

**Submission to the UN
Committee on the Rights of the
Child on the List of Issues Prior
to Reporting for the fourth
periodic examination of Ireland**

July 2020



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

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Rights of the Child on the List of Issues
Prior to Reporting for the fourth periodic
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1. Introduction

The Irish Human Rights and Equality Commission ('the Commission') exercises a dual capacity as the "A" Status National Human Rights Institution ('NHRI') and the National Equality Body ('NEB') for Ireland. Under the *Irish Human Rights and Equality Commission Act 2014*, the Commission is mandated to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality and to consult with international bodies having a knowledge or expertise in the field of human rights or equality as it sees fit.

The purpose of this submission is to provide the Committee on the Rights of the Child with information to inform its preparation of the List of Issues Prior to Reporting (LOIPR) for Ireland, due to be examined by the Committee in its 88th session, ahead of its fourth periodic review of Ireland.

The submission follows the Commission's engagement with the Committee during Ireland's third periodic review in 2015.

This submission is informed by the Commission's prioritisation in its *Strategy Statement 2019-2021* of 'disability', 'promoting access to justice', 'socio-economic rights' and 'combatting racism and promoting intercultural understanding'.

Noting the concerns raised and statements issued by UN Treaty Bodies on the subject of the COVID-19 pandemic, this submission will also, where relevant, touch on the impact of the COVID-19 pandemic and response in Ireland on child rights.¹

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

¹ Committee on the Rights of the Child (8 April 2020), 'The Committee on the Rights of the Child warns of the grave physical, emotional and psychological effect of the COVID-19 pandemic on children and calls on States to protect the rights of children'; Joint Statement by UN Treaty Bodies (24 March 2020), 'UN Human Rights Treaty Bodies call for human rights approach in fighting COVID-19'. See OHCHR (April 2020), [Compilation of statements by human rights treaty bodies in the context of COVID-19](#)

2. General measures of implementation (arts. 4, 42 and 44, para. 6)

Legal and policy framework for the protection of children's rights

Since the last examination, there has been a number of legislative and policy developments to better protect children's rights for example, the enactment of the *Domestic Violence Act 2018* and the *Criminal Law (Sexual Offences) Act 2017* and the commencement of the *Children and Family Relationships Act 2015* and the *Children First Act 2015*.² However, Ireland has not fully incorporated the Convention into domestic law

The Commission recommends that the Committee urges the State to incorporate the Convention into domestic law.

The Commission welcomes the publication of the mid-term review of *Better Outcomes, Brighter Futures* as well as the National Strategy on Children and Young People's Participation in Decision Making 2015 – 2020, the National Youth Strategy 2015 – 2020 and First 5, the National Early Years Strategy. The Commission welcomes the identification of thematic priorities in the mid-term review in response to emerging issues, particularly child poverty, child homelessness and mental health. The Commission also welcomes the publication of a number of equality strategies, such as the National Strategy for Women and Girls 2017-2020, the LGBTI+ National Youth Strategy 2018-2020 and the National Disability Inclusion Strategy 2017-2021, which include measures to protect children's rights.

The Commission recommends that the Committee asks the State to explain how the rights and general principles enumerated in the Convention guide the development and implementation of national policies affecting children.

Ratification of international human rights instruments

Since the last examination Ireland has ratified the UN Convention on the Rights of Persons with Disabilities and the Council of Europe Istanbul Convention. However, Ireland has not yet ratified the Optional Protocol on the sale of children, child prostitution and child pornography, having signed it

² UNCRC (2016) [Concluding Observations on Ireland](#), CRC/C/IRL/CO/3-4, para 11.

in 2000. In 2019, the then Minister for Children and Youth Affairs, Katherine Zappone TD, announced her intention to ratify the optional protocol and confirmed that preparations to ratify are at an advanced stage.³

Ireland also has not yet ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities; the Optional Protocol to the Convention against Torture (OPCAT);⁴ the Optional Protocol to the International Covenant and Economic, Social and Cultural Rights (ICESCR);⁵ the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW); and the Convention for the Protection of all Persons from Enforced Disappearances (CED).

The Commission recommends that the Committee urges the State to progress ratification of the Optional Protocol on the Sale of children, child prostitution and child pornography, and other outstanding international treaties and protocols, as a matter of priority, including through prioritising the passage of any legislative and policy reforms necessary for ratification.

Public Sector Equality and Human Rights Duty

Section 42 of 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.⁶ This obligation is referred to as the Public Sector Equality and Human Rights Duty.

The Commission is concerned that neither the Department of Children and Youth Affairs nor the Child and Family Agency, TUSLA, have set out their Section 42 assessments and/or action plans in their strategic or business plans.

³ Press release, January 2019, available: <https://www.gov.ie/en/press-release/d0ce66-ireland-joining-international-stand-against-sale-of-children-child-p/>. Written answers

Tuesday, 19 November 2019, available: <https://www.kildarestreet.com/wrans/?id=2019-11-19a.1491&s=%22ratification+of+the+Second+Optional+Protocol%22#g1493.r>

⁴ Ireland signed OPCAT in 2007 but has not yet ratified it. The Government has not yet provided a timeframe for the ratification of OPCAT but the Commission understands that the State is in the process of developing legislation to allow for the establishment of a National Preventative Mechanism (NPM).

⁵ Ireland signed the Optional Protocol to ICESCR on 23 March 2012 but has not yet ratified it.

⁶ 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. https://www.ihrec.ie/app/uploads/2019/03/IHREC_Public_Sector_Duty_Final_Eng_WEB.pdf

The Commission recommends that the Committee asks the State to report on the level of compliance with the Public Sector Equality and Human Rights Duty, particularly with respect to the protection and promotion of children's rights.

Institutional mechanisms for the protection and promotion of children's rights

Bearing in mind the Committee's 2016 *Concluding Observations*,⁷ the Commission welcomes the retention of a full Cabinet Minister for Children following earlier indications that the closure of the ministry was being discussed during Government formation talks.⁸ On 27 June 2020, it was announced that Mr Roderic O'Gorman TD would be appointed to the role of Minister for Children, Disability, Equality and Integration.

The Commission recommends that the Committee asks the State to outline how the protection and promotion of children's rights will be embedded in the operation of this reformed ministry for children.

The Commission welcomes the State recognition of the remit of the Ombudsman and the Ombudsman for Children to receive complaints from people living in direct provision in 2017.

The Commission remains concerned that the Health Information and Quality Authority (HIQA) is currently not empowered to inspect certain private and voluntary residential and respite services for children. This is particularly important given that the Ombudsman for Children's Office highlighted significant inconsistencies across the country in respect of the arrangements for the registration, inspection and monitoring of voluntary and private residential centres for children in the care of the State.⁹

The Commission recommends that the Committee urges the State to commence sections 41(a), (d) and (e) and 45(1)(a) of the *Health Act 2007* without delay in order to enable HIQA to conduct independent inspections of all residential, foster and respite services for children, whether the service is provided directly by the State or through a non-state actor.

⁷ UNCRC (2016) [Concluding Observations on Ireland](#), CRC/C/IRL/CO/3-4, para 14.

⁸ Hugh O'Connell, 'Children set to lose voice at Cabinet as government talks continue', *Irish Independent*, 10 June 2020.

⁹ Ombudsman for Children's Office, [Department of Children and Youth Affairs: Review of the Child Care Act 1991 – Submission by the Ombudsman for Children's Office](#) (23 February 2018) at pp. 27-28.

The Commission also reiterates its concerns about the lapse of the parliamentary committee on Human Rights relative to Justice and Equality Matters.¹⁰

The Commission recommends that the Committee urges the State to take the necessary steps towards establishment of a full parliamentary Committee on Human Rights, Equality and Diversity.

Data collection

In its 2016 *Concluding Observations* the Committee recommended that the States ‘data collection system should cover all areas of the Convention and should be disaggregated in order to facilitate analysis on the situation of all children, particularly those in situations of vulnerability’.¹¹ There is a recognised lack of disaggregated data in the State.¹² There are also data gaps and deficiencies relating to particular groups and for example, the UN Special Rapporteur on the sale and sexual exploitation of children has raised concerns about the ‘absence of regularly gathered, comprehensive data on the scope and different forms of sexual abuse and exploitation of children in Ireland’.¹³

The Commission has advocated for the full implementation of the European Commission’s Guidelines on improving the collection and use of equality data.¹⁴

The Commission recommends that the Committee urges the State to improve data collection and recording systems as a matter of priority, to ensure that reliable and disaggregated information is available to monitor the rights of children across all the equality grounds.

¹⁰ 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.

¹¹ Tusla, [Exploring ethnic data collection for the Child and Family Agency](#); Dr Eamonn Furey & Dr John Canavan, [A review on the availability and comparability of statistics on child protection and welfare, including children in care, collated by Tusla: Child and Family Agency with statistics published in other jurisdictions](#).

¹² Barry and Feeley (2016) Comparative review of equality data collection practices in the EU.

¹³ Human Rights Council, [Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#) (March 2019) at pp. 6, 9, 13. See also IHREC (2019) [Comments on Ireland’s 16th National Report on the implementation of the European Social Charter](#).

¹⁴ https://ec.europa.eu/info/sites/info/files/final_guidelines_4-10-18_without_date_july.pdf

Allocation of resources

In its 2016 *Concluding Observations* the Committee recommended that the State conduct a comprehensive assessment of the budget needs of children and made a number of recommendations for improvements to budget process, including defining specific budgetary lines for Traveller and Roma children and children with disabilities as well as integrating children's rights impact assessments in the framework.¹⁵ Since the last examination the State has committed to integrating equality budgeting within the budgetary process, which has included a strand in relation to the provision of early intervention through children and youth service.¹⁶

The Commission notes that the current economic outlook in the context of the COVID-19 pandemic is serious, with a significant impact already being felt both on State finances, and on the unemployment rate.¹⁷ The Commission notes the risks that attach to the protection and promotion of children's rights in the context of economic downturn, both in terms of the risk of children falling into poverty, and the potential impact on the funding of services for the protection and promotion of children's rights.¹⁸ The Commission, at the end of the last great recession, highlighted the considerable impact fiscal consolidation or austerity measures had on the protection and promotion of human rights.¹⁹ The Commission is of the view that in the context of current events, the State must ensure that measures to address the current recession take full account of their human rights implications, and of the need to ensure the continued allocation of resources to the protection and promotion of human rights.

The Commission recommends that the Committee asks the State about its plans for the next phase of equality budgeting and how the 2016 recommendations of the Committee in relation to the budget needs of children will be incorporated into that plan.

¹⁵ UNCRC (2016) *Concluding Observations on Ireland*, CRC/C/IRL/CO/3-4, para 16.

¹⁶ <https://www.gov.ie/en/policy-information/aec432-equality-budgeting/>. See also OECD (2019) *OECD Scan: Equality Budgeting in Ireland*.

¹⁷ The most recent scenario analysis by the Economic and Social Research Institute has noted the 'extreme' impact on the Irish economy. Its baseline scenario analysis indicates that economic output will decline by 12.4 per cent in 2020, consumption by 13.3 per cent and investment by over 27 per cent. Unemployment is now set to average 17.4 per cent for 2020 and fiscal accounts now facing a deficit of at least 9 per cent of GDP or €27.5 billion. McQuinn *et al* (ESRI, 28 May 2020), *Quarterly Economic Commentary, Summer 2020*.

¹⁸ CESCR - *Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights by the Committee on Economic, Social and Cultural Rights*, E/C.12/2020/1 (6 April 2020): "if States do not act with within a human rights framework, a clear risk exists that the measures taken might violate economic, social and cultural rights and increase the suffering of the most marginalized groups."

¹⁹ IHREC (2015), *Ireland and the International Covenant on Economic, Social and Cultural Rights*

The Commission recommends that the Committee asks the State what measures it intends to put in place to ensure the continued allocation of resources for the protection and promotion of the rights of the child in the context of the COVID-19 induced recession.

