Children in Detention

Immediate Actions for 2016

SUPPORT THE OPENING OF ADDITIONAL UNITS IN THE NATIONAL CHILDREN DETENTION FACILITY TO ACCOMMODATE 17 YEAR OLDS SERVING A CUSTODIAL SENTENCE.

Provide all necessary supports, including staffing recruitment, to facilitate the opening of additional units in the National Children Detention Facility to allow for the transfer of responsibility for 17 year olds serving a custodial sentence, currently detained in Wheatfield Place of Detention.


Fully commence the Children (Amendment) Act 2015 and the Prisons Act 2015 at the earliest opportunity to ensure that no child under 18 years is detained in an adult prison.

WITHDRAW THE RESERVATION TO ARTICLE 10(2)(B) OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS.

Once the transfer of responsibility for 17 year old males to the Oberstown campus has been completed, the Government should withdraw the reservation to Article 10(2)(b) of the International Covenant on Civil and Political Rights.

6. RIGHT TO EQUALITY AND NON-DISCRIMINATION

Chapter Grade D+

The Children and Family Relationships Act (2015) for the first time recognises and gives legal status to the broad range of families in Ireland of the 21st century. This important Act has brought much needed security to thousands of children in Ireland and is a very welcome reform to Irish family law. Children from all family types can now enjoy the security and care of a legal relationship with their parents that heretofore was not possible.

Sandra Irwin-Gowran, Director of Education Policy, GLEN - Gay and Lesbian Equality Network

Right to Equality and Non-Discrimination

Every child has the right to equal treatment, without discrimination of any kind, irrespective of the race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status of the child or the child’s parents or guardian.

Summary of Article 2 of the UN Convention on the Rights of the Child
6.1 Traveller and Roma Children

GOVERNMENT COMMITMENT

The Programme for Government 2011-2016 commits to promoting greater co-ordination and integration of delivery of services to the Traveller community across Government, using available resources more effectively to deliver on principles of social inclusion, particularly in the area of Traveller education.

Progress: Unsatisfactory

‘Traveller and Roma Children’ is awarded an ‘E-’ grade in Report Card 2016, a decrease from last year’s ‘E+’ grade. The lower grade reflects the Government’s persistent failure to implement their commitment to recognise the ethnic minority status of Travellers and the missed opportunity presented by the Carrickmines fire tragedy to uphold the rights of Traveller children. Traveller and Roma children continued to face educational disadvantage in 2015.

This is the final year being analysed in the Report Card series under the Programme for Government 2011-2016. A commitment was made to promote greater co-ordination and integration of delivery of services to Travellers. The coordination of delivery of services for Travellers remains very weak. In many cases whilst policies and strategies have been put in place, there is limited implementation, monitoring, evaluation or accountability. For example, the National Traveller Health Advisory Committee (NTHAC) entrusted with developing a strategy to respond to the All-Ireland Traveller Health Study in 2010 has not met since 2012.552 Between 2008 and 2013, funding for interagency activities relating to Travellers was cut completely and has not been reinstated.553 Of serious concern is that the adoption of integrated services has resulted in a mainstreaming approach which fails to address the specific experiences of Traveller and Roma children as members of communities who experience high levels of marginalisation, discrimination, educational disadvantage and poverty. In the area of education for example, additional supports for Travellers to assist the process of mainstreaming have not been put in place.554

There are 14,913 Traveller children living in Ireland.555 The Traveller community has a very young population with 42 per cent of Travellers under the age of 15 years.556 At the end of the Programme for Government, outcomes for Traveller and Roma children continue to be among the worst for children in Ireland in areas such as equality and education.

STATE TO INTRODUCE PARTS OF CHILDREN AND FAMILY RELATIONSHIPS ACT

The Irish Times, 20 May 2015

The Government is preparing to activate parts of the Children and Family Relationships Act, which overhauls the law on adoption and donor-assisted reproduction.

The Act was signed into law by President Michael D. Higgins in April but its provision will not come into force until formal commencement orders are signed. Some parts of the legislation will not be activated for at least a year.

The landmark reform of family law changes guardianship and custody rules and allows same-sex couples to apply to adopt. A section on surrogacy was removed by Minister for Justice Frances Fitzgerald when she succeeded Alan Shatter last year, and the Department of Health plans to incorporate surrogacy into a forthcoming Bill on assisted human reproduction. Three departments – Justice, Children and Foreign Affairs – must sign separate commencement orders for the Children and Family Relationships Act to come into force. A spokesman for the Department of Justice, which is responsible for most sections of the legislation, said it was “proceeding with preparations” for the commencement of those parts but could not say when it would be done.

[...]

