Are We There Yet?

Parallel Report to Ireland’s Third and Fourth Combined Report under the UN Convention on the Rights of the Child

September 2015
Children’s Rights Alliance Members

Ag Eisteacht
Alcohol Action Ireland
Alliance Against Cutbacks in Education
Amnesty International Ireland
Arc Adoption
The Ark, A Cultural Centre for Children
ASH Ireland
Assoc. for Criminal Justice Research and Development (ACJRD)
Association of Secondary Teachers Ireland (ASTI)
ATD Fourth World – Ireland Ltd
Atheist Ireland
Barnardos
Barretstown Camp
BeLonG To Youth Services
Bessborough Centre
Border Counties Childhood Network
Carr’s Child and Family Services
Catholic Guides of Ireland
Children in Hospital Ireland
Carr’s Child and Family Services
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Children in Hospital Ireland
City of Dublin YMCA
COPE Galway
Cork Life Centre
Crosscare
Dental Health Foundation
DIT - School of Social Sciences & Legal Studies
Disability Federation of Ireland
Down Syndrome Ireland
Dublin Rape Crisis Centre
Dun Laoghaire Refugee Project
Early Childhood Ireland
Educate Together
School of Education UCD
EPIC
Extern Ireland
Focus Ireland
Foróige
GLEN - Gay and Lesbian Equality Network
Headstrong - The National Centre for Youth Mental Health
Healthy Food for All
Immigrant Council of Ireland
Inclusion Ireland
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Institute of Community Health Nursing
Institute of Guidance Counsellors
International Adoption Association
Irish Association for Infant Mental Health
Irish Association of Social Care Workers (IASCW)
Irish Association of Social Workers
Irish Association of Suicidology
Irish Autism Action
Irish Centre for Human Rights, NUI Galway
Irish Congress of Trade Unions (ICTU)
Irish Council for Civil Liberties (ICCL)
Irish Foster Care Association
Irish Girl Guides
Irish Heart Foundation
Irish National Teachers Organisation (INTO)
Irish Penal Reform Trust
Irish Premature Babies
Irish Primary Principals Network
Irish Refugee Council
Irish Second Level Students’ Union (ISSU)
Irish Society for the Prevention of Cruelty to Children
Irish Traveller Movement
Irish Youth Foundation (IYF)
Jack & Jill Children’s Foundation
Jesuit Centre for Faith and Justice
Junglebox Childcare Centre F.D.Y.S.
Kids’ Own Publishing Partnership
Law Centre for Children and Young People
Lifefirst National Office
Marriage Equality - Civil Marriage for Gay and Lesbian People
Mary Immaculate College
Mental Health Reform
Mounttown Neighbourhood Youth and Family Project
MyMind
National Organisation for the Treatment of Abusers (NOTA)
National Parents Council Post Primary
National Parents Council Primary
National Youth Council of Ireland
One Family
One in Four
Parentline
Parentstop
Pavee Point
Peter McVerry Trust
Rape Crisis Network Ireland (RCNI)
Realt Beag
SAFE Ireland
Saoirse Housing Association
SAOL Beag Children’s Centre
Scouting Ireland
Simon Communities of Ireland
Society of St. Vincent de Paul
Sonas Housing Association
Special Needs Parents Association
SpunOut.ie
St. Nicholas Montessori Teachers Association
Saint Nicholas Montessori College Ireland
St. Patrick’s Mental Health Services
Start Strong
Step by Step Child & Family Project
Suas Educational Development
Sugradh
Teacher’s Union of Ireland
The UNESCO Child and Family Research Centre, NUI Galway
The Guardian Children’s Project
The Prevention and Early Intervention Network Treoír
UNICEF Ireland
Unmarried and Separated Families of Ireland
youngballymun
Youth Advocate Programme Ireland (YAP)
Youth Work Ireland
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Preface

Are We There Yet? is the Children’s Rights Alliance’s Third and Fourth combined Parallel Report to the United Nations Committee on the Rights of the Child. It is the culmination of a major civil society consultation with over one hundred of our members and stakeholders who work at the coalface with children and families in Ireland.

A lot has happened since Ireland was last reviewed in 2006. To be fair, there has been lots of positive change. The Constitution of Ireland has been amended to strengthen children’s rights, we now have a Minister for Children and Youth Affairs with full Cabinet status and a dedicated agency has been established for children and families. These are very significant milestones and lay the foundation for an Ireland where children can flourish. And the happy reality is that many children growing up in Ireland have their rights respected, protected and fulfilled.

Sadly, some large and very dark clouds hang over this happy picture.

For a substantial minority of children, life is tough. These children, through no fault of their own, are living on the margins and are being failed by the State. This report highlights the plight of these children. The happy picture fades when you learn that there are 1,500 asylum seeking children growing up in sometimes inappropriate direct provision accommodation. Traveler children have an infant mortality rate that is three and a half times higher than the national average. There are gaps in our law so that children are not fully protected - so, inexplicably it’s still legal to hit your child, or indeed another child, if you are their minder.

We have the highest EU rate of youth suicide amongst girls and the second highest rate amongst boys. Other stark realities are that one third of LGBT young people have seriously thought about ending their lives and 20 per cent have attempted suicide. Shamefully, Ireland ranks second of 194 countries for binge drinking of alcohol amongst those aged 15 and over. We also spotlight the fact that in 2013 only one in three children detained on remand was supported. This is very far from utopia. The bottom line is that public services and the courts get even more unfair when you consider that waiting times vary massively from county to county resulting in a geographical lottery dictating the speed at which a child will be supported. This is very far from utopia. The bottom line is that public services and the courts must be better resourced to provide essential supports and uphold children’s rights.

The secondary dark cloud is poverty. The child poverty rate is soaring due to the recession as well as austerity decisions chosen over the last few years. As a result, one in eight children is now living in consistent poverty, a staggering figure that has nearly doubled in five years. 1,500 children are living in emergency homeless accommodation, a number that is rapidly rising by the day as our housing crisis snowballs. Families are struggling to feed their children and to keep up with the costs of sending them to school. For some, they face the added challenge of ensuring a child with special needs or mental health difficulties is supported. Shamefully, Ireland is now living in consistent poverty, a staggering figure that has nearly doubled in five years. 1,500 children are living in emergency homeless accommodation, a number that is rapidly rising by the day as our housing crisis snowballs. Families are struggling to feed their children and to keep up with the costs of sending them to school. For some, they face the added challenge of ensuring a child with special needs or mental health difficulties is supported.

In a nutshell, the Irish State must improve children’s access to the healthcare and education services to which they are entitled. They must address child poverty. They must take the necessary steps to improve the lives of marginalised children. Filling the children’s rights gap and creating a happy picture for all children is dependent on smart decisions and political will. It is possible and it must now happen.

Tanya Ward
Chief Executive

Acknowledgements

The Children’s Rights Alliance wishes to thank all those who contributed to researching and compiling this report, including the staff of the Children’s Rights Alliance and in particular its Legal and Policy Team, Maia Corbett, Legal and Policy Director; Edel Quinn, Senior Legal and Policy Officer; Lauren Flanagan, Child Rights Intern, and Catriona Doherty, Catherine McGuinness Fellow. A special thanks is owed to Margaret Burns for her help with proofreading.

We are particularly grateful to our members and other stakeholders across the country who contributed their time and expertise to support the development of this report.

We would like to express our appreciation to members of our UNCRC Project Steering Group for their valuable guidance on this project. They are: Amnesty International, Ireland; Atheist Ireland; Barnardos, Brendan Gogarty, BL, Early Childhood Ireland; Educate Together; EPIC, Forbairt Naionala Teoranta; Foreign; Gay and Lesbian Equality Network; Guardian Children’s Project; Immigrant Council of Ireland; Irish Council for Civil Liberties; Irish Penal Reform Trust; Irish Refugee Council; Irish Society for the Prevention of Cruelty to Children; Irish Traveller Movement; Jesuit Centre for Faith and Justice; Lifestart; Pavee Point; Scouting Ireland; Start Strong; Swan Youth Service; UNESCO Child and Family Research Centre; UNICEF Ireland; and Youth Advocates Programme Ireland.

The Children’s Rights Alliance would like to express our sincere thanks to our Patron, Professor Geoffrey Shannon, Child Rights Expert, and to the funders who supported this project: The Atlantic Philanthropies, the Department of Children and Youth Affairs; the Department of the Environment, Community and Local Government; and the Katharine Howard Foundation.

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Introduction

1. Ireland ratified without reservation the UN Convention on the Rights of the Child in 1992, the Optional Protocol on the Involvement of Children in Armed Conflict in 2002 and the Optional Protocol on a Communications Procedure in 2014. Ireland was examined by the UN Committee on the Rights of the Child under the Convention in 1998 and 2006. Ireland’s third and fourth combined examination is scheduled to take place in January 2016.

2. Ireland consulted with civil society on the development of its Third and Fourth Combined Report under the Convention, which it lodged with the UN Committee on the Rights of the Child on 2 August 2013. Although the State Report is welcome, it should be noted that it was submitted over four years after the submission date set by the Committee – 27 April 2009 – had passed.

3. In 2011, there were 1,148,687 children under 18 years living in Ireland. This represented 25 per cent of the total population and was the highest percentage of children among the then 27 European Union Member States, where the average child population was 19 per cent. Between 2002 and 2011, the population of children in Ireland grew by 13.4 per cent.

4. Many children growing up in Ireland are experiencing a happy childhood where their rights are respected, protected and fulfilled. The Government has prioritised children with the appointment of a Minister for Children and Youth Affairs with full Cabinet status, an amendment to the Constitution of Ireland on children, and the establishment of a dedicated agency for children and families. But despite these and other positive initiatives, for a sizeable minority of children another story exists. These children continue to be marginalised within society and failed by inadequate and overstretched services and supports.

5. During the nearly ten years since the Committee’s last examination, much has changed for children in Ireland. Following years of unprecedented economic growth, in 2008 Ireland experienced an economic crisis followed by a recession which brought poverty, hunger, debt, unemployment, emigration, homelessness and anxiety about the future to the lives of many families and their children. Through a series of austerity budgets and policy decisions, the State did not adequately protect children and vital public services from the impact of the recession.

6. This Report has been prepared by the Children’s Rights Alliance on behalf of its members. A UNCRC Project Steering Group was convened comprising member organisations and other stakeholders to guide the project and help shape a national consultation involving civil society. The consultation on the Parallel Report commenced in November 2014 with a meeting held in Dublin attended by over 40 groups and individuals. Four regional consultative events were held in different parts of the country – Carlow, Galway, Cork and Limerick – attended by local and regional organisations, academics and interested individuals. Written inputs were also sought from members and other stakeholders and 36 submissions were received. A final consultation was held in April 2015.

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3 Ibid.
4 Department of Children and Youth Affairs (2012) Ireland’s Consolidated Third and Fourth Reports to the UN Committee on the Rights of the Child, Dublin: Department of Children and Youth Affairs. The State Report is required under Article 44 of the Convention.
5 The Department of Children and Youth Affairs consulted with civil society, through the Children’s Rights Alliance, in late 2012 and early 2013.
8 Ibid., p. 10.
7. Article 4 of the UN Convention on the Rights of the Child obliges States to undertake ‘...measures necessary for the implementation of the rights set out under the Convention, and [to] do so to the maximum extent of available resources with regard to economic, social and cultural rights.’

> PREVIOUS RECOMMENDATIONS FROM THE COMMITTEE

8. The UN Committee on the Rights of the Child has examined Ireland’s progress on implementing the UN Convention on the Rights of the Child on two occasions, in 1998 and 2006. Following each examination, the Committee issued a set of Concluding Observations, comprising observations and recommendations outlining necessary steps to be taken by the State to further the implementation of the Convention in Ireland. The assessment of progress made on these recommendations should bear in mind that there has been a seventeen-year interval since the first examination and a nine-year interval since the second examination.

9. Since the last examination in 2006, the State has made progress on a number of the Committee’s recommendations. The most significant advances include the amendment to the Constitution of Ireland to strengthen children’s rights; an improvement in the care of separated children seeking asylum; the raising of the minimum age of recruitment into the armed forces to 18 years; the prohibition of the practice of female genital mutilation; and an increased investment in school buildings.

10. Unfortunately, the State’s progress on implementing the remaining Committee’s recommendations varied. On some issues, steps were taken by the Government but more action is needed to impact on children’s lives – for example increasing access to non-demonstrational education; reforming adoption laws; and ending the practice of detaining children in an adult prison. In other areas, limited or little progress has been made to date. Examples include implementing the commitments to prohibit corporal punishment; ratifying the Optional Protocol on the Sale of Children, Child Pornography and Child Prostitution; addressing child poverty; ensuring all reported cases of abuse and neglect are adequately investigated and victims are supported; adopting a rights-based legal framework for meeting the needs of children with disabilities and for children’s healthcare needs; taking steps to improve the lives of Traveller children; addressing Alcohol misuse; and supporting children with mental health needs.

11. In 2006, the Committee reiterated its earlier recommendation14 that the State should undertake further action to incorporate the Convention into domestic law.15

12. Ireland operates a dualist legal system meaning that international conventions must be given further effect in domestic law to be justiciable before the Courts. Since 2006, elements of the Convention have been given legal effect, albeit in limited circumstances and settings, such as the constitutional amendment on children and through the Adoption Act 2010, the Child and Family Agency Act 2013, and the Children and Family Relationships Act 2015. While these developments are laudable, there are still significant gaps in the protection of children’s rights in Irish law. For example, corporal punishment is permissible and there is no legal framework on the child’s right to healthcare.

13. Recommendation: The Committee is urged to recommend that the State conducts an audit of its laws and judicial and administrative practices to determine where these fail to comply with the Convention and its Optional Protocols. The identified gaps should be addressed through a consolidated Children’s Rights Bill.

14. Constitutional Law: In 2006, the Committee drew attention to its outstanding 1998 recommendation6 where it called on the State to ‘take all appropriate measures to accelerate the implementation of the recommendations of the Constitutional Review Group for the inclusion of all the principles and provisions of the Convention [...] thereby reinforcing the status of the child as a full subject of rights.’

15. In November 2012, a national referendum was held and 58 per cent of voters supported the Thirty-first Amendment to the Constitution.14 Article 42A.1 of the Constitution now provides that ‘The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.’ It is hoped that this provision will open up a new line of jurisprudence on children’s rights from the Superior Courts.

16. Article 42A also clarifies how and when the State can step in to protect children and provides, for the first time, the same threshold of protection to all children, regardless of the parents’ marital status.16 It also commits the Oireachtas (Parliament) to bring in legislative reform in the area of adoption to allow a child, the opportunity of being adopted in circumstances where there has been a continuous failure on the part of the parents towards their child, and this situation is likely to continue; and to allow parents, either married or unmarried, to voluntarily place their child for adoption and to consent to the adoption of their child.17

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15 The Thirty-First Amendment to the Constitution was passed by 58 per cent of votes. Department of the Environment, Community and Local Government, Referendum Results 1937-2015, p. 82. http://www.environ.ie/en/LocalGovernment/Voting/Referenda/PublicationDocuments/ ReferendumResults19372015.pdf [accessed 9 September 2015].
17 Ibid, Article 42A.2 and Article 42A.3.
17. In addition, Article 42A commits the Oireachtas (Parliament) to legislate to ensure that the best interests of the child will be ‘the paramount consideration’ in child protection and care proceedings brought by the State, and in proceedings concerning adoption, guardianship or custody of, or access to, any child.19 In such cases, the views of the child will be heard and taken into account in the proceedings.20 While the provisions on the best interests and views of the child are welcome, it is disappointing that they are restricted to certain circumstances and only apply in judicial settings. Also, the framing of the constitutional amendment places the development of these rights in the hands of the legislature, rather than empowering the judiciary to develop jurisprudence on these issues.

18. The signing into law of the constitutional amendment was delayed for over two and a half years by a legal challenge as to whether or not Government-funded referendum material, which had been found to be unconstitutional,21 impacted the referendum outcome.22 On 24 April 2015, the Supreme Court upheld the judgment of the High Court and dismissed the appeal.23

19. Immediate action is now needed to ensure compliance of legislation and practice with Article 42A of the Constitution.

20. **Recommendation:** The Committee is urged to recommend that the State takes immediate action to vindicate children’s constitutional rights; including enacting legislation to satisfy Article 42A provisions on the best interests of the child, views of the child, and adoption. In addition, the judiciary and the legal profession should be supported to undertake studies on the interpretation of Article 42A of the Constitution in line with international best practice.

21. **Economic, Social and Cultural Rights:** In Ireland, the legislature and the judiciary have traditionally taken a conservative position on the justiciability of economic, social and cultural rights, arguing that they may have cost implications for the Exchequer, and that judicial enforceability may represent a breach of the principle of the separation of powers.24 In 2013, the Constitutional Convention recommended that economic, social and cultural rights be given enhanced protection in the Constitution.25 The Government has yet to respond to this recommendation, despite a general commitment to respond to the recommendations of the Constitutional Convention within four months.26

22. **Recommendation:** The Committee is urged to recommend that the State accepts the Constitutional Convention’s recommendation on enhancing the protection of economic, social and cultural rights in the Constitution, and holds a referendum to amend the Constitution accordingly.

23. On 22 May 2015, the People of Ireland voted in favour of an amendment to the Constitution of Ireland to provide for marriage equality for same-sex couples.27 The first same-sex marriages are expected to take place in Ireland by the end of 2015.28

24. In 2006, the Committee called on the State to evaluate and assess the achievements of the National Children Strategy to ensure that a rights-based approach to all the activities is taken, and to establish specific timeframes and budget allocations for its implementation.29

25. The National Children’s Strategy, Our Children – Their Lives,30 was independently reviewed at its mid-way point in 2006 and changes were made on foot of this review.31 The Children’s Rights Alliance carried out the only evaluation of the National Children’s Strategy at the conclusion of the ten-year period the Strategy was originally intended to cover.32 The evaluation found that progress on the first two goals (child participation and research on children) was impressive but progress on the third goal (quality services and supports for vulnerable children) was limited. The Strategy was due to end in December 2010 but was extended until the publication (in 2014) of a follow-on strategy – Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020.33

26. Better Outcomes, Brighter Futures sets out an ambitious road map for achieving five national outcomes for all children and young people up to the age of 24 years.34 The framework contains a positive vision which reflects the language of the Convention and adopts an outcomes focus.35 Seventeen of its commitments promote the implementation of outstanding Concluding Observations. However, there are also some important omissions – for example, the framework does not contain a commitment to prohibit corporal punishment. The framework contains a commitment to ensure that Ireland’s laws, policies and practice are compliant with the Convention and its Optional Protocols (Commitment 5.8); that children will have access to a remedy if their rights are breached (Commitment 5.9); and that the ethos, policies and practices of Government institutions and State-funded services (including schools) promote equal treatment and interculturalism, and incorporate measures to protect against and remedy all forms of discrimination (Commitment 5.7). Following the publication of the framework in April 2014, an Advisory Council comprising non-governmental and independent representatives was established in October 2014.