Public procurement

The private and voluntary sector delivers a range of health and social care services in the State, including private and residential foster care. For example at the end of 2019, there were 695 children in private placements.²⁰ This is the highest number for all quarters Q1 2018 – Q4 2019.²¹

In its last report to the Committee, the Commission raised concerns that accountability mechanisms can be weakened where the State delivers its functions through private, non-State actors. Moreover, the Commission is concerned that commercial interests may take precedence over the protection of rights of service users.²² Given the developments in public procurement law²³ and the entry into force of the Public Sector Equality and Human Rights Duty, the Commission is of the view that compliance with human rights and equality should be embedded in public procurement practices.

The Commission recommends that the Committee asks the State to what extent it includes the Public Sector Equality and Human Rights Duty in its procurement processes and Service Level Agreements with the private and voluntary sector for the delivery of foster care and other health and social care services for children.

²⁰ For example, in 2017, the HSE provided over €3.3 billion to HSE funded bodies. See Department of Health (2018) [Report of the Independent Review Group established to examine the role of voluntary organisations in publicly funded health and personal social services](#), at p. 21.

²¹ See Tusla (2019) [Quarterly Service Performance and Activity Report](#). Quarter 4 2019. Dublin: Tusla

²² IHREC (2019) [Ireland and the Convention on the Elimination of Racial Discrimination. Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#), at p. 119.

²³ Regulation 18(4)(a) provides: 'In the performance of a public contract, an economic operator shall comply with applicable obligations in the fields of environmental, social and labour law... established by European Union law, national law, collective agreements or by international, environmental, social and labour law'. These regulations have been in force since 18 April 2016.

3. Civil rights and freedoms (arts. 7, 8, and 13-17)

Nationality

The Commission notes the Committee has stated that ‘all nationality laws should be implemented in a non-discriminatory manner, including with regard to residence status in relation to the length of residency requirements, to ensure that every child’s right to a nationality is respected, protected and fulfilled.’²⁴

Following the approval of the Twenty-Seventh amendment of the Irish Constitution by referendum on 11 June 2004²⁵, the *Irish Nationality and Citizenship Act 2004* was enacted which provides that children born in Ireland whose parent is Irish or British, or had permission to reside in Ireland for three of the previous four years,²⁶ are entitled to citizenship at birth.²⁷ Since then there has been increased public debate on reforming the law on citizenship. For example, a 2018 opinion poll revealed that 71 per cent of people agree that anyone born in Ireland should be entitled to citizenship.²⁸ The Commission notes that there has been discussion of law reform in this area for the last number of years, including a commitment to do so in the previous Programme for a Partnership Government.²⁹

The Commission notes the publication of research by the Ombudsman for Children in June 2020, which reveals that children in migration situations³⁰, face numerous barriers in securing access to citizenship and its attendant rights.³¹ Such barriers include the fact that children are not permitted

²⁴ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/343/65/PDF/G1734365.pdf?OpenElement> para 25.

²⁵ See Article 9 of the Irish Constitution. 79% of voters supported the change to the Constitution, see Author Unknown (12 June 2004), ‘[Citizenship Referendum carried by massive majority](#)’ *The Irish Times*.

²⁶ Time spent undocumented or resident with an international student permission does not qualify for meeting this requirement.

²⁷ Section 6 of the *Irish Nationality and Citizenship Act 1956*, as amended by the *Irish Nationality and Citizenship Acts 2001 and 2004*. See Immigrant Council of Ireland (2016), [Child Migration Matters: Children and Young People’s Experiences of Migration](#), p37.

²⁸ This poll is based on a nationally representative sample of 905 eligible Irish voters aged 18 years and over. The margin of error is +/- 3.3%. The Sunday Times (November 2018), [Opinion Poll](#), p13.

²⁹ [Programme for a Partnership Government](#) (2016). p 103. See also Immigrant Council of Ireland, (2017) [Submission to the 4th Programme of Law Reform under the Law Reform Commission Act 1975 Immigration, Residence and Citizenship – an Area for Law Reform](#).

³⁰ Children whose parents are seeking international protection; whose parents are undocumented; who are separated from their families and in the care of the State (that is separated children); and stateless children.

³¹ Arnold (2020) [Pathways to Irish Citizenship Separated, Stateless, Asylum Seeking and Undocumented Children](#) (OCO: Dublin).

to independently apply for international protection and register with immigration authorities.³²

Children may also face barriers in providing proof of identity due to the lack of a birth certificate or passport from their country of origin.³³

Following the 2004 referendum there are now young people in their teens who were born in Ireland and have lived here all their lives without Irish citizenship. The Commission notes reports of a small number of cases in which children born in Ireland have faced deportation, including to countries they have never been to.³⁴ In 2018, Eric Zhi Xue, a nine-year-old boy who was born in Ireland, had a deportation order issued against him. His mother came to Ireland over 12 years earlier and her attempts to regularise her status were unsuccessful. Following an intervention from the Minister for Health, it was confirmed that the family were not in danger of imminent deportation³⁵. The immigration authorities have expressed the view that despite the fact that no legislative prohibition exists for the deportation of unaccompanied minors, such deportations do not normally take place in practice.³⁶

The Commission also notes that there is a continued absence of any pathway to residency for undocumented people in Ireland and reiterates its recommendation that the State introduce a regularisation scheme for undocumented migrants.³⁷ There are also between 2,000 to 6,000 undocumented children living in the State.³⁸

The Commission recommends that the Committee asks the State what plans it has to review the legislative framework on citizenship and residency in light of the current barriers in place for children, and the State's obligations under Article 7 of the Convention.

³² Arnold (2020) [Pathways to Irish Citizenship Separated, Stateless, Asylum Seeking and Undocumented Children](#) (OCO: Dublin), p 22.

³³ Arnold (2020) [Pathways to Irish Citizenship Separated, Stateless, Asylum Seeking and Undocumented Children](#) (OCO: Dublin), p 16.

³⁴ Seanad Éireann debate (21 November 2018), [Irish Nationality and Citizenship \(Naturalisation of Minors Born in Ireland\) Bill 2018: Second Stage](#).

³⁵ Irish Times 26 October 2018 'Eric Zhi Ying Xue faces 'no imminent threat of deportation', says Simon Harris'.

³⁶ Stated by the Irish Naturalisation and Immigration Service (INIS) in Groarke, S. and Arnold, S. (2018). *Approaches to Unaccompanied Minors following Status Determination in Ireland*, European Migration Network, Research Series No. 83. Dublin: The ESRI.

³⁷ IHREC (2017) CEDAW Shadow Report, p. 91.

³⁸ Migrant Rights Centre Ireland (2016), [Ireland is Home 2016](#).

Identity

Gender Recognition

The *Gender Recognition Act 2015*,³⁹ provides that an application may be made for a Gender Recognition Certificate on behalf of a 16 or 17 year old child where a court order has been obtained, which requires parental or guardian consent and certification by two medical practitioners. The Commission recommended in 2015 that the legislation be amended to permit young people aged 16 and 17 to make an application under the legislation themselves, and to enable applications to be made on behalf of young people under the age of 16 years with all of the relevant safeguards applying.⁴⁰ In 2018 a Review carried out under Section 7 of the Act recommended that a 'system of gender recognition should be introduced for children of any age' subject to certain key principles.⁴¹ In November 2019 the Government indicated that it will legislate to replace the existing process for 16 and 17 year olds with an administrative process along the lines of the self-declaration model that is currently in place for adults, but which will require the consent of both parents.⁴² The Government also indicated in 2019 that 'there are no current plans to change the arrangements for children under 16 years'.⁴³

The Commission recommends that the Committee asks the State about progress on its plans to introduce legislation to simplify the procedure for legal gender recognition for 16 and 17 year olds.

Genetic Identity

Parts 2 and 3 of the *Children and Family Relationships Act 2015* came into operation on the 4th of May 2020.⁴⁴ Under Part 3 of the Act, a donor-conceived child who is 18 years old, or the parent of a donor-conceived child who is under 18, may request information from a register, such as information about the donor and the number of people who were born as a result of that a gamete donated by the donor. While the introduction of a regulatory framework is welcomed, the

³⁹ Sections 8, 9 and 12 of the *Gender Recognition Act 2015*

⁴⁰ IHREC, [IHREC reiterates its call to further safeguard the rights of Transgender and Intersex people](#), 10 March 2015; IHREC, [Ireland and the United Nations Convention on the Rights of the Child, Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland's Combined Third and Fourth Periodic Reports](#), Dec 2015, at p. 14.

⁴¹ Minister for Employment Affairs and Social Protection, [Report on the Review of the Gender Recognition Act](#), Nov 2019, at p. 9.

⁴² Minister for Employment Affairs and Social Protection, [Gender Recognition Act 2015: Report to the Oireachtas under Section 7 of the Act](#), Nov 2019, at p. 8.

⁴³ Minister for Employment Affairs and Social Protection, [Gender Recognition Act 2015: Report to the Oireachtas under Section 7 of the Act](#), Nov 2019, at p. 9.

⁴⁴ S.I. No. 541/2019 - *Children and Family Relationships Act 2015* (Parts 2 and 3) (Commencement) Order 2019

Commission is concerned that the right to access information about their identity is not available for children under the age of 18 year old and children born of a donor assisted human reproduction procedure, which falls outside of the scope of the legislation.⁴⁵

The Commission recommends that the Committee asks the State about its plans to introduce legislation to vindicate the child's right to genetic identity.

Voting age

In its 2016 *Concluding Observations*, the Committee also recommended that the State ensure the right of the child to be heard in relevant legal proceedings and that the State implement its plan to carry out a referendum on lowering the voting age to 16 years.⁴⁶ In December 2019, the Minister of State for Local Government and Electoral Reform informed parliament that while the Government remains committed to holding the referendum, no decision has been taken on scheduling.⁴⁷

The Commission recommends that the Committee asks the State whether it remains committed to holding a referendum on the lowering of the voting age.

⁴⁵ IHREC, *Observations on the Children and Family Relationships Bill 2015*, Mar 2015, p. 5.

⁴⁶ UNCRC (2016) *Concluding Observations on Ireland*, CRC/C/IRL/CO/3-4, para 32.

⁴⁷ <https://www.kildarestreet.com/wrans/?id=2019-12-17a.2014&s=%22voting+age%22+AND+%22referendum%22#g2016.r>

4. Violence against children (arts. 19, 24, para.3, 28, para. 2, 34, 37 (a) and 39)

Legal and policy framework

Since the last examination, the State has taken a number of legislative and policy measures to better protect children from sexual abuse and exploitation. These include the ratification of the Istanbul Convention, the publication of the *Second National Strategy on Domestic, Sexual and Gender-based Violence 2016-2021*,⁴⁸ and the enactment of the *Domestic Violence Act 2018*, the *Criminal Justice (Sexual Offences) Act 2017*,⁴⁹ the *Criminal Justice (Victims of Crime) Act 2017* and the commencement of the *Children First Act 2015*. The *Second National Intercultural Health Strategy 2018–2023* also recognises the need to continue the development and implementation of education and public campaigns to raise awareness about the *Criminal Justice (Female Genital Mutilation) Act 2012*.⁵⁰

The Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material (hereafter ‘the Special Rapporteur’) concluded following her mission visit to Ireland in 2018 that ‘the impact of these advancements is hindered by the lack of a dedicated and integrated strategy to respond to sexual violence against children’.⁵¹

The Commission recommends that the Committee urges the State to develop a dedicated and integrated strategy to respond to sexual violence against children.

Since the last examination, the *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland* also came into effect. The Commission has welcomed the State’s commitment in the *Second National Action Plan* to ensure best practice in age assessment procedures.⁵² The *Second National Action Plan* also commits the State to considering the establishment of ‘further independent monitoring mechanisms for oversight of anti-trafficking, including the possibility of

⁴⁸ [Second National Strategy on Domestic, Sexual and Gender-based Violence 2016 - 2021](#).

