in domestic legislation, it is not necessary to incorporate the Convention into domestic law.'<sup>8</sup> The Commission notes, however, that non-incorporation in domestic law means that rights holders remain unable to rely directly on the provisions of CERD before the Irish courts.<sup>9</sup>

<sup>6</sup> The Committee (4 April 2011), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland*, CERD/C/IRL/CO/3-4, p.4. This recommendation is a reiteration of previous Concluding Observations, see The Committee (14 April 2005), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland*, CERD/C/IRL/CO/2, p.2.

<sup>7</sup> This is consistent with what has been the State's general approach to domestic incorporation of international treaties, rooted in its dualist legal system. Article 29.6 of the Constitution of Ireland provides that 'no international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas.' This provision has been interpreted as precluding the Irish courts from giving effect to an international agreement if it is contrary to domestic law, grants rights, or imposes obligations additional to those of domestic law.

<sup>8</sup> The Committee (5 November 2018), *Combined Fifth to Ninth Periodic Reports Submitted by Ireland under Article 9 of the Convention*, Due in 2014, CERD/C/IRL/5-9, p.12.

<sup>9</sup> For example, in *Olaniran & Others v Minister for Justice, Equality and Law Reform* [2010] IEHC 83, J. Clarke clearly



**The Commission recommends that the State incorporate CERD into domestic law.**



**...non-incorporation in domestic law means that rights holders remain unable to rely directly on the provisions of CERD before the Irish courts.**

The State report indicates that 'there are no immediate plans to propose withdrawing Ireland's reservation/interpretive declaration on Article 4 of the Convention.'<sup>10</sup> The Commission notes the clarity provided by the Committee on the compatibility of Article 4 with the rights to freedom of expression, opinion, and association.<sup>11</sup> Furthermore, in light of the growing body of evidence about significant levels of discrimination against and troubling attitudes towards ethnic minorities in Ireland,<sup>12</sup> the Commission is of the view that the State's reservation is unnecessary, out of date, and does not account for current issues and trends.

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stated that ratification of international human rights treaties, such as the UN Convention on the Rights of the Child, is of no effect in Irish courts.

10 The Committee, Combined Fifth to Ninth Periodic Reports Submitted by Ireland under Article 9 of the Convention, p.12, per The Committee (4 April 2011), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland*, p.4.

11 See The Committee (1993), *General Recommendation XV on Article 4 of the Convention*, p.1 and The Committee (2013), *General Recommendation No. 35: Combating Racist Hate Speech*, CERD/C/GC/35, pp.2, 7.

12 See sections 5 and 6 for further information.



**The Commission recommends that the State withdraw its reservation/interpretative declaration on Article 4 of CERD as a matter of priority.**

## **Monitoring mechanisms for international human rights standards**

On 3 December 2014, a parliamentary committee, the Joint Sub-Committee on Human Rights relative to Justice and Equality Matters, was established to examine, amongst other things, the ratification by Ireland of international human rights treaties.<sup>13</sup> During its first meeting, the Joint Sub-Committee considered the role of Parliament in both the ratification and implementation of international standards, noting, in particular, the guidance from the United Nations (UN) and the Council of Europe. The Joint Sub-Committee met three times before the Parliament was dissolved on 3 February 2016 and it was not re-established following the 2016 general election. Through engagement with the Ceann Comhairle (Chairperson of Dáil Éireann) in 2016, the Commission has highlighted its support for a parliamentary committee with a dedicated human rights and equality mandate. As set out further below, the statutory duty on public bodies to proactively promote equality, protect human rights, and eliminate discrimination should be considered in this context.

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13 See, for example, Joint Sub-Committee on Human Rights relative to Justice and Equality Matters (9 December 2015), *Joint Sub-Committee on Human Rights Relative to Justice and Equality Matters Debate*.

The Commission notes that on 20 May 2019, a parliamentary committee was established with the specific aim of achieving consensus, based on human rights principles, on policy directions in respect of key issues affecting the Traveller community.<sup>14</sup> This committee is due to be dissolved within six months of its first meeting,<sup>15</sup> following the publication of its final report.



**The Commission recommends that a full parliamentary Committee on Human Rights, Equality and Diversity, covering all thematic areas arising in other parliamentary committees, be established.**

The Inter-Departmental Committee on Human Rights brings together senior officials from several government departments to improve 'the coherence of the promotion and protection of human rights' and assisting 'progress towards the ratification by Ireland of key international human rights treaties and timely reporting to UN human rights bodies.'<sup>16</sup> There has also been a more recent proposal to amend the terms of reference of this Inter-Departmental Committee to include monitoring the government-wide implementation of the *National Plan on Business and Human Rights 2017–2020*.<sup>17</sup>

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14 For further information, see *Committee on Key Issues affecting the Traveller Community*.

15 This Committee met for the first time on Tuesday, 24 September 2019.

16 Government of Ireland (2015), *The Global Island: Ireland's Foreign Policy for a Changing World*, p.36.

17 Department of Foreign Affairs (2015), *Working Outline of Ireland's National Plan on Business and Human Rights 2016–2019*, p.11 and Government of Ireland (2017), *National Plan on Business and Human Rights 2017–2020*, p.16.

The NGO Standing Committee on Human Rights (now known as the DFAT Committee on Human Rights) brings together representatives from civil society to consider human rights issues in the context of Ireland's foreign policy and obligations under international human rights law. The Commission and the Northern Ireland Human Rights Commission are also members of this committee.<sup>18</sup>



**The Commission recommends that the Inter-Departmental Committee on Human Rights and the DFAT Committee on Human Rights fully engage with the parliamentary Committee on Human Rights, Equality and Diversity, following its establishment as recommended above.**

## Public Sector Equality and Human Rights Duty

The Irish Human Rights and Equality Commission Act 2014 places a statutory obligation on public bodies to actively promote equality, protect human rights, and eliminate discrimination in the performance of their functions.<sup>19</sup> This obligation is referred to as the Public Sector Equality and Human Rights Duty. This duty is unique across Europe in that it encompasses both equality and human rights within its scope and is an important mechanism through which the

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18 For further information, see Department of Foreign Affairs and Trade (13 November 2018), *Departmental Bodies Data*.

19 See section 42 of the Irish Human Rights and Equality Commission Act 2014. For further information, see IHREC (2019), *Implementing the Public Sector Equality and Human Rights Duty*.

implementation of international human rights norms, including the Committee's Concluding Observations, can be progressed by public bodies at a national level.<sup>20</sup>

The assessment of human rights and equality issues under the duty supports a public body to identify service delivery and workplace policies, procedures, and practices that may need to be adapted to eliminate discrimination and promote equality of opportunity for people from minority ethnic groups. Such an assessment should include consultation with staff and service users from minority ethnic groups to identify priority actions and monitor progress.<sup>21</sup>



**The Commission recommends that, in complying with their obligations under the Public Sector Equality and Human Rights Duty, public bodies promote the human rights of, and eliminate discrimination against, minority ethnic communities through their work.**

The Commission has repeatedly expressed its concerns that accountability mechanisms can be weakened where the State delivers its functions through private, non-State actors.<sup>22</sup> Further measures need to be adopted to ensure that the State, as duty-

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20 See section 29 of the Irish Human Rights and Equality Commission Act 2014. See also, N. Crowley (2017), 'A duty to value: Implementing the public sector equality and human rights duty', *Administration*, 65(3), p.143.

21 For further information, see IHREC, *Implementing the Public Sector Equality and Human Rights Duty*.

22 See IHREC (December 2015), *Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland's Combined Third and Fourth Periodic Reports*, p.12. For further information on the application of the duty in the international protection system, see section 13.

bearer, ensures the protection of human rights standards in such contexts. As set out in section 13 of this submission, a particular example is the operation of direct provision centres, many of which are run on a for-profit basis.



**The Commission recommends that when the State subcontracts its functions to non-State actors, compliance with the Public Sector Equality and Human Rights Duty should be included as a requirement in all procurement processes and service level agreements.**

## National legislative frameworks

As highlighted in the State report,<sup>23</sup> there are several legislative frameworks in place to protect people against racial discrimination. Discrimination in the provision of goods and services, accommodation, education, and employment are prohibited on nine specified grounds: gender, civil status, family status, age, race, religion, disability, sexual orientation, and membership of the Traveller community.<sup>24</sup> The race ground includes people who are of different race, colour, nationality, or ethnic or national origins.<sup>25</sup>

Since the equality legislation was first enacted in Ireland, there have been repeated

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23 The Committee, *Combined Fifth to Ninth Periodic Reports Submitted by Ireland under Article 9 of the Convention*, pp.28–29.

24 See the Equal Status Acts 2000 to 2015 and the Employment Equality Acts 1998 to 2011.

25 See section 3 of the Equal Status Act 2000 (revised) and section 6 of the Employment Equality Act 1998 (revised).





**...minority ethnic groups experience cumulative disadvantage and discrimination in education, employment, housing, and other areas, are significantly overrepresented among those living in poverty and are disproportionately excluded from accessing social assistance.**

recommendations to expand these grounds to include a prohibition on discrimination based on a person's socio-economic status.<sup>26</sup> Furthermore, while an individual may bring proceedings on one or more of the existing nine grounds of discrimination, there is no provision for compound discrimination across multiple grounds.<sup>27</sup>

It is highlighted throughout this submission that minority ethnic groups experience cumulative disadvantage and discrimination

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26 The government has indicated that it is commissioning research to establish the extent and prevalence of socio-economic discrimination which needs to be addressed, and where a legislative response is needed. See Minister of State David Stanton TD (speech, 22 March 2018), *'Poverty and discrimination – two sides of the same coin'*. The Commission notes that Deputies Jim O'Callaghan and Fiona O'Loughlin (from the Fianna Fáil party) introduced a Private Member's Bill to Dáil Éireann in June 2017 with the aim of amending the Equality Acts to prohibit discrimination on the basis of a person's social and economic background. This Bill is not supported by the government and has not progressed since November 2017. See Dáil Éireann (8 November 2017), *'Equality (miscellaneous provisions) bill 2017: second stage'*.

27 IHREC (January 2017), *Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Periodic Reports*, p.34.

in education,<sup>28</sup> employment,<sup>29</sup> housing,<sup>30</sup> and other areas, are significantly overrepresented among those living in poverty and are disproportionately excluded from accessing social assistance.<sup>31</sup> The Commission is of the view that prohibiting discrimination based on socio-economic status would serve the objectives underpinning the equality legislation and that greater recognition is needed of the multiple forms of discrimination that many groups face.<sup>32</sup>



**The Commission recommends that the equality legislation is amended to prohibit discrimination on the ground of socio-economic status in all areas covered by the legislation and to permit claims across multiple grounds.<sup>33</sup>**

The Commission notes that access to a remedy for discriminatory refusal of entry to a licensed premises (including bars, public houses, hotels, or clubs) is governed by section 19 of the Intoxicating Liquor Act 2003, rather than by the Equal Status Acts 2000 to 2015. Therefore, these cases must be taken to the District Court, rather than the national Equality Tribunal (the Workplace Relations Commission (WRC)). Bringing a case under the 2003 Act is procedurally

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28 See section 8.

29 See section 9.

30 See section 11.

31 See section 9.

32 See IHREC (May 2015), *Report to UN Committee on Economic, Social and Cultural Rights on Ireland's Third Periodic Review*, pp.22–24.

33 The Commission previously made this recommendation to the Committee on the Elimination of Discrimination Against Women in 2017. See IHREC, *Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Periodic Reports*, p.34.

complex, may involve unwanted publicity, and carries a higher risk of costs and court fees. Furthermore, criticisms have been raised that the District Court is less efficient and takes place in an adversarial and public context, as opposed to the more victim-centric set up of the WRC.<sup>34</sup> The Commission previously highlighted these issues to the Review Group of the Administration of Civil Justice in 2018, noting that the transfer of jurisdiction to the District Court has created a much more onerous process for people wishing to bring complaints. In 2016, 28 applications were made to the District Court under the 2003 Act – 26 of which were lodged by members of the Traveller community – and 27 of these applications were struck out, withdrawn, or adjourned. In 2017, 51 out of 52 applications were lodged by members of the Traveller community, and 50 of these applications were struck off, withdrawn, or adjourned.<sup>35</sup>



**The Commission recommends that the State return complaints of discrimination in licensed premises to the purview of the Equal Status Acts and the jurisdiction of the Workplace Relations Commission.**

34 Advisory Committee on the Framework Convention for the Protection of National Minorities (October 2018), *Fourth Opinion on Ireland*, ACFC/OP/IV(2018)005, p.10.

35 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Ireland*, p.10. In line with section 40 of the Irish Human Rights and Equality Commission Act 2014, the Commission has represented a number of individuals who were denied service in a licenced premises on the grounds of their membership of the Traveller community. See IHREC (18 December 2017), *Travellers Denied Service Secure Settlement and Redress*.

## National policy frameworks

The current national policy frameworks focused on the promotion of race equality include the *Migrant Integration Strategy 2017–2020*,<sup>36</sup> the *National Traveller and Roma Inclusion Strategy 2017–2020*,<sup>37</sup> and the *Second National Intercultural Health Strategy 2018–2023*.<sup>38</sup> While the targeted actions and objectives relating to people from minority ethnic groups in these strategies are welcome, the diversity in Irish society and the multiple forms of discrimination that specific groups face should be reflected across all national policy frameworks, including those relating to women and girls,<sup>39</sup> those with disabilities,<sup>40</sup> the LGBTI+ community,<sup>41</sup> and poverty and social inclusion.<sup>42</sup>

The Commission notes that building a successful intercultural society goes beyond the focus on integration and inclusion in the existing policy frameworks and requires the State to expressly acknowledge and address racism and racial discrimination. The Commission regrets the State's failure to renew the *National*

36 Department of Justice and Equality (2017), *The Migrant Integration Strategy 2017–2020*.

37 Department of Justice and Equality (June 2017), *National Traveller and Roma Inclusion Strategy 2017–2021*.

38 HSE (2018), *Second National Intercultural Health Strategy 2018–2023*.

39 Department of Justice and Equality (April 2017), *National Strategy for Women and Girls 2017–2020*.

40 Department of Justice and Equality (July 2017), *National Disability Inclusion Strategy 2017–2021*.

41 Department of Children and Youth Affairs (2018), *LGBTI+ National Youth Strategy 2018–2020*. The Department of Justice and Equality is also in the process of developing a national LGBTI inclusion strategy.

42 The Commission is aware that the new social inclusion strategy of the government, *Roadmap for Social Inclusion 2019–2025*, is being finalised and is expected to be published shortly. See Department of Employment Affairs and Social Protection (25 September 2019), *Departmental Strategies*.

*Action Plan Against Racism 2005–2008* following its conclusion, noting that the final report on this policy framework was entitled *Not an End – Just a Beginning*.<sup>43</sup>

While the Commission has an important statutory role in promoting interculturalism, tolerance, and the acceptance of diversity<sup>44</sup> (as referenced in the State report<sup>45</sup>), further measures are needed to ensure that the necessary infrastructure to tackle racial discrimination is in place. The Commission notes that the disbanding of the National Consultative Committee on Racism and Interculturalism in 2008 due to budget cuts resulted in the discontinuation of the existing mechanism for reporting and monitoring racist incidents.<sup>46</sup> While the Office for the Promotion of Migrant Integration is tasked with monitoring trends in racially motivated incidents,<sup>47</sup> it is unclear how it uses collated statistics to inform and influence State policy in combatting racism and xenophobia.<sup>48</sup>

In July 2019, the Department of Justice and Equality announced its plans to establish a

new anti-racism committee to review and make recommendations on strengthening the government's approach to combatting racism.<sup>49</sup> Further information regarding the anti-racism committee's terms of reference, mandate, and membership is required, including assessing how this committee will advance the implementation of human rights standards on eliminating racial discrimination, be underpinned by robust and disaggregated data,<sup>50</sup> and facilitate the active and direct participation of minority ethnic communities.<sup>51</sup>



**The Commission recommends that the State should put in place a new national action plan against racism.**



**The Commission recommends that the work of the new anti-racism committee should be grounded in human rights and equality standards, ensure the participation of rights holders, and include data specialists.**

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43 The Commission has previously raised these concerns to the UN Committee on Economic, Social, and Cultural Rights. See IHREC, *Report to UN Committee on Economic, Social, and Cultural Rights on Ireland's Third Periodic Review*, pp.11, 24.

44 See section 10(1)(b) and (d) of the Irish Human Rights and Equality Commission Act 2014. See also, IHREC, *Strategy Statement 2019–2021*, p.8.

45 The Committee, *Combined Fifth to Ninth Periodic Reports Submitted by Ireland under Article 9 of the Convention*, para. 26.

46 See also, ECRI (19 February 2013), *ECRI Report on Ireland (Fourth Monitoring Cycle)*, p.7.

47 For more on the recording and monitoring of hate speech and hate crime incidents, see section 6.

48 The Commission has previously raised these concerns with the UN Committee on Economic, Social, and Cultural Rights. See IHREC, *Report to UN Committee on Economic, Social, and Cultural Rights on Ireland's Third Periodic Review*, pp.24–25.

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49 Department of Justice and Equality (28 June 2019), 'Minister Stanton announces new anti-racism committee'.

50 The Commission notes that the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance welcomed the Race Disparity Audit in the UK and its accompanying public database that provides official data on how race and ethnicity affect life, death, health, education, employment, and education. The Special Rapporteur encouraged other governments to adopt this data-led approach. See Office of the High Commissioner for Human Rights (2018), *End of Mission Statement of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance at the Conclusion of Her Mission to the United Kingdom of Great Britain and Northern Ireland*.

51 See Article 5(c) of CERD on the 'right...to take part in the government as well as in the conduct of public affairs at any level and to have equal access to public service.'

The Commission is concerned with the adequacy of the State's mechanisms to facilitate the participation of minority ethnic communities in the formulation of national and local policies. Firstly, in broad areas of policy development that relate to the general population, there can be no specific mechanisms in place to ensure that such communities are represented, for example, in the former work of the Citizen's Assembly<sup>52</sup> and the National Youth Mental Health Task Force.<sup>53</sup>

Although there can be a greater emphasis on the inclusion of minority ethnic communities in issues that more directly affect them, the measures adopted can be insufficient in practice. The Housing (Traveller Accommodation) Act 1998 requires each local authority to establish a local traveller accommodation consultative committee, on which local Traveller groups are represented, and to produce a Traveller accommodation programme for its area in consultation with this committee. The Act also provides for a single National Traveller Accommodation Consultative Committee, to which Traveller groups and representatives are nominated to oversee the implementation of the legislation at a national level.<sup>54</sup> However, the Commission

is concerned that these mechanisms are inadequate for ensuring the effective and meaningful participation of Travellers in the policy-making process, as highlighted by the findings of a recent independent expert review<sup>55</sup> and the concerns raised by Traveller organisations and community representatives engaging in these mechanisms.<sup>56</sup> Research carried out by Travellers in 2016 among 95 families reported that 51% of respondents strongly disagreed and 47% disagreed with the statement: 'I feel my voice and experience is listened to by the Council and the government when decisions about Traveller accommodation are being made.'<sup>57</sup>

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to the Committee, the State does not identify or discuss the role of Local Traveller Accommodation Consultative Committees or the National Traveller Accommodation Consultative Committee in its presentation of the processes by which Traveller accommodation is delivered at the local government level. See The Committee, *Combined Fifth to Ninth Periodic Reports Submitted by Ireland under Article 9 of the Convention*, pp.7–8.

55 A July 2019 review by the Traveller Accommodation Expert Review Group identifies wide-ranging weaknesses in the structure, mandate, and operation of both the National Traveller Accommodation Consultative Committee and the Local Traveller Accommodation Consultative Committees, and ultimately recommends that both mechanisms be revised substantially. See D. Joyce, C. Norton, and M. Norris (2019), *Traveller Accommodation Expert Review*, pp.62–64.

56 There have been several reports of Traveller representatives on the National Traveller Accommodation Consultative Committee or a Local Traveller Accommodation Consultative Committee resigning or staging a walk-out protest due to the lack of due process or consultation and ongoing disputes with local authority officials. Some Traveller representatives have been reported as saying that they could no longer 'collude with a system that is failing' Travellers. See K. Holland (3 November 2015), 'Traveller representatives walk out of housing meeting', *The Irish Times*; The Sligo Champion (26 May 2018), 'Row over halting site leads to resignations', *The Sligo Champion*; and K. Holland (1 November 2018) 'Row stalls work on Traveller Accommodation Programme', *The Irish Times*.

57 Travellers of North Cork (2017), *Human Rights Monitoring*, p.7.

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52 The Citizens' Assembly is a body comprising a chairperson and 99 citizens, randomly selected to be broadly representative of the Irish electorate. It was established in July 2016 to consider a limited number of significant and contentious policy issues, including access to abortion services and climate change. See *The Citizen's Assembly Factsheet*.

53 The taskforce was convened in 2016 as a community-led group to develop proposals and recommendations relating to youth mental health. Members of the taskforce were invited to participate directly by the Minister of State for Mental Health and Older People. No representatives of a Traveller-focused organisation were on the taskforce. See National Youth Mental Health Taskforce (2017), *National Youth Mental Health Taskforce Report 2017*.

54 See sections 20–22 of the *Housing (Traveller Accommodation) Act, 1998*. It is notable that in its report



**The Commission recommends that the State implements its obligation to ensure the effective participation of minority ethnic communities in the process of developing, monitoring and reviewing policy frameworks, at both a national and local level.**

## The collection and publication of disaggregated data

The Commission notes the Committee's criticisms in 2011 about the unavailability of disaggregated statistical data on the issues faced by minority ethnic groups in Ireland, including data on racial discrimination and reports of violence.<sup>58</sup> This reflects the repeated concerns raised by the Commission and other treaty monitoring bodies, including the Committee on Economic, Social, and Cultural Rights<sup>59</sup> and the Committee on the Rights of the Child,<sup>60</sup> that Ireland does not have sufficient disaggregated data to allow an adequate and regular assessment of the extent to which it is meeting its obligations under international law across a range of sectors.<sup>61</sup>

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58 The Committee (4 April 2011), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland*, p.5.

59 Committee on Economic, Social, and Cultural Rights (8 July 2015), *Concluding Observations on the Third Periodic Report of Ireland*, E/C.12/IRL/CO/3, p.2.

60 Committee on the Rights of the Child (2016), *Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland*, CRC/C/IRL/CO/3-4, p.4.

61 See, for example, IHREC (13 February 2017), *Statement of the Irish Human Rights and Equality Commission to the United Nations Committee on the Elimination of Discrimination Against Women*.

There continue to be significant gaps in the national survey and administrative data available on minority ethnic groups, and concerns about its availability, quality, and use. The Commission identified deficits in the availability of disaggregated and appropriately collated data under each area covered by this submission,<sup>62</sup> highlighting the pervasiveness of this issue across different sectors and State agencies. With only a few exceptions,<sup>63</sup> Irish data collection instruments do not collect information on ethnicity as standard, and there is a lack of coordination and integration in the approach to the data that is collected. Overall, this makes it difficult for authorities, policy-makers, and civil society organisations to fully assess the scope, reach, and dynamics of the issues faced by minority ethnic groups.

The Commission is active in promoting the need for improvements to the data collection systems in place, including through its participation since 2017 with the Census Advisory Group convened by the Central Statistics Office (CSO).<sup>64</sup> Such improvements will be crucial to the fulfilment of the Public Sector Equality and Human Rights Duty by public bodies and enable accurate comparisons between Ireland and other countries.

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62 For example, this submission highlights deficits in the availability of data on hate crime and hate speech, gender-based violence, the experiences of minority ethnic groups in the housing, education, and health sectors, human trafficking, statelessness, access to the labour market, social services, unaccompanied and separated children, access to justice, and monitoring mechanisms for international human rights standards.

63 For example, the Census of the Population and the Equality and Discrimination Survey conducted by the CSO.

64 Note, following recommendations from the Census Advisory Group, the CSO recently updated its questions on religion and ethnic groups for Census 2021. See CSO (10 July 2019), 'Press statement Census 2021 date and questions approved by government'.



**The Commission recommends that the State improves its collection and reporting of data on minority ethnic groups across all sectors, to inform policy-making, legislative reform, and service provision.**

## Support for civil society organisations

In light of funding cuts to organisations during the economic recession,<sup>65</sup> the Commission has emphasised the importance of ensuring that the State supports the vital role of civil society. To an increasingly large extent, the relationship between the State and civil society organisations is focused on arrangements relating to the subcontracting and delivery of services.<sup>66</sup> However, the advocacy role of such organisations in democratic discourse and in the promotion of human rights needs to be fully recognised and protected.<sup>67</sup> The Commission notes that the Electoral Act 1997, as amended, introduced new regulatory measures relating to advocacy for political purposes and donations from people without Irish citizenship and companies not resident or based in Ireland. The broad interpretation of these measures is of concern due to the potential effect on civil society organisations in seeking funding from international sources, such

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65 See IHREC, *Report to UN Committee on Economic, Social and Cultural Rights on Ireland's Third Periodic Review*, p.11.

66 N. O'Connor and M. Ketola (2018), *Enabling Citizens: Powering Civil Society*.

67 See IHREC (July 2019), *Statement on the Ratification of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence*, p.11.

as philanthropic trusts and foundations, and in engaging in legitimate advocacy aiming to influence political decisions and policy-making, including with regard to the elimination of racial discrimination.<sup>68</sup>



**With only a few exceptions, Irish data collection instruments do not collect information on ethnicity as standard, and there is a lack of coordination and integration in the approach to the data that is collected.**

During the Commission's Be Heard on CERD consultation, the young people identified the importance of 'allies' in challenging racial abuse and discrimination and supporting victims, including within youth work, information, and advice services. In line with the State's obligations under Article 7 of CERD, they also highlighted that such allies and services would play an important role in challenging misinformation and myths about minority ethnic communities in Ireland, and act as a negotiation space for trust to be built about existing agencies and societal structures. The Commission notes that youth work services experienced funding cuts of more than 30% during the economic recession and that they continue to be significantly under-resourced.<sup>69</sup>

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68 See IHREC (January 2019), *Policy Statement on the Electoral Acts and Civil Society Space in Ireland*.

69 National Youth Council of Ireland (October 2018), *Budget 2019 – Post-Budget Analysis*, pp.2, 4–5.



**The Commission calls on the State to ensure that organisations working with minority ethnic communities across a range of sectors receive adequate support.**



**The Commission recommends that a review of the Electoral Acts be undertaken to ensure an enabling legal framework and a conducive political and public environment for civil society organisations advocating for minority ethnic communities.<sup>70</sup>**

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<sup>70</sup> For more detailed recommendations by IHREC in this area, see IHREC, *Policy Statement on the Electoral Acts and Civil Society Space in Ireland*.

## Section 4

# **Legal Framework on Citizenship and Nationality**

*(Articles 2(1), 5(d)(iii))*





While citizenship laws fall within the remit of national discretion,<sup>71</sup> the practical and legal impact of restrictions on citizenship affect the protection of fundamental human rights, including the guarantee of equality.<sup>72</sup> The Committee has called on states to ensure that particular groups are not discriminated against regarding access to citizenship, and to pay due attention to possible barriers to naturalisation that may exist for long-term or permanent residents. It has also confirmed that differential treatment

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71 Article 1(3) of CERD states that 'Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.'

72 For example, as some of the rights protected under the Constitution of Ireland refer explicitly to citizens while others do not, there is uncertainty as to the scope of protection provided under constitutional law to persons without Irish citizenship. Article 40, which provides for rights to equal treatment, freedom of association, freedom of expression, and other rights, including unenumerated rights, refers specifically to citizens. For further analysis, see Irish Human Rights Commission (May 2004), *Observations on the Proposed Referendum on Citizenship and on the 27th Amendment to the Constitution Bill 2004*, pp.7–9, 14.

based on citizenship must be proportionate and pursue a legitimate aim.<sup>73</sup>

## The legal framework on citizenship

The 27<sup>th</sup> amendment of the Constitution of Ireland, which was approved by referendum on 11 June 2004, removed the automatic right to citizenship for all children born in the State and provided the Oireachtas (Irish Parliament) with the power to legislate for citizenship.<sup>74</sup>

Following the referendum, the Irish Nationality and Citizenship Act 2004 was introduced, which provides that children born in Ireland whose parent is Irish or British, or had permission to reside in Ireland for three of the previous four years,<sup>75</sup> are entitled to citizenship at birth.<sup>76</sup> Ongoing inward migration and the existence of established diverse communities, including due to State

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73 Office of the High Commissioner for Human Rights (1 October 2002), *CERD General Recommendation XXX on Discrimination against Non-Citizens*, section IV.

74 See Article 9 of the Constitution of Ireland; 79% of voters supported the change to the Constitution, see The Irish Times (12 June 2004), 'Citizenship referendum carried by massive majority', *The Irish Times*.

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

76 Section 6 of the Irish Nationality and Citizenship Act 1956, as amended by the Irish Nationality and Citizenship Acts 2001 and 2004. Note, Irish citizenship can also be acquired through descent. A child born abroad who has a grandparent born on the island of Ireland or a parent who claimed their Irish citizenship before the child's birth is automatically entitled to claim Irish citizenship by applying for a foreign birth registration. See Immigrant Council of Ireland (2016), *Child Migration Matters: Children and Young People's Experiences of Migration*, p.37.

policies, such as the active recruitment of migrant workers and the focus on attracting multinational investment,<sup>77</sup> ensure that children born to parents who fall outside of these categories will continue to be a growing population.<sup>78</sup> There have been reports of a small number of cases in which children born in Ireland have faced deportation, including to countries to which they have never been.<sup>79</sup>



**There have been reports of a small number of cases in which children born in Ireland have faced deportation, including to countries to which they have never been.**

There are also between 2,000 and 6,000 undocumented children living in the State.<sup>80</sup> According to research conducted with undocumented parents, 68% of their children were born in Ireland. These undocumented children have spent an average of five years in the Irish education system, while 8% have spent a decade in the system.<sup>81</sup> The

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77 Department of Jobs, Enterprise, and Innovation (30 July 2014), 'Next phase of FDI policy must be based on talent, technology, sectors and great places to live – Minister Bruton'. A recent report from the Central Bank has also advised that net inward migration is a critical source of new employees and is needed to support continued economic growth. See Central Bank of Ireland (July 2019), 'Employment growth: where do we go from here?', pp.4–5.

78 Children's Rights Alliance (2004), *Immigration and Citizenship in Ireland*.

79 Seanad Éireann debate (21 November 2018), 'Irish nationality and citizenship (naturalisation of minors born in Ireland) bill 2018: second stage'.

80 Migrant Rights Centre Ireland (MRCI) (2016), *Ireland is Home 2016*.

81 This research involved a survey of 108 undocumented parents raising their children in Ireland. MRCI (July 2017), *Growing Up Undocumented in Ireland*.

Commission notes that there is a continued absence of any pathway to residency for undocumented people in Ireland.<sup>82</sup>

The Commission is concerned about the extent to which the legislative framework on citizenship is serving a legitimate or proportionate purpose, considering its impact on children's access to third-level education<sup>83</sup> and other rights. A 2018 opinion poll revealed that 71% of people agree that anyone born in Ireland should be entitled to citizenship.<sup>84</sup>

## Citizenship by naturalisation

Under the current law, children born in Ireland without an automatic right to citizenship, or people who move to Ireland, can apply for naturalisation as Irish citizens when they meet certain conditions, including residence and 'good character' requirements.<sup>85</sup> The Department of Justice and Equality is also considering the introduction of civics and language tests for those seeking citizenship.<sup>86</sup>

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82 These issues were raised at the Civil Society Forum on 27 May 2019. See also, Immigrant Council of Ireland, *Child Migration Matters*, p.40. Note, the Department of Justice and Equality introduced a special three-month scheme for non-EEA nationals who originally came to Ireland on student visas to apply for permission to remain in the State. See Department of Justice and Equality (15 October 2018), 'Special Scheme for non-EEA nationals who held a student permission in the State during the period 1 January 2005 to 31 December 2010' and Immigrant Council of Ireland (15 October 2018), 'More compassion needed for new immigration regularisation scheme'.

83 For further information on access to further and third-level education, see section 8.

84 This poll is based on a nationally representative sample of 905 eligible Irish voters aged 18 years and over. The margin of error is +/- 3.3%. The Sunday Times (November 2018), 'Opinion poll', *the Sunday Times*, p.13.

85 Part III of the Irish Nationality and Citizenship Act 1956, as amended by the Irish Nationality and Citizenship Acts 2001 and 2004.

86 Department of Justice and Equality (February 2017), *The*

The Commission has several concerns about the citizenship-by-naturalisation process. Firstly, children cannot make an application for naturalisation independently and must rely on a parent or guardian to do so, which fails to acknowledge their evolving capacities and status as independent rights-holders. In most cases, children cannot apply for naturalisation until their parent naturalises first, which can delay their access to citizenship.<sup>87</sup>

The Commission has also been informed that the Irish Naturalisation and Immigration Service (INIS) routinely refuses to accept application forms for naturalisation signed by social workers on behalf of children in care.<sup>88</sup> This can arise in circumstances where a child does not have any contact with their birth parents and has lived in Ireland for a number of years under a full care order.

INIS<sup>89</sup> has committed to keeping the fees for naturalisation under regular review to ensure that costs are reasonable and do not deter qualified applicants.<sup>90</sup> At the Be Heard on CERD consultation, the high costs of becoming a citizen were raised, including

the transition costs that can be involved due to the need for legal advice or translation services.<sup>91</sup> As highlighted by one young person, 'access to citizenship and residency shouldn't discriminate on the basis of socio-economic background and financial means.'

Applications for citizenship are granted at the absolute discretion of the Minister for Justice and Equality.<sup>92</sup> Issues regarding the application of naturalisation rules in individual cases have consistently come before the High Court in the form of judicial review proceedings, including due to the restrictive interpretation by the Minister of the conditions that must be met.<sup>93</sup> Applicants can be deemed as failing to meet the good character requirement on the basis of their moral character or if they have come to the adverse attention of An Garda Síochána (the national police service in Ireland).<sup>94</sup> The Minister for Justice and Equality recently found that he was not satisfied an applicant was of good character as she had come in contact with the Gardaí on two occasions, once

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*Migrant Integration Strategy: A Blueprint for the Future*, p.23 and Government of Ireland (2019), *The Migrant Integration Strategy 2017–2020: Progress Report to Government*, p.24.

<sup>87</sup> See Immigrant Council of Ireland, *Child Migration Matters*, p.38.

<sup>88</sup> Section 18(3) of the Child Care Act 1991 provides that where a care order is in force, the Child and Family Agency shall 'have the like control over the child as if it were his parent; and do what is reasonable...in all the circumstances of the case for the purpose of safeguarding or promoting the child's health, development or welfare.'

<sup>89</sup> For further information, see [www.inis.gov.ie](http://www.inis.gov.ie).

<sup>90</sup> Department of Justice and Equality, *The Migrant Integration Strategy*, p.22 and Department of Justice and Equality (18 June 2019), 'Naturalisation applications'. The application fee for citizenship is €175 and the certification fee, payable on issue of a certificate of naturalisation, is €950. Note, there is no certification fee for stateless persons.

<sup>91</sup> It was reported that families often cannot afford to pay for multiple citizenship applications at once, resulting in different family members having different statuses.

<sup>92</sup> The High Court has said that the Minister's discretion in naturalisation cases is 'as absolute as it is possible to get in a system based on the rule of law.' See *AMA v Minister for Justice and Equality* [2016] IEHC 466.

<sup>93</sup> C. Murphy (2013), 'Reconciling sovereignty claims with individual rights? Access to citizenship after Mallak and Sulaimon', *The Irish Jurist*, 49(1), pp.193–202. For example, in October 2019, the Court of Appeal upheld the appeal of a teenager who had been refused citizenship by the Minister on the grounds that her Irish associations were not 'sufficiently strong' to warrant naturalisation. The teenager had lived with her family in Ireland for four and a half years prior to her citizenship application and is in full-time education. See M. Carolan (14 October 2019), 'Teenage girl wins appeal over refusal of Irish citizenship', *The Irish Times*.

<sup>94</sup> B. Otukoya (2018), 'Super-Citizens: Defining the "good character" requirement for citizenship acquisition by naturalisation', *Hibernian Law Journal*, 17(1), pp.80–88.

as a witness in respect of child neglect and cruelty and second when she made a complaint about racially motivated misbehaviour against her family. The High Court has ordered the Minister to reconsider his refusal of citizenship in this case.<sup>95</sup> In another recent case, the High Court quashed the Minister's decision to deny citizenship to a child on the grounds that her father was not of good character as he had engaged in criminal conduct, including domestic violence, towards her mother.<sup>96</sup>

Under the citizenship rules, applicants must have a total residence in the State amounting to five years out of the previous nine years, including a period of one year's continuous residence in the State immediately before the date of application.<sup>97</sup> There have been reports that absences from the State in the year prior to application have been increasingly identified as the reason for the refusal of citizenship.<sup>98</sup> The policy of the Minister for Justice and Equality has been to allow applicants a discretionary absence period of six weeks without it impacting on the continuous residence requirement.<sup>99</sup>

However, in July 2019, the High Court delivered a judgment finding that the Minister has no power to introduce such a discretionary policy and that residence

in the State must be unbroken and uninterrupted in order to be continuous. The Court concluded that a person who travels abroad, including to Northern Ireland, for a single day or more could not be considered to be continuously resident in Ireland and, therefore, is not eligible for citizenship.<sup>100</sup> The Commission has serious concerns about the strict interpretation of the citizenship rules in this regard and its potential impact on the approval rate of applications. It also notes that this High Court judgment is being appealed<sup>101</sup> and the Department of Justice and Equality has committed to introducing legislation to resolve the issues arising from its findings.<sup>102</sup>

The Supreme Court has confirmed that the Minister for Justice and Equality has a duty to provide unsuccessful applicants for naturalisation with reasons for the refusal or provide justification for not providing reasons, to allow the applicant to challenge the decision.<sup>103</sup> However, aside

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95 *I v The Minister for Justice and Equality* [2019] IEHC 515.

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

97 The Minister for Justice and Equality has the power to dispense with these conditions of naturalisation in certain circumstances. See Part III of the Irish Nationality and Citizenship Act 1956, as amended by the Irish Nationality and Citizenship Acts 2001 and 2004.

98 F. McGinnity, E. Fahey, E. Quinn, S. Arnold, B. Maitre, and P. O'Connell (2018), *Monitoring report on integration 2019* (ESRI and Department of Justice and Equality), p.73.

99 McGinnity et al., *Monitoring Report on Integration 2018*, p.73.

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100 *Jones v Minister for Justice and Equality* [2019] IEHC 519.

101 This judgment is being appealed by the applicant, but the Minister for Justice and Equality has also asked the Court of Appeal to overturn the 'very restrictive' finding of the High Court in relation to the interpretation of continuous residence. The Court reserved judgment in this case on 8 October 2019. For further information see, A. O'Loughlin (8 October 2019), '*Judgment reserved on citizenship ruling appeal as judges consider "continuous residence" interpretation*', *The Irish Examiner*.

102 On Thursday 25 July 2019, the Minister for Justice and Equality obtained Cabinet approval for a proposed bill seeking to address the recent interpretation by the High Court of the continuous residence requirement. The intention was to have a bill drafted on an urgent basis and before the Houses of the Oireachtas for consideration by September 2019. See Department of Justice and Equality (29 July 2019), '*Updated statement from INIS on the recent judgment in the High Court Citizenship case*'.

103 *Mallak v Minister for Justice Equality and Law Reform* [2012] IESC 59. See also, J. Stanley (2017), *Immigration and Citizenship Law* (Dublin: Round Hall, 2017), pp.111–112, 895.

from applying to the High Court for a judicial review, there is no independent appeals mechanism available for naturalisation decisions.<sup>104</sup> Furthermore, in several cases, the Minister has not disclosed the reasons for refusing naturalisation on national security grounds. This deprives applicants of any meaningful opportunity to challenge the decision on substantive grounds or to make a new application for naturalisation.<sup>105</sup>



**The Commission recommends that the State provide statutory underpinning for the good character requirement to increase transparency and consistency in its application, with recognition of children as individual rights holders and people's right to access justice.**



**The Commission recommends that the State provide statutory underpinning for the continuous residence requirement, adopting an expansive interpretation that takes into account people's right to private and family life and to have meaningful access to employment.**

104 Stanley, *Immigration and Citizenship Law*, p.902. Note, the judicial review action is limited and does not review the merits of a case or questions of fact. Also, the High Court does not have the power to alter or replace the administrative decision. See Immigrant Council of Ireland, *Child Migration Matters*, p.125.

105 Stanley, *Immigration and Citizenship Law*, pp.896–898. The INIS website notes that in reapplying for citizenship by naturalisation, an application should 'pay careful attention' to the reasons the previous application was refused. See [www.inis.gov.ie/en/INIS/Pages/WP16000022](http://www.inis.gov.ie/en/INIS/Pages/WP16000022).



**The Commission recommends the introduction of a statutory right to an independent appeals process for citizenship-by-naturalisation decisions.**

## Revocation of certificates of naturalisation

While the State cannot revoke the citizenship of a non-naturalised Irish citizen, the Minister for Justice and Equality may revoke a certificate of naturalisation under certain circumstances.<sup>106</sup>

Following an initial notification of an intention to revoke, the affected individual may apply to the Minister for a quasi-judicial inquiry as to the reasons for the revocation. The case is then referred to a Committee of Inquiry that subsequently reports to the Minister, though its recommendations are not binding. The affected individual can call evidence and examine witnesses, but legal aid is not available. The Commission notes the recent comments of the Chief Justice that the scope of the areas currently covered by the legal aid system needs to be considerably widened.<sup>107</sup>

106 The Minister may revoke a certificate of naturalisation if satisfied that the person to whom it was granted procured the certificate by fraud, misrepresentation (whether innocent or fraudulent), or concealment of material facts or circumstances; failed in their duty of fidelity to the nation and loyalty to the State; was ordinarily outside the State for a continuous period of seven years without registering annually in the prescribed manner; is also a citizen of a country with which the State is at war; or has by any other voluntary act other than marriage acquired another citizenship. See section 19 of the Irish Nationality and Citizenship Act 1956.

107 *Law Society Gazette* (16 September 2019), "Moral

There is no right of appeal to a decision of the Committee of Inquiry or the final decision of the Minister for Justice and Equality.<sup>108</sup> As of December 2018, five revocations had taken place.<sup>109</sup> The Minister established the first Committee of Inquiry into revocations in March 2018<sup>110</sup> and began to examine cases from December 2018.<sup>111</sup>

In some circumstances, individuals renounce their existing citizenship to become an Irish citizen, such that the revocation of naturalisation could lead to an individual becoming stateless. In the absence of a formal statelessness determination procedure in Ireland, the consequences of revocation are potentially very serious. Revocation of Irish citizenship may also amount to revocation of European Union (EU) citizenship, with consequences for a range of rights.

Irish constitutional law experts have questioned the constitutionality of this framework, owing both to the drastic nature of the revocation of citizenship and the question of whether anyone other than a judge in a court could order it. In addition, these experts comment on the vague criterion of failure in the duty of

fidelity to the nation and loyalty to the State, which 'invites an unpredictable, subjective application of a kind hostile to the concept of 'due process' or 'due course of law''.<sup>112</sup>



**The Commission recommends that the State immediately makes legal aid available to all people in respect of whom the Minister for Justice and Equality proposes to revoke citizenship.**



**The Commission recommends that the State review section 19 of the Irish Nationality and Citizenship Act 1956 on the revocation of citizenship concerning guarantees of due process and fair procedure and the need for clarity on the duty of fidelity to the nation or loyalty to the State.**

## Stateless people

Ireland is a State party to both the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.<sup>113</sup> However, there is currently no formal process for determining statelessness,<sup>114</sup> and there is an ad hoc

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argument" for civil legal aid boost – Clarke'.

108 The affected individual can challenge the Minister's decision by way of judicial review.

109 It is reported that those five individuals accepted the revocation and did not appeal to the Committee of Inquiry, see C. Gallagher (28 January 2019), 'Immigrants facing revocation of citizenship not entitled to legal aid', *The Irish Times*. Prior to 2015, there were no instances of revoking certificates of naturalisation, see Minister for Justice and Equality, Charles Flanagan TD (11 December 2018), 'Naturalisation certificates'.

110 The Committee of Inquiry comprises a former minister of government, a retired judge, and a solicitor.

111 It was reported in January 2019 that the Committee of Inquiry had heard two cases in December 2018 and was due to hear 38 others in 2019. See Gallagher, 'Immigrants facing revocation of citizenship not entitled to legal aid'.

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112 G. Hogan, G. Whyte, D. Kenny, and R. Walsh (2018), *Kelly: The Irish Constitution*, (5<sup>th</sup> ed., Bloomsbury Professional), p.166.

113 Under this Convention, Ireland reserves the right to deprive naturalised citizens of their citizenship, as provided for under section 19 of the Irish Nationality and Citizenship Act 1956.