27. **Recommendation:** The Committee is urged to recommend that the State provides adequate resources to ensure the full implementation of Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020, including the development of a rights-based implementation plan that has cross-departmental support and contains an allocated budget and clearly assigned timelines.

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19. ibid, Article 42A.4.1°
20. ibid, Article 42A.4.2°
22. The petitioner, Jordan, claimed that the Government booklet, website and advertising had a material effect on the referendum outcome and interfered with the democratic process. Jordan v Minister for Children and Youth Affairs & Others (2012) [IEHC] 625.
25. The Convention on the Constitution is a forum for a broad representative of Irish society and parliamentarians from the island of Ireland. It was established in 2012 to consider and make recommendations on certain topics as possible future amendments to the Constitution. For more see https://www. constitution.ie/Documents/Terms_of_Reference.pdf.
34. The five national outcomes are that children will be: active and healthy; achieving in all areas of learning and development; safe and protected from harm; and connected, respected and contributing.
35. The vision of the Policy Framework is Our vision is for Ireland to be one of the best small countries in the world in which to grow up and raise a family, and where the rights of all children and young people are respected, protected and fulfilled, where their voices are heard and where they are supported to realise their maximum potential now and in the future.

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COORDINATION

28. Two positive developments have taken place since 2006 to strengthen the national coordinating infrastructure in relation to children. Firstly, in 2011 the Government developed the post of Minister for Children and Youth Affairs to carry full Cabinet status, and established a Department of Children and Youth Affairs. The Department focuses on harmonising policy issues that affect children in areas such as early childhood care and education, youth justice, child welfare and protection, participation, research, youth work and cross-cutting initiatives for children. The post of Minister for Children and Youth Affairs was a ‘super junior’ post from 2002 to 2011, entitling the Minister to attend Cabinet meetings but he or she did not have a vote on Cabinet decisions. The Cabinet is a committee of senior ministers responsible for controlling government policy.

29. Secondly, in 2013 a dedicated agency, Tusla – Child and Family Agency, was established with responsibility for improving wellbeing and outcomes for children. The Agency is directly accountable to the Minister for Children and Youth Affairs and brings together child welfare and protection services, family support, educational welfare, pre-school inspections, some services relating to the psychological welfare of children, and services relating to domestic, sexual and gender-based violence.

30. The Chief Executive of Tusla – Child and Family Agency has expressed concern that the Agency’s budget is insufficient to meet increasing demand for its services as well as demographic pressures. There is a danger that budgetary pressures will force the Agency to make cuts to key services, a development that could not be considered to be in the best interests of children, and that it will remain focused on crisis intervention rather than moving towards greater investment in early intervention and prevention services.

31. Recommendation: The Committee is urged to recommend that the State continues to support the work of the Department of Children and Youth Affairs and Tusla – Child and Family Agency to make cuts to key services, a development that could not be considered to be in the best interests of children, and that it will remain focused on crisis intervention rather than moving towards greater investment in early intervention and prevention services.

ALLOCATION OF RESOURCES

32. The Committee has made clear that a financial crisis should not be used as a reason to postpone action to fulfil the State’s obligations to tackle child poverty. The Committee has also recommended that the potential impact on children be made visible in budgets, pointing out that: "No State can tell whether it is fulfilling children’s economic, social and cultural rights to ‘the maximum extent of available resources’ … unless it can identify the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly.”

LEGAL AND JUDICIAL INFRASTRUCTURE

33. The national Budget in Ireland is not disaggregated to show the proportion of the budget devoted to expenditure on children. In 2014, the Government committed to explore the development of a mechanism to track and analyse expenditure on children across departments, agencies and non-governmental organisations. In addition, the Department of Social Protection has begun to carry out social impact assessments following the introduction of the national Budget.

34. Recommendation: The Committee is urged to recommend that the State disaggregates the national Budget to show the proportion of expenditure devoted to children; and puts in place measures to ensure that budgetary decisions are made with the best interests of children as a primary consideration. Relevant government departments should provide an analysis of the potential impact on their budgetary proposals on children’s rights, with a particular focus on child poverty.

35. Ireland’s legal and judicial infrastructure is inadequate to support the roll-out of legislation in compliance with the Convention and its General Comments. Ireland has an adversarial child and family law system, which often pits family members against each other or against the State unnecessarily. A commitment in the Programme for Government 2011–2016 to establish a distinct and separate system of family courts to streamline family law court processes has yet to be implemented.

36. There are serious deficiencies in the current child and family court system, where parties endure long delays and proceedings are expensive. There is geographical disparity in how child care and family proceedings are heard. In Dublin, cases are heard in a special court under the direction of six dedicated judges. Outside Dublin, child care and family proceedings are heard as routine matters by the sitting judge. This has led to inconsistencies in approaches to cases and in thresholds applied. There is no training required before judges can hear child and family cases. Delays are a persistent feature of the system, in particular for families accessing legal aid. Reform is urgently needed to ensure the rights of children and their families are protected and family law is administered with due regard to the dignity of all parties.

37. In a welcome step, the Courts and Civil Law (Miscellaneous Provisions) Act 2013 amended the in-camera rule to allow the media to report on family law and child care proceedings according to strict conditions.

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35. Ireland’s legal and judicial infrastructure is inadequate to support the roll-out of legislation in compliance with the Convention and its General Comments. Ireland has an adversarial child and family law system, which often pits family members against each other or against the State unnecessarily. A commitment in the Programme for Government 2011–2016 to establish a distinct and separate system of family courts to streamline family law court processes has yet to be implemented.

36. There are serious deficiencies in the current child and family court system, where parties endure long delays and proceedings are expensive. There is geographical disparity in how child care and family proceedings are heard. In Dublin, cases are heard in a special court under the direction of six dedicated judges. Outside Dublin, child care and family proceedings are heard as routine matters by the sitting judge. This has led to inconsistencies in approaches to cases and in thresholds applied. There is no training required before judges can hear child and family cases. Delays are a persistent feature of the system, in particular for families accessing legal aid. Reform is urgently needed to ensure the rights of children and their families are protected and family law is administered with due regard to the dignity of all parties.

37. In a welcome step, the Courts and Civil Law (Miscellaneous Provisions) Act 2013 amended the in-camera rule to allow the media to report on family law and child care proceedings according to strict conditions.
39. **Ombudsman for Children**: In 2006, in order to ensure the independent functioning of the Ombudsman for Children, the Committee called on the State to provide the Office with financial resources directly through the Oireachtas (Parliament) and the Department of Finance. This recommendation has not been acted upon. The Ombudsman for Children’s Office is funded through the Department of Children and Youth Affairs.

40. In 2006, the Committee also recommended that the Ombudsman for Children Act 2002 be reviewed and amended where necessary to strengthen the investigative powers under the Act.51 In 2012, these powers were expanded to include any public body that comes within the scope of the general Ombudsman,52 and children detained in adult prisons.53 While these developments are warmly welcomed, certain vulnerable children still cannot make a complaint to the Ombudsman for Children as the Office is precluded from hearing complaints on decisions taken in ‘the administration of the law relating to asylum, immigration, naturalisation or citizenship’.54 In addition, unlike other Ombudsmen for Children and the Irish Human Rights and Equality Commission, the Ombudsman for Children does not have a statutory function to act as amicus curiae.55

41. **Recommendation**: The Committee is urged to recommend that the State retains the Ombudsman for Children as an independent separate office to ensure a visible and dedicated focus on children. In addition, the State should transfer responsibility for the Office’s budget to the Oireachtas (Parliament), amend the Ombudsman for Children Act 2002 to provide a statutory function to act as amicus curiae; and clarify that the exclusion relating to asylum, immigration, naturalisation or citizenship relates solely to decisions on immigration status.

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42. **Equality and Human Rights Infrastructure**: In 2008, the Government significantly reduced the capacity and scope for action of the State’s human rights and equality bodies by discontinuing or reducing their funding. While austerity measures were endured across state departments and agencies, this sector suffered disproportionately.56 The Combat Poverty Agency was subsumed into the Department of Social Protection and funding for the National Consultative Committee on Racism and Interculturalism was ended and the body ceased to exist. Funding to the Equality Authority and the Irish Human Rights Commission was drastically reduced (by 43 per cent in the case of the former and 24 per cent in that of the latter)57 and the two bodies were merged in 2014 to form the Irish Human Rights and Equality Commission.58

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43. In 2006, the Committee echoed its earlier recommendation59 calling on the State to undertake further measures to develop a systematic and comprehensive collection of disaggregated data in compliance with the Convention, for use in the creation, implementation and monitoring of policies and programmes for children.60

44. Much progress has been made since 2006, including the commencement of the National Longitudinal Study of Children, Growing Up in Ireland61 publication of biennial State of the Nation’s Children reports,62 and a National Strategy for Research and Data on Children’s Lives63 and the introduction a Children’s Funded Research Programme,64 a National Child Care Information System (NCCIS),65 and an Inventory of Data Sources on Children’s Lives.66

45. In 2015, a universal ethnic identifier was introduced in primary schools.67 This is a positive development which should be extended to post-primary schools. At present, only Traveller children are asked to identify their ethnicity at post-primary level. In addition, legislation was enacted in 2014 (but has not yet been commenced) to allow for the introduction of a unique health identifier.68

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57 Ibid., para. 14.
58 Ombudsman (Amendment) Act 2012, s. 4 and s. 22. The Office of the Ombudsman was established under the Ombudsman Act 1980 with the function of investigating complaints from members of the public who believe that they have been unfairly treated by certain public bodies. Currently, its remit covers all government departments, the Health Service Executive (HSE), public hospitals and health agencies providing services on behalf of the HSE, and local authorities. See www.ombudsman.ie for further details.
60 Ibid., s. 10(2)(ae).
61 An amicus curiae or ‘friend of the court’ is a person or body not directly engaged in a case who has the role of advising the court in a case.
64 D. de Bréadún, ‘Equali...and rights bodies to merge’, The Irish Times, 3 July 2008.
67 Launched in 2007, Growing Up in Ireland is a national longitudinal study of children. See www.growingup.ie.
73 Department of Education and Skills (2014) Circular 002/2014, For use by circular: Notice to explain how some of the personal data of pupils in primary and special schools will be recorded on the proposed Primary Online Database (PODS) and how the data will be processed by the Department of Education and Skills in compliance with the Data Protection Act 1988 and the Data Protection Amendment Act 2015, p. 3.
74 Health Identifiers Act 2014. The Act is not yet commenced: it requires commencement order under s. 320.
Despite positive initiatives, gaps remain in up-to-date disaggregated data. In some cases, data is only available for adults or households. There is also a dearth of data evaluating the effectiveness of policies and services and their outcomes for children. For example, there is no comprehensive data on outcomes for young people who leave the care system. The establishment of a national longitudinal study of care leavers is an outstanding commitment under the Ryan Report Implementation Plan. The commitment to develop a set of progress indicators under Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020 is welcome and should address some critical data gaps.

Recommendation: The Committee is urged to recommend that the State takes further measures to provide disaggregated and rights-related data on children to inform evidence-based practice and policy-making.

DISSEMINATION, TRAINING AND AWARENESS-RAISING

Article 42 obliges States to ‘make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike’ and Article 44(6) obliges States to ‘make their reports widely available to the public in their own countries’.

In 2006, the Committee echoing its early recommendation, called on the State to further strengthen its efforts to ensure that the provisions of the Convention are widely known and understood by both adults and children, including through public awareness-raising campaigns and training for professionals working with children.

Since 2006 some key initiatives have taken place to promote awareness of the Convention, including ongoing education work with children undertaken by the Office of the Ombudsman for Children. However, given the lack of data in this area, it is difficult to gauge the level of awareness, or use, of the Convention among children, parents, practitioners and decision-makers, and whether relevant professional training and accredited programmes include a focus on children’s rights.

Recommendation: The Committee is urged to recommend that the State undertakes a needs assessment in relation to the training of professionals working with children on children’s rights and child-friendly practices, in particular for staff of Tusla – Child and Family Agency, health service professionals, teachers, school board members, early childhood workers, social workers, legal professionals, the judiciary and members of An Garda Síochána (Police Service).

AGE OF CRIMINAL RESPONSIBILITY

52. Article 1 defines a child as anyone below the age of 18 years unless majority is attained earlier under the law.

53. In 2006, the Committee reiterated its 1998 criticism of the low age of criminal responsibility in Ireland.41

54. The Criminal Justice Act 2006 raised the age of criminal responsibility from seven to 12 years for most criminal offences, but also provided that, in the case of allegations of serious offences such as murder, manslaughter, rape or aggravated sexual assault, a child aged 10 and 11 years may be prosecuted.42 The Criminal Justice Act 2006 also repealed Article 52(2) of the Children Act 2001 which had provided for a rebuttable presumption that children between the ages of 12 and 14 years were incapable of committing an offence.43 In the 2006 Act the rebuttable presumption was replaced with a requirement that a child under 14 years may not be prosecuted without the consent of the Director of Public Prosecutions.44 It appears that since the commencement of the 2006 Act in 2007 no child under 12 years has been convicted of a criminal offence.

55. In its 2006 examination, the Committee recommended that the provisions regarding the age of criminal responsibility which had been provided for in the Children Act 2001 should be re-instated.45

56. Recommendation: The Committee is urged to recommend that the State increases the age of criminal responsibility to 14 years for all criminal offences.

AGE OF CONSENT FOR HEALTHCARE

57. The UN Committee on the Rights of the Child has commented that in the context of health care, “[b]efore parents give their consent, adolescents need to have a chance to express their views freely and their views should be given due weight [...]. However, if the adolescent is of sufficient maturity, informed consent shall be obtained from the adolescent her/himself, while informing the parents if that is in the “best interest of the child”.46

58. The age at which a child can consent without the agreement of their parents to surgical, medical and dental procedures is set at 16 years under the Non-Fatal Offences Against the Person Act 1997.47 However, this Act only applies in the context of criminal law as a defence and is very limited in its scope — for example, it does not provide guidance on whether a child under 16 years can provide consent or whether a child aged 16 or 17 years can refuse medical treatment or social care interventions.

59. Practice across the country varies in relation to consent by those under 16 years, with some health care practitioners adopting the ‘mature minor’ test set out in the UK Gillick case, in particular in relation to prescribing contraception.48 However, this test has not been confirmed by the Irish courts. A National Consent Policy, which sets out best practice principles, was published in 2013.49 The National Consent Policy notes that only in exceptional circumstances should a health and social care intervention be provided to a child under 16 years without the knowledge or consent of their parent or guardian, following an assessment of the rights and best interests of the child.50 However, the National Consent Policy has no legal basis. The lack of clarity in this area may hinder a child’s right to healthcare and to their ability to seek confidential advice. The legal vacuum also leaves the actions of health professionals who do not seek, or who ignore, parental consent open to legal challenge.

60. The Mental Health Act 2001 sets the age of consent for mental health treatment at 18 years.51 This appears to create a distinction between the age at which a child has capacity to consent to mental health treatment as opposed to physical health treatment.52 The Law Reform Commission53 and the Mental Health Commission54 have called for clarity on this issue. The Report of the Expert Group Review on the Mental Health Act 2001 recommended that 16 and 17 year olds be presumed to have capacity to consent to or refuse treatment.55

61. Recommendation: The Committee is urged to recommend that the State puts in place a comprehensive and coherent legal framework for the child’s right to consent to, or refuse treatment, in physical and mental health and social care settings, taking into account the child’s capacity to understand the nature and consequences of treatment, and addressing issues of confidentiality.

83 Children Act 2001, s. 52(2).
84 Criminal Justice Act 2006, s. 129(4).
87 Non-Fatal Offences Against the Person Act 1997, s. 23 (1).
CHAPTER 3:
GENERAL PRINCIPLES
62. Under Article 2, States must ensure the rights set out in the Convention apply to each child without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. States are obligated to “take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.”

63. Article 40.1 of the Constitution of Ireland provides for equality before the law for all. However, the Constitution only protects against direct discrimination and the provision is not under-developed by the Courts.96 The Equal Status Acts 2000–2002 prohibits direct and indirect discrimination in accessing goods and services under nine grounds – gender, race, religion, family status, civil status, membership of the Traveller Community, sexual orientation, disability and age.

64. The Equal Status Acts 2000–2012 lists the standard required under Article 2 of the Convention. To ensure its compliance the legislation should be amended to include all of the grounds listed in the Remit of the ‘goods’, ‘services’, and ‘facilities’ list besides those of lists under the remit of ‘goods’ and ‘services’, leaving key functions outside its remit. This issue was discussed by the UN Committee on the Elimination of Racial Discrimination in 2005, who recommended that the State expand the Equal Status Act to cover the whole range of government functions including controlling duties.97

65. In addition, the equality legislation only covers government functions that fall under the remit of ‘goods’ and ‘services’, leaving key functions outside its remit. This issue was discussed by the UN Committee on the Elimination of Racial Discrimination in 2005, who recommended that the State expand the Equal Status Act to cover the whole range of government functions including controlling duties.97

66. Recommendation: The Committee is urged to recommend that the State considers reform of Article 40.1 of the Constitution of Ireland to specifically include an express prohibition of direct and indirect discrimination on named grounds, and amends the Equal Status Acts 2000–2012 to bring them in line with Article 2 of the Convention.

67. Racism: In 2006, the Committee called on the State to ensure the full implementation of the National Action Plan Against Racism with a specific focus on addressing racism, prejudice, stereotyping and xenophobia amongst children, particularly in education.98

68. On completion of the National Action Plan Against Racism 2005–2008, no follow-up policy was introduced. In 2014, a Cross Departmental Group on Integration was mandated to review Government activities on migrant integration and draft an Integration Strategy.99 It is expected that anti-racism measures will be addressed in this Strategy.100 While this proposal is welcome, racism is not just experienced by migrants, so a wider approach must be taken to address this issue. A high level of civil society consultation, including with children, in the development and implementation of such a plan will also be required.