⁴⁹ Transposing the 2011 EU Directive on Combatting the Sexual Abuse and Sexual Exploitation of Children and Child Pornography.

⁵⁰ HSE, [Second National Intercultural Health Strategy 2018–2023](#), p.25.

⁵¹ Human Rights Council, [Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#) (March 2019) at p. 7

⁵² Irish Human Rights and Equality Commission, [IHREC submission to GRETA in advance of its Second Evaluation Round of Ireland](#) (September 2016) at p. 19.

putting into place a National Rapporteur'.⁵³ However, the Commission remains concerned about the State's continued reliance on an inadequate administrative scheme⁵⁴ for the recognition and protection of victims of trafficking. As outlined in our last submission to the Committee, the High Court found this scheme to be inadequate in terms of its compliance with EU law.⁵⁵

The Commission recommends that the Committee asks the State about its plan to reform the current administrative arrangements for the identification of victims of trafficking in line with the GRETA recommendations.

Services for child victims

The Special Rapporteur has highlighted that there is no national therapeutic service for child victims of abuse, meaning that they are not guaranteed counselling that is appropriately specialised. Obtaining timely and robust assessments for child victims of sexual abuse has been described as a 'geographical lottery', with some parts of the country having no access to specialist services and relying on the assessment of social workers with inadequate training.⁵⁶

In its 2016 *Concluding Observations* on Ireland, the Committee also recommended that the State ensure the allocation of adequate resources to the Child and Family Agency to enable it to respond to child protection referrals and address the needs of children at risk in a timely manner.⁵⁷ At the end of 2019, the number of cases open⁵⁸ to the child protection and welfare service was 24,827 and 5,291 cases had not been allocated a social worker, of those, 653 were high priority cases.⁵⁹

The Commission recommends that the Committee asks the State about its plans to develop and adequately resource specialised procedures and services for child victims of abuse and exploitation.

⁵³ Department of Justice and Equality, [Second National Action Plan to Prevent and Combat Human Trafficking in Ireland](#) (2016) at p. 82.

⁵⁴ In its *Trafficking in Persons Report 2018*, the US State Department downgraded Ireland to Tier 2 status, due to what it termed 'chronic deficiencies' in the victim identification process. US Department of State, [Trafficking in Persons Report](#) (June 2018) at p. 235.

⁵⁵ *P. v. The Chief Superintendent of the Garda National Immigration Bureau & Ors* [2015] IEHC 222. The Commission appeared as *amicus curiae* in that case.

⁵⁶ Child Care Law Reporting Project, [An Examination of Lengthy, Contested and Complex Child Protection Cases in the District Court](#) (March 2018) at pp. 100-101.

⁵⁷ Committee on the Rights of the Child, [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland](#) (2016) at para 38.

⁵⁸ Open cases are where referrals are either waiting for a service or are being actively worked on by Tusla.

⁵⁹ HIQA (2020) [Annual overview report on the inspection and regulation of children's services – 2019](#), p 30.

In its 2016 *Concluding Observations*, the Committee recommended that the State ‘ensure sufficient 24-hour refuge accommodation for persons affected by domestic violence and their children and provide redress and rehabilitation to the victims’.⁶⁰ The Commission has ongoing concerns about the inadequate supply of domestic violence refuges as well as the multiple barriers faced by victims in accessing specialist support services, including women and children living in rural areas⁶¹ and children who are homeless.⁶² In 2019, Women’s Aid reported to parliament that in 2018, its 24-hour helpline made a total of 244 calls to refuges for women who could not make such a call themselves and on 126 occasions the refuges were full.⁶³ In May 2020 the Minister for Children and Youth Affairs reported that €25.3m has been allocated to 60 organisations that deliver services for victims of domestic violence, including funding and coordinated supports for 21 services that provide emergency refuge and non-refuge accommodation to victims of domestic violence.⁶⁴ In June 2020, the Minister also stated that Tusla has been in contact with funded organisations in relation to a Strategic Review of Domestic Violence Accommodation to inform Tusla's future commissioning of domestic violence emergency accommodation services.⁶⁵ In addition, parliamentarians have raised concerns about access to services for women during the COVID-19 pandemic, particularly where refuges do not exist in their locality.⁶⁶

The Commission recommends that the Committee asks the State whether it plans to increase the number, accessibility and geographical spread of domestic violence refuges.

Access to justice

The Commission is also concerned about reported issues with the response to child sexual abuse cases within the criminal justice system, including the involvement of ‘inexperienced and untrained’ Gardaí at all stages of the investigation; inconsistencies and difficulties in obtaining evidence due to delays; and barriers to structured joint-agency working, resulting in the multiple interviewing of

⁶⁰ UNCRC (2016) *Concluding Observations*, para 38(b).

⁶¹ Irish Human Rights and Equality Commission (2017), *Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland’s Combined Sixth and Seventh Reports* p 63. IHREC (2019) *Submission to the Universal Periodic Review of the UN Human Rights Council*, para 34.

⁶² OCO (2017) *Children homeless for two years after suffering domestic abuse*.

⁶³ https://www.oireachtas.ie/en/debates/debate/joint_committee_on_children_and_youth_affairs/2019-05-08/3/

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⁶⁵ <https://www.kildarestreet.com/wrans/?id=2020-06-03a.2892&s=%22Review+of+Domestic+Violence+Accommodation%22#g2894.r>

⁶⁶ <https://www.kildarestreet.com/wrans/?id=2020-06-03a.2865&s=%22domestic+violence%22+AND+%22refuge%22#g2868.q>

children.⁶⁷ The Commission also notes that the 2017 report by the Garda Inspectorate highlighted serious failings in the process of receiving, investigating and tracking online referrals of child sexual abuse materials by An Garda Síochána. In particular, it found that the Online Child Sexual Exploitation Unit was not sufficiently resourced and that there were unacceptable delays in conducting forensic examinations of devices.⁶⁸

The Special Rapporteur on Children has repeatedly expressed concern about the lack of a specialised family or children's court system with appropriate waiting facilities,⁶⁹ and the lack of provision for children to make applications for protection and safety orders in their own right.⁷⁰

The Commission recommends that the Committee asks the State about its plans to provide specialised court facilities and whether it intends to amend the *Domestic Violence Act 2018* to allow children to make applications for protection and safety orders in their own right.

Historical child abuse

Investigation and accountability

Following her mission visit to Ireland in 2018, the UN Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material remarked that 'past systemic abuses, such as those committed in institutions and in the area of adoption, are yet to be fully examined, with accountability and redress remaining elusive for victims'.⁷¹ This echoes the views of a number of UN treaty bodies⁷² and in its last report to the Committee, the Commission outlined its concerns in relation to the lack of prompt, thorough and effective investigation into the abuse of children in institutions including Magdalene laundries and

⁶⁷ Human Rights Council (2019), [Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#), p 7; Garda Inspectorate (2017), [Responding to Child Sexual Abuse: A follow up Review from the Garda Inspectorate](#) pp 9-11, 19, 91-92, 153-154, 190 and Child Care Law Reporting Project (2018), [An Examination of Lengthy, Contested and Complex Child Protection Cases in the District Court](#) pp. 50-51.

⁶⁸ Garda Inspectorate, [Responding to Child Sexual Abuse: A follow up Review from the Garda Inspectorate](#) (December 2017) at pp. 226-227, 235.

⁶⁹ Professor Geoffrey Shannon, [Eleventh Report of the Special Rapporteur on Child Protection](#) (2018) at pp. 7, 74 and Joint Committee on Justice and Equality, [Reform of Family Law System: Discussion \(Resumed\)](#) (13 March 2019).

⁷⁰ Professor Geoffrey Shannon, [Twelfth Report of the Special Rapporteur on Child Protection](#) (2019) p 44.

⁷¹ United Nations General Assembly Human Rights Council, [Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#) (15 November 2019) A/HRC/40/51/Add.2, para. 75.

⁷² See CERD [Concluding Observations on Ireland](#) (2020); CEDAW [Concluding Observations on Ireland](#) (2017), ICCPR [Concluding observations on Ireland](#) (2014). See also IHREC (2020), [Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland](#).

mother and baby homes.⁷³ These concerns have been most recently highlighted in a decision of the UN Committee against Torture, which has found that it has full jurisdiction to decide Elizabeth Coppin's complaint alleging that Ireland has failed to investigate or to ensure accountability or comprehensive redress for the abuse that she suffered in three of Ireland's Catholic Church-run 'Magdalene Laundries' from 1964 - 1968.⁷⁴

The Commission is also concerned about the lack of prompt, thorough and effective investigation into the abuse of children with intellectual disabilities in the care system. In 2017, the Commission met with the Minister of State with special responsibility for Disabilities to express concerns about the lengthy investigation into allegations of child abuse in foster home settings which had not taken place in the public domain.⁷⁵ While a statutory Commission of Investigation has since been established, the Commission is now concerned that the inquiry has been delayed for the third time.⁷⁶

The Commission notes that the Special Rapporteur identified a culture of silence around issues of childhood sexual abuse and exploitation in Ireland.⁷⁷ This is again evident in the findings of the recent 'learning review' in relation to sexual abuse in scouting, which revealed that 'sex abuse was known about and tolerated within scouting in some situations. Known offenders were protected, and there are examples of those individuals being replaced in those roles by others against whom we now hold allegations of sexual abuse'.⁷⁸

Recalling the recommendations of numerous treaty bodies, the Commission recommends that the Committee urges the State to undertake independent and transparent investigations into all instances of historical child abuse in a manner that is in compliance with international human rights law.

⁷³ IHREC UNCRC Shadow Report 2015.

⁷⁴ https://www.hoganlovells.com/~media/hogan-lovells/pdf/2020-pdfs/2020_02_17_un_torture_committee_delivers_preliminary_judgment_against_ireland.pdf?la=en

⁷⁵ In this case two previous investigations had taken place but neither had been published.

⁷⁶ Ó Cionnaith, 'State inquiry into abuse at foster home set to be delayed for third time' RTÉ, 8 May 2020.

⁷⁷ Human Rights Council, *Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material* (March 2019) at pp. 9, 16.

⁷⁸ <https://www.scouts.ie/News/2020/Ian-Elliott-Learning-Review-Scouting-Ireland.pdf>

In its 2015 report to the Committee, the Commission raised the case of *O’Keeffe v. Ireland*, in which the applicant, Louise O’Keeffe, had been sexually abused by the principal of the school she attended which was owned (through trustees) by a Roman Catholic bishop, and managed by a local priest. The European Court of Human Rights held that the State had failed to fulfil its obligation to protect Louise O’Keeffe from inhuman and degrading treatment, and had failed to provide her with an effective remedy.⁷⁹ In October 2015, the Commission reported to the Council of Europe’s Committee of Ministers its concern that the State has adopted an unduly restrictive and narrow approach to the category of “victim” of abuse in its interpretation of the ruling of the European Court of Human Rights. This view was shared by an independent assessor in 2019 who held that the “prior complaint” condition risks a “continuing breach of the rights under Article 13 of the ECHR” (the right to an effective remedy) of those survivors of child sexual abuse in National Schools.⁸⁰

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

Moreover, the Commission has expressed concerns about the proposal to deposit the records of the Commission to Inquire into Child Abuse, the Residential Institutions Redress Board and the Residential Institutions Redress Review Committee into the National Archives, where they will be withheld from public inspection for a period of 75 years.⁸¹ These records will include administrative records of the institutions, survivors’ personal records, and all relevant documents created by State representatives and the aforementioned bodies.⁸² The Commission is concerned that, if enacted, the legislation would significantly weaken survivors’ rights to their personal information, contrary to international and European human rights norms.⁸³

The Commission recommends that the Committee asks the State whether it will review its proposed approach to the retention of records to bring it in line with international human rights norms.