The spokesman said the department was already in discussions with the Courts Service on the rules of court that would be needed to activate the provisions on guardianship, custody, access and maintenance. Ms Fitzgerald has indicated that the provisions in parts two and three of the Act, which deal with donor-assisted human reproduction, will not be activated for at least a year. [...]

By Ruadhán Mac Cormaic
In Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020, the Government committed to reduce discrimination and intolerance of all types experienced by marginalised groups including Traveller and Roma children, and to improve their educational and health outcomes.

The Government also reiterated its commitment to implement and monitor the National Traveller Roma Integration Strategy.556

Under the UN Convention on the Rights of the Child, the State is obliged to take measures, using the maximum available resources, to ensure that all children, including Travellers and Roma children, have an adequate standard of living.557 All children have the right not to experience discrimination on any ground irrespective of the race, language, religion, political opinion, national or ethnic origin, other status of the child or the child’s parents or guardian558 and they have the right to life, survival and development.559 The State is obliged to ensure that every child has a standard of living which is adequate to allow them to develop fully – physically, mentally, spiritually, morally and socially.560 Moreover, children in ethnic, religious, linguistic minorities or of indigenous origin must not be denied the right to enjoy their own culture, religion or language.561

National Traveller and Roma Inclusion Strategy: A National Traveller Roma Integration Strategy was launched in 2011.562 In April 2015, the National Traveller and Roma Inclusion Strategy Steering Group was established to oversee the development and implementation of a revised Strategy.563 A second phase of the consultation process for this strategy was commenced in February 2016.564 It is vital that the implementation of the Strategy, involves Travellers and Roma, is based on human rights, and sets out clear goals, targets, indicators, timelines and funding mechanisms.565 Rigorous monitoring, evaluation and accountability mechanisms should be put in place to oversee the impact of the new Strategy in particular on children.

Recognition of the Ethnic Status of Travellers: In November 2014, the Minister of State for New Communities, Culture and Equality, Aodhán Ó Riordáin TD, made a commitment that the State would recognise Travellers as an ethnic minority within six months.566 One year later, in November 2015, Traveller ethnicity was debated in Dáil Éireann. A motion calling for the State to recognise the ethnic minority status of Travellers was rejected by Government by 58 to 39 votes.567

The Government’s failure to recognise Traveller ethnicity is incompatible with international human rights standards and has been criticised at both national and international level,568 including in 2014 by the UN Human Rights Committee.569 Travellers are an indigenous minority group that have been part of Irish society for hundreds of years and deserve the right to self-identification. They have a distinctive lifestyle and culture based on a nomadic tradition with a language, customs and traditions that make them identifiable as a group to both themselves and to others.570 One impact of the recognition of ethnicity would be that Traveller of Irish descent would be automatically given consideration in anti-racism and anti-discrimination initiatives.571

Ethnic Identifier: There is no publicly available statistical information on the number of Roma living in Ireland or the number of Roma or Traveller children in the care system.572 The UN Committee on the Rights of the Child has called on States to employ data collection mechanisms that can study the situation of specific groups, including ethnic and/or indigenous groups. Between 2014 and 2015 highlighted that the lack of disaggregated data on Traveller and Roma children hinders our understanding of the progression of these children within the education, health and child protection systems.

During 2015, the Department of Education and Skills continued to develop a Primary Online Database (POD).573 Data on ethnicity is sought from families.

The Government’s failure to recognise Traveller ethnicity is incompatible with international human rights standards and has been criticised at both national and international level.

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557 Ibid Commitment 4.9.


559 Ibid Art 27.

560 Ibid Art 27.

561 Ibid Art 27.

562 Pavee Point, Travelling with Austerity, Impacts of Cuts on Travellers, Traveller Projects and Services (Pavee Point 2015) 34-38.


565 Cécile Kielshner et al., Our Gees, All Ireland Traveller Health Study, University College Dublin 2010 9.


567 Department of Justice and Equality, Minister O’Riordan announces details of Phase 2 in the development of a new National Traveller and Roma Inclusion Strategy < http://www.justice.ie/en/JELR/Pages/PR16000044.aspx> accessed 12 February 2016. It is expected that a new strategy will be implemented by 2020.


570 ibid.


572 Department of Justice and Equality, Minister O’Riordan announces details of Phase 2 in the development of a new National Traveller and Roma Inclusion Strategy < http://www.justice.ie/en/JELR/Pages/PR16000044.aspx> accessed 12 February 2016. It is expected that a new strategy will be implemented by 2020.


576 Cécile Kielshner et al., Our Gees, All Ireland Traveller Health Study, University College Dublin 2010 9.


578 Department of Justice and Equality, Minister O’Riordan announces details of Phase 2 in the development of a new National Traveller and Roma Inclusion Strategy < http://www.justice.ie/en/JELR/Pages/PR16000044.aspx> accessed 12 February 2016. It is expected that a new strategy will be implemented by 2020.