69. In 2011, the UN Committee on the Elimination of All Forms of Discrimination recommended that racist motivation be consistently taken into account as an aggravating factor in sentencing practice for criminal offences.101 Racist behaviour, homophobia, xenophobia and offences directed at a person, either an adult or child, on the basis of his or her religion or disability are not explicitly criminalised in Irish law – except under incitement to hatred legislation.102

70. Recommendation: The Committee is urged to recommend that the State delivers and implements a suite of measures to tackle racism, including measures focused on children. An education and awareness raising initiative should be rolled out nationally, with a view to preventing racist incidents and informing children of opportunities to report and seek support. In addition, the State should enact legislation to allow the judiciary to consider a racist motive as an aggravating factor in sentencing.

71. Habitual Residence Condition: With regard to accessing social welfare benefits, the State report makes no reference to the Habitual Residence Condition. Introduced in 2005,103 the Condition restricts access to certain social welfare payments104 to those who can prove a close link to Ireland.105 This has resulted in certain children being denied access to the Child Benefit payment – a monthly cash payment and the State’s key mechanism to support children. This amounts to indirect discrimination against approximately 10,000 children as they are denied the payment due to their parents’ immigration status or migration history.106 The Habitual Residence Condition has a disproportionate impact on particular groups of children,107 including Traveller children,108 Roma children,109 and asylum seekers.110

72. Recommendation: The Committee is urged to recommend that the State reviews the Habitual Residence Condition to assess its impact on children, and to remove the Child Benefit payment from the ambit of the Habitual Residence Condition as its inclusion is inappropriate, given that it is intended to be a universal payment, access to which is not dependent on either social insurance contributions or means testing.

73. Denominational Education: In 2006, the Committee called on the State to encourage the establishment of non-denominational or multi-denominational schools. This recommendation was echoed by the UN Committee on the Elimination of All Forms of Racial Discrimination in 2011111 and by the UN Human Rights Committee in 2014.112

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96 Constitution of Ireland – Bunsreacht na hÉireann
97 Article 40.1 states: “All citizens, shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.”
100 Minister for Justice and Equality, Frances Fitzgerald TD, Legislative Measures, [10378/15], Dáil Debates, 10 March 2015.
101 Minister for Justice and Equality, Frances Fitzgerald TD, Legislative Measures, [10378/15], Dáil Debates, 10 March 2015.
105 These include Child Benefit, Jobseeker’s Allowance, Disability Allowance and Carer’s Allowance. For a full list see, Citizen’s Information Board, Citizens Information, ‘Requirements for social assistance in Ireland’, http://www.citizensinformation.ie/en/social_welfare/habitual_residence_system/
106 The Social Welfare and Pensions Act 2013 introduces five criteria to determine habitual residence: 1) the length and continuity of living in the State or another country, 2) the length and reason for any absence from the State, 3) the nature and pattern of the person’s employment, 4) the person’s main centre of interest and 5) the future intentions of the person applying for the social welfare payment.
111 UN Committee on the Elimination of All Forms of Racial Discrimination (CERD) CERD/C/IRL/CO/3-4, para. 21.
74. Census 2011 showed an increase in the number of people identifying as of ‘No Religion’ between 2006115 and 2011, as well as an increase in the number of people of religions other than the Catholic faith.116 Ninety-six per cent of primary schools in Ireland have a religious patron and 89.6 per cent are under the patronage of the Catholic Church.117 The denominational structure of the education system has led to difficulties for families who wish for their child to be educated in a multi- or non-denominational environment. These families may find themselves unable to do so as there is no option available in their geographical area, other than a denominational publicly funded school.118 In six of the 26 counties of Ireland, there is no alternative to denominational primary school provision.119

75. Since 2006, there has been some progress in providing greater choice in the school system, with a number of both primary and post-primary multi-denominational schools being opened under the patronage of Educate Together, which now has a network of 74 primary schools and three second-level schools nationwide.120 As of 2011, there were also nine primary schools of other patrons such as the Education and Training Boards.121

76. In addition, negotiations on devestment of primary school properties between the Catholic Church and the then Department of Education and Science began in 2008.122 A process of phased devestment of school properties from religious bodies was set out in 2012 by the Forum on Patronage and Pluralism in the Primary Sector.123 However, the devestment process has been very slow; to date one school has transitioned from the Church of Ireland to a multi-denominational patronage and two Catholic schools were merged.124

77. The second issue of concern is that under Irish law, a child can be denied access to a publicly funded school due to his or her religious or non-religious belief. The Equal Status Acts 2000–2012, which prohibits discrimination including on religious grounds, provides an exemption that allows schools of a particular religious ethos to give preference to students of that religious denomination, or refuse admission to students of other or no religion in order to preserve the school’s ethos.125 Proposed legislation in this area does not address this discrimination.126

78. Recommendation: The Committee is urged to recommend that the State accelerates efforts to create a national network of schools that guarantees equality of access to children irrespective of their religious or non-religious beliefs, and to encourage diversity and tolerance of other faiths and beliefs in the education system by monitoring incidents of discrimination in school admissions on the basis of belief.

79. Discrimination in School Admissions: Some schools indirectly discriminate by giving preference in school admission to the children of past pupils.127 This particularly impacts on access to education for Travellers, Roma, children in the care system and migrant children whose parents may not have attended school to second level or may not have attended school in Ireland.128 The Education (Admission to Schools) Bill 2015 aims to prohibit discrimination in admissions based on the nine grounds set out in the Equal Status Acts 2002–2012. Under the Bill, the ability to give preference to children of past pupils is preserved, although this ability is expected to be limited by regulations.129

80. Recommendation: The Committee is urged to recommend that the State removes the ability of publicly-funded schools to give preference to the children of past pupils under the Education (Admission to Schools) Bill 2015.

81. Discrimination Against Boys: The Criminal Law (Sexual Offences) Act 2006 provides for offences on the defilement of a child under 15 years and under 17 years. The offences of defilement of a child under 15 years carries a maximum sanction of life imprisonment, and consent is not considered a defence to this offence.130

82. The Criminal Law (Sexual Offences) Act 2006 differentiates between boys and girls, as only boys are liable for prosecution under its provisions. Section 5 of the 2006 Act provides that a girl under 17 ‘shall not be guilty of an offence under this Act by reason only of her engaging in an act of sexual intercourse’. The intention of this provision was to prevent the stigmatisation of young mothers and remove any potential barrier to a girl seeking medical care for fear of prosecution.131 In July 2013, the Supreme Court upheld the law in a case taken by a young man prosecuted under the 2006 Act, citing that the Courts have previously upheld the different treatment of the sexes on the basis that girls who have undergone sex reassignment, while boys do not.132

83. Recommendation: The Committee is urged to recommend that the State considers Section 5 of the Criminal Law (Sexual Offences) Act 2006 to ensure that boys and girls are treated equally under the law and the principle of the best interests of the child is applied.
86. Welcome steps have been taken to incorporate the best interests principle into Irish law. Article 42A.4.1 of the Constitution now states that provision shall be made by law for the best interests of the child to be the paramount consideration in child protection and care proceedings brought by the State, and to judicial proceedings concerning adoption, guardianship or custody of, or access to, any child.\(^{135}\)

87. The Children and Family Relationships Act 2015 provides, for the first time, comprehensive guidance to the Courts on what elements to consider when making a determination on the child’s best interests in relation to guardianship, custody or upbringiong of, or access to, a child.\(^{136}\) The definition of the best interests of the child provided in the Children and Family Relationships Act 2015 is limited to family law settings, a similar definition should be developed to guide child care proceedings, in line with the Convention and General Comment No. 14.\(^\text{137}\)

88. Under its founding legislation, Tusla – Child and Family Agency must also have regard to the best interests of the child when making decisions and performing its functions in respect of an individual child.\(^{138}\)

89. However, in many other areas, the principle does not have legal status. For example, the principle is absent from the Education Act 1998 which governs the education system. Nor does the principle inform decision-making on immigration. In 2014, the High Court held that the Minister for Justice and Equality, when making a deportation order, was not bound to consider the ‘best interests of the child’ under Article 3 of the UN Convention on the Rights of the Child as the Convention did not form part of Irish domestic law.\(^{139}\) Instead, the Judge found that consideration by the Minister of the ‘welfare of the child’ under Section 3 of the Immigration Act 1999 was sufficient.\(^{140}\) In addition, a significant amount of decision-making affecting children’s lives takes place at an administrative level outside legislation or judicial oversight. A research study published by the Ombudsman for Children found that the best interests principle was not used to guide administrative actions or decision-making to any great extent at all.\(^{141}\)

90. Recommendation: The Committee is urged to recommend that the State provides in law for a comprehensive definition of the best interests of the child principle that will apply across all relevant areas of law, in line with the Convention and General Comment No. 14. The Committee is also urged to recommend that the State conducts an audit of its laws, judicial and administrative practices and policies to identify gaps in the implementation of the best interests principle and to address these gaps without delay.

91. Article 6 obliges States to ‘recognize that every child has the inherent right to life’ and ‘to ensure to the maximum extent possible the survival and development of the child’.\(^{142}\) The Committee is also urged to recommend that the State undertakes to ensure that every child is alive from the moment of conception.

92. Infant Mortality: The rate of infant mortality in Ireland is below the European average.\(^{143}\) However a certain cohort of children has a much higher rate of infant mortality than that of the general population. The mortality rate of Travellers infants is 3.6 times the rate of the general population.\(^{144}\)

93. Recommendation: The Committee is urged to recommend that the State develops and implements a new National Traveller and Roma Health Strategy with a clear focus on infant mortality and access to maternal health care services.

94. Child Deaths: Ireland has the ninth highest rate of injury related child deaths in the European Union.\(^{145}\) From 2007 to 2012, a total of 645 children died as a result of external injuries, such as falls,\(^{146}\) poissions,\(^{147}\) drowning,\(^{148}\) farm deaths\(^{149}\) and road traffic accidents. Road traffic accidents are the leading cause of child mortality in Ireland, accounting for over 56 per cent of all child deaths.\(^{150}\) In the period 1997 to 2012, child deaths on Irish roads totalled 262, while a further 1,115 children were seriously injured.\(^{151}\) The current default speed limit for built-up areas in Ireland is 50 kilometres per hour (km/h). Reducing speed limits within built-up areas, and residential areas in particular, is a proven method of reducing child death and injury.\(^{152}\) The Government has committed to produce legislation that will allow local authorities to reduce speed limits to 30 km/h within residential areas. While this commitment is welcome, the legislation needs to be recast so as to make 30 km/h the default speed limit for built-up areas, with local authorities empowered to designate particular roads as having a higher speed limit on the basis of the outcome of safety assessments.\(^{153}\)

95. Recommendation: The Committee is urged to recommend that the State introduces a comprehensive Child Injury Prevention Action Plan and ensures that the safety strategies, including the Road Safety Strategy 2013–2020\(^{154}\) and the National Cycle Policy Framework 2009–2020,\(^{155}\) and the Farm Safety Action Plan 2013– 2018,\(^{156}\) are fully resourced and implemented; and it enacts legislation to introduce a default 30km/h speed limit for built-up areas, and enforces safer road speeds.

96. Suicide: In 2006, the Committee reiterated its earlier concern about the incidence of teenage suicide,\(^{157}\) particularly among boys, and the apparent link between underage substance abuse and the suicide rate.\(^{158}\) The Committee recommended that Ireland implement the National Strategy for Action on Suicide Prevention and the recommendations of the second report of the Strategic Task Force on Alcohol.

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135 Constitution of Ireland – Bunreacht na hÉireann, Article 42A.4.1 states that: ‘Provision shall be made by law that the resolution of all proceedings (brought by the State, as guardian of the common good, for the purpose of safeguarding the welfare and safety of any child from being injuriously affected, or from being injuriously neglected, is made in the child’s interests, and is, in studies in built-up areas – infants who are the best interests of the child the paramount consideration.’
136 Children and Family Relationships Act 2015, c. 41(133) and also Part V which sets out that the court shall have regard to all of the factors or circumstances that it regards as relevant to the child concerned and his or her family, including the child’s age and any special characteristics and the ascertainable views of the child.
137 UN Committee on the Rights of the Child (2010) General Comment No. 14 (2010) on the right of the child to have his or her best interests taken as a primary consideration: CRC/C/GC/14, (art. 3, para. 1).
138 Child and Family Agency Act 2013, s. 5.
139 Dos Santos & Ors v Minister for Justice, Ireland, UN Committee on the Rights of the Child, (2013) or ii) concerning the adoption, guardianship or custody of, or access to, any child, the best interests of the child shall be the paramount consideration.’
140 Article 6 obliges States to ‘recognize that every child has the inherent right to life’ and ‘to ensure to the maximum extent possible the survival and development of the child’.
97. On average from 2009 to 2011, Ireland had the highest rate of female youth suicide and the second highest rate of male youth suicide in the European Union. Between 2007 and 2012, 213 children and young people under the age of 19 years died by suicide. Over a thirteen-year period from 2001 to 2013, there were 19 incidents of murder-suicide (dyadic) deaths which claimed 46 lives. More than half of the victims of such deaths were children killed by a parent.  

98. The national strategy on suicide, Reach Out: The National Strategy for Action on Suicide Prevention 2005 – 2014, ended in 2014. While much progress was made, a weakness was that the Strategy was implemented in a fragmented way, with services being rolled out in an ad hoc manner across certain areas of Ireland rather than adopting a strategic approach. In June 2015, the Government launched a follow-on national strategy, Connecting for life – Ireland’s National Strategy to Reduce Suicide 2015–2020. The Strategy contains a range of commitments dedicated to children and young people. Key commitments include the implementation of relevant guidelines for mental health promotion and suicide prevention in schools, and a commitment to train those working in child protection services to deliver suicide prevention.

99. Recommendation: The Committee is urged to recommend that the State implements the new National Strategy to Reduce Suicide and ensures that it is implemented in a standardised way, and that particular attention is paid to marginalised groups of young people who have a high rate of suicide – for example, Travellers, asylum seekers and lesbian, gay, bisexual, transgender and intersex young people.

100. Article 12 obliges States to ‘assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child’.

101. In 2006, the Committee called on the State to strengthen efforts, including through constitutional provisions, to ensure children have the right to express their views in all matters affecting them and to have those views given due weight in family, education, health and community matters, including through the use of a Guardian ad Litem, in particular in cases where children are separated from their parents.

> RESPECT FOR THE VIEWS OF THE CHILD

102. Over the past decade, much progress has been made to strengthen child participation mechanisms, with the Participation, Play and Recreation and Culture Unit of the Department of Children and Youth Affairs being an innovative and key driver of activity in this area. The Unit supports initiatives such as Dáil na nÓg (Youth Parliament), Comhainnt na nÓg Youth Councils and Student Councils. In July 2015, the Government published a National Strategy on Children and Young People’s Participation in Decision-Making and a series of supporting documents. The national strategy sets out a clear roadmap including a detailed action plan to ensure children are heard in decisions made about their individual and collective lives in their communities, in education, on their health and wellbeing and in legal settings.

103. Since 2006, the principle of hearing the views of the child has been provided for in the Adoption Act 2010, the Child and Family Agency Act 2013 and the Children and Family Relationships Act 2015. The Child and Family Agency Act 2013 places an obligation on the State to consult and listen to children in the planning and functioning of the Agency and in their work with individual children and families.

104. Despite these positive initiatives, Irish law is still not fully compliant with Article 12 of the Convention and General Comment No. 12. A child has no legal entitlement to have their views heard in decision-making within the education or health sectors. For example, while post-primary schools are required under law to support the establishment of a Student Council, children in school do not have an automatic entitlement to have their views heard in decisions that affect them, including in cases of suspension or expulsion. In addition, a child has no right to complain to their school’s Board of Management as this right is restricted to persons over the age of 18. In relation to healthcare, there is no duty on professionals to consult with a child in relation to their health care and treatment, and there is no independent advocacy service for children with mental health difficulties. In addition, a child cannot independently initiate legal proceedings.

105. In a very positive development, Article 42A.4.2° of the Constitution now states that provision shall be made by law for the views of the child to be ‘ascertained and given due weight’ in care, protection, adoption and family law court proceedings. The right of a child to have his or her views heard in these settings is not adequately provided for in Irish law. Two key gaps remain.


160 G. O’Halloran, ‘Children the victim in 50% of murder suicides’, The Sunday Business Post, 15 September 2013 http://www.3ts.ie/.


164 Ibid., p 19.


167 It has supported the strengthening and expansion of structures at local and national level for involving children in decision-making and conducting consultations and dialogues with children and young people on national policy development and recruitment practices. For more information on Dáil na nÓg and Comhainnt na nÓg, visit http://www.comhainntaonog.ie/.

168 For further information see the website of the Student Council Support: http://www.studentcouncil.ie/.


170 Sol, p v.

171 UN Committee on the Rights of the Child (2009) General Comment No. 12. The right of the child to be heard, CRC/C/GC/22.

172 UN Committee on the Rights of the Child (2009) General Comment No. 12. The right of the child to be heard, CRC/C/GC/22.

173 An independent advocacy and information service exists for adults with mental health difficulties, the Irish Advocacy Network http://www.irelandadvocacynetwork.com/.

174 Pursuant to Order 15 rule 16 of the Rules of the Superior Court with similar rules in the lower courts.

175 Constitution of Ireland – Bunreacht na hÉireann, Article 42A.4.2° states that: ‘Provision shall be made by law for the views of the child to be ‘ascertained and given due weight’ in care, protection, adoption and family law court proceedings. The right of a child to have his or her views heard in these settings is not adequately provided for in Irish law. Two key gaps remain.’
106. First, a child has no automatic entitlement to have their voice heard in family law proceedings affecting them, such as guardianship, custody and access decisions. The legislative provision enacted in 1997 recognising this right was never commenced and has been ad hoc.\(^{176}\) New legislative provisions in the Children and Family Relationships Act 2015 are yet to be commenced. While the 2015 Act is welcome it does not fully satisfy the constitutional provision. 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.\(^{177}\) The cost of the expert must be borne by the parties to the cases, in effect the parent or guardian.\(^{178}\) This provision is likely to impact negatively on children in low income families who will face an additional barrier to having their voices heard.