114 The Minister for Justice and Equality may, at his absolute discretion, dispense with the conditions for naturalisation in cases involving stateless persons, under section 16 of the Irish Nationality and Citizenship Act 1956 as amended by section 5 of the Irish Nationality and Citizenship

system for the recognition of stateless people in Ireland, for example, by granting permission to remain in circumstances where people fulfil the relevant criteria.<sup>115</sup> The State does not collect data specifically on stateless people.<sup>116</sup> The Commission also notes the potential challenges faced by stateless migrant children. There is a safeguard to ensure that a child born on the island of Ireland who is not entitled to citizenship of any other country is an Irish citizen from birth;<sup>117</sup> however, this does not benefit stateless children who migrate to Ireland.<sup>118</sup>



**The Commission recommends that the State develop a statelessness determination procedure in line with its obligations under international law.**



**Ireland is a State party to both the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

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Act 1986.

115 It has been reported that when Ireland has granted a determination of statelessness under the 1954 Convention, the person concerned has been granted leave to remain, see European Migration Network (2016) *Statelessness in the EU*, p.9. According to the UNHCR, while the 1954 Convention does 'not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty' and that individuals would be granted at least two and preferably five years' residence. See UNHCR (2014), *Handbook on Protection of Stateless Persons*, p.52.

116 See Dáil Éireann (10 July 2018), 'Statelessness determination process'.

117 Section 6(3) of the Irish Nationality and Citizenship Act 1956.

118 This concern has also been documented by the Immigrant Council of Ireland: 'The Irish Nationality and Citizenship Act 1956 gives the Minister for Justice and Equality the power to dispense with the conditions for naturalisation in cases involving stateless persons. While the 1956 Act provides a safeguard for stateless children born in Ireland, there are significant practical obstacles to accessing that discretionary mechanism in the absence of a specific regime governing statelessness. The provision is of no assistance to stateless children who migrate to Ireland.' See Immigrant Council of Ireland, *Child Migration Matters*, p.239.

# Section 5

## **Experiences of Racial Discrimination and Attitudes to Diversity**

*(Articles 2, 5, 7)*





## Discrimination and prejudice on the grounds of race

Through its Human Rights and Equality Research Programme with the ESRI, the Commission has produced extensive research demonstrating consistent and significant levels of discrimination against minority ethnic people in Ireland, as well as troubling attitudes to particular groups in society.<sup>119</sup>

The research study, *Who Experiences Discrimination in Ireland?*, found that, compared to 'White Irish' respondents, 'Black' people are three times more likely to experience discrimination in access to public services and almost five times more likely to experience discrimination in access to private services such as shops, banks, and housing. 'Asian' respondents also report more discrimination in private services.<sup>120</sup>

Another research study, *Attitudes to Diversity in Ireland*,<sup>121</sup> found that 'just under half of adults born in Ireland believe some cultures to be superior to others. It also found that 45% believe that some races/ethnic

groups were born harder working.'<sup>122</sup> This proportion is higher than the average of the ten other western European countries examined in the report (40%), though lower than some individual countries.<sup>123</sup> It was found that 17% of adults born in Ireland believe that 'some races were born less intelligent.' Again, this proportion is higher than the average of the ten other western European countries examined (14%), though some countries registered substantially higher proportions.<sup>124</sup>



**Black people are three times more likely to experience discrimination in access to public services and almost five times more likely to experience discrimination in access to private services such as shops, banks, and housing.**

These findings align with other national and European reports on the racism and discrimination experienced by minority ethnic groups in Ireland. The CSO published data in July 2019 demonstrating that compared to 16.3% of 'Irish persons', 26.7% of persons of other nationalities and 33.1% of 'persons from non-White

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119 These include *Who Experiences Discrimination in Ireland?* (2017); *Attitudes to Diversity in Ireland* (2018); *Discrimination and Inequality in Housing in Ireland* (2018); and *Nationality and Ethnicity in the Irish Labour Market* (2018). For discussion on the absence of a national action plan against racism in Ireland, see section 3.

120 F. McGinnity, R. Grotti, O. Kenny and H. Russell (November 2017), *Who Experiences Discrimination in Ireland?* (IHREC and ESRI), p.36.

121 F. McGinnity, R. Grotti, H. Russell, and É. Fahey (2018), *Attitudes to Diversity in Ireland* (IHREC and ESRI). The report examines data from the European Social Survey and, therefore, the results for Ireland are compared with averages from ten other western European countries (Belgium, Denmark, Finland, France, Germany, The Netherlands, Portugal, Spain, Sweden, and the UK) to set it in a comparative context.

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122 McGinnity et al., *Attitudes to Diversity in Ireland*, p.50.

123 McGinnity et al., *Attitudes to Diversity in Ireland*, p.27. The average proportion for the ten other western European countries was 40%. The lowest proportion was recorded in The Netherlands, at 12%, and the highest in Portugal at 67%.

124 McGinnity et al., *Attitudes to Diversity in Ireland*, p.26. The average proportion for the ten other western European countries was 14%. However, substantially different values were recorded, ranging from less than 2% in Sweden to 41% in Portugal.

ethnic backgrounds' reported experiencing discrimination in the previous two years. Overall, men continue to report significantly more racist crime, abuse, and discrimination than women in Ireland.<sup>125</sup> However, the Commission recognises that women have different and specific experiences of racial discrimination, particularly as their gender and ethnicity can intersect to create additional barriers and obstacles to the enjoyment of their civil, political, economic, social, and cultural rights.<sup>126</sup>

One study that analysed reported racist incidents found that the shaming of and discriminatory behaviour towards people of African descent are frequent and highly visible in Ireland.<sup>127</sup> Persons of African descent living in Dublin have also reported experiences of racism and systematic xenophobia, including being targeted in their homes through break-ins, intimidation, and the shouting of racist slurs. Furthermore, second-generation minority ethnic Irish people are reported as experiencing particular racism, including being specifically targeted with online racial abuse due to their perceived lack of any 'biological' or 'ethnic' connection to Ireland.<sup>128</sup>

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125 L. Michael (July–December 2017), *Reports of Racism in Ireland* (ENAR Ireland), p.14.

126 The Committee (2000), *Discrimination and Prejudice: General Recommendation XXV on Gender-Related Dimensions of Racial Discrimination*.

127 L. Michael (2015), *Afrophobia in Ireland: Racism Against People of African Descent*, pp.38–39. This research analysed the online reporting of racist incidents.

128 E. Siapera, E. Moreo, and J. Zhou (November 2018), *Hate Track: Tracking and Monitoring Racist Speech Online* (Dublin City University), p.38. The study observes that in certain racially loaded online discourse, 'Irishness' is constructed in exclusively White terms and minority ethnic groups are often viewed as 'only Irish in name or paper'. See also, Maynooth University, Wezesha, and Dungleave Associates (2019), *Embracing Diversity: How People of African Descent and Service Providers Experience Diversity in Dublin 15*, p.13 and A. Röder, M. Ward, C. Frese, and E. Sánchez

The role of the national media in contributing to racism against minority ethnic communities has been criticised, including due to the often negative portrayal of immigration in Ireland.<sup>129</sup> Furthermore, concerning the reporting of criminal offences, reference is regularly made in the media, including the national public service broadcaster RTÉ, to the specific nationality of the suspect or accused or the fact that they are a 'foreign national'.<sup>130</sup>

Victims of racism in Ireland report experiencing both physical and mental health issues, including anxiety, depression, and nausea. They also report a lack of confidence in occupying public spaces and engaging with strangers, as well as fears for their other family members.<sup>131</sup> Such experiences and feelings of isolation were echoed by participants at our Be Heard on CERD consultation, including due to the lack of awareness and understanding among the general public about the racism experienced by minority ethnic communities. Particular concerns were raised about the prevalence of silent bystanders in society, described as people who fail to challenge the racism they witness and therefore engage in passive discrimination.

The Commission notes the value of victimisation surveys in bridging gaps in

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(2014), *New Irish Families: A Profile of Second Generation Children and their Families* (Dublin, Trinity College Dublin).

129 L. Michael, *Afrophobia in Ireland*, p.8. For further information on the link between editorial decisions and the emergence of online and real-world hate speech and incidents, see section 6 on hate crime and hate speech.

130 See for example, A. Phelan (26 August 2019), 'Taxi driver accused of raping passenger in cab granted bail', *The Irish Independent*; RTÉ (27 August 2019), 'Taxi driver appears in Dublin court on rape charge'; RTÉ (25 January 2019), 'Gardaí investigate alleged sexual assault of elderly woman at hospital on Christmas Eve'; and RTÉ (21 February 2018), 'Egyptian man jailed for raping student in Carlow'.

131 L. Michael, *Afrophobia in Ireland*, pp.12, 35.

data and highlighting the experiences of communities,<sup>132</sup> particularly when supplemented by booster samples of groups traditionally underrepresented or excluded from standard national surveys.<sup>133</sup>



**The Commission recommends the use of victimisation surveys to increase public understanding of the prevalence and impact of racial discrimination in Ireland, including the multiple forms of discrimination faced by women.**

## Discrimination and prejudice against the Traveller and Roma communities

There is a demonstrable history of chronic racism and discrimination against the Traveller community in Ireland. The Commission-funded report, *Who Experiences Discrimination in Ireland?*, found that compared to 'White Irish' respondents, Irish Travellers are 22 times more likely to experience discrimination in accessing private services in general, and 38 times more likely to report discrimination in

shops, pubs, and restaurants.<sup>134</sup> Other available research indicates that 90% of Travellers have experienced discrimination over their lifetime, while 77% experienced discrimination in the previous year. In particular, they reported experiencing discrimination from the Gardaí, as well as pub and hotel staff.<sup>135</sup> In research carried out with the general population in 2017, 27% of respondents agreed with the statement 'it is acceptable for Travellers to be refused entry to hotels, pubs and shops' and 35% of respondents stated that they would avoid a member of the Traveller community.<sup>136</sup>



**There is a demonstrable history of chronic racism and discrimination against the Traveller community in Ireland.**

Thirty-seven per cent of respondents in the above research<sup>137</sup> indicated that they would avoid a member of the Roma community. The Commission is also concerned about the particular prejudices towards the Roma community in Ireland.<sup>138</sup> The *National Roma Needs Assessment* is a recent study

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132 For example, the CSO has a *Crime and Victimisation* survey to provide detailed official information on the incidence of crime and victimisation in the population and the attitudes and opinions of the population on the Irish justice system. See also, UN Office on Drugs and Crime and UN Economic Commission for Europe (2010), *Manual on Victimisation Surveys*.

133 A booster sample deliberately over-represents minority groups and reweights data to ensure representativeness at the analysis stage. For a more detailed discussion of data and integration of minority ethnic groups in Ireland see É. Fahey, F. McGinnity, and E. Quinn (2019), *Data for Monitoring Integration: Gaps, Challenges, and Opportunities* (ESRI).

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134 McGinnity et al., *Who Experiences Discrimination in Ireland?*, p.36.

135 In total, 481 Travellers took part in this survey. The Community Foundation for Ireland (July 2017), *B&A Traveller Community National Survey*, pp.86–87.

136 In total, 1007 adults took part in this survey. The Community Foundation for Ireland, *B&A Traveller Community National Survey*, pp.102, 105.

137 The Community Foundation for Ireland, *B&A Traveller Community National Survey*, p.105.

138 McGinnity et al., *Attitudes to Diversity in Ireland*, pp. vii–viii.

conducted with Roma in Ireland.<sup>139</sup> It reported high levels of discrimination faced by Roma on the street or other public settings (81% of respondents) when accessing social welfare (84%) and in shops, restaurants, pubs, or other social venues (74%). This report highlighted that Roma women are particularly vulnerable to on-street racism, including because of their identifiable and traditional dress.<sup>140</sup> As referenced in section 15 regarding racial profiling, a 2014 Special Inquiry found that two Roma children were removed from their families by An Garda Síochána on the basis that their appearance did not conform to racial stereotypes and physically resemble their respective parents.<sup>141</sup>



**There is a growing evidence base regarding the cumulative discrimination and racism experienced by people of African descent, and particularly women of African descent.**

The Commission notes the recent call by the Advisory Committee on the Framework Convention for the Protection of National Minorities that the State take immediate action to launch an awareness-raising

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139 The study conducted interviews using a questionnaire with 108 respondents and gathered basic information for a further 501 Roma household members. For further information on the methodology see, Pavee Point Traveller and Roma Centre and Department of Justice and Equality (2018), *Roma in Ireland – A National Needs Assessment*.

140 Pavee Point Traveller and Roma Centre and Department of Justice and Equality, *Roma in Ireland – A National Needs Assessment*, pp.51, 56.

141 Department of Justice and Equality (2014), *Report of Ms. Emily Logan, Garda Síochána Act 2005 (Section 42) (Special Inquiries relating to Garda Síochána) Order 2013*, p.115.

campaign on the level of discrimination faced by Travellers and Roma.<sup>142</sup>



**The Commission recommends that the State implement the recommendations of the Advisory Committee on the Framework Convention for the Protection of National Minorities on addressing the discrimination faced by Travellers and Roma.**

## International Decade for People of African Descent

As noted above, there is a growing evidence base regarding the cumulative discrimination and racism experienced by people of African descent, and particularly women of African descent.

The Commission notes the State's indication that dialogue is underway to develop a comprehensive programme for the International Decade for People of African Descent,<sup>143</sup> and the holding of a public and stakeholder consultation event in Spring 2019 'to involve stakeholders in the design of a programme of action in Ireland' to mark the Decade.<sup>144</sup> This dialogue has commenced, however, over four years after the start of the International Decade for People of African Descent.

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142 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Ireland*, p. 11.

143 The Committee, *Combined Fifth to Ninth Periodic Reports Submitted by Ireland under Article 9 of the Convention*, p.25.

144 Department of Justice and Equality (3 April 2019), 'Minister Stanton hosts public and stakeholder consultation for the International Decade for People of African Descent'.



**The Commission is of the view that the State has not given adequate priority to marking the International Decade for People of African Descent and recommends that it redouble its efforts to develop a programme of action to ensure the latter part of the Decade is appropriately marked.**

## Islamophobia and anti-Semitism

The Commission notes the Committee's acknowledgement of the intersection between discrimination on the grounds of religion, and discrimination on the grounds of race, and the phenomenon of discrimination targeting 'persons belonging to certain ethnic groups who profess or practice a religion different from the majority, including expressions of Islamophobia, anti-Semitism and other similar manifestations of hatred against ethno-religious groups.'<sup>145</sup>

Research co-funded by the Commission and published in 2018 demonstrated the common use of Islamophobic and anti-Semitic racist discourse in the Irish online sphere.<sup>146</sup> The authors observed that such online discourse commonly deployed narratives around terrorism, the 'clash of civilisations', and crude sexualisation.<sup>147</sup> The authors noted the linkage between Islamophobia and anti-black racism online.<sup>148</sup> The authors further observed

145 The Committee, *General Recommendation No. 35*, para. 6.

146 Siapera et al., *Hate Track*, pp.35–38.

147 Siapera et al., *Hate Track*, p.36.

148 Siapera et al., *Hate Track*, p.37.

the regular deployment of anti-Semitic tropes online in Ireland, particularly in the context of anti-immigration discourses.<sup>149</sup>

Another report, *Attitudes to Diversity in Ireland*, has identified the existence of particular prejudices towards the Muslim community.<sup>150</sup> Research also demonstrates that Muslim women report much higher levels of anti-Muslim hostility than Muslim men, and are particularly at risk of discrimination in locations such as public transport or restaurants.<sup>151</sup>



**The Commission recommends that the State adopt public awareness-raising and education measures to address discrimination and prejudice, including on the grounds of race and religion, and to specifically address the discrimination faced by minority ethnic women.**

149 Siapera et al., *Hate Track*, p.37.

150 McGinnity et al., *Attitudes to Diversity in Ireland*, pp. vii–viii.

151 J. Carr (2014), *Experiences of Anti-Muslim Racism in Ireland*, pp.6–7. Three-hundred and forty-five Muslim men and women took part in this research incorporating participants from a diverse range of ethno-national backgrounds, ages, genders and aspects of Islam.

Section 6

# **Hate Speech and Hate Crime**

*(Articles 2, 4, 5, 7)*



The Commission notes the Committee's guidance regarding the potential for hate speech to silence the free speech of its victims and on the complementary relationship between combatting hate speech and enabling freedom of expression to flourish.<sup>152</sup>

In keeping with the Committee's approach in General Recommendation No. 35, it is the Commission's view that the State's response to hate speech should not only make use of the criminal law but should also encompass other policy and regulatory measures to encourage non-discriminatory discourse, to educate the public on the harm of hate speech, and to ensure that its extent and impact are adequately tracked.

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152 The Committee, *General Recommendation No. 35*, para. 28–29, 45.

## Legal framework on incitement to hatred and hate motivation

### The Prohibition of Incitement to Hatred Act 1989

The Prohibition of Incitement to Hatred Act 1989 remains the only legislation under which hostility on the grounds of race, colour, nationality, religion, ethnic or national origin, membership of the Traveller community, or sexual orientation is currently criminalised in Ireland.<sup>153</sup>

The Commission notes the State report's reference to the 1989 Act, in particular, its indication that 'since 2010 there have been 12 cases prosecuted ... resulting in two sentences of imprisonment,'<sup>154</sup> The low rate of prosecutions under this Act 'calls into question the effectiveness and accessibility of these sanctions.'<sup>155</sup> The 1989

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153 The 1989 Act criminalises certain behaviour and expression that is likely or intended to 'stir-up' hatred against a group of persons. Direct abuse levelled at an individual on the grounds of a protected characteristic is not necessarily prohibited under the 1989 Act, in the absence of a wider intention, or likelihood, to stir-up hatred.

154 The Committee, *Combined Fifth to Ninth Periodic Reports Submitted by Ireland under Article 9 of the Convention, Due in 2014*, para. 65.

155 IHREC (June 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*, para. 188. The ineffective operation of the 1989 Act has been attributed to a number of issues that were consistently identified in analysis of the legislation. One key issue is the apparent reluctance of the Director of Public Prosecutions to prosecute or grant leave to prosecute complaints made under the Act, with reasons to not seek prosecution attributed to insufficient evidence, definitional difficulties, the role of prosecutorial discretion, and procedural issues. See J. Schweppe and D. Walsh (2008), *Combating Racism and Xenophobia through the Criminal Law: A Report Commissioned by the National Action Plan Against*

Act also appears particularly ill-equipped to deal with online hate speech incidents.<sup>156</sup>

The European Commission against Racism and Intolerance (ECRI) has recently criticised the legislation's limited scope and has recommended the amendment of the criminal law to include a wider range of expression-based offences.<sup>157</sup>



**The Commission is of the view that the Prohibition of Incitement to Hatred Act 1989 is outdated and inadequate to effectively address hate speech that calls for a response in criminal law.**



**The Commission recommends the modernisation of the Prohibition of**

**Incitement to Hatred Act 1989, in line with the recent recommendations of ECRI,<sup>158</sup> and including with a view to addressing online incitement to hatred and hate speech.**

## Hate motivation in the criminal law

In the wider criminal justice sphere, Ireland's criminal laws do not include substantive hate crime offences nor do they provide for aggravation of crimes on the statute book. Trial judges can take aggravating factors, including hate motivation, into account at sentencing for offences, including assault, criminal damage, and public order offences. The State has expressed confidence that this approach meets its obligations under CERD<sup>159</sup> and the European Framework Convention.<sup>160</sup>

The Commission is concerned, however, that the State's current reliance on judicial discretion in sentencing places limitations on the justice system's ability to deal with hate crime. While current practice in sentencing in Ireland allows for prejudice motivations to be taken into account by the sentencing court, the court is under no obligation to do so. Moreover, as the State has indicated in its report to the Committee, the Courts Service does not keep data on these factors

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*Racism*, pp.100–101.

156 The first prosecution dealing with online material concerned the creation of a racist Facebook page in 2009. The page titled 'Promote the use of knacker babies as shark bait', targeted the Traveller community. The prosecution failed in the District Court, with the judge not finding evidence beyond reasonable doubt that there was intent to incite hatred towards members of the Traveller community. The Court took into account that the accused had only posted on the site once; however, by the time Facebook acted to have the page removed, 644 people had joined the page and many more had viewed it. See PILA (5 October 2011), '*Irish District Court dismisses Traveller Facebook hate speech case*'.

157 ECRI (June 2019), *Report on Ireland (Fifth Monitoring Cycle)*, p.12. Suggested offences included public incitement to violence and to discrimination and defamation; the public expression, with a racist aim, of an ideology that claims the superiority of, or which depreciates or denigrates, a group of persons on grounds of their race; the public denial, trivialisation, justification, or condoning of crimes of genocide, crimes against humanity, or war crimes; the creation or leadership of a group that promotes racism, support for such a group and participation in its activities; and racial discrimination in the exercise of one's public office or (private) occupation.

158 ECRI, *Report on Ireland (Fifth Monitoring Cycle)*, p.12.

159 The Committee, *Combined Fifth to Ninth Periodic Reports Submitted by Ireland under Article 9 of the Convention*, para. 66.

160 Ireland has indicated to the European Commission that 'motivation can always be considered by the courts.' See European Commission (2014), *Report from the Commission to the European Parliament and the Council on the Implementation of Council Framework Decision 2008/913/JHA on Combating Certain Forms and Expressions of Racism and Xenophobia by means of Criminal Law*, SWD(2014) 27, para. 3.4.



when recording the final sentence imposed, meaning no record is kept of the number, scale, or incidence of criminal sentences informed by the hate element of the crime.<sup>161</sup>



## Ireland's criminal laws do not include substantive hate crime offences nor do they provide for aggravation of crimes on the statute book.

Recent research suggests that, in practice, the hate element of a crime is prone to becoming invisible at various stages of the criminal justice process, from the reporting and investigation of the crime, through to prosecution and sentencing. The research points to the fact that the bias motivation, due to various obstacles encountered, may not reach the sentencing stage of a trial and where it does, it is far from clear that an appropriate aggravation of sentence is assured.<sup>162</sup> This represents a clear challenge to the State's position that judicial discretion in sentencing effectively deals with hate crime.

In its recent report on Ireland, ECRI observed that the lack of provision on racist motivation constituting an aggravating

circumstance ran contrary to its standards,<sup>163</sup> and recommended that the law should be 'amended to provide that racist and other hate motivation constitutes an aggravating circumstance for all criminal offences and is taken into account in sentencing.'<sup>164</sup> This recommendation reflects the Committee's recommendation during its last examination of Ireland that 'racist motivation [be] consistently taken into account as an aggravating factor in sentencing practice for criminal offences.'<sup>165</sup> The Commission more generally notes the Committee's commentary on prevention of racial discrimination in the administration and functioning of the criminal justice system.<sup>166</sup>



**The Commission is of the view that Ireland's current approach to hate motivation does not adequately meet its international obligations.<sup>167</sup>**



**The Commission recommends that statutory provision be made for aggravation and penalty enhancements**

161 The Committee, *Combined Fifth to Ninth Periodic Reports Submitted by Ireland under Article 9 of the Convention*, para. 66.

162 For a comprehensive account of this phenomenon, see A. Haynes and J. Schweppe (2017), *Lifecycle of a Hate Crime: Country Report for Ireland* (ICCL). See also, A. Haynes and J. Schweppe (2017), 'The disappearing of hate crime in the Irish criminal justice process', in A. Haynes, J. Schweppe, and S. Taylor (eds), *Critical Perspectives on Hate Crime: Contributions from the Island of Ireland* (Palgrave Macmillan).

163 ECRI (2017), *General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination*.

164 ECRI, *Report on Ireland (Fifth Monitoring Cycle)*, p.12.

165 The Committee (4 April 2011), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland*, para 19.

166 The Committee (2005), *General Recommendation 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*, para. 4(a).

167 The Commission notes that the new *Diversity and Integration Strategy 2019–2021* includes a commitment to develop a mechanism to ensure that the aggravating factor of a hate crime is communicated effectively during the criminal justice process to criminal justice partners by An Garda Síochána. An Garda Síochána, *Diversity and Integration Strategy 2019–2021*, p.10.

**for crimes motivated by hate or prejudice.**



**The Commission recommends the development of legislative measures for the creation of substantive hate-motivated criminal offences.**

## **Current status of review and reform initiatives**

The Commission is concerned that the State is placing insufficient urgency on advancing reform on hate crime in Ireland.

In its report to the Committee, the State indicated its intention to conduct a 'review of the law relating to hate crime and incitement to hatred', for completion 'by the end of 2018'.<sup>168</sup> Separately, the Minister for Justice and Equality indicated in 2018 his intention to bring forward proposals to address the other gaps that have been highlighted in Ireland's legislative and procedural infrastructure for combatting hate crime.<sup>169</sup> Neither the review nor the proposals have been completed. The Department of Justice and Equality has begun an evidence review of hate crime legislation in other jurisdictions.<sup>170</sup> It appears

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168 The Committee, *Combined Fifth to Ninth Periodic Reports Submitted by Ireland under Article 9 of the Convention*, para. 68.

169 Department of Justice and Equality (2018), 'Statement by Minister Flanagan on hate crime legislation'. The Commission notes that the Department issued a call for an evidence review of hate crime legislation in 2019. See Department of Justice and Equality (2019), *Request for Tender for Research Services: an Evidence Review of Hate Crime Legislation*.

170 This review was subject to an unsuccessful public tendering process. It is now being carried out by a research

further work on the review of the Irish legislative landscape and the development of proposals for reform are awaiting the completion of this evidence review. However, this further work has not been made subject to any clear terms of reference, nor to any detailed timeframe for delivery.



**The Commission recommends that the State develop and commit to a clear, time-bound action plan for review and modernisation of hate crime law and practice in Ireland to bring it in line with its international obligations, undertaken in full consultation with groups targeted by hate crime in Ireland, and with the participation of civil society organisations representing them.**

The Commission notes the emphasis placed by the Committee on appropriate training for the judiciary,<sup>171</sup> prosecutors, and investigators<sup>172</sup> in identifying and understanding hate motivation.



**The Commission recommends that the review include the development of appropriate education measures for key actors in the criminal justice system, including the judiciary, prosecutors, and investigators.<sup>173</sup>**

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team in the Department of Justice and Equality's research and analysis section.

171 See for example, The Committee (4 April 2011), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland*, para. 19.

172 OSCE (2009), *Hate Crime Laws – A Practical Guide*, p.36.

173 Section 17 of the recently enacted Judicial Council Act 2019 makes provision for a Judicial Studies Committee

## Monitoring and recording of hate crime and hate-related incidents

The Commission notes that the Committee 'regards the adoption by States parties of targets and monitoring procedures to support laws and policies combatting racist hate speech to be of the utmost importance.'<sup>174</sup> The Commission further notes the emphasis placed by the Committee on systematic data collection in combatting hate speech.<sup>175</sup>

### Police recording of crime and non-crime incidents

An Garda Síochána has facilitated the recording of crime with a discriminatory motive since 2002 under Garda HQ Directive No 188/2002, which mandated that racist motivations be entered on the Police Using Leading Systems Effectively (PULSE) system.<sup>176</sup>

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that shall 'facilitate the continuing education and training of judges with regard to their functions.' This may be a potential means of providing the judiciary with the requisite skills, knowledge, and training on hate crime. It has been reported that preparatory research is currently underway under the guidance of Chief Justice Frank Clarke for the formation of the Judicial Studies Committee, including benchmarking against comparable jurisdictions such as Scotland. See *Law Society Gazette* (3 October 2019), "'Hit the ground running" on Judicial Council – Clarke'. For further information on the potential role of the Judicial Studies Committee, see section 15.

174 The Committee, *General Recommendation No. 35*, para. 47.

175 The Committee, *General Recommendation No. 35*, para. 38.

176 The recording of discriminatory motives occurs at the point of logging crimes onto PULSE. Prosecutions (i.e. charges or summons) are recorded separately on PULSE and linked to the associated crime incident record. However, despite its introduction in 2002, it seems that An Garda Síochána did not begin to officially compile hate crime data

The Commission notes that the integrity of An Garda Síochána's system of recording hate crime rests on the officers' knowledge and understanding of hate crime and the process for recording incidents on PULSE. Concerns have been raised about the extent of awareness within the Gardaí of what constitutes hate crime or a hate-related incident, how it should be recorded, and the importance of it being recorded.<sup>177</sup>



**...the integrity of An Garda Síochána's system of recording hate crime rests on the officers' knowledge and understanding of hate crime and the process for recording incidents on PULSE.**

The Garda Síochána Inspectorate has reported on deficiencies in systems and processes that hinder the investigation of racist incidents, finding that the levels of recording are 'very low'.<sup>178</sup>

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until 2006. See D. McInerney (2017), 'Policing Racism on the Island of Ireland', in A. Haynes, J. Schweppe, and S. Taylor, *Critical Perspectives on Hate Crime*, p.428. In November 2015, the recording of crimes with a 'discriminatory motive' was reformed, amending both recording categories and the recording process. As part of an update of PULSE 6.8, the five pre-existing recording categories were replaced and extended to eleven categories of discriminatory motives.

177 J. Carr (2017), 'Recording and Reporting Racist Hate Crime: Police and Civil Society Responses', p.373 and A. Haynes and J. Schweppe (2017), 'The disappearing of hate crime in the Irish criminal justice process', in A. Haynes et al. (eds.), *Critical Perspectives on Hate Crime*.

178 Garda Síochána Inspectorate (2014), *Crime Investigation* and CSO (2018), *Review of the Quality of Recorded Crime Statistics: Based on 2017 Data Provided by An Garda Síochána*.

At present, recorded hate crime data does not attain the standards of quality required for the status of national statistics.<sup>179</sup> All recorded crime statistics are currently categorised as 'Statistics Under Reservation' and will remain as such until the CSO is satisfied that a stronger data governance framework is operational in An Garda Síochána and the quality of the data output improves.<sup>180</sup>

In contrast to criminal incidents, currently, the PULSE system does not offer a menu of flags for reporting prejudice-motivated non-crime incidents. While non-crime incidents can be recorded separately in the attention and complaints section on PULSE, there is no data retrieval system on PULSE for prejudice-motivated non-crime incidents. Consequently, these incidents will only be identified as being prejudice-motivated if the Garda officer dealing with the matter manually types a description of the incident into the relevant narrative box.<sup>181</sup>

The *Diversity and Integration Strategy 2019-2021* of An Garda Síochána, published in October 2019, introduces a working

definition of 'hate crimes'<sup>182</sup> and 'non-crime hate incidents'.<sup>183</sup> This strategy also has several objectives focused on improving the identification, reporting, investigation, and prosecution elements of hate crime. For example, it includes commitments to develop an initial online reporting facility for hate crime; deliver clear guidelines regarding the identification and recording of hate crime and non-crime hate incidents to all Gardaí and Garda staff; develop an IT mechanism to record non-crime hate incidents; update the Garda PULSE system to introduce an alert mechanism to highlight hate crimes; and conduct an analysis of hate crime trends and patterns.<sup>184</sup>



**Noting the commitments in the new Diversity and Integration Strategy 2019–2021, the Commission recommends the timely comprehensive reform of the PULSE system, including the implementation of a stronger governance framework and overall improvements in data collection by An Garda Síochána in line with Central Statistics Office standards.**

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179 The Irish State has not made official statistics on police-recorded hate crime publicly available since the end of 2016.

180 CSO, *Review of the Quality of Recorded Crime Statistics*. The Commission notes the recent quality improvement proposal shared by the CSO with An Garda Síochána in July 2018. The quality proposal outlines key actions to improve the quality of PULSE data for statistical purposes emphasising the need to improve data in respect to relevance, completeness, timeliness, accuracy, as well as coherence and consistency. According to the document, 'in order for the CSO to be able to compile statistics in which users can have trust, sound data quality principles and methodologies must be employed by An Garda Síochána at the recording stage so as to ensure a high standard of quality in the underlying administrative data source' (see p.29).

181 Carr, 'Recording and Reporting Racist Hate Crime', p.373.

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182 'Any criminal offence which is perceived by the victim or any other person to, in whole or in part, be motivated by hostility or prejudice, based on actual or perceived age, disability, race, colour, nationality, ethnicity, religion, sexual orientation or gender.' See An Garda Síochána, *Diversity and Integration Strategy 2019–2021*, p.6.

183 'Any non-crime incident which is perceived by any person to, in whole or in part, be motivated by hostility or prejudice, based on actual or perceived age, disability, race, colour, nationality, ethnicity, religion, sexual orientation or gender'. See An Garda Síochána, *Diversity and Integration Strategy 2019-2021*, p6. An Garda Síochána, *Diversity and Integration Strategy 2019–2021*, p.6.

184 An Garda Síochána, *Diversity and Integration Strategy 2019–2021*, pp.7–8.



**The Commission recommends that guidelines and protocols for the recording of discriminatory motives are developed transparently and made publicly available.**



**The Commission recommends that members of An Garda Síochána should be equipped to understand, recognise, and thoroughly investigate all instances of hate crime through dedicated training, both during general training at Garda College and through specialist modular learning at in-service level, including targeted training for:**

- assisting victims of specific types of hate offences
- accurate, reliable, and timely data recording on PULSE.

These mechanisms need to be adequately maintained, updated, and publicised, as well as evaluated to assess their effectiveness in practice.<sup>187</sup> The Commission notes that the new *An Garda Síochána Diversity and Integration Strategy 2019–2021* includes a commitment to facilitate third-party referrals of hate crime from non-government organisations or civil society organisations.<sup>188</sup>

Considering the phenomenon of underreporting of hate crime and hate incidents, the Commission also notes the value of victimisation surveys in bridging the reporting gap.<sup>189</sup>



**The Commission recommends that the State consider the establishment of alternative reporting mechanisms by which victims or witnesses can report hate crime offences, including the establishment of third-party reporting mechanisms in partnership with civil society organisations.**

## Alternative reporting mechanisms

Collaboration with non-police organisations and other third parties can provide safe spaces to report and access support.<sup>185</sup>

Third-party schemes can target those groups most at risk of being victimised and/or who are least likely to report crimes to police.<sup>186</sup>

185 In its recent Action Plan, the UK government expressed its support for alternative modes of reporting when stating ‘Giving victims the opportunity to report hate crime without approaching the police directly – for instance to a third party such as a local charity – has been shown to improve the accessibility of the criminal justice system.’ See UK Home Office (July 2016), *Action Against Hate: the UK Government’s Plan for Tackling Hate Crime*, p.31.

186 In the UK, for example, third-party reporting centres

are recognised as important for disabled people to report hate crime at locations accessible to them. See UK Home Office, *Action Against Hate*.

187 See Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (2018), *Understanding the Difference: The Initial Police Response to Hate Crime*.

188 An Garda Síochána, *Diversity and Integration Strategy 2019–2021*, p.7.

189 In the context of hate crimes, victimisation surveys have been identified as providing a better indication of the true volume of hate crimes, as well as valuable information about the impact on victims, identifying specific communities at risk, providing information about changing patterns of violence, and helping to assess the level of confidence amongst victims in the police and other criminal justice agencies. See OSCE Office for Democratic Institutions and Human Rights (2014), *Hate Crime Data-Collection and Monitoring Mechanisms: A Practical Guide*. See section 5 for further information on victimisation surveys.



**The Commission recommends the use of victimisation surveys, which include hate crime specific questions, and are supplemented by booster samples of groups traditionally underrepresented or excluded from standard national surveys.**

## Policy and regulatory responses to racism online, in print, and broadcast

The Commission is of the view that significant reform to the policy and regulatory environment is essential to address the contemporary problem of the circulation of racist and hate speech in the public sphere, both online and offline. The Commission notes in particular, the centrality of Ireland, as European host to all major global social media and technology companies, the growth and development of regulation and oversight of social media and other online platforms.

### Hate speech online

Internationally, the majority of hate speech incidents occur online,<sup>190</sup> and there is some evidence to suggest that this is the case in Ireland.<sup>191</sup>

Research co-funded by the Commission demonstrates the nature of racially loaded

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190 ECRI (2016), *ECRI General Policy Recommendation No. 15 on Combating Hate Speech*, p.4.

191 ENAR recorded 125 hate speech incidents in the period July–December 2017 and 113 of these occurred online. See L. Michael (2018), *Reports of Racism in Ireland: 17th+18th Quarterly Reports of iReport.ie, July–December 2017*, p.7.

discourse online in Ireland, ranging from 'crude' to 'coded' forms of speech, as well as a broader and more generalised acceptance of 'banal' or 'casual' racialised discourse.<sup>192</sup> In some instances, the research identified patterns of a shared language between Irish online racist speech and the racist and identarian language observable in the United States and Europe, including reference to racist tropes, such as 'white genocide' and 'population replacement', which indicated the operation of activist racist groups in this sphere. The link between the traditional media's framing of news events and online racist speech was also highlighted in the research, which observed that 'sensationalist headlines attract [...] a large volume of hateful comments.'<sup>193</sup>

The research further indicates the wide range of communities targeted by online racist speech in Ireland. Anti-immigrant and anti-refugee discourses focusing on access to welfare and housing are common. Discourses stereotyping, dehumanising, and denigrating Roma and Travellers were found to be 'pervasive'.<sup>194</sup> In this connection, the Commission notes the emphasis placed by Traveller representatives during its Civil Society Forum on the specificity of anti-Traveller racism in the online space in Ireland and the extent to which members of the public appear willing to express racism against Travellers in a way that they would not

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192 Siapera et al., *Hate Track*, pp.4, 31. The project used insights from civil society and experts in the field of race, racism, and hate speech to build a computational tool that harvests and classifies Facebook and Twitter posts in terms of their probability to contain racially-loaded toxic content, generating a dataset that was subsequently analysed in terms of the toxic repertoires it contained, the communities targeted, the kinds of people posting, and the events that trigger racially toxic contents.

193 Siapera et al., *Hate Track*, pp.4, 32, 33.

194 Siapera et al., *Hate Track*, pp.35–36.



**Research co-funded by the Commission demonstrates the nature of racially loaded discourse online in Ireland, ranging from ‘crude’ to ‘coded’ forms of speech, as well as a broader and more generalised acceptance of ‘banal’ or ‘casual’ racialised discourse.**

with other minority groups. Islamophobic, anti-Black, and anti-Semitic racist discourse was also identified by the research.<sup>195</sup> Overall, its findings emphasised the importance of promoting digital literacy as a means of combatting online hate speech in Ireland.<sup>196</sup>

### **Social media standards and takedown procedures**

Notice-and-takedown procedures have emerged as the primary mechanism of self-regulation for social media platforms.<sup>197</sup> These procedures have been criticised for being ad hoc in nature,<sup>198</sup> and for placing the primary responsibility to identify hateful content on users rather than on

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195 Siapera et al., *Hate Track*, pp.35–38. For further information on experiences of racial discrimination and attitudes to diversity, see section 5.

196 Siapera et al., *Hate Track*, p.5.

197 These mechanisms have been codified at the European level, with the European Commission having agreed in 2016 a code of conduct on countering illegal hate speech online with Facebook, Microsoft, Twitter, and YouTube. European Commission (2016), *Code of Conduct on Countering Illegal Hate Speech Online*.

198 See G. Shannon (2017), *Statement to the Oireachtas Joint Committee on Children and Youth Affairs*, p.3.

the companies themselves.<sup>199</sup> The efficacy of notice-and-takedown processes has also been difficult to assess.<sup>200</sup> Recently published guidelines from the Organization for Security and Co-operation in Europe (The Tallinn Guidelines) have stressed the need for clarity and transparency in procedures governing the removal of content.<sup>201</sup>

The Law Reform Commission has recommended the establishment of a monitoring and oversight body to regulate the operation of notice-and-takedown processes.<sup>202</sup> The Minister for Communications, Climate Action, and Environment has recently committed to introduce an Online Safety Bill to regulate the content shared on social media platforms by ‘setting a clear expectation for service providers to take reasonable steps to ensure the safety of the users of their service’ and establishing an Online Safety Commissioner to oversee the new regulatory framework.<sup>203</sup>

The Commission notes that these initiatives to better regulate harmful content online are developing in the

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199 House of Commons Home Affairs Committee (2018), *Hate Crime: Abuse, Hate and Extremism Online*, p.12.

200 Law Reform Commission (2016), *Report on Harmful Communications and Digital Safety*, para. 3.17. Social media companies have consistently refused to clarify with precision the number of staff or the amount of money they are committing to moderate the content on their platforms. See House of Commons Home Affairs Committee, *Hate Crime*, p.15.

201 OSCE (2019), *The Tallinn Guidelines on National Minorities and the Media in the Digital Age & Explanatory Note*, para. 37.

202 See Law Reform Commission, *Report on Harmful Communications and Digital Safety*.

203 Department of Communications, Climate Action, and Environment (2019), ‘*Regulation of harmful online content and the implementation of the revised audiovisual media services directive*’. See proposals to introduce a similar regulatory framework by the UK government at HM Government (UK) (2019), *Online Harms White Paper*.

context of a forthcoming revision of the EU Audiovisual Media Services Directive.<sup>204</sup>



**The Commission recommends that the State develop a comprehensive regulatory framework to combat prejudicial and discriminatory content and hate speech online.**



**The Commission recommends that under this framework, the operation of notice-and-takedown procedures for removing harmful content online should be subject to codes of practice and transparency concerning the prevalence of online hate speech and the measures being taken by internet intermediaries to address it. Compliance with the framework should be overseen and enforced by an independent statutory body and should be promoted by way of effective and proportionate sanctions.**



**The Commission recommends that the State promote and advance digital literacy as a core skill for people of all ages to combat prejudicial and discriminatory content and hate speech online.**

## Press and broadcast

The Press Council of Ireland and Office of the Press Ombudsman are statutory self-regulatory bodies providing oversight of the press (print and online) in Ireland.<sup>205</sup>

Principle eight of the Press Council of Ireland's Code of Practice prohibits the publication of material intended or likely to cause grave offence or stir up hatred based on protected characteristics. While referring to the standards of the Constitution of Ireland and the European Convention on Human Rights, the Code does not rely on CERD or other UN human rights instruments.<sup>206</sup>

Broadcasting is subject to structural and content regulation under the Broadcasting Act 2009.<sup>207</sup> The Broadcasting Authority

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204 'Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities'. The deadline for the implementation of the provisions of the Directive is 19 September 2020 – see Department of Communications, Climate Action, and Environment (2019), *Public Consultation on the Regulation of Harmful Content on Online Platforms and the Implementation of the*

*Revised Audiovisual Media Services Directive: Explanatory Note.*

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205 The bodies are recognised in statute under the Defamation Act 2009.

206 The Council may decide not to uphold a complaint for breach of the code for a wide range of reasons, including where the publication concerned has taken or offered to take sufficient remedial action to resolve a complaint. Sufficient remedial action by a publication can include the publication of a correction, a clarification or apology, a right of reply, or the amendment or deletion of online material. Press Council of Ireland & Office of the Press Ombudsman (2014), *Code of Practice for Newspapers and Magazines: Handbook, January 2014*, p.4.

207 This regulatory framework operates by way of a licensing regime overseen by the Commission for Communications Regulation (ComReg), the body that



of Ireland (BAI) monitors compliance by broadcasters with broadcasting rules. The BAI Code of Programme Standards require that 'material shall not stigmatise, support or condone discrimination or incite hatred against people or groups in society in particular on the basis of age, gender, marital status, membership of the Traveller community, family status, sexual orientation, disability, race, nationality, ethnicity or religion.'<sup>208</sup>



## a free media plays a fundamental role in promoting an open, democratic, and equal society.

The BAI considers complaints relating to broadcasts<sup>209</sup> and publishes the decisions of its compliance committee.<sup>210</sup> Hate speech in broadcasting has been the subject of complaint.<sup>211</sup> When the BAI upholds a complaint of a breach of its codes and rules, it 'does not have any power to award to any party, costs or expenses.'<sup>212</sup>

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grants broadcasting licences. Under section 39(1)(d) of the Broadcasting Act 2009, television and radio broadcasters must not broadcast 'anything which may reasonably be regarded as causing harm or offence, or as being likely to promote, or incite to, crime or as tending to undermine the authority of the State.'

208 Principle 5 of the *BAI Code of Programme Standards*.

209 The viewer or listener must first raise the complaint directly with the broadcaster.

210 These decisions are published on the BAI's website, [www.bai.ie](http://www.bai.ie).

211 The BAI informed ECRI that in the last five years, nine complaints were submitted invoking principle 5 of the *BAI Code of Programme Standards*. Three of these complaints were upheld as breaches of the code. See ECRI, *ECRI Report on Ireland*, para. 38.

212 BAI (2017), *A Guide for Listeners & Viewers to the*

The Commission is of the view that a free media plays a fundamental role in promoting an open, democratic, and equal society.<sup>213</sup> The Commission notes that in the modern media environment, a strong link can be observed between editorial decisions and the emergence of online and real-world hate speech and incidents.<sup>214</sup> The Commission is of the view that in light of this link, the special protection afforded to the press regarding freedom of expression,<sup>215</sup> and the Committee's guidance in General Recommendation No. 35,<sup>216</sup> it is imperative that media professionals adhere to journalistic ethics and codes of practice, and ensure that such codes of practice are responsive to the modern media environment.