580 ibid.

as part of the data collection for the POD, known as an ethnic census.841 The POD is due to be fully operational for the academic year 2015/16.842 An ethnic identifier is an important measure to track and monitor the impact of policies and legislation on minority children, including school attendance, retention and learning outcomes. The data generated by the POD is to be used to monitor the progress of children through the education system and the question on ethnicity is to allow the Department to collect data on the diversity of the school population.843 It is anticipated that the database will provide timely information to relevant bodies, such as the Department of Social Protection, the HSE and the National Council for Special Education.844 The Data Protection Commission has advised that ‘the most equitable way of collecting this type of data is to give all pupils an opportunity to identify their own ethnic and cultural background and to consent to the data being shared with the Department.’845 Because ethnicity is considered to be sensitive data, consent of the child’s parent or guardian is required in order for it to be shared with the Department.846 The database only applies to primary schools. At second level, Traveller children are the only group asked to identify their ethnicity.

**Traveller Accommodation:** Adequate and culturally appropriate accommodation is a serious and ongoing issue for the Traveller community and has a direct impact on health outcomes of Traveller children.847 A study in 2010 found that almost three-quarters of Travellers live in houses and almost a fifth live in caravans, tents or mobile homes.848 It also found a quarter of families felt where they lived was unhealthy and over a quarter felt that their place of residence was unsafe.849 Over three quarters did not have safe play areas.850

Local authorities are charged with providing Traveller accommodation but between 2008 and 2013, 25 local authorities failed to meet their obligations for accommodation provision.851 There are no sanctions against those who failed to achieve their target.852 The Irish Human Rights and Equality Commission expressed concern at the rising numbers of Travellers living on the roadside and sharing accommodation in the context of ‘low or non-existent’ capital investment in Traveller accommodation through the Department of the Environment, Community and Local Government.853 The Commission went on to note that emergency accommodation has become ‘de facto permanent’ accommodation for many Traveller families and that such accommodation ‘cannot, in the long term, vindicate the right to dignity and protection of the concerned people’.854 A 2015 Supreme Court judgment in O’Donnell v South Dublin County Council & Ors highlighted the fact that poor quality Traveller accommodation, may be a breach of a local authority’s statutory duty, and in addition may also amount to a breach of the constitutional right to autonomy, bodily integrity and privacy.855

On 9 October 2015, a fire at a temporary Traveller halting site, in Carrickmines, Dublin, killed ten people including five children. Local residents objected to the use of a nearby green field site to re-accommodate the survivors on a temporary basis.856 Legal action by residents threatened to delay the relocation decision when the Local Authority re-accommodated the survivors in an alternative site – a car park. The Carrickmines fire tragedy highlighted the deeply rooted racism in Irish society towards Travellers and focused national attention on the deficits of Traveller accommodation. Following the tragedy, fire safety reviews are to be undertaken on all sites857 and Pavee Point called for the establishment of a dedicated Traveller Agency to drive improvements and implementation of policy and legislation for Travellers.858

**Roma Children:** In December 2013, the then Ombudsman for Children, Ms Emily Logan was appointed in her personal capacity by the Minister for Justice and Equality to carry out a special inquiry into the removal of two Roma Children from their families by An Garda Síochána.859 The Report of the Implementation Group set up to monitor the recommendations in the Logan Report was published in November 2015 and lists the range of ongoing issues and activities undertaken to date.860 One of the report’s key recommendations was that an assessment of the needs of the Roma community be undertaken.861 This assessment is ongoing in partnership with Pavee Point and is expected to be finalised by the end of 2015.862 The Government note that the completed assessment will ‘inform consideration of whether an up-dated needs assessment of the Traveller community could usefully be undertaken’.

**Education:** The Programme for Government commits to use available resources to more effectively deliver on principles of social inclusion such as Traveller education. All children including Traveller and Roma children have the right to education.863 This education must be directed to the development of ‘respect for the child’s parents, his or her own cultural identity, languages and values, [..]’864 While the Report and Recommendations for a Traveller Education Strategy was published in 2006,865 a strategy of itself with an implementation plan and timeline was never developed. In April 2015, an evaluation of the Delivering Equality of Opportunity in Schools (DEIS) programme was published,866 it repeated earlier findings comparing average test results undertaken to date.867 One of the report’s key recommendations was that an assessment of the needs of the Roma community be undertaken.868