107. Secondly, the right of a child to have his or her views heard in child care proceedings is not adequately provided for nor supported. In child care proceedings, the Child Care Act 1991 provides for the views of the child to be heard through a Guardian ad Litem.\(^{179}\) However, the appointment of the Guardian ad Litem is at the judge’s discretion if he or she is satisfied that it is necessary in the interests of the child and in the interests of justice to do so.\(^{180}\) If a child is made a party to the proceedings the entitlement to a Guardian ad Litem ceases.\(^{181}\) The Guardians ad Litem service is unregulated, availability is patchy,\(^{182}\) and there is no statutory guidance on the eligibility criteria, role, functions or payment structures.\(^{183}\)

108. Right to Vote: The right to vote is restricted to those over the age of 18 years. In 2012, the Convention on the Constitution considered whether there should be a constitutional amendment to reduce the voting age.\(^{184}\) A majority of the Convention voted in favour of lowering the voting age – 48 per cent of those were in favour of lowering the age to 16 years and 38 per cent were in favour of lowering it to 17 years.\(^{185}\) In spite of a commitment to hold a referendum on the issue, the Tánaiste (Vice Minister) confirmed that additional referenda will not go ahead in the lifetime of the current government.\(^{186}\)

109. Recommendation: The Committee is urged to recommend that the State ensures the full implementation of the National Strategy on Participation and addresses any gaps in the implementation of Article 12 and General Comment No. 12. Measures must be taken to ensure children have access to a range of mechanisms to have their voice heard in judicial settings, including, but not limited to, a reformed Guardian ad Litem service.

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\(^{176}\) Children Act 1997, s. 52.

\(^{177}\) Children and Family Relationships Act 2015, s. 32 (1) (a) and (b).

\(^{178}\) Ibid., s. 63.

\(^{179}\) A Guardian ad Litem is a person appointed by a court under s. 26(3) of the Child Care Act 1991 to represent the interests and wishes of a child who is the subject of proceedings under parts IV, IVA or VI of the Act.

\(^{180}\) Child Care Act 1991, s. 26(1).

\(^{181}\) Ibid., s. 26(4).


\(^{184}\) The Convention on the Constitution was established by Resolution of the Houses of the Oireachtas in July 2012. It was a forum of 100 people, representative of Irish society and parliamentarians from the island of Ireland, with an independent chairman. For more see https://www.constitution.ie/Convention.aspx.

109. Article 7 provides that a child must be ‘registered immediately’ after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.

110. In 1998 the Committee expressed concern about the disadvantaged situation of children born of unmarried parents due to the lack of appropriate procedures to name the father in the birth registration of the child.186

111. At present, a child of parents who are not married to each other is registered at birth under the mother’s name with the registration of the father’s name being optional. However, this situation will be changed once the Civil Registration (Amendment) Act 2014 is commenced in full. The 2014 Act introduces compulsory registration of a father’s name on a birth certificate, where the parents of a child are not married to each other, except in some exceptional circumstances.187 This is a positive development which will further the implementation of the Convention.

112. Section 9 of the Civil Registration (Amendment) Act 2014 provides that where parents fail to agree on a child’s surname to be registered, a registrar may still complete the registration even though the surname field is left blank. In cases where a surname is already registered, the registrar may leave that surname in place. The legislation provides for the registering of a surname when the child attains the age of 18, but this still means that a child may not have a surname until the age of 18 years. This is contrary to Article 7(1) which requires that registration take place immediately after birth, and gives rise to obvious practical difficulties.

113. Recommendation: The Committee is urged to recommend that the State amends the Civil Registration (Amendment) Act 2014 to stipulate a timeframe for the resolution of a disagreement regarding the child’s surname, and that it commences in full the Civil Registration (Amendment) Act 2014.

114. Article 8 obliges States to ‘undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations’, and to ‘provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity’ in cases where a child is illegitimately deprived of some or all of the elements of his or her identity.

115. Adoption: An adopted person currently has no legal entitlement to know the identity of his or her birth parents.188 An adoption certificate replaces the child’s original birth certificate and is issued in the name of the child’s adoptive family. In 1998, the Supreme Court held that the mother’s right to privacy took precedence over the child’s unenumerated constitutional right to know his or her mother.189 On reaching adulthood, those who were adopted experience difficulties in tracing their biological parents. A National Adoption Contact Preference Register exists, which facilitates contact between adopted people and their birth families.190 However, participation in the Register is voluntary and contact through the register is only initiated where both parties register.

116. Recommendation: The Committee is urged to recommend that the State enacts the Adoption (Information and Tracing) Bill 2015 to provide in legislation for a statutory adoption information and tracing service, including retrospective application, and to legislate for the introduction of open or semi-open adoptions in appropriate circumstances.

117. Gender Recognition: Gender identity is defined by the Yogyakarta Principles as ‘each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth’.191

118. In July 2015, the Government published the General Scheme and Heads of the Adoption (Information and Tracing) Bill 2015.192 The draft legislation establishes an Adoption Information Register of Ireland, providing a statutory basis for the provision of information related to prospective and retrospective adoptions, and including access for persons over 18 years to their original birth certificate. The Scheme contains safeguards to protect the rights of the birth parent but also includes a presumption in favour of the sharing of information and contains a very high threshold for withholding this information.193 It also provides that the best interests of the child is to be the deciding factor in the sharing of information on anyone under 18 years.194

119. Recommendation: The Committee is urged to recommend that the State enacts the Adoption (Information and Tracing) Bill 2015 to provide in legislation for a statutory adoption information and tracing service, including retrospective application; and to legislate for the introduction of open or semi-open adoptions in appropriate circumstances.

120. Right to Name: Article 8, para. 3, states that the child has ‘the right to receive a name and to use any name’. In Ireland, a child currently has no legal entitlement to know the identity of the child’s birth father.195 Where the mother does not know the identity of the child’s birth father, or where the mother believes that providing the information is not in the best interests of the child’s safety, Civil Registration (Amendment) Act 2014, s. 6(1)(D).

121. In July 2015, the Government published the General Scheme and Heads of the Adoption (Information and Tracing) Bill 2015.196 The draft legislation establishes an Adoption Information Register of Ireland, providing a statutory basis for the provision of information related to prospective and retrospective adoptions, and including access for persons over 18 years to their original birth certificate. The Scheme contains safeguards to protect the rights of the birth parent but also includes a presumption in favour of the sharing of information and contains a very high threshold for withholding this information.197 It also provides that the best interests of the child is to be the deciding factor in the sharing of information on anyone under 18 years.198

122. The 2015 Act fails to adequately address the position of children. Under the Act, 16 or 17 year olds are entitled to apply to the Minister for Social Protection for a gender recognition certificate. The application process is complex, involving the intervention of a court, two medical officers and the applicant’s parents or guardians. The Bill does not include a mechanism for an application to be made on behalf of a child under 16 years in circumstances where there is consent from the child’s parents or guardian. More information is needed to understand the difficulties faced by transgender, intersex or gender non-conforming children in accessing schools, health care, and social services.

187. The exemptions are: if the mother does not know the identity of the child’s birth father, or where the mother believes that providing the information is not in the best interests of the child’s safety. Civil Registration (Amendment) Act 2014, s. 6(1)(D).
189. [1998] 2 IR 321; See also Godelli v Italy [1998] ECHR 254; (Application no.33783/09).
193. Ibid.
194. The National Adoption Contact Preference Register is maintained by the Adoption Authority of Ireland. For more information see http://www.aai.gov.ie/index.php/tracing/contact-preference-register.html [accessed 3 September 2015].
197. Ibid., see pages 85, 92 and 177.
FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

123. Recommendation: The Committee is urged to recommend that the State undertakes research on the needs of transgender and intersex children and to reconsider how their needs can be met within the State’s regime to obtain legal gender recognition. Any process must provide for the child’s right to be heard, for decisions to be made in the best interests of the child and for relevant safeguards to apply.

124. Article 42 obliges States to ‘respect the right of the child to freedom of thought, conscience and religion’ and the rights and duties of the parents or guardians, ‘to provide direction on the exercise of this right in a manner consistent with the evolving capacities of the child’.

125. A child’s right to freedom of thought, conscience and religion is protected under Article 42.2.1 of the Constitution of Ireland.200 The Constitution provides for parents or guardians to provide direction on the exercise of this right. It does not provide any qualification to take account of the child’s evolving capacities in a manner consistent with the evolving capacities of the child.

126. In 2014, the UN Human Rights Committee expressed concern about the integrated curriculum within the Irish school system and the slow progress in phasing it out in schools accommodating minority or non-faith children.201 Ninety-six per cent of primary schools in Ireland have a religious patron and 89.6 per cent are under the patronage of the Catholic Church.202 Given the lack of choice of schools, parents and guardians are often forced to send their children to denominational schools,203 contrary to their own religious belief or non-belief and in breach of their constitutional rights.204 In addition, denominational schools are legally entitled to give preference in admission to children of that religious denomination. There have been reports that some parents are baptising their child in the Catholic faith solely to secure a school place for their child.205

PROTECTION OF PRIVACY AND PROTECTION OF IMAGE

130. Article 156 provides that ‘no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation. Any process must provide for the child’s right to ‘the protection of the law against such interference or attacks’.

131. Children in Court: In 2006, the Committee expressed concern that children prosecuted in higher courts are not provided with the same protection as those in the ‘Children Court’ and called on Ireland to ‘take necessary measures to extend the protection of privacy to all legal proceedings involving children’.206

198 Constitution of Ireland - Bunreacht na hÉireann: Article 44.2.4 provides that: ‘Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen’.

199 Article 42.1 of the Constitution of Ireland provides that primary and natural education of the child is the family’s right and the State is guaranteed to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children. Article 42.2 provides that: ‘Parents shall be free to provide this education in their homes or in private schools or in schools recognized or established by the State’. Article 42.3 provides that: ‘The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State’, Article 42.3.1 provides that: ‘The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State’, Article 42.3.2 provides that: ‘The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State’.

200 The UN Human Rights Committee went on to recommend that diverse school types and curriculum options are available throughout the State party. UN Human Rights Committee (2014) Concluding Observations: Ireland, CRC/C/IRL/CO/2, paras. 26–27.


202 Ninety-six per cent of primary schools in Ireland have a religious patron and 89.6 per cent are under the patronage of the Catholic Church.

203 Article 42.1 of the Constitution of Ireland and Article 42.2 of the Constitution of Ireland states that the primary and natural education of the child is the family’s right and the State is guaranteed to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children. Article 42.2 states that parents shall be free to provide this education in their homes or in private schools or in schools recognized or established by the State. Subsection 3 adds that the State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.


205 This appears to reflect Article 44.2.4 of the Constitution of Ireland which provides that: ‘Legislation providing State aid for schools shall not…’. The Constitution prohibits the public funding of religious instruction and the provision of religious education in the public schools. Article 43.3.1 of the Constitution of Ireland states: ‘No child shall be required to attend instruction in any subject which is contrary to the conscience of his or her parent.’ Two difficulties arise in relation to opting out of religious instruction. Firstly, it is often difficult in practice for schools to uphold this right as the school must provide alternative supervision for the child in place of religious education without any alternative subject-matter being taught. Opt-out measures tend to be ad hoc in nature and inconsistently applied across schools.206

206 In addition, the provision of an opt-out is undermined by the fact that religion is not just taught at specified times. It is integrated into and permeates the whole curriculum and ethos of the schools. Section 15–2(8) of the Education Act 1998 obliges schools to uphold the religious ethos of the patron often resulting in religious practices being integrated into all aspects of the school day.207

207 In 2006, the Committee expressed concern ‘that children prosecuted in higher courts are not provided with the same protection as those in the “Children Court” and called on Ireland to “take necessary measures to extend the protection of privacy to all legal proceedings involving children”.’


209 This appears to reflect Article 44.2.4 of the Constitution of Ireland which provides that: ‘Legislation providing State aid for schools shall not…’ (accessed 5 May 2015).
132. Section 93 of the Children Act 2001 provides protection for the identity of children in the Children Court. However, the 2001 Act does not extend beyond the Children Court. The Government addressed the Committee’s concern through Section 139 of the Criminal Justice Act 2006 which imposes restrictions on the identification of the child in all courts. However, these restrictions can be dispensed with if the Court is satisfied that it is necessary for example, to apprehend a child who is unlawfully at large or in the public interest.

133. Garda PULSE System: In 2014, a review by the Garda Inspectorate of crime investigation practices within the Gardaí Síochána (Police Service) found that the details of children, including infants, had been recorded on the Garda intelligence database (PULSE). The Inspectorate called for an urgent review of this practice. In some cases, it seems that the children involved were from the Traveller community. For example, in a case reported in the media, two Traveller children seeking passports for a family holiday were assigned criminal intelligence numbers. It was not clear why this information was contained on PULSE or why children were assigned criminal intelligence numbers.

134. Recommendation: The Committee is urged to recommend that the State commissions an independent review of the PULSE system as it operates in relation to children, and puts in place safeguards for the regulation of the gathering and storing of, and access to, information on children on the PULSE system.

213 Ibid.
135. Article 19 delimits States to ‘take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.’

136. Since 2006, a series of damning investigations, inquiries and reports have detailed the State’s failure to protect children from abuse and neglect. These include the Ryan Report,219 Magdalene Laundries Report,220 the Mother and Baby Homes Investigation,221 the Fermi Report,222 the Murphy Report,223 the Child Death Review224 and the Roscommon Child Care Investigation.225

137. Of particular note is the 2009 report of the Commission to Inquire into Child Abuse (referred to as the Ryan Report) which revealed horrific wrongdoings perpetrated against children living in institutions throughout Ireland mainly in the period from the 1930s to 1970, including physical, emotional and sexual abuse and gross neglect. These offences against children were not effectively reported, investigated or prosecuted.226

138. In 2006, the Government appointed Geoffrey Shannon as the Special Rapporteur on Child Protection. Professor Shannon has to date produced seven annual reports, which audit legal developments relating to the protection of children and assess what impact, if any, litigation in national and international courts may have.227 These reports provide an invaluable analysis of the gaps in Irish law and practice in relation to the child’s right to protection from harm.

139. Response to Child Protection Referrals: In 2006, the Committee echoed its earlier recommendation228 in calling on Ireland to ‘enshrine that all reported cases of abuse and neglect are adequately investigated and prosecuted.’229

140. The delay in responding to child abuse referrals continues to be of serious concern. In May 2015, of the 28,194 child protection cases ‘open’ to social work teams across the country, more than a quarter (7,455 cases) had not been allocated a social worker.230 This backlog included 1,731 cases deemed ‘high priority.’

141. The Minister for Children and Youth Affairs,231 the Ombudsman for Children232 and the Health Information and Quality Authority (HIQA)233 have each raised concerns about the failure to allocate a social worker to child protection and welfare referral cases, or to give them timely access to child protection and welfare interventions.

142. Recommendation: The Committee is urged to recommend that the State ensures that Tusla – Child and Family Agency is adequately funded and staffed to assay child protection referrals in a timely and appropriate manner, assign each case a social worker, and take the necessary steps to protect the child from abuse or neglect.

143. 24-Hour Social Work Service: In 2006, the Committee called on Ireland to ‘extend the social work services provided to families and children at all hours to a seven day, 24-hour service.’234 There is no national out-of-hours social work service in Ireland. However, there is a national emergency place of safety service, comprising two services operated by Tusla – Child and Family Agency.235 These services are not directly accessible by members of the public; access is organised through the Gardaí Siochána (police service). Tusla – Child and Family Agency has developed a business case for a national Emergency Out of Hours Social Work Service but a service has yet to be developed,236 and it is understood it would continue the model of being only accessible through the Gardaí Siochána.

144. Recommendation: The Committee is urged to recommend that the State ensures that Tusla – Child and Family Agency operates a national seven day, 24-hour social-work service for children and families at risk.

145. Vetting: In 2006, the Committee called on Ireland to ‘ensure that evaluation of all employees and volunteers working with children is undertaken prior to recruitment.’237 The National Vetting Bureau (Children and Vulnerable Persons) Act 2012 places the National Vetting Bureau on a statutory footing and permits the Bureau to collect and exchange ‘relevant’ or ‘suspicious’ criminal records that indicate that there is reason to believe that a person may harm or attempt to cause harm to children or vulnerable adults. The legislation was enacted in December 2012, but has yet to be commenced.238 This means that the vetting of staff working with children and vulnerable adults is confined to ‘hard’ information relating to criminal convictions.

Concern exists that the weak level of vetting in Ireland is placing children at risk and may also attract people who wish to commit offences against children or vulnerable adults from jurisdictions that operate a more robust vetting system.239

146. The National Vetting Bureau (Children and Vulnerable Persons) Act 2012 does not cover all those working with children. For example, the vetting of teachers is not retrospective and certain childcare workers, including those caring for fewer than four children, are not required to be vetted under the legislation.240

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147. Identification of Domestic Violence: Children in Ireland continue to be affected by domestic violence. In 2013, over 8,000 women and under just 3,500 children sought support from domestic violence services in Ireland.246 There is a chronic shortage of refuge accommodation. In 2013, requests for access to emergency refuge accommodation were declined on 3,494 occasions, because refuges were full.247 One service, Sons of the Harp, operating in the greater Dublin area, reported that in 2013 it was able to provide refuge in only one-fifth of the cases where women sought refuge for themselves and their children.248 Despite the dearth of refuge accommodation, domestic violence services have experienced significant funding cuts,249 leading to the closure of a number of services.250 Difficulties also persist within some refuges in terms of non-availability of play facilities251 and non-admission of teenage boys.

148. Prevention of Domestic Violence: The Committee is urged to recommend that the State continues the National Vetting Bureau Act 2012 as a matter of urgency to address the weak system of vetting currently in place. The 2012 Act should be amended to ensure it covers all those working directly with children, including all teachers and childminders.

150. The Children First Bill 2014, currently being debated in the Oireachtas (Parliament), places aspects of the 2011 Children First: National Guidance for the Protection and Welfare of Children on a statutory footing. The proposed legislation places a legal duty on organisations providing specified services for children to carry out a risk assessment and prepare an organisation-specific Child Safeguarding Statement.252 It also requires ‘mandated persons’ to report child protection concerns which meet a defined threshold.253 Although the Bill is welcome, the sanctions for those who fail to comply with its provisions are weak. The only new sanction introduced under the Bill is the establishment of a non-compliance register to ‘name and shame’ organisations which do not have a child safeguarding statement.254 The Bill provides no sanction to address a breach of its provisions by a mandated individual. A failure by a mandated person to report a child protection concern will therefore need to be addressed through existing employment legislation or a sanction by a professional body.