⁷⁹ The Court found violations of Articles 3 and 13 of the European Convention on Human Rights.
<http://hudoc.echr.coe.int/eng?i=001-140235>

⁸⁰ See IHREC, [Irish Human Rights and Equality Commission welcomes Mr Justice Laffhlaith O’Neill’s interpretation of Louise O’Keeffe’s Strasbourg judgment as too restrictive](#) (08 July 2019).

⁸¹ IHREC (2020) Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland, p. 26. This was proposed in the *Retention of Records Bill 2019*, which lapsed in January 2020 with the dissolution of parliament.

⁸² Dr Maeve O’Rourke, Máiréad Enright, Dr Sinéad Ring (2019) [Submission on the provisions of the Retention of Records Bill 2019](#), at p. 3.

⁸³ In particular: Article 8, European Convention on Human Rights and Article 19, International Covenant on Civil and Political Rights.

COVID-19 impact on violence against children

Self-isolation and quarantine have put children at greater risk of domestic and family violence worldwide.⁸⁴ In June 2020 the Policing Authority noted a significant increase in levels of domestic abuse are reported by support organisations and the Garda Síochána.⁸⁵ Childline, a national helpline for children, has reported an increased demand of 25 per cent in its services since the closure of schools during the pandemic.⁸⁶

The Commission notes that the Child and Family Agency, Tusla, has published guidelines on Safety Planning Support for Child Protection and Domestic Violence Cases.⁸⁷

The Commission recommends that the Committee asks the State how it is monitoring the implementation and effectiveness of Tusla's guidelines on Safety Planning Support for Child Protection and Domestic Violence Cases.

The Commission recommends that the Committee asks the State whether it intends to evaluate the effect and impact of the COVID-19 pandemic and related restrictions on violence against children.

⁸⁴ Inter-Agency Working Group on Violence against Children, *Agenda for Action*, April 2020

⁸⁵ Policing Authority (2020) *Policing Performance by the Garda Síochána in relation to COVID19 regulations*, p 12.

⁸⁶ ISPPC, *Childline here for every child and young person*, Press release, 4 May 2020.

⁸⁷ Available at: https://www.tusla.ie/uploads/content/CMT-AD-22a-2020_-_Covid-19-SPS-CP-DV-Cases-no-contacts.pdf

5. Family environment and alternative care (arts. 5, 9-11, 18 (paras. 1 and 2), 20-21, 25 and 27 (para. 4))

Provision of care services

The Commission welcomes the review of the *Child Care Act 1991* undertaken by the State and supports calls for the revised legislation to be underpinned by a child rights approach in order to ensure child-centred delivery of services.⁸⁸ In 2016, the Committee raised its concerns about insufficient alternative care services in Ireland for children with complex needs and recommended that the State prioritise the development of its special care services.⁸⁹

There are ongoing concerns about the lack of availability of appropriate placements for children in State care. In January 2020 there were 5,971 children in care, of which 3,905 were in general foster care, 1,555 were in relative foster care, 400 were in residential care⁹⁰ and 398 children were in private foster care placements.⁹¹

This has been reported as resulting in children being required to stay in inappropriate placements, including at a considerable distance from their homes and local communities, or being moved to multiple different placements.⁹²

There is a need to diversify foster parents including recruitment of foster parents from migrant families.

The Special Rapporteur on Child Protection has highlighted difficulties with the State's reliance on private providers for the provision of emergency, out-of-hours foster placements. He notes that such providers are under no statutory obligation to organise placements for children they deem to be 'too problematic or challenging'.⁹³

The Commission recommends that the Committee asks the State about the gaps in the availability of appropriate placements to meet the needs of children in care.

⁸⁸ <https://www.gov.ie/en/publication/ee2a23-submissions-to-the-written-consultation-on-the-review-of-the-child-c/>

⁸⁹ Committee on the Rights of the Child, *Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland* (2016) at pp. 9-10.

⁹⁰ Tusla, *National Performance and Activity Dashboard*, Jan 2020

⁹¹ Tusla, *National Performance and Activity Dashboard*, Jan 2020

⁹² Ombudsman for Children's Office, *Department of Children and Youth Affairs: Review of the Child Care Act 1991* (February 2018).

⁹³ Professor Geoffrey Shannon, *Eleventh Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas* (2018) at p. 160.

The Commission is concerned by the high number of children in care waiting to be allocated a social worker by Tusla, the Child and Family Agency. In November 2019, the Oireachtas Public Accounts Committee stated that it was “unacceptable that 6,000 children had not been allocated a social worker by Tusla even though the Department surrendered €58.7m to the Exchequer in 2017.” As of January 2020, there 5,971 children in care, 422 of which were awaiting allocation of a social worker.⁹⁴ In an inspection report on the foster care services operated by the Tusla in the Carlow/Kilkenny/South Tipperary service area, the Health Information and Quality Authority stated that the allocation of social workers was “chaotic and not child-centred”.⁹⁵

The Commission recommends that the Committee asks the State what measures it is taking to increase the number of social workers and ensure the child-centred allocation of social workers.

The Commission recalls the concerns raised by the Committee in Ireland’s last examination that alternative care provision for children was both fragmented and inadequate.⁹⁶ In particular the Committee highlighted inadequate measures for needs assessment, insufficient services for children with special needs, the inappropriate use of single isolation, and inadequate coordination between bodies responsible for child protection, mental health and disability. A 2015 review of the framework used by the Child and Family Agency to describe the categorisation of children’s needs identified that it appeared to discriminate against children with a disability and may have excluded them from accessing child protection services.⁹⁷

The Commission recommends that the Committee asks the State about the extent to which the rights and needs of children with disabilities are prioritised in the provision of services and administrative decision-making processes.

Potential impact of withdrawal of United Kingdom from the European Union on family law proceedings

The Joint Committee of the Irish Human Rights and Equality Commission and the Northern Irish Human Rights Commission, established under the Good Friday Agreement, has highlighted that the need to ensure continuous enforcement of relevant judgments in family cases, to resolve cross-

⁹⁴ Tusla, [National Performance and Activity Dashboard](#), Jan 2020

⁹⁵ HIQA, [Children’s services publication statement 03 October 2019](#), 3 Oct 2019. See also HIQA (2020) Annual overview report on the inspection and regulation of children’s services – 2019.

⁹⁶ Committee on the Rights of a Child (2016), *Concluding Observations on the combined third and fourth period of Ireland*, CRC/C/IRL/CO/3-4, para. 43.

⁹⁷ Ombudsman for Children’s Office, [Molly’s case: How Tusla and the HSE provided and coordinated supports for a child with a disability in the care of the State](#) (January 2018) at pp. 18-19. See also Inclusion Ireland, [Inclusion Ireland calls on Minister Katherine Zappone to review decision to exclude children with a disability from Tusla’s remit](#) (January 2018).

border instances of child abduction and non-payment of maintenance and ensure practical solutions consistent with the rights of the child.⁹⁸ The Special Rapporteur on Child Protection has also highlighted that there may be conflicts of jurisdiction in divorce and separation proceedings, leading to lengthier and more time consuming procedures for enforcing orders, which is contrary to the best interests of the child.⁹⁹

The Commission recommends that the Committee asks the State to clarify how it intends to regulate matrimonial and maintenance matters once the UK fully withdraws from the European Union.

Impact of COVID-19 on children in care

The Commission is concerned that family access to children in care is inhibited by COVID-19 social distancing measures. Visits may be cancelled if it is impossible to maintain a social distance. It is necessary that alternative forms of access are used, through phone calls, letters, or Skype/Zoom.¹⁰⁰

Experts have noted that home schooling and social distancing will likely cause a drop off in the number of child protection referrals, as teachers and youth workers will not be able to identify and report concerns about children at risk. Once schools and community facilities open, there may be a surge of referrals.¹⁰¹ There is a need to ensure that at risk children are identified.

Similarly, there will also likely be a surge in child protection cases in the Courts once the Courts resume normal service, which may lead to delays.¹⁰²

The Commission recommends that the Committee asks the State about actions undertaken to protect child welfare during the pandemic and the transition period, and its plans to analyse the longer term effects of the pandemic on child welfare.

⁹⁸ IHREC and NIHRC (2018) *Policy Statement on the United Kingdom withdrawal from the European Union*, p 13, available: https://www.ihrec.ie/app/uploads/2018/03/Joint-Committee-IHREC-NIHRC-Brexit-Policy-Statement_March-2018.pdf

⁹⁹ 12th report, 186 - 187

6. Disability, basic health and welfare (arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) and 33)

Children with disabilities

While the ratification of the UNCRPD is to be welcomed the Commission notes that the State has not yet revised the legal and policy framework fully to ensure a human rights-based approach to disability, as recommended by the Committee in 2016.¹⁰³ The Commission is concerned that different legal definitions of a ‘disability’ has led to inconsistencies in needs assessments processes.¹⁰⁴ For example there are discrepancies between the definition of disability under the *Disability Act 2005* and the *Education for Persons with Special Educational Needs Act 2004* (EPSEN Act). Moreover, neither the *Disability Act 2005* nor the *EPSEN Act* have been fully commenced and therefore the intended statutory framework for the assessment of need is not in force.

The Commission is also concerned about reports of the Health Service Executive’s (HSE) failure to meet the statutory deadlines to carry out assessments.¹⁰⁵ A Parliamentary Health Committee recently heard evidence of significant delays in the assessment process (with an average time of 30 months in one area).¹⁰⁶ While the HSE is now proposing a new Standard Operating Procedure for the assessment of need, the Commission notes that this new Procedure has been widely criticised.¹⁰⁷

The Commission recommends that the Committee urges the State to commence Part 2 of the *Disability Act 2005* and fully commence the *EPSEN Act 2004*. The Commission further recommends that the Committee ask the State when it intends to review these acts to bring them into line with international human rights norms.

¹⁰³ Committee on the Rights of the Child, [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland](#) (2016) at para 48.

¹⁰⁴ Joint Committee on Health, Report on the New Standard Operating Procedure for Assessment of Need under the *Disability Act 2005* (January 2019); Health Service Executive, Opening Statement by Dr. Cathal Morgan, Head of Operations – Disability Services to the Joint Committee on Health (27 June 2018).

Mary Carolan, [HSE could face hundreds of cases over special needs assessment delays](#)

¹⁰⁵ Joint Committee on Health, [Report on the New Standard Operating Procedure for Assessment of Need under the Disability Act 2005](#) (January 2019) at p. 30.

¹⁰⁶ Joint Committee on Health, [Report on the New Standard Operating Procedure for Assessment of Need under the Disability Act 2005](#) (January 2019) at pp. 29, 31. See also NUIG, [New Study Shows 74% of Children & Adolescents with an Autism Spectrum Disorder Had Unmet Service Needs in Ireland](#), 21 Feb 2020

¹⁰⁷ Barnardos, [Summer Waiting List Report](#) (June 2018) at p. 10 and Psychological Society of Ireland, [Review of the Assessment of Need Standard Operating Procedure](#) (March 2018).

Access to health services

In its 2016 *Concluding Observations*, the Committee expressed concerns about the child's right to access various types of health services, including mental health services and safe abortion and post-abortion care services.¹⁰⁸ The Committee also called upon the State 'to address socio-economic disadvantages, which constitute root causes for exclusion from access to health services'.¹⁰⁹

Since the last examination, the *Health (Regulation of Termination of Pregnancy) Act 2018* was enacted, following an amendment of Article 40.1.1 of the Constitution of Ireland, and now provides for a termination of pregnancy in certain circumstances.¹¹⁰ The Commission has stressed the importance of ensuring that the legal framework for access to termination of pregnancy "is implemented in an age-appropriate manner, in a way that meets the particular health needs of girls and adolescents, and that gives due weight to their views, in keeping with the Convention on the Rights of the Child".¹¹¹ A review of the operation of the Act is due in 2022.¹¹²

The Commission recommends that the Committee asks the State to provide information on its plans for a review of the Act, and on the measures it is taking to ensure that young people are provided with appropriate access to reproductive health services.