**The Commission recommends that the State encourage the media to update their codes of professional ethics and press codes to reflect the challenges of the modern media environment where the circulation of prejudicial and discriminatory content and hate speech are concerned, and to explicitly incorporate the principles of CERD and other fundamental human rights standards.**

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*Complaints Process & the Broadcasting Authority of Ireland*, p.24.

213 European Broadcasting Union (13 September 2019), '*Public service media critical to healthy democracies*'.

214 Siapera et al., *Hate Track*, p.25.

215 Article 40.6.1°(i) of the Constitution of Ireland provides that the State must seek to ensure the media (the 'organs of public opinion') can exercise their 'rightful liberty of expression', provided they 'shall not be used to undermine public order or morality or the authority of the State.'

216 The Committee, *General Recommendation No. 35*, para. 39.



**The Commission recommends that the State encourage appropriate training for editors and journalists as to the nature and dynamics of hate speech to avoid the publication and inappropriate framing of news and editorial content that is prejudicial, discriminatory, or triggers hate speech or incidents.**



**The Commission recommends that compliance with regulatory mechanisms aiming to prevent hate speech, such as codes of conduct, should be supported by way of dissuasive sanctions for breach of their provisions.**

# Section 7

## **Participation in Public Life and Representation in Decision-Making**

*(Article 1)*



The Commission notes the Committee's Concluding Observations regarding the participation of minority groups in Irish public life,<sup>217</sup> and that several current government policies aim to increase the participation of minority groups in political processes at the local and national level, and in public life generally.<sup>218</sup>

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217 See The Committee (4 April 2011), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland*, para 14.

218 The *National Traveller and Roma Inclusion Strategy 2017–2021* sets the objective that 'Traveller and Roma people should be supported to participate in political processes at local and national levels', and that 'Traveller and Roma organisations should be resourced to support and facilitate political engagement and leadership in the Traveller and Roma communities.' See Department of Justice and Equality, *National Traveller and Roma Inclusion Strategy 2017–2021*, Action 132, p.42. The *National Strategy for Women and Girls 2017–2020* aims to secure 'greater levels of participation by Traveller and Roma women in public life' by 'continuing to fund and support the National Traveller Women's Forum, Mincéirs Whiden, and relevant local community Traveller and Roma projects'. See Department of Justice and Equality, *National Strategy for Women and Girls 2017–2020*, Action 3.11, p.54. Further, *The Migrant Integration Strategy* makes the commitment that 'migrants will be supported and encouraged to register to vote and to exercise their franchise.' See Department of Justice and Equality, *The Migrant Integration Strategy*, action 59, p.32.

## Political participation

The Commission notes that participation as voters and as candidates in the local election process is based on residency and is not restricted to Irish citizens.<sup>219</sup> All Irish and British citizens who live in Ireland and are aged 18 years or over are entitled to vote in a general election, while Irish citizenship is a requirement to be elected to Dáil Éireann (lower house of Parliament).<sup>220</sup>

Analysis of data from the 2016/2017 electoral register and the 2016 Census indicates that 13% of the population ordinarily resident in the State were of nationalities other than Irish and over 18 years of age (and therefore eligible to register to vote in local elections). This group accounted for only 5% of people on the electoral register.<sup>221</sup> Possible barriers to registering to vote include access to information about voting rights and the complexity of the registration process, including electoral registration forms.<sup>222</sup>

Fifty-three 'naturalised/non-Irish citizen' candidates contested the 2019 local elections, with eight being elected.<sup>223</sup> This represents a welcome increase on the 2014 local elections.<sup>224</sup> However, analysis suggests

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219 Department of Housing, Planning and Local Government (2018), *How members of local authorities are elected*, pp.3–5.

220 For further information, see *Voting in Ireland*.

221 McGinnity et al., *Monitoring Report on Integration 2018*, p.77.

222 Doras Luimní (2019), *Submission: Modernising the Electoral Process*.

223 In 2014, 31 naturalised/non-Irish citizens ran, two of whom were elected. See A. Kavanagh (2019), *The 2019 Local Elections: A Geographer's Overview*. Kavanagh's operational definition of 'naturalised/non-Irish citizen' does not disaggregate naturalised Irish citizens from non-citizen residents but does exclude British citizens.

224 McGinnity et al., *Monitoring Report on Integration 2018*, p.75. It has been noted that if the proportion of non-Irish candidates in the 2014 elections reflected the resident

that some 86 people would need to have been elected in the 2019 local elections for this group's political representation at local government level to be proportionate.<sup>225</sup> The Commission further notes the low levels of Traveller and Roma participation as electoral candidates; it is estimated that just five of the almost 2,000 people to contest the 2019 local elections were members of the Traveller community.<sup>226</sup>

The most recent general election took place in February 2016. One of the 166 members elected to Dáil Éireann is a naturalised Irish national.<sup>227</sup> Groups representing minority ethnic communities have called for positive measures to be taken to improve the diversity of representation in Parliament.<sup>228</sup>

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population as recorded in Census 2011, 218 non-Irish candidates would have contested the election, rather than 31. See E. Quinn (2017), 'Active Citizenship' in A. Barrett, F. McGinnity and E. Quinn (eds.) (2016), *Monitoring Report on Integration* (ESRI and the Department of Justice and Equality), pp.80–81.

225 See A. Kavanagh (2018), *New Irish (Non-Irish/UK Nationals) Candidates Contesting the 2019 Local Elections*. Kavanagh argues that 'Non-Irish nationals currently account for 11.3% of the Irish population based on the most recent Census of 2016, with this percentage falling to 9.1% when UK nationals are taken out of this group. If the proportion of successful non-Irish/UK nationals local election candidates at the May 24<sup>th</sup> [2019] local elections was similar to this level (i.e. 9.1%), there would be 86 "New Irish" Councillors (based on a total number of 949 City and County Council members)'.

226 See the first witness statement made by Ms Kathleen Sherlock in the Seanad Public Consultation Committee (9 July 2019), *Travellers Towards a More Equitable Ireland Post-Recognition: Discussion*.

227 McGinnity et al., *Monitoring Report on Integration 2018*, p.76. Articles 16.1.1° and 18.2 of the Constitution of Ireland stipulate that only Irish citizens are eligible to be elected to Parliament in a general election.

228 See Seanad Public Consultation Committee, *Travellers Towards a More Equitable Ireland Post-Recognition*. Martin Collins and Rosaleen McDonagh of Pavee Point and Kathleen Sherlock of Mincéirs Whiden called for seats in Seanad Éireann (upper house of Parliament) to be reserved for Traveller candidates. See also, Traveller Visibility Group Cork (January 2018), *Submission to the Office for the Promotion*

However, the Commission notes that despite a commitment in the *National Action Plan Against Racism 2005–2008* to consider the reservation of a seat in Seanad Éireann for a cultural and minority ethnic representative,<sup>229</sup> due consideration of such a measure is not apparent in the government's current Seanad reform agenda.<sup>230</sup>

Minority ethnic women face additional barriers to political participation, including due to language and gender-based discrimination, sexist stereotyping, political inexperience, limited access to campaign funding, work commitments, and the lack of childcare provisions.<sup>231</sup> The Commission notes the successes that have been achieved following the introduction of gender quotas in party candidate selection.<sup>232</sup> However, women

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*of Migrant Integration/Department of Justice & Equality on the State's Draft Combined 5th 6th & 7th Report in Response to the Recommendations of the United Nations Committee on the Elimination of Racial Discrimination*, p.2.

229 Department of Justice, Equality, and Law Reform (2005), *Planning for Diversity: The National Action Plan Against Racism 2005–2008*, measure 9.2.1, p.147.

230 In April 2019, the government considered the *Report of the Implementation Group on Seanad Reform 2018*. See *Dáil Debates (11 June 2019), Seanad Reform*. The Implementation Group's terms of reference were to consider and report on the implementation of the recommendations made in the Report of the Working Group on Seanad Reform 2015, including 'to consider whether any specific variations on [the Working Group's] recommendations were desirable or necessary.'

However, neither the Working Group nor the Implementation Group made recommendations regarding measures to ensure minority ethnic community representation in the Seanad, despite the fact that 'many of the submissions made to the Working Group contained suggestions that An Taoiseach should be mindful of unrepresented minorities ... in making his/her nominations' to the Seanad. See *Report of the Working Group on Seanad Reform 2015*, p.29.

231 Coppieters Foundation and the Unrepresented Nations and Peoples Organisation (2019), *Minority Women in Politics: The Political Participation and Representation of Minority and Migrant Women in Europe*, pp.101–105.

232 There was a 40% increase in the number of women parliamentarians (TDs) elected in the first election where gender quotas applied, the 2016 general election. See F.

from politically underrepresented groups, such as minority ethnic communities, continue to remain marginalised. In particular, concerns have been raised about the low levels of political participation by Traveller women and migrant women.<sup>233</sup> The Commission has recommended that capacity training and mentoring workshops be provided for migrant women and Traveller women to redress their underrepresentation in politics.<sup>234</sup>



**The Commission recommends that the government's proposed Electoral Commission<sup>235</sup> be mandated to promote more equal political participation of groups, including minority ethnic communities.<sup>236</sup>**



**The Commission recommends that the State undertake additional positive**

**action measures to enable the political participation of minority ethnic groups, such as the introduction of reserved seats in Parliament and local government.**



**The Commission recommends that the State introduce a quota system for minority ethnic candidates in political party candidate selection, as a complementary measure to the introduction of gender quotas.<sup>237</sup>**



**The Commission recommends that special measures to support engagement in public and political life should be designed and implemented with the active participation of the communities they concern and should include targeted interventions for specific minority ethnic groups, for example, women.**

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Buckley (2016), 'The 2016 Irish election demonstrated how gender quotas can shift the balance on female representation'. The Electoral (Amendment) (Political Funding) Act 2012 introduced the quotas, providing that in order to secure State funding, political parties are required to ensure that 30% of their election candidates are female.

233 IHREC (January 2017), *Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women*, p.73.

234 IHREC, *Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women*, p.74.

235 In July 2019, the government announced the commencement of work on the establishment of an Electoral Commission. The proposed body will bring together several electoral functions in an independent statutory body and will also include a new research and advisory function. See Department of Housing, Planning, and Local Government (19 July 2019), 'Government approval for the establishment of an electoral commission'.

236 IHREC (2019), 'Response to the Public consultation on a regulatory impact analysis on the establishment of an electoral commission', pp.9–12.

## Standards in public office and political discourse

The Commission notes that 30 independent UN experts have collectively raised their

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237 The Commission notes reports in 2018 that the Minister of State with special responsibility for local government and electoral reform, Deputy John Paul Phelan, was working on a bill requiring political parties to fill 40% of their nominations with women, migrants, and people from ethnic minorities under a new local election quota system. This bill has not been advanced to date. See E. Loughlin, 'Quota system targets migrants, women and minorities', *The Irish Examiner*.

alarm about the recent increase in public figures dehumanising migrants and other minority groups, including for their political gain.<sup>238</sup> It wishes to alert the Committee to its concerns about political discourse in Ireland that may serve to exclude minority groups from public life.<sup>239</sup>



## Thirty independent UN experts have collectively raised their alarm about the recent increase in public figures dehumanising migrants and other minority groups, including for their political gain.

In 2017, a local government councillor and member of the main party in government disseminated anti-Muslim messages on social media.<sup>240</sup> In the 2018 Irish presidential election contest, a candidate publicly denied that Travellers have a separate ethnic identity and stated that Travellers are 'basically people camping in someone else's land.'<sup>241</sup> The Commission also notes

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238 Office of the High Commissioner for Human Rights (23 September 2019), 'Hate speech: UN experts make joint call for action by states and social media firms'.

239 For further commentary on hate crime and hate speech, see section 6.

240 C. Finn (8 September 2017), 'Fine Gael councillor to face disciplinary hearing over comments about Islam', *The Journal*. The party sanctioned the councillor by removing him from the whip for a period of 12 months, meaning he was not allowed to represent the party in any political forum during this time. See J. Carr (2017), 'Islamophobia in Ireland: National Report 2017', in E. Bayrakli and F. Hafez (eds.) (2018), *European Islamophobia Report 2017*.

241 See H. McGee (27 October 2018) 'How the presidential campaign went wrong for four out of six candidates', *The Irish Times*.

the prejudicial and discriminatory comments made by a member of the Irish Parliament at a recent public meeting on the opening of a direct provision centre, when he referred to refugees from Africa as 'economic migrants' seeking to 'sponge off the system here in Ireland.'<sup>242</sup> The Commission is of the view that while political debates should be free and open, they should not be characterised by a political discourse that is of a discriminatory and racist nature.<sup>243</sup>

Considering the Committee's recognition of the important role to be played by public officials in rejecting hate speech,<sup>244</sup> the State should take measures to address the use of discriminatory rhetoric in political discourse by public officials, election candidates, and elected representatives.

In this regard, appropriate measures include codes of conduct that prohibit the use or endorsement of prejudicial and discriminatory discourse by public officials and elected representatives.<sup>245</sup> While the current *Civil Service Code of Standards and Behaviour* prohibits the use of such speech by public officials,<sup>246</sup>

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242 S. Murray (13 September 2019), 'Taoiseach calls on Galway TD to withdraw remarks made at direct provision centre public meeting', *The Journal*.

243 The Committee of Ministers of the Council of Europe defines hate speech as 'all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.' See Council of Europe (1997), *Recommendation No. R(97) 20 of the Committee of Ministers to Member States on 'Hate Speech'*.

244 The Committee (2013), *General Recommendation No. 35: Combatting Racist Hate Speech*, CERD/C/GC/35, para. 37.

245 ECRI (2016), *General Policy Recommendation No. 15*, p.7.

246 The code requires public officials 'to ensure non-

the Commission notes that the codes of conduct in place for officeholders and members of Parliament do not do so.<sup>247</sup>

To avoid using prejudicial and discriminatory speech, and to challenge its use by others, public officials must be able to recognise it and the prejudice of which it is symptomatic, express sympathy and support for its targets, and articulate its harm to society as a whole.



**The Commission recommends that codes of conduct for public officials and election candidates should clearly prohibit the use or endorsement of prejudicial and discriminatory discourse. These codes should provide for appropriate sanctions for breach of their conditions.**



**The Commission recommends that public officials and elected representatives be provided with training in equality and non-discrimination to ensure they are equipped to recognise and respond effectively to prejudicial and discriminatory discourse and hate speech.**

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discriminatory language is used in all communications, both internal and external, including display material and documents in electronic form.' See SIPO (2008), *Civil Service Code of Standards and Behaviour*, para. 10.

247 See SIPO (2003), *Code of Conduct for Office Holders, as drawn up by the Government pursuant to section 10(2) of the Standards in Public Office Act 2001*; SIPO (2002), *Code of Conduct for Members of Dáil Éireann other than Office Holders*; and SIPO (2002), *Code of Conduct for Members of Seanad Éireann*.

Regarding the use of discriminatory rhetoric in election campaigns, the Commission is of the view that this can be addressed by the development and promotion of guidance on standards for political candidates, as has been recommended by regional human rights<sup>248</sup> and equality bodies<sup>249</sup> and as has been done in the UK.<sup>250</sup> In a submission to government, the Commission has recommended that the proposed Electoral Commission be mandated to develop and promote such guidance and

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248 See ECRI (2015), *General Policy Recommendation No. 15 on Combating Hate Speech*, para 6. ECRI recommends that States encourage political parties to sign the *Charter Of European Political Parties For A Non-Racist Society*. By adopting the Charter, political parties commit 'to refuse to display, to publish or to have published, to distribute or to endorse in any way views and positions which stir up or invite, or may reasonably be expected to stir up or to invite prejudices, hostility or division between people of different ethnic or national origins or religious beliefs, and to deal firmly with any racist sentiments and behaviour within its own ranks.'

249 See Equinet (2019), *Recommendation on Promoting Equality and Combatting Discrimination in Election Campaigns*. The recommendation calls on political parties and candidates to refrain from using discriminatory language or hate speech and from proposing discriminatory laws and policies.

250 The Commission notes the Committee's recommendation to the UK that comprehensive measures be adopted 'to combat racist hate speech and xenophobic political discourse [...] and ensure that public officials not only refrain from such speech but also formally reject hate speech and condemn the hateful ideas expressed, so as to promote a culture of tolerance and respect.' See The Committee (2016), *Concluding Observations on the Combined Twenty-First to Twenty-Third Periodic Reports of the United Kingdom of Great Britain and Northern Ireland*, CERD/C/GBR/CO/21-23, para 16(d). The Equality and Human Rights Commission in the UK has since developed and promoted voluntary principles on standards in political discourse for political candidates. These principles call on political parties to commit to ensuring that their members refrain from conduct that generates hostility, discrimination, prejudice, or division; is abusive or denigrating; promotes stereotypes; or uses false, erroneous, or misleading information. See Equality and Human Rights Commission (2017), '*Voluntary principles on standards for political discourse*'.



standards for political candidates during election and referendum campaigns.<sup>251</sup>



**The Commission recommends that the government's proposed Electoral Commission be mandated to uphold standards in political discourse during election and referendum campaigns, with a specific focus on discourse relating to minority ethnic groups.**

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251 IHREC, *Response to the Public Consultation on a Regulatory Impact Analysis on the Establishment of an Electoral Commission*, p.6.

# Section 8

## **Education**

*(Articles 5(d)(vii), 5(e)(v), 7)*



The Commission notes the constitutional provision that the State recognises and affirms the natural and inalienable rights of *all children* and shall, as far as practicable, by its laws protect and vindicate those rights (emphasis added).<sup>252</sup> One such right, as expressly recognised by the Constitution, is the right to education. The State has committed to providing free primary education and to ensuring that children receive a certain minimum education.<sup>253</sup>

In light of the constitutional right to education, this section considers the extent to which the primary and secondary education system is inclusive and culturally respectful to all, considering access issues, the experiences of

minority ethnic children, educational outcomes, staff and school diversity, bullying, and the curriculum in place. It also examines the particular barriers faced by minority ethnic groups in accessing further and third-level education.

## Primary and secondary education

### Access to and participation in education

The Education (Admissions to Schools) Act 2018 permits 25% of the places in a school that is oversubscribed to be reserved for children or grandchildren of past pupils.<sup>254</sup> The Commission has repeatedly called on the State to ensure equity of access to publicly funded schools.<sup>255</sup> It is concerned that the application of this past-pupil criterion will act as a barrier, particularly for children from Traveller families and families of migrant origin in accessing education and may result in their segregation in

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254 See section 62(10)(b) of the Education Act 1998, as amended by the Education (Admission to Schools) Act 2018.

255 See IHREC (November 2016), *Observations on the Education (Admission to Schools) Bill 2016* and *Mary Stokes v Christian Brothers High School Clonmel & Ors* (December 2012). The Committee on the Rights of the Child also referred to this as a discriminatory policy in 2016. See Committee on the Rights of the Child, *Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland*, p.14.

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252 See Article 42A(1) of the Constitution of Ireland.

253 See Article 42 of the Constitution of Ireland.

specific schools.<sup>256</sup> Research has indicated a pattern of segregation with students from minority ethnic groups being more likely to attend large urban schools that are less likely to be oversubscribed and have a concentration of students who experience socio-economic disadvantage.<sup>257</sup>



**The Commission recommends that the use of a connection with a former student of the school as a criterion in the admission of a child is prohibited.<sup>258</sup>**

The Committee on the Rights of the Child highlighted in 2016 that it is 'deeply concerned about the structural discrimination against Traveller and Roma children, including as regards their access to education' and it called on the State to undertake concrete and comprehensive measures to address this.<sup>259</sup> The new

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256 IHREC (January 2017), *Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's combined sixth and seventh reports*, pp.85–87 and IHREC (16 November 2016), "'Segregation Out' of Traveller, immigrant children & children of people with disabilities from schools through preferential access for others should be prohibited'. In 2011, approximately seven out of ten Traveller children (67.3%) lived in families where the mother had either no formal education or a primary education only. See Department of Children and Youth Affairs (2016), *State of the Nation's Children*, p.22.

257 For example, 25% of children whose mothers migrated from Africa are reported as attending the most disadvantaged schools, compared to 9% of children of Irish-born mothers. M. Darmody, F. McGinnity, and G. Kingston (October 2016), 'The experiences of migrant children in Ireland', pp.182–183.

258 For an overview of the previous recommendations by the Commission in this area, see IHREC, 'Segregation Out' and IHREC (24 May 2011), 'Increase diversity in Irish schools to meet human rights obligations'.

259 Committee on the Rights of the Child, *Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland*, p.16.

*National Traveller and Roma Inclusion Strategy 2017–2021* includes several specific actions relating to improving the educational outcomes of Traveller and Roma children.<sup>260</sup> However, separate achievement data is not collected for these children, so it is not possible to establish the impact of any measures adopted.<sup>261</sup>

Low levels of participation among the Traveller and Roma community in early childhood education, including due to a lack of awareness about the availability of free preschool, can result in educational disadvantage before the children enter primary school.<sup>262</sup> Census 2016 demonstrates that the level of education among Travellers continues to remain well below that of the general population throughout school, with just 13.3% of girls from the Traveller community being educated to upper secondary school or above compared with 69.1% of the general population. In 2016, nearly 6 in 10 Traveller men (57.2%) had left school at primary level, in sharp contrast to the general population (13.6%).<sup>263</sup> Despite the educational disadvantage experienced, the Commission notes regressive measures relating to specialised supports such

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260 Department of Justice and Equality, *National Traveller and Roma Inclusion Strategy 2017–2021* and Department of Education and Skills (2017), *DEIS Plan 2017 – Delivering Equal Opportunity in Schools*.

261 Government of Ireland (October 2019), *16th National Report on the Implementation of the European Social Charter*, pp.95–96.

262 ECRI, *Report on Ireland (fifth monitoring cycle)*, p.24 and D. Watson, O. Kenny, and F. McGinnity (2017), *A Social Portrait of Travellers in Ireland* (ESRI), p.6.

263 CSO, *Census of Population 2016 – Profile 8: Irish Travellers, Ethnicity and Religion*. See also, Watson et al., *A Social Portrait of Travellers in Ireland*, pp.31, 34. In a recent survey with the Traveller community, 37% of respondents had left school at primary level and only 16% had completed their Leaving Certificate. The Community Foundation for Ireland, *B&A Traveller Community National Survey*, pp.89, 115.

as the discontinuation of the Visiting Teacher Service for Travellers in 2011.<sup>264</sup>



**Low levels of participation among the Traveller and Roma community in early childhood education, including due to a lack of awareness about the availability of free preschool, can result in educational disadvantage before the children enter primary school.**

The Commission is very concerned about the emerging and consistent reports of the use of reduced timetables for Traveller children, including as a disciplinary measure or in response to challenging behaviour when there is a lack of learning supports and resources available.<sup>265</sup> This measure involves schools reducing children's attendance at school to as little as 30 minutes or a few hours per day in the absence of appropriate monitoring and guidelines from the Department of Education and Skills.<sup>266</sup>

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264 ECRI, *Report on Ireland (Fifth Monitoring Cycle)*, p.24 and Department of Education and Skills (22 March 2018), *Submission to the Joint Committee on Education and Skills on Barriers to Education Facing Vulnerable Groups*, pp.7–8.

265 Barnardos (2018), *Barriers to Education Facing Vulnerable Groups*, p.2; Joint Committee on Education and Skills (26 March 2019), *Traveller Education: Discussion* and Joint Committee on Education and Skills (June 2019), *Interim Report on the Committee's Examination on the Current Use of Reduced Timetables*, pp.10, 15.

266 Barnardos, *Barriers to Education Facing Vulnerable Groups*, p.2; Joint Committee on Education and Skills, *Interim Report on the Committee's Examination on the Current Use of Reduced Timetables*, p.6; K. Holland (13 May 2019), 'Children on "reduced timetables" being denied

The National Traveller Women's Forum has highlighted that reduced timetables have been used for prolonged periods for Traveller children who are on a waiting list for psychological assessments and supports.<sup>267</sup>

Research has also highlighted school attendance and completion rates as an issue for the Roma community,<sup>268</sup> with service providers calling for additional supports and resources to be put in place.<sup>269</sup> The inadequate and overcrowded nature of the accommodation that many families are living in has been identified as impacting on the participation of Roma children in school.<sup>270</sup> Furthermore, many Roma children face significant financial barriers to education and are often deemed ineligible for supports, such as the Back to School Clothing and Footwear Allowance, due to

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*education'*, *The Irish Times*. The Commission notes the recent commitment from the Minister for Education and Skills that new guidelines should be in place by the beginning of 2020 to ensure that school pupils will only be subject to reduced timetables in exceptional cases. However, the failure of the guidelines to address the issue of Travellers being disproportionately affected by reduced timetables has been highlighted. See Department of Education and Skills (23 September 2019), 'Minister for Education and Skills invites education partners to give views on proposed guidelines on reduced timetables', and Joint Committee on Education and Skills (24 September 2019), *Interim Report on Reduced Timetables: Minister for Education and Skills*.

267 Joint Committee on Education and Skills, *Interim Report on the Committee's Examination on the Current Use of Reduced Timetables*, p.14.

268 In the 2016/2017 academic year, 1,323 pupils in primary school indicated that they were of Roma ethnic or cultural background. Note, the level of non-response or 'no consent' response to the question on ethnicity was close to 30%. N. Tickner (February 2017), *Interesting Facts – First Look at Data from POD, 2016/2017*.

269 Pavee Point Traveller and Roma Centre and Department of Justice and Equality, *Roma in Ireland – A National Needs Assessment*, p.113.

270 Pavee Point Traveller and Roma Centre and Department of Justice and Equality, *Roma in Ireland – A National Needs Assessment*, p.114.

the Habitual Residence Condition (HRC).<sup>271</sup>

The Commission notes that the Department of Education and Skills has confirmed the establishment of a two-year pilot programme, to address the gap in educational outcomes for Traveller and Roma children.<sup>272</sup>



**The Commission recommends that targeted educational supports must be available for Traveller and Roma children from the early years and throughout school, including through the timely evaluation of the proposed pilot programme and the restoration of the Visiting Teaching Service for Travellers.**



**The Commission recommends the introduction of appropriate safeguards to monitor the use of reduced timetables and to ensure that they are not used in place of the provision of appropriate supports in any circumstances.**

In Irish primary schools, there are significant gaps in the reading proficiency between children whose mothers were born in Ireland and those whose mothers were

271 For further information on the HRC, see section 9. Children's Rights Alliance (2019), *Report Card 2019*, pp.120–121 and Pavee Point Traveller and Roma Centre and Department of Justice and Equality, *Roma in Ireland – A National Needs Assessment*, pp.110–111.

272 The Committee, *Combined Fifth to Ninth Periodic Reports Submitted by Ireland under Article 9 of the Convention*, p.9.

born in Eastern Europe, Asia, and Africa.<sup>273</sup> 'Children from immigrant families' also experience greater difficulties when transitioning to second-level education, and are less likely to have large groups of friends and are more socially isolated than their Irish peers.<sup>274</sup> Parents, young people, and education providers participating in a recent study identified language as the biggest educational issue, including due to the inadequate resourcing of English language support.<sup>275</sup> The number of English language support teachers was cut significantly during the economic recession, and they have not been reinstated in the intervening period.<sup>276</sup> Teachers have reported particular language difficulties among children whose mothers were born in Eastern Europe (40% having difficulties), Asia (36%) and to a lesser extent, children whose mothers were born in Africa (24%).<sup>277</sup>



**The Commission recommends the consistent provision of additional English language supports for children and families who require it.**

Concerning children in the asylum process, as of September 2019, 1,677 children were

273 M. Darmody et al., 'The experiences of migrant children in Ireland', p.181.

274 E. Smyth (2017), *Off to a Good Start? Primary School Experiences and the Transition to Second-Level Education* (Growing Up in Ireland, ESRI), pp.30, 37, 41.

275 M. Ní Raghallaigh, K. Smith, and J. Scholtz (September 2019), *Safe Haven: The needs of refugee children arriving in Ireland through the Irish Refugee Protection Programme – An Exploratory Study*, pp.46–48.

276 K. Bielenberg (24 May 2017), 'Migrants need more help with English', *The Irish Independent*.

277 F. McGinnity, M. Darmody, and A. Murray (September 2015), *Academic Achievement among Immigrant Children in Irish Primary Schools* (Working Paper No. 512), p.8.

residing in direct provision centres and 278 children in emergency accommodation centres across Ireland.<sup>278</sup> Living in such accommodation can have a particularly negative impact on children’s educational attendance, engagement, and experience, including due to their poor physical or mental health, low self-esteem, exhaustion, and feelings of isolation.<sup>279</sup> The unavailability of appropriate spaces to study and complete homework has also been identified as an issue in a consultation carried out with children living in direct provision.<sup>280</sup>

The Commission is particularly concerned about the lack of educational access for children in emergency accommodation centres, including due to the temporary and remote nature of the accommodation and the lack of information provided to families about registering for a school place.<sup>281</sup> In February 2019, the Commission met with families living in an emergency accommodation centre and was informed that none of the children were attending school or preschool.

The Ombudsman for Children’s Office (OCO) has expressed its concern about the provision of education for children who arrived in Ireland under the Irish Refugee

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278 Department of Justice and Equality (24 September 2019), *Direct Provision Data* and Dáil Éireann Debate (1 October 2019), *International Protection*.

279 Irish Primary Principals Network (21 February 2019), ‘Schools becoming a safe haven for Ireland’s 4,000 homeless children’. This issue was also raised at the Commission’s Civil Society Forum on 27 May 2019.

280 Department of Children and Youth Affairs (2015), *Report of DCYA Consultations with Children and Young People Living in Direct Provision*.

281 Irish Refugee Council (July 2019), *The Reception Conditions Directive: One Year On*, pp.58–59 and C. Thomas (5 May 2019), ‘“He has no one to talk to”: Concerns raised around potential lack of schooling for 86 children of asylum seekers’, *The Journal*.

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**The unavailability of appropriate spaces to study and complete homework has also been identified as an issue in a consultation carried out with children living in direct provision.**

Protection Programme and are living in emergency reception and orientation centres (EROCs). Schools in EROCs are not recognised by the Department of Education and Skills and, according to the OCO, this makes it much more difficult for them to access the additional supports needed.<sup>282</sup> It also means that such schools are not subject to inspections by the Department, although measures are being adopted to address this issue.<sup>283</sup>



**The Commission recommends the introduction of additional support services to ensure that children in the asylum process are placed in local mainstream schools without delay, regardless of whether they are in emergency accommodation.**<sup>284</sup>

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282 Ombudsman for Children (20 February 2019), ‘*Equal education for refugee children*’.

283 Ní Raghallaigh et al., *Safe Haven*, pp.44–45.

284 A September 2019 report has highlighted that the Department of Education and Skills and the Irish Refugee Protection Programme are putting in place provision to ensure that children attend on-site EROC schools for no longer than three months, at which point they will transfer to local schools. See Ní Raghallaigh et al., *Safe Haven*, p.54.

## Diversity in education

The significant changes in the demographic makeup of Irish society during the reporting period are reflected in the diversity of students attending Irish schools. However, there is a diversity gap between the student and teacher populations in Ireland, with over 99% of entrants to primary teacher education identifying as 'White Irish Settled'.<sup>285</sup> Furthermore, only 2% of secondary school teachers come from minority ethnic backgrounds.<sup>286</sup> It has been reported that teachers who qualified abroad face several administrative barriers, as well as other difficulties in accessing employment.<sup>287</sup> The Commission welcomes the introduction of the Migrant Teacher Project in 2017 as an important step in addressing these issues. It provides information, advice, and training to teachers who have qualified outside of Ireland, to help them to continue their profession in Irish primary and post-primary schools.<sup>288</sup>

As recommended by the Commission, the Education (Admissions to Schools) Act 2018 gives effect to the principle that no child should be given preferential access to a publicly funded school based on their religion. This is with due regard to the particular requirements of children of minority faiths.<sup>289</sup> While the Commission

has welcomed commitments by the State to establish more multid denominational schools,<sup>290</sup> it shares the Committee's concerns about the slow progress to date.<sup>291</sup> In the 2017/2018 academic year, 95.8% of primary schools in Ireland had a religious patron. In 4 of 26 counties in Ireland, there is no alternative to denominational primary school provision.<sup>292</sup> In 2017, 48.3% of post-primary schools had a Catholic ethos, while 42.5% were interdenominational<sup>293</sup> and 5.5% were multid denominational.<sup>294</sup> Overall, there is no clear, long-term plan as to how the State's targets on the divestment and patronage of schools will be met.<sup>295</sup>

Furthermore, religious teaching continues to be included across other subjects throughout the school day due to the integrated nature of the curriculum.<sup>296</sup>

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welcomed by Irish human rights and equality commission'.

290 IHREC, *Report to UN Committee on Economic, Social and Cultural Rights on Ireland's Third Periodic Review*, p.87.

291 The Committee (4 April 2011), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland*, p.6. The Committee on the Rights of the Child raised similar concerns in 2016 and called on the State to expeditiously undertake concrete measures to significantly increase the availability of non-denominational or multi-denominational schools. See Committee on the Rights of the Child, *Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland*, p. 14.

292 In 2017/2018, 90% of all primary schools remained under the patronage of the Catholic Church and 6% were run by minority religions. See Children's Rights Alliance, *Report Card 2019*, pp. 19–20.

293 According to the Department of Education and Skills, an inter-denominational school is under the patronage or trusteeship of more than one religious faith community. See Department of Education and Skills, *Diversity of Patronage*.

294 Information provided by the Department of Education and Skills on 24 April 2019.

295 Children's Rights Alliance, *Report Card 2019*, p.18.

296 Children's Rights Alliance, *Report Card 2019*, p.22. In its observations on the Education (Admissions to School) Bill 2015, the Commission recommended that a legislative amendment should require schools to have regard to providing information in relation to religion in an objective, critical, and pluralistic manner that avoids indoctrination.

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285 M. Heinz and E. Keane (2018), 'Socio-demographic composition of primary initial teacher education entrants in Ireland', *Irish Educational Studies*, 37(4), pp.523–543.

286 A. McMahon (10 September 2019), 'The changing face of teaching in Ireland', *The Irish Times*.

287 McMahon, 'The changing face of teaching in Ireland'.

288 This project was established by the Marino Institute of Education with the support of the Department of Justice and Equality. While 140 people applied to enrol, the course could only accommodate 40 people. For more information, see [https://www.mie.ie/en/Research/Migrant\\_Teacher\\_Project/](https://www.mie.ie/en/Research/Migrant_Teacher_Project/).

289 IHREC (9 May 2018), 'Proposals to end "baptism barrier"





**The Commission recommends increased diversity in the provision of primary and secondary schools within educational catchment areas throughout the State.<sup>297</sup>**

During the Commission's recent consultations on CERD, the issue of racist bullying in schools was highlighted.<sup>298</sup> While the crucial role of teachers in challenging such bullying was referenced, there were also calls for the issue of racism within the teaching profession to be addressed. In particular, both Traveller and Roma children are significantly more likely to have negative experiences in school, including experiences of bullying, racism, and discrimination, and this can result in them hiding their identity or leaving school early.<sup>299</sup> In recent research conducted with the Traveller community, 40% of respondents indicated that either they or their children had been bullied at school due to their Traveller identity; 76% of respondents also reported that Traveller culture is not visible in the school curriculum.<sup>300</sup>

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See IHREC, *Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland's Combined Third and Fourth Periodic Reports*, p.29.

297 For an overview of the previous recommendations by the Commission in this area, see IHREC, 'Segregation Out' and IHREC, 'Increase diversity in Irish schools to meet human rights obligations'.

298 A recent report has also noted incidents of racist bullying and name-calling (such as 'ISIS') in school settings. See Ní Raghallaigh et al., *Safe Haven*, p.66.

299 See Pavee Point Traveller and Roma Centre and Department of Justice and Equality, *Roma in Ireland – A National Needs Assessment*, p.53; Pavee Point (April 2019), *Submission to the Joint Committee on Education and Skills on the Current Use of Reduced Timetables*; and Watson et al., *A Social Portrait of Travellers in Ireland*, p.4.

300 The Community Foundation for Ireland, *B&A Traveller Community National Survey*, pp.89, 115.

Article 7 of CERD highlights the important role of teaching, education, culture, and information in the promotion of interethnic understanding and tolerance.<sup>301</sup> While the Commission supported the development of the Yellow Flag Programme,<sup>302</sup> it is concerned that issues relating to race, prejudice, and cultural diversity are still not adequately addressed within teacher education programmes and the policies and curriculum in Irish schools.<sup>303</sup> The initial teacher education programmes for primary and secondary level have inclusive education as a mandatory element.<sup>304</sup> However, the Oireachtas Joint Committee on Education and Skills has called for ongoing in-service teacher education on 'how to practice equality and inclusion for vulnerable groups.'<sup>305</sup> Furthermore, the Advisory Committee on the Framework Convention for the Protection of National Minorities has highlighted the poor

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301 The Committee, *General Recommendation No. 35*, p.3.

302 The Yellow Flag programme is focused on supporting primary and secondary schools to become more inclusive of all cultures and ethnicities, celebrate diversity, and challenge racism and discrimination. See IHREC and Irish Traveller Movement (2015), *Intercultural Training for Yellow Flag Schools*.

303 Issue raised at the Commission's Be Heard on CERD consultation on 30 March 2019. As an example, young people have highlighted the lack of reference in the curriculum to African history and the significant lack of knowledge among the public about Africa. See also, Ní Raghallaigh et al., *Safe Haven*, p.49.

304 Department of Education and Skills, *Submission to the Joint Committee on Education and Skills*, pp.7–8.

305 Joint Committee on Education and Skills (May 2019), *Report on Education Inequality & Disadvantage and Barriers to Education*, p.27; K. Lynch (March 2018), *Written Submission to the Joint Oireachtas Committee on Education and Skills: Barriers to Education Facing Vulnerable Groups*, p. vii. Furthermore, despite policy commitments to provide anti-racist and intercultural training and professional development for teachers, it was recently highlighted in the Seanad that these measures are not being implemented. See Seanad Public Consultation Committee, *Travellers Towards a More Equitable Ireland Post-Recognition: Discussion*.

knowledge and appreciation among the majority of the population about the history and culture of Irish Travellers.<sup>306</sup>



**The Commission recommends the introduction of mandatory programmes on promoting understanding and combatting racism and on Traveller history and culture<sup>307</sup> for inclusion in the school curriculum and initial and continuous teacher education programmes.**



**The Commission recommends the inclusion of specific actions in existing anti-bullying programmes targeting racially motivated bullying.**

## Further and third-level education and training

The Commission notes that *Ireland's National Skills Strategy 2025* has a specific focus on active inclusion to support participation in education and training by disadvantaged and underrepresented groups.<sup>308</sup> The Commission also welcomes

306 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Ireland*, p.20.

307 The Commission notes that the Traveller Culture and History in Education Bill 2019, introduced by the Private Member Colette Kelleher TD, provides for the inclusion of Traveller culture and history in the State curriculum. It was passed by the Seanad on 16 October 2019 and has progressed to Dáil Éireann.

308 Department of Education and Skills (January 2016), *Ireland's National Skills Strategy 2025*, p.72, Objective 5.

that several Irish universities have recently become designated 'Universities of Sanctuary' for efforts made to include asylum seekers and refugees. This initiative offers a small number of financial scholarships and other supports to students living in direct provision.<sup>309</sup>

However, the ongoing barriers faced by migrants, refugees, and asylum seekers who wish to pursue education or training in Ireland include the lack of availability of affordable childcare and transport, the uncertainty or short-term nature of their visa or residential status, the lack of recognition of their existing qualifications, and the limited availability of beginner or upskilling English language classes.<sup>310</sup>

Concerning access to further and third-level education, the operation of the current system can also present financial and administrative barriers for students from migration, refugee, and asylum-seeking backgrounds.<sup>311</sup> Firstly, accessible information on the types of education open to these groups, including information on grants and financial assistance available,

309 At the time of writing, NUI Galway, Dublin City University, University of Limerick, University College Dublin, University College Cork, and Athlone Institute of Technology had 'sanctuary designation' while Maynooth University is pursuing a similar status. Trinity College Dublin is also offering a similar scholarship programme. See O. Murnaghan (19 September 2019), '*NUI Galway becomes a University of Sanctuary*'.

310 Spiritan Asylum Services Initiative (SPIRASI) (2018), *Barriers to Education Facing Vulnerable Groups and R. Mooney and C. O'Rourke (July 2017), Barriers to Further Education and Training with Particular Reference to Long Term Unemployed Persons and Other Vulnerable Individuals*, pp.17, 20, 39. These issues were also raised at the Commission's Be Heard on CERD consultation on 30 March 2019 and the Civil Society Forum on 27 May 2019.

311 This is recognised by the Department of Education and Skills. See Department of Education and Skills, *Submission to the Joint Committee on Education and Skills*, pp.9–10.

is poorly distributed.<sup>312</sup> Access to the Free Fees Initiative is subject to criteria of nationality or immigration status, along with an ordinary residence requirement of three out of five years preceding entry to third-level education.<sup>313</sup>

The Department of Education and Skills also introduced the Pilot Student Support Scheme in 2015 to support school leavers who are in the international protection system to access further and higher education. The Commission welcomes that the Department has recently lowered the eligibility criteria for this scheme, requiring applicants to have spent three years in the education system as opposed to five years as was previously required.<sup>314</sup> However, the impact of the scheme in previous years was significantly limited due to the restrictive interpretation of the eligibility requirements. By 2018, only five people had been granted support from a total of 59 applicants.<sup>315</sup> For students who do not meet the eligibility requirements for these initiatives, including undocumented students, the high cost of fees would be widely prohibitive. The provision of student financial support continues to be underpinned by the Refugee Act 1996, despite the introduction of the International Protection Act 2015. It has been brought to the Commission's

attention that prospective students with a status under the 2015 Act are being denied support in practice, on the basis that their documentation does not align with the regulations in place.<sup>316</sup> There are also reports that since the introduction of the 2015 Act, asylum seekers granted leave to remain are no longer eligible for financial support under the Student Universal Support Ireland scheme.<sup>317</sup>

Furthermore, despite the introduction of specific initiatives including the Higher Education Access Fund, the participation of the Traveller community in further and third-level education remains comparatively low;<sup>318</sup> 167 Travellers held a third-level qualification in 2016, up from 89 in 2011.<sup>319</sup>

Concerning training opportunities, there is no nationally collected data on the participation of minority ethnic groups in apprenticeships.<sup>320</sup> Such opportunities can be particularly important for refugee young people due to the gaps in their education and the difficulties they can face in accessing third-level education.<sup>321</sup> A recent review of the apprenticeship programme reported that 85% of

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312 SPIRASI (2018), *Barriers to Education Facing Vulnerable Groups*.

313 For further information, see the 'Higher Education Authority'.

314 E. O Kelly (4 June 2019), 'Criteria eased for asylum seekers to attend third level', RTÉ. The Commission had previously highlighted this issue in 2017. See IHREC, *Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Reports*, p.87.

315 Irish Refugee Council (28 November 2018), 'IRC Education Fund highlights barriers in access to further education for people seeking asylum'.

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316 This issue was raised at the Civil Society Forum on 27 May 2019. See also, the Student Support Act 2011.

317 The SUSI grant scheme is the main financial support scheme for students. See E. O'Kelly (14 September 2019), 'Refugee Council critical of asylum seeker education restrictions', RTÉ.

318 Department of Education and Skills, *Submission to the Joint Committee on Education and Skills*, p.7. See also, Seanad Public Consultation Committee, *Travellers Towards a More Equitable Ireland Post-Recognition: Discussion*.

319 CSO, *Census of Population 2016 – Profile 8: Irish Travellers, Ethnicity and Religion*.

320 SOLAS (November 2018), 'Review of pathways to participation in apprenticeship', p.3; National Youth Council of Ireland (June 2019), *NYCI Pre-Budget Submission 2020*, p.12.

321 Ní Raghallaigh et al., *Safe Haven*, p.57.

apprentices in 2018 were young men under 25 years of age. There were no examples cited by participants of apprentices with a Traveller background and only a few known cases of apprentices with a migrant background. A lack of information and guidance was identified as a disadvantage to prospective apprentices, particularly where they have no contact in the community to support them in identifying opportunities and navigating the system.<sup>322</sup>



**The Commission recommends that the State introduce practical supports to increase the accessibility of apprenticeships to people from minority ethnic groups, including the adoption of specific measures for women.**



**The Commission recommends that the State consider implementing a policy similar to the Pilot Student Support Scheme to facilitate undocumented people's access to third-level education.**<sup>323</sup>



**The Commission recommends that all measures introduced to support participation in further education and third-level institutions are evaluated in line with the Public Sector Equality and Human Rights Duty to ensure their accessibility to minority ethnic groups and address any remaining administrative and financial barriers**

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322 SOLAS, 'Review of pathways to participation in apprenticeship', pp.3, 5. Note: the *Action Plan to Expand Apprenticeship and Traineeship in Ireland 2016–2020* commits to the implementation of the recommendations of this review immediately. See Department of Education and Skills (August 2017), *Access Plan to Expand Apprenticeship and Traineeship in Ireland 2016–2020*, p.18.