153. The Children First Bill 2014 and the Domestic Violence Bill 2014 both aim to strengthen the Children First Bill 2014 and enact it as a matter of urgency; and recommends the establishment of a non-compliance register to ‘name and shame’ organisations which do not have a child safeguarding statement.252 The Bill provides no sanction to address a breach of its provisions by a mandated individual. A failure by a mandated person to report a child protection concern will therefore need to be addressed through existing employment legislation or a sanction by a professional body.

152. Recommendation: The Committee is urged to recommend that the State strengthens its supports to ensure victims of domestic violence can access safe emergency accommodation that is family friendly, and introduces a multi-agency risk assessment, risk management framework and infrastructure for victims of domestic violence and their children. The definition of homelessness in housing legislation should be expanded to include victims of domestic violence who have been forced to leave their homes.

151. Recommendation: The Committee is urged to recommend that the State strengthens its supports to ensure victims of domestic violence can access safe emergency accommodation that is family friendly, and strengthens the Children First Bill 2014 and enacts it as a matter of urgency; and recommends the establishment of a non-compliance register to ‘name and shame’ organisations which do not have a child safeguarding statement.252 The Bill provides no sanction to address a breach of its provisions by a mandated individual. A failure by a mandated person to report a child protection concern will therefore need to be addressed through existing employment legislation or a sanction by a professional body.
MEASURES TO PROHIBIT AND ELIMINATE ALL FORMS OF HARMFUL TRADITIONAL PRACTICES

157. Article 24(3) obliges States to ‘take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children’.

158. Female Genital Mutilation: In 2006, the Committee expressed concern ‘that some immigrant communities continue to practice female genital mutilation (FGM) in Ireland’ and recommended that the State prohibit FGM by law, implement targeted programmes to sensitize the population about its extremely harmful effects, and mobilise relevant partners to prevent the practice of FGM.258

159. In a very welcome development, the Criminal Justice (Female Genital Mutilation) Act 2012 provides for the first time in Irish law an offence of performing or attempting to perform the act of FGM,4 and creates an offence of removing or attempting to remove a girl or woman from the State for the purposes of undergoing FGM. Other progress includes the production of State-funded guidelines for schools in 201445 and the opening of a specialist health clinic in 2014.46 However, research has shown that knowledge among healthcare workers of the referral procedure for FGM is low.259

160. Recommendation: The Committee is urged to recommend that the State implements targeted programmes to raise awareness of female genital mutilation (FGM), in particular among health care workers, and that it ensures support for victims of FGM through the provision of specialist health services.

161. Early and Forced Marriage: The Committee has commented that States that permit children under 18 years to marry, and thus be considered an adult in law, deprive the child of the special protection measures to which he or she is entitled under the Convention. It recommends that States increase the minimum age for marriage to 18 years.47 The UN has also acknowledged that as a matter of respecting the child's evolving capacities and autonomy in making decisions that affect his or her life, in exceptional circumstances, a marriage of a mature, capable child below the age of 18 may be allowed. It notes that in such cases the child must be at least 16 years old and that such decisions be made by a judge based on legitimate exceptional grounds, defined by law, and on the evidence of maturity without deference to cultures and traditions.48

162. The age of majority—the age of which a person normally becomes an adult in law—is attained at 18 years in Ireland.49 The Family Law Act 1995 defines the legal age at which a person can marry as 18 years.50 However, in special circumstances, a Court Exemption Order may allow a marriage to proceed if one or both parties are under the age of 18.51 There is no minimum age set in law below which a marriage cannot take place. It should be noted that the age of sexual consent is set at 17 years irrespective of the individual’s gender or sexual orientation under the Criminal Law (Sexual Offences) Act 2006.52

163. In 2013, a case involving the alleged forced marriage of a 16 year old girl came before the Irish High Court.53 This case highlighted the fact that Irish law does not define, penalise or address the issue of forced marriage.54 Legal reform is needed to address this gap, with a particular focus on circumstances where one or both parties are under 18 years.

164. Recommendation: The Committee is urged to recommend that the State amends Section 33 of the Family Law Act 1995 to ensure that a marriage cannot proceed if either party is under 18 years. In addition, legislation should be enacted to define and penalise instances of forced marriage, with more severe penalties in circumstances when either party is under 18 years.

SEXUAL EXPLOITATION AND SEXUAL ABUSE

165. Article 34 provides that the State must protect children from all forms of sexual exploitation and sexual abuse.

166. In 2006, the Committee called on the State to ‘collect information and undertake research on child prostitution, pornography and other forms of sexual exploitation and sexual abuse of children with a view to developing targeted measures, and requests the State party to provide detailed information in that respect in its next report’.55 Research and data gaps persist in relation to child prostitution, pornography and other forms of sexual exploitation and abuse.

> 40 Parallel Report to Ireland’s Third and Fourth Combined Report under the UN Convention on the Rights of the Child

> 41 Parallel Report to Ireland’s Third and Fourth Combined Report under the UN Convention on the Rights of the Child
Since 2006, a number of legislative provisions have been introduced to provide greater protection to children from sexual abuse.272 Despite these legal reforms, gaps remain. Ireland has not yet ratified the Optional Protocol on the Sale of Children, Child Pornography and Child Prostitution (see Chapter 10). In addition, Ireland signed the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention) in 2007,273 and signed the Council of Europe Convention on Cybercrime (the Budapest Convention) in 2002. However, it has failed to ratify either Convention.274 In addition, Ireland has yet to fully transposed the EU Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography into national law.275

In September 2015, the Government published the Criminal Law (Sexual Offences) Bill 2015.276 The Bill introduces a number of new offences with severe sanctions to protect children from sexual exploitation. It creates new offences in relation to obtaining or providing a child for the purpose of sexual exploitation (s. 3); an invitation to sexual touching (s. 4); sexual activity in the presence of a child (s. 5); causing a child to watch sexual activity (s. 6); meeting a child to groom them for sexual exploitation (s. 7); use of information and communication technology to facilitate exploitation (s. 8). It also strengthens the law combating child prostitution, child pornography and incest.277 Part 6 of the Bill extends the criminal law of Ireland to sexual acts involving children done outside this jurisdiction by Irish citizens or persons ordinarily resident in Ireland. These are welcome developments which will significantly strengthen the protection of children from criminal law from sexual exploitation.

Recommendation: The Committee is urged to recommend that the State enacts the Criminal Law (Sexual Offences) Bill 2015 and adequately resource the Garda Síochána (Police Service) to implement its provisions; and ratifies the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention); and the Council of Europe Convention on Cybercrime (the Budapest Convention).

Article 37 obliges States to ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

Corporal Punishment: In 2006, the Committee reiterated its previous recommendation278 and called on Ireland to ban corporal punishment outright in all settings, to sensitize and educate parents and the general public about the unacceptable nature of corporal punishment, to promote positive, non-violent forms of discipline as an alternative to corporal punishment, and to take into account the Committee’s General Comment No. 8.279 The Committee’s recommendation was reiterated by the UN Committee against Torture in 201130 and the UN Human Rights Committee in 2014.31 In 2011, Ireland partially accepted a recommendation at the UN Human Rights Council Universal Periodic Review to end corporal punishment for all children.32

In 2015, Ireland was found to be in breach of Article 17 of the European Social Charter, given its failure to explicitly prohibit corporal punishment in the home.33 This follows an initial finding against Ireland by the European Committee of Social Rights in 2003.34

In Ireland, corporal punishment is prohibited as a disciplinary measure in a range of settings,35 and the Children Act 2001 provides for a broadly framed offence of child abuse.36 However, the defence of ‘reasonable chastisement’ still exists in common law so it remains permissible for parents and others in the home as well as childminders who are caring for fewer than four children at home, to use corporal punishment.37 The National Standards for Foster Care provide that corporal punishment is unacceptable and prohibited.38 However, these Standards do not have the force of law and are not currently in operation. The law in Ireland is thus in breach of Article 19 and the Committee’s General Comment No. 8.39

European Committee of Social Rights, Proceeding of the Expert Committee on Social Rights, Ireland, Complaint no. 18/2003.
Corporal punishment is prohibited in penal institutions (Section 132(2) of the Criminal Law Act 1997) and children detention schools (Section 201 of the Criminal Law Act 2006), as amended in 2007, in reformatory schools (Section 122(2) of the Criminal Law Act 1907), in schools (improvisation of teachers’ remedy from criminal prosecution under Article 24 of the Non-Fatal Offences Against the Person Act 1997), and in the Special Care residential settings.
Section 246 of the Children Act 2001 states: ‘There shall be an offence for any person who has the custody, charge or care of a child unlawfully and with intent to cause him or her unnecessary suffering or injury.”
Children who are found by the children’s hearing Tribunals that they are living in a family and are not more than three children of different families are exempt from the Child Care (Pre-school Services) Regulations 1996 and (Amendment) Regulations 1997 under Section 58 of the Children Act 1995 and so are not covered by the prohibition of corporal punishment in these Regulations.
UN Committee on the Rights of the Child (2008) General Comment No. 8. The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 29, 37, para. 2, and 2, inter alia).
174. The State Report comments that ‘a wide variety of parenting courses are provided throughout Ireland’[290]. However, a 2013 survey found that two-thirds of those surveyed did not believe that there was enough information available to parents and guardians on alternative methods of discipline.[291] The survey also found that 73 per cent of participating adults believed that slapping was not an effective way to discipline a child.[292] The National Longitudinal Study, Growing Up In Ireland, found that 45 per cent of mothers had smacked their child as a discipline strategy - 32 per cent saying they did so ‘rarely’ and 13 per cent ‘now and again’ – with the frequency level increasing in lower income households.[293]

175. The lack of progress on prohibiting corporal punishment is unacceptable. The current legal position undermines progress made in other areas, and is at odds with Article 42A of the Constitution of Ireland.

176. **Recommendation:** The Committee is urged to again recommend that the State bans corporal punishment outright in all settings; sensitisises and educates parents and the general public about the unacceptable nature of corporal punishment; and promotes positive, non-violent alternative forms of discipline.

177. **School Discipline:** Article 28(2) obliges States to take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.

178. ‘Safe spaces’[294] are used in schools for short periods of time to provide support to the child or to manage pupil behaviour.[295] In 2014, a media source documented a number of incidents of inappropriate use of such spaces in schools with Autism Spectrum Disorder Units, where children as young as eight were locked into ‘safe spaces’. In one reported instance, a child was locked alone in such a space without supervision for up to five hours on two consecutive days and injured himself when trying to escape.[296] A teachers’ union in Ireland has recommended that training in the use of such spaces be part of professional development for teachers and Special Needs Assistants.[297]

179. **Recommendation:** The Committee is urged to recommend that the State introduces regulations on the appropriate use of ‘safe spaces’ within educational settings; and undertakes research on children’s experience of school discipline.

180. Article 39 obliges States to take all appropriate measures to promote physical and psychological recovery and social reintegration of child victims of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment that fosters the health, self-respect and dignity of the child.

181. In 2006, the Committee called on Ireland to [ensure [...] that victims of abuse and neglect have access to counseling and assistance with physical recovery and social reintegration].[298]

182. Ireland continues to be the only European Union Member State that has not yet ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.[299]

183. Ireland is intending to opt into the EU Directive on Victims which must be transposed into law by 16 November 2015. In July 2015, the Government published the General Scheme of the Criminal Justice (Victims of Crime) Bill 2015, placing the rights of victims on a statutory footing for the first time in Irish law. The Scheme contains many positive provisions, including the presumption that all child victims need special protection measures. However, the Bill is not fully compliant with the rights afforded by the Directive. Significantly, the Bill fails to address the requirement under Article 8 of the Directive for the mandatory provision of confidential victim support services free of charge both before, during and for an appropriate time after criminal proceedings.

184. In addition, the inclusion of the principle of the best interest of the child within the General Scheme is weak. The Scheme includes two references. The Preamble provides that the best interests of a child victim will be regarded ‘as a primary consideration by the criminal justice system’, and Head 17(2) provides that the special protection measures required by a child victims will be determined in the best interests of the child. However, the Preamble does not itself prescribe binding principles; rather it is a frame of reference by which the provision are to be interpreted. Hence, the best interests of the child principle should be incorporated into the legislation in its own right. Other areas of concern are that the Scheme fails to include measures on the appointment of a special representative where parents are excluded from representing the child as a victim;[300] and there is no requirement to train members of the legal profession.[301]
185. Within the criminal justice system, supports for child victims of abuse, neglect and other crimes have in many cases been inadequate. While there have been positive changes in Garda (police) investigative practices, a 2014 Garda Inspectorate Report found delays of up to six months in the interviewing of child victims or witnesses of sexual or physical abuse or serious neglect.\(^3\) The courts have also been found to be ill-equipped to deal with this special category of victim, in terms of long delays, inadequate facilities and the lack of training for lawyers and judges.\(^4\) Long delays in bringing cases forward\(^5\) can also affect a child’s ability to recall events.\(^6\)

186. Child victims continue to experience delays in obtaining counselling support and assistance because services are underfunded. For example, in 2015, a media report highlighted the case of a child who had waited for two years to access counselling.\(^7\) The only counselling service for child victims of sexual abuse in Dublin, the CARI centre, had a waiting list of 10 families in January 2015.\(^8\) For victims of sexual assault under 14 years, there is limited access to specialist services, with just one State service, located in Galway.\(^9\) Victims over 14 years are entitled to access specialist integrated Sexual Assault Treatment Units (SATU), but these are unavailable in most parts of Ireland.\(^10\)

187. In September 2015, the Government published the Criminal Law (Sexual Offences) Bill 2015 which contains a number of amendments to the Criminal Evidence Act 1992 on child victims giving evidence and on the circumstances in which an accused can personally cross examine a child witness. The Scheme also regulates the disclosure of third part counselling or therapy records in sexual offence trials. These provisions are welcome, but further investment in court facilities and training for the legal profession will be needed. For example, although video link evidence is admissible, the availability of technology in all courts across the country has been restricted by financial constraints.\(^3\)

188. Recommendation: The Committee is urged to recommend that the State enacts the Criminal Justice (Victims of Crime) Bill 2015 and amends the Criminal Evidence Act 1992 to put in place robust legal protection for child victims. The State should also conduct a review of how the Garda Síochána (Police), Director of Public Prosecutions, courts and health services respond to the needs of child victims, and ensure that it devotes the additional resources needed to ensure a prompt, appropriate and comprehensive response to the needs of child victims.

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\(^{310}\) RTÉ Morning Ireland (March 2015) and K. O’Brien, “Abused Boys Wait Two Years for Counselling”, Irish Examiner, 21 March 2015.

\(^{311}\) Communication received by the Children’s Rights Alliance from CARI on the 27 January 2015.

\(^{312}\) There are only six SATU clinics in Ireland (Cork, Dublin, Galway, Mullingar, Drogheda and Waterford). Source: Health Service Executive, Sexual Assault Treatment Unit, http://www.hse.ie/satu/ [accessed 28 September 2015].

FAMILY ENVIRONMENT

189. Article 5 obliges States 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 the rights recognized in the present Convention’. 

190. In 2006, the Committee welcomed the phased extension of paid maternity leave. In Ireland, mothers who are employed or self-employed are entitled to statutory paid Maternity Benefit, provided they have the required number of social insurance contributions. The payment was extended in 2007 to 26 weeks (or 24 weeks for adoptive leave); mothers can also avail of a further 16 weeks of unpaid maternity or adoptive leave. However, the taxation of Maternity Benefit introduced in 2013 and the reduction in the rate for some mothers from 2014 have led to fears that mothers will be forced to return to work early due to financial pressure.

191. Unpaid parental leave is provided for in law; each parent in employment is entitled to avai of 18 weeks of unpaid parental leave for each of their children. Total parental leave (comprising paid Maternity Benefit, unpaid maternity leave and unpaid parental leave) is below the European Union average of parental leave entitlements. Furthermore, Ireland is one of only nine EU countries that have no provision for statutory paid paternity leave.

192. In July 2015, an Interdepartmental Working Group recommended that the State provide for an incremental expansion of paid parental leave for the first year of a child’s life through extra weeks of paid leave and benefits for mothers or fathers immediately after existing maternity entitlements.

193. Recommendation: The Committee is urged to recommend that the State enacts comprehensive legislation on family leave entitlements providing at least a period of two weeks’ paid paternity leave, and a new entitlement to six months’ paid Family Leave to be taken at the end of parental leave. This would provide parents with 12 months’ paid leave after the birth of their child. In addition, the right to request flexible working arrangements should be extended to all parents with children under six years, not just parents returning to work after parental leave.

PARENTAL SUPPORT AND THE PROVISION OF CHILDCARE SERVICES

194. Article 18 obliges States to give appropriate assistance to parents in the performance of their child-rearing responsibilities; they have the duty to ensure the development of institutions, facilities and services for the care of children. The State should ‘take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible’. 

195. Childcare costs for parents in Ireland are among the highest in the OECD. Depending on the income level and composition of a household, full-time childcare can account for over 40 per cent of household income. The high cost of childcare is acting as a barrier to employment and training for some parents, and preventing parents from exiting poverty.

196. The majority of childcare services are run by private providers. The State gives capital grants and regulates these providers; it also offers a free one-year seasonal placement of early education for all children of pre-school age — the Early Childcare and Education (ECCE) Scheme. Centre based early years settings are regulated and inspected. Certain childcare providers are not covered by regulations — those who look after fewer than four pre-school children, including those who provide after-school care to an unspecified number of children. In addition, there are no regulation or inspections of after-school services.

197. Low income families face barriers in accessing subsidised childcare and after-school care. The largest subsidy scheme, the Community Childcare Subvention, is only available on an ad hoc basis through some community-based (not-for-profit) childcare services; furthermore, places can generally only be accessed in September/October of a given year.