Regrettably, since the last examination, the State has failed to adequately provide for child and adolescent mental health services. As of the end of August 2019, there were a total of 2,038 persons in Ireland awaiting an appointment, 201 of which have been waiting for over a year.¹¹³ Inadequate supply of step-down also means that children and adolescents are having their detention in inpatient facilities continued despite the lack of medical necessity.¹¹⁴ There is also continuing admission of children to adult psychiatric units,¹¹⁵ with 47 children having been admitted to adult mental health units in 2019.¹¹⁶ The lack of specialised psychiatric facilities in Ireland has led to the transfer of

¹⁰⁸ Committee on the Rights of a Child (2016), *Concluding Observations on the combined third and fourth period of Ireland*, CRC/C/IRL/CO/3-4, paras. 53-54.

¹⁰⁹ Committee on the Rights of a Child (2016), *Concluding Observations on the combined third and fourth period of Ireland*, CRC/C/IRL/CO/3-4, paras. 53-54.

¹¹⁰ See IHREC (2018) [Observations by the Irish Human Rights and Equality Commission on the General Scheme of a Bill Entitled Health \(Regulation of Termination of Pregnancy\) Bill 2018](#).

¹¹¹ IHREC (2017), [Human rights and equality considerations in the development of a new legislative and regulatory framework on abortion](#).

¹¹² Per section 7 of the Act.

¹¹³ HSE (2019) [Response to PQ 40339/19](#), 2 Oct 2019. See also Mental Health Commission (2019) [Annual Report 2018](#).

¹¹⁴ For examples, see HIQA (2018) [Monitoring inspection report of Ballydowd special care unit](#), at pp. 14-15; HIQA (2018) [Monitoring inspection report of Coovaagh House special care unit](#), at p. 22.

¹¹⁵ Mental Health Commission (2019) [Mental Health Commission finds eight children admitted to one adult mental health service](#).

¹¹⁶ HSE (2019) [Response to PQ 50849/19](#), 29 Dec 2019.

children to facilities outside of the State.¹¹⁷ The Child Law Reporting Project expressed concern that such facilities are not subject to the same regulation, which is particularly concerning in light of the forthcoming withdrawal of the UK from the EU.¹¹⁸

The legal framework of treatment of children with mental health issues also is a source of concern for the Commission. As was noted by the Committee in the previous examination of Ireland,¹¹⁹ 16 and 17-year-old children have no legal right to give or refuse consent for admission and mental health treatment.¹²⁰ Despite having commissioned an expert review of the underpinning legislation for mental health care in Ireland, the *Mental Health Act 2001*, there has not been any law reform in this area.¹²¹

The Commission also notes that in June 2020 the Government approved Ireland's new mental health policy, 'Sharing the Vision – a Mental Health Policy for Everyone' for the period 2020-2030. .¹²²

The Commission recommends that the Committee asks the State what measures it is taking to reduce the number of children who are admitted to psychiatric wards and to ensure that, where such practice is necessary, facilities are age-appropriate. The Commission recommends that the Committee asks the State to clarify which body is monitoring the situation of children who have been transferred outside the State.

As was noted by the Committee in the third and fourth examination of Ireland,¹²³ there are significant barriers to accessing services and inequitable health outcomes experienced by minority ethnic children in Ireland.¹²⁴ The *National Roma Needs Assessment* found that 39 per cent of

¹¹⁷ Lisa Colfer and Dr Carol Coulter (2020) [High Court oversight of children's complex care needs](#). See also UN Committee on the Rights of the Child (2016) *Concluding Observations on the combined third and fourth periodic reports of Ireland*, CRC/C/IRL/CO/3-4, para. 43(b).

¹¹⁸ Child Care Law Reporting Project, [Brexit a concern as court discusses case of child in UK under an Irish care order](#) (2018)

¹¹⁹ Committee on the Rights of a Child (2016), *Concluding Observations on the combined third and fourth period of Ireland*, CRC/C/IRL/CO/3-4, paras. 53-54.

¹²⁰ See IHREC (2019) [Comments on Ireland's 16th National Report on the implementation of the European Social Charter](#), p 28. Department of Health, [Report of the Expert Group on the Review of the Mental Health Act 2001](#) (2015) at p. 67. Under the *Non-Fatal Offences Against the Person Act 1997*, children aged 16 years and over are permitted consent to physical and dental health treatment but they do not have an explicit right to consent to mental health treatment. See also, Seanad Éireann, [Mental Health \(Capacity to Consent to Treatment\) Bill 2018: Second Stage](#) (10 October 2018). IHREC (2020) Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland, p. 6.

¹²¹ See IHREC (2020) Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland, p. 6. The [Mental Health \(Amendment\) Act 2018](#) introduced guiding principles in respect of children, including their right to access services that are focused on delivering the highest attainable standard of child mental health. However, this legislative framework has yet to be commenced by the Government.

¹²² <https://www.mentalhealthreform.ie/news/government-approval-of-irelands-new-mental-health-policy/>.

¹²³ Committee on the Rights of a Child (2016), *Concluding Observations on the combined third and fourth period of Ireland*, CRC/C/IRL/CO/3-4, paras. 49-50.

¹²⁴ See IHREC, Submission to the Committee on the Elimination of Racial Discrimination; 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.

respondents did not have a General Practitioner, and 50 per cent did not have a medical card.¹²⁵

There are also concerns regarding the access to medical services and the adherence to child protection guidelines for children living in accommodation for asylum seekers and emergency homeless accommodation centres.¹²⁶ There are criticisms regarding the shortage of general practitioners and out-of-hours services in local areas of some centres, resulting in a lack of choice, difficulties in obtaining appointments, and inadequate care.¹²⁷

The Commission recommends that the Committee asks the State what measures it is taking to improve the health of children who are members of minority ethnic communities.

Childcare services

Ireland continues to have the highest childcare costs in the European Union.¹²⁸ While the State has implemented welcome measures to address the deficiencies in the availability of affordable childcare,¹²⁹ families still face a high burden of cost and there is a high level of unmet need in Ireland for formal childcare supports, particularly among disadvantaged families.

COVID-19 has also had a significant impact on the childcare sector with facilities being closed from 12 March to 29 June 2020 and the sector faces significant new operational challenges as a result of the pandemic.¹³⁰ Recalling General Comment No. 7, the Commission notes that early childhood professionals should be provided with ‘thorough preparation, ongoing training and adequate remuneration’.¹³¹ In addition, the Commission notes that where non-State services play a major role

¹²⁵ 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.

¹²⁶ Joint Committee on Justice and Equality (2019), *Report on Direct Provision and the International Protection Application Process* (House of the Oireachtas 2019, p 27-28. 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

¹²⁷ Joint Oireachtas Committee on Justice and 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.

¹²⁸ IHREC (2020), *Submission to the Citizens Assembly on Gender Equality*.

¹²⁹ See generally the Affordable Childcare System Scheme, the publication of First Five: A Whole-of-Governments Strategy for Babies, Young Children and their Families 2019-2028. See European Social Committee, *Ireland 2019 Conclusions*, p. 20; IHREC (2020), *Submission to the Citizens Assembly on Gender Equality*, Mar 2020; IHREC/ESRI (2019) *Caring and Unpaid Work in Ireland*, Jul 2019

¹³⁰ During this time the State introduced a scheme for childcare providers to continue to pay staff wages. More information available here: <https://www.revenue.ie/en/employing-people/documents/pmod-topics/guidance-on-operation-of-temporary-covid-wage-subsidy-scheme.pdf>

¹³¹ GENERAL COMMENT No. 7 (2005) Implementing child rights in early childhood, para. 32

in services provision states parties have an obligation to ‘monitor and regulate the quality of provision to ensure that children’s rights are protected and their best interests served’.¹³²

The Commission recommends that the Committee urges the State to address the ongoing deficiencies in the childcare infrastructure and the high cost of childcare in Ireland.¹³³

Child Poverty

Better Outcomes, Brighter Futures set a goal of a 66 per cent reduction in the number of children living in consistent poverty from its 2011 level of 107,000 by the end of 2020. During the recession this figure increased to 150,000, but by the end of 2018 it had reduced to just under 92,000.¹³⁴ In 2017, 24 per cent of children in Ireland were at risk of poverty or social exclusion, compared to the EU average of 24.4 per cent.¹³⁵

The Commission notes that in its Roadmap for Social Inclusion 2020-2025, the Government commits to continue reporting on progress against the national target for reducing the number of children experiencing consistent poverty by the end of 2020 and set a new target for the period to the end of 2025 consistent with any revised EU targets for the period.

The Commission recommends that the Committee urges the State to put in place a comprehensive new national strategy to eliminate child poverty.

Social security and the right to an adequate standard of living

In its 2015 report to the Committee, the Commission expressed concern about the impact of the Habitual Residence Condition on the accessibility of Child Benefit to children from migrant and Traveller backgrounds as well as asylum seeking children.¹³⁶ This qualifying condition remains in

¹³² General Comment No. 7 (2005) Implementing child rights in early childhood, para 32.

¹³³ The Commission raised these issues with CEDAW in 2017. See Irish Human Rights and Equality Commission, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland’s Combined Sixth and Seventh Reports](#) (January 2017) at pp. 94-95.

¹³⁴ Roadmap for Social Inclusion 2020-2025

http://www.dsfa.ie/en/pdf/Roadmap_for_Social_Inclusion_2020_2025_Summary_of_Ambition_Goals_and_Commitments.pdf

¹³⁵ European Commission, [Social protection & social inclusion. Country profiles - Ireland: Policies and progress towards investing in children](#)

¹³⁶ IHREC (2015) CRC Shadow Report.

force and the Commission continues to have concerns about the assessment process.¹³⁷ This restriction applies even where the children are Irish citizens. Recognising that Child Benefit is ‘designed for the benefit of the child’, the Court of Appeal found that even though it is claimed by the parent the failure of the State to treat an Irish citizen child in the same way as other Irish children, including an asylum seeking child living in direct provision, breached the equality guarantee under Article 40.1 of the Constitution.¹³⁸ However, this decision was overturned by the Supreme Court in finding that the claimant, the child’s mother, did not have permission to reside in the State and she could not satisfy the habitual residence condition and was therefore not a “qualified person” for the purposes of the Act.

The Commission also remains concerned about the impact of changes to the One Parent Family Payment introduced in 2010 and 2013,¹³⁹ on lone parents and their children. A parliamentary report issued in 2017 made a number of recommendations to reform social security payments in order to reduce poverty.¹⁴⁰ Currently, children of lone parents are more than twice as likely to live in consistent poverty as the general child population.¹⁴¹ The Commission notes that a review of the payment is currently ongoing.

The Commission recommends that the Committee asks the State about the discriminatory impact of the Habitual Residence Condition on access to social welfare supports for particular families, including migrant families, Traveller families and Roma families.

The Commission recommends that the Committee asks the State when it intends to publish and implement the review of the One Parent Family Payment.

¹³⁷ Ryan & Power (2020). Understanding how decision-makers practice discretion in the context of the Habitual Residence Condition in the Republic of Ireland. *Irish Journal of Sociology*.

¹³⁸ *Agha (a minor) & ors -v- Minister for Social Protection & ors Osinuga (a minor) & anor -v- Minister for Social Protection & ors* [2018] IECA 155.

¹³⁹ Mary P Murphy (2014) ‘Ireland’s lone parents, social welfare and recession’, *The Irish Community Development Law Journal*, vol. 3(2), pp. 6–21, available: <http://www.communitylawandmediation.ie/fileupload/The%20Journal/CLM-eJournal-Issue-2-Volume-3%20%28December%202014%29.pdf>

¹⁴⁰ Joint Committee on Social Protection (2017) *Report on the Position of Lone Parents in Ireland*.