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588 ibid 4.
589 Emily Logan et al., Our Geels, All Ireland Traveller Health Study, (University College Dublin 2010) 148.
590 ibid 46.
591 ibid 4.
592 Pavee Point, Irish Traveller and Roma Children, An Update to Pavee Point Traveller and Roma Centre’s shadow report in response to Ireland’s consolidated third and fourth report to the UN Committee on the Rights of the Child (Pavee Point 2015) 11.
593 Pavee Point, Irish Traveller and Roma Children, An Update to Pavee Point Traveller and Roma Centre’s shadow report in response to Ireland’s consolidated third and fourth report to the UN Committee on the Rights of the Child (Pavee Point 2015) 11.
594 ibid 11.
598 ibid 46.
601 Emily Logan, Garda Síochána Act 2005 (Section 42) (Special Inquiries relating to Garda Síochána Order 2013) Report of Ms Emily Logan (Department of Justice and Equality 2013).
603 Emily Logan, Garda Síochána Act 2005 (Section 42) (Special Inquiries relating to Garda Síochána Order 2013) Report of Ms Emily Logan (Department of Justice and Equality 2014).
605 UNCRC ‘List of Issues in relation to the Combined Third and Fourth Periodic reports Ireland’ UN Doc CRC/C/IRL/ Add.1,4.
607 ibid Art 28(2).
608 Department of Education and Skills, Report and Recommendations for a Traveller Education Strategy (Stationery Office 2006).
609 The Delivering Equality of Opportunity in Schools (DEIS) Programme, introduced in 2005, aims to address the educational needs of children from marginalised communities through lower pupil-teacher ratios and a range of literacy and numeracy programmes. For more information see section 2.2 of this Report.
scores of pupils from the Traveller community in 2007 and in 2010 with non-Traveller pupils in reading and mathematics.610 The study found that the average scores of Travellers in both years were significantly below those of non-Travellers and that the difference between them was ‘large’.611 Small but not significant improvements were seen across the board in reading but not in mathematics.612 This is of particular concern given the broader context that of the general Traveller population 55 per cent have left school by the age of 15, on average 4.7 years earlier than the general population,613 and 17.7 per cent of Travellers have no formal education, compared with 1.4 per cent in the general population.614

Half of Traveller pupils attend DEIS schools, those in non-DEIS schools do not receive additional support because Traveller specific supports, such as resource teachers for Travellers and the Visiting Teacher Service were abolished in 2011.615 The Irish National Teacher’s Organisation (INTO) has noted that ‘many teachers’ are of the view that ‘the DEIS support programme did not adequately respond to the needs of Traveller children.’616

Despite the obvious challenges faced by Traveller and Roma children in education, Budget 2016 did not include any additional supports for these groups. Resources are provided on ‘identified individual educational need’ to all children with no targeted initiatives for Traveller children or others based on cultural or ethnic background to facilitate and support their engagement in mainstream education.

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Nevertheless, there are a number of immediate actions that can be taken to improve the educational outcomes for Traveller and Roma children. These include:

**Immediate Actions for 2016**

- **Put in place a monitoring and evaluation mechanism for the National Roma and Traveller Inclusion Strategy.** To ensure commitments are delivered, a rigorous monitoring and evaluation mechanism should be established for the Strategy.

- **Deliver on the government commitment to recognise Traveller ethnicity.** Swift action is needed to fulfil the commitment of the Minister of State for Equality, New Communities and Culture that the State will recognise Traveller ethnicity.

- **Introduce an ethnic identifier across all administrative areas.** An ethnic identifier should be introduced across all administrative areas to enable the Government to track outcomes for minorities and to measure the efficacy of Traveller and Roma related initiatives.

- **Ensure adequate and appropriate accommodation, including transient accommodation, is provided to Traveller families by local authorities.** Local authorities should fulfil their obligations under the Housing (Traveller Accommodation) Act 1998 to provide culturally appropriate accommodation to Travellers with adequate water and sanitation facilities. Penalties should be imposed where local authorities fail in their duty to do so. Safe play and recreational areas should be provided for Traveller children and young people.

- **Establish a Traveller Agency.** A Traveller Agency should be established to drive cohesion and integration of delivery of services as well as improvements to and implementation of policy and legislation for Travellers and their children.

- **Take steps to improve the educational outcomes for Traveller and Roma children.** Targeted education supports should be introduced to support Traveller and Roma inclusion in mainstream education. An evaluation of the impact of the withdrawal of Traveller specific education supports should be undertaken to inform this. A monitoring and evaluation framework with clear timelines for the Report and Recommendations for a Traveller Education Strategy should also be developed and implemented.

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612 ibid.
614 ibid.
616 ibid 6.
617 Communication Received by the Children’s Rights Alliance from the Department of Justice and Equality, 4 November 2014.
There are a range of rights relating to migrant children under the UN Convention on the Rights of the Child (CRC) but for the purpose of this section, we will examine the Programme for Government commitment under two key provisions relating to migrant children – non-discrimination and special protection measures. Under Article 2, the State is required to ensure that children are not discriminated against on any ground irrespective of their race, national or ethnic origin or other status. Furthermore, they must be protected against discrimination based on their parent or guardian’s race, national, ethnic or other status. Under Article 22, States must provide special protection measures for children outside their country of origin seeking refugee protection.