198. Recommendation: The Committee is urged to recommend that the State extends the Community Childcare Subvention Programme to all early-years’ services; reforms the administrative procedures so that families can take up subsidised places at any time of the year; and ensures all paid childcare providers are regulated.
Family Supports: In 2006, the Committee welcomed a number of developments regarding family support structures, but expressed concern that these structures lack a broad-based and child-centred approach and that the responsibility for support programmes and the delivery of support services is allocated to different governmental authorities. The Committee called on the State to undertake an extensive review of the support services provided under the different governmental departments to assess the quality and outreach of these services and to identify and address shortcomings.331

In 2014, the Family Support Agency was transferred to Tusla – Child and Family Agency. The statutory functions of the new Agency include ensuring the effective functioning of families, and the delivery of ‘preventative family support services’. Another major development is the establishment of Children and Young People’s Services Committees (CYPSC) to coordinate relevant services in every county in Ireland. Major investments have also been made in prevention and early intervention initiatives by Government and through philanthropic funding for families experiencing difficulties.332

The National Policy Framework for Children and Young People includes a cross-cutting transformational goal obliging Government to support parenting to parent confidently and positively, and see this as one of the primary, universal and most effective supports that the State can provide along the continuum of family support. To implement this goal, the Government developed a High Level Policy Statement on Parenting and Family Support to guide the provision of universal evidence-informed parenting supports. The Statement provides the policy context for considerable work in the area being undertaken by Tusla – Child and Family Agency.

These developments are very welcome and important steps in implementing the Committee’s previous recommendations. However, the Children and Young People’s Services Committees lack a legislative basis. Furthermore, the High Level Policy Statement on Parenting and Family Support does not have an accountability or enforcement mechanism. Without such an accountability mechanism, there is a danger that family support will not receive the same weighting as child protection by designated agencies. The High Level Policy Statement could be used to develop a set of metrics to be monitored by the Department of Children and Youth Affairs.

Recommendation: The Committee is urged to recommend that an accountability mechanism be put in place by the State for the implementation of the High Level Policy Statement on Parenting and Family Support. The State should also invest in universal and targeted parenting supports and adopt a ‘whole of government’ commitment to incrementally realign resources to prioritise proven prevention and early intervention approaches rather than crisis-driven services.

> Separation from Parents

Article 9 obliges States to ensure that a child shall not be separated from his or her parents against their will, except where ‘such separation is necessary for the best interests of the child’, and to provide ‘an opportunity for all interested to participate in the proceedings and make their views known’. Article 9(3) also obliges State to respect the rights of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.

In line with Article 42A.4.1° of the Constitution of Ireland, the Children and Family Relationships Act 2015 provides for the best interest of the child to be paramount in any decisions on guardianship, custody or upbringing of, or access to, a child. The 2015 Act provides comprehensive guidance to the Courts on the best interest principle. It also makes provisions in relation to hearing the views of the child. These are positive developments. However, the provisions on the voice of the child do not go far enough to comply with Article 42A of the Constitution and under Article 12 of the Convention. For further discussion of this issue, see Chapter 3 of this report.

There is no dedicated family court division and families experience long delays, inadequate facilities and poor case management and there is also a lack of specialist family law judicial training. Reform has been advocated for many years. To support the implementation of the Children and Family Relationships Act 2015 a court welfare service is needed to provide a mechanism appropriate for the carrying out of assessments of the child’s welfare and best interests, and ascertaining his or her views, as well as carrying out family and risk assessments, as required. Additional services are also needed to support children and families, such as mediation services and child contact centres.

The Children and Family Relationships Act 2015 provides for six types of guardianship,335 either assigned by court or by statutory declaration.336 The Act did not establish a register to collate the existence of a guardianship arrangement and what level of guardianships rights have been assigned to an individual. The absence of such a register means that, for example, in circumstances where guardianship is achieved through the parties voluntarily signing a statutory declaration, if the statutory declaration document is lost, withheld or destroyed, then no official record of the existence of the guardianship agreement is available.337

Recommendation: The Committee is urged to recommend that the State commence the Children and Family Relationships Act 2015 and takes steps to support its roll out by establishing a specific family court system, a comprehensive court welfare service and a guardianship register.

332 Ibid., para 29.
333 Child and Family Agency Act 2013, s. 8.
334 Children and Young People’s Services Committees aim to improve outcomes for children and young people, under 24 years, through local and national interagency working. They provide a forum for joint planning to ensure that children, young people and their families receive improved and accessible services.
> FAMILY REUNIFICATION

209. Article 10 obliges States to deal in 'a positive, humane and expeditious manner' with family reunification applications and that such applications should entail no adverse consequences for the applicants and for the members of their family.

210. In 2006, the Committee called on Ireland to consider reviewing the definition of family in the Refugee Act 1996, to consider establishing a legal framework for family reunification outside situations under the Refugee Act, and to ensure that the principle of the best interests of the children is always a primary consideration when making decisions involving children.

211. There has been no progress on family reunification since 2006. The provisions of the Refugee Act 1996 relating to this issue have not been reviewed or amended and there is no legal framework for family reunification outside situations under the Refugee Act. Hence, family reunification is still confined to four categories – the refugee’s spouse; parents of an unmarried refugee who is under the age of 18; the child of a refugee where that child is under 18 and unmarried; and, at the discretion of the Minister for Justice and Equality, a 'dependent member of the family of a refugee'. Applications for family reunification for migrants are made to the Irish Naturalisation and Immigration Service (INIS) and the decision is made at the discretion of the Minister for Justice and Equality. The time-frame for processing a migrant family reunification visa and residence applications can be up to a year.346

212. There is no independent appeals mechanism for those whose application has been refused. The only remedy is to apply to the High Court for a judicial review of the decision. This is an inadequate appeals mechanism as a judicial review is restricted to examining the lawfulness of the decision-making process. It cannot examine the merits of the decision made. Furthermore, an application to the High Court is an expensive process and civil legal aid is not routinely available for these proceedings.347

213. Recommendation: The Committee is urged to recommend that the State enacts rights-based legislation on family reunification to provide wide protection for migrant and refugee families to reunite; ensures the best interests of the child is a primary consideration in such decisions; and establishes an independent appeals mechanism to provide an inexpensive and effective process for applicants.

> CHILDREN DEPRIVED OF FAMILY ENVIRONMENT

214. Article 20 provides that ‘[a] child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.’

215. There were 6,441 children in care as of May 2015.350 Of all children in care, 5,943 (93 per cent) were in foster care placements, 1,833 of which were in the foster care of a relative.351 Of the 468 children in care but not in foster care, 345 were in residential care, 105 were in ‘Other Care placements’, 16 were in Special Care, and four were in residential ‘Out of State Secure Placements’.352

216. National Standards: In 2006, the Committee called on Ireland to consider measures to create a statutory basis for the Social Services Inspectorate to function and extend its mandate to all children without parental care, irrespective of the care required.353 The Health Act 2007 placed the Social Services Inspectorate (SSI) on a statutory footing with the Health Information and Quality Authority (HIQA). HIQA inspects children’s foster care homes,354 children’s residential centres,355 child protection services teams,356 social services for children with disabilities357 and Children Detention Schools.358 However, HIQA does not inspect all residential care settings for children; it inspects all State-run residential centres. Tusla – Child and Family Agency inspects, registers and monitors non-statutory children’s centres.359 It is an outstanding recommendation of the Ryan Report Implementation Plan that HIQA would undertake independent inspections of all children’s residential centres and foster care.360

217. Recommendation: The Committee is urged to recommend that the State commences the relevant provisions of the Health Act 2007 to enable the Health Information and Quality Authority to inspect all residential services for children to ensure all services are independently inspected.

218. Ireland has no national strategy on the prevention of child abuse. Evidence points to the need to strengthen our prevention, early intervention and family support services to either better support children to remain at home or to remove children into care earlier for safety or welfare.361 For example, a report into the deaths of 196 children in care, aftercare or known to the social services which revealed a litany of State failures, found that in 12 of 36 cases where a child in care had died there was evidence of a delay in taking the child into care.362 There also appears to be geographical differences in the use of Supervision Orders (where the child remains at home).363

219. The Child Care Law Reporting Project has highlighted that a disproportionately high number of the child care proceedings coming before the courts are in respect of children from Traveller and ethnic minority communities and children with special needs.364 It has also noted that there is a significant regional disparity in the numbers of children taken into care under care orders.365 The Project also noted that a high proportion of parents (one in six) coming before the courts on child care proceedings were identified as suffering from cognitive impairment or mental illness.366

347 Refugee Act 1996.
348 Immigrant Council of Ireland (2013) Family Reunification: A Barrier or Facilitator of Integration? Ireland Country Report, Brussels: European Commission, p. 56; see more generally chapters 4 and 5. 44.
349 Ibid. p. 44.
351 Ibid. pp. 1–3.
357 Health Information and Quality Authority (2013) National Standards for Residential Services for Children and Adults with Disabilities, Dublin: HIQA.
363 Ibid.
365 Ibid. p. 18.
366 Ibid. p. 25.
220. Recommendation: The Committee is urged to recommend that the State reviews the use of supervision orders; and invests in intensive child and family support programme aimed at children at high risk of placement in care.

221. There are significant gaps in the provision of supports to children in care. Regulations require that all children in care should have an allocated social worker. Of the 6,441 children in care at the end of May 2015, however, 551 (9 per cent) did not have an allocated social worker. The high turnover of social work staff means that children in care may experience a succession of social workers which hinders the possibility of their benefiting fully from the social work service and may result in a lack of continuity in their care. For example, one social worker over a ten-year period and another had four over a five month period.

222. A child in care has a right to have access to his or her parents, in practice, the level of access is influenced by available resources within Tusla – Child and Family Agency. Anecdotal evidence points to a reduction in access visits for some children in care.

223. A 2014 HIQA report on foster care services in Carlow, Kilkenny and South Tipperary found 45 children – the majority with complex needs – were waiting on psychology and mental health services, with some waiting for up to one year. There appears to be a gap in care options for a child in circumstances where either the environment becomes untenable due to the child’s emotional or behavioural needs or a residential or foster placement breaks down. In 2013, a high-support unit, which had been established to cater for a child with a high level of need and behavioural challenge, was closed down because of safety concerns. Following this closure, there appears to be a lack of suitable residential care other than Special Care Units – an intervention where the child is denied his or her liberty.

224. Recommendation: The Committee is urged to recommend that the State continues to take steps to ensure that every child in care has an allocated social worker, a written care plan, adequate mental health supports and access with or his or her family.

225. Special Care: Article 37(d) States that every child has the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

226. A child may be detained in a Special Care Unit in circumstances where (a) the behaviour of the child is such that it poses a real and substantial risk to his or her health, safety, development or welfare, and (b) the child requires special care or protection which he or she is unlikely to receive unless the court makes an order. There are three Special Care Units in Ireland, which aim to provide a child with a short-term, stabilising intervention in a secure, therapeutic environment. Special Care Units are locked residential units for children aged between 11 and 17 years.

227. Currently, children are placed in Special Care Units under the High Court’s inherent jurisdiction. The Child Care (Amendment) Act 2011 creates a statutory framework for Special Care, but relevant provisions of this Act have yet to be commenced.

228. HIQA has raised concerns about the inappropriate use of ‘cool off’ (single isolation) rooms within Special Care Units, with the rooms being used as a punishment rather than for the child’s safety. In September 2015, a HIQA inspection identified serious breaches of children’s rights due to the high turnover of social work staff. The care environment becomes untenable due to the child’s emotional or behavioural needs or a residential or foster placement breaks down. In 2013, a high-support unit, which had been established to cater for a child with a high level of need and behavioural challenge, was closed down because of safety concerns. Following this closure, there appears to be a lack of suitable residential care other than Special Care Units – an intervention where the child is denied his or her liberty.

229. When specialist services are not available in Ireland, the State sends children abroad for therapeutic residential care to secure facilities, such as Oakview Hospital in Kent; St. Mary’s in Scotland and Boystown in Nebraska. As of May 2015, four children were in residential out-of-state secure placements. Concern has been raised that in some cases, the child had not received adequate follow-on support on returning home from Special Care abroad. There is also concern that Article 8 of the European Convention on Human Rights (private and family life) may be engaged if children are removed from the jurisdiction for a significant period of time.

230. Recommendation: The Committee is urged to recommend that the State commences the relevant provisions of the Child Care (Amendment) Act 2011 to create a statutory framework for Special Care, and undertakes a review of services to identify ways to better support children with emotional or behavioural difficulties and so reduce the use of Special Care.

231. Homeless Children: This section focused on children or young people under 18 years who present as homeless are who are without the care of their families. Chapter 7 of this report addresses the issue of homeless families with children.
232 Much progress has been made in the area of youth homelessness over the past number of years. On foot of the 2013 review of the Youth Homelessness Strategy, the policy response to youth homelessness is now integrated into the child protection and welfare service, rather than set out in a standalone strategy. However, the lack of a national out-of-hours social work service in Ireland means that some newly homeless children still access emergency accommodation through the Garda Síochána (police).

233. However, the law in relation to youth homelessness is still inadequate. Section 5 of the Child Care Act 1991 places a duty on Tusla – Child and Family Agency to accommodate a homeless child but under this provision the child is not considered to be ‘in care’, limiting the child’s access to a social worker, a written care plan and aftercare services.

234. Some children access homeless services as a route out of an abusive family home and into care, or as a result of a care placement breakdown. A small number of children access emergency accommodation over an extended period of time. They often have ongoing and complex care needs, arising from personal or family problems which may have existed before they became homeless, added to which is the destabilising impact of being homeless. The number of children receiving accommodation under this Section 5 of the 1991 Act must be tracked carefully to ensure the provision is only used as an emergency measure.

235. Recommendation: The Committee is urged to recommend that the State amend the Child Care Act 1991 to provide greater protections for the rights of children who experience homelessness; and extends the supports available to homeless children, including by providing an outreach health service offering medical, sexual health, mental health and psychiatric supports.

236. Aftercare: In 2006, the Committee called on Ireland to ‘strengthen its efforts to ensure and provide for follow-up and aftercare to young persons leaving care centres’. At the end of March 2015, 1,720 young adults aged between 18 and 22 years were receiving an aftercare service. The Government has taken steps to strengthen aftercare provisions, including the adoption by the HSE of the Leaving and Aftercare Services: National Policy and Procedure in 2011, which is monitored by the Aftercare Implementation Group; a 2011 audit of aftercare service provision; and the adoption in 2014 of a Protocol on Young People Leaving State Care to prevent homelessness for young people leaving State care. Despite these initiatives, there continues to be inconsistencies in the provision of aftercare throughout the country.

237. Children continue to have no statutory entitlement to aftercare supports. The Heads and General Scheme of the Aftercare Bill 2014, under consideration by the Oireachtas (Parliament), places a statutory duty on Tusla – Child and Family Agency to prepare an aftercare plan for each eligible child and sets the grounds for eligibility based on the length of time a child has been in care. While the Bill’s provisions represent significant improvement on the existing legislative situation, they do not provide the young person with an entitlement to access services, only an entitlement to have a plan drawn up. In addition, the eligibility criteria set out in the Bill exclude children leaving Children Detention Schools and children who are using emergency homeless services and may exclude some vulnerable young people who are in care for less than one year.

238. Media reports have highlighted that some young care leavers are finding accessing private rental accommodation extremely difficult, given the housing crisis, and so are at risk of homelessness.

239. Recommendation: The Committee is urged to recommend that the State enacts an amended Aftercare Bill 2014 which would widen the eligibility criteria and provide an entitlement to aftercare services to a young care leaver deemed to be in need of such support; and increases its efforts to support young care leavers to access accommodation.

> ADOPTION (NATIONAL AND INTER-COUNTRY)

240. Article 21 obliges States to operate their adoption systems in line with a set of criteria and ensure that the best interests of the child shall be the paramount consideration.

241. In 2006, the Committee called on Ireland to ‘expedite its efforts to enact and implement the legislative reforms, ensure that all relevant legislation is in conformity with international standards, and that the best interests of the child are a primary consideration’.

242. Much progress has been made in the area of adoption since 2006. The Adoption Act 2010 provided a standardised framework for all adoptions, addressing the disparity in standards between domestic and inter-country adoptions. The Act also provided for the incorporation into Ireland’s domestic law of the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Inter-country Adoption.

390 The Nightlight Project, based in Laffey House in Dublin’s city centre, is the primary centre providing accommodation for homeless children between the ages of 12 to 17 years. Children known to the service can access it directly during specific hours.

391 For example, of 175 children who accessed Crisis Intervention Service emergency accommodation, 16 returned home and 75 were placed in residential or foster care (including relative foster care), five were placed in supported lodgings, two were placed in semi-independent living, six stayed with friends, three were placed in secure Care and one was referred to adult services. Crisis Intervention Service, 2014 Powerpoint presentation, supplied by the Department of Children and Youth Affairs, February 2014.


395 The Nightlight Project, based in Laffey House in Dublin’s city centre, is the primary centre providing accommodation for homeless children between the ages of 12 to 17 years. Children known to the service can access it directly during specific hours.


400 Hague Conference on Private International Law, Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-Country Adoption. As a result of the provisions of the Adoption Act 2010, from 1 November 2010, inter-country adoptions can be effected only with countries that have ratified the Hague Convention or with which Ireland has a bilateral agreement.
Article 42A of the Constitution of Ireland requires that provision be made in law for a child to be adopted, where his or her parents have met a high threshold of failure towards their child for a specified period of time.\(^{403}\) Such adoptions can only take place where it is in the best interests of the child and where all other options have been explored and failed. This will allow some of the estimated 2,000 children in long-term foster care who have been effectively abandoned by their parents to be eligible for adoption and be given a ‘second chance’ for a stable and permanent family life with their foster families. The relevant legislation to give effect to Article 42A 2.1 has not been progressed so the law remains unaltered.

Other gaps in our adoption legislation still exist. For example, reform of the 2010 Act is needed to allow the appointment of a Guardian ad Litem to represent the interests of the child in all cases where there is a conflict between the rights of the birth mother and the wishes of adoptive parents. In addition, there is no statutory right to access post-adoption support services.

The Children and Family Relationships Act 2015 provides for guardianship rights to be granted to step parents. However, there is also no provision in Irish law for second-parent adoption. Under current adoption law, to enable a spouse who is not the child’s biological parent to adopt the child, the mother or father must give their child up for adoption and then adopt the child jointly with her or his new spouse.

Recommendation: The Committee is urged to recommend that the State enacts legislation as a matter of urgency to satisfy the provisions of Article 42A of the Constitution of Ireland; provides in law for the appointment of a Guardian ad Litem in contentious adoption proceedings and provides for second-parent adoption.

> MEASURES TO ENSURE THE PROTECTION OF CHILDREN WITH INCARCERATED PARENTS

Article 9 stipulates that children have a right to regular contact with their parents and Article 18 obliges States to give appropriate assistance to parents in the performance of their child-rearing responsibilities.