¹⁴¹ Children’s Rights Alliance, *Report Card 2019* (February 2019) at pp. 41-42.

Family Homelessness

Ireland is experiencing a housing crisis with unprecedented levels of homelessness.¹⁴² As of May 2020, there were 1,217 homeless families and 2,787 homeless children in Ireland.¹⁴³ Fifty-five per cent of homeless families are headed by a lone female parent, despite such families only comprising 16 per cent of family units in the State.¹⁴⁴ Families from minority ethnic groups or nationalities are disproportionately more likely to be homeless.¹⁴⁵

The Commission has noted that in light of the delays in providing suitable permanent accommodation for families experiencing homelessness, the policy focus has shifted towards the provision of supported temporary accommodation in centres known as ‘family hubs’.¹⁴⁶ In 2019, there were 32 family hubs in operation, with 720 units for homeless families.¹⁴⁷ The Commission has raised concerns about the use of family hubs has normalised family homelessness, which may lead to families being institutionalised¹⁴⁸; and these have been supported by research by the Ombudsman for Children¹⁴⁹. It has been identified that the rules and conditions applying to the use of communal spaces and visitors can lead to developmental delays, emotional attachment issues, self-harm and accidental injuries in children.¹⁵⁰ Studies have also found that living in emergency accommodation has negative impacts on the physical and mental health of children, as well as on learning and development.¹⁵¹ Despite the stated policy intention to move towards hubs and abolish use of hotels

¹⁴² Figures from the Department of Housing, Planning and Local Government demonstrate that, as of May 2020, there were 8,876 people accessing emergency homeless accommodation in Ireland including 1,217 families and 2,787 children. See Department of Housing, Planning and Local Government, [Homelessness Report May 2020](#). 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](#).

¹⁴³ Department of Housing, Planning & Local Government, [Homelessness Report May 2020](#)

¹⁴⁴ Irish Human Rights and Equality Commission and ESRI, [Discrimination and Inequality in Housing in Ireland](#) (June 2018) at pp. 65-66.

¹⁴⁵ Dublin Region Homeless Executive, [A Report on the 2016 and 2017 families who experienced homelessness in the Dublin region](#) (April 2018) at p. 11.

¹⁴⁶ Irish Human Rights and Equality Commission, [The provision of emergency accommodation to families experiencing homelessness](#) (July 2017) at p. 7.

¹⁴⁷ Ombudsman for Children’s Office, [No Place Like Home: Children’s views and experiences of living in Family Hubs](#) (April 2019), at p. 7.

¹⁴⁸ Irish Human Rights and Equality Commission, [The provision of emergency accommodation to families experiencing homelessness](#) (July 2017) at p. 9.

¹⁴⁹ The Ombudsman for Children’s Office (OCO) report, No Place Like Home, detailed the views of 80 children living in family hubs in Dublin, Cork and Limerick. <https://www.oco.ie/library/no-place-like-home-childrens-views-and-experiences-of-living-in-family-hubs/>

¹⁵⁰ Ombudsman for Children’s Office, [Ombudsman for Children warns of long term impact of homelessness on children](#) (29 January 2019); Ombudsman for Children’s Office, [No Place Like Home: Children’s views and experiences of living in Family Hubs](#) (April 2019); and Temple Street Children’s Hospital, [842 children who attended Temple Street’s ED in 2018 were discharged with no fixed home address: 29% increase on 2017 figure](#) (21 January 2019).

¹⁵¹ Irish Primary Principals Network, [Schools becoming a safe haven for Ireland’s 4,000 homeless children](#) (21 February 2019); Children’s Rights Alliance, [Home Works: A Study on the Educational Needs of Children Experiencing Homelessness and Living in Emergency Accommodation](#) (2018); Focus Ireland, [Homelessness costs children their education](#) (17 June 2018)

and Bed & Breakfasts, according to recent statistics (May 2020), 54 per cent of families experiencing homelessness remain in these settings. Living in confined conditions such as hotel rooms can have a detrimental impact on all aspects of family life¹⁵².

The Commission recommends that the Committee reiterates its previous recommendation to the State to undertake measures to increase the availability of social housing.¹⁵³

The Commission recommends that the Committee asks the State what measures it is taking to address the physical, mental, social, developmental impacts that emergency and homeless accommodation has on children.

Provision of accommodation to Traveller and Roma families

The inadequacy of Ireland's accommodation provision for Travellers remains a significant issue of concern, in particular the consistently low level of funding that has been drawn down by local authorities in recent years for the purposed of Traveller accommodation. By November 2019, only 31.5 per cent of the Traveller-specific accommodation budget for 2019 had been drawn down.¹⁵⁴ €694,000 of the 2020 budget had been drawn down by the start of March, which represent less than 5 per cent of the total budget.¹⁵⁵ In 2019 the Commission requested that every local authority to conduct an equality review under Section 32(1) of the *Irish Human Rights and Equality Commission Act 2014* on their practices and procedures related to the provision of Traveller-specific accommodation.¹⁵⁶

and Department of Children and Youth Affairs, [Report of DCYA consultations with children and young people living in Direct Provision](#) (2015); HSE, [Research finds 'Significant Negative Impact' of Homelessness on Health of Children](#)

¹⁵² Share, M. and Hennessey, M. (2017) *Food Access and Nutritional Health among Families in Emergency Accommodation*. Dublin: Focus Ireland.

¹⁵³ Committee on the Rights of a Child (2016), *Concluding Observations on the combined third and fourth period of Ireland*, CRC/C/IRL/CO/3-4, para. 62.

¹⁵⁴ Damien English, Minister of State at the Department of Housing, Planning and Local Government, [Dáil Éireann Written Answer 660, Volume 989, Number 4, 19 November 2019](#).

¹⁵⁵ Damien English, Minister of State at the Department of Housing, Planning and Local Government, [Dáil Éireann Written Answer 1223, Volume 992, Number 2, 05 March 2020](#).). Over the past ten years, 2009-18, the Department has recouped in excess of €75 million to Local Authorities from a capital budget of €128.8 million. See Seanad Éireann, [Traveller Accommodation: Statements](#) (6 March 2019).

¹⁵⁶ IHREC (28 June 2019), [Human Rights and Equality Commission Launches National Review into Council Traveller Accommodation Provision](#). The equality reviews also obliged the thirty one city and county councils to examine whether the failure to draw down funds is a result of discriminatory practices or policies under the *Housing (Traveller Accommodation) Act 1998* and the *Equal Status Acts 2000-2015*. The examination of documentation provided to the Commission under this review is underway, as is continued liaison with local authorities for follow-up and clarification purposes. The Commission is not in a position to comment further on the review until the process is completed.

The Commission's legal casework also demonstrates persistent discrimination and inertia towards the provision of services for Traveller families.¹⁵⁷ Since 2016, IHREC Your Rights Helpline has responded to 156 human rights and equality queries by Travellers¹⁵⁸. 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.¹⁵⁹ The European Committee of Social Rights has found that despite some improvements, Ireland is in continued violation of the Charter¹⁶⁰ with on-going evidence of a substantial deficiency in providing accommodation for Travellers.

Where accommodation is provided, there are reports of severe deficiencies, which impact on children's rights. A survey of 10 Traveller halting sites and group housing schemes in Galway found that many of the sites lacked play areas of children, were overcrowded, were infested with rodents and flies, had blocked pipes and sewerage overflow, and structural hazards.¹⁶¹ As of November 2019, there was little to no progress to addressing the problems raised.¹⁶²

The *National Roma Needs Assessment* similarly identified significant issues with regard to housing for children in Roma community, including discrimination in accessing accommodation; severe overcrowding; poor quality accommodation; a lack of security of tenure; homelessness; and a lack of access to social housing and rent supplement. The research documented reports of Roma living in unsafe abandoned buildings and accommodation without basic facilities, including light and heat.¹⁶³

¹⁵⁷ In 2018, the Commission provided legal assistance to a family in their successful challenge to the discrimination they faced in making an application for social housing to the local County Council, due to their status as members of the Traveller community. Irish Human Rights and Equality Commission, [County Council Criterion for Traveller Family Access to Services Discriminatory](#) (10 May 2018).

¹⁵⁸ This includes a total of 84 queries relating to *Equal Status Act 2000-2015*; 59 queries relating to Intoxicating Liquor Acts 2003-2008; and 13 queries relating to *Employment Equality Acts 1998-2015*. There are an average of 35 queries by Travellers in relation to these Acts per year since 2016.

¹⁵⁹ R. Grotti, H. Russell, É. Fahey and B. Maître (June 2018), [Discrimination and Inequality in Housing in Ireland](#) (IHREC and ESRI). 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.

¹⁶⁰ 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. See also European Social Committee, [Ireland 2019 Conclusions](#), p. 32.

¹⁶¹ Galway Traveller Movement, *Traveller Homes Now. First Monitoring Report* (July 2018)

¹⁶² Galway Traveller Movement, *Traveller Homes Now. Third Monitoring Report* (November 2019)

¹⁶³ 12.4% of the respondents did not have a kitchen, 13.5% did not have a fridge and 14.4% did not have a bathroom in their house or apartment. 44.8% of respondents said they did not have enough beds in their accommodation. Rat

The Commission recommends that the Committee asks the State to report on its progress in implementing the recommendations of the Independent Expert Review of Traveller Accommodation and European Commission against Racism and Intolerance.

The Commission recommends the Committee urges the State to introduce dissuasive sanctions for local authorities who fail to provide Traveller-specific and culturally appropriate accommodation in areas where there is a stated need.

infestation also emerged as a regular theme in this research. See Pavee Point Traveller and Roma Centre and Department of Justice and Equality, [Roma in Ireland – A National Needs Assessment](#) (2018) at pp. 87-92.

7. Education, leisure and cultural activities (arts. 28, 29, 30 and 31)

Religion and education

In its 2016 *Concluding Observations* the Committee recommended that the State ‘amend the existing legislative framework to eliminate discrimination in school admissions’.¹⁶⁴ The *Education (Admission to Schools) Act 2018* requires publicly funded schools to publish an admission policy that prohibits discrimination across all equality grounds, including religion.¹⁶⁵ It is still possible, however, for schools to refuse admission on the basis of religion where the refusal is essential to maintain the ethos of the school.¹⁶⁶

In its 2016 *Concluding Observations* the Committee also recommended that the State increase the availability of non-denominational and multidenominational schools.¹⁶⁷ While the Commission has welcomed commitments by the State to establish more multidenominational schools,¹⁶⁸ it shares the Committee’s concerns about the slow progress to date.¹⁶⁹ In the 2017/2018 academic year, 95.8 per cent of primary schools in Ireland had a religious patron. In 2017, 48.3 per cent of post-primary schools had a Catholic ethos, while 42.5 per cent were interdenominational¹⁷⁰ and 5.5 per cent were multidenominational.¹⁷¹

The Commission recommends that the Committee asks the State to formally review the operation of the *Education (Admissions to Schools) Act 2018* to ensure that the exemption for refusal of admission on the basis of religion does not adversely impact access to education.

The Commission recommends that the Committee asks the State why it has not met its targets on the divestment of patronage from Catholic schools.

¹⁶⁴ UNCRC (2016) [Concluding Observations on Ireland](#), CRC/C/IRL/CO/3-4, para 64(a).

¹⁶⁵ The *Education (Admission to Schools) Act 2018* (Commencement) Order 2018 (S.I. No. 396 of 2018) and *Education (Admission to Schools) Act 2018* (Commencement) Order 2020 (S.I. No. 6 of 2020).

¹⁶⁶ <http://www.irishstatutebook.ie/eli/2018/act/14/section/11/enacted/en/html>

¹⁶⁷ UNCRC (2016) *Concluding Observations on Ireland*, CRC/C/IRL/CO/3-4, para 64(a).