323 The Commission previously made this recommendation to CEDAW. See IHREC, *Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Reports*, p.87.

# Section 9

## **Employment and Economic and Social Life**

*(Articles 5(e)(i), 5(e)(iv))*



This section highlights the labour market discrimination faced by minority ethnic groups in Ireland and the structural and other barriers they face in accessing decent work, including the particular issues faced by asylum seekers. It also examines the obligation on the State to ensure the protection of the economic, social, and cultural life of minority ethnic communities.

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Travellers, Roma, and people of African descent experience significant barriers to accessing employment.

## Labour market discrimination

The Commission notes that the *Migrant Integration Strategy 2017–2020* includes several actions targeting increased employment and pathways to work.<sup>324</sup> The recent announcement by the government that spouses and partners of Critical Skills

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<sup>324</sup> Department of Justice and Equality, *The Migrant Integration Strategy 2017–2020*, pp.27–29.

Employment Permit holders will be granted immigration permission with an automatic right to work is also welcome.<sup>325</sup> However, labour market discrimination in Ireland is a consistent issue and, as discussed earlier in this submission, it demonstrates troubling attitudes to particular groups in society.<sup>326</sup> Travellers, Roma, and people of African descent experience significant barriers to accessing employment.

The Commission-funded research report, *Who Experiences Discrimination in Ireland?*, found that, compared to ‘White Irish’ respondents, Travellers are almost ten times more likely to experience discrimination in seeking work.<sup>327</sup> In 2016, the unemployment rate for Travellers was 80.2%, compared to 12.9% for the general population. Census 2016 also highlighted that only 10.1% of Traveller women and 12.6% of Traveller men list their principal economic status as ‘at work’.<sup>328</sup> In recent research conducted with 481 Travellers, 43% indicated that they had experienced discrimination on the grounds of their identity when seeking to access employment. Twenty per cent of respondents reported their previous experience of hiding their identity during a recruitment process, such as changing their address.<sup>329</sup> Furthermore, the *National*

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<sup>325</sup> The Critical Skills Employment Permit is designed to attract highly skilled individuals into the State to fill high-demand vacancies (for example, in the ICT sector), where the required skills are not readily available in the Irish/EEA labour market. See Department of Justice and Equality (6 March 2019), ‘Ministers Flanagan and Humphreys announce change to immigration arrangements for spouses and partners of critical skills employment permit holders’.

<sup>326</sup> See section 5.

<sup>327</sup> McGinnity et al., *Who Experiences Discrimination in Ireland?*, p.35.

<sup>328</sup> CSO, *Census of Population 2016 – Profile 8 Irish Travellers, Ethnicity and Religion*.

<sup>329</sup> The Community Foundation for Ireland, *B&A Traveller Community National Survey*, p.91.

*Roma Needs Assessment* found that only 17% of Roma respondents were in employment, and 79% felt that they had been discriminated against in getting a job.<sup>330</sup>

Research funded by the Commission has demonstrated that Black people also experience particularly high rates of labour market discrimination and disadvantage in Ireland.<sup>331</sup> The 2018 study, *Ethnicity and Nationality in the Irish Labour Market*, found that, in comparison to 'White Irish' people, Black people of Irish nationality were twice as likely to experience discrimination when seeking employment and 3.4 times as likely to experience discrimination in the workplace. Black people of other nationalities were five times more likely to experience discrimination when seeking employment, and over 2.5 times more likely to experience discrimination in the workplace.<sup>332</sup> Furthermore, the report, *Who Experiences Discrimination in Ireland?*, reported that women are almost twice as likely as men to report discrimination in the workplace, including in relation to pay and promotion.<sup>333</sup> The Commission is concerned about the particular and cumulative discrimination that minority ethnic women may face in the Irish labour market, including women of African descent.

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330 Pavee Point Traveller and Roma Centre and Department of Justice and Equality, *Roma in Ireland – A National Needs Assessment*, pp.51, 75.

331 F. McGinnity, R. Grotti, S. Groarke, and S. Coughlan (2018), *Ethnicity and Nationality in the Irish Labour Market*, (IHREC and ESRI), p.36; McGinnity et al., *Who Experiences Discrimination in Ireland?*, p.35.

332 McGinnity et al., *Ethnicity and Nationality in the Irish Labour Market*. The CSO also published data in July 2019 demonstrating that 14.4% of 'non-Irish persons' and 19.8% of 'persons from non-White ethnic backgrounds' reported experiencing workplace discrimination in Ireland. See CSO (04 July 2019), *Equality and Discrimination: Quarter 1 2019*.

333 McGinnity et al., *Who Experiences Discrimination in Ireland?*, p.33.



## Travellers are almost ten times more likely to experience discrimination in seeking work.

These studies reflect the *2018 Monitoring Report on Integration*, which reports that the employment rate of 'African nationals' is 45%, compared to an average of 70% for other minority national groups.<sup>334</sup> The employment rate of African women is 38%, 17% below the average female employment rate in Ireland.<sup>335</sup> While discrimination in the recruitment process has been identified as a significant contributing factor, the former exclusion of asylum seekers from the labour market and the existence of workplace racism against African people are also barriers to accessing employment and career progression.<sup>336</sup> The Commission welcomes the commitment in the *Migrant Integration Strategy 2017–2020* to examine unemployment among jobseekers of African origin.<sup>337</sup> The Commission also welcomes the recent appointment of a Diversity and Inclusion Lead in the Public Appointments Service.

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334 McGinnity et al., *Monitoring Report on Integration 2018*, pp.25–26.

335 P. J. O'Connell (2018), *Why Are So Few Africans at Work in Ireland? Immigration Policy and Labour Market Disadvantage*, p.7; McGinnity et al., *Monitoring Report on Integration 2018*.

336 McGinnity et al., *Monitoring Report on Integration 2018*; P. O'Connell and O. Kenny, 'Employment and Integration', in Barrett et al. (eds.) (2016), *Annual Monitoring Report on Integration*; G. Kingston, P. O'Connell, and E. Kelly (2013), *Ethnicity and Nationality in the Irish Labour Market: Evidence from the QNHS Equality Module 2010*; G. Kingston, F. McGinnity, and P. O'Connell (2015), 'Discrimination in the Labour Market: Nationality, Ethnicity and the Recession', *Work, Employment and Society*, 29(2), pp.213–223; and L. Michael, *Afrophobia in Ireland*, pp.25–28.

337 Department of Justice and Equality, *The Migrant Integration Strategy 2017–2020*, p.28.



**The Commission recommends that the State take concrete measures to address discrimination in the workplace, including in relation to recruitment, pay, and promotion.**

## Structural barriers to accessing the labour market

Several structural barriers also impede access to and participation in the labour market for minority ethnic groups. In most cases, civil service employment is not open to people from outside the European Economic Area (EEA) which represents a significant barrier to labour market integration. More generally, there is a lack of representation of people from minority ethnic groups across the public sector.<sup>338</sup>

The recognition of qualifications acquired abroad is also an issue.<sup>339</sup> A European directive on the recognition of foreign qualifications only applies to people from the EU, and there are often lengthy and complicated procedures in place.<sup>340</sup> Quality and Qualifications Ireland operates a system for the recognition of vocational skills accredited in other countries, and the State has recently committed to promoting this role more widely.<sup>341</sup> However, research

indicates that, in practice, difficulties in obtaining recognition in Ireland of qualifications acquired abroad can give rise to situations of under-employment and over-qualification.<sup>342</sup> The over-qualification rate for migrant workers in Ireland is 41%, compared to 29% for workers born in Ireland.<sup>343</sup>



**...difficulties in obtaining recognition in Ireland of qualifications acquired abroad can give rise to situations of under-employment and over-qualification.**

Furthermore, a lack of familiarity with the job culture and employment system in Ireland can be an issue, with participants at the Commission's Civil Society Forum highlighting the need for employment orientation courses for asylum seekers and migrants.<sup>344</sup> The high cost of childcare in Ireland and the inequitable access to childcare facilities for people living in rural areas is also a particular challenge faced by women from minority ethnic groups seeking to access the labour market.<sup>345</sup>

338 Department of Justice and Equality, *The Migrant Integration Strategy 2017–2020*, pp.4, 40 and C. Murphy, L. Caulfield, and M. Gilmartin (2017), *Developing Integration Policy in the Public Sector: A Human Rights Approach*.

339 Department of Justice and Equality, *The Migrant Integration Strategy 2017–2020*, p.40.

340 D. Toomey (2015), 'Employment Rights for Migrant Workers in Ireland: Towards a Human Rights Framework', *International Migration & Integration*, 36, p.257.

341 Department of Justice and Equality, *The Migrant*

*Integration Strategy 2017–2020*, p.28.

342 McGinnity et al., *Ethnicity and Nationality in the Irish Labour Market*, p.72.

343 OECD and the EU (2015), *Indicators of Immigrant Integration 2015: Settling In*, pp.110–111.

344 See also, European Commission (2016), 'Challenges in the labour market integration of asylum seekers and refugees', (Luxembourg: EEPO Publications Office of the EU).

345 The Commission previously raised this issue with CEDAW. See IHREC, *Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Periodic Reports*, pp.94–95. See also, Committee on Economic, Social, and Cultural Rights (2015), *Concluding Observations*





**The Commission recommends that the State consider opening civil service employment to migrants from outside the European Economic Area.**



**The Commission recommends that the State target the recruitment of minority ethnic groups in the public sector.**



**The Commission recommends that the State introduce a formal recognition process for the systematic assessment and recording of education, skills, and work experience gained abroad, facilitating the transfer of qualifications into domestic equivalents as appropriate.<sup>346</sup>**



**The Commission recommends that the State disseminate accessible information and educational materials to people who migrated to Ireland on the employment system and the administrative requirements in place.<sup>347</sup>**

on the *Third Period Report of Ireland*, UN Doc. E/C.12/IRL/CO/3, para. 23; and Irish Congress of Trade Unions (2016), *Who Cares? Report on Childcare Costs & Practices*.

346 This recommendation has also been made by the Organisation for Economic Co-operation and Development. See OECD (2018), *Working Together for Local Integration of Migrants and Refugees* and OECD (2016), *Making Integration Work: Refugees and Others in Need of Protection*.

347 See also, IHREC (March 2018), *Access to the Labour*

## Access to the labour market for asylum seekers

In response to the 2017 Supreme Court judgment in *NHV v The Minister for Justice and Equality*,<sup>348</sup> the State introduced a new scheme for labour market access for international protection applicants.<sup>349</sup> The Commission acted as *amicus curiae* (friend of the court) in the case and submitted that the right to work, guaranteed in Article 40.3.1 of the Constitution of Ireland, extended to applicants for international protection residing in Ireland. The scheme in place provides permits for employment and self-employment that are valid for six months and renewable. To be eligible, international protection applicants must have been awaiting a first instance recommendation on their protection application for nine months or more.<sup>350</sup>

As of July 2019, 3,993 applications have been made for permission to work, of which 2,665 have been granted.<sup>351</sup> Based on the number of employment returns received by the Department of Justice and Equality,<sup>352</sup> of those granted permission, approximately 48% have

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*Market for Applications for International Protection*, p.19.

348 *NHV v Minister for Justice and Equality & Ors* [2017] IECA 86. In that case, the Supreme Court held that, in circumstances where there is no time limit on the asylum process, the absolute ban on asylum seekers seeking employment is unconstitutional.

349 See Department of Justice and Equality (2018), *Information Booklet: Labour Market Access for International Protection Applicants*. The Scheme's launch coincided with Ireland opting into the Reception Conditions Directive (recast) (2013/33/EU).

350 Per Article 15, Reception Conditions Directive (recast) (2013/33/EU).

351 Direct Provision Data (25 June 2019), *Direct Provision Data*.

352 Required by Regulation 14(3) of the European Communities (Reception Conditions) Regulations 2018.

'worked at some point', though the volume or nature of the work is not clear.<sup>353</sup>



**...international protection applicants are facing continuing barriers in effectively accessing employment.**

While the Commission welcomed<sup>354</sup> the launch of this scheme, it is concerned at reports that international protection applicants are facing continuing barriers in effectively accessing employment. These include the lack of employer awareness of their entitlement to work, the deterring influence of the permit's temporary nature,<sup>355</sup> barriers to accessing banking services,<sup>356</sup> as well as exclusion from access to the driving licence application process.<sup>357</sup>

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353 Irish Refugee Council, *The Reception Conditions Directive: One Year On*, p.21.

354 IHREC (6 June 2018), '*Human Rights and Equality Commission welcomes scheme to grant access to the labour market for applicants for international protection*'.

355 Irish Refugee Council, *The Reception Conditions Directive: One Year On*, p.21.

356 S. Pollack (17 September 2018), '*Employer doubts preventing asylum seekers from entering workforce*', *The Irish Times*. The Commission recently successfully represented a refugee from Syria at the WRC in a case against a bank for breach of the Equal Status Acts 2000–2015, alleging that they refused to open a bank account for him on the ground of his Syrian nationality. The WRC ordered the bank to pay compensation of €4,000 to the man. The Commission understands that this is not an isolated incident, with similar incidents being experienced by both refugees and asylum seekers. See IHREC (9 April 2019), '*Syrian refugee wins equal status case for refusal of bank account*'.

357 The Commission is advising and representing several individuals at the WRC with regard to the ongoing exclusion of asylum seekers from eligibility to apply for driving licences.



**The Commission is of the view that measures for access to the labour market for asylum seekers must be effective in practice, sufficient in their scope to provide meaningful access to employment and safeguard against potential exploitation and discrimination.<sup>358</sup>**



**The Commission recommends that the State conduct a review of the scheme for labour market access for asylum seekers to identify and address the ongoing administrative barriers, including access to banking services and driving licence applications.**

The Commission notes that new standards and guidance recommending earlier access to the labour market for asylum seekers are currently being developed. The UN High Commissioner for Refugees (UNHCR) has recommended that access to the labour market be granted no later than six months after the date of lodging an application for international protection. It noted<sup>359</sup> that such a limit would align with the standards set out in the Asylum Procedures Directive (recast), which imposes a maximum timeline of six months on processing an asylum claim.<sup>360</sup>

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358 IHREC (2018), '*Access to the labour market for applicants for international protection*', p.10.

359 UNHCR Bureau for Europe (2015), *Annotated Comments to Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 Laying Down Standards for the Reception of Applicants for International Protection (Recast)*.

360 Directive 2013/32/EU of the European Parliament and the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast),



**The Commission recommends that, in line with emerging standards and UNHCR guidance, applicants for international protection be granted access to the labour market no later than six months after the date of lodging an application.**

Officials have indicated that there are no studies available on the skillset of people currently in the protection system and have been unable to provide an estimate of the likely scale of access to the labour market that may be achieved through the interim scheme.<sup>361</sup>

Designing a process that ensures effective access to the labour market requires access to data on the profile, qualifications, and skillsets of the current cohort of international protection applicants. Provisions for access to employment must, therefore, be underpinned and informed by clear analysis of the likely labour market prospects of the current cohort of asylum seekers resident in the State to ensure that effective access is not undermined by any limitations imposed. This early competence

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Article 31(3). As referenced in section 13, Ireland has not opted in to this Directive and is therefore not bound by it. However, the International Protection Act 2015 places a particular importance on the elapsing of six months in the consideration of an asylum claim. Section 39(5) of the Act provides that an asylum seeker is entitled to seek information from the IPO on the likely timing of a recommendation on their application in the event that such a recommendation cannot be made within six months.

<sup>361</sup> Officials indicated this in response to questions posed at an information session on the right to work for international protection applicants held by the Department of Justice and Equality, Department of Business, Enterprise, and Innovation, and the Department of Employment Affairs and Social Protection in Dublin on 31 January 2018.

mapping should include recognition of skills acquired formally and informally, without the need for reliance on formal documentation of qualifications or work experience.<sup>362</sup> Such an approach should also be accompanied by other integration measures, including language learning, career counselling, and upskilling opportunities.<sup>363</sup>



**The Commission recommends that an audit of the skills, qualifications, and labour market profile of the current cohort of international protection applicants be carried out to ensure effective access to the labour market.**



**The Commission recommends that the State support the development of a national labour market activation programme, in collaboration with professional and trade associations, focused on ensuring that international protection applicants can retain and further develop their qualifications, experience, and skills.**<sup>364</sup>

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<sup>362</sup> Refugees and asylum seekers often face difficulties in the academic validation process due to their lack of documentation. See OECD (2018), 'Working together for the local integration of migrants and refugees', (Paris: OECD Publishing).

<sup>363</sup> See OECD (2017), 'Finding their way: labour market integration of refugees in Germany', (Paris: OECD Publishing).

<sup>364</sup> The Commission notes the operation of The Open Doors Initiative, a collaboration between Irish employers, with the support of NGOs, focused on supporting people with a disability, refugees, and asylum seekers, and long-term unemployed people to access employment. For more information, see <https://www.opendoorsinitiative.ie/>.

## Accessing decent work

In addition to the barriers faced in accessing employment, minority ethnic groups are often confronted with issues in the workplace such as precarious contracts, a lack of progression, unequal treatment, and exploitation.<sup>365</sup>

Reports indicate a concerning prevalence of undocumented people and workers on employment permits in sectors where there is a high incidence of low pay and exploitation, including domestic work, the food and accommodation industry, and cleaning services.<sup>366</sup> The current employment permit system, which links an individual worker to one employer, has been criticised as it places employees at risk of becoming undocumented or deported if they leave exploitative work.<sup>367</sup>

The Commission is particularly concerned about the treatment of women from minority ethnic groups in the workplace. Research has highlighted that migrant women are overrepresented in the care and domestic work sectors, with many women working in vulnerable employment conditions.<sup>368</sup> There is no system for the inspection of labour standards in private household settings.<sup>369</sup> Furthermore, the issue of domestic workers who have become undocumented is not adequately addressed in labour

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365 D. Toomey, 'Employment rights for migrant workers in Ireland', pp.249–263 and MRCI (2015), *Workers on the Move: Past Lessons and Future Perspectives on Ireland's Labour Migration*.

366 MRCI, *Workers on the Move*.

367 MRCI, *Workers on the Move*, p.12.

368 MRCI (2015), *Migrant Workers in the Home Care Sector: Preparing for the Elder Boom in Ireland*.

369 For further information, see IHREC, *Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Periodic Reports*, p.91.

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Reports indicate a concerning prevalence of undocumented people and workers on employment permits in sectors where there is a high incidence of low pay and exploitation, including domestic work, the food and accommodation industry, and cleaning services.

inspections, as employers are not subject to clear sanctions while undocumented workers face the risk of deportation.<sup>370</sup> It is estimated that 33% of all undocumented workers are domestic workers, including caregivers and homecare providers.<sup>371</sup>

The Commission notes that the majority of eligible occupations listed under the State's Critical Skills Employment Permit include information and communication technologies professionals and professional engineers and technologists.<sup>372</sup> Men currently outnumber women in these professions due to the ongoing occupational segregation in Ireland.<sup>373</sup> The list of ineligible occupations to obtain a work permit includes a wide range of care work occupations, including domestic work.<sup>374</sup>

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370 MRCI (2010), *Ending the Race to the Bottom*, p.2.

371 MRCI (2014), *Ireland is Home: An Analysis of the Current Situation of Undocumented Migrants in Ireland*.

372 Department of Business, Enterprise, and Innovation, *Critical Skills Employment Permits*.

373 CEDAW (September 2016), *Combined Sixth and Seventh Periodic Reports of States Parties Due in 2016: Ireland - Annex*, p.8. See also, Department of Justice and Equality, *National Strategy for Women and Girls 2017–2020*, p.29.

374 Department of Business, Enterprise, and Innovation,



**The Commission recommends that protections for domestic workers are strengthened, including through enhancement of labour inspections and the oversight of employers.**



**The Commission recommends that the State consider the development of a regularisation scheme for undocumented people.<sup>375</sup>**



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

poverty rate in Ireland disproportionately affects children from Traveller, Roma, and refugee backgrounds.<sup>377</sup> The government has failed to meet its national targets to reduce poverty rates, with the most recent figures from 2017 demonstrating that the consistent poverty rate remains higher than 2010 levels (6.7% compared to 6.3% respectively).<sup>378</sup> The data also demonstrates that the consistent poverty rate for people who do not identify as being an Irish citizen or national is significantly higher than the general population (12.7% compared to 8.2% respectively). In 2016, the at-risk-of-poverty rate was 22.6% for people whose nationality is other than Irish and 42% for those from outside the EU, compared to 15.7% for 'Irish nationals'.<sup>379</sup>



**The Commission recommends that the national targets and measures adopted by the State to reduce poverty take adequate account of the specific issues and multiple disadvantages faced by minority**

## Economic protection

The Commission notes the State's positive obligation to ensure the economic protection of minority ethnic communities.<sup>376</sup> However, the Committee on the Rights of the Child has highlighted its concerns that the consistent

*Ineligible List of Occupations for Employment Permits.*

<sup>375</sup> The Commission previously made these recommendations to the CEDAW. See IHREC, *Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Periodic Reports*, p.91.

<sup>376</sup> See Article 2(2) of CERD. See also, European Committee of Social Rights (2011), *Conclusions 2011 - Ireland - Article 16*.

<sup>377</sup> Committee on the Rights of the Child, *Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland*, p.13.

<sup>378</sup> The government's national targets are to reduce consistent poverty to 2% by 2020 from the 2010 baseline rate of 6.3%, and to lift over 70,000 children out of consistent poverty by 2020, a reduction of at least two-thirds on the 2011 level. However, data from the CSO shows that the consistent poverty rate was 6.7% in 2017, compared to 8.2% in 2016; the 'at risk of poverty' rate was 15.7% in 2017, compared to 16.2% in 2016; and in 2017, 18.8% of the population experienced two or more types of enforced deprivation, compared to 21% in 2016. See Department of Social Protection (2016), *Updated National Action Plan for Social Inclusion 2015–2017*, p.5 and CSO (2017), *Survey on Income and Living Conditions*. For an explanation of the measures for enforced deprivation, see CSO, *Poverty Indicators Explained*.

<sup>379</sup> McGinnity et al., *Monitoring Report on Integration 2018*, pp.xiii, 51, 53.

**ethnic groups, and that an accelerated programme of initiatives is put in place to make up the ground lost.**

## Habitual residence condition

As well as being disproportionately affected by poverty, minority ethnic groups can face particular barriers to accessing social assistance. The HRC is an extra qualifying condition requiring applicants to demonstrate a connection to Ireland to access a range of social welfare benefits, including Child Benefit. While the HRC is applied to all applicants for benefits regardless of their nationality,<sup>380</sup> in practice, it is not neutral in its application and can have a discriminatory impact on migrant, Traveller, and Roma families.<sup>381</sup> These families can face particular challenges in satisfying the conditions of the HRC due to their nomadic way of life, employment patterns, absence of family ties, or overall length of time spent in the country.<sup>382</sup>

The *National Roma Needs Assessment* found that many Roma cannot meet the HRC as they lack the documentation to prove the length of time that they have lived in Ireland or their connection to the State. This is a significant challenge as many Roma are unemployed or working informally and living in accommodation without a tenancy agreement or utility bills. Of the respondents

380 Government of Ireland, *16<sup>th</sup> National Report on the implementation of the European Social Charter*, pp.80–81.

381 IHREC, *Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Reports*, p.92. See also, IHREC (May 2019), *Comments on Ireland's 16<sup>th</sup> National Report on the Implementation of the European Social Charter*, p.22.

382 FLAC (2016), *FLAC Briefing for Nils Muižnieks: Council of Europe Commission for Human Rights*, p.8.

who had applied for social protection, 48% were unsuccessful despite living in Ireland for an average of eight years. Sixty-seven per cent of these respondents indicated that the HRC was the reason for their lack of success in accessing payments.<sup>383</sup>

The Commission has raised its concerns about the HRC since its establishment in 2014, including to treaty monitoring bodies such as the Human Rights Committee,<sup>384</sup> and the UN Committee on Economic, Social, and Cultural Rights.<sup>385</sup> In particular, it has highlighted the need for decision-makers to receive adequate training to make fair and correct decisions on social protection applications and to support applicants in meeting the requirements in place.<sup>386</sup>



**Reiterating its previous recommendations, the Commission recommends that the State should review the Habitual Residence Condition and its impact on minority ethnic communities in practice.**

## Protection of social and cultural life

The Commission welcomes the recognition

383 Pavee Point Traveller and Roma Centre and Department of Justice and Equality, *Roma in Ireland – A National Needs Assessment*, pp.78–79.

384 IHREC (June 2014), *Irish Human Rights Commission Submission to the UN Committee on the Examination of Ireland's Fourth Periodic Report under the International Covenant on Civil and Political Rights*, p.22.

385 IHREC, *Report to UN Committee on Economic, Social and Cultural Rights on Ireland's Third Periodic Review*.

386 See also, IHREC, *Report to UN Committee on Economic, Social and Cultural Rights on Ireland's Third Periodic Review*, p.47.

of Travellers as an ethnic minority by the Taoiseach (Prime Minister) in Parliament on 1 March 2017, noting that while it is of no legal effect, it is of significant symbolic value.<sup>387</sup> The Commission also welcomes the commitments made by the State in the *National Traveller and Roma Integration Strategy 2017–2021*.<sup>388</sup>

To protect the social and cultural life of the Traveller community, the Commission is of the view that the State must invest in the necessary infrastructure. While the funding provided to date to promote Traveller culture is welcome, it has been criticised for its ad hoc and project-based character.<sup>389</sup> The Advisory Committee on the Framework Convention for the Protection of National Minorities recently called on the Irish authorities to ensure the availability of institutional funding to support the continuous presence of the Traveller community in Ireland's cultural life.<sup>390</sup>

There have also been criticisms at a national level about the failure of the State to take adequate measures to support the tradition of horse ownership and its central role in Traveller culture and identity. Horse ownership and the promotion of Traveller culture more broadly have been identified

as supporting wellbeing in young men, which is vital considering the extremely high levels of mental ill-health in the Traveller community.<sup>391</sup> The importance of horse ownership to the cultural heritage of Travellers is recognised in the *National Traveller and Roma Inclusion Strategy 2017–2021*,<sup>392</sup> and several regional Traveller horse projects have been developed to promote knowledge and care of horses.<sup>393</sup>

However, the Control of Horses Act 1996 led to a notable increase in the seizure and impoundment of Traveller horses. The Act provided local authorities with the power to dictate that horses are allowed in designated 'Control Areas' only and that horses must be licensed in these areas. The Commission notes that local authorities have a significant budget for the seizure and impoundment of horses, particularly in Limerick,<sup>394</sup> but there does not appear to be provision for assistance to Travellers in complying with the requirements of the legislation.<sup>395</sup> A recent report has indicated that horse ownership continues to be increasingly restrained due to the implementation of local authority by-laws. According to the respondents in this research, compliance with the legislation (61%) and the threat of impounding (78%) are particular barriers to Travellers keeping horses.<sup>396</sup>

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387 This was restated in the High Court, where Justice Eager remarked that the recognition 'has no legal effect, clearly it is not legislation'. See *Mongans & Ors v Clare County Council* [2017] IEHC 709, para. 37.

388 Dáil Éireann debate (1 March 2017), 'Traveller ethnicity: statements' and IHREC (1 March 2017), 'Historic step as Traveller ethnicity recognised by State'. See also, Department of Justice and Equality, *National Traveller and Roma Inclusion Strategy 2017–2021*.

389 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Ireland*, pp.12–13.

390 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Ireland*, pp.12–13.

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391 Pavee Point Traveller and Roma Centre (2018), *Traveller Horse Ownership*, p.10.

392 Department of Justice and Equality, *National Traveller and Roma Inclusion Strategy 2017–2021*.

393 Dáil Éireann Debate (11 October 2018), 'Control of Horses'.

394 There are reports that the local authority in Limerick was estimated to spend €1.625 million on horse control from 2015–2017. See F. Walsh (22 January 2017), 'Horse control to cost Limerick council €475k in 2017', *The Limerick Post*.

395 P. Wood (2017), 'Travellers, land management, and the political ecology of marginalisation in Celtic-Tiger Ireland', *Irish Geography*, 50(1), pp.60, 66.

396 Pavee Point Traveller and Roma Centre, *Traveller Horse*

The report also recommended that the State develop a more positive relationship between the Traveller community and local authorities and take measures to build awareness of the importance of horse ownership for Travellers.<sup>397</sup>



**The Commission recommends that the State support Travellers in preserving and developing their identity and culture, including nomadism and horse ownership.**



**The Commission recommends that the State engage in consultations with the Traveller community about the establishment of a permanent cultural centre.**<sup>398</sup>

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*Ownership*, pp.13, 15.

397 Pavee Point Traveller and Roma Centre, *Traveller Horse Ownership*, pp.20–24.

398 A similar recommendation has also been made by the Advisory Committee on the Framework Convention for the Protection of National Minorities. See Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Ireland*, pp.12–13.



Section 10

# **Health and Social Services**

*(Articles 5(e)(iv))*



## Access to healthcare services and health outcomes

The Commission is concerned about the significant barriers to accessing services and inequitable health outcomes experienced by minority ethnic groups in Ireland.<sup>398</sup>

These administrative and structural barriers include a lack of awareness about health services available and how to access them, as well as difficulties in accessing a Personal Public Service (PPS) number<sup>399</sup> and a medical card.<sup>400</sup> Significant regional variations persist in the Irish healthcare system that give rise to inequitable access to services.<sup>401</sup> People living in direct provision and emergency accommodation centres have criticised the shortage of general practitioners (GPs) and out-of-hours services in their local area, resulting in a lack of choice, difficulties in obtaining appointments, and inadequate care.<sup>402</sup> In February 2019, the Commission

met with families who are in the asylum process and have been placed in emergency accommodation, and they highlighted the lack of information provided about accessing medical services. Furthermore, particular barriers can be faced by women in the asylum process seeking to access abortion services, including where their accommodation is remotely located, and they are reliant on the public transport system.<sup>403</sup>



### Significant regional variations persist in the Irish healthcare system that give rise to inequitable access to services.

During its consultations with civil society and young people, it was also indicated to the Commission that minority ethnic communities are reluctant to access healthcare services due to discrimination they have experienced in the past and fears about the treatment they will receive. As one young person explained, 'you prepare to be disappointed.'<sup>404</sup> There have also been calls for

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398 See IHREC, *Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Periodic Reports*, pp.16, 99.

399 A PPS number is a unique reference number that facilitates people to access social welfare benefits and public services in Ireland.

400 See HSE, *Second National Intercultural Health Strategy 2018–2023*, p.62; IHREC, *Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Periodic Reports*, p.99; Irish Refugee Council, *The Reception Conditions Directive: One Year On*, p.25; and Pavee Point Traveller and Roma Centre and Department of Justice and Equality, *Roma in Ireland – A National Needs Assessment*, pp.96–98.

401 See IHREC, *Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Periodic Reports*, p.99.

402 This issue was raised with the Commission staff at the Civil Society Forum on 27 May 2019 and during the visits with families living in emergency accommodation in February 2019. See also, Joint Oireachtas Committee on Justice and

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Equality (29 May 2019), '*Direct provision and the international protection application process: discussion (resumed)*' and Irish Refugee Council, *The Reception Conditions Directive: One Year On*, pp.24–25. Note, Article 19 of the Reception Conditions Directive (recast) (2013/33/EU) requires the Minister for Health to ensure that a person in the international protection system has access to a broad range of healthcare, including emergency care and treatment for serious illnesses.

403 J. Leogue (19 February 2019), '*Call for better access to abortions for women in direct provision*', *The Irish Examiner*. A recent report has acknowledged that while the issue of poor public transport affects the Irish population in general, it is likely to affect refugees disproportionately as they are unlikely to have their own transport, especially on initial resettlement, and they can lack family and social ties with individuals who might be in a position to help with transport. See Ní Raghallaigh et al., *Safe Haven*, p.35.

404 These issues were raised at the Commission's Be

health services, including maternity services, to be more responsive to the specific needs of minority ethnic people through the provision of culturally appropriate treatment.<sup>405</sup> At the Civil Society Forum, the participants highlighted the need for more quality training on anti-racism and cultural awareness across all frontline health services and the proactive recruitment of a more diverse workforce.

As recognised by the State, efforts towards implementing ethnic equality monitoring in the health sector have been 'fragmented, resulting in limited capacity to evaluate the impact of targeted actions.' Where ethnic data is collected, it is often incomplete or of poor quality.<sup>406</sup> The Commission welcomes the publication of the *Second National Intercultural Health Strategy 2018–2023* in January 2019 and the commitment to develop an ethnic identifier throughout the health service.<sup>407</sup> However, progress in this area has been 'slow to date.'<sup>408</sup>

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Heard on CERD consultation on 30 March 2019 and the Civil Society Forum on 27 May 2019.

405 HSE, *Second National Intercultural Health Strategy 2018–2023*, p.64. This issue was also raised at the Civil Society Forum on 27 May 2019.

406 HSE, *Second National Intercultural Health Strategy 2018–2023*, pp.40, 77.

407 HSE, *Second National Intercultural Health Strategy 2018–2023*. The *Migration Integration Strategy 2017–2020* commits to the recording of ethnicity as part of ethnic equality monitoring across the health service, as a means of identifying the unique needs of migrants and developing interventions to address these needs. See Department of Justice and Equality, *The Migrant Integration Strategy 2017–2020*, p.30. The *National Traveller and Roma Inclusion Strategy 2017–2021* also commits to the phased and incremental implementation of a standardised ethnic identifier across all health administrative systems to monitor access, participation, and outcomes of all groups. See Department of Justice and Equality, *National Traveller and Roma Inclusion Strategy 2017–2021*, p.33.

408 Government of Ireland, *The Migrant Integration Strategy 2017–2020*, pp.55–56.



**The Commission recommends that the State advance the introduction of an ethnic identifier across the health sector and the systematic publication of disaggregated data, with the specific aim of supporting policy reform and the planning and delivery of appropriate services for ethnic minorities.<sup>409</sup>**



**The Commission recommends that the State introduce measures to progress and evaluate the delivery of cultural competency training across frontline health services and to ensure that the workforce fully reflects the diversity of the population.**

The Commission is aware that access to health services is impeded by the inadequate provision of quality and regulated interpreting services for people with language support needs.<sup>410</sup> There are reports of tensions between services about the cost of interpretation and who is responsible for payment.<sup>411</sup> The use of family members, including children and friends, as

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409 The Commission previously made this recommendation to the UN Committee on Economic, Social, and Cultural Rights in 2015. See IHREC, *Report to the UN Committee on Economic, Social and Cultural Rights on Ireland's Third Periodic Review*, p.77.

410 Crosscare (December 2018), *Do You Speak English? A Study on Access to Interpreter Services in Public Social Welfare Offices in Ireland*, p.6 and HSE, *Second National Intercultural Health Strategy 2018–2023*, p.49. These issues relating to interpreting services have been raised since 2007. See National Consultative Committee on Racism and Interculturalism (February 2007), *Interpreting, Translation and Public Bodies in Ireland: The Need for Policy and Training*.

411 Ní Raghallaigh et al., *Safe Haven*, p.37.

interpreters within health services is also commonly reported. In recent research conducted with 158 adults whose first language was not English or Irish, 91% had never used a professional interpreter in Ireland, and 79% had previously acted as an interpreter for family or friends, including in hospitals.<sup>412</sup> Such informal interpretation arrangements raise serious issues relating to privacy, confidentiality, informed consent, and empowerment.<sup>413</sup> The Health Service Executive's (HSE) good practice guidelines, *On Speaking Terms*, note that the failure to provide formal interpreting services, when there is a known language barrier, could be construed as unlawful racial discrimination.<sup>414</sup>



**...access to health services is impeded by the inadequate provision of quality and regulated interpreting services for people with language support needs.**

In 2018, the Commission invited the HSE to carry out an equality review<sup>415</sup> on the provision of interpreting services to people

with limited or no English accessing free GP services. This review resulted in a commitment by the HSE to seek additional funding and measures to encourage the use of professional interpreting services.<sup>416</sup> The Commission also welcomes the State's recent commitment to finalise an appropriate model for the phased implementation of interpreting provision across the HSE.<sup>417</sup>



**The Commission recommends that interpreting services in Ireland are professionalised and regulated, including through the development of a system of accreditation and training.**

The Commission is particularly concerned about the disproportionately poor health outcomes of Travellers and Roma in Ireland.<sup>418</sup> The *All Ireland Traveller Health Study* reported in 2010 that, in comparison to the national average, life expectancy at birth is 15.1 years less for Traveller men and 11.5 years less for Traveller women, while the Traveller infant mortality rate is 3.6 times higher.<sup>419</sup> In 2016, 2.9% of Irish

412 Immigrant Council of Ireland (2017), *Language and Migration in Ireland*, pp.24–26.

413 Crosscare, *Do You Speak English?*, p.14. These issues were also raised at the Commission's Be Heard on CERD consultation on 30 March 2019 and the Civil Society Forum on 27 May 2019.

414 HSE (2009), *On Speaking Terms: Good Practice Guidelines for HSE Staff in the Provision of Interpreting Services*, pp.7–8.

415 Under section 32 of the Irish Human Rights and Equality Commission Act 2014, the Commission can 'invite a particular undertaking, group of undertakings or the undertakings making up a particular industry or sector thereof' to conduct an equality review.

416 IHREC (2018), *Annual Report 2018*, p.27.

417 HSE, *Second National Intercultural Health Strategy 2018–2023*, pp.22–23. The *Migration Integration Strategy 2017–2020* also includes a commitment to develop an appropriate model for the provision of interpreting services to users within the health area who are not proficient in English. See Department of Justice and Equality, *The Migrant Integration Strategy 2017–2020*, p.30. For details on the proposed model, see A. MacFarlane (2018), *To Develop a Model for the Implementation of Trained Interpreters in the Irish Healthcare System*, (HSE).

418 These disproportionately poor health outcomes have been acknowledged by the State. See The Committee, *Combined Fifth to Ninth Periodic Reports Submitted by Ireland Under Article 9 of the Convention*, p.8 and HSE, *Second National Intercultural Health Strategy 2018–2023*, p.52.

419 All Ireland Traveller Health Study Team (2010), *All Ireland Traveller Health Study: Our Geels – Summary of*

Traveller males were aged over 65, compared to 12.6% of the general population.<sup>420</sup>

Overall, research has demonstrated that the gap in poor health between Travellers and the general population increases very rapidly after the age of 35.<sup>421</sup>

The 2017 *Traveller Community National Survey* asked 481 Travellers about the issues they were actively concerned about their health. Seventy-one per cent of respondents identified lifestyle and diet factors, 41% identified drug and alcohol consumption, 33% identified long-term physical illness, and 22% identified isolation. Thirty-six per cent of the respondents also assessed their health as poor or very poor (in comparison to 19% of the general population).<sup>422</sup> The pattern of poor health among Travellers is a clear example of the effects of cumulative disadvantage in education, employment, housing, and other issues such as prejudice and discrimination.<sup>423</sup>

Roma are considered an at-risk group in terms of health, with a higher infant mortality rate and lower life expectancy. A lack of access to services also compounds the health issues that this community

experiences.<sup>424</sup> The *National Roma Needs Assessment* found that 39% of respondents did not have a GP, and 50% did not have a medical card. Furthermore, 25% of Roma women had not engaged with health services while pregnant and their first point of access was to give birth. This study reported that there is a fear about potential costs, resulting in a reluctance to access basic health services.<sup>425</sup> Low uptake of immunisations among Roma children has also been identified as a particular concern.<sup>426</sup>

The Commission recognises that specific measures have been adopted by the State, including the development of the Traveller Primary Health Care Projects aimed at improving health outcomes in the Traveller community.<sup>427</sup> The Tallaght Roma Integration Project also provides primary healthcare and support to members of the local Roma community.<sup>428</sup> The *National Traveller and Roma Inclusion Strategy 2017–2021* includes several actions focused on the healthcare system, including improving

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*Findings*, (Dublin: University College Dublin), pp.87, 94–95. Note, this study included consideration of the broader social determinants of relevance to health, including environment and poor living conditions, lack of recognition of Traveller culture and identity, individual and institutional level racism, and social exclusion.

420 CSO, *Census of Population 2016 – Profile 8 Irish Travellers, Ethnicity and Religion*.

421 Watson et al., *A Social Portrait of Travellers in Ireland*, pp.61–62, 78.

422 The Community Foundation for Ireland, *B&A Traveller Community National Survey*, pp.39, 42.

423 Watson et al., *A Social Portrait of Travellers in Ireland*, pp.61–62, 78. Approximately 67% of service providers reported their belief that Travellers experience discrimination in their use of health services. See Department of Justice and Equality, *National Traveller and Roma Inclusion Strategy 2017–2021*, p.11.

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424 Pavee Point Traveller and Roma Centre and the HSE (November 2012), *Roma Communities in Ireland and Child Protection Considerations*, pp.22–23. See also, HSE, *Second National Intercultural Health Strategy 2018–2023*, p.52.

425 Pavee Point Traveller and Roma Centre and Department of Justice and Equality, *Roma in Ireland – A National Needs Assessment*, pp.96–97, 99–100. See also, HSE, *Second National Intercultural Health Strategy 2018–2023*, pp.52–53.

426 HSE, *Second National Intercultural Health Strategy 2018–2023*, p.56. Note, the *National Traveller and Roma Inclusion Strategy 2017–2021* commits to promoting immunisation uptake among members of the Roma community and to support Roma women to access maternal health services in a timely and appropriate manner. See Department of Justice and Equality, *National Traveller and Roma Inclusion Strategy 2017–2021*, p.34.

427 For further information, see Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Ireland*, pp.22–23.

428 Pavee Point Traveller and Roma Centre and Department of Justice and Equality, *Roma in Ireland – A National Needs Assessment*, p.127.

access, participation rates, and outcomes for Travellers and Roma.<sup>429</sup> However, the implementation of this policy framework has been inadequate to date.<sup>430</sup>



**The Commission recommends the development of additional public health, health promotion, and outreach services for minority ethnic groups, including to address the specific health needs of Travellers and the broader social determinants that lead to health inequalities.**



**The Commission recommends the development of a national primary healthcare project for Roma.<sup>431</sup>**

## Mental health

One of the strongest themes arising from the Commission's recent consultations on CERD is the significant impact of racial discrimination and prejudice on the mental health of minority ethnic communities. This aligns with research that demonstrates that there is a strong relationship between experiences of racism and high levels of depression, anxiety, low self-esteem, and reduced resilience.<sup>432</sup> Dealing with racial

discrimination can also generate negative coping mechanisms among young people in particular, including substance abuse, suicidal ideation, and disengagement from public services.<sup>433</sup> Furthermore, stigma and exclusion from society have been identified as challenging barriers faced by people from minority ethnic communities in reaching out to mental health services and continuing with their treatment.<sup>434</sup>



**One of the strongest themes arising from the Commission's recent consultations on CERD is the significant impact of racial discrimination and prejudice on the mental health of minority ethnic communities.**

Overall, the level of community mental health services in Ireland continues to fall short of national targets, and there are significant waiting lists in place for both primary care

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*Services and Staff on Working with People from Ethnic Minority Communities*, p.8, Pavee Point Traveller and Roma Centre and Department of Justice and Equality, *Roma in Ireland – A National Needs Assessment*, p.104 and Watson et al., *A Social Portrait of Travellers in Ireland*, p.11.

433 Cairde (2015), *Ethnic Minorities and Mental Health in Ireland: Barriers and Recommendations*, p.13 and Mental Health Reform, *Ethnic Minorities and Mental Health*, p.9.

434 Mental Health Reform, *Ethnic Minorities and Mental Health*, p.9. In a study conducted with minority ethnic communities, over 50% of respondents indicated that they have not sought help for their mental health difficulties. See Cairde, *Ethnic Minorities and Mental Health in Ireland*, p.11. Note, the *Second National Intercultural Health Strategy 2018–2023* includes a commitment to tackle the issue of mental health stigma among minority ethnic communities. See HSE, *Second National Intercultural Health Strategy 2018–2023*, p.19.

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429 Department of Justice and Equality, *National Traveller and Roma Inclusion Strategy 2017–2021*, pp.33–36.

430 ECRI, *Report on Ireland (Fifth Monitoring Cycle)*, p.25.

431 This was also recommended in the *National Roma Needs Assessment*. See Pavee Point Traveller and Roma Centre and Department of Justice and Equality, *Roma in Ireland – A National Needs Assessment*, p.105.