There are no figures available regarding the number of children in Ireland who have a parent or primary care giver who is incarcerated or the number of children who have been placed in care due to the imprisonment of a parent. Under the Irish Prison Rules, 2007, a child can be admitted to the prison to remain with his or her mother up until the age of 12 months.\(^{248}\) Provision for mothers with babies is available in the Dóchas Centre women’s prison in Dublin, but no facilities exist in Limerick’s female prison.\(^{402}\)

The Irish Prison Service has estimated that 80,000 child visits per annum take place across the Irish prison estate.\(^{406}\) Research by the Irish Penal Reform Trust raised concerns that prison visiting conditions are not conducive to visits by children. Their concerns include security issues associated with visits, the use of dogs as part of the security regime, the frightening nature of searches for children, non-contact visits despite heavy security, and poor visiting conditions.\(^{407}\) The research found that some families chose not to inform the children that their parent was in prison, even if families did tell the children about the imprisonment they were, in many cases, reluctant to take children to visit a parent because of the frightening nature of visits.\(^{408}\) Conditions vary across the prison estate: some but not all prisons have a Visitors’ Centre and in two prisons visiting facilities are ‘screened’ meaning there is a glass window between the prisoner and the visitor. The Inspector of Prisons has raised concern about the denial of family visits being used as part of discipline punishment for prisoners.\(^{409}\)

Some positive developments have taken place such as the training of prison officers and the development of the Parenting in Prison Project in Limerick Prison; these initiatives should be rolled out nationwide.

Recommendation: The Committee is urged to recommend that the State undertakes a review of its prison visiting facilities and implements reforms to ensure child friendly and child sensitive facilities and practices, including the provision of modern, appropriately equipped visitors’ centres in each prison; in line with the standards set out in the European Prison Rules, issued by the Council of Europe.\(^{410}\)

\(^{401}\) Thirty-First Amendment of the Constitution (Children) Act 2015, Article 42A 2.1.
\(^{402}\) Section 13(2) Irish Prison Rules, 2007.
\(^{404}\) Ibid, p. 9.
\(^{405}\) Ibid, p. 20.
\(^{406}\) Ibid.
> CHILDREN WITH DISABILITIES

252. Article 23 obliges States to recognise that a child with a disability ‘should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community’ and that he or she has a right ‘to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child’s condition and to the circumstances of the parents or others caring for the child’.

253. In March 2007, Ireland signed the UN Convention on the Rights of Persons with Disabilities (CRPD) but it has yet to ratify this Convention.409 The State has committed to the ratification of CRPD following the enactment of the Assisted Decision-Making (Capacity) Bill 2013.410 Various drafts of this Bill have been published since 2007 but legislation has yet to be enacted.

254. In 2006, the Committee called on the State to adopt an inclusive and rights-based legal framework that addresses the specific needs of children with disabilities and to implement all relevant provisions of existing legislation related to children with disabilities; to undertake awareness-raising campaigns with the involvement of children which focus on prevention and inclusion, available support and services for children with disabilities, as well as combating negative societal attitudes towards children with disabilities.411 In 1998, the Committee noted its concern about the lack of a national policy to protect the rights of children with disabilities.412

255. Since 2006, the State has not undertaken any initiatives to target negative societal attitudes towards children with disabilities. The National Disability Authority of Ireland has conducted a series of surveys at regular intervals on public attitudes towards people with disabilities (2001, 2006 and 2013). The 2011 survey found that public attitudes towards people with disabilities had deteriorated from previous years.413

256. There have been no new legislative developments since 2006. The Disability Act 2005 provides that children are eligible for an assessment of their health and education needs arising from their disability. The needs assessment sets out what services the child shall receive. However, the assessment may not result in access to services, since there may be insufficient resources to provide these on a scale that meets demand; in some cases, services may not be available at all in particular locations.414 This means, in effect, that the provisions of the Disability Act do not necessarily deliver a legal entitlement to a service. The operation of the Education for Persons with Special Educational Needs Act 2004 is covered in Chapter B.

257. Disability health services for children are organised and delivered very differently across the country because of the way they have been initiated and developed over many years. In 2009, the Health Service Executive acknowledged this and adopted the Progressing Disability Services for Children programme to create a national unified approach to delivering disability health services.415

> HEALTH AND HEALTH SERVICES, IN PARTICULAR PRIMARY CARE

258. Children with disabilities may face challenges in accessing early years education. About 200 children with special needs avail of mechanisms to support their attendance in the Free Pre-School Year, including spreading their attendance over two years on a pro-rata basis.416 There is evidence that children with special needs and disabilities do not receive adequate supports to allow their full participation in the scheme.417 In a survey, 11 per cent of early years services admitted that they had to refuse a child with additional needs, with most reporting the reason for refusal as the service being unable to meet the needs of the child.418

259. In a positive development, HGA commenced inspections of residential services for children with disabilities in 2013.419

260. Recommendation: The Committee is urged to recommend that the State ratifies the UN Convention on the Rights of Persons with Disabilities as a matter of priority; that it implements in full the Disability Act 2005 and that it makes available, and properly resources, all necessary services for children with disabilities; and that it adequately supports children with disabilities to access the Free Pre-School Year.

261. Article 24(1) obliges States to ‘recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services’. Article 24(2)(d) obliges States to take appropriate measures to ‘ensure appropriate pre-natal and post-natal health care for mothers’.

262. In 2006, the Committee called on the State to:
(a) Adopt all-inclusive legislation that addresses the health needs of children;
(b) ensure that availability and quality of healthcare services are maintained throughout the country by providing targeted resources and by establishing statutory guidelines for the quality of these services;
(c) ensure that the resources used for existing health care services for children are used in a strategic and coordinated manner;
(d) pay special attention to needs of refugee and asylum-seeking children, and children belonging to the Traveller community, inter alia, by implementing the existing National Strategy for Traveller Health.410

263. There have been some positive developments generally in the area of health, such as the publication of Healthy Ireland: A Framework for Improved Health and Wellbeing 2013–2025,411 and the development of a new primary care structure. Primary care delivers health and social care services in the community outside of hospital settings, and ideally is comprised of the services of general practitioners, nurses and therapeutic staff such as speech and language therapists, physiotherapists and social workers.

410 UN Human Rights Committee, Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (CCPR), UN Doc. CCPR/C/ IRL/4 (25 July 2012), para. 58.
413 National Disability Authority (2018) Public Attitudes to Disability in Ireland Survey 2017, Dublin: NDA.
414 Health Service Executive, Progressing Disability Services for Children programme to create a national unified approach to delivering disability health services.
415 The programme’s objectives are based on the recommendations of the Report of the Reference Group on Multidisciplinary Services for Children aged 5 to 13 Years. For further information see the website of the Health Service Executive http://www.hse.ie/progressingdisabilitieservices/ (accessed 7 September 2015).
416 Minister for Children and Youth Affairs, Dr. James Reilly TD, Special Educational Needs Data, (32091.04), Dail Debates, 17 July 2014.
418 Health Information and Quality Authority (2013) National Standards for Residential Services for Children and Adults with Disabilities, Dublin: HIGA.
129 children were waiting for orthodontic treatment at the end of 2014 compared to 15,697 at the end of 2013 – an increase of 12%. These figures were

Health Insurance Authority (2014)

A. Nolan and B. Nolan (2005)

Office, pp. 40–42.

U. Kilkelly and E. Savage (2013)

Communication received by the Children’s Rights Alliance from the Department of Health, 27 January 2013.

November 2012.


The Committee is urged to recommend that the State introduces comprehensive, rights-based legislation for addressing children’s health needs, which provides for the child’s right to participation and specifies that decisions be made in the best interests of the child, and continues its efforts to develop an effective national primary care service.

In its Programme for Government, agreed in 2011, the Government gave a commitment to introduce a universal healthcare system and this commitment was reiterated in November 2012 when the Government published a policy document outlining its proposals for the reform of the health service. In 2014, the Government took an important step towards this goal by enacting legislation to allow for the extension of free GP care to all children under the age of six. This measure will benefit a quarter of a million children additional to those already entitled to free GP care because they qualify for a medical card.

A medical card entitles individuals and families on low incomes, and children with a long-term illness or disability, not just to GP services, but also to prescribed medicines and hospital services free of charge. Eligibility for a medical card is based on income, but a medical card may also be granted in cases where there is a serious medical condition requiring long-term care. Despite this provision, the reality is that there are cohorts of children with high-level health needs – including serious health conditions, disabilities and severe developmental delays – who do not have access to a medical card because their parents do not meet the income eligibility criteria, and their application under the discretionary grounds has not been successful.

A ‘probity review’ undertaken by the Government of medical cards resulted in the withdrawal of cards from people who were no longer deemed eligible, this review was suspended in May 2014 following widespread public criticism, and the withdrawn ‘discretionary’ cards were restored. From January to April 2014, approximately 97,000 medical cards were withdrawn, causing widespread upset. Accessing medical cards was, and in some cases continues to be, a hugely stressful experience for many families.

On foot of this, the Government established an Expert Panel to review medical card eligibility. The Expert Panel acknowledged that the eligibility criteria and the application process had evolved over time in a fragmented manner and had become complex and poorly understood by patients, medical staff and administrators. The Panel concluded that a person’s means should remain the main qualifier for a medical card but recommended other reforms. In response to the report of the Expert Panel, the Government announced a ten point action plan to reform the medical card system, including an enhanced assessment process for discretionary cards. A clinical advisory group is to be established by the HSE to develop guidelines on assessing applications involving significant medical conditions.

The Committee is urged to recommend that the State intensifies its efforts to introduce a universal healthcare system, addresses waiting lists for children to access health care, and ensures the reformed eligibility criteria for a medical card includes extending access to children with serious health conditions, profound disabilities and severe developmental delays.

264. However, there remains no overarching statutory basis or national policy on children’s access to healthcare services. Such a framework is needed to guide the development and delivery of services to children and instil a respect for children’s rights across healthcare settings. 432

265. Recommendation: The Committee is urged to recommend that the State introduces comprehensive, rights-based legislation for addressing children’s health needs, which provides for the child’s right to participation and specifies that decisions be made in the best interests of the child, and continues its efforts to develop an effective national primary care service.

266. Discrimination in Access to Healthcare: Indicators of poorer health status among children from less well-off areas are obvious from a very early age. Compounding the problem of health status differentials is the fact that in Ireland access to healthcare is severely undermined by an entrenched two-tier healthcare system. Those on low incomes who are reliant on the public health system may have to wait for extended periods for tests and procedures, while those who can afford to purchase private health insurance, can receive a much faster service through the private system. The proportion of the population taking out private health insurance fell during the recession from 51 per cent in 2008 to 45 per cent in 2013, with cost being a key factor. The infrastructure for the public and private systems is often the same, as doctors can use public healthcare facilities to run their private clinics.

267. Under the public health system, thousands of children face long waiting lists to access health care, including some surgeries, as well as therapeutic services, such as speech and language therapy, and for orthodontics treatment. Such delays infringe the rights of children from low income families to access vital services. This is a very serious issue given that early intervention, in particular for children with disabilities, is critical to help a child reach their full potential.

268. In its Programme for Government, agreed in 2011, the Government gave a commitment to introduce a universal healthcare system and this commitment was reiterated in November 2012 when the Government published a policy document outlining its proposals for the reform of the health service. In 2014, the Government took an important step towards this goal by enacting legislation to allow for the extension of free GP care to all children under the age of six. This measure will benefit a quarter of a million children additional to those already entitled to free GP care because they qualify for a medical card.

269. A medical card entitles individuals and families on low incomes, and children with a long-term illness or disability, not just to GP services, but also to prescribed medicines and hospital services free of charge. Eligibility for a medical card is based on income, but a medical card may also be granted in cases where there is a serious medical condition requiring long-term care. Despite this provision, the reality is that there are cohorts of children with high-level health needs – including serious health conditions, disabilities and severe developmental delays – who do not have access to a medical card because their parents do not meet the income eligibility criteria, and their application under the discretionary grounds has not been successful.

270. A ‘probity review’ undertaken by the Government of medical cards resulted in the withdrawal of cards from people who were no longer deemed eligible, this review was suspended in May 2014 following widespread public criticism, and the withdrawn ‘discretionary’ cards were restored. From January to April 2014, approximately 97,000 medical cards were withdrawn, causing widespread upset. Accessing medical cards was, and in some cases continues to be, a hugely stressful experience for many families.

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272. Recommendation: The Committee is urged to recommend that the State intensifies its efforts to introduce a universal healthcare system, addresses waiting lists for children to access health care, and ensures the reformed eligibility criteria for a medical card includes extending access to children with serious health conditions, profound disabilities and severe developmental delays.

Additional reading

277. Advertising of milk formula products in Ireland is subject to EU regulations which include restrictions on the advertising of infant formula (for those under six months) and ‘follow-on’ formulas (for those under 12 months). However, the regulations do not apply to the full range of products covered by the World Health Organization’s International Code of Marketing of Breast-milk Substitutes, which also includes restrictions on the advertising of milk substitutes, bottles and bottle-fed complementary foods. Furthermore, the Special Rapporteur on Child Protection has called on advertising to be prohibited rather than restricted, given its effects on breastfeeding rates.

278. Recommendation: The Committee is urged to recommend that the State promotes increased public understanding of breastfeeding and its benefits, measures take steps to provide women on their return to work to allow them to continue to breastfeed beyond 26 weeks, and ensures stringent enforcement, backed up by penalties, of the EU regulations on the advertising of breast milk substitutes.

279. Obesity: The UN Committee has set out measures which State parties should take to meet their obligations under Article 24 (right to health) in relation to addressing obesity in children.

280. Despite some progress on implementation of the recommendations of the 2005 National Taskforce on Obesity, childhood obesity remains a serious concern. A 2011 survey of 5 to 12 year-olds found that one girl in four and one boy in five in Ireland is overweight or obese. Another study of children aged nine found that children from disadvantaged backgrounds are more likely to be obese.

281. In Ireland, there are three State-run obesity prevention programmes for children identified at risk of becoming obese, and two group treatment programmes for obese children. One of the three dedicated children’s hospitals has a specialist obesity programme. Time for children with obesity, this programme has a waiting list of six months.

282. Research shows that calories from healthy foods such as fruits, vegetables and lean meat are up to 10 times more expensive than those from foods high in fat, sugar and salt. There is no State intervention to subsidise healthy food.
283. There is a strong link between physical activity and being overweight.464 Over half of primary school children do not meet the Government’s Physical Activity Guidelines which recommend 60 minutes of moderate physical activity per day for children.465 Ireland has fewer hours of compulsory physical education classes than other EU Member States.466 For example, Irish primary school pupils have 37 hours of physical education throughout the school year, in contrast to France which has 107 hours. Figures for secondary schools are slightly higher with students having 45 hours physical education over the school year.467

284. A study of 13 year olds showed that children from a higher social class and from families with higher levels of parental education had higher levels of exercise.468 Just 39 per cent of those surveyed had participated in exercise in nine of the previous 14 days.469 Over one-third (37 per cent) of children in the lowest social group had never participated in organised sports.470

285. There has been a steady decline in the numbers of children walking and cycling to school.471 In 1986, almost a half (45 per cent) of children aged from 5 and 12 years walked to school; by 2011 this figure had dropped to below a quarter (24 per cent). The corresponding figures for cycling show a drop from 4 per cent to just over 1 per cent of children.472 A sharp decline in walking and cycling is also evident for children aged 13 to 18 years. Whereas in 1986 almost one-third (31 per cent) of this age group walked to school, by 2011 the figure had fallen to 23 per cent, and the figures for cycling dropped from 15 per cent to 2 per cent.473

286. Recommendation: The Committee is urged to recommend that the State adopts comprehensive policies on food poverty, obesity and physical activity. In addition, planning regulations should be amended to restrict the number of fast food outlets, in particular in locations adjacent to schools, and measures should be taken to subsidise healthy food.

287. The UN Committee has called for the regulation of marketing and availability of foods that have high levels of sugar, salt and fat to children and for the control of their availability in schools.474 Research with children aged between three and five years found that they recognised more unhealthy brands than healthy brands.475

288. Recommendation: The Committee is urged to recommend that the State strengthens legislation and regulations in relation to the broadcast and online digital marketing of food that is high in sugar, salt and fat, including the introduction of a complete ban on television advertising and sponsorship from 6 a.m. to 9 p.m. and develops national nutrition standards for all publicly funded education and health settings.

289. Mental Health: In 2006, the Committee reiterated its previous recommendation476 and called on the State to implement recommendations of the Expert Group on Mental Health Policy in 2003 including to undertake awareness-raising and sensitisation measures to prevent stigmatisation and ensure that focus is given to early intervention programmes. It also recommended that the State must carry out an evaluation to ensure that children with mental health difficulties benefit from specific services designed for children under 18 years of age.477

290. Since 2006, there has been much focus and some progress on child and adolescent mental health as set out in the State Report.478 However, there is still no clear legal entitlement to mental health care for children in Ireland. In March 2015, an Expert Group appointed by the Government recommended that the Mental Health Act, 2001 be amended to bring it into line with international human rights standards including on issues of capacity for decision-making and involuntary admissions.479 The Expert Group also recommended that the legislation should be amended to include a separate section on children, with its own set of guiding principles.480

291. Recommendation: The Committee is urged to recommend that the State amends the Mental Health Act, 2001 to ensure it is fully compliant with international human rights standards and includes a separate section on children under 18 years, with its own set of guiding principles, including the best interests of the child and the voice of the child.481

292. Community Mental Health Services for Children: In Ireland, primary care for children’s mental health is delivered through the Child and Adolescent Mental Health Services (CAMHS). This service, located within the Health Service Executive, is underdeveloped. Of the estimated 107 specialist teams needed for CAMHS to operate effectively,482 only 63 are currently in operation.483 There are significant staff shortages within CAMHS as well as delays in filling allocated posts and a lack of adequate training and development of staff.484 There are no national standards guiding the operation of CAMHS; furthermore, there is no national policy to guide the process of transition from child to adult mental health services when a young person reaches the age of 18 years.485


471 Ibid.

473 Ibid.


476 Ibid.

477 Committee on the Rights of the Child, CRC/C/GC/15, 17 April 2013.

483 Ibid., p. 3.

487 UN Committee on the Rights of the Child, Concluding Observations: Ireland, CRC/C/15/Add.85, para. 20 and 38.

488 UN Committee on the Rights of the Child, Concluding Observations: Ireland, CRC/C/15/Add/2, para. 47.

489 Minister for Children and Young Affairs, p. 491–497.


491 Ibid., p. 73.


493 This service is located within the Health Service Executive.

495 Minister of State for Disability, Equality, Mental Health and Older People, Kathleen Lynch TD, Mental Health Services [S46449/13] Deputies, 15 April 2015.