¹⁶⁸ IHREC, [Report to UN Committee on Economic, Social and Cultural Rights on Ireland’s Third Periodic Review](#), p.87.

¹⁶⁹ Committee on the Rights of the Child (2016), [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland](#), p.14.

¹⁷⁰ 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](#).

¹⁷¹ Information provided by the Department of Education and Skills on 24 April 2019.

Relationships and sexuality education

In December 2019, the National Council for Curriculum and Assessment (NCCA) published a report on their review of relationships and sexuality education (RSE) in primary and secondary schools in Ireland.¹⁷² The review examined topics including sexual consent, contraception, sexual expression and relationships, safe use of the internet, as well as LGBTQ issues. The report stated that there was a need for a revised curriculum and interim guidelines on how the current curriculum can incorporate the aforementioned themes. The Department of Education stated that the NCCA will begin work on redeveloping the RSE curriculum in 2020.¹⁷³ In 2019, the Joint Committee on Education and Skills also published a Report on Relationships and Sexuality Education, recommending an update to the curriculum ‘in order to produce a gender equality-based, inclusive, holistic, creative, empowering and protective curriculum’.¹⁷⁴

The Commission recommends that the Committee asks the State to report on its progress in developing a revised curriculum for RSE, which is gender equality-based, inclusive, and empowering.

Gender stereotyping and education

The Commission has expressed concern about impact of gender stereotyping on children attending secondary school.¹⁷⁵ Research has demonstrated that from early second level onwards, pupils conform closely to the traditional gender stereotype in terms of the subjects they study.¹⁷⁶ It has also been found that school policies and procedures regarding subject provision can serve reinforce

¹⁷² National Council for Curriculum and Assessment (2019) [Report on the Review of Relationships and Sexuality Education \(RSE\) in primary and post primary schools](#).

¹⁷³ Department of Education and Skills, [Ministers McHugh and Mitchell O'Connor welcome final report of National Council for Curriculum and Assessment on Review of Relationships and Sexuality Education](#), 11 Dec 2019

¹⁷⁴ Joint Committee on Education and Skills (2019) [Report on Relationships and Sexuality Education](#), Jan 2019.

¹⁷⁵ IHREC (2017) CEDAW Report; IHREC (2020) [Submission to the Citizens' Assembly on Gender Equality](#), p 8-10.

¹⁷⁶ Department of Education and Science, 'Sé Sí: Gender in Irish Education' (2007), available at: <https://www.education.ie/en/Publications/Statistics/Se-Si-Gender-in-Irish-Education-Introduction-to-Chapter-9.pdf>.

existing gendered patterns of subject take-up.¹⁷⁷ It has been found that subject uptake in school can impact on the low level of women's representation in STEM at third level.¹⁷⁸

The Commission recommends that the Committee asks the State about what actions it intends to taken to tackle gender stereotyping within the subject choice process.

Educational supports for specific groups of children

In its 2015 report to the Committee, the Commission recommended that specific educational supports be put in place to ensure that educational opportunities are fully accessible to all children, particularly Traveller and Roma children, migrant children and children with disabilities.¹⁷⁹ Regrettably these recommendations have not yet been implemented.

The Commission is particularly concerned about the reported use of reduced timetables for Traveller children,¹⁸⁰ and children with disabilities.¹⁸¹ It is being reported that schools are opting to place children – particularly those from educationally disadvantaged backgrounds - on reduced timetables as a response to challenging behaviour when there is a lack of learning supports available, while others are using it as a disciplinary method.¹⁸² The Irish Traveller Movement has also documented a rising trend in the use of reduced timetables for Traveller children.¹⁸³ This measure involves the school allowing a child to attend school for a few hours or less per day, without appropriate monitoring by the Child and Family Agency or the Department of Education and Skills.¹⁸⁴ It has been

¹⁷⁷ Emer Smyth and Merike Darmody (2007) "Man enough to do it"? Girls and non-traditional subjects in lower secondary education', ESRI Working Paper No. 198, p. 23, available: <https://www.esri.ie/pubs/WP198.pdf>. Department of Education and Science, 'Sé Sí: Gender in Irish Education' (2007), available at: <https://www.education.ie/en/Publications/Statistics/Se-Si-Gender-in-Irish-Education-Introduction-to-Chapter-9.pdf>.

¹⁷⁸ Judith Delaney and Paul Deveraux (2019), *It's not just for boys! Understanding Gender Differences in STEM*, University College Dublin. The study indicates that there is a large gender gap in the fraction of applicants listing a STEM course as their first preference in college applications, with just over 40% of males listing a STEM course compared with roughly 19% of females. The study also observes that there is not a significant gender gap in science take-up, and that efforts to close the gap "might be better off focusing on narrowing the gap just in TEM (Technology, Engineering and Math)".

¹⁷⁹ IHREC (2015) CRC Shadow Report. See also IHREC (2019) [Comments on Ireland's 16th National Report on the implementation of the European Social Charter](#).

¹⁸⁰ 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.

¹⁸¹ See: Joint Oireachtas Committee on Education and Skills, [Interim Report on the Committee's Examination on the Current Use of Reduced Timetables](#), June 2019; Inclusion Ireland, [Education, Behaviour and Exclusion: The experience and impact of short school days on children with disabilities and their families in the Republic of Ireland](#).

¹⁸² Barnardos (2018), [Barriers to Education Facing Vulnerable Groups](#), p.2; Joint Committee on Education and Skills (26 March 2019).

¹⁸³ Irish Traveller Movement, [Presentation to the Joint Committee on Education and Skills](#) (26 March 2019).

¹⁸⁴ Joint Committee on Education and Skills, [Traveller Education: Discussion](#) (26 March 2019).

highlighted that there is widely diverging practice with regard to the use of reduced timetables across Ireland and a lack of regulations and guidelines in place.¹⁸⁵

The Commission recommends that the Committee urges the State to fully commence the *Education for Persons with Special Educational Needs Act 2000*,¹⁸⁶ and ensure the restoration of the Visiting Teaching Service for Travellers and the provision of additional English language supports.¹⁸⁷

The Commission recommends that the Committee urges the State to investigate reported use of reduced timetables and to ensure that they are not used in place of the provision of appropriate supports in any circumstances.¹⁸⁸

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.¹⁸⁹ The Commission is also concerned about the provision of education for children who arrived in Ireland under the Irish Refugee 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 Office of the Ombudsman for Children, it creates a barrier to accessing additional supports¹⁹⁰ and such schools are not subject to inspections by the Department.¹⁹¹

The Commission recommends that the Committee urges the State to introduce 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.¹⁹²

¹⁸⁵ Barnardos, *Barriers to education facing vulnerable groups* (2018) at p. 2.

¹⁸⁶ Sections 3-13, 14(1)(b), 1(d)-(f), 15, 18, 38 and 39 of the 2004 Act have not been commenced.

¹⁸⁷ IHREC (2019) CERD Shadow Report

¹⁸⁸ The Commission has also raised this with the European Committee on Social Rights. See also IHREC (2019) [Comments on Ireland's 16th National Report on the implementation of the European Social Charter](#).

¹⁸⁹ Irish Refugee Council (July 2019), *The Reception Conditions Directive: One Year On*, pp.58–

¹⁹⁰ Ombudsman for Children (20 February 2019), '[Equal education for refugee children](#)'.

¹⁹¹ Ní Raghallaigh et al., *Safe Haven*, pp.44–45.

¹⁹² 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.

Impact of COVID-19 on the right to education

On 12 March 2020, the government ordered the temporary closure of all preschools, schools, and higher education institutions to support efforts to contain the spread of COVID-19.¹⁹³ The Commission is concerned that these school closures may have exacerbated existing socio-economic and educational inequalities.

Home schooling is more challenging in lower socio-economic households because, among other reasons, they may lack physical resources, such as desk space and computers, they may have literacy issues, they may be subject to time constraints because parents are working in essential services, and there may be more stress and health problems.¹⁹⁴ Parents with low educational attainment are less likely than highly educated parents to use resources sent by the teacher, virtual classes, education apps, and the Department of Education website.¹⁹⁵

In April and May 2020, Inclusion Ireland conducted a survey of 733 parents of children with disabilities who are trying to home educate responded to a survey conducted by Inclusion Ireland.¹⁹⁶ They found that for children with complex behaviour and medical needs home education is very difficult or non-existent. Some children have no access to any form of technology to engage in online schoolwork. Some children with complex needs cannot access education unless it is provided in person. Over half of the parents predicted that their children will have difficulties returning when schools reopen.¹⁹⁷

The Commission recommends that the Committee asks the State what measures it is taking to address any disproportionate educational impacts experienced by socio-economic disadvantaged families arising from the COVID-19 school closures.

¹⁹³ Department of Education and Skills, [Covid-19 - Statement from the Department of Education and Skills](#), 12 March 2020.

¹⁹⁴ Orla Doyle, [Presentation on Impact of School Closures on Educational Inequalities](#), Geary Institute Conference on Ireland's COVID19 Crisis Response, 17 April 2020

¹⁹⁵ Orla Doyle, [Presentation on Impact of School Closures on Educational Inequalities](#), Geary Institute Conference on Ireland's COVID19 Crisis Response, 17 April 2020

¹⁹⁶ Inclusion Ireland, [The Implications of COVID-19 on the Education of Pupils with Intellectual Disabilities and Autism](#), May 2020

¹⁹⁷ Inclusion Ireland, [The Implications of COVID-19 on the Education of Pupils with Intellectual Disabilities and Autism](#), May 2020

The Leaving Certificate

The Commission recalls the Committee's 2016 that the State should consider reforming the Leaving Certificate Examination with a view to reducing the stress caused to children by it. In May 2020, the Minister of State for Education and Skills, Joe McHugh TD, announced the postponement of the Leaving Cert 2020 and the introduction of an alternative Calculated Grade system, incorporating a national standardisation process which will take into account past school performance. .

The Commission is concerned that this approach carries the risk of exacerbating and entrenching socio-economic inequalities in educational attainment between schools, and having a potential adverse impact this system on students from disadvantaged backgrounds. The Commission has written to the Minister for Education, recommending that all teachers complete online training on unconscious bias to support them in carrying out the alternative grading of students.¹⁹⁸

The Commission recommends that the Committee asks the State whether it has collected data on the extent to which predicted grades were amended to be brought into line with schools' record from previous years, and what measures the State took to ensure that pupils from socio-economic disadvantaged schools were not disproportionately adversely affected.

The Commission recommends that the Committee asks the State what plans it has for wider reform of the Leaving Certificate, and what measures it has put in place to draw lessons from the current crisis in any planned reform process.

Girls in Sport

In its General Comment No. 17 (2013), the Committee recognises that 'girls generally have lower participation rates in physical activities and organized games as a consequence of either external cultural or self-imposed exclusion or lack of appropriate provision' and calls upon 'states parties to take action to challenge gender stereotypes which serve to compound and reinforce patterns of discrimination and inequality of opportunity'.¹⁹⁹ This pattern is also apparent in Ireland and was strongly expressed by girls who were consulted for the Commission's submission to CEDAW in 2016.

¹⁹⁸ [IHREC letter to Minister McHugh](#), 27 May 2020. Predictive marking in the UK has been found to disproportionately affect students from lower socio-economic backgrounds, as well as students from ethnic minority communities, including Gypsy, Roma and Irish Traveller students. See Runnymede Trust (April 2020): [Open letter on predicted Grades and BME students](#).

¹⁹⁹ UNCRC (2013) General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31).