The Programme for Government commitment in this area is broad-reaching. Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020 recognises migrant children as a vulnerable group and makes specific commitments including to tackle inequalities in health, strengthen social inclusion measures, improve educational outcomes, address the interaction of migrant children with the immigration system, provide for a more efficient protection determination system and reduce discrimination and intolerance experienced by migrant children.

Integration Strategy: In 2014, a review of Ireland’s approach to migrants was ordered by the then Minister for Justice and Equality, Alan Shatter TD. A Cross-Departmental Group on Integration was established in March 2014 to draft an overarching Integration Strategy taking account of existing policies and actions being implemented. Consultation with key stakeholders was carried out and in October 2015 a draft of the Strategy was shared with stakeholders for their observations; the Strategy is due to be published shortly.

It has been eight years since the publication of Migration Nation, Statement on Integration Strategy and Diversity Management in 2008 and the landscape has changed significantly in the intervening period, with the lapse of Planning for Diversity. The National Action Plan Against Racism 2005-2008, the closure of the National Consultative Committee on Racism and Interculturalism and the loss of the designated Minister for Integration as well as a significant reduction in the capacity of community migrant-led groups. The new Strategy is an opportunity for the State to meet its commitments to migrant children under the National Policy Framework and its obligations under the UN Convention on the Rights of the Child. The Strategy should include commitments on legislative reforms. The continued lack of a modern and coherent legal structure in relation to migrants and their families, impacts negatively of the everyday lives of migrant children, young people and their families in Ireland. 2015 saw the publication and enactment of the International Protection Act 2015. However, this legislation only addresses issues relating to the protection determination process, which is not covered in this report.

There is still no legal framework on the reception conditions of asylum seekers in Ireland, that is, Direct Provision. Ireland has decided to opt out of the EU Reception Conditions (Recast) Directive, which governs reception conditions for applicants.

622 See for example, Article 7 of the UN Convention on the Rights of the Child, which stipulates that a child shall have the right to a nationality and Article 30 which provides that the State must ensure that children of an ethnic-religious or linguistic minority are not denied the right to enjoy their own culture, to profess and practise their own religion, or to use their own language. Article 32(1) obliges States to ensure that children can participate fully in cultural, religious and national life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.


626 ibid Commitment 2.22.

627 Ibid Commitment 3.7.

628 Ibid Commitment 5.6.

629 Existing strategies include the Intercultural Education Strategy and the Gorta Sodhantára Diversity Strategy.

630 Minister of State at the Department of Justice and Equality, Mr Aodhán Ó Ríordáin TD, Dáil Debates, Migrant Integration, 25 November 2015 (35194/15).


632 Office of the Minister for Integration, Migration Nation, Statement on Integration Strategy and Diversity Management (Office of the Minister for Integration 2008).

for international protection.634 This is disappointing and the Direct Provision system requires signatures to ensure that the best interests of the child are a primary consideration in decision making and States must ensure a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.635

Children Living in Direct Provision: Young people from migrant backgrounds experience discrimination in their daily lives both interpersonally636 and systematically in their right to family life,637 access to education,638 child and family protection639 and independent complaints (though this is expected to change shortly).640 Few children are more vulnerable to discrimination in Ireland than those of asylum seeking families. Approximately half of children in asylum-seeking families in Ireland live in the Direct Provision system.641 Direct Provision is a system of accommodation provided by the State to people seeking asylum in Ireland. It provides room and board within former hotels, hostels or other large buildings. Each centre is managed by private contractors on behalf of the Reception and Integration Agency.642

Concerns about the system and the living conditions at the centres are well documented643 and the Government’s own Statement of Government Priorities 2014-2015 highlights the need for further reform.644 In October 2014, the Minister for Justice and Equality, Frances Fitzgerald TD and the Minister of State for New Communities, Culture and Equality, Aodhán Ó Ríordáin TD established a Working Group, chaired by former High Court Judge, Dr Brian McMahon, to review the protection process and make recommendations on how to improve the standard of living in the Direct Provision system.645 The Final Report of the Working Group, published in June 2015, made a range of findings and 173 recommendations, five of which were of particular relevance to children. The Working Group report provides a blueprint for the State to significantly improve the lives of children and families in the Direct Provision system.