432 Mental Health Reform (December 2016), *Ethnic Minorities And Mental Health: Guidelines For Mental Health*

and specialist services.<sup>435</sup> Such delays can have a particularly acute impact on groups experiencing higher levels of mental ill-health than the general population.

The *All Ireland Traveller Health Study* reported in 2010 that the suicide rate among Traveller men is 6.6 times higher than in the general population and suicide accounts for 11% of all Traveller deaths.<sup>436</sup> According to representatives from the Traveller community, there has been a steep rise in the level of suicide in their community, particularly among Traveller women, since 2010. Reports indicate that there were at least 30 deaths of Travellers by suicide in six counties from January to August 2019.<sup>437</sup> Research conducted in 2017 identified that 82% of Travellers have been affected by suicide.<sup>438</sup> Forty-five per cent of respondents in this research also reported that they are concerned about their mental health, and 31% reported that they are concerned

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435 See Department of Health and Children (2006), *A Vision for Change: Report of the Expert Group on Mental Health Policy* and Mental Health Commission (2017), *Annual Report (Including Report of the Inspector of Mental Health Services)*, p.60. For example, it was reported in February 2019 that more than 1,200 adults have been waiting for counselling services for more than three months and 2,560 children are on the Child and Adolescent Mental Health Service waiting list, of which almost 300 have been waiting for more than a year. See B. Hutton (18 February 2019), 'Over 1,200 adults waiting three months-plus for counselling, says HSE', *The Irish Times*.

436 The study also reported that 62.7% of Traveller women and 59.4% of Traveller men reported that their mental health was not good for one or more of the previous 30 days. See All Ireland Traveller Health Study Team, *All Ireland Traveller Health Study*, p.94. See also, Houses of the Oireachtas (October 2018), *Joint Committee on the Future of Mental Health Care: Final Report*, p.13.

437 Joint Committee on Key Issues affecting the Traveller Community (24 September 2019), *Traveller Mental Health: Discussion*.

438 Overall, 481 Travellers took part in this survey. The Community Foundation for Ireland, *B&A Traveller Community National Survey*, p.48.

about the mental health of their children.<sup>439</sup> A significant majority of respondents agreed that mental health issues are prevalent among the Traveller community (91%) and have increased in recent years (84%). They also reported that discomfort with discussing mental health issues is common across age groups (80%).<sup>440</sup> Poverty, poor housing, lack of employment, inequality, racism, and the lack of cultural respect have been identified as determinants of the 'exponentially high' levels of mental ill-health among the Traveller community.<sup>441</sup>

Mental health issues are also extremely prevalent in the Roma community. In the *National Roma Needs Assessment*, 51% of respondents reported that their mental health was poor for more than 14 days of the previous month, while 34% reported that their mental health was poor for every day of the previous month. Respondents identified discrimination, unemployment, and lack of social protection as sources of stress.<sup>442</sup> The Commission notes that the *National Traveller and Roma Inclusion Strategy 2017–2021* includes several commitments of relevance to the mental health needs of Travellers and Roma, including the development of culturally appropriate and accessible services.<sup>443</sup>

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439 The Community Foundation for Ireland, *B&A Traveller Community National Survey*, pp.38–39.

440 The Community Foundation for Ireland, *B&A Traveller Community National Survey*, p.45.

441 Houses of the Oireachtas, *Joint Committee on the Future of Mental Health Care*, p.13; Watson et al., *A Social Portrait of Travellers in Ireland*, p.11; and Joint Committee on Key Issues affecting the Traveller Community, *Traveller Mental Health*.

442 Pavee Point Traveller and Roma Centre and Department of Justice and Equality, *Roma in Ireland – A National Needs Assessment*, pp.14, 97. See also, HSE, *Second National Intercultural Health Strategy 2018–2023*, p.53.

443 Department of Justice and Equality, *National Traveller and Roma Inclusion Strategy 2017–2021*, pp.29, 35–36. See also the recommendations of the Joint Committee on the Future of Mental Health Care relating to the provision



**Complex immigration policies, difficulties in accessing secure employment, education, and financial stability, a lack of control over everyday life, and uncertainty about the future are also associated with the increased prevalence of mental health issues among people in the international protection system.**

The Commission is concerned about the mental health issues faced by people seeking asylum in Ireland, particularly when they have pre-existing experiences of trauma, torture, female genital mutilation (FGM), and violence.<sup>444</sup> Complex immigration policies, difficulties in accessing secure employment, education, and financial stability, a lack of control over everyday life, and uncertainty about the future are also associated with the increased prevalence of mental health issues among people in the international protection system.<sup>445</sup> *The Second National Intercultural Health Strategy 2018–2023*

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of mental health services to members of the Traveller community. Houses of the Oireachtas, *Joint Committee on the Future of Mental Health Care*, pp.6–7, 9, 21–22.

444 HSE, *Second National Intercultural Health Strategy 2018–2023*, p.52.

445 These issues were raised at the Commission's Be Heard on CERD consultation on 30 March 2019 and the Civil Society Forum on 27 May 2019. The Commission also previously raised this issue with the UN Committee on Economic, Social, and Cultural Rights in 2015. See IHREC, *Report to the UN Committee on Economic, Social and Cultural Rights on Ireland's Third Periodic Review*, p.xxxix. See also, Cairde, *Ethnic Minorities and Mental Health in Ireland*, p.17.

recognises that protection applicants experience higher levels of depression than people granted refugee status, and higher rates of anxiety and depressive disorders than other sections of society.<sup>446</sup> The impact of experiences before their arrival in Ireland on children's mental health, as well as their post-migratory experiences of resettlement, have been identified as manifesting in specific symptoms such as bedwetting, nightmares, sleeping difficulties, and anger.<sup>447</sup>

As recognised by the Committee,<sup>448</sup> the adverse impact of the direct provision system on the mental health of residents, including children, is a serious issue, with reports that suicide attempts in the centres have increased over recent months.<sup>449</sup> Families placed in emergency accommodation centres have highlighted to the Commission that they 'have nothing to do' or 'no one to talk to', and as a result, they feel 'depressed', 'sad', and 'forgotten'.<sup>450</sup> The Commission notes that under the Reception Conditions Directive (recast), the Minister is required to ensure that people in the asylum process have access to appropriate mental healthcare.<sup>451</sup> However, concerns have been raised that mental health needs

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446 HSE, *Second National Intercultural Health Strategy 2018–2023*, pp.66–67.

447 Ni Raghallaigh et al., *Safe Haven*, pp.33–34.

448 The Committee (4 April 2011), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland*, pp.4–5.

449 Joint Committee on Justice and Equality (29 May 2019), *Direct Provision and the International Protection Application Process: Discussion (Resumed)*. Note, the *Second National Intercultural Health Strategy 2018–2023* includes a commitment to address the mental health needs of people living in Direct Provision. See HSE, *Second National Intercultural Health Strategy 2018–2023*, pp.27, 31.

450 The Commission staff met with families in the asylum process who had been placed in B&B and hotel accommodation in February 2019.

451 See Article 19 of the Reception Conditions Directive (recast) (2013/33/EU).



are not being formally assessed in the centres, resulting in the lack of referrals to appropriate treatment in a timely manner.<sup>452</sup> Overall, the insufficient availability of mental health services with expertise in working with adults and children from minority ethnic communities and the specific issues they face has been criticised.<sup>453</sup>

The Commission notes that the government has committed to reviewing the underpinning legislation for mental healthcare in Ireland, the Mental Health Act 2001, and the national policy framework, *A Vision for Change*. However, there have been extensive delays in progressing this reform.<sup>454</sup>



**The Commission recommends that the prevalence of mental health issues among minority ethnic communities, the barriers they face in accessing services, and the public health challenges of addressing the social determinants of mental ill-health are fully reflected in forthcoming legislative and policy developments.**



**The Commission recommends that mental health services are available**

452 Irish Refugee Council, *The Reception Conditions Directive: One Year On*, pp.26–27 and College of Psychiatrists of Ireland (March 2017), *The Mental Health Service Requirements in Ireland for Asylum Seekers, Refugees and Migrants from Conflict Zones: Position Paper*, p.6. For further commentary on vulnerability assessments, see section 13.

453 This issue was raised at the Civil Society Forum on 27 May 2019. See also, Ní Raghallaigh et al., *Safe Haven*, p.36.

454 For further information, see IHREC (May 2019), *Comments on Ireland's National Report on the Implementation of the European Social Charter*, p.28.

**to residents in all direct provision and emergency accommodation centres and that increased expertise is developed within community-based services concerning appropriate interventions and support for people in the international protection process.**



**As recommended by the Committee on the Rights of the Child, the Commission recommends the further development of mental health advocacy and information services for children, including children from minority ethnic communities.<sup>455</sup>**

## Social services for children and families

There is limited research or data in Ireland on the interaction of minority ethnic communities with social services.<sup>456</sup> However, the Child Care Law Reporting Project<sup>457</sup> has identified that a disproportionate number of

455 In 2016, the Committee on the Rights of the Child called on the State to consider establishing a mental health advocacy and information service that is specifically for children, and accordingly accessible and child-friendly. See Committee on the Rights of the Child, *Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland*, p.12.

456 G. Shannon (March 2018), *Audit of the Exercise by An Garda Síochána of the Provisions of Section 12 of the Child Care Act 1991*, p.109. See also, S. Roe (November 2018), *A Report on the Findings of an Open Policy Debate on the Review of the Child Care Act 1991*, pp.11, 25.

457 The Child Care Law Reporting Project examines and reports on judicial childcare proceedings. It provides information to the public on the operation of the childcare system in the courts with the aim of promoting transparency and accountability. For further information, see [www.childlawproject.ie](http://www.childlawproject.ie).

children involved in care proceedings have at least one parent from a minority ethnic group. In particular, Traveller families are significantly overrepresented and are involved in 4.4% of cases before the childcare courts.<sup>458</sup> It has also been reported that child protection issues in Traveller families may not come to the attention of social services until they are at crisis level, which can result in them becoming high conflict and contested cases.<sup>459</sup> Families where both parents' country of origin is an African country are approximately seven times more likely to face childcare proceedings, compared to families where both parents were born in Ireland. In these cases, 'parental disability' is often cited as the reason for seeking a care order, and this commonly relates to mental health issues on the part of a mother living in direct provision.<sup>460</sup>

The Commission is aware that fears among minority ethnic communities about the risk of their children being taken into care, and their distrust of State authorities, can act as a barrier to accessing services.<sup>461</sup> Recent research has identified that the staff in EROCs can make generalisations about the parenting skills of refugees, particularly concerning the supervision of their children. The research suggested that the staff in

these centres go beyond their responsibilities under child protection legislation and this can infringe the family's right to privacy. In turn, the parents felt that they were being threatened with reports to social services.<sup>462</sup>

Roma families are grossly overrepresented in State care institutions across Europe and, therefore, it is recognised that the Roma community may have had negative experiences with child protection services.<sup>463</sup> Many Roma families in Ireland are living in poverty, without access to welfare or other basic supports, and this has been reported as putting pressure on social workers to take children into care.<sup>464</sup> It emerged in recent research that some Roma mothers avoid public health nurses for fear of children being taken into care due to poverty and poor living conditions.<sup>465</sup> The level of trust among Roma families in the child protection system is also likely to have been significantly affected by the reports in 2013 of the removal of two Roma children from their families on the basis that their appearance did not conform to racial stereotypes and resemble their respective parents.<sup>466</sup>

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458 C. Coulter (2015), *Final Report* (Dublin: Child Care Law Reporting Project), p.13. Note this was considered to be an under-estimation as ethnicity was not recorded in all cases. See also, Pavee Point Traveller and Roma Centre and the HSE, *Roma Communities in Ireland and Child Protection Considerations*, p.36.

459 C. Coulter (2018), *An Examination of Lengthy, Contested and Complex Child Protection Cases in the District Court* (Dublin: Child Care Law Reporting Project), p.68.

460 C. Coulter, *Final Report*, pp.13, 16. See also, Joint Committee on Justice and Equality (12 June 2019), *Direct Provision and the International Protection Application Process: Discussion (Resumed)*.

461 HSE, *Second National Intercultural Health Strategy 2018–2023*, p.64 and C. Coulter, *An Examination of Lengthy, Contested and Complex Child Protection Cases in the District Court*, p.96.

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462 Ni Raghallaigh et al., *Safe Haven*, pp.39–40.

463 Pavee Point Traveller and Roma Centre and Department of Justice and Equality, *Roma in Ireland – A National Needs Assessment*, p.24 and Pavee Point Traveller and Roma Centre and the HSE, *Roma Communities in Ireland and Child Protection Considerations*, p.18.

464 Pavee Point Traveller and Roma Centre and the HSE, *Roma Communities in Ireland and Child Protection Considerations*, p.22 and Pavee Point Traveller and Roma Centre (March 2015), *Irish Traveller and Roma Children Shadow Report: A Response to Ireland's Consolidated Third and Fourth Report to the UN Committee on the Rights of the Child*, p.7.

465 Pavee Point Traveller and Roma Centre and Department of Justice and Equality, *Roma in Ireland – A National Needs Assessment*, pp.62, 101. See also, Pavee Point Traveller and Roma Centre and the HSE, *Roma Communities in Ireland and Child Protection Considerations*, p.27.

466 Emily Logan (who at the time was the Ombudsman for Children but was acting in an independent capacity for the

Furthermore, there are ongoing gaps in the availability of appropriate placements to meet the needs of children who are placed in alternative care.<sup>467</sup> There have been reports of objections by parents about the foster care placements provided to their children, including because the placements were not appropriate to the religious, cultural, or linguistic background of the family.<sup>468</sup>

The Commission notes that the State has commenced a review of the Child Care Act 1991, the legislative framework empowering the State to promote the welfare of children who are not receiving adequate care and protection.<sup>469</sup> The Health Information and Quality Authority has also commenced the development of draft national standards for children's social services, which will be applicable to all welfare and protection services for children.<sup>470</sup>



**The Commission recommends that the review of the Child Care Act 1991 and the new national standards for children's social services take adequate**

**account of the issues experienced by minority ethnic families in engaging with welfare and protection services, their overrepresentation in childcare proceedings, and the need for alternative care placements appropriate to their individual circumstances and needs.**<sup>471</sup>

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purposes of the investigation) carried out a special inquiry into these cases and found that, in the case of one of the Roma children affected, his 'ethnicity was so influential in determining the decision to remove him from the care of his parents, with no objective or reasonable justification' that it amounted to ethnic profiling. See Department of Justice and Equality, *Report of Ms. Emily Logan*, p.115.

467 See IHREC, *Comments on Ireland's 16th National Report on the Implementation of the European Social Charter*, p.31.

468 C. Coulter, *Final Report*, pp.29, 45. See also, Pavee Point Traveller and Roma Centre and the HSE, *Roma Communities in Ireland and Child Protection Considerations*, p.36.

469 Minister for Children and Youth Affairs, Katherine Zappone (15 December 2017), 'Reviewing laws for children in crisis – consultation begins: "Laws to be updated to reflect a quarter of a century of change"'.  
470 Health Information and Quality Authority (14 August 2019), *Scoping Consultation to Inform the Development of Draft National Standards for Children's Social Services*.

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471 Note, the *National Traveller and Roma Inclusion Strategy 2017–2021* makes a commitment that child protection services will encourage involvement with Traveller and Roma communities in carrying out their duties and measures will be explored to support Travellers and Roma to become social workers and social care workers. See Department of Justice and Equality, *National Traveller and Roma Inclusion Strategy 2017–2021*, pp.29–30.

# Section 11

## **Housing**

*(Articles 5(d)(v), 5(e)(iii))*



## Housing policy

The Commission notes the view of the United Nation's Special Rapporteur on adequate housing that the constitutionalisation of the right to housing in Ireland is of fundamental importance to the realisation of human rights and the adoption of human rights-based housing policies.<sup>473</sup> A recent national poll published by the Commission demonstrated that 63% of people generally, and 78% of 18–24-year-olds, believe that a right to housing should be entered into the Constitution of Ireland.<sup>474</sup>

Overall, the State's approach to the provision of housing is inadequate. In particular, the current policy environment and associated instruments have significant implications for minority ethnic groups.

An applicant for social housing support is assessed according to the Housing (Miscellaneous Provisions) Act 2009 and the Social Housing Assessment Regulations 2011 (as amended). However, applicants who live in Ireland but are from an EEA State (excluding the United Kingdom) face additional hurdles, including in relation to their employment status. This is mandated by the Department of Housing, Planning, and Local Government's Circular 41/2012.<sup>475</sup>

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473 S. Burns, (11 June 2018) 'UN backs calls to make housing a constitutional right in Ireland', *The Irish Times* and Simon Community (June 2018), *Making the Case for the Right to Housing*, p.2.

474 This poll involved a nationally representative sample of 1,200 participants. See Amárach Research and IHREC (October 2018), *Understanding and Awareness of Human Rights and Equality in Ireland*, p.15.

475 The Circular outlines access to social housing supports for 'non-Irish nationals' and states that as an EU citizen living in Ireland, an individual must be in employment in order to be assessed for social housing support. If not, they must be unemployed due to illness, accident, or involuntarily unemployed after being in employment for over a year and

In April 2018, the Commission invited the four Dublin local authorities to carry out equality reviews<sup>476</sup> specifically focused on EEA and non-EEA nationals' access to social housing and homeless services.<sup>477</sup> These reviews raised serious concerns across the local authorities about the application of the Circular, which excludes certain applicants (especially EEA nationals) who would otherwise qualify for social housing supports. Following these findings, the Commission is concerned that its application in practice would see unlawful refusals to both homeless and social housing services, amounting to discrimination on the ground of race.<sup>478</sup>

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registered as a jobseeker with the Department of Social Protection. See *Circular Housing 41/2012 – Access to Social Housing Supports for Non-Irish Nationals*.

476 Under section 32 of the Irish Human Rights and Equality Commission Act 2014, the Commission can 'invite a particular undertaking, group of undertakings or the undertakings making up a particular industry or sector thereof' to conduct an equality review.

477 The four local authorities (Dublin City Council, Dún Laoghaire–Rathdown County Council, Fingal County Council, and South Dublin County Council) were tasked to audit, considering their obligations under Ireland's equality legislation, the level of equality of opportunity for people in accessing social housing services as set out in section 19 of the Housing Act 2009, and people's access to homeless services governed by section 10 of the Housing Act 1988. The local authorities were also tasked to examine their practices and procedures for the provision of accommodation services to non-Irish nationals (EEA and non-EEA) to determine whether these practices and procedures promoted equality of opportunity in line with their equality obligations under the Equal Status Acts.

478 This echoes previous concerns that the Circular unduly restricts the ability of EEA citizens in Ireland to apply for social housing with particular implications for access to housing for minority ethnic groups. See Children's Rights Alliance (July 2015), *Making Rights Real for Children: A Children's Rights Audit of Irish Law*.



**The Commission recommends that Circular 41/2012 on ‘access to social housing supports for non-Irish nationals’ be reviewed and amended to ensure that EEA nationals are not unlawfully discriminated against in accessing social housing supports.<sup>479</sup>**

Current government housing policy is now heavily dependent on the use of the private housing market to meet social housing needs.<sup>480</sup> This is apparent in the case of HAP, now a key pillar of the State’s social housing strategy.<sup>481</sup> The Commission is

479 The Commission has previously written to the Department of Housing, Planning, and Local Government seeking changes to the Circular. See IHREC, *Annual Report 2018*, p.28.

480 Changes made to arrangements for funding social housing over the past three decades has caused a long-term contraction in the role of social housing as the key source of accommodation for low-income households in Ireland. The decision to withdraw from building social housing and to provide rent supplement for low-income private renters instead has made low-income households extremely vulnerable to shocks in the housing market. Austerity imposed after the global financial crisis has merely accelerated this long-term trend, rather than signalling a new policy direction. See R. Hearne and M. Murphy (2018), ‘An absence of rights: homeless families and social housing marketisation in Ireland’, *Administration*, 66(2), pp.9–31 and M. Byrne and M. Norris (2018), ‘Pro-cyclical social housing and the crisis of Irish housing policy: marketization, social housing, and the property boom and bust’, *Housing Policy Debate*, 28(1), pp.50–63.

481 Government of Ireland (July 2016), *Rebuilding Ireland: Action Plan for Housing and Homelessness*, p.38. HAP is a form of social housing support whereby the local authority pays rent to a private landlord on behalf of those households assessed as having a social housing need. The government aims to provide 83,760 social housing homes via HAP between 2016 and 2021 as part of the Rebuilding Ireland strategy. During this time, only 33,617 homes will be built, while 6,830 will be bought and 10,036 will be leased by the local authorities or the voluntary housing associations. See Department of Housing, Planning, and Local Government (2016), *Rebuilding Ireland: Accelerate Social Housing*.

increasingly supporting individuals who have been discriminated against based on their receipt of HAP. In particular, it is concerned by the evidence of discriminatory advertising used to obstruct access to housing in the private rental sector for people in receipt of HAP.<sup>482</sup> HAP is a costly market-oriented scheme and is unlikely to provide satisfactory long-term housing solutions in the absence of sufficient complementary measures.



**Current government housing policy is now heavily dependent on the use of the private housing market to meet social housing needs.**



**The Commission recommends that the State adopt a policy approach that primarily views access to housing as a fundamental human right, rather than as a matter for the private market. This approach should include a new commitment to social housing and public housing provision.**

482 IHREC (20 August 2019), ‘*Human Rights and Equality Commission uses legal powers in successful challenge of daft.ie discriminatory rental adverts*’. The Commission is commissioning a scoping study on discrimination on the housing assistance ground under the Equal Status Acts 2000–2018. This study will be completed in 2020 and published on [www.ihrec.ie](http://www.ihrec.ie). For further discussion on the HAP, see R. Hearne and M. Murphy (2017), *Investing in the Right to a Home: Housing, HAPs and Hubs*.



**The Commission is increasingly supporting individuals who have been discriminated against based on their receipt of HAP.**

## Discrimination and inequality in housing

The Commission wishes to inform the Committee of the clear evidence of discrimination against, and higher risks of homelessness amongst, the minority ethnic population in Ireland.

The Commission-funded *Discrimination and Inequality in Housing in Ireland* report provides evidence that:

- ‘Black’ respondents are more than five times more likely to report housing discrimination than ‘White Irish nationals’;
- Even after education, employment status, and housing tenure are taken into account, ‘Black people’ remain 3.5 times more likely to be discriminated against with respect to housing than ‘White Irish people’;
- ‘Non-EU nationals’ are more likely to experience housing deprivation than ‘Irish nationals’ (1.7 times as likely);
- ‘Non-EU nationals’ are more likely to live in overcrowded accommodation compared to ‘Irish nationals’, even when they are within the same income group (2.5 times as likely);
- People whose nationality is other than Irish are substantially overrepresented among the homeless

population, particularly Romanians and people from African countries;

- People whose nationality is other than Irish or British are considerably overrepresented in the private rented sector and are particularly affected by entry barriers to the mortgage market.<sup>483</sup>

Ireland is experiencing a housing crisis with unprecedented levels of homelessness,<sup>484</sup> and the Commission is alarmed by evidence that a disproportionately high number of families of migrant origin are at risk of and are experiencing family homelessness.<sup>485</sup> A recent study demonstrates that some 10% of people accessing an emergency accommodation service in Dublin were from countries within the EEA, while a further 12% were from non-EEA countries.<sup>486</sup> It has also been documented

483 R. Grotti, H. Russell, É. Fahey, and B. Maitre (June 2018), *Discrimination and Inequality in Housing in Ireland* (IHREC and ESRI).

484 Figures from the Department of Housing, Planning, and Local Government demonstrate that, as of July 2019, there were 10,275 people accessing emergency homeless accommodation in Ireland including 1,721 families and 3,778 children. See Department of Housing, Planning, and Local Government, *Homelessness Report July 2019*. In December 2014, there were 407 families with 880 children and 2,310 persons without children in emergency homeless accommodation. See Department of Housing, Planning, and Local Government, ‘*Breakdown of homeless persons in emergency accommodation during the week 22 to 28 December 2014*’.

485 Dublin Region Homeless Executive (April 2018), *A Report on the 2016 And 2017 Families Who Experienced Homelessness in the Dublin Region*, p.11 and Focus Ireland (2019), *Family Homelessness in Dublin: Causes, Housing Histories, and Finding a Home-Full Report*.

486 In 20% of cases, the individuals’ origin is listed as unknown. The study uses administrative data from the Dublin Region Homeless Executive’s Pathway Accommodation and Support System. The greatest number of clients accessing emergency accommodation from non-EEA countries were from Nigeria (381), Somalia (136), and the Democratic Republic of Congo (81). See R. Waldron, B. O’Donoghue-Hynes, and D. Redmond (2019), ‘Emergency

that lone parent households led by women are significantly more susceptible to homelessness than other family types.<sup>487</sup>



## **a disproportionately high number of families of migrant origin are at risk of and are experiencing family homelessness.**

The Commission notes the findings of the recent report, *Diverse Neighbourhoods: An Analysis of the Residential Distribution of Immigrants in Ireland*, which found that people with poor English language proficiency are less advantaged, with half of Ireland's population with poor English language skills found in just 135 of 3,409 electoral divisions.<sup>488</sup>

As noted previously in this submission, the HRC is a qualifying condition for social welfare payments. Although applied to all applicants 'regardless of their nationality,' it has a disproportionate impact on migrant families, Traveller families, and Roma families.<sup>489</sup> The Commission has

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homeless shelter use in the Dublin region 2012–2016: Utilizing a cluster analysis of administrative data', *Cities*, 94, pp.143–152.

487 National Women's Council of Ireland (April 2018), *The Impact of Homelessness on Women's Health*.

488 Furthermore, the population with poor English-language proficiency is more likely to reside in areas with average levels of affluence/deprivation and low tertiary educational attainment. See É. Fahey, H. Russell, F. McGinnity, and R. Grotti (2019), *Diverse Neighbourhoods: An Analysis of The Residential Distribution of Immigrants in Ireland*, (Department of Justice and Equality and ESRI).

489 For further information on the HRC, see section 9. The Commission also previously highlighted this issue to CEDAW in 2017. See IHREC, *Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Reports*, p.92.

received information that the HRC is used as a criterion for access to emergency accommodation.<sup>490</sup> At the Civil Society Forum, the Commission also heard evidence of the difficulties experienced by some migrant and second-generation single parents and adults without children in qualifying for this condition, due to the requirements to prove a right to reside and a local connection.<sup>491</sup>

Overall, the discrimination and inequality faced by minority ethnic groups take place within the broader context of anti-immigrant and anti-refugee discourses relating to access to housing. Recent Commission-funded research has highlighted that online debates on refugee quotas in Ireland are often punctuated with comments that cast migrants as unworthy recipients of public funds and blame them for the current housing crisis.<sup>492</sup>



**The Commission recommends a review of the Housing Acts and associated policy instruments to reflect the changing and increasingly diverse nature of the population in need of social housing and homelessness supports, and to address the discrimination and inequalities faced by minority ethnic groups.**

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490 See IHREC, *Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Reports*, p.63.

491 A lack of awareness about rights and how to get on the housing list amongst minority ethnic and migrant groups, the practice of night-by-night accommodation, particularly for people who do not have their status regularised, and the direct entry of people coming to Ireland through the family reunification process into homelessness were also highlighted as issues of concern at the Commission's Civil Society Forum in May 2019.

492 Siapera et al., *Hate Track*, pp.4–38.



## Traveller accommodation

In June 2019, the Commission invoked its statutory powers to invite every local authority in the State to undertake an equality review<sup>493</sup> on their provision of Traveller-specific accommodation.<sup>494</sup>

This was motivated by the evidence arising from the Commission's legal casework of the persistent discrimination and inertia towards the provision of accommodation to the Traveller community.<sup>495</sup> In particular, the Commission remains concerned at the lack of provision of Traveller-specific accommodation, the persistent underspend of the Traveller accommodation budget, the conditions of many Traveller accommodation sites,<sup>496</sup> and the experiences of Travellers in the private rental sector.

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493 Under section 32 of the Irish Human Rights and Equality Commission Act 2014, the Commission can 'invite a particular undertaking, group of undertakings or the undertakings making up a particular industry or sector thereof' to conduct an equality review.

494 The statutory equality reviews focus on failures nationally to draw down the ring-fenced capital budget for Traveller-specific accommodation and oblige local authorities to examine whether any such failings may be due to discriminatory practices or policies under the Housing (Traveller Accommodation) Act 1998 and the Equal Status Acts. See IHREC (28 June 2019), *Human Rights and Equality Commission Launches National Review into Council Traveller Accommodation Provision*.

495 The Commission also notes evidence of substandard living conditions on many Traveller accommodation sites and the lack of progress in transient sites, despite a formal commitment from government since the 1995 *Report of the Taskforce of the Travelling Community*. The European Committee of Social Rights has recently concluded that there is still 'a not insubstantial shortfall' of transient sites across the country and, of 1,000 transient bays identified as needed by the 1995 taskforce, there are only 54 in existence and not all function as proper transient sites. Furthermore, only five local authorities (15%) provide transient sites. See *European Roma Rights Centre (ERRC) v. Ireland*, Complaint No. 100/2013.

496 On its State visit, the ECRI delegation expressed alarm at the deplorable conditions in which some Travellers were

Recent Commission-funded research, *Discrimination and Inequality in Housing in Ireland*, demonstrates that Travellers face high levels of discrimination, overcrowding, and higher risks of homelessness.<sup>497</sup> The existence of discrimination is also evident in the increase in the number of Traveller families sharing housing and, despite the general decline since 2002, the recent growth in the total number of Traveller families living on unauthorised sites.<sup>498</sup> Figures from 2018 show that local authorities did not draw down the total funding allocated for Traveller-specific accommodation.<sup>499</sup> Furthermore, there is a clear increase in the number of Traveller families living in private rented accommodation.<sup>500</sup> The Commission is

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living. See ECRI, *ECRI Report on Ireland*, p.23.

497 Grotti et al., *Discrimination and Inequality in Housing in Ireland*. The report found the following: Travellers are 22 times more likely than other white-Irish respondents to report that they have experienced discrimination in access to housing; while Travellers represent less than 1% of the Irish population, they make up more than 9% of the homeless population; the vast majority (84%) of Travellers living in caravan or mobile home accommodation reside in over-crowded conditions; only 16% of Travellers owned their own home, compared to 72% for the non-Traveller population; and Travellers are exceptionally reliant on social housing, with just under half (49%) being social renters.

498 The number of Traveller families sharing housing increased from 249 to 1,115 between 2002 and 2017, accounting for 10% of the total number of Traveller families as of 2017. The total number of Traveller families living on unauthorised sites increased from 422 to 585 between 2009 and 2017. IHREC analysis of the Department of Housing, Planning and Local Government, *Annual Count Figures 2002–2017*.

499 Over the past ten years, 2009–2018, the Department has recouped in excess of €75 million to local authorities from a capital budget of €128.8 million. See Seanad Éireann (6 March 2019), *Traveller Accommodation: Statements*. Ten local authorities did not draw down any funding for Traveller accommodation in 2018, including in counties with cities and particularly large populations such as Galway and Cork. Department of Housing, Planning and Local Government (19 February 2019), *Traveller Accommodation*.

500 From 2002 to 2017, the number of Traveller families in the private rented sector increased from 162 to 2,387, representing 21% of the total number of Traveller families.

concerned that this increase is not a precise reflection of the accommodation preferences of the Traveller community<sup>501</sup> and does not fulfil the State's obligations to provide culturally appropriate accommodation.<sup>502</sup>

The European Committee of Social Rights has found that despite some improvements, Ireland is in continued violation of Article 16 of the Charter,<sup>503</sup> with ongoing evidence of a substantial deficiency in providing accommodation for Travellers.<sup>504</sup> The Commission also notes the publication of the report of the Traveller Accommodation Expert Review Group,<sup>505</sup> which documents

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IHREC analysis of the Department of Housing, Planning and Local Government, *Annual Count Figures 2002–2017*.

501 The Irish State recently argued that the increase in the number of Travellers accommodated in private rented accommodation is in line with preferences expressed by Travellers and represents success in the State's efforts to improve the status of the Traveller community. European Committee of Social Rights (14 November 2014), *European Roma Rights Centre v Ireland: Further Response from the Government*.

502 The Commission also notes the barriers to the provision of Traveller specific accommodation and the inadequacies in the procedure to assess accommodation needs of the Traveller community. See Joyce et al., *Traveller Accommodation Expert Review*, section 3.

503 In December 2015, the Committee found that Irish law and practice breaches the human rights of Travellers on the following grounds: insufficient provision of accommodation for Travellers; many Traveller sites are in an inadequate condition; the Criminal Justice (Public Order) Act 1994 (as amended) provides for inadequate safeguards for Travellers threatened with eviction; the Housing (Miscellaneous Provisions) Act 1992 (as amended) provides for inadequate safeguards for Travellers threatened with eviction; and evictions are carried out in practice without the necessary safeguards. See *European Roma Rights Centre (ERRC) v. Ireland*, Complaint No. 100/2013.

504 European Committee of Social Rights (December 2018), *Follow-Up to Decisions on the Merits of Collective Complaints*.

505 The group was established by the Minister of State for Housing and Urban Development, Damien English T.D., to review the Traveller Accommodation Act 1998, and other legislation that affects the provision and delivery of accommodation for Travellers. The aims of the Expert Group

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**Figures from 2018 show that local authorities did not draw down the total funding allocated for Traveller-specific accommodation. Furthermore, there is a clear increase in the number of Traveller families living in private rented accommodation.**

clear shortcomings in the provision of accommodation, including the quality of available information on the accommodation needs and preferences of the Traveller population. The report indicates that 54% of accommodation output between 2006 and 2018 involved the refurbishment or extension of existing Traveller-specific units rather than new output.<sup>506</sup> The review recommends a range of short-, medium-, and long-term measures including encouraging local authority chief executives to use their emergency powers to provide housing, and the introduction of legislative provisions to suspend the reserved function of elected members for approval of proposals for Traveller accommodation.<sup>507</sup>

The Commission notes the recommendations of ECRI that efforts

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were to review the effectiveness of the 1998 Act, determine if it provides a robust legislative basis for meeting the current and future accommodation needs of the Traveller Community, and to review other legislation that impacts on the delivery of Traveller-specific accommodation. See Joyce et al., *Traveller Accommodation Expert Review*.

506 Only 14.7% of output involved the provision of new halting site bays, and 18.4% was for group housing scheme units. See Joyce et al., *Traveller Accommodation Expert Review*, p.42.

507 See Joyce et al., *Traveller Accommodation Expert Review*.

to meet the accommodation needs of Travellers should be increased, including by improving existing halting sites to meet decent and safe living standards, and by providing adequate, accessible, suitable, and culturally appropriate accommodation.<sup>508</sup>



**The Commission recommends that the State prioritise the implementation of the recommendations of the Independent Expert Review of Traveller Accommodation and European Commission against Racism and Intolerance.**



**The Commission recommends the introduction of dissuasive sanctions for local authorities who fail to provide Traveller-specific and culturally appropriate accommodation in areas where there is a stated need.**

## Roma

The Commission is concerned with the findings of the 2018 *National Roma Needs Assessment*, which documented discrimination in accessing accommodation, severe overcrowding, poor quality accommodation, a lack of security of tenure, homelessness, and lack of access to social housing and rent supplement

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508 ECRI also recommended the need for a solution to the failure by local authorities to use funding allocated for Traveller accommodation, including by imposing dissuasive sanctions on local authorities for failure to spend allocated funding, or shifting the responsibility for accommodation from local authorities to a central housing agency. See ECRI, *ECRI Report on Ireland*, p.23.

within the Roma community.<sup>509</sup>

Approximately 77% of Roma who participated in the study lived in private rented accommodation, 45% said they did not have enough beds in their accommodation, and 24% lived in households of eight or more people. Thirty-seven per cent of respondents reported that they did not have a tenancy agreement, 7% of respondents were homeless, and 46% reported having been homeless at some stage of their lives.<sup>510</sup>

The application of Housing Circular 41/2012, as highlighted above, has also been reported as precluding many Roma people from accessing a range of housing supports, including homeless supports. For Roma who do not meet the requirements relating to employment, a housing assessment cannot be completed.<sup>511</sup>

The Commission notes the Committee's general recommendations on the elimination of discrimination against Roma including 'to act firmly against any discriminatory practices affecting Roma, mainly by local authorities and private owners, with regard to taking up residence and access to housing.'<sup>512</sup>



**The Commission recommends that the State take further specific, targeted**

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509 Pavee Point Traveller and Roma Centre and Department of Justice and Equality, *Roma in Ireland – A National Needs Assessment*.

510 Pavee Point Traveller and Roma Centre and Department of Justice and Equality, *Roma in Ireland – A National Needs Assessment*, section 8.

511 See Pavee Point Traveller and Roma Centre (2015), *The National Roma Needs Assessment: Accommodation Briefing*.

512 Committee on Elimination Racial Discrimination (2000), *General Recommendation XXVII on Discrimination against Roma*, p.3.

**measures to address barriers to access to housing for the Roma community.**

The Commission notes there is currently no specific action in the *National Traveller and Roma Inclusion Strategy 2017–2021* on addressing the housing and accommodation issues affecting the Roma community.



**The Commission recommends the development of Roma-specific, time-bound actions in the area of housing for inclusion in the *National Traveller and Roma Inclusion Strategy 2017–2021*.**

The Commission is mindful of the need for additional administrative and survey data to document the impact of policies on housing outcomes and the reliance on private sector accommodation on minority ethnic communities, as well as any progress achieved in the provision of housing. This is most apparent in the case of the Roma community in Ireland, and the Commission notes the Committee's recommendation that the State collects and reports data on the situation of the Roma community.<sup>513</sup>



**The Commission recommends that the State progress the introduction of an ethnic identifier across the housing sector and the systematic publication of disaggregated administrative data, including specific data on the Roma community.**

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513 Committee on Elimination Racial Discrimination, *General Recommendation XXVII*, p.5.

Section 12

# **Gender-based Violence**

*(Articles 2(2), 4(a), 5(b))*



## Violence against women and girls

The Commission notes the right of people to be protected from violence under Article 5 of CERD, as well as the Committee's focus on mainstreaming a gender perspective.<sup>514</sup> The Irish government ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) on 8 March 2019.<sup>515</sup> In welcoming this ratification, the Commission identified priority areas for action by the State to ensure the adoption of a comprehensive and coordinated response to violence against women and girls, including women and girls from minority ethnic groups.<sup>516</sup>

Existing evidence indicates that violence against women and girls is prevalent in Ireland.<sup>517</sup> However, both the Commission

and the Committee on the Elimination of Discrimination against Women (CEDAW) have raised concerns about the limited data and research available in practice, as well as reported inaccuracies by An Garda Síochána in the recording and classification of crimes involving domestic violence.<sup>518</sup> Furthermore, there is evidence that sexual and domestic violence offences are chronically under-reported by victims from minority ethnic communities, due to, among other reasons, the limited availability of reliable support services, accessible procedures, and specialised practitioners.<sup>519</sup>



**...there is evidence that sexual and domestic violence offences are chronically under-reported by victims from minority ethnic communities, due to, among other reasons, the limited availability of reliable support services, accessible procedures, and specialised practitioners.**

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514 See for example, The Committee (20 March 2000), *General Recommendation No. 25 on Gender-Related Dimensions of Racial Discrimination*.

515 Department of Justice and Equality (8 March 2019), 'Minister Flanagan announces ratification of the Istanbul Convention by Ireland on International Women's Day'. The Commission repeatedly called on the State to ratify this Convention. See for example, IHREC (5 November 2015), 'Statement on Ireland's signature of Council of Europe Convention on preventing and combating violence against women (Istanbul Convention)', and IHREC, *Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women*, p.11.

516 IHREC, 'Statement on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence'.

517 EU Agency for Fundamental Rights (2014), *Violence Against Women: An EU Wide Survey*, (Luxembourg: Publications Office of the European Union). A recent survey has reported that Ireland has the highest level of claimed sexual harassment in Europe, with 32% of Irish women between the ages of 18 and 34 saying they had experienced some form of sexual harassment in the last 12 months. See Department of Justice and Equality (9 May 2019), 'Minister Flanagan launches major national awareness campaign on

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sexual harassment and sexual violence'.

518 IHREC, *Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women*, p.59; IHREC (2018), *Submission to the Commission on the Future of Policing*; and CEDAW (9 March 2017), *Concluding Observations on the Combined Sixth and Seventh Periodic Reports of Ireland*, CEDAW/C/IRL/CO/6-7, p.7.

519 IHREC (February 2017), *Observations on the Criminal Justice (Victims of Crime) Bill 2016*, p.8 and Irish Observatory on Violence Against Women (September 2018), *Submission: The Policing Authority – Policing Priorities for 2019*, pp.4–5.

Such underreporting contributes to deficits in the data available on the experiences of violence among particular groups. The Department of Justice and Equality has recently announced its plan to undertake a new national survey on the prevalence of sexual violence in Ireland, which will take up to five years to complete.<sup>520</sup> However, the Commission understands that the inclusion of a representative sample of minority ethnic and other groups will only be considered after the completion of the first survey. This raises concerns about the specific timelines and commitments relating to this second phase and the potential for significant delays in the availability of the data, as well as concerns about the extent to which the data will be comparable.<sup>521</sup>

UN treaty monitoring bodies have repeatedly called on Ireland to strengthen its specialist supports for victims of domestic violence,<sup>522</sup> but the Commission has ongoing concerns about the multiple barriers faced by victims in accessing services. Recent reports indicate that Ireland has less than a third of the number of domestic violence refuge spaces it is required to have under European standards.<sup>523</sup> The Commission has

received information that due to demands on services, eligibility for social security is used as a criterion for access to emergency accommodation, which presents difficulties for women and girls from migrant, Roma, and Traveller communities who cannot satisfy the HRC.<sup>524</sup> The Commission is also aware that access to such services is impeded by the inadequate provision of quality interpreting services.<sup>525</sup>



**The Commission recommends that the State adopt measures to encourage and facilitate the reporting of crimes, including special measures for women and girls from minority ethnic groups.**



**The Commission recommends that the new Sexual Violence Survey should facilitate the reporting of robust and sufficient data on the experiences of women and girls from minority ethnic groups in a timely manner.**<sup>526</sup>

520 Department of Justice and Equality (10 January 2019), 'Department of Justice and Equality and the Central Statistics Office sign Memorandum of Understanding on the undertaking of a national sexual violence prevalence study' and CSO (10 January 2019), 'CSO to oversee new national survey on the prevalence of sexual violence in Ireland'.

521 National surveys often build in booster samples of groups traditionally underrepresented or excluded from standard national surveys within the main research design. For further information, see section 6.

522 Committee on the Rights of the Child, *Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland*, p.8; Committee on Economic, Social, and Cultural Rights, *Concluding Observations on the Third Periodic Report of Ireland*, p.7 and Human Rights Committee (19 August 2014), *Concluding Observations on the Fourth Periodic Report of Ireland*, CCPR/C/IRL/CO/4, p.3.

523 According to Minister Zappone, the Child and Family

Agency is applying a standard of one shelter space per 10,000 of the female population. However, the Council of Europe has set the standard at one place per 7,500 of the population and one family place per 10,000 of the population. See WAVE – Women against Violence Europe (March 2018), *WAVE Country Report 2017: The Situation of Women's Specialist Support Services in Europe*; Council of Europe (September 2008), *Combating Violence Against Women: Minimum Standards for Support Services*, p.18; and Dáil Éireann Debate (28 March 2019), 'Domestic violence'.

524 See section 9 for more detail on the HRC. See also, IHREC, *Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women*, p.63.

525 See sections 10 and 15 for further details on interpreting services.

526 The Commission notes that the Scoping Group on Sexual Violence Data has also recommended that 'further consideration be given to the development of appropriate supplementary data collection exercises to explore the



**The Commission recommends that specialised services for victims of violence must be widely accessible and accommodating of the diverse needs of minority ethnic women.**

The Commission is of the view that the protection of women and girls from violence should be central to immigration reform. It has been reported that migrant women are disproportionately represented in the figures of women presenting to frontline domestic and sexual violence services.<sup>527</sup> According to Women's Aid, 19% of the women who engaged with its services in 2018 were migrant women.<sup>528</sup> Women in direct provision can also have additional risk factors, including heightened tensions within

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experiences of sexual violence for members of vulnerable and minority groups in the population. This is because a national survey by its nature cannot achieve data to make any useful or meaningful conclusions in relation to small groups'. See Scoping Group on Sexual Violence Data (April 2018), *Report of the Scoping Group on Sexual Violence Data*. It is worrying that there is no confirmation as to whether the study of vulnerable and minority groups in the population will have a similar scope to the Sexual Violence Study (SVS) national survey, when it will be completed, and what resources will be invested. Discussions with the State indicate that the study of vulnerable and minority groups may follow after the SVS national study, which would result in significant delay to the development of the evidence base for policy and provision.