In particular, it was frequently highlighted that women and girls in Ireland do not enjoy equal treatment in sport with respect to state funding practices, representation in sports governance, and poor representation by the media of women in sport.²⁰⁰

The Commission has welcomed the publication of the National Sports Policy 2018-2027 in July 2018, which aims to increase participation, with a specific focus on women and girls, and which commits to financing “increasing participation in sport throughout the population”.²⁰¹ In its submission to the Citizen’s Assembly on Gender Equality in 2020, the Commission recommended that sporting bodies in receipt of State funding be required to have gender balance on their boards and that an action plan be developed at national level to ensure a more equal representation of women’s sport in the media.²⁰²

The Commission recommends that the Committee urges the State to take action to challenge gender stereotypes which serve to compound and reinforce patterns of discrimination and inequality of opportunity in the participation of girls in sports.

²⁰⁰ IHREC (2017), *Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women*.

²⁰¹ Department of Transport, Tourism and Sport: *National Sports Policy 2018-2027*.

²⁰² https://www.ihrec.ie/app/uploads/2020/03/IHREC-Submission-to-the-Citizens-Assembly-on-Gender-Equality-March-2020_fin.pdf

8. Special protection measures (arts. 22, 30, 32-33, 35-36, 37 (b)-(d), 38, 39 and 40)

Children Seeking International Protection

Direct Provision

The Commission recalls the previous concerns expressed by the Committee in relation to the living conditions of children in Direct Provision centres.²⁰³ The Commission has also previously expressed such concerns including the failure to place children in school, a lack of play spaces for children, and difficulties accessing medical treatment.²⁰⁴ The Special Rapporteur on Child Protection has criticised the nature of such accommodation, including because of the loss of autonomy and the experiences of institutionalisation²⁰⁵ and the impact on children is well documented.²⁰⁶

There are currently almost 7,700 people living in Direct Provision²⁰⁷, of whom approximately 2000 are children.²⁰⁸ The mean length of stay in Direct Provision is 21 months.²⁰⁹ The Committee on the Elimination of Racial Discrimination recently expressed concern about the lengthy stay in Direct Provision centres and urged the State to develop an alternative model, and recommended, in the interim, that the State improve living conditions.²¹⁰ In December 2019, the government announced the establishment of the Expert Group on Direct Provision, tasked with developing new approaches to meeting the long-term needs of asylum seekers in the protection process.²¹¹ In June 2020 the Expert Group issued a briefing note providing an update of the progress of its work, in which it recommended a set of immediate measures which would immediately improve the situation of

²⁰³ Committee on the Rights of a Child (2016), Concluding Observations on the combined third and fourth period of Ireland, CRC/C/IRL/CO/3-4, para. 65.

²⁰⁴ IHREC, [Submission to the Committee on the Elimination of Racial Discrimination](#), Oct 2019, at p. 144.

²⁰⁵ Professor Geoffrey Shannon, [Eleventh Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas](#) (2018) at p. 46.

²⁰⁶ See Oireachtas (2019) [Joint Committee on Justice and Equality debate - Wednesday, 12 Jun 2019: Direct Provision and the International Protection Application Process: Discussion](#), 12 Jun 2019; Professor Geoffrey Shannon, [Twelfth Report of the Special Rapporteur on Child Protection](#), 2019, at p. 77.

²⁰⁷ The Ombudsman (April 2020) [The Ombudsman and Direct Provision: Update for 2019](#)

²⁰⁸ Joint Committee on Justice and Equality, [Report on Direct Provision and the International Protection Application Process](#), December 2019

²⁰⁹ Department of Justice and Equality (2019) [Parliamentary Questions](#), 20 Nov 2019.

²¹⁰ Committee on the Elimination of Racial Discrimination (2019) [Concluding observations on the combined fifth to ninth reports of Ireland](#), CERD/C/IRL/CO/5-9, at para. 37.

²¹¹ Department of Justice and Equality (2019) [Ministers Flanagan and Stanton announce establishment of Expert Group on Direct Provision](#), press release, 28 Dec 2019.

those currently in direct provision.²¹² The new Government formed in late June 2020 has committed to replacing direct provision and to publishing a White Paper on how this will be done following the report of the Expert Group which is now expected to be completed in September.

The Commission recommends that the Committee asks the State to report on its progress in implementing the recommendations of the Expert Group, and in ensuring that child rights are fully respected and taken into account in the development of an alternative model for the reception of international protection applicants.

Unaccompanied and Separated Minors

The Commission is concerned about reports of delays in the processing of international protection applications by the Child and Family Agency on behalf of unaccompanied and separated children.²¹³ Most unaccompanied and separated children do not receive a decision on their application for international protection before the age of 18, with potential impacts on their right to access family reunification, employment, education, and other services and supports.²¹⁴ The Health Information and Quality Authority (HIQA) has highlighted that aftercare planning for unaccompanied and separated children is inconsistent, resulting in the preparation for their transition to adulthood and leaving care being compromised.²¹⁵ ‘Aged-out’ young people who are awaiting an international protection status determination on turning 18, are transferred from care to Direct Provision²¹⁶ and are not eligible for the Standardised National Aftercare Allowance.²¹⁷

²¹² Department of Justice and Equality (8 June 2020), [‘Statement by Ministers Flanagan and Stanton regarding the direct provision system’](#). Recommended measures include extending the right to work; alternative Housing models and funding provisions; ensuring all applicants can open bank accounts; reduction of time taken to process positive decisions; ensuring binding standards for centres are applied and enforced by January 2021; compulsory training and regular networking for centre managers; ending use of emergency accommodation; ensuring vulnerability assessments take place; and facilitating access to driving licenses. These reflect long standing recommendations made by the Commission, most recently in its engagement with the UN Committee for the Elimination of all forms of Racial Discrimination. See IHREC (2019), [Ireland and the UN Convention on the Elimination of all Forms of Racial Discrimination](#), p112.

²¹³ S. Groarke and S. Arnold (December 2018), [Approaches to Unaccompanied Minors Following Status Determination in Ireland](#) (ESRI and European Migration Network), p36. See also IHREC (2019) [Submission to the Committee on the Elimination of Racial Discrimination](#).

²¹⁴ For research findings in this regard, see S. Groarke and S. Arnold (December 2018), [Approaches to Unaccompanied Minors Following Status Determination in Ireland](#) (ESRI and European Migration Network). See also, Immigrant Council of Ireland (2016), [Child Migration Matters: Children and Young People’s Experiences of Migration](#).

²¹⁵ S. Groarke and S. Arnold (December 2018), [Approaches to Unaccompanied Minors Following Status Determination in Ireland](#) (ESRI and European Migration Network), pp55-57.

²¹⁶ 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](#), p38.

²¹⁷ S. Groarke and S. Arnold (December 2018), [Approaches to Unaccompanied Minors Following Status Determination in Ireland](#) (ESRI and European Migration Network), pp 55-57.

The Commission recommends that the Committee asks the State the measures it is taking to support the submission of international protection applications for unaccompanied and separated children by the Child and Family Agency.

Administration of juvenile justice

The age of criminal responsibility

In its 2016 *Concluding Observations*, the Committee urged the State to set the age of criminal responsibility at 14 years for all offences.²¹⁸ The age of criminal responsibility remains unchanged and has been criticised by the Special Rapporteur on Child Protection²¹⁹ and the European Social Committee.²²⁰ The Commission acknowledges that the Department of Justice and Equality is currently engaged in a review of the *Children Act 2001*,²²¹ and a consultation on the Youth Justice Strategy,²²² but is concerned about the absence of any clear commitment or timeline for raising the age of criminal responsibility.

The Commission recommends that the Committee urges the State to raise the age of criminal responsibility.

Children involved in court proceedings

The Children's Court is the criminal court in Ireland, which hears all minor charges against children under the age of 18 years. However, in the case of serious offences, it has jurisdiction to send the child forward for trial to the Circuit and Central Criminal Courts.²²³ The European Social Committee

²¹⁸ Committee on the Rights of the Child, [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland](#) (1 March 2016) at p. 17. The Special Rapporteur on Child Protection has also called for the age of criminal responsibility to be set at least at the age of 14 years for all offences. See Professor Geoffrey Shannon, [Tenth Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas](#) (2016) at p. 22. See also IHREC (2019) [Comments on Ireland's 16th National Report on the implementation of the European Social Charter](#).

²¹⁹ Professor Geoffrey Shannon, [Tenth Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas](#) (2016) at pp. 8, 83-84.

²²⁰ European Committee of Social Rights, [Conclusions 2011 – Ireland – Article 17-1](#).

²²¹ Government of Ireland, [16th National Report on the implementation of the European Social Charter](#) (30 October 2019) at p. 93.

²²² Department of Justice and Equality, [Minister Stanton publishes Draft Youth Justice Strategy for Consultation](#), 1 May 2020

²²³ U. Kilkelly, [The Children's Court: A Children's Rights Audit](#) (2005) at p. vii.

recently noted that these children may lose certain guarantees/safeguards afforded to minors in the Children's Court.²²⁴

Significant delays in the court process have also resulted in children 'ageing out' of the youth justice system and having to face trial as an adult for an offence they were alleged to have committed as a child. This can have a significant impact as they can no longer benefit from the specific protections in place for children in conflict with the law, including provisions mandating anonymity, the use of detention only as a measure of last resort and the obtaining of a probation report where a court is of the opinion that the appropriate sanction is detention.²²⁵ The Commission is concerned that there are inadequate procedures and protections in place to ensure that the rights of all children in conflict with the law are guaranteed, including their right to a speedy and adapted trial regardless of the nature of the alleged or proven offence.

The Commission recommends that the Committee asks the State what measures it is taking to ensure that children still enjoy guarantees and safeguards where their trial has been forwarded to the Circuit and Central Criminal Courts.

The Commission recommends that the Committee asks the State what measures it is taking to ensure the timely progression of trials in Children's Court.

Juvenile Detention

A disproportionate number of young people in detention are members of the Traveller Community. While Travellers only account for 1 per cent of the Irish population, they make up 19 per cent of the young people in Oberstown Detention Centre. Furthermore, 41 per cent of the young people in Oberstown were either in care or had significant involvement with the Child and Family Agency prior to their detention.²²⁶ The Children's Rights Alliance has reported that children in care are more heavily policed than those who had been living in family environments.²²⁷

A recent investigation by the Health Information and Quality Authority (HIQA) into Oberstown Children Detention Campus found inconsistencies in the recording and the quality of the use of

²²⁴ European Social Committee, Conclusions, at p. 36; See also Children's Rights Alliance, [Child Law Audit – Chapter 7: Youth Justice](#) (2015) at pp. 162-163.

²²⁵ See *A.B. v. The Director of Public Prosecutions* [2019] IEHC 214 at para 6.

²²⁶ Oberstown, *Characteristics of Young People Report*, 2019, at p. 6

²²⁷ Children's Rights Alliance, Report to members of joint consultation on a new youth justice strategy, Oct 2019, at p. 11.

restrictive procedures.²²⁸ There are also concerns regarding record-keeping in relation to single separation.²²⁹ The Commission has expressed the view to the Court that any separation policy that amounts to de facto solitary confinement should never be imposed on children.²³⁰

The Commission recommends that the Committee asks the State to provide an update on separation policy in Oberstown Children Detention Campus and the use of restrictive practices.

²²⁸ Health Information and Quality Authority (2020) [Report of Oberstown Children Detention Campus](#), at p. 15. HIQA (2020) [Annual overview report on the inspection and regulation of children's services – 2019](#), p 50-53.

²²⁹ Health Information and Quality Authority (2020) [Report of Oberstown Children Detention Campus](#), at pp. 17-18.

²³⁰ Irish Human Rights and Equality Commission, [Applicant v. The Director of Oberstown Detention Centre and Another](#) (January 2017) and Irish Human Rights and Equality Commission, [Irish Human Rights and Equality Commission Secures Court Role in Oberstown Child Detention Cases](#) (January 2017). See also, See Irish Human Rights and Equality Commission, [Submission to the United Nations Committee against Torture on Ireland's Second Periodic Report](#) (July 2017) at p. 32.



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