The average length of stay in Direct Provision is three years and four months but almost 15 per cent of residents have been in the system for more than seven years.646 This means that there are children who have spent their whole lives in a centre, which often involves living in communal or shared accommodation that is not appropriate for family life. One of the main recommendations of the Working Group relates to reducing the length of time being spent by people in the protection process and have to remain stages.647

Another key issue raised by the Working Group related to the quality of the physical conditions in Direct Provision accommodation, which they noted, varied across the centres648 and in some cases involved ‘cramped physical conditions’ and that the ‘multipurpose and multi-occupancy nature of the accommodation…raises concerns around privacy, mental health, family life and child protection’.649 The Working Group notes that some children had grown up without a memory of their parents cooking a family meal,650 and that all families should have access to cooking facilities and other communal living space in so far as practicable.651 The Group recommended that all requests for new accommodation for asylum seeker families should specifically require self-contained units with cooking facilities and/or family quarters with communal kitchens and adequate recreational space for children and young people.652 However, a tender for new accommodation released in July 2015 did not reflect this recommendation, missing an important opportunity to act on the Working Group’s recommendation in this area.653

In May 2015, the Health Inspection and Quality Authority (HIQA) issued a report that found that in one year child welfare and protection referrals had been made to Tusa – the Child and Family Agency in relation to approximately 1 in 20 children in the population of children living in Direct Provision.654 This represents a significantly higher referral rate than for the general child population of 1.6 per cent.655 The HIQA’s Annual Report on the Child Protection Support to Asylum Seekers, Final Report (June 2015)656 provides a blueprint for the State to significantly improve the lives of children and families in the Direct Provision system.
the prevalence of families in Direct Provision centres involving in child care proceedings.665

While a child protection policy is in place at the accommodation centres, the current approach must be revised to develop a broader policy in line with the recommendation of the Working Group.663 The Group recommended that Tusla, in conjunction with the Reception and Integration Agency (RIA) should develop a welfare strategy within RIA, to advise on policy and practice matters and to liaise on individual cases as required.663 This followed a number of recommendations from HIQA to Tusla in this area, including that Tusla develop an inter-cultural strategy to inform the provision of social services to ethnic minority children and families. It is understood that work is underway on formalising current practice between Tusla and RIA and in their cooperation on tracking movement of children and families between centres to ensure social workers are notified where necessary.664 HIQA also recommended that Tusla complete an audit to ensure all assessments have been carried out where needed; ensure effective interagency and inter-professional co-operation with key stakeholders and gather information on referrals to their services about children in Direct Provision accommodation to inform strategic planning.664

The Working Group found that the existing inspection regimes at Direct Provision centres lacked credibility among residents, and focused on compliance with contractual obligations in relation to health and safety, for example, and lacked care standards in areas such as training of staff in diversity issues, ensuring that residents have a voice and facilities for children.665 The Group recommended that national standards for inspection be developed to reflect fully government policy across all areas of service in Direct Provision. The report further recommended that an independent Inspectorsate should be established to ensure equality of treatment across services and that the Inspectorsate report its findings directly to the Minister.

In early 2016, plans were announced to extend the remit of the complaints procedure under the Office of the Ombudsman for Children to include children in the Direct Provision.666 Up to this point, this group of children were the only group of children in Ireland who were denied access to this procedure.666 They continue to be among a minority of children denied access to the Child Benefit payment.667 On 5 January 2016, the Department of Social Protection announced that the child component of the weekly Direct Provision allowance of €9.60 will be increased by €6.00 to €15.60.666 This represents the first increase in the payment in 16 years. While this increase is welcome, it falls far short of the €29.80 weekly figure recommended by the Working Group for the child component of the payment.666

Consultations: During October and November 2015, the Department of Children and Youth Affairs conducted consultations with approximately 90 asylum seeking children and young people (aged 8-17) living in Direct Provision, in co-operation with the Reception and Integration Agency (RIA) of the Department of Justice and Equality. An independent researcher is compiling a report to be established to ensure equality of treatment across services and that the Inspectorsate report its findings directly to the Minister.

During October and November 2015, the Department of Children and Youth Affairs conducted consultations