527 AkiDwA (31 May 2019), *Submission to the Joint Committee on Justice & Equality: Direct Provision & the International Protection Application Process*, p.3. Women's Aid has highlighted that it is important not to draw conclusions about levels or severity of domestic violence amongst particular minority ethnic communities given some appear 'over-represented' in refuge provision. Instead, it shows that minority women face additional barriers to obtaining long-term safety and lack other possible options than emergency accommodation.

528 This data relates to its One to One and Dolphin House services. See Women's Aid (April 2019), *Impact Report 2018*, p.9.

families as a result of the physical space and conditions within which they are living.<sup>529</sup>

INIS has published guidelines on how the immigration system deals with cases where the victim's immigration status is derived from or dependent on that of the perpetrator of domestic violence. However, the Minister has discretion in all decisions, and the arrangements do not apply to victims without permission to be in the State.<sup>530</sup>



**...the State is obliged to assess the special reception needs of vulnerable persons, including people who have been subjected to violence, within a reasonable time after an application for international protection is made.**

The Commission is also concerned about the absence of gender guidelines and gender-sensitive asylum procedures applying to the application and decision-making processes of the International Protection Office (IPO) and the International Protection Appeals Tribunal (IPAT).<sup>531</sup> As recognised by the Council of Europe, introducing a gender perspective into procedures allows for the specific types of persecution and protection concerns that affect women and girls to be taken into account.<sup>532</sup>

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529 AkiDwA, *Submission to the Joint Committee on Justice & Equality*, pp.3-4.

530 INIS, *Victims of Domestic Violence Immigration Guidelines*.

531 See Article 60(3) of the *Istanbul Convention*.

532 Council of Europe (2019), '*Protecting migrant women, refugee women and women asylum seekers from gender-*



Concerning gender-sensitive reception procedures and support services for asylum seekers,<sup>533</sup> the Commission notes that the State is obliged to assess the special reception needs of vulnerable persons, including people who have been subjected to violence, within a reasonable time after an application for international protection is made.<sup>534</sup> However, there have been criticisms by organisations supporting asylum seekers in Ireland that these vulnerability assessments are not taking place at the beginning of the asylum procedure, as required.<sup>535</sup> The Department of Justice and Equality has confirmed that new national standards for accommodation centres for asylum seekers will support the process of ensuring that reception procedures and support services are appropriately gender-sensitive.<sup>536</sup>



**The Commission recommends that the *Immigration Guidelines for Victims of Domestic Violence* are placed on a legislative basis, to ensure that victims, whose residence status depends on the perpetrator of domestic violence, can access autonomous residence permits irrespective of the duration of the relationship.**<sup>537</sup>

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*based violence*'.

533 See Article 60(3) of the *Istanbul Convention*.

534 See Articles 21–22 of the Reception Conditions Directive (recast) (2013/33/EU). For further information on the requirements under this Directive and vulnerability assessments, see section 13.

535 Irish Refugee Council (27 May 2019), '*Refugee organisations highlight absence of vulnerability assessment in Irish asylum procedure*'.

536 Department of Justice and Equality (10 July 2019), '*Written answers – gender recognition*'.

537 This recommendation has previously been raised by the Commission and the Committee. See IHREC, *Ireland and the Convention on the Elimination of All Forms of*



**The Commission recommends the introduction of a clear legal framework to provide pathways to lawful residence for victims of domestic violence who are undocumented.**<sup>538</sup>



**The Commission recommends that the State take all necessary legislative and other measures to ensure that the needs of victims of violence are identified and addressed throughout the asylum procedure, including by introducing gender-sensitive guidelines, reception procedures, and support services.**

The Commission is aware of reports on the existence of negative attitudes towards victims among some members of An Garda Síochána.<sup>539</sup> In 2017, CEDAW recommended that Ireland intensify existing efforts to combat gender-based violence against women by ensuring that prosecutors and the police are properly trained to identify, investigate, and prosecute cases, particularly cases involving violence targeted at Traveller, Roma, and migrant women and girls.<sup>540</sup> Broader information and education measures

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*Discrimination Against Women*, p.61 and The Committee (2011), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland*, CERD/C/IRL/CO/3-4, p.3.

538 See section 9 for the Commission's recommendation that a regularisation scheme for undocumented people is developed in Ireland.

539 Women's Aid, *Impact Report 2018*, p.9 and Garda Síochána Inspectorate, *Crime Investigation*, p.17.

540 CEDAW, *Concluding Observations on the Combined Sixth and Seventh Periodic Reports of Ireland*, p.7.

are also necessary to raise awareness among the public about the responsibility of the State to prevent and combat violence against women and girls. The Commission notes the recent launch of a three-year national awareness campaign on sexual harassment and sexual violence by the Department of Justice and Equality.<sup>541</sup>



**The Commission recommends that the complex and intersectional issues relating to violence against minority ethnic women and girls are included in the pre-service and ongoing training of An Garda Síochána.**



**The Commission recommends that targeted public information and education measures on violence against women and girls should be developed for minority ethnic communities, including women and girls in the international protection system.**

## Female genital mutilation

An estimated 5,795 women and girls living in Ireland have undergone FGM.<sup>542</sup> The Criminal Justice (Female Genital Mutilation) Act 2012 made it a criminal offence to perform FGM or to remove a woman or

girl from the State for FGM. The *Second National Intercultural Health Strategy 2018–2023* recognises the need to continue the development and implementation of education and public campaigns to raise awareness about this legal framework.<sup>543</sup>

There is a specialised treatment centre in Dublin city centre for women and girls who have experienced FGM, operated by the Irish Family Planning Association (IFPA) and funded by the HSE.<sup>544</sup> The IFPA has noted that despite its awareness-raising work, challenges remain in ensuring access to this service, particularly for asylum-seeking women. In particular, the IFPA has raised its concerns that women in the direct provision system are unaware that a free treatment service for FGM is available in Ireland. These women experience difficulties in accessing childcare and meeting the required transport costs to access the service, particularly when they are travelling from rural areas and have multiple counselling sessions.<sup>545</sup> Cultural barriers and the fear of the unknown have also been described as preventing many women and girls from accessing services for FGM.<sup>546</sup>

The Commission acknowledges the

<sup>541</sup> Department of Justice and Equality, 'Minister Flanagan launches major national awareness campaign on sexual harassment and sexual violence'.

<sup>542</sup> This figure was compiled by synthesising Census 2016 data with UNICEF global prevalence estimations from 2016. See AkiDwA (January 2018), *CERD Submission*, p.2.

<sup>543</sup> HSE, *Second National Intercultural Health Strategy 2018–2023*, p.25.

<sup>544</sup> As referenced in the State report. See The Committee, *Combined Fifth to Ninth Periodic Reports Submitted by Ireland Under Article 9 of the Convention*, p.11.

<sup>545</sup> IFPA (May 2019), *Submission on Direct Provision to the Oireachtas Committee on Justice and Equality*, p.4; IFPA (26 June 2017), *Supplementary Information on Ireland in Relation to Sexual and Reproductive Health and Rights for the Consideration of the Committee Against Torture at its 61st session (24 July–11 August 2017)*, pp.10–11; and IHREC, *Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women*, p.65.

<sup>546</sup> S. Pollak (30 April 2019), 'Female genital mutilation victims not availing of health services – charity', *The Irish Times*.

ongoing efforts of civil society in laying the groundwork for the development of a framework for the coordination of services on FGM,<sup>547</sup> and the recent calls for the State to establish an interdepartmental committee tasked with the role of drawing up a national action plan to combat FGM.<sup>548</sup> However, a government-led coordinated plan and interagency group on FGM have yet to be established.



**The Commission recommends that the State work in collaboration with communities affected by Female Genital Mutilation to raise awareness about and support access to the existing specialist services and to develop additional regional services and peer-led support.**



**The Commission recommends that the State build on the work carried out by civil society to advance the publication of a comprehensive national action plan on Female Genital Mutilation.**



**The Commission acknowledges the ongoing efforts of civil society in laying the groundwork for the development of a framework for the coordination of services on FGM, and the recent calls for the State to establish an interdepartmental committee tasked with the role of drawing up a national action plan to combat FGM.**

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547 AkiDwA (2016), *Towards a National Action Plan to Combat Female Genital Mutilation 2016–2019*. See also, IHREC, *Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women*, p.65.

548 HSE, *Second National Intercultural Health Strategy 2018–2023*, p.105.

Section 13

# **International Protection**

*(Articles 2, 5)*



## The international protection application process

As recommended by the Commission,<sup>549</sup> the International Protection Act 2015 introduced a single procedure whereby an applicant for international protection makes one application and has all grounds determined in a single process.<sup>550</sup> Key objectives of the law were to establish the IPO,<sup>551</sup> IPAT, and to improve the efficiency of the international protection system. At the end of 2018, there were 5,700 applications for international protection, 1,500 of which were waiting to have an interview scheduled in the IPO.<sup>552</sup> The Department of Justice and Equality estimated that it was taking 19 months from the point of applying for protection to schedule an interview in early 2018,<sup>553</sup> and this was reduced to 15 months by June 2019.<sup>554</sup> The IPO made 3,091 recommendations in 2018, up from 1,938 in 2017.<sup>555</sup> On average, it takes 23 weeks to process appeals to the IPAT.<sup>556</sup> Although the Commission acknowledges progress in this area in recent years,<sup>557</sup> it

notes that the Ombudsman has called for the complaints and investigations remit of his Office to be extended to the administrative processes through which asylum applications are assessed, including the issue of timeframes.<sup>558</sup>



**The Commission is concerned that almost four years after the passing of the International Protection Act 2015, excessive waiting times for the processing of international protection applications persist, leading to dependency and disempowerment amongst those seeking protection and impeding prospects of integration.**<sup>559</sup>

International protection applicants are provided with legal assistance to progress their application, the resourcing of which has been subject to criticisms. A 2015 review of the protection process<sup>560</sup>

549 IHREC (10 December 2014), *Policy Statement on the System of Direct Provision in Ireland*, p.18.

550 See Department of Justice and Equality (31 December 2016), *'The International Protection Act 2015'*.

551 In June 2019, about 149 staff worked in the IPO with 70 individuals on the legal processing panel, see Dáil Éireann debate (27 June 2019), *'International protection'*.

552 Department of Justice and Equality (2018), *Immigration in Ireland: Annual Review 2018*, p.37.

553 This waiting time refers to non-prioritised applications, see Dáil Éireann debate (30 January 2018), *'Asylum applications'*.

554 Dáil Éireann (27 June 2019), *'International protection'*.

555 Dáil Éireann, *'International protection'*.

556 Dáil Éireann, *'International protection'*.

557 The Department has also committed to further improving the processing rate for international protection applications, including the time taken for first instance decisions in 2019. See Department of Justice and Equality, *Immigration in Ireland*, p.58.

558 Joint Committee on Justice and Equality (25 September 2019), *'Direct provision: discussion with Ombudsman'*.

559 IHREC (April 2019), *Submission to the Universal Periodic Review of the UN Human Rights Council: Second Cycle Mid-Term Review*, p.11; UNHCR Ireland (25 April 2018), *'UNHCR calls for action to cut Irish asylum waiting times'*; and C. Gallagher (14 October 2019), *'Government urged to speed up asylum application process'*, *The Irish Times*. This issue was also raised at the Commission's Be Heard on CERD consultation and the Civil Society Forum. In June 2019, NASC stated before a Joint Oireachtas Committee that 'the wait times with no upper limit is one of the primary issues raised to us by applicants' and advocated for additional staff and resources to be assigned to the IPO. See NASC (12 June 2019), *'Opening statement to the Oireachtas Joint Committee on Justice and Equality hearing on direct provision and the protection process'*.

560 Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers (June 2015), *Final Report*.

recognised the value of early legal advice<sup>561</sup> and recommended the proper resourcing of the Civil Legal Aid Board to ensure that applicants have access to effective legal advice before the first instance interview.<sup>562</sup> This reflects more recent comments by the Chief Justice that there is 'a compelling case for a very significant increase' in civil legal aid services.<sup>563</sup> Stakeholders continue to raise the under-resourcing of legal assistance at an early stage as a key issue in the international protection system.<sup>564</sup> The Commission's Civil Society Forum in May 2019 heard concerns regarding the quality and amount of legal advice provided at an early stage in the process. Similar concerns were also raised at the Oireachtas Joint Committee on Justice and Equality on 29 May 2019.<sup>565</sup>

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561 'Early legal advice, i.e. prior to the first instance interview, is the most effective and ultimately cost-saving form of legal advice, in that it increases the likelihood of applicants receiving an appropriate first instance decision, concluding the procedure in the case of applicants who are recognised, and facilitating an expeditious appeals decision in the case of applicants who are not recognized'. See Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report*, p.117.

562 See Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report*, pp.118–119.

563 *Law Society Gazette*, "'Moral argument' for civil legal aid boost – Clarke".

564 The Irish Refugee Council highlights that 'only 11% of the Legal Aid Board's civil legal aid budget is spent on advice for international protection applicants.' See Irish Refugee Council (May 2019), *Submission to Joint Oireachtas Committee on Justice and Equality*, p.27.

565 See Joint Committee on Justice and Equality (29 May 2019), *Direct Provision and the International Protection Application Process: Discussion (Resumed)*. Ms Donnah Vuma, a protection applicant, gave evidence before the Committee, stating: 'We do not have proper legal advice. While legal aid is available in principle, one may only get to see one's solicitor once before an interview'.



**The Commission recommends that the State ensure effective legal advice for international protection applicants at an early stage through the Civil Legal Aid Board, to support them in progressing their application.**

Under the Asylum Procedures Directive (recast), States must ensure that vulnerable applicants, including applicants with a disability, are provided with adequate support throughout the international protection process. These special procedural guarantees should be put in place before a first instance decision is taken and should include the creation of the conditions necessary to ensure that applicants can effectively access procedures and substantiate their application for international protection.<sup>566</sup> The Commission notes that Ireland has not opted into this Directive.



**The Commission calls on the State to opt in to the Asylum Procedures Directive (recast) and introduce measures to support people with disabilities and other special procedural needs in their application for international protection.**

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

## Immigration detention

There are no designated detention centres for people seeking international protection. Under the international protection framework, applicants may be detained at any Garda Station or Cloverhill Prison.<sup>567</sup> The number of people detained in prison under broader immigration laws<sup>568</sup> remains steady:<sup>569</sup> 414 committals, involving 406 detainees falling under this category for 2018.<sup>570</sup> There were on average 11 people detained daily for immigration-related matters in 2018.<sup>571</sup>

A new dedicated and secure facility for immigrant detainees is due to open at Dublin Airport.<sup>572</sup> The Commission has also been informed that a separate immigration detention unit is due to open in Cloverhill prison.<sup>573</sup> The Commission reiterates its call for immigration detention facilities to adhere to human rights standards, including the right to appropriate legal advice, the principle of detention as a measure of last resort, the need for clear oversight and accountability measures, and the right to information in the language and format required.<sup>574</sup>

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567 See Regulation 31 of the European Communities (Reception Conditions) Regulations 2018 that amended the International Protection Act 2015 (Places of Detention) Regulations 2016.

568 This includes persons detained for offences outside of international protection e.g. trafficking of persons.

569 See Irish Prison Service (2019), *Annual Report*, p.25.

570 Corresponding figures for previous years are: 418 committals involving 396 detainees (2017) and 421 committals involving 408 detainees (2016). See website of the *Asylum Information Database*.

571 See Irish Prison Service (2019), *Annual Report*, p.25.

572 C. O’Keeffe (12 June 2019), ‘Dedicated immigration facility due to open at Dublin Airport’, *The Irish Examiner*.

573 Department of Justice and Equality civil society briefing on labour market access for international protection applicants, held in Dublin on 28 July 2018.

574 Detailed guidance from the European Committee for the Prevention of Torture and Inhuman or Degrading



**The Commission is of the view<sup>575</sup> that immigration detention should not be punitive and should only be used as an individual measure that is exceptional, proportionate, and necessary.**



**The Commission recommends that the operation of immigration detention should be regularly evaluated.**

## Developments in direct provision since 2011

In its 2011 Concluding Observations, the Committee recommended that the State ‘take all necessary measures to improve’ the living conditions of asylum seekers and conduct a review of the direct provision system.<sup>576</sup> Following the Commission’s establishment, its first programme of work in 2014 was focused on direct provision, and it echoed the Committee’s call for a review of the system.<sup>577</sup>

This review was subsequently carried out by

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Treatment or Punishment (the CPT) provides that detained irregular migrants should have access to legal aid and should, without delay, be expressly informed of their rights and the procedure applicable to them, in a language they understand. They should have the lawfulness of their deprivation of liberty decided speedily by a judicial body. See CPT (2017), *Factsheet on Immigration Detention*.

575 IHREC (July 2017), *Ireland and the Convention against Torture*, p.15.

576 The Committee (4 April 2011), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland*, para 20.

577 IHREC, *Policy Statement on the System of Direct Provision in Ireland*.

the Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports for Asylum Seekers and its report, *The McMahon Report*, was published in 2015.<sup>578</sup> *The McMahon Report* set out detailed recommendations, and the State claims that 98% of these recommendations have been implemented.<sup>579</sup> This figure has been disputed by several commentators, including the chair of the working group.<sup>580</sup> For example, the State report provides details on improvements to living conditions with the introduction of self or communal catering. However, these improvements have not been made in all centres,<sup>581</sup> and notably the State-owned centres have not provided access to a food hall and/or cooking facilities.<sup>582</sup>

As recommended by the Commission before a parliamentary committee,<sup>583</sup> the State opted-in to the Reception Conditions Directive (recast) in 2018,<sup>584</sup> committing

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...direct provision centres are experiencing significant capacity issues. These issues are being exacerbated by the housing crisis, which has meant that residents who have been granted refugee status are unable to leave.

itself to common minimal standards for material reception conditions for asylum seekers. New national standards for accommodation offered to people in the protection process were also published in August 2019<sup>585</sup> and resulted in calls for an independent oversight and inspection mechanism to be established to monitor their implementation in practice.<sup>586</sup> The Commission remains concerned that direct provision centres are experiencing significant capacity issues.<sup>587</sup> These issues are being

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578 Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report*.

579 See Committee on the Elimination of Racial Discrimination, *Combined Fifth to Ninth Periodic Reports Submitted by Ireland under Article 9 of the Convention*, and Department of Justice and Equality (July 2017), *Third and Final Progress Report on the Implementation of the Report's Recommendations*.

580 NASC (December 2017), *Working Paper on Progress of Implementation of the McMahon Report*, p.5. See also, L. Thornton (2019), *Submission to the Oireachtas Committee on Justice and Equality on Direct Provision and Human Rights*, at p.4 and Joint Committee on Justice and Equality (22 May 2019), *Direct Provision and the International Protection Application Process: Discussion*.

581 NASC (December 2017), *Working Paper on Progress of Implementation of the McMahon Report*, p.4.

582 Joint Committee on Justice and Equality (22 May 2019), *Direct Provision and the International Protection Application Process: Discussion*.

583 Joint Oireachtas Committee on Justice and Equality (9 May 2018), *Access to the Labour Market for International Protection Applicants: Discussion*.

584 The European Communities (Reception Conditions)

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Regulations 2018 transposed the Reception Conditions Directive (recast) (2013/33/EU) into Irish law.

585 Department of Justice and Equality (2019), *National Standards for Accommodation Centres*. Note, the McMahon Report specifically called for standards in Direct Provision, against which inspection should occur. See Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report*, p.198.

586 See for example, Children's Rights Alliance (16 August 2019), *National Standards for Accommodation Potentially Transformative for Families in the Protection Process but Need for Independent Inspectorate Essential for their Success* and Doras, 'Experiences of living in direct provision: a case study of Mount Trenchard accommodation centre' (Limerick: The Community Foundation for Ireland, 2019), p.5.

587 Ombudsman (March 2019), *The Ombudsman and Direct Provision: Update for 2018 – A Commentary by the Ombudsman*, p.7. There was an increase in the number of people seeking asylum during 2018. The number in Direct Provision grew from 5,687 (of which 591 were in emergency accommodation) on 1 January 2018 to 6,148 (of which 442 were in emergency accommodation) on 1 January 2019.



exacerbated by the housing crisis, which has meant that residents who have been granted refugee status are unable to leave. There are currently approximately 850 people with an international protection status or permission to remain still living in direct provision.<sup>588</sup>

Owing to the capacity issues in direct provision centres, the State has been providing emergency accommodation to international protection applicants in hotels and guesthouses since September 2018. As of October 2019, 1,399 people were living in emergency accommodation across Ireland.<sup>589</sup> The Commission is concerned about reports of inadequate living conditions in emergency accommodation and the failure to ensure that asylum seekers are assessed before being placed in the centres and provided with access to the necessary services.<sup>590</sup> The Commission staff met with protection applicants living in emergency accommodation in February 2019,<sup>591</sup> in light of concerns that people were being moved at weekends so that the hotels could be used for commercial purposes. These applicants raised wide-ranging concerns regarding their treatment, including the failure to provide information about entitlements, the failure to place children in school and preschool,<sup>592</sup> isolation due to lack of access to transport, a lack of play spaces for children, some adults sharing beds with strangers, insufficient sanitary and toiletry items, unsuitable food for the cultural and religious beliefs of residents, delays in accessing medical cards and PPS numbers,

difficulties accessing medical treatment,<sup>593</sup> and delays in accessing legal advice.



**Owing to the capacity issues in direct provision centres, the State has been providing emergency accommodation to international protection applicants in hotels and guesthouses since September 2018.**

Noting comments by government officials that it is not possible to apply the same standards and inspection regime to emergency accommodation,<sup>594</sup> the Commission is of the view that this type of accommodation is incompatible with the rights of protection applicants. The Commission recalls the reference to the Public Sector Equality and Human Rights Duty in the national standards for accommodation offered to people in the protection process.<sup>595</sup> Due consideration must be given to the requirements of this duty in the procurement and provision of emergency accommodation, as well as in the delivery of other services by State bodies, including in the areas of health, education, and transport.

Although this had been described as an 'emergency' measure, the Commission

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588 Dáil Éireann (1 October 2019), *Direct Provision System*.

589 Dáil Éireann (8 October 2019), *Direct Provision Data*.

590 Joint Committee on Justice and Equality, '*Direct provision*'.

591 Commission staff visited emergency accommodation facilities in a rural town in Monaghan in February 2019, including hotels and B&Bs.

592 See also, section 8 on Education.

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593 See also, section 10 on Health and social services.

594 Joint Oireachtas Committee on Justice and Equality (19 June 2019), *Direct Provision and the International Protection Application Process: Discussion (Resumed)*.

595 Department of Justice and Equality, *National Standards for Accommodation Centres*.

is concerned that government officials have stated that this system is now a long-term measure with some individuals living in this type of accommodation for nine months.<sup>596</sup> Recalling the Commission's broader concerns about the normalisation of emergency accommodation in the context of the housing crisis,<sup>597</sup> it recommends that emergency accommodation only be used for the shortest possible amount of time. The Commission is also of the view that the current use of emergency accommodation does not meet the minimum material reception conditions required by the European Communities (Reception Conditions) Regulations 2018.



**The Commission is of the view that the policy of direct provision does not adequately protect the rights of international protection applicants. In the long term, the Commission recommends the complete phasing-out of direct provision.<sup>598</sup>**

596 Joint Oireachtas Committee on Justice and Equality (19 June 2019), *Direct Provision and the International Protection Application Process: Discussion (Resumed)*.

597 IHREC (2017), *The Provision of Emergency Accommodation to Families Experiencing Homelessness*.

598 The Commission notes that the Department of Justice and Equality has established a high-level interdepartmental group, chaired at a senior level, to review the international protection system. To complement the work of this interdepartmental group, it has also established an advisory group to look at the longer-term approaches to providing supports to people in the protection process. This group will include experienced former public servants and representatives from the NGO community, and will commence work in late October 2019. See Dáil Éireann (3 October 2019), '*International protection*'.



**The Commission is of the view that emergency accommodation does not adequately protect the rights of international protection applicants and that its use should cease as soon as possible.**



**The Commission recommends that where the use of emergency accommodation is unavoidable, international standards and the Public Sector Equality and Human Rights Duty, must be considered in the request for tenders and that such accommodation must only be used for the shortest possible time.**



**While the current model of direct provision remains in place, the Commission calls upon the State to develop a robust independent inspection mechanism to ensure that the new national standards for accommodation offered to people in the protection process are fully implemented, including in emergency accommodation centres.**

## Special reception needs

Amongst other standards, the Reception Conditions Directive (recast) obliges the State to conduct assessments of the special reception needs of vulnerable

persons.<sup>599</sup> While the State indicated that plans were underway to institute vulnerability assessment procedures in advance of opting into the Directive,<sup>600</sup> the Commission is concerned that, as of yet, a vulnerability assessment process does not appear to have been created.<sup>601</sup>

The Directive includes disabled people within its definition of vulnerable persons and requires States to take their specific needs into account.<sup>602</sup> The Reception and Integration Agency does not maintain statistics on the number of people with a disability residing in direct provision but does try 'to ensure that any special accommodation arrangements are in place.'<sup>603</sup> However, the Commission notes that people with disabilities can be moved from their original placement due to the closure or planned closure of centres.<sup>604</sup> The Department of Justice and Equality has also confirmed that applicants for international protection access disability services through the same referral pathways as Irish citizens.<sup>605</sup> The Commission

has several concerns about access to disability services in Ireland, including the reduction in State funding for supports and allowances, the culture surrounding the treatment of individuals with intellectual disabilities, and the waiting lists in place.<sup>606</sup>

Following consultation with women living in direct provision in 2016, the Commission reported that some women had been subjected to harassment, which is often exacerbated by the fact that centres are located in rural areas where women are easily identified.<sup>607</sup> Women report hostility and misogyny in their daily lives and often have previous experiences of trauma, torture, abuse, and violence in their countries of origin.<sup>608</sup> There have been several reports of women, children, and men in direct provision being offered money for sex by staff, other residents, and people from the local area who know that they are living in a situation of poverty.<sup>609</sup> The Commission has also been informed of concerns regarding the inappropriate placement of LGBT asylum seekers in environments where they are subjected to harassment from others.<sup>610</sup>

The Commission notes that the new national standards for accommodation offered to

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599 See Article 22.

600 The Department of Justice and Equality held a civil society briefing on labour market access for international protection applicants in Dublin on 28 July 2018. Officials indicated that, in keeping with the Reception Conditions Directive (recast), a model would be adopted to cover health needs, including mental health, the needs of minors, and other vulnerabilities. Officials indicated that a two-step model was being prepared, which included an initial assessment of the applicant in Baleskin Reception Centre on arrival, followed by 'ongoing assessment by dedicated staff in direct provision centres.' This briefing was given before emergency accommodation was being used to house protection applicants.

601 Irish Refugee Council, *The Reception Conditions Directive: One Year On*, pp.18–19.

602 See Article 21.

603 Dáil Éireann (27 March 2019), '*Direct provision data*'.

604 For example, the closure of the Watergate House Accommodation Centre and the planned closure of the Towers Accommodation Centre.

605 Dáil Éireann (27 March 2019), '*Services for people with*

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*disabilities*'.

606 IHREC (April 2017), *Comments on Ireland's 14th National Report on the Implementation of the European Social Charter*, pp.22–23 and IHREC, *Comments on Ireland's 16th National Report on the Implementation of the European Social Charter*, pp.29–30.

607 IHREC, *Ireland and the Convention on the Elimination of all Forms of Discrimination against Women*, p.115.

608 AkiDwA, *Submission to the Joint Committee on Justice & Equality*, pp.2–3.

609 Joint Committee on Justice and Equality (29 May 2019), *Direct Provision and the International Protection Application Process: Discussion (Resumed)* and AkiDwA, *Submission to the Joint Committee on Justice & Equality*, pp.2–3.

610 Discussion at the Commission's Civil Society Forum in May 2019.

people in the protection process require service providers to make a reception officer available in each centre. The main duties of this officer are to receive information arising from vulnerability assessments, proactively identify the special reception needs of residents on an ongoing basis, and liaise with the relevant services and authorities.<sup>611</sup>



**The Commission recommends that all individuals receive an initial vulnerability assessment within a reasonable time after an application for international protection is made and before their placement in a direct provision or emergency accommodation centre.**



**The Commission recommends that the State continue to use the vulnerability assessment process on an ongoing basis to proactively deliver appropriate services to applicants, including reasonable accommodation for people with disabilities and supports sensitive to their gender and sexual orientation.<sup>612</sup> The State should also report publicly on the operation of the process and the actions taken.**

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611 Department of Justice and Equality, *National Standards for Accommodation Centres*, standards 10.3.2 and 10.4.

612 See also section 14 for the Commission's recommendation that victims of trafficking are accommodated in appropriate facilities that ensure access to the necessary support services.

## **Impact of the policy of dispersal on the rights of asylum seekers and refugees**

Following the establishment of direct provision in 2000, the Committee expressed concern in 2005 at 'the possible implications of the policy of dispersal and direct provision for asylum-seekers' and encouraged the State to 'take all necessary steps with a view to avoiding negative consequences for individual asylum seekers.'<sup>613</sup> Since then, the negative long-term impact of the State's policy of direct provision on the rights of individuals seeking international protection in Ireland has been well documented by national and international bodies.<sup>614</sup> The Commission has highlighted the impact of direct provision on the right to family and private life in particular,<sup>615</sup> on the right to health,<sup>616</sup> as well as its impact on the rights of specific groups such as women<sup>617</sup> and children.<sup>618</sup>

The potential for the policy of dispersal to result in racial segregation, as outlined by the Committee in 2005, has not received

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613 The Committee (14 April 2005), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland*, CERD/C/IRL/CO/2.

614 For example, Committee on the Rights of the Child, *Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland*, para. 66; Committee on Economic Social and Cultural Rights, *Concluding Observations on the Third Periodic Report of Ireland*, para. 14; Human Rights Committee, *Concluding Observations on the Fourth Periodic Report of Ireland*, para. 19; and The Committee (4 April 2011), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland*, para. 20. The State has also committed to reforming the Direct Provision system during the second cycle of the Universal Periodic Review. See Human Rights Council (2016), *Report of the Working Group on the Universal Periodic Review: Ireland*, A/HRC/33/17/Add.1, para. 136.

615 IHREC (2014), *Policy Statement on Direct Provision*.

616 See section 10 on health and social services.

617 IHREC, *Ireland and the Convention on the Elimination of all Forms of Discrimination against Women*.

618 IHREC (December 2015), *Ireland and the Convention on*

much attention. Article 3 of CERD requires the State to prevent, prohibit, and eradicate all practices of racial segregation. General Recommendations 20 and 29 require these practices to be prohibited in respect of housing for non-citizens. In addition, General Recommendation 19 acknowledges that 'segregation may also arise as an unintended by-product of the actions of private persons.'



**...the negative long-term impact of the State's policy of direct provision on the rights of individuals seeking international protection in Ireland has been well documented by national and international bodies.**

It has been stated that the rationale for the policy of dispersal was to 'spread the burden of education, medical, and other services across the State.'<sup>619</sup> The remoteness of the location is not taken into consideration in the development of direct provision centres.<sup>620</sup> However, *The McMahon Report* found that the location of centres, particularly in remote areas, 'can act as a barrier to residents' participation in activities in the area and access to legal, medical and other supports.' *The McMahon Report* also indicated that 'the isolated location of centres has a stigmatising effect

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*the Rights of the Child.*

619 Department of Justice and Equality (11 September 2017), 'Direct provision system'.

620 Joint Oireachtas Committee on Justice and Equality (19 June 2019), *Direct Provision and the International Protection Application Process: Discussion (Resumed)*.

that remains with residents even after they have been granted some form of status.'<sup>621</sup> In a recent case study of an accommodation centre located 5km from the nearest town, residents reported that 'being physically removed from the wider community...has a negative impact on residents' wellbeing, including their mental health.'<sup>622</sup>

The Commission has longstanding concerns that the system of dispersal is a major factor in the segregation and isolation of international protection applicants and may contribute to hostility in areas where centres are located.<sup>623</sup> Furthermore, the Commission is concerned about the very low levels of consultation by the Department of Justice and Equality with local residents. A government official has stated: 'we have had many complaints about direct provision centres being opened with people not being informed and centres being landed into communities' and acknowledged that communication must be improved.'<sup>624</sup>

The Commission regrets that in 2018<sup>625</sup> and 2019,<sup>626</sup> two hotels, which were to be used to accommodate protection applicants, were

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621 Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report*, para. 4.108.

622 Doras Luimní (August 2019), *Experiences of Living in Direct Provision: a case study of Mount Trenchard accommodation centre*, p.19.

623 IHRC (2004), 'Submission of the Irish Human Rights Commission in respect of Ireland's First National Report under the Convention on the Elimination of All Forms of Racial Discrimination', p.61.

624 Joint Oireachtas Committee on Justice and Equality (19 June 2019), *Direct Provision and the International Protection Application Process: Discussion (Resumed)*.

625 S. Maguire (25 November 2018), 'Donegal hotel earmarked for asylum seekers set on fire', *The Irish Times*.

626 S. Pollak (12 February 2019), 'Rooskey fire was premeditated and carefully planned, says Garda', *The Irish Times*.



...the system of dispersal is a major factor in the segregation and isolation of international protection applicants and may contribute to hostility in areas where centres are located.

subject to arson attacks. At a local meeting and protests in Galway in September 2019, concerns were also raised about the opening of a direct provision centre in the community.<sup>627</sup> The Commission notes reports that groups of people queried whether the government intends to carry out background checks on asylum seekers, and disseminated leaflets with misleading claims that asylum seekers are given priority on housing lists.<sup>628</sup> The tender to provide this direct provision centre has since been withdrawn by the applicant.<sup>629</sup> The Minister for Justice and Equality has raised concerns about these groups who are exploiting the concerns of locals to 'whip up anti-immigrant, anti-asylum seeker sentiment.'<sup>630</sup>



**The Commission is of the view that the policy of dispersal does not protect**

627 B. Ní Fhlatharta (15 September 2019), 'Locals concerned about Oughterard asylum centre to protest around the clock', *The Irish Times*.

628 C. Gallagher and S. Pollak (23 September 2019), 'How the far-right is exploitation immigrations concerns in Oughterard', *The Irish Times*.

629 Department of Justice and Equality (1 October 2019), 'Statement from the Department of Justice and Equality regarding Oughterard'.

630 Minister C. Flanagan (23 September 2019), 'Direct provision is not a threat to communities', *Irish Examiner*.

**the rights of international protection applicants and that its impact in practice amounts to a failure on the part of the State to prevent racial segregation, contrary to Article 3 of CERD.**

### **The provision of accommodation by private non-State actors**

Currently, all 38 direct provision accommodation centres are operated by private non-State actors,<sup>631</sup> of which the State owns seven.<sup>632</sup> In August 2019, the Department of Justice and Equality published a spending review of direct provision, which outlines that €78 million was paid to private companies in 2018 and this is expected to exceed €120 million in 2019.<sup>633</sup> The report details that approximately €22 million is to be spent on providing emergency accommodation in hotels and guesthouses and a further €22.5 million is to be spent on contract renewals for existing commercial centres and the opening of new centres.<sup>634</sup>

Following visits to several direct provision centres, the Commission has previously expressed concern that given the involvement of private non-State actors, residents may have diverging experiences of direct provision.<sup>635</sup> This variation in service

631 Department of Justice and Equality (8 October 2019), 'Direct provision system'.

632 Department of Justice and Equality (2019), *Spending Review 2019, Direct Provision: Overview of Current Accommodation Expenditure*, p.iv.

633 Department of Justice and Equality, *Spending Review 2019, Direct Provision*, p.iv.

634 Department of Justice and Equality, *Spending Review 2019, Direct Provision*, p.vi.

635 IHREC, *Ireland and the Convention on the Elimination of all Forms of Discrimination against Women*, p.118.



...it has been reported that protection applicants have been moved out of emergency accommodation at short notice to allow hotels to be used for other commercial purposes.

provision and residents' experience of the system is also noted in the report of the Ombudsman on complaints received about the direct provision system.<sup>636</sup>

The Commission has expressed concern that human rights accountability mechanisms can be weakened where the State delivers its public functions through non-State actors.<sup>637</sup> For example, the State only recognised the remit of the Ombudsman and the Ombudsman for Children to receive complaints from people living in direct provision in 2017.<sup>638</sup> Furthermore, in the current for-profit model, the Commission is concerned that commercial interests take precedence over the rights of protection applicants. In July 2019, the Hatch Hall direct provision centre in Dublin was closed due to a 'commercial decision by the operator'<sup>639</sup> and it has been reported that the centre is to

be redeveloped into a five-star hotel.<sup>640</sup> The closure of this centre has taken place despite capacity issues in the direct provision system, and more than half of the 200 residents will be accommodated in Baleskin Reception Centre.<sup>641</sup> As stated above, it has also been reported that protection applicants have been moved out of emergency accommodation at short notice to allow hotels to be used for other commercial purposes.<sup>642</sup>

The for-profit nature of direct provision was described in *The McMahon Report* as 'a striking aspect of the Irish arrangements for the reception of applicants', particularly since it contrasts with other European countries.<sup>643</sup> The Commission notes that an interdepartmental committee has been established to consider the State's response to people seeking international protection and that the group will consider alternative models of service provision. The Department of Justice and Equality's spending review makes some suggestions for consideration by this group, such as moving to an allowance-based system or contracting specialist not-for-profit accommodation providers.



**The Commission recommends that the State move away from the current for-profit model of direct provision.**

636 Ombudsman (January 2018), *The Ombudsman and Direct Provision: The Story so Far*, p.10.

637 IHREC, *Ireland and the Convention on the Rights of the Child*, p.12.

638 This followed a judicial review in which J. Mac Eochaidh found that the existing complaints handling procedure and some of the rules in place in the direct provision centres were unlawful. See *C.A and T.A. (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland* (Record No. 2013/751/JR), para 3.1 and 6.1–12.6.

639 Department of Justice and Equality (26 June 2019), 'Direct provision system'.

640 C. Thomas (2019), '200 people to be moved as Dublin city direct provision centre closes down', *The Journal*.

641 Department of Justice and Equality (26 June 2019), 'Direct provision system'.

642 Irish Refugee Council, *The Reception Conditions Directive: One Year On*, p.11 and IHREC, *Submission to the Universal Periodic Review of the UN Human Rights Council*, p.11.

643 Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report*, p.153.



**Should the State continue to outsource the provision of reception conditions for international protection applicants, whether to for-profit or not-for-profit non-State actors, all such outsourcing should be subject to procurement processes that are underpinned by international human rights standards and the Public Sector Equality and Human Rights Duty.**

## Family reunification

The Commission notes the Committee's Concluding Observation regarding a legal framework for family reunification,<sup>644</sup> and the State's confirmation<sup>645</sup> that such a framework has been set out in the International Protection Act 2015, which came into effect on 31 December 2016. The Commission has serious concerns regarding 'retrogressive measures'<sup>646</sup> on family reunification introduced in the 2015 Act, and the impact of these changes on the rights of beneficiaries of international protection since the Act's commencement. Similar concerns have been raised by various actors, including a parliamentary Committee,<sup>647</sup> civil society,<sup>648</sup> and the Council of Europe's

Commissioner for Human Rights.<sup>649</sup>

The 2015 Act limits the statutory right to family reunification to members of the nuclear family and removes the 'dependent family members' category included in the (predecessor) Refugee Act 1996. There is also no statutory right for aged-out unaccompanied and separated children, who applied for international protection before turning 18, to apply for family reunification with their parents on receiving status.<sup>650</sup> The Commission has recommended that the 2015 Act be amended to define family members in sufficiently broad terms to reflect the understanding of family as articulated in international human rights law,<sup>651</sup> and

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*in Ireland.*

649 Council of Europe Commissioner for Human Rights (2017), *Realising the Right to Family Reunification of Refugees in Europe*.

650 Section 56(9)(c) of the International Protection Act 2015 states that a child, who on the date of application is under the age of 18 years and is not married, is entitled to apply for family reunification with his or her parents and their children (who are also under the age of 18 years and not married). The Commission notes the finding of the Court of Justice of the EU in April 2018 that an unaccompanied child who lodges an application for international protection before the age of 18 but reaches the age of majority before being granted international protection, must be regarded as a minor in assessing entitlements for family reunification. See Case C-550/16, *A and S v Staatssecretaris van Veiligheid en Justitie* [2018] EU:C:2018:248. As Ireland has not opted into the EU Family Reunification Directive, this judgment is not binding. There have been successful legal representations made in Ireland on behalf of aged-out unaccompanied and separated children seeking family reunification with their parents and siblings, under the vulnerability provisions of the 2015 Act and the A and S case. However, this right to family reunification is not protected by law. See S. Groarke and S. Arnold (December 2018), *Approaches to Unaccompanied Minors Following Status Determination in Ireland* (ESRI and European Migration Network), pp.84–85.

651 IHREC, *The Right to Family Reunification for Beneficiaries of International Protection*, pp.17–18. The European Court of Human Rights has held that the right to family life extends beyond the nuclear family to relationships between grandparents and grandchildren, uncle and aunts with nieces

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644 The Committee (4 April 2011), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland*, para. 25.

645 Committee on the Elimination of Racial Discrimination (5 November 2018), *Combined Fifth to Ninth Periodic Reports Submitted by Ireland under Article 9 of the Convention*, para. 131.

646 IHREC (June 2018), *The Right to Family Reunification for Beneficiaries of International Protection*.

647 Joint Oireachtas Committee on Justice and Equality (February 2017), *Report on Immigration, Asylum and the Refugee Crisis*.

648 For example, Oxfam Ireland, *Dear Family: How Migration Policies Are Keeping Families Apart – Refugee Family Reunion*



to permit individuals in a customary marriage or long-term partnership to apply for family reunification.<sup>652</sup>



## The 2015 Act limits the statutory right to family reunification to members of the nuclear family and removes the ‘dependent family members’ category included in the (predecessor) Refugee Act 1996.

Limited access to tailored legal services and information has also been identified as a challenge faced by applicants for family reunification, particularly unaccompanied and separated children seeking to navigate the process.<sup>653</sup> The 2015 Act requires

family reunification applications to be made within 12 months of the grant of refugee or subsidiary protection status. Meeting this time limit may prove impossible for many refugees due to difficulties in accessing legal support, tracing family members, collating documentation, and arranging for family members to liaise with embassies.<sup>654</sup> The Commission has called for the repeal or amendment of this time limit, and provision for extension of time limits where warranted. The Commission is further concerned that the 2015 Act denies family reunification to refugees who acquire citizenship by naturalisation. The Commission is of the view that naturalised refugees should not be excluded from the statutory family reunification regime.<sup>655</sup>



**The Commission recommends that the State clarify how it intends to address the deficiencies in its statutory framework for family reunification.<sup>656</sup>**

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and nephews, and adult siblings. See *L. v. The Netherlands* (Application no. 45582/99), para. 36; *Brauer v. Germany* (Application no. 3545/O4), para. 30; *Marckx v Belgium* (Application no. 6833/74), para. 45; *Nsona v The Netherlands* (Application no. 23366/94); and *Boughenemi v France* (Application no. 16/1995/522/608).

652 While it is possible for beneficiaries of international protection to apply for reunification with family members who do not fit the 2015 Act definition of ‘member of family’ under the *Policy Document on Non-EEA Family Reunification* and, more recently, under the Irish Humanitarian Admissions Programme, such applications fall outside the statutory framework and are subject to ministerial discretion.

Refugees who meet the 2015 Act criteria are automatically entitled to family reunification under that Act as of right; refugees who must apply under the non-EEA policy document or IHAP scheme have no automatic entitlement or right to family reunification. See Irish Naturalisation and Immigration Service (December 2016), *Policy Document on Non-EEA Family Reunification*.

653 See Groarke and Arnold, *Approaches to Unaccompanied Minors Following Status Determination in Ireland*, p.86.

The Commission notes that the NGOs, the Irish Refugee Council, and the Immigrant Council of Ireland, together with

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Kids in Need of Defense in the United States, are piloting a joint pro bono project to provide legal representation to unaccompanied minors seeking family reunification.

654 Council of Europe Commissioner for Human Rights, *Realising the Right to Family Reunification of Refugees in Europe*, p.41. The diverse challenges faced when tracing family members have been outlined in a study published by the Fundamental Rights Agency. See Fundamental Rights Agency (2016), *Monthly Data Collection on the Current Migration Situation in the EU – Thematic Focus: Family Tracing and Family Reunification, September 2016 Monthly Report, 1–31 August 2016*, p.10.

655 The Commission recently appeared as *amicus curiae* in Court of Appeal litigation seeking that the Refugee Act 1996, predecessor to the 2015 Act, be interpreted to apply to naturalised refugees. In its judgment of 29 March 2019, the Court found that the declarations of refugee status of the two people at the centre of the cases had been revoked by operation of law once they acquired Irish citizenship. See IHREC (2018), *Amicus curiae Submission in Case of MAM v Minister for Justice*.