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663 Communication received by the Children’s Rights Alliance from the Department of Children and Youth Affairs, 15 February 2016.
665 The Government has committed to revising the payment with a view to considering the possibility of further increases. Communication received by the Children's Rights Alliance from the Irish Naturalisation and Immigration Service, 28 January 2016.
666 Communication received by the Children’s Rights Alliance from the Department of Children and Youth Affairs, 15 February 2016.
667 Carol Coulter, Final Report - Child Care Law Reporting Project (Child Care Law Reporting Project 2015) 45. This often related to instances where mothers in Direct Provision suffered from mental illness problems, leading to their children being taken into care.
672 In February 2016, in line with a recommendation of the Working Group, the Minister for Justice and Equality agreed, subject to the advice of the Attorney General, to allow asylum seekers living in Direct Provision to have their complaints heard by both the Ombudsman and the Ombudsman for Children. Children living in Direct Provision centres are the only group of children denied access to the Ombudsman for Children Office. Ombudsman for Children’s Office, ‘Commitment to allowing residents in Direct Provision to make complaints to Ombudsman offices welcomed’ (4 February 2016) <http://bit.ly/1yIPvHw6> accessed 5 February 2016.
673 Ombudsman for Children Act 2002, s 11(1)(ii) precludes the Office of the Ombudsman for Children from hearing complaints on decisions taken in the administration of the law relating to asylum, immigration, naturalisation or citizenship.
674 Child Benefit is a monthly payment to parents for the support of their children. Department of Social Protection, ‘Child Benefit Payment’ <http://www.welfare.ie/en/Pages/ChildBenefit.aspx> accessed 29 January 2016. The Habitual Residence Condition was introduced in 2005 under the Social Welfare (Consolidation) Act 2005 as amended, s 248, restricting access to certain social welfare payments including Child Benefit, to those who can prove a close link to Ireland. This amount was increased to reflect the amount of indirect discrimination against approximately 10,000 children as they are denied the payment due to their parents’ immigration status, or migration history.
Inequalities in Family Life

GOVERNMENT COMMITMENT

The Programme for Government 2011-2016 promises to modernise and reform outdated elements of family law.

Progress: Complete

We will enact legislation to consolidate and reform the law on adoption.

Progress: Slow

We will amend the Civil Partnership and Certain Rights and Obligations of Cohabiting Couples Act 2010 to address any anomalies or omissions, including those relating to children.

Progress: Complete

Inequalities in Family Life’ receives an ‘A’ grade in Report Card 2016, an increase from the ‘B’ grade awarded last year. The improved grade reflects the enactment of the Children and Family Relationships Act 2015, which represents the most important reform of family law for a generation and the improvement in the law relating to children parented by same sex couples.

This is the final year being analysed in the Report Card series under the Programme for Government 2011-2016. A commitment was made to modernise and reform the law in relation to families and adoption. Significant progress has been made through the enactment of the Children and Family Relationships Act 2015 and Marriage Act 2015, and the publication of the General Scheme and Heads of the Adoption (Information and Tracing) Bill 2015.

The UN Convention on the Rights of the Child recognises the central role played by parents and guardians in the lives of children. Under the Convention every child has the right to be cared for by his or her parents insofar as possible."667 Children also have the right to contact with both their parents on a regular basis, to maintain personal relations and not to be separated from their parents against their will, unless the separation is in the child’s best interests."668 States are obliged to ‘respect the responsibilities, rights and duties of parents’ or ‘persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of his or her rights’669 irrespective of the relationships entered into by parents, children should not be discriminated against on any ground, including due to the status of their parents’ relationship.670

668 ibid Art 9.
669 ibid Art 5.
670 ibid Art 2.
The Children and Family Relationships Act 2015 was enacted on 6 April 2015. It modernises and reforms outdated elements of family law by providing legal clarity around various family types and addressing discrimination faced by children of non-marital families. Prior to the Act, there was no legal framework governing the relationship between a child and a non-biological parent acting in loco parentis (day to day parenting) such as their parent’s cohabiting partner.672 The lack of a legal framework made routine family life difficult because the non-biological parent could not consent for example, to emergency medical treatment, vaccinations or school forms. It also meant that the non-biological parent had no visitation rights or maintenance duties toward a child upon breakdown of the relationship. It is a long overdue recognition that the make-up of families has changed since we last revisited their status in primary legislation.

One of the key strengths of the Children and Family Relationships Act 2015 is that it provides that the best interests of the child are paramount in decisions on guardianship, custody and access.673 In relation to guardianship, the Act provides that a step-parent, civil partner or a person who has cohabited with a parent for not less than three years may apply to the court to become a guardian where they co-parented the child for more than two years. A person who has provided for the child’s day-to-day care for a continuous period of more than a year may apply for guardianship if the child has no parent or guardian who is willing or able to exercise the rights and responsibilities of guardianship. The Act also allows for the appointment of a temporary guardian. Further, the Act stipulates that an unmarried father will automatically be a guardian if he has lived with the child’s mother for 12 months. If the child is under at least three months with the mother and child following the birth of the child, this is a welcome development as previously unmarried parents did not automatically acquire guardianship rights.

672 For example, there were only two ways in which the relationship between a child and their non-biological parent could be recognised in law. The relationship between a step-parent and their partner’s child could be recognised only if the step-parent adopted the child. Adopting a child is not a practical solution in many cases, particularly if the child’s other parent is present in the child’s life. The only other way was if a non-biological parent became a child’s guardian in the case of the death of the child’s parent through testamentary guardianship. In this case however, testamentary guardianship will act jointly with the child’s surviving parent who is a guardian unless the parent objects, in which case a court order must be obtained, granting joint guardianship to the testamentary guardian and the surviving parent or excluding the child’s surviving parent.