656 The Commission acted as a notice party in a recent case in which the applicant challenged the decision of

The Commission notes the Committee's recommendation in 2011 that the State develop an 'appellate procedure to challenge its decisions' on family reunification.<sup>657</sup> The requirement for an appellate procedure in family reunification cases has also been identified by the European Committee of Social Rights.<sup>658</sup> However, as was the case under the Refugee Act 1996, refusals of applications for family reunification under section 56(8) of the International Protection Act 2015 may not be appealed.

While individuals who are refused family reunification may not challenge the outcome of the decision, they may judicially review the decision-making process. Since it is only possible to review the reasonableness of a decision through judicial review, this course of action may not be considered an effective remedy. Judicial review may also be a costly and time-consuming procedure, particularly since legal aid is not

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the Minister for Justice and Equality under section 56(9) (a) of the International Protection Act 2015 to refuse his application for family reunification with his spouse on the basis that the marriage was not subsisting at the time of the original application for international protection. The High Court found that the difference in treatment between applicants for international protection depending on the timing of their marriage did not have any objective or reasonable justification and was therefore arbitrary in nature. The Court concluded that section 56(9)(a) of the International Protection Act 2015 is unconstitutional and a violation of Article 14 together with Article 8 of the European Convention on Human Rights. See *A v The Minister for Justice and Equality & Ors; S & anor v The Minister for Justice and Equality & ors* [2019] IEHC 547.

657 The Committee (4 April 2011), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland*, para. 25.

658 The Committee stated that 'restrictions on the exercise of the right to family reunion should be subject to an effective mechanism of appeal or review, which provides an opportunity for consideration of the individual merits of the case consistent with the principles of proportionality and reasonableness.' See European Committee of Social Rights (January 2016), *Conclusions 2015*, para. 17.

available and there have been concerns about delays in hearing immigration cases in the superior courts in the past.<sup>659</sup>



**The Commission recommends that an independent appeals procedure for family reunification applications be added to the existing appeals mechanisms of the State to protect the right to an effective remedy.**

## Unaccompanied and separated children

The lack of consistent and comprehensive data on unaccompanied and separated children has been identified as a challenge to the development of appropriate policy responses.<sup>660</sup> The available information demonstrates that 175 unaccompanied children were referred to the Child and Family Agency in 2017, up from 97 in 2014. Of these 175 children, 111 were taken into care. A family reunification service was also provided to 70 children.<sup>661</sup>

The Child and Family Agency has responsibility for making applications for international protection on behalf of unaccompanied and separated children,<sup>662</sup>

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659 H. Becker (2014), 'The law on family reunification', *Irish Journal of European Law*, 17(1). See also section 15 below and the discussion of the High Court Practice Direction 81.

660 ESRI and Office for the Promotion of Migrant Integration (March 2019), *Data for Monitoring Integration: Gaps, Challenges and Opportunities*, pp.29–30.

661 Groarke and Arnold, *Approaches to Unaccompanied Minors Following Status Determination in Ireland*, p.22. The report notes that there may be double counting of minors placed in care and minors who were provided with a family reunification service and subsequently reunited with family.

662 'Where it appears on the basis of information,

but there are no standardised policies or guidelines in place to inform the decision-making process. Although the Commission notes recent improvements in this area, the practice of such applications being delayed by social workers on a discretionary basis<sup>663</sup> has been reported.<sup>664</sup> Most unaccompanied and separated children do not receive a decision on their application for international protection before the age of 18,<sup>665</sup> with potential impacts on their right to access family reunification, employment, education, and other services and supports.<sup>666</sup> As discussed further in section 8, unaccompanied and separated children have significant difficulties in accessing third-level education due to the high fees and their inability to meet the eligibility requirements for the financial supports available, including on the grounds of their residency and immigration status.<sup>667</sup>

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including legal advice, available to it, that an application for international protection should be made on [the child's behalf]'. See section 15(4) of the International Protection Act 2015.

663 Reasons put forward for the delay include the view that it is not in the child's best interests and that the child may not be deemed ready for the international protection process. The Child and Family Agency has a broad obligation to consider the best interests of the child in the performance of its functions under section 9 of the *Child and Family Agency 2013*. However, there is no specific reference to the best interests principle, or the factors to be considered in the examination or determination of a child's best interests in making a decision under section 15(4) of the International Protection Act 2015 to make an application for international protection on behalf of unaccompanied and separated children.

664 Groarke and Arnold, *Approaches to Unaccompanied Minors Following Status Determination in Ireland*, p.36.

665 Groarke and Arnold, *Approaches to Unaccompanied Minors Following Status Determination in Ireland*, p.35.

666 For research findings in this regard, see Groarke and Arnold, *Approaches to Unaccompanied Minors Following Status Determination in Ireland*. See also, Immigrant Council of Ireland, *Child Migration Matters*.

667 For further information, see Immigrant Council of Ireland, *Child Migration Matters*, pp.45, 261–271.

The Equity of Care policy was introduced by the Child and Family Agency in 2010, requiring that the same standard of care is provided to unaccompanied and separated children as to other children in State care.<sup>668</sup> This is aligned with the Public Sector Equality and Human Rights Duty, which requires public bodies to eliminate discrimination in the performance of their functions.<sup>669</sup> While the introduction of these obligations represents progress, they have not been fully implemented in practice.<sup>670</sup>

Although unaccompanied and separated children are assigned a social worker, they are rarely appointed a guardian *ad litem* or another independent representative.<sup>671</sup> The Health Information and Quality Authority has highlighted that aftercare planning for unaccompanied and separated children in residential settings can be inconsistent, resulting in preparation for their transition to adulthood and leaving care being compromised.<sup>672</sup> Furthermore, many children do not meet the eligibility requirements for aftercare as they were only referred to social work services between the ages of 16 and 17.<sup>673</sup> Aged-out young

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668 See Joint Committee on Health and Children (18 November 2010), *Implementation of child protection measures: discussion with HSE*'.

669 For further information on the Public Sector Equality and Human Rights Duty, see section 3.

670 Ombudsman for Children's Office (November 2016), *Submission to Tusla on the Review of the National Leaving and Aftercare Policy*, p.8.

671 Groarke and Arnold, *Approaches to Unaccompanied Minors Following Status Determination in Ireland*, p.52.

Legislative reform of the Guardian *ad litem* arrangements is currently being considered, with the aim of setting out the role, qualifications and appointment of such representatives at a statutory level. See Department of Children and Youth Affairs, *Reform of Guardian Ad Litem Arrangements in Child Care Proceedings*.

672 Groarke and Arnold, *Approaches to Unaccompanied Minors Following Status Determination in Ireland*, pp.55–57.

673 For aftercare purposes, eligible children are those who

people, who are awaiting an international protection status determination on turning 18 and have been in care for less than a year, are transferred from care to direct provision.<sup>674</sup> It has been documented that moving from a care placement to direct provision can be a very daunting experience for young people and that transfers to centres in rural areas can present particular barriers to accessing supports as aftercare workers are often based in Dublin.<sup>675</sup>



**The Commission recommends that the State clarify its plans to improve data collection and analysis on unaccompanied and separated children to develop appropriate policy responses.**



**The Commission recommends the publication of guidance to support the submission of international protection applications for unaccompanied and separated children by the Child and Family Agency.**



**The Commission recommends that the Equity of Care principle is consistently applied in respect to aftercare planning and supports and that independent representatives are appointed to all unaccompanied and separated children.<sup>676</sup>**

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have been in the care of the State for at least 12 months between the ages of 13 and 18. For further information, see Groarke and Arnold, *Approaches to Unaccompanied Minors Following Status Determination in Ireland*, pp.53–54.

674 The Commission previously highlighted this issue to the Committee on the Rights of the Child in 2016. See IHREC (December 2015), *Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland's Combined Third and Fourth Periodic Reports*, p.38.

675 Groarke and Arnold, *Approaches to Unaccompanied Minors Following Status Determination in Ireland*, pp.55–57 and Ombudsman for Children's Office, *Submission to Tusla on the Review of the National Leaving and Aftercare Policy*, p.8.

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676 As recommended by the Committee in 2011. See The Committee (4 April 2011), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland*, p.5.

Section 14

# **Human Trafficking**

*(Articles 2, 5(b))*



It has been identified that Ireland is both a destination and source country for trafficking, including people trafficked for sexual exploitation, domestic work, fishing,<sup>677</sup> agriculture, the restaurant industry, waste management, and car-washing services.<sup>678</sup>

The Commission notes that Ireland ratified the International Labour Organisation Forced Labour Protocol, 2014 on 4 February 2019.<sup>679</sup> However, despite some effort on the part of State authorities to combat trafficking and support victims, minimum standards across several areas are still not being

met and are not being afforded sufficient priority. As a result, the US Department of State classified Ireland as Tier 2 status in its 2018 and 2019 *Trafficking in Persons* reports.<sup>680</sup>

## Investigations and prosecutions

The State has been criticised as maintaining 'insufficient law enforcement efforts' concerning human trafficking.<sup>681</sup> The focus of the legislative approach is on criminalising offences of trafficking and providing for dissuasive penalties.<sup>682</sup> However, although there were 64 reported investigations relating to trafficking in 2018, the authorities did not initiate any prosecutions (only three were initiated in 2017). Overall, there have been no convictions for trafficking for sexual or labour exploitation since the relevant legislative framework was introduced in 2013.<sup>683</sup> GRETA has raised concern that the absence of appropriate convictions and sentences creates a sense of impunity and undermines efforts to support victims to testify.<sup>684</sup>

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677 See the Commission's submission to the Committee on the List of Themes for information on the fishing industry and the *Atypical Working Scheme for Seafarers*. IHREC (July 2019), *Submission to the UN Committee on the Elimination of Racial Discrimination on the List of Themes for the Examination of Ireland on its Combined 5<sup>th</sup> to 9<sup>th</sup> Report*, p.22.

678 US Department of State (June 2019), *Trafficking in Persons Report*, p.253 and GRETA (July 2017), *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: Second Evaluation Round*, p.8.

679 Merrion Street (28 January 2019), 'Ireland agrees to ratify the ILO Forced Labour Protocol'.

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680 US Department of State, *Trafficking in Persons Report*, p.235 and US Department of State, *Trafficking in Persons Report*, p.251.

681 US Department of State, *Trafficking in Persons Report*, p.251.

682 See sections 1 to 4 of the Criminal Law (Human Trafficking) Act 2008, as amended by the Criminal Law (Human Trafficking) (Amendment) Act 2013.

683 US Department of State, *Trafficking in Persons Report*, p.251.

684 GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in*

The Commission is also concerned about the impact of Brexit on the ability of the authorities across the island of Ireland to effectively address transnational crimes, such as human trafficking, including due to disruptions to extradition arrangements, policing cooperation, and information- and data-sharing.<sup>685</sup>



**The Commission recommends that the State should address the existing obstacles preventing the prosecution of perpetrators of trafficking.**



**The Commission recommends that any future arrangement with the United Kingdom following its departure from the European Union should aim to be as comprehensive as possible and cover police co-operation, as well as any data-sharing arrangements, including in the area of human trafficking.**

## Victim identification and assistance

The Commission appeared as *amicus curiae* in the case of *P. v The Chief Superintendent of the Garda National Immigration Bureau & Ors* in 2015, wherein the High Court found that the State's administrative scheme for the protection of victims is inadequate under EU law aimed at combatting human

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*Human Beings by Ireland*, p.55.

685 A. Kramer, R. Dickson, and A. Pues (August 2019), *Evolving Justice Arrangements Post-Brexit* (IHREC and the Northern Ireland Human Rights Commission).

trafficking. In particular, the Court criticised the limited application of the administrative arrangements in place, the failure to formally set out the nature and detail of the identification process, and the lack of clarity and transparency in decision-making.<sup>686</sup>



**...the State continues to rely on an inadequate administrative scheme for the recognition and protection of victims of trafficking.**

However, despite the above judgment, the State continues to rely on an inadequate administrative scheme for the recognition and protection of victims of trafficking. In 2017, State authorities participated in a UN Office of Drugs and Crime research project that aimed to understand the variance in numbers between victims who are known to the relevant authorities and victims who are not. The study found that the total number of victims could be twice the number of identified victims.<sup>687</sup> Furthermore, in June 2019, the US Department of State raised its concerns about the 'chronic deficiencies' in the victim identification process in Ireland.<sup>688</sup>

In particular,<sup>689</sup> the formal procedures for

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686 IHREC (15 April 2019), '*IHREC calls for immediate action to protect victims of human trafficking following High Court judgment*'. See also, GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland*, para. 111–113.

687 UNODC (2018), *Monitoring Target 16.2 of the United Nations Sustainable Development Goals: Multiple Systems Estimation of the Numbers of Presumed Victims of Trafficking in Persons – Ireland*, p.4.

688 US Department of State, *Trafficking in Persons Report*, p.251.

689 For more detail on the gaps in the victim identification process in Ireland, see GRETA, *Report Concerning the*

victim identification do not apply to EEA nationals or asylum seekers, requiring the latter to choose between identification as a victim of trafficking and their pending application for international protection.<sup>690</sup> The Commission is also concerned about the role of An Garda Síochána in assessing the formal identification of victims at the same time as investigating criminal offences, which can result in a conflict of priorities. GRETA has called on the State to promote multi-agency involvement in the victim identification process to guarantee that, in practice, identification is disassociated from the suspected victim's cooperation in the investigation.<sup>691</sup>

The Commission notes the State's adoption of the *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland* in 2016, and the government's commitment to 'carry out a fundamental review' of the formal identification process for victims of trafficking to ensure that it meets international best practice.<sup>692</sup> However, the State's activities concerning this review have been limited to engagement with the police, State bodies, and civil society, and reviewing the administrative documents that guide identification procedures.<sup>693</sup> The Commission further notes the State's indication in its follow-up report to

GRETA in October 2018 that 'the review is not complete.'<sup>694</sup> The Commission is concerned that the fundamental review of the victim identification process does not seem to be subject to concrete timelines or clear outcomes.

The State has confirmed that guidance for police and prosecutors has been put in place that 'provides for the separation of the criminal investigation and the trafficking identification procedure.'<sup>695</sup> The Commission welcomes such guidance but remains concerned that the non-punishment of victims of trafficking has yet to be codified in Irish law.<sup>696</sup>



**The Commission recommends that the victim identification process be placed on a statutory footing, which should include a clear statement regarding the rights and entitlements that flow from a positive decision regardless of the victim's nationality or immigration status. Fair procedures must be afforded to the potential victim throughout the process.**<sup>697</sup>

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*Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland*, para. 106–116.

690 US Department of State, *Trafficking in Persons Report*, p.252 and GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland*, para. 116.

691 GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland*, para. 106.

692 Department of Justice and Equality (2016), *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland*, p.47.

693 Anti-Human Trafficking Unit, Department of Justice and Equality (2018), *Annual Report 2017*, p.14.

694 Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings (2018), *Report Submitted by the Irish Authorities on Measures Taken to Comply with Committee of the Parties Recommendation CP(2017)29 on the Implementation of the Council of Europe Convention on Action Against Trafficking in Human Beings, Second Evaluation Round*, p.3.

695 Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings, *Report Submitted by the Irish Authorities on Measures Taken to Comply with Committee of the Parties Recommendation CP(2017)29 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings*, p.9.

696 This was recommended by GRETA in 2017. See GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland*, pp.50–51.

697 The Commission previously made this submission





**The Commission recommends that the State provide further information on its review of the formal victim identification process, particularly the timelines for when the new identification process will be in place, and what measures are to be applied in the interim.<sup>698</sup>**



**The Commission recommends that the State put the non-punishment principle on a statutory footing to ensure that victims are not prosecuted for crimes that they were compelled to carry out as a result of being trafficked.**

The Commission notes that there is an absence of a clear statutory basis in Ireland for the right of victims to specialised services and assistance.<sup>699</sup> However, the Department of Justice and Equality has indicated that there are currently no plans to introduce primary legislation to address this gap.<sup>700</sup>

Furthermore, GRETA has criticised the ongoing links between the criminal justice

process and the provision of assistance, as a formal victim statement and referral from law enforcement are required for potential victims to access services through the national referral mechanism.<sup>701</sup> The Commission is also aware of concerns about the limited availability of supports for women who have been trafficked and, in particular, services that protect women from the risk of deportation and address their physical and mental health.<sup>702</sup>

In 2017, the State provided €360,000 to non-governmental organisations to support victims of trafficking, with a particular focus on 'exit supports'.<sup>703</sup> As well as the delivery of immediate and short-term assistance, the State is required to adopt more long-term social inclusion measures focused on the physical and psychological wellbeing of victims of trafficking, their protection from being re-trafficked, and their participation in the economic, social, cultural, and political life of society. Such supports should include access to counselling, financial assistance, housing, training and education, and childcare.<sup>704</sup>

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to GRETA in 2016. See IHREC (5 September 2016), *IHREC Submission to GRETA in Advance of its Second Evaluation Round of Ireland*, p.29.

698 IHREC (2016), *IHREC Submission to GRETA in Advance of its Second Evaluation Round of Ireland*, p.29.

699 This right derives from Article 12 of the *Council of Europe Convention on Action against Trafficking in Human Beings* and Recital 18 and 22 and Article 11 of the *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and Replacing Council Framework Decision 2002/629/JHA*.

700 The Commission highlighted this in a letter sent to GRETA on 1 November 2018, as part of its one-year follow-up procedure.

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701 Note, victims unwilling to engage with law enforcement can access services through NGOs but not through the formal referral mechanism. See US Department of State, *Trafficking in Persons Report*, p.252.

702 US Department of State, *Trafficking in Persons Report*, p.252. These issues were also raised at the Commission's Civil Society Forum on 27 May 2019.

703 Department of Justice and Equality (2018), *Trafficking in Human Beings in Ireland: Annual Report 2017*, p.21. The Anti-Human Trafficking Unit provided an additional €66,441 to these NGOs to provide supports to migrant workers and victims of sex trafficking, but it is not clear if these initiatives were targeted at providing exit strategies.

704 Human Rights Council (23 April 2019), *Report of the Special Rapporteur on Trafficking in Persons, especially Women and Children*, A/HRC/41/46, para. 4–9. See also, Ruhama (2018), *Annual Report 2017*, pp.21, 33.



**The Commission recommends that the State adopt legislation to ensure that all potential victims of trafficking have a statutory right to specialised services and assistance, irrespective of their involvement with law enforcement agencies.<sup>705</sup>**



**The Commission recommends that the State assess whether its current provision of funding is sufficient to ensure the availability of long-term social inclusion measures and supports for victims of trafficking.**

## Access to compensation

Victims of trafficking can obtain compensation through a court order, civil action, the Criminal Injuries Compensation Tribunal, and State bodies dealing specifically with work-related rights, including the WRC.<sup>706</sup> However, several administrative and other barriers exist in practice, preventing victims from accessing justice and an effective remedy for the violation of their rights. No victim had received compensation through any of these avenues by 2018.<sup>707</sup> In 2019, it was reported that the WRC awarded lost wages to six victims of trafficking in the fishing industry.<sup>708</sup>

705 The Commission previously made this recommendation to GRETA in 2016. See IHREC, *IHREC Submission to GRETA in advance of its Second Evaluation Round of Ireland*, p.29.

706 US Department of State, *Trafficking in Persons Report*, p.252.

707 US Department of State, *Trafficking in Persons Report*, p.236.

708 US Department of State, *Trafficking in Persons Report*, p.252.

The absence of convictions for trafficking in Ireland precludes victims from accessing compensation through the courts.<sup>709</sup> Furthermore, in the majority of cases, victims of trafficking for sexual exploitation do not have verifiable expenses or employment losses to present to an employment or compensation tribunal.<sup>710</sup> Victims also cannot claim for the pain and suffering experienced as a result of trafficking before the Criminal Injuries Compensation Tribunal.<sup>711</sup> GRETA has noted the absence of a dedicated compensation fund for victims of trafficking which could use the assets confiscated from perpetrators.<sup>712</sup>



**The Commission recommends that the State take measures to ensure that victims of trafficking can access compensation, including through provision of the necessary information and supports.**



**The Commission recommends that the State examine the possibility of**

709 Group of Experts on Action against Trafficking in Human Beings (20 September 2017), *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: Second Evaluation Round*, paras 174–175.

710 US Department of State, *Trafficking in Persons Report*, p.252 and Group of Experts on Action against Trafficking in Human Beings, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland*, para. 179.

711 IHREC, *IHREC Submission to GRETA in advance of its Second Evaluation Round of Ireland*, pp.34–35.

712 Group of Experts on Action against Trafficking in Human Beings, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland*, para. 180.

**establishing a dedicated compensation fund for victims of trafficking, including a contribution from any proceeds confiscated from perpetrators of trafficking.**<sup>713</sup>

## Data collection and monitoring

In 2017, GRETA called on the authorities to continue developing the data collection and monitoring systems in place to ensure that there is a comprehensive picture of the human trafficking situation in Ireland.<sup>714</sup> In line with these recommendations, the *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland* sets out the State's commitment to considering the possibility of putting in place an independent National Rapporteur on Human Trafficking.<sup>715</sup> Through formal engagement with the Department of Justice and Equality, the Commission is considering whether it could fulfil this role of National Rapporteur in Ireland.

The Commission welcomes the ongoing Human Trafficking and Exploitation Project, which is focused on the collection and

analysis of data on victims of trafficking across Ireland,<sup>716</sup> and notes that the issue of trafficking children has been identified as an issue that requires additional research.<sup>717</sup>



**The Commission recommends that the State provide information on its plans to support sustained and improved data collection and reporting to ensure a comprehensive picture of the human trafficking situation in Ireland.**<sup>718</sup>



**The Commission is of the view that an independent, dedicated national rapporteur should be appointed in line with international best practice to monitor developments on trafficking and to support the State's compliance with human rights standards.**<sup>719</sup>

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713 Note, the Commission raised this issue with GRETA in 2016. See IHREC, *IHREC Submission to GRETA in advance of its Second Evaluation Round of Ireland*, pp.35–36. It is important to note that the State has previously said that 'the establishment of a dedicated compensation fund for victims of human trafficking would be inappropriate given that no such fund exists for any other victims of crime.' See Department for Justice, Equality, and Defence (2009), *Review of the National Action Plan to Prevent and Combat Trafficking in Human Beings 2009–2012*, p.57.

714 GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland*, pp.11–12, 14.

715 Department of Justice and Equality, *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland*, p.82.

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716 A. Jacques (13 June 2018), 'Limerick to lead human trafficking and exploitation project', *Limerick Post*. This all-island project is focused on examining the official and non-official data on human trafficking in Ireland.

717 GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland*, p.15.

718 This recommendation was also made by GRETA in 2017. See Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings, *Report Submitted by the Irish Authorities on Measures Taken to Comply with Committee of the Parties Recommendation CP(2017)29 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings*, p.46.

719 The Commission previously expressed this view to the European Committee of Social Rights in 2019. See IHREC, *Comments on Ireland's 16<sup>th</sup> National Report on the Implementation of the European Social Charter*, p.8.

## Accommodation of victims of trafficking in direct provision centres

The Commission is concerned about the absence of dedicated accommodation arrangements for victims of trafficking. In violation of the *Council of Europe Convention on Action against Trafficking in Human Beings*,<sup>720</sup> victims continue to be inappropriately accommodated in mixed-gender housing within the direct provision system and may have to remain there for several years until a determination is made on their claim for international protection. These centres lack sufficient specialised services and privacy, with the requirement to share a bedroom with other people being described as particularly challenging.

Overall, the use of such accommodation can expose victims to further exploitation, trauma, and mental health issues, thereby undermining their recovery and increasing their risk of being re-trafficked.<sup>721</sup> Female victims of trafficking have reported sexual advances, harassment, and inappropriate behaviour by other residents.<sup>722</sup> As highlighted in section

13 of this submission, there are also reports of people in direct provision being offered money for sex by staff and people in the local area. Although one female gender hostel has been established, the Commission notes reports that it is removed from any specialised complementary services for trafficked women.<sup>723</sup>



**The Commission recommends that victims of trafficking are accommodated in appropriate facilities that ensure access to the necessary support services.<sup>724</sup>**



**victims continue to be inappropriately accommodated in mixed-gender housing within the direct provision system and may have to remain there for several years until a determination is made on their claim for international protection.**

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720 Article 12 places an obligation on Ireland to adopt legislative and other measures as may be necessary to assist victims in their recovery, including by ensuring appropriate and secure accommodation and psychological and material assistance.

721 US Department of State, *Trafficking in Persons Report*, p.252, Immigrant Council of Ireland (22 May 2019), 'Immigrant Council of Ireland opening statement to the Oireachtas Joint Committee on Justice and Equality on issues of direct provision and the international protection application process' and IHREC, *IHREC Submission to GRETA in advance of its Second Evaluation Round of Ireland*, pp.38–40.

722 GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland*, para. 130 and Joint Committee on Justice and Equality (22 May 2019), 'Direct provision and the international protection application process: discussion'.

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723 Immigrant Council of Ireland, 'Immigrant Council of Ireland opening statement to the Oireachtas Joint Committee on Justice and Equality on issues of direct provision and the international protection application process'.

724 The Commission previously made this recommendation to GRETA in 2016. See IHREC, *IHREC Submission to GRETA in advance of its Second Evaluation Round of Ireland*, pp.38–40.

# Section 15

## **Access to Justice**

*(Articles 2, 5(a), 7)*



## Policing reform

The government established the Commission on the Future of Policing in Ireland in May 2017 to review the role, structures, leadership, management, ethos, and culture of policing.<sup>725</sup> As part of this process and in line with the Concluding Observations of the Committee in 2011,<sup>726</sup> the Commission called for human rights and equality standards to be embedded in every aspect of policing, including the delivery of services and the operation of the oversight and accountability mechanisms in place.<sup>727</sup>



**The report of the Commission on the Future of Policing was published in September 2018 and recognises, as a first principle, that ‘human rights are the foundation and purpose of policing.’**

The report of the Commission on the Future of Policing was published in September 2018 and recognises, as a first principle, that ‘human rights are the foundation and purpose of policing.’<sup>728</sup> The Commission welcomes the comprehensive approach to human rights set out in the report and the acceptance by the government of

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725 Department of Justice and Equality (16 May 2017), ‘*Tánaiste announces membership and final terms of reference of Commission on the future of policing in Ireland*’.

726 The Committee (2011), *Concluding observations of the Committee on the Elimination of Racial Discrimination: Ireland*, CERD/C/IRL/CO/3-4, para. 18, 24.

727 IHREC, *Submission to the Commission on the Future of Policing*.

728 The Commission on the Future of Policing in Ireland, *The Future of Policing in Ireland*, p.ix.

all of the recommendations in full.<sup>729</sup> A four-year implementation plan, *A Policing Service for the Future*, was published in December 2018 and a programme office has been established in the Department of An Taoiseach to oversee and report on progress.<sup>730</sup> To date, a human rights unit has been created within An Garda Síochána, and the Strategic Human Rights Advisory Committee has been re-established.<sup>731</sup>

However, despite this reform, the Commission remains concerned about the extent to which the criminal justice system in Ireland has the capacity to be responsive and sensitive to the needs of minority ethnic communities.

## The experiences of minority ethnic groups within the criminal justice system

Reports indicate that minority ethnic communities can be under-protected and over-policed, including due to racial profiling.<sup>732</sup> The Commission notes the findings of the

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729 IHREC (18 September 2018), ‘*Primacy of human rights in the future of policing in Ireland welcomed by Human Rights and Equality Commission*’.

730 Government of Ireland (December 2018), *A Policing Service for the Future: Implementing the Report of the Commission on the Future of Policing in Ireland* and Department of Justice and Equality (27 February 2019), ‘*Written answers – juvenile offenders*’.

731 Joint Committee on Justice and Equality (26 June 2019), ‘*Garda reform and related issues: discussion*’.

732 The Committee (2011), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland*, CERD/C/IRL/CO/3-4, para. 18. See also, L. Michael and S. O’Curry (2018), *ENAR Ireland Submission to the Commission on the Future of Policing in Ireland*, p.3 and L. Kushnick (1999) ‘“Over policed and under protected”: Stephen Lawrence, institutional and police practices’, *Sociological Research Online*, 4(1), pp.1–11.

2014 Special Inquiry<sup>733</sup> on the removal of two Roma children from their families on the basis that the children's appearance did not conform to racial stereotypes and did not physically resemble their respective parents.<sup>734</sup> It concluded that, in the case of one of the Roma children affected, his 'ethnicity was so influential in determining the decision to remove him from the care of his parents, with no objective or reasonable justification' that it amounted to ethnic profiling.<sup>735</sup>

The special inquiry led to the *National Roma Needs Assessment*,<sup>736</sup> which found that 53% of Roma respondents reported feeling discriminated against by An Garda Síochána or in the courts.<sup>737</sup> A further 78% of respondents reported that they had been stopped at least once by An Garda Síochána for identification, and of those, 56% reported being stopped four times or more.<sup>738</sup>

The Commission notes the Committee's position that the State should foster dialogue and cooperation between the police and representatives of minority ethnic

groups to combat prejudice and create a relationship of trust.<sup>739</sup> The new *Diversity and Integration Strategy 2019–2021* of An Garda Síochána includes a commitment to foster minority communities' trust to enhance access to policing services.<sup>740</sup>

Some participants at the Be Heard on CERD consultation spoke about the positive experiences they had with members of An Garda Síochána who were involved in community youth organisations.<sup>741</sup> However, concerns were also raised about the targeting of people from minority ethnic groups, including with regard to stop and search powers.<sup>742</sup> Overall, the young people expressed their mistrust in the justice system and their reluctance to report discrimination and other offences. While the Commission supports the appointment of Garda ethnic liaison officers to work with minority communities, it notes that discrimination does not explicitly constitute a breach of discipline within the Garda Síochána (Discipline) Regulations 2007.

As well as having higher rates of engagement with An Garda Síochána, minority ethnic groups are overrepresented in the prison system. Travellers comprise 10% of the male prison population and 22% of the female prison population, despite making

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733 This special inquiry was conducted by Emily Logan, who was the Ombudsman for Children at the time but was acting in an independent capacity for the purposes of the inquiry.

734 See also section 10.

735 Department of Justice and Equality (2014), *Report of Ms. Emily Logan*, p.115.

736 The special inquiry recommended that an assessment of need be undertaken by a nominated government department to establish how best to improve State agencies' interaction with, and provision of support to, the Roma community. Subsequently, the *National Roma Needs Assessment*, commissioned by the Department of Justice and Equality in line with the Logan Report, was published in 2018. See Department of Justice and Equality, *Report of Ms. Emily Logan*, p.106 (recommendation 4.2.3).

737 Pavee Point Traveller and Roma Centre and Department of Justice and Equality, *Roma in Ireland – A National Needs Assessment*, p.53.

738 Pavee Point Traveller and Roma Centre and Department of Justice and Equality, *Roma in Ireland – A National Needs Assessment*, p.53.

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739 The Committee (2005), *General Recommendation XXXI on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*, p.4.

740 An Garda Síochána, *Diversity and Integration Strategy 2019–2021*, p.7.

741 Attendees mentioned in particular the positive impact of the Garda National Youth Awards. See An Garda Síochána (2019), 'First ever Garda National Youth Awards to recognise over 100 young people'.

742 These views echo previous findings of institutional discrimination against minority communities in some of the operations of An Garda Síochána. See Ionann Management Consultants (2004), *An Garda Síochána Human Rights Audit*, pp.76, 93–95 and D. Walsh (2009), *Human Rights and Policing in Ireland* (Dublin: Clarus Press), p.592.

up only 0.6% of the general population.<sup>743</sup> A report from the Oberstown Children Detention Campus demonstrates that at the beginning of 2019, 19% of children in detention were members of the Traveller community.<sup>744</sup> District Court judges are not required to provide written reasons for imposing a particular sentence, resulting in a lack of data to support measures to address this overrepresentation. The Commission notes that the Judicial Council Act 2019 provides for a Sentencing Guidelines and Information Committee to collate information on sentences imposed by the courts.<sup>745</sup>

The Commission would also like to bring to the Committee's attention concerns about the operation of selective passport and identity checks by An Garda Síochána on cross-border buses between Ireland and Northern Ireland, which are frequently conducted based on racial profiling.<sup>746</sup> The UK government has established that, following its departure from the EU, the future immigration system will not include a routine border control, but in-country checks to control access to the labour market and public services.<sup>747</sup> The Commission is concerned that this does not seem to reflect current practice and there is an absence of adequate protections to

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743 K. Holland (20 October 2017), 'Disproportionate number of Travellers in prison population', *The Irish Times*.

744 Oberstown Children Detention Campus (2019), *Key Characteristics of Young People in Detention: A Snapshot (Q1, 2019)*, p.6. At the beginning of 2018, 22% of children in detention were members of the Traveller community. See, Oberstown Children Detention Campus (2018), *Key Characteristics of Young People in Detention: A Snapshot (Q1, 2018)*.

745 See section 23.

746 See Irish Council for Civil Liberties (17 September 2019), 'Equality complaint made against Translink for facilitating discriminatory passport checks on cross-border buses'.

747 HM Government (December 2018), *The UK's Future Skills-Based Immigration System*, p.91.

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...there is an absence of adequate protections to ensure that minority ethnic groups are not increasingly targeted through racial profiling.

ensure that minority ethnic groups are not increasingly targeted through racial profiling.<sup>748</sup>



**The Commission recommends that racial profiling is dealt with appropriately, including through legislative measures.**<sup>749</sup>



**The Commission recommends that, through the Sentencing Guidelines and Information Committee or another mechanism, the Courts Service collects data on sentencing that is disaggregated on the grounds of ethnicity.**



**The Commission recommends the discontinuation of passport and identity checks by An Garda Síochána and other Irish officials at the border**

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748 See Harvey et al. (2018), *Brexit, Border Controls and Free Movement*.

749 In 2011, the Committee recommended that the State party adopt legislation that prohibits any form of racial profiling. See The Committee (2011), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland*, para. 18.



between Ireland and Northern Ireland based on racial profiling.<sup>750</sup>

## Cultural competency

The reported experiences of minority ethnic groups in engaging with criminal justice agencies raises questions about the level of cultural competence within the system. ECRI has noted different accounts of police attitudes to minorities in Ireland, ranging from 'indifferent' to 'toxic'.<sup>751</sup> In recent years, several international human rights treaty monitoring bodies have identified shortcomings in law enforcement training in Ireland, including with regard to gender-based violence affecting Traveller, Roma, and migrant women and girls.<sup>752</sup> The 2018 report of the Commission on the Future of Policing also highlighted the continuing shortcomings in the professional development and training practices in An Garda Síochána.<sup>753</sup>

The Commission notes that the State report provides information on the human rights and intercultural awareness training provided to members of An Garda Síochána, the Prison Service, and the Defence Forces.<sup>754</sup>

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750 IHREC and the Northern Ireland Human Rights Commission recently funded research which has called for an independently appointed panel of human rights experts to be tasked with completing *ex ante* assessments of any future justice and security arrangements agreed with the UK. See Kramer et al., *Evolving Justice Arrangements Post-Brexit*, p.97.

751 ECRI, *Report on Ireland (Fifth Monitoring Cycle)*, p.20.

752 CEDAW, *Concluding Observations on the Combined Sixth and Seventh Periodic Reports of Ireland*, p.7 and Committee against Torture (31 August 2017), *Concluding Observations on the Second Periodic Report of Ireland*, CAT/C/IRL/CO/2, p.5. See also, section 12.

753 The Commission on the Future of Policing in Ireland, *The Future of Policing in Ireland*, p.12.

754 The Committee, *Combined Fifth to Ninth Periodic Reports Submitted by Ireland under Article 9 of the Convention*, pp.12–13, 38–39.

While these measures are welcome, they are largely short-term in nature, only available for specific groups of professionals (for example, ethnic liaison officers), and involve training provided during pre-service education rather than as part of a structured and ongoing process of professional development. The report does not set out the extent to which such training measures have been periodically evaluated to determine their contribution to a culture of knowledge and respect for the rights of minority ethnic communities.<sup>755</sup> Furthermore, there is no reference to the human rights and intercultural awareness training provided to other criminal justice agencies, for example, the Office of the Director of Public Prosecutions. The *Diversity and Integration Strategy 2019–2021*, published in October 2019, includes a commitment to address potential discriminatory attitudes within An Garda Síochána, including through the delivery of a training programme to build the competency and capacity of members and staff to interact more positively with minority ethnic communities.<sup>756</sup>

The Commission is also concerned about the recent remark by a High Court judge that an asylum seeker making a family reunification application is 'tucking' into a 'goody-bag labelled rights.'<sup>757</sup> The Judicial Council Act 2019 provides for the establishment of a Judicial Studies Committee to facilitate the continuing

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755 The Committee on the Rights of the Child has recommended the periodic evaluation of training programmes to determine their effectiveness. See Committee on the Rights of the Child (2003), *General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5, p.13.

756 An Garda Síochána, *Diversity and Integration Strategy 2019–2021*, p.9.

757 *R.C. (Afghanistan) v The Minister and Equality, Ireland and the Attorney General* [2019] IEHC 65, para. 28.

education of judges.<sup>758</sup> The Commission is of the view that this mechanism is an opportunity through which the specialisation of the judiciary on human rights, equality, and cultural competence may be supported.



**The Commission recommends that human rights and equality standards are central to the initial and continuous training of all criminal justice personnel, including staff within An Garda Síochána, the Office of the Director of Public Prosecutions, the Prison Service, and detention centres.**



**The Commission recommends that the Judicial Studies Committee support the continuing education of the judiciary on human rights, equality, and cultural competence.**

## Diversity within the criminal justice system

The Commission notes the Committee's recommendations to States to promote the proper representation of people belonging to ethnic groups in the criminal justice system, including through the recruitment of members of the Roma

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758 Section 17(2). As noted in section 6, it has been reported that preparatory research is currently underway under the guidance of Chief Justice Frank Clarke for the formation of the Judicial Studies Committee, including benchmarking against comparable jurisdictions such as Scotland. See *Law Society Gazette* (3 October 2019), "Hit the ground running" on Judicial Council – Clarke'.

community.<sup>759</sup> The Commission is also of the view that in order to enhance trust within minority ethnic communities, it is imperative that the criminal justice system fully reflects the diversity of Irish society.



**in order to enhance trust within minority ethnic communities, it is imperative that the criminal justice system fully reflects the diversity of Irish society.**

There have been several important developments in the area of policing in recent years. The report of the Commission on the Future of Policing recognises that a more diverse workforce will lead to improved policing outcomes and the subsequent *An Garda Síochána People Strategy 2019–2021* includes commitments relating to diversity and the building of an inclusive culture.<sup>760</sup> Furthermore, An Garda Síochána ran a recruitment campaign in 2019 focused on encouraging candidates from diverse backgrounds, including minority ethnic communities, and it updated its uniform policy to permit the wearing of turbans and hijabs.<sup>761</sup> However, recent reports

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759 The Committee, *General Recommendation XXXI*, p.4 and The Committee, *General Recommendation XXVII*, p.2.

760 The Commission on the Future of Policing in Ireland, *The Future of Policing in Ireland*, p. xiv and An Garda Síochána (2019), *An Garda Síochána People Strategy 2019–2021*.

The new *Diversity and Integration Strategy 2019–2021* also includes a commitment to identify the barriers to recruiting and retaining people from diverse and minority backgrounds as Garda members, staff and Reserves. See An Garda Síochána, *Diversity and Integration Strategy 2019–2021*, p.9.

761 An Garda Síochána (2019), *An Garda Síochána Opens Recruitment Competition for Garda Trainees*. Note, the updated uniform policy follows a 2013 challenge to the

demonstrate that only 86 members of minority ethnic communities are in An Garda Síochána, including one member from the Traveller community and no members from the Roma community.<sup>762</sup> Applications from people from minority ethnic communities to join An Garda Síochána are down to 2.3%, compared with almost 15% nine years ago.<sup>763</sup> The Commission also notes calls for the increased recruitment of staff from minority ethnic communities within the Prison Service, including members of the Traveller community.<sup>764</sup>



**The Commission recommends that An Garda Síochána and other public bodies in the criminal justice sector should set specific targets for diversity in their recruitment procedures.**

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*Equality Tribunal and High Court by a member of the Irish Sikh community that the refusal to allow those training for the Garda Reserve to wear a turban on duty constituted discrimination. Although the applicant was unsuccessful, the Court's decision was based on the specific facts of the case (the applicant was a reserve member and did not fall within the definition of an employee). See *The Commissioner of An Garda Síochána & Anor v Oberoi & Ors* [2013] IEHC 267 and *M. Hennessy* (23 January 2019), 'Garda management feared Sikh members could win discrimination cases over turban ban', *The Journal*.*

762 ECRI, *Report on Ireland (Fifth Monitoring Cycle)*, p.20. Reports also indicate that people from ethnic minority groups form just 0.4% of An Garda Síochána. See C. Gallagher (2018), 'Just one in 240 Gardai from a minority background', *The Irish Times*.

763 ECRI, *Report on Ireland (Fifth Monitoring Cycle)*, p.20.

764 See IPRT (2014), *Travellers in the Irish Prison System – A Qualitative Study*, p.6 and G. McNamee (11 February 2018), 'The Irish Prison Service needs more women and ethnic minorities to become prison officers', *The Journal*.

## Criminalisation of prostitution

The Commission notes the State's obligations under Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women to take all appropriate measures, including legislation, to suppress all forms of exploitation of prostitution of women. Although there is limited research and data available, it has been reported that a significant proportion of people involved in prostitution in Ireland are from minority ethnic communities.<sup>765</sup>

Section 11 of the Criminal Law (Sexual Offences) Act 1993 prohibits 'brothel keeping'. In 2017, the 1993 Act was amended to criminalise the purchase of sex and to increase the maximum punishment for brothel keeping.<sup>766</sup> The CSO has reported that there were 43 recorded crime incidents related to brothel keeping in 2017 and 2018.<sup>767</sup>

The Commission is concerned that increasing the penalty for the offence of brothel keeping (where a brothel is defined in terms of a premises used by more than one person) will continue the criminalisation of people working together for safety, and place them in greater danger as they may opt to work alone despite the risks involved.<sup>768</sup> There have been recent reports of the conviction

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765 See Immigrant Council of Ireland (2009), *Globalisation, Sex Trafficking and Prostitution: The Experiences of Migrant Women in Ireland*, p.23 and Pavee Point Traveller and Roma Centre (2013), *Submission to the Joint Oireachtas Committee on Justice, Equality and Defence: Review of Legislation on Prostitution*.

766 Section 7A of the Criminal Law Sexual Offences 1993.

767 Information received from the CSO on 15 July 2019.

768 IHREC (5 September 2016), *Submission to GRETA in Advance of its Second Evaluation Round of Ireland*, p.12.

of two women, both from Romania and one of whom was pregnant, for working together in a brothel.<sup>769</sup> Research has also indicated that the brothel keeping offence causes women to distrust the police, resulting in a reluctance to report abuse or other incidents due to a fear of prosecution.<sup>770</sup>



**The Commission recommends that the State review the operation of section 11 of the Criminal Law (Sexual Offences) Act 1993 concerning the interpretation of 'brothel keeping'.**

## Access to legal aid, advice, and assistance

Civil legal aid is unavailable for certain areas of law and administrative decisions, acting as a barrier for people from minority ethnic communities seeking to access justice. The Legal Aid Board is precluded from providing representation before quasi-judicial tribunals and bodies dealing with social welfare appeals, housing issues, and employment and equality cases.<sup>771</sup> These matters can be extremely complex and, as highlighted throughout this submission, they can present particular issues for minority ethnic communities due to the residency requirements for social

welfare payments, their overrepresentation in the homelessness population, and the higher rates of discrimination they face in the labour market, for example.<sup>772</sup>



**Civil legal aid is unavailable for certain areas of law and administrative decisions, acting as a barrier for people from minority ethnic communities seeking to access justice.**

The legal aid scheme does not extend to eviction proceedings, which has a disproportionate impact on Travellers due to the increase in forced evictions and the suppression of nomadism as a cultural practice.<sup>773</sup> Furthermore, such evictions often take place in the evening, which can make it very challenging to access timely legal assistance.<sup>774</sup> The Commission also notes that the Irish Traveller Movement Independent Law Centre closed in 2014 due to lack of funding.<sup>775</sup> It is of the view that legal services providing specialist advice and representation on the particular forms of discrimination experienced by Travellers is necessary to ensure equal access to justice.<sup>776</sup>

769 S. Pollak (10 June 2019), 'Jailing of sex workers keeping brothel shows law "not fit for purpose"', *The Irish Times*.

770 L. A. Sweeney and S. FitzGerald (2017), 'A case for a health promotion framework: the psychosocial experiences of female, migrant sex workers in Ireland', *International Journal of Migration, Health, and Social Care*, 13(4), pp.419–443.

771 Human Rights Council (2011), *Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona: Mission to Ireland*, A/HRC/17/34/Add.2, p.4.

772 See sections 9 and 11 in particular.

773 Committee on the Rights of the Child, *Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland*, p.12.

774 See Dáil Debates (20 January 2016), 'Topical issue debate – Traveller accommodation' and Pavee Point Traveller and Roma Centre (4 July 2019), 'Private security firms for Traveller evictions – serious cause for concern'.

775 See National Traveller Mabs, 'Ireland in breach in practice and in legislation of Traveller's housing, accommodation and eviction rights'.

776 The Commission notes that the NGO, Free Legal



**The Commission recommends that the remit of the Legal Aid Board be reviewed and that civil legal aid services are made available in a wider range of areas.<sup>777</sup>**



**The Commission recommends that the State support the sustained provision of specialist legal services to minority ethnic communities.**

of a protection applicant.<sup>780</sup> The availability of legal documentation in accessible formats and different languages has also been identified as a barrier to accessing justice.<sup>781</sup>



**Recalling its recommendation in section 10 of this submission, the Commission is of the view that interpreting services for legal and administrative proceedings should be professionalised and regulated, including through the development of a system of accreditation and training.**

## Interpreting services

The Commission is concerned about the lack of accredited training, quality assurance mechanisms, and regulations pertaining to interpreting services in Ireland. It has resulted in the limited availability of appropriately trained interpreters with technical expertise for legal proceedings,<sup>778</sup> as well as variation in the standard of interpreting services provided.<sup>779</sup> In particular, poor interpreting can affect a court's perception of a defendant or a tribunal's assessment of the credibility

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Advice Centres, is recruiting a solicitor to provide a specialised legal service to the Traveller community. However, this position only has funding for three years under the Community Foundation for Ireland.

777 The recommendation was also made by the UN Committee on Economic, Social, and Cultural Rights in 2015. See UN Committee on Economic, Social, and Cultural Rights (8 July 2015), *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, E/C.12/IRL/CO/3, para 8.

778 In addition to issues in accessing justice, the lack of appropriate qualified and skilled interpreters also impedes access to healthcare services. For further information, see section 10.

779 *Law Society Gazette* (2017), 'A matter of interpretation: legal interpretation in Ireland' and Joint Committee on Justice and Equality (13 March 2019), 'Reform of family law system: discussion (resumed)'.

## Multiparty litigation

Ireland does not have a mechanism for multi-party litigation, thereby preventing victims of rights violations and discrimination from collectively seeking redress and compensation. This can present a particular barrier in encouraging specific groups to come forward and access justice, including victims of trafficking, for example. Facilitating such collective action would permit multiple claimants to share the cost of judicial proceedings and expedite the resolution of their cases, with the overall objective of expanding access to justice and procedural efficiency.<sup>782</sup> The Commission notes that the Law Reform Commission recommended the introduction

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780 Irish Translators' and Interpreters' Association (2002), *Submission to the Working Group on the Jurisdiction of the Courts*, p.2.

781 Joint Oireachtas Committee on Justice and Equality (13 March 2019), 'Reform of family law system: discussion (resumed)'.

782 For further information, see FLAC (February 2018), *Submission on the Multi-Party Actions Bill 2017: A submission by FLAC to the Joint Oireachtas Committee on Justice and Equality*.

of multi-party litigation in 2005, but this recommendation was never implemented.<sup>783</sup>



**The Commission recommends that the State reconsider the Law Reform Commission's recommendation on the introduction of a multi-party litigation mechanism to provide for collective redress.**

## Practice Direction 81

The recent High Court Practice Direction 81 (PD81)<sup>784</sup> introduces several new obligations for applicants involved in judicial review proceedings on asylum, immigration, citizenship, and EU Treaty Rights. The Commission has concerns about the financial burden and the procedural complexity PD81 places on applicants and the extent to which this acts as a barrier for migrants and their families seeking to access justice.<sup>785</sup>

Firstly, PD81 requires applicants to provide a significant amount of personal information to the court regarding their case.<sup>786</sup> More

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783 Law Reform Commission (2005), *Report on Multi-Party Litigation*.

784 PD81 came into force in the High Court in Ireland on 1 January 2019, with an explanatory note issued later that month.

785 Bloomsbury Professional (24 January 2019), '*Irish immigration and asylum law briefing*'; *Law Society Gazette* (22 January 2019), '*Judge tells solicitors his door open on asylum ruling*'; and E. Edwards (21 January 2019), '*High Court clarifies practice direction for immigration and asylum cases*', *The Irish Times*.

786 This includes full details of any potentially relevant previous civil or criminal proceedings they have been involved in, whether in the State or elsewhere; all protection or immigration applications previously made, whether in the State or elsewhere, and the outcomes and dates of each; and their complete immigration history since leaving their

specifically, it requires applicants to provide to the court all legal authority relevant to the case, such as case law and legislation, and in particular, all such legal authority that is adverse to their application and an accompanying explanation.<sup>787</sup> The Commission is concerned that the additional burden of producing such substantial written submissions at leave stage might frustrate the making of timely leave applications. PD81 also requires that all the applicant's documents be translated into Irish or English by a qualified translator.<sup>788</sup> It can be difficult and costly<sup>789</sup> for applicants to obtain translations at short notice, which can inhibit the making of a judicial review application within the specified 28-day timeframe.

Moreover, PD81 does not appear to fully consider the situation of applicants in vulnerable circumstances. The Commission is concerned that some potential litigants, such as minors and people with capacity issues, might find it particularly difficult to cooperate with their legal representatives towards discharging the requirements of PD81 in the short time periods that often attend the making of *ex parte* leave applications.

The Commission is also concerned that PD81 places disproportionate burdens on the applicant's legal representatives, which may, in turn, affect the applicant's ability to access

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country of origin.

787 Direction 7E.

788 Courts Service of Ireland, *HC81 – Asylum, Immigration and Citizenship List*. See para. 5(3) of the Practice Direction. Para. 17 of the explanatory note states that the requirement to provide translations will only apply if such translation existed before the proceedings, if the parties producing the document is relying on such document, or if directed by the court.

789 There is no provision for legal aid towards the cost of translating documents.

justice. If an applicant's solicitor is unable to take instructions about the applicant's background and immigration history, the solicitor is 'required personally to set out on affidavit exactly why no, or inadequate or unsuccessful, efforts have been taken to seek out and obtain the information.'<sup>790</sup> In the limited timeframe available for judicial review proceedings, the onus on the solicitor to make efforts to seek information can be particularly onerous. Moreover, Direction 7(8)(b)(i) requires that the solicitor swear an affidavit to the effect that every statement made by or on behalf of the applicant or family member to any immigration or protection body, in the State or elsewhere, has been disclosed. This may be impossible to discharge, as an applicant's solicitor would likely have no way of knowing whether their client has disclosed every statement that a family member's solicitor has made on their behalf in foreign jurisdictions. Furthermore, Direction 7(9) requires that both the applicant and the applicant's solicitor swear and submit further affidavits of verification if they make assertions, claims, or representations not contained in the original affidavit. The preparation and filing of all of these affidavits can be onerous and very costly, especially if translation is required.



**PD81 places disproportionate burdens on the applicant's legal representatives, which may, in turn, affect the applicant's ability to access justice.**

The Commission is concerned that an applicant might find it extremely challenging to discharge the requirements of PD81, leading to an inability to access justice and to vindicate fundamental rights. The Commission understands there was a very considerable fall-off in the numbers of *ex parte* applications after this Practice Direction was introduced. As stated above, PD81 is limited to asylum, immigration, citizenship, and EU Treaty Rights, and some of the requirements therein are not imposed in other areas of judicial review. The Commission is therefore concerned that it imposes a disadvantage on migrants. The Commission welcomes, however, the recent consultation undertaken by the High Court on the operation of PD81.<sup>791</sup>



**The Commission recommends that the State address the implications of Practice Direction 81 on migrants' access to justice.**

<sup>790</sup> Direction 7(6)(c).

<sup>791</sup> Courts Service (28 June 2019), *General Notices: 28th June 2019 PD HC81*.

Section 16

# **Human Rights Leadership**

*(Article 7)*





The Commission notes Ireland's express commitment to advancing its impact at an international level, including through the promotion of human rights, greater equality and justice, and sustainable development.<sup>792</sup>

## Promotion of women's rights

There is currently a pervasive pushback on core and well-established concepts of women's rights on the international stage. At both the Sixty-Third Session of the Commission on the Status of Women in March 2019 and a UN Security Council Debate in April 2019, the most difficult issues in the negotiations related to proposed language on access to sexual and reproductive health services for victims and survivors of gender-based violence.<sup>793</sup> There is also a current trend at an international level to roll-back on legal protections against domestic violence and FGM.<sup>794</sup>

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792 Government of Ireland (June 2018), *Global Ireland: Ireland's Global Footprint to 2025*.

793 UN (22 March 2019), *Concluding Sixty-Third Session, Women's Commission Approves Text on Strengthening Social Protection Systems, Sustainable Infrastructure for Gender Equality* and Women's International League for Peace and Freedom (23 April 2019), *Security Council Open Debate: Sexual Violence in Conflict*.

794 UN Secretary-General (8 March 2019), 'Secretary-General's remarks on International Women's Day 2019'.



**The Commission recommends that the State build on its ratification of the Istanbul Convention by adopting a strong leadership role on the international stage in promoting the protection of women's rights.**

## Rescue and humanitarian missions

In a visit to Ireland in July 2019, Filippo Grandi, the UNHCR, criticised the EU for winding down Operation Sophia, the migrant rescue operation in the Mediterranean Sea, which included the Irish naval ship the LÉ Eithne. This operation was due to expire in March 2019, and although it was extended until September 2019, sea patrols were suspended.<sup>795</sup> Reports indicate that the Irish naval presence in the Mediterranean has rescued more than 18,000 people as of April 2019.<sup>796</sup>



**The Commission recommends that the State detail its plans and arrangements to work with other governments to ensure ongoing rescue and humanitarian missions in the Mediterranean.**

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795 S. Carswell (12 July 2019), 'Government too reliant on market in tackling housing crisis, says UNHCR chief', *The Irish Times* and J. Rankin (27 March 2019), 'EU to stop Mediterranean migrant rescue boat patrols', *The Guardian*.

796 O. Ryan (1 April 2019), 'Decision to end migrant rescue operation labelled "outrageous abdication of responsibilities"', *The Journal* and Seanad Éireann (9 July 2019), 'Defence matters: statements'.

## Business and human rights

The Commission notes the positive obligation on the State to ensure that all Irish businesses respect human rights throughout their operations and take measures to avoid negative impacts on human rights in their supply chains and procurement contracts.<sup>797</sup> This is consistent with the statutory obligation on public bodies to actively promote human rights and equality in the performance of their functions, including where they sub-contract their functions to non-State actors, under the Public Sector Equality and Human Rights Duty.<sup>798</sup>

Other UN human rights bodies have previously highlighted the impact of business on human rights in Ireland.<sup>799</sup> In 2016, the Committee on the Rights of the Child called on the State to strengthen its regulatory and monitoring framework to ensure that the business sector, including in the context of public procurement, complies with international and national human rights, labour, environment and other standards. It also specifically called for a requirement on companies to undertake assessments, consultations, and full public disclosure of the environmental, health-related, and human rights impacts of their business activities

and their plans to address such impacts.<sup>800</sup>

The Commission welcomes the adoption of the *National Plan on Business and Human Rights 2017–2020*,<sup>801</sup> as it represents a commitment on the part of the State to protect human rights from being infringed by third parties, including business enterprises.<sup>802</sup> The *National Plan* commits to encouraging and supporting effective human rights due diligence by State-owned or controlled companies.<sup>803</sup> A recent baseline assessment of the legislative and regulatory framework, commissioned by the government, found that the commitments in the National Plan proposed a largely voluntary regime regarding due diligence, which may not result in compliance across the board or may lead to delays in businesses achieving compliance. For the State to continue to develop its reputation in the protection of human rights, it was recommended that consideration be given to the adoption of mandatory human rights due diligence.<sup>804</sup>

The Commission notes that since the launch of the *National Plan*, the Department of Foreign Affairs and Trade established a Business and Human Rights Implementation Group in January 2019 focused on overseeing the implementation

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

798 For further information on the Public Sector Equality and Human Rights Duty, see section 3.

799 For example, the UN Human Rights Committee asked the Irish government in 2013 to address concerns regarding the activities of private businesses based in the State party that may lead to violations of the Covenant outside the territory of the State party. See Human Rights Committee (22 November 2013), *List of issues in Relation to the Fourth Periodic Report of Ireland*, para. 5.

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800 Committee on the Rights of the Child, *Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland*, para. 23–24.

801 Government of Ireland, *National Plan on Business and Human Rights 2017–2020*.

802 For further commentary by the Commission on the National Plan, see IHREC, *IHREC Submission on Ireland's National Action Plan on Business and Human Rights*.

803 Government of Ireland, *National Plan on Business and Human Rights 2017–2020*, p.18.

804 ReganStein (March 2019), *National Plan on Business and Human Rights: Baseline Assessment of Legislative and Regulatory Framework*, (Department of Foreign Affairs and Trade), pp.20–21.

of the UN Guiding Principles on Business and Human Rights in Ireland.<sup>805</sup>



**The Commission recommends that the State should consider introducing human rights due diligence as a mandatory requirement with legislative underpinning, including in the context of government procurement.<sup>806</sup>**



**The Commission recommends that the Business and Human Rights Implementation Group should examine the implementation of recommendations by UN human rights bodies on business and human rights and the implementation of the State's obligations under the Public Sector Equality and Human Rights Duty.**

## **The fishing industry and Atypical Working Scheme**

The rights of migrant workers and their family members are particularly relevant in this context, given the risks that they face concerning exploitation and abuse by business enterprises. However, as referenced in section 3 of this submission, the Commission notes

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805 Department of Foreign Affairs and Trade (27 February 2019), *Human Rights*.

806 The Commission previously made this recommendation to the Committee on the Rights of the Child in 2015. See IHREC, *Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland's Combined Third and Fourth Periodic Reports*, p.12.

that Ireland has not signed or ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

In recent years, concerns have arisen regarding the exploitation of migrant workers in the Irish fishing industry. In its report to the Committee, the State referenced its Atypical Working Scheme for Seafarers, which permits 'a lawful pathway for persons, previously with no immigration or employment permission, to work in the Irish Fishing Fleet.'<sup>807</sup>

GRETA recommended in 2017 that the State review 'the application of the Atypical Working Scheme in the fisheries industry with a view to ensuring that it contains sufficient safeguards against trafficking and exploitation of fishermen.'<sup>808</sup> Similar concerns have been jointly raised by UN special rapporteurs in a joint letter to Ireland in February 2019, noting that the scheme 'does not provide for effectively preventing and combatting trafficking in people for the purpose of forced labour and labour exploitation in the fishing industry, nor does it provide for adequate protection of the rights of migrant fishermen.'<sup>809</sup>

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807 The Committee, *Combined Fifth to Ninth Periodic Reports Submitted by Ireland Under Article 9 of the Convention*, para. 230.

808 GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland*, para. 79.

809 Joint letter sent to the Irish government on 12 February 2019 by UN special rapporteurs on the human rights of migrants; contemporary forms of racism, racial discrimination, xenophobia, and related intolerance; contemporary forms of slavery, including its causes and consequences; and trafficking in people, especially women and children. The letter is available at: [www.spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24331](http://www.spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24331).

The International Transport Workers' Federation has taken action against the State on behalf of workers affected and potentially affected by the operation of the scheme, alleging that the scheme created a real and substantial risk of human trafficking and other forms of severe labour exploitation. In October 2018, the High Court granted the Commission leave to intervene as *amicus curiae* in the case. In April 2019, a mediated settlement was agreed, the terms of which included several changes to the Atypical Working Scheme.<sup>810</sup>



**The Commission recommends that the State ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and take the necessary measures to ensure its full incorporation at a domestic level.**

## State purchasing of Colombian coal

It is recognised that the State has a positive obligation to take additional steps to protect against human rights abuses by business enterprises that it owns, controls, or to which it provides support or contracts.<sup>811</sup>

810 Changes included: flexibility for non-EEA fishermen to move to another vessel within a defined time without risk of visa cancellation and deportation (such a move cannot be vetoed by employers); streamlining of inter-agency collaboration between the WRC, Marine Survey Office, and the Gardai to combat exploitation onboard fishing vessels; and greater promotion of awareness among non-EEA fishermen of their rights and entitlements. See IHREC (30 April 2019), 'Changes to atypical work permit scheme for migrant fishers welcomed by human rights and equality commission'.

811 See UN Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*

The Commission wishes to note its concern regarding the heavy reliance of the State-owned Electricity Supply Board (ESB)<sup>812</sup> on coal mined from the Cerrejón mining complex in La Guajira, north-eastern Colombia. Recent reports have indicated that up to 90% of the coal burned at the ESB's Moneypoint<sup>813</sup> power station in County Clare comes from Colombia, with two-thirds of it purchased from the Cerrejón mine.<sup>814</sup> The operation of the Cerrejón mine has been linked with serious human rights abuses, including the forceful displacement of thousands of indigenous Wayúu, Afro Colombian, and Campesino populations, and contamination of farmland and drinking water.<sup>815</sup> The sales branch of the Cerrejón mine has headquarters in Dublin.<sup>816</sup>

The Commission notes the Committee's clear articulation of the applicability of Convention provisions to indigenous peoples.<sup>817</sup> The Commission further notes the reference in the UN Guiding Principles on Business and Human

and IHREC, *Submission on Ireland's National Action Plan on Business and Human Rights*.

812 The ESB was established in 1927 as a statutory corporation. The Irish government has a 95% holding in the company, with the remaining 5% held by the trustees of an Employee Share Ownership Plan. See [www.esb.ie/who-we-are/about-esb/](http://www.esb.ie/who-we-are/about-esb/).

813 Moneypoint is one of Ireland's largest power plants, with a capacity of around 7 million MW hours per year. It burns approximately two million tonnes of coal per annum. See 'Electricity Supply Board station portfolio'.

814 N. Healy (25 October 2018), 'Blood Coal: Ireland's dirty secret', *The Guardian* and S. Pollak (11 May 2019), 'Coal "stained with Colombian blood" is bought and sold in Dublin', *The Irish Times*.

815 N. Healy, J. C. Stephens, and S. A. Malin, 'Embodied energy injustices: Unveiling and politicizing the transboundary harms of fossil fuel extractivism and fossil fuel supply chains', *Energy Research and Social Science*, 48, pp.219–234.

816 CMC – Coal Marketing DAC, Fumbally Square, New Street, Dublin. Company website: <http://www.cmc-coal.ie/>.

817 The Committee (1997), *General Recommendation No. 23: Indigenous Peoples, A/52/18*, annex V. In particular, the Committee stresses the rights of indigenous peoples to



Recent reports have indicated that up to 90% of the coal burned at the ESB’s Moneypoint power station in County Clare comes from Colombia, with two thirds of it purchased from the Cerrejón mine.

Rights to states’ role in reducing the risk of gross human rights abuses in regions affected by conflict,<sup>818</sup> as well as the Irish government’s significant leadership role in the Colombian peace process.<sup>819</sup> Furthermore, the *Climate Action Plan 2019* includes a commitment to the ‘early and complete phase-out of coal- and peat-fired electricity generation’ by 2030.<sup>820</sup>

The Department of Foreign Affairs and Trade has recognised the detrimental impact of the activities in the Cerrejón mine on the environment and local communities. Officials from the Irish Embassy in Bogotá also recently met with representatives of the mine and partner organisations to discuss the human rights issues that have been raised.<sup>821</sup>

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own, develop, control, and use their communal lands and resources, and has underscored the right of indigenous communities to restitution and compensation.

818 Guiding Principle 7: ‘Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses’ of the UN Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*.

819 For an overview of Ireland’s contribution, see Department of Foreign Affairs and Trade (2017), *Year in Review 2016*.

820 Government of Ireland (2019), *Climate Action Plan 2019*, p.53.

821 Department of Foreign Affairs and Trade (27 February 2019), *Human Rights*, and Department of Foreign Affairs and Trade (17 September 2019), *Human Rights Cases*.



The Commission recommends that the State continue to raise concerns about human rights abuses in the Cerrejón mine with the government of Colombia and lend its support to the initiation of an independent inquiry into the operation of the mine, and restitution and compensation for victims of displacement and other human rights abuses.



The Commission further recommends that, in line with its actions on ‘Corporate Responsibility’ and ‘Access to Remedy’ in the *National Plan on Business and Human Rights*,<sup>822</sup> the State engage with companies domiciled in Ireland with links to the Cerrejón mine regarding human rights abuses occurring there.

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822 Government of Ireland, *National Plan on Business and Human Rights 2017 – 2020*, p.18.

Appendix

**List of  
Recommendations**

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## Section 3: National Machinery for the Promotion of Race Equality

- » The Commission recommends that the State ratify the relevant international treaties and protocols as a matter of priority, including through prioritising the passage of any legislative and policy reforms necessary for ratification.
- » The Commission recommends that the State incorporate CERD into domestic law.
- » The Commission recommends that the State withdraw its reservation/interpretative declaration on Article 4 of CERD as a matter of priority.
- » The Commission recommends that a full parliamentary Committee on Human Rights, Equality and Diversity, covering all thematic areas arising in other parliamentary committees, be established.
- » The Commission recommends that the Inter-Departmental Committee on Human Rights and the DFAT Committee on Human Rights fully engage with the parliamentary Committee on Human Rights, Equality and Diversity, following its establishment as recommended above.
- » The Commission recommends that, in complying with their obligations under the Public Sector Equality and Human Rights Duty, public bodies promote the human rights of, and eliminate discrimination against, minority ethnic communities through their work.
- » The Commission recommends that when the State subcontracts its functions to non-State actors, compliance with the Public Sector Equality and Human Rights Duty should be included as a requirement in all procurement processes and service level agreements.
- » The Commission recommends that the equality legislation is amended to prohibit discrimination on the ground of socio-economic status in all areas covered by the legislation and to permit claims across multiple grounds.
- » The Commission recommends that the State return complaints of discrimination in licensed premises to the purview of the Equal Status Acts and the jurisdiction of the Workplace Relations Commission.
- » The Commission recommends that the State should put in place a new national action plan against racism.
- » The Commission recommends that the work of the new anti-racism committee should be grounded in human rights and equality standards, ensure the participation of rights holders, and include data specialists.
- » The Commission recommends that the State implements its obligation to ensure the effective participation of minority ethnic communities in the process of developing, monitoring and reviewing policy frameworks, at both a national and local level.
- » The Commission recommends that the State improves its collection and reporting of data on minority ethnic groups across all sectors, to inform policy-making, legislative reform, and service provision.
- » The Commission calls on the State to ensure that organisations working with minority ethnic communities across a range of sectors receive adequate support.
- » The Commission recommends that a review of the Electoral Acts be undertaken to ensure an enabling legal framework and a conducive political and public environment for civil society organisations advocating for minority ethnic communities.

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## Section 4: Legal Framework on Citizenship and Nationality

- » The Commission recommends that the State provide statutory underpinning for the good character requirement to increase transparency and consistency in its application, with recognition of children as individual rights holders and people's right to access justice.
- » The Commission recommends that the State provide statutory underpinning for the continuous residence requirement, adopting an expansive interpretation that takes into account people's right to private and family life and to have meaningful access to employment.
- » The Commission recommends the introduction of a statutory right to an independent appeals process for citizenship-by-naturalisation decisions.
- » The Commission recommends that the State immediately makes legal aid available to all people in respect of whom the Minister for Justice and Equality proposes to revoke citizenship.
- » The Commission recommends that the State review section 19 of the Irish Nationality and Citizenship Act 1956 on the revocation of citizenship concerning guarantees of due process and fair procedure and the need for clarity on the duty of fidelity to the nation or loyalty to the State.
- » The Commission recommends that the State develop a statelessness determination procedure in line with its obligations under international law.

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## Section 5: Experiences of Racial Discrimination and Attitudes to Diversity

- » The Commission recommends the use of victimisation surveys to increase public understanding of the prevalence and impact of racial discrimination in Ireland, including the multiple forms of discrimination faced by women.
- » The Commission recommends that the State implement the recommendations of the Advisory Committee on the Framework Convention for the Protection of National Minorities on addressing the discrimination faced by Travellers and Roma.
- » The Commission is of the view that the State has not given adequate priority to marking the International Decade for People of African Descent and recommends that it redouble its efforts to develop a programme of action to ensure the latter part of the Decade is appropriately marked.
- » The Commission recommends that the State adopt public awareness-raising and education measures to address discrimination and prejudice, including on the grounds of race and religion, and to specifically address the discrimination faced by minority ethnic women.

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## Section 6: Hate Speech and Hate Crime

- » The Commission is of the view that the Prohibition of Incitement to Hatred Act 1989 is outdated and inadequate to effectively address hate speech that calls for a response in criminal law.
- » The Commission is of the view that Ireland's current approach to hate motivation does not adequately meet its international obligations.
- » The Commission recommends that statutory provision be made for aggravation and penalty enhancements for crimes motivated by hate or prejudice.
- » The Commission is of the view that the Prohibition of Incitement to Hatred Act 1989, in line with the recent recommendations of ECRI, and including with a view to addressing online incitement to hatred and hate speech.
- » The Commission is of the view that Ireland's current approach



» The Commission recommends the development of legislative measures for the creation of substantive hate-motivated criminal offences.

» The Commission recommends that the State develop and commit to a clear, time-bound action plan for review and modernisation of hate crime law and practice in Ireland to bring it in line with its international obligations, undertaken in full consultation with groups targeted by hate crime in Ireland, and with the participation of civil society organisations representing them.

» The Commission recommends that the review include the development of appropriate education measures for key actors in the criminal justice system, including the judiciary, prosecutors, and investigators.

» Noting the commitments in the new *Diversity and Integration Strategy 2019–2021*, the Commission recommends the timely comprehensive reform of the PULSE system, including the implementation of a stronger governance framework and overall improvements in data collection by An Garda Síochána in line with Central Statistics Office standards.

» The Commission recommends that guidelines and protocols for the recording of discriminatory motives are developed transparently and made publicly available.

» The Commission recommends that members of An Garda Síochána should be equipped to understand, recognise, and thoroughly investigate all instances of hate crime through dedicated training, both during general training at Garda College and through specialist modular learning at in-service level, including targeted training for:

- assisting victims of specific types of hate offences
- accurate, reliable, and timely data recording on PULSE.

» The Commission recommends that the State consider the establishment of alternative reporting mechanisms by which victims or witnesses can report hate crime offences, including the establishment of third-party reporting mechanisms in partnership with civil society organisations.

» The Commission recommends the use of victimisation surveys, which include hate crime specific questions, and are supplemented by booster samples of groups traditionally underrepresented or excluded from standard national surveys.

» The Commission recommends that the State develop a comprehensive regulatory framework to combat prejudicial and discriminatory content and hate speech online.

» The Commission recommends that under this framework, the operation of notice-and-

takedown procedures for removing harmful content online should be subject to codes of practice and transparency concerning the prevalence of online hate speech and the measures being taken by internet intermediaries to address it. Compliance with the framework should be overseen and enforced by an independent statutory body and should be promoted by way of effective and proportionate sanctions.

» The Commission recommends that the State promote and advance digital literacy as a core skill for people of all ages to combat prejudicial and discriminatory content and hate speech online.

» The Commission recommends that the State encourage the media to update their codes of professional ethics and press codes to reflect the challenges of the modern media environment where the circulation of prejudicial and discriminatory content and hate speech are concerned, and to explicitly incorporate the principles of CERD and other fundamental human rights standards.

» The Commission recommends that the State encourage appropriate training for editors and journalists as to the nature and dynamics of hate speech to avoid the publication and inappropriate framing of news and editorial content that is prejudicial, discriminatory, or triggers hate speech or incidents.

» The Commission recommends that compliance with regulatory mechanisms aiming to prevent

hate speech, such as codes of conduct, should be supported by way of dissuasive sanctions for

breach of their provisions.

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## Section 7: Participation in Public Life and Representation in Decision-Making

» The Commission recommends that the government's proposed Electoral Commission be mandated to promote more equal political participation of groups, including minority ethnic communities.

complementary measure to the introduction of gender quotas.

appropriate sanctions for breach of their conditions.

» The Commission recommends that the State undertake additional positive action measures to enable the political participation of minority ethnic groups, such as the introduction of reserved seats in Parliament and local government.

» The Commission recommends that special measures to support engagement in public and political life should be designed and implemented with the active participation of the communities they concern and should include targeted interventions for specific minority ethnic groups, for example, women.

» The Commission recommends that public officials and elected representatives be provided with training in equality and non-discrimination to ensure they are equipped to recognise and respond effectively to prejudicial and discriminatory discourse and hate speech.

» The Commission recommends that the State introduce a quota system for minority ethnic candidates in political party candidate selection, as a

» The Commission recommends that codes of conduct for public officials and election candidates should clearly prohibit the use or endorsement of prejudicial and discriminatory discourse. These codes should provide for

» The Commission recommends that the government's proposed Electoral Commission be mandated to uphold standards in political discourse during election and referendum campaigns, with a specific focus on discourse relating to minority ethnic groups.

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## Section 8: Education

» The Commission recommends that the use of a connection with a former student of the school as a criterion in the admission of a child is prohibited.

the restoration of the Visiting Teaching Service for Travellers.

supports for children and families who require it.

» The Commission recommends that targeted educational supports must be available for Traveller and Roma children from the early years and throughout school, including through the timely evaluation of the proposed pilot programme and

» The Commission recommends the introduction of appropriate safeguards to monitor the use of reduced timetables and to ensure that they are not used in place of the provision of appropriate supports in any circumstances.

» The Commission recommends the introduction of additional support services to ensure that children in the asylum process are placed in local mainstream schools without delay, regardless of whether they are in emergency accommodation.

» The Commission recommends the consistent provision of additional English language

» The Commission recommends increased diversity in the provision

of primary and secondary schools within educational catchment areas throughout the State.

» The Commission recommends the introduction of mandatory programmes on promoting understanding and combatting racism and on Traveller history and culture for inclusion in the school curriculum and initial and continuous teacher education programmes.

» The Commission recommends the inclusion of specific actions in

existing anti-bullying programmes targeting racially motivated bullying.

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

» The Commission recommends that all measures introduced to support participation in further education and third-level

institutions are evaluated in line with the Public Sector Equality and Human Rights Duty to ensure their accessibility to minority ethnic groups and address any remaining administrative and financial barriers.

» The Commission recommends that the State introduce practical supports to increase the accessibility of apprenticeships to people from minority ethnic groups, including the adoption of specific measures for women.

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## Section 9: Employment and Economic and Social Life

» The Commission recommends that the State take concrete measures to address discrimination in the workplace, including in relation to recruitment, pay, and promotion.

» The Commission recommends that the State consider opening civil service employment to migrants from outside the European Economic Area.

» The Commission recommends that the State target the recruitment of minority ethnic groups in the public sector.

» The Commission recommends that the State introduce a formal recognition process for the systematic assessment and recording of education, skills, and work experience gained abroad, facilitating the transfer of qualifications into domestic

equivalents as appropriate.

» The Commission recommends that the State disseminate accessible information and educational materials to people who migrated to Ireland on the employment system and the administrative requirements in place.

» The Commission is of the view that measures for access to the labour market for asylum seekers must be effective in practice, sufficient in their scope to provide meaningful access to employment and safeguard against potential exploitation and discrimination.

» The Commission recommends that the State conduct a review of the scheme for labour market access for asylum seekers to identify and address the ongoing administrative barriers, including

access to banking services and driving licence applications.

» The Commission recommends that, in line with emerging standards and UNHCR guidance, applicants for international protection be granted access to the labour market no later than six months after the date of lodging an application.

» The Commission recommends that an audit of the skills, qualifications, and labour market profile of the current cohort of international protection applicants be carried out to ensure effective access to the labour market.

» The Commission recommends that the State support the development of a national labour market activation programme, in collaboration with professional and trade associations, focused

on ensuring that international protection applicants can retain and further develop their qualifications, experience, and skills.

» The Commission recommends that protections for domestic workers are strengthened, including through enhancement of labour inspections and the oversight of employers.

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

» The Commission recommends that the Minister for Jobs and

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

» The Commission recommends that the national targets and measures adopted by the State to reduce poverty take adequate account of the specific issues and multiple disadvantages faced by minority ethnic groups, and that an accelerated programme of initiatives is put in place to make up the ground lost.

» Reiterating its previous recommendations, the

Commission recommends that the State should review the Habitual Residence Condition and its impact on minority ethnic communities in practice.

» The Commission recommends that the State support Travellers in preserving and developing their identity and culture, including nomadism and horse ownership.

» The Commission recommends that the State engage in consultations with the Traveller community about the establishment of a permanent cultural centre.

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## Section 10: Health and Social Services

» The Commission recommends that the State advance the introduction of an ethnic identifier across the health sector and the systematic publication of disaggregated data, with the specific aim of supporting policy reform and the planning and delivery of appropriate services for ethnic minorities.

» The Commission recommends that the State introduce measures to progress and evaluate the delivery of cultural competency training across frontline health services and to ensure that the workforce fully reflects the diversity of the population.

» The Commission recommends that interpreting services in

Ireland are professionalised and regulated, including through the development of a system of accreditation and training.

» The Commission recommends the development of additional public health, health promotion, and outreach services for minority ethnic groups, including to address the specific health needs of Travellers and the broader social determinants that lead to health inequalities.

» The Commission recommends the development of a national primary healthcare project for Roma.

» The Commission recommends that the prevalence of mental

health issues among minority ethnic communities, the barriers they face in accessing services, and the public health challenges of addressing the social determinants of mental ill-health are fully reflected in forthcoming legislative and policy developments.

» The Commission recommends that mental health services are available to residents in all direct provision and emergency accommodation centres and that increased expertise is developed within community-based services concerning appropriate interventions and support for people in the international protection process.

» As recommended by the Committee on the Rights of the Child, the Commission recommends the further development of mental health advocacy and information services for children, including children from minority ethnic communities.

» The Commission recommends that the review of the Child Care Act 1991 and the new national standards for children's social services take adequate account of the issues experienced by minority ethnic families in engaging with welfare and protection services,

their overrepresentation in childcare proceedings, and the need for alternative care placements appropriate to their individual circumstances and needs.

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## Section 11: Housing

» The Commission recommends that Circular 41/2012 on 'access to social housing supports for non-Irish nationals' be reviewed and amended to ensure that EEA nationals are not unlawfully discriminated against in accessing social housing supports.

» The Commission recommends that the State adopt a policy approach that primarily views access to housing as a fundamental human right, rather than as a matter for the private market. This approach should include a new commitment to social housing and public housing provision.

» The Commission recommends a review of the Housing Acts and associated policy instruments to reflect the changing and

increasingly diverse nature of the population in need of social housing and homelessness supports, and to address the discrimination and inequalities faced by minority ethnic groups.

» The Commission recommends that the State prioritise the implementation of the recommendations of the Independent Expert Review of Traveller Accommodation and European Commission against Racism and Intolerance.

» The Commission recommends the introduction of dissuasive sanctions for local authorities who fail to provide Traveller-specific and culturally appropriate accommodation in areas where there is a stated need.

» The Commission recommends that the State take further specific, targeted measures to address barriers to access to housing for the Roma community.

» The Commission recommends the development of Roma-specific, time-bound actions in the area of housing for inclusion in the *National Traveller and Roma Inclusion Strategy 2017–2021*.

» The Commission recommends that the State progress the introduction of an ethnic identifier across the housing sector and the systematic publication of disaggregated administrative data, including specific data on the Roma community.

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## Section 12: Gender-based Violence

» The Commission recommends that the State adopt measures to encourage and facilitate the reporting of crimes, including special measures for women and girls from minority ethnic groups.

» The Commission recommends that the new Sexual Violence Survey should facilitate the reporting of robust and sufficient data on the experiences of women and girls from minority ethnic groups in a timely manner.

» The Commission recommends that specialised services for victims of violence must be widely accessible and accommodating of the diverse needs of minority ethnic women.

» The Commission recommends that the *Immigration Guidelines for Victims of Domestic Violence* are placed on a legislative basis, to ensure that victims, whose residence status depends on the perpetrator of domestic violence, can access autonomous residence permits irrespective of the duration of the relationship.

» The Commission recommends the introduction of a clear legal framework to provide pathways to lawful residence for victims of domestic violence who are undocumented.

» The Commission recommends that the State take all necessary legislative and other measures

to ensure that the needs of victims of violence are identified and addressed throughout the asylum procedure, including by introducing gender-sensitive guidelines, reception procedures, and support services.

» The Commission recommends that the complex and intersectional issues relating to violence against minority ethnic women and girls are included in the pre-service and ongoing training of An Garda Síochána.

» The Commission recommends that targeted public information and education measures on violence against women and girls should be developed for

minority ethnic communities, including women and girls in the international protection system.

» The Commission recommends that the State work in collaboration with communities affected by Female Genital Mutilation to raise awareness about and support access to the existing specialist services and to develop additional regional services and peer-led support.

» The Commission recommends that the State build on the work carried out by civil society to advance the publication of a comprehensive national action plan on Female Genital Mutilation.

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## Section 13: International Protection

» The Commission is concerned that almost four years after the passing of the International Protection Act 2015, excessive waiting times for the processing of international protection applications persist, leading to dependency and disempowerment amongst those seeking protection and impeding prospects of integration.

» The Commission recommends that the State ensure effective legal advice for international protection applicants at an early stage through the Civil Legal Aid Board, to support them in progressing their application.

» The Commission calls on the State to opt in to the Asylum Procedures Directive (recast) and introduce measures to support people with disabilities and other special procedural needs in their application for international protection.

» The Commission is of the view that immigration detention should not be punitive and should only be used as an individual measure that is exceptional, proportionate, and necessary.

» The Commission recommends that the operation of immigration detention should be regularly evaluated.

» The Commission is of the view that the policy of direct provision does not adequately protect the rights of international protection applicants. In the long term, the Commission recommends the complete phasing-out of direct provision.

» The Commission is of the view that emergency accommodation does not adequately protect the rights of international protection applicants and that its use should cease as soon as possible.

» The Commission recommends that where the use of emergency accommodation is unavoidable, international standards and the

Public Sector Equality and Human Rights Duty, must be considered in the request for tenders and that such accommodation must only be used for the shortest possible time.

» While the current model of direct provision remains in place, the Commission calls upon the State to develop a robust independent inspection mechanism to ensure that the new national standards for accommodation offered to people in the protection process are fully implemented, including in emergency accommodation centres.

» The Commission recommends that all individuals receive an initial vulnerability assessment within a reasonable time after an application for international protection is made and before their placement in a direct provision or emergency accommodation centre.

» The Commission recommends that the State continue to use the vulnerability assessment process on an ongoing basis to proactively deliver appropriate services to applicants, including reasonable accommodation for people with disabilities and supports sensitive

to their gender and sexual orientation. The State should also report publicly on the operation of the process and the actions taken.

» The Commission is of the view that the policy of dispersal does not protect the rights of international protection applicants and that its impact in practice amounts to a failure on the part of the State to prevent racial segregation, contrary to Article 3 of CERD.

» The Commission recommends that the State move away from the current for-profit model of direct provision.

» Should the State continue to outsource the provision of reception conditions for international protection applicants, whether to for-profit or not-for-profit non-State actors, all such outsourcing should be subject to procurement processes that are underpinned by international human rights standards and the Public Sector Equality and Human Rights Duty.

» The Commission recommends that the State clarify how it intends to address the deficiencies in its

statutory framework for family reunification.

» The Commission recommends that an independent appeals procedure for family reunification applications be added to the existing appeals mechanisms of the State to protect the right to an effective remedy.

» The Commission recommends that the State clarify its plans to improve data collection and analysis on unaccompanied and separated children to develop appropriate policy responses.

» The Commission recommends the publication of guidance to support the submission of international protection applications for unaccompanied and separated children by the Child and Family Agency.

» The Commission recommends that the Equity of Care principle is consistently applied in respect to aftercare planning and supports and that independent representatives are appointed to all unaccompanied and separated children.

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## Section 14: Human Trafficking

» The Commission recommends that the State should address the existing obstacles preventing the prosecution of perpetrators of trafficking.

» The Commission recommends that any future arrangement with the United Kingdom following its departure from the European Union should aim to be as comprehensive

as possible and cover police co-operation, as well as any data-sharing arrangements, including in the area of human trafficking.

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

» The Commission recommends that the State provide further information on its review of the formal victim identification process, particularly the timelines for when the new identification process will be in place, and what measures are to be applied in the interim.

» The Commission recommends that the State put the non-punishment principle on a statutory footing to ensure that victims are not prosecuted for crimes that they were compelled to carry out as a result of being trafficked.

» The Commission recommends that the State adopt legislation to ensure that all potential victims of trafficking have a statutory right to specialised services and assistance, irrespective of their involvement with law enforcement agencies.

» The Commission recommends that the State assess whether its current provision of funding is sufficient to ensure the availability of long-term social inclusion measures and supports for victims of trafficking.

» The Commission recommends that the State take measures to ensure that victims of trafficking can access compensation, including through provision of the necessary information and supports.

» The Commission recommends that the State examine the possibility of establishing a dedicated compensation fund for victims of trafficking, including a

contribution from any proceeds confiscated from perpetrators of trafficking.

» The Commission recommends that the State provide information on its plans to support sustained and improved data collection and reporting to ensure a comprehensive picture of the human trafficking situation in Ireland.

» The Commission is of the view that an independent, dedicated national rapporteur should be appointed in line with international best practice to monitor developments on trafficking and to support the State's compliance with human rights standards.

» The Commission recommends that victims of trafficking are accommodated in appropriate facilities that ensure access to the necessary support services.

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## Section 15: Access to Justice

» The Commission recommends that racial profiling is dealt with appropriately, including through legislative measures.

» The Commission recommends that, through the Sentencing Guidelines and Information Committee or another mechanism, the Courts Service collects data on sentencing that is disaggregated on the grounds of ethnicity.

» The Commission recommends the discontinuation of passport and identity checks by An Garda Síochána and other Irish officials at the border between Ireland and Northern Ireland based on racial profiling.

» The Commission recommends that human rights and equality standards are central to the initial and continuous training of all criminal justice personnel, including staff within An Garda

Síochána, the Office of the Director of Public Prosecutions, the Prison Service, and detention centres.

» The Commission recommends that the Judicial Studies Committee support the continuing education of the judiciary on human rights, equality, and cultural competence.

» The Commission recommends that An Garda Síochána and other



public bodies in the criminal justice sector should set specific targets for diversity in their recruitment procedures.

» The Commission recommends that the State review the operation of section 11 of the Criminal Law (Sexual Offences) Act 1993 concerning the interpretation of 'brothel keeping'.

» The Commission recommends that the remit of the Legal Aid Board be reviewed and that civil legal aid

services are made available in a wider range of areas.

» The Commission recommends that the State support the sustained provision of specialist legal services to minority ethnic communities.

» Recalling its recommendation in section 10 of this submission, the Commission is of the view that interpreting services for legal and administrative proceedings should be professionalised and regulated, including through the development

of a system of accreditation and training.

» The Commission recommends that the State reconsider the Law Reform Commission's recommendation on the introduction of a multi-party litigation mechanism to provide for collective redress.

» The Commission recommends that the State address the implications of Practice Direction 81 on migrants' access to justice.

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## Section 16: Human Rights Leadership

» The Commission recommends that the State build on its ratification of the Istanbul Convention by adopting a strong leadership role on the international stage in promoting the protection of women's rights.

» The Commission recommends that the State detail its plans and arrangements to work with other governments to ensure ongoing rescue and humanitarian missions in the Mediterranean.

» The Commission recommends that the State should consider introducing human rights due diligence as a mandatory requirement with legislative underpinning, including in the context of government procurement.

» The Commission recommends that the Business and Human Rights

Implementation Group should examine the implementation of recommendations by UN human rights bodies on business and human rights and the implementation of the State's obligations under the Public Sector Equality and Human Rights Duty.

» The Commission recommends that the State ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and take the necessary measures to ensure its full incorporation at a domestic level.

» The Commission recommends that the State continue to raise concerns about human rights abuses in the Cerrejón mine with the government of Colombia and lend its support to the initiation of an independent inquiry into the operation of the mine, and

restitution and compensation for victims of displacement and other human rights abuses.

» The Commission further recommends that, in line with its actions on 'Corporate Responsibility' and 'Access to Remedy' in the *National Plan on Business and Human Rights*, the State engage with companies domiciled in Ireland with links to the Cerrejón mine regarding human rights abuses occurring there.







**16-22 Sráid na Faiche,  
Baile Átha Cliath 7, D07 CR20**  
16-22 Green Street,  
Dublin 7, D07 CR20

**Guthán/Phone + 353 (0) 1 8589601**

**Facs/Fax + 353 (0) 1 8589609**

**Ríomhphost/Email [info@ihrec.ie](mailto:info@ihrec.ie)**

**Idirlíon/Web [www.ihrec.ie](http://www.ihrec.ie)**

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