673 Children and Family Relationships Act 2015, s 45.
676 Commitment 3.17.

The provisions of the Act relating to adoption, guardianship, and custody were commenced on 18 January 2016679 and Part 10 which relates to passports has also been commenced.680 Despite the significant progress made in the area of family law under the 2015 Act, two significant problems remain unresolved.

Section 63 of the Act provides, at the discretion of the Court, to procure from an expert a report in writing on any question affecting the welfare of the child or to appoint an expert to determine the views of the child and convey these to the Court.678 The cost of the expert must be borne by the parties to the cases, in effect the parent or guardian. This provision is likely to impact negatively on children in low income families who will face an additional barrier to having their voices heard. Section 63 has yet to be commenced meaning that a child still has no automatic entitlement to have their voice heard in family law proceedings affecting them, such as guardianship, custody and access decisions.676

The second issue relates to the lack of a Central Register for Statutory Declarations for Joint Guardianship which may cause a difficulty for an unmarried father who has not retained a copy of his declaration of guardianship and so is unable to prove that he is a joint guardian of his child. The statutory declaration is the only non-judicial mechanism to enable an unmarried father to gain guardianship rights – the safe keeping of these documents should be fully supported by the State. It is understood that work is being undertaken by the Department of Justice and Equality to develop a repository of statutory declarations relating to guardianship.678

In addition to the right to know their parents’ identity is the right of children to have accurate information about their identity...675 The Act also addresses the obligations of a donor assisted human reproduction (DAHR) facility and the categories of information required to be available from, the national donor-conceived person register.676 It is expected that this part of the Act will not be commenced for at least a year to allow DAHR facilities to prepare for the changes contained in the legislation.677 The longer this is delayed however, the longer the rights of children to know their parents and to have accurate information about their identity under the UN Convention are not being respected.678

681 Children and Family Relationships Act 2015, s 43.
682 Section 52 of the Children Act 1997 would have provided for it, but the section was never commenced.
683 Communication received by the Children’s Rights Alliance from the Department of Justice and Equality, 31 November 2015.
685 ibid 85, 92 and 177.
687 Communication received by the Children’s Rights Alliance from the Department of Justice and Equality, 1 December 2015.
689 Child contact centres are for children whose parents are separated and are unable to agree safe and appropriate arrangements for the child. Children to have contact with the parent they do not live with and for children who are in care who need support to have contact with their parents. These are time-limited services for families that need to engage with family supports so that they can move to self-arranged contact over time. See: Candy Murphy and Louise Caffrey, Supporting Child Contact: The need for Child Contact Centres in Ireland (Candy Family 2010).
Civil Partnership and Cohabiting Couples: The commitment in the Programme for Government to address anomalies and omissions in civil partnership legislation has been addressed through the Children and Family Relationships Act 2015. The Civil Partnership and Certain Rights and Obligations of Cohabitating Couples Act 2010 did not provide a legal framework governing the relationship between a child and their mother or father’s civil partner or cohabiting partner in a number of critical areas. This meant that civil or cohabiting partners could not apply for guardianship, custody or access of a child in the family unit. It was also not possible for a maintenance order to be made against a civil or cohabiting partner in relation to a dependent child and non-biological children of a deceased civil or cohabiting partner were denied inheritance rights. This meant that civil partner or cohabiting families faced significant discrimination in comparison with married families. The Children and Family Relationships Act 2015 addresses these anomalies and ensures that the legal relationship is formalised.

Furthermore, on 23 May 2015, a referendum took place to determine whether or not the Constitution should be amended to extend civil marriage rights to same sex couples. The amendment was passed by a 62.1 per cent majority. On foot of the referendum result, the Marriage Act 2015 was enacted and commenced on 16 November 2015. It provides for civil marriages for same sex couples – which have the same status under the Constitution as a marriage between a man and a woman.

The commitment in the Programme for Government to address anomalies and omissions in civil partnership legislation has been addressed through the Children and Family Relationships Act 2015. The Civil Partnership and Certain Rights and Obligations of Cohabitating Couples Act 2010 did not provide a legal framework governing the relationship between a child and their mother or father’s civil partner or cohabiting partner in a number of critical areas.

690 Paula Fagan, Missing Pieces, A comparison of the rights and responsibilities gained from civil partnership compared to the rights and responsibilities gained through civil marriage in Ireland (Marriage Equality 2011) 26-27.
691 Paula Fagan, Missing Pieces, A comparison of the rights and responsibilities gained from civil partnership compared to the rights and responsibilities gained through civil marriage in Ireland (Marriage Equality 2011) 27.
692 ibid.