497 CRC/C/15/Add.85, paras. 20 and 38.

498 UN Committee on the Rights of the Child, CRC/C/15/Add.85, para. 20 and 38.
293. The demand for CAMHS is rising: referrals increased by 49% between June 2014 and May 2015.488 In May 2015, 3,110 children were waiting to receive a CAMHS appointment, of whom 1,729 had been waiting for longer than three months, and 383 had been waiting for more than a year.489 In some areas, non-acute cases have waited for up to two years.490 A challenge also exists in that there is no one person or agency responsible for caring for children while they are on a waiting list.491

294. Vulnerable children, such as children in the care and youth justice systems, and homeless children, may experience additional difficulties in accessing mental health supports.492 Of particular concern is the mental health of lesbian, gay, bisexual and transgender (LGBT) young people. A study of LGBT young people under the age of 25 found that 27 per cent of those interviewed had self-harmed; one third had seriously thought of ending their lives in the past year; and 18 per cent had attempted suicide.493

295. Under Section 2 of the Mental Health Act, 2001, a child under 18 years cannot consent to mental health treatment.494 A very small number of ‘involuntary’ admissions occur under Section 25 of the Mental Health Act, 2001.495 The term ‘voluntary’ refers to the fact that the child’s parent or legal guardian has provided consent on their behalf.496 As a ‘voluntary’ patient, a child has fewer protections and safeguards than a child or adult classified as an ‘involuntary’ patient.497 The Law Reform Commission recommended the introduction of a new category of ‘informal admission’ for children admitted under the Mental Health Act, 2001 by parental consent.498 The admission and treatment of this intermediate category of patients would be subject to regular review, in the same manner as for involuntary patients.499

296. In-Patient Admissions: On admission to an in-patient mental health unit, a child is categorised as either a ‘voluntary’ or ‘involuntary’ patient.500 The term ‘voluntary’ refers to the fact that the child’s parent or legal guardian has provided consent on their behalf.501 As a ‘voluntary’ patient, a child has fewer protections and safeguards than a child or adult classified as an ‘involuntary’ patient.502 The Law Reform Commission recommended the introduction of a new category of ‘informal admission’ for children admitted under the Mental Health Act, 2001 by parental consent.503 The admission and treatment of this intermediate category of patients would be subject to regular review, in the same manner as for involuntary patients.504

297. Recommendation: The Committee is urged to recommend that the State steps to address the unacceptable waiting lists for children to access mental health services, and that it develops quality standards and guidelines to govern the operation of the Child and Adolescent Mental Health Services (CAMHS).

298. The UN Committee on the Rights of the Child has stated that, where placement in a psychiatric unit is necessary, adolescents should be separated from adults, where appropriate; and any decision on their care should be made in accordance with their best interests.505 Annual inspections of in-patient facilities are carried out by the Inspector of Mental Health Services.506 The Inspector has found some incidences where children have not been consulted on their care plans and the continuing lack of availability of beds in child units;507 has resulted in children being placed inappropriately in adult settings.508

299. The Mental Health Act, 2001 does not require that children be admitted to age-appropriate mental health facilities nor does it prohibit the admission of children to adult in-patient facilities. The Mental Health Commission’s Code of Practice relating to the Admission of Children under the Mental Health Act, 2001, which was published in 2006, sought to end the placement of children in inappropriate settings including adult units by 2011, except in exceptional circumstances.509 Despite the operation of the Code, children continue to be detained inappropriately in adult in-patient mental health facilities. In 2014, almost one-third of child and adolescent in-patient admissions (89 admissions) were to adult facilities. A 2014 inspection by the Mental Health Commission found that the Department of Psychiatry in Connolly Hospital (an adult unit in Dublin) had been obliged to admit acutely ill children on numerous occasions because no bed was available in a child and adolescent approved centre. It found that the department was not a suitable environment for a child nor could it deliver optimal care and treatment.510 Given the continued placement of children in adult in-patient wards, it is clear that the non-legally binding Code has not been effective.511

300. Recommendation: The Committee is urged to recommend that the State steps to end the practice of placing children in adult mental health facilities, other than in exceptional circumstances where it would be in the child’s best interests to do so, and to ensure adequate provision of children and adolescent mental health in-patient units, as recommended in A Vision for Change, Report of the Expert Group on Mental Health Policy.
301. In 2006, the Committee expressed concern 'that adolescents have insufficient access to necessary information on reproductive health and that the education is optional and parents can exempt their children from such education.' A National Sexual Health Strategy is expected to be published shortly and is long overdue. 512

302. There has been a significant fall in the number of births to teenage mothers in Ireland over the past decade – the number in 2014 was less than half that for 2004. A National Sexual Health Strategy is expected to be published shortly and is long overdue. 512

303. Currently sexual and reproductive health education is taught through the schools’ curriculum and is supported by programmes which take place in non-formal education sites by youth organisations. Section 4 of the Rules and Programme for Secondary Schools requires schools to have an agreed policy for Relationships and Sexuality Education (RSE) and a suitable RSE programme in place for all students in post-primary schools. It is the responsibility of individual schools to ensure that an RSE programme is made available to all students in accordance with its own ethos. 513 This means that the curriculum in respect of this issue varies, depending on the school. In addition, parents may exempt their child from ‘instruction in any subject which is contrary to the conscience of the parent’. 514 The Department of Education and Skills has been criticised for a lack of monitoring and evaluation, resulting in ‘poor and inconsistent implementation of a comprehensive sexuality education’. 515

304. A study on teenage sexuality commissioned by the Crisis Pregnancy Agency found only half of young people (18–25 years) who had received sex education reported that they had been given information on sexual feelings, relationships and emotions; 66 per cent on safer sex and STIs; and 70 per cent on contraception. Parents’ and teachers’ discomfort in talking about these topics may mean young people lack knowledge about these issues. In 2013, more than one tenth (12 per cent) of those who were newly diagnosed as having HIV were young people, aged 15 to 24 years. 516

305. Recommendation: The Committee is urged to again recommend that the State strengthens its efforts to enhance access to adolescent-specific reproductive and sexual health information and services, and to ensure the Relationships and Sexuality Education (RSE) programme is rolled out in full, and completes and implements a National Sexual Health Strategy, with a focus on young people.


Department of Education and Science, Circular MV90

Education Act, 1998, s. 30(2)(e). This also applies to students who are over the age of 18.


111. The Bill should be strengthened to include the phasing out and banning of alcohol sponsorship of sports events and other large public events, and should include measures to reduce the number of outlets selling alcohol and cut back on the number of hours during which alcohol can be purchased.524

112. The level of alcohol misuse by adolescents remains a serious concern in Ireland.525 A study of consumption patterns in 2013 showed that 39 per cent of all people aged 15 years and over had engaged in binge drinking, or ‘heavy episodic drinking’, in the previous 30 days.526 This puts Ireland second at the top of the 194 countries studied.527 Over 60 per cent of girls and over 62 percent of boys aged 12 to 14 years had consumed alcohol in the previous 12 months.528

113. Research also demonstrates that many children’s lives are blighted by alcohol misuse within their families. One-tenth of Irish parents or guardians reported that children had experienced at least one or more harmful incidents in the previous 12 months as a result of someone else’s drinking, including verbal abuse, being left in unsafe situations, witnessing serious violence in the home or physical abuse.529 In one study, alcohol abuse was found to be a reason for an application to take a child into care in over 12.5 per cent of cases documented.530

114. Recommendation: The Committee is urged to recommend that the State enacts a comprehensive and ambitious Public Health (Alcohol) Bill to address alcohol misuse as a matter of urgency. In addition, measures are needed to ban below-costselling of alcohol; eliminate alcohol sponsorship of sports and other public events; reduce the availability of alcohol; regulate alcohol marketing; and tackle the link between alcohol misuse and instances of child abuse and neglect.531

115. Tobacco: Since 2004, the Government has continued to make commendable efforts to reduce smoking among children and adults, including publication in 2013 of a national policy on smoking, Tobacco Free Ireland.532 The extension of the ban on smoking in work places to cover smoking in cars and other vehicles where a child is present,533 and the enactment of the Public Health (Standardised Packaging of Tobacco) Act 2015, which will require standardised packaging for tobacco products,534

116. Despite these positive steps, the most recently published survey found that 12 per cent of children smoke.535 This is a serious issue not just in terms of the short-term impact on children’s health but in terms of long-term health consequences; the majority of those who die from tobacco-related diseases are people who started smoking while still a child.536 In Ireland, 5,200 people die each year from smoking-related diseases and the treatment of tobacco-related disease costs the health services €1 billion annually.537


118. In one study, alcohol abuse was found to be a reason for an application to take a child into care in over 12.5 per cent of cases documented.530

119. There are more than 215,000 lone parent families living in Ireland.538 Over 31 per cent of lone parent households in 2013 risk poverty, 23 per cent are living in consistent poverty and over 63 per cent are experiencing two or more types of deprivation.539 The rate of poverty among lone parent households is disproportionally higher than other family types.540 This level of inequality is unacceptable. The European Commission has noted that Ireland has one of the highest proportions of people living in low income in the European Union.541

120. The One Parent Family Payment is a means-tested social welfare payment for a lone-parent on a low income.542 Until 2012, the payment was available to any parent or guardian who satisfied the qualifying criteria until their youngest child reached 18 years of age.543 New measures were then introduced with the stated aim of encouraging lone parents back to the workforce. The age threshold of the youngest child has been reduced for new recipients to seven years.544 The earnings disregard has been reduced from €146.50 per week in 2011 to €90 in 2014. It is planned to reduce it to €60 per week in 2016 for both new and existing recipients. Changes to the means-tested One Parent Family Payment since 2012 have led to about 60,000 recipients losing the payment.

527 Ibid.
531 The policy sets a target of 2025 to have a tobacco-free Ireland – in other words, to have a smoking prevalence rate of less than 5 per cent of the population two key themes underlying the policy are protecting children and the de-normalisation of tobacco use. See: Department of Health (2012) Tobacco Free Ireland: Report of the Tobacco Policy Review Group, Dublin: Department of Health, p. 42.
533 The Bill will also give effect, in part, to the revised European Council; Tobacco Products Directive 2014/40/EU of 3 April 2014.
321. Under the reforms, a key difficulty for many claimants moving to a new payment is that they no longer qualify for the same level of support. For example, for many, while they are working part-time, they are not working the full 19 hours a week needed to qualify for the Family Income Supplement. There is also concern that the reductions in the earnings disregards is acting as a work disincentive. In 2012, 60 per cent of lone parents receiving the One Parent Family payment were working at least part time outside the home. This figure has fallen to just 36 per cent. Structural barriers persist which are preventing the reforms from having the desired effect of moving parents from welfare-dependence to employability. Key among these barriers is access to affordable high-quality childcare and after-school supports, affordable housing and well paid family-friendly employment opportunities.

322. There is grave concern that the reforms are contributing to the rising incidence of child poverty in Ireland.

323. Recommendation: The Committee is urged to recommend that the State undertakes a review to assess the impact to date of the reforms on poverty rates and work activation, and takes other steps necessary to ensure that lone parents are adequately supported to effectively care for their children and to access quality, affordable childcare and after-school care to enable them to take up employment, training or education.

324. Article 27 obliges States to ‘recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development and that States shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.’

325. Ireland signed the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in 2012 but has yet to ratify it.

STANDARD OF LIVING, INCLUDING MATERIAL ASSISTANCE AND SUPPORT PROGRAMMES

326. In 2006, the Committee called on the State to:
(a) Effectively implement its National Anti-Poverty Strategy and strengthen its support to families living in economic hardship in order to ensure that poverty is reduced and children are protected against the negative impact of economic hardship on their development;
(b) Introduce a supplement to the existing universal child benefit payments as an additional and targeted allowance to assist the families which experience highest levels of poverty;
(c) Implement fully existing policies and strategies and increase budgetary allocations for and subsidization of services, including childcare, healthcare and housing, for families with children who are particularly vulnerable; and
(d) Increase investments in social and affordable housing for low-income families.

327. In 2006, Ireland was still experiencing a period of unprecedented economic growth. By the end of 2008, however, the country began to suffer a serious decline in its economic position and it soon entered recession, experiencing a sharp fall in income and a dramatic increase in unemployment. In December 2010, the country entered a European Commission/International Monetary Fund (IMF)/European Central Bank (ECB) Troika economic adjustment programme. The State exited from this programme in December 2013. Since 2014, Ireland’s economic situation has improved considerably, growth has been above the EU average and unemployment has been falling (it has declined from a peak of almost 15 per cent to 9.6 per cent in Quarter 2 of 2015).

328. Austerity measures imposed from 2008 onwards in Ireland have had severe and negative impacts on children, young people and their families. Budget adjustments over these years led to significant cuts to social welfare payments and public services. A link can be drawn between the cuts to social welfare payments and the Child Benefit payment and the increase in child poverty rates. A 2014 UNICEF report found Irish families with children lost the equivalent of ten years of income progress as a result of the economic crisis and an OECD study, which presented a league table measuring relative changes in child poverty during the recession, showed Ireland ranking as 37 of 41 countries.

329. The level of child poverty is unacceptably high, and reflects a significant deterioration that was allowed to occur from the start of the economic crisis. The child poverty rate climbed from 6.3 per cent in 2008 to 11.7 per cent in 2013 (the most recent year for which figures are available)549 in that year, 11.7 per cent of children were living in consistent poverty while 17.9 per cent of children were at risk of poverty.550 Children are 1.4 times more likely than adults to live in consistent poverty and one child in three in Ireland is deprived of basic necessities.551 Children living in lone parent households suffer the highest rates of consistent poverty and deprivation. Families and their children seeking asylum and living in direct provision constitute another group deeply affected by poverty.

547 Ibid
330. Under the 2020 Strategy, Ireland has committed to lift 200,000 people out of poverty by 2020.640 In 2014, a new national child-specific social target was introduced in the National Policy Framework for Children and Young People 2014–2020.641 The target commits to lift over 70,000 children out of consistent poverty by 2020, a reduction of at least two-thirds on the 2011 level.642 This target will need to be adjusted upwards to take account of the recent increases in child poverty.643 An Implementation Plan to achieve this target has yet to be published.

331. The social welfare system provides a vital safety net644 but cuts during the recessions meant it was not able to fully protect many families from being pushed into poverty. A key challenge for families on low wages is the cost of healthcare, housing, education and childcare. The plan to address the target must include a focus on improving the affordability of key public services for families with children.

332. Recommendation: The Committee is urged to recommend that the State adopts a multidimensional rights-based plan to achieve the Child Poverty Target, in line with the EU Recommendation on children and the Convention,645 with a specific focus on investment in public services.

333. Food Poverty: Since 2008, the prevalence of food poverty has increased dramatically, with nearly 10 per cent of the population unable to afford food at some stage in 2014.646 Teachers have reported an increase in the number of children coming to school hungry, and it has been suggested that pupils may lose the equivalent of six weeks of learning as a result of hunger.647

334. The relatively high cost of good quality, nutritious food is a key contributor to food poverty.648 Families from lower income backgrounds are priced out of having a healthy diet and are forced to rely on cheaper, energy-dense and micronutrient-poor foods. Research found that rates of social welfare payments on school-hourly-wage-income and housing costs on the minimum wage in Ireland are such as to make eating a healthy diet almost impossible.649 As a result, children living in lower-income families are more likely to suffer from poor health and to experience obesity.650

335. The risk of families on low incomes experiencing food poverty is related to the age of their children, with expenditure greatest when there are infants (who have specific dietary requirements) or teenagers (who need to consume more food).651 Ireland has in place a School Meals Programme with almost 207,000 children benefitting from the programme in 2014. However, the programme does not cover the cost of kitchen equipment, facilities or salaries, training for staff or the repurposing of space within the school to provide food in a safe and social way. This forces schools to take from their core budget or charge students to implement the programme.652

336. Recommendation: The Committee is urged to recommend that the State provides appropriate, family-friendly emergency accommodation; enacts legislation to prevent homelessness, as a temporary measure pending sufficient increases in social housing and homelessness crisis. The number of families with children becoming homeless increased dramatically in 2014, with on average over 40 families becoming homeless each month, twice the number per month in 2013.648 Since the beginning of 2015, this upward trend has accelerated in January, the number of families newly-presenting as homeless was 47, by August, the figure had risen to 78. In 2015, there were 707 family units, with 1,496 children, living in emergency accommodation.649 The great majority of these homeless families were in Dublin, where there were 607 families with 1,275 children, in emergency accommodation. A stark indication of the worsening situation in Dublin is that in the period between December 2014 and August 2015, the number of families with children in emergency accommodation rose by 83 per cent (increasing from 331 to 607).

337. A factor contributing to the increasing number of families becoming homeless is the setting of Rent Supplement at levels substantially below market rents in a context of rising rents, particularly in urban areas. Other factors include increased demand for rental accommodation, landlords refusing to accept tenants on Rent Supplement, lack of availability of social housing and personal indebtedness.650 In 2014, the Government published a Social Housing Strategy for the period up to 2020 which provides the basis for an enhanced approach to social housing provision and outlines actions to be taken to increase supply and reduce the number of people on waiting lists.653 The rise in homelessness is set against the backdrop of a very large number of households found at rates of social welfare payments on school-welfare-income and housing costs on the minimum wage, in 2013, with 47 per cent of these children seven years or more old.

338. The quality of emergency accommodation being offered to families – in hotel rooms and temporary and breakfas (B&b) accommodation – is sometimes inappropriate for family life as such accommodation often means whole families living in one room with no kitchen facilities.651 Long-term living in emergency accommodation is a costly, unsustainable and not conducive to children’s development. Children’s right to play and education are affected as there is little space for them to play or do homework; in some instances, children may have to travel long distances to remain in the school which they were attending prior to their family becoming homeless. Child welfare and protection issues arise where families are living in shared accommodation with people and staff who are not vetted and the service is not inspected. The lack of available accommodation means that families become stuck in emergency accommodation, some living in hotels for one year. Alternative emergency accommodation is urgently required, such as modular housing.

340. Recommendation: The Committee is urged to recommend that the State provides appropriate, family-friendly emergency accommodation; enacts legislation to prevent homelessness, as a temporary measure pending sufficient increases in housing stock.

560 Department of Social Protection (2021) National Social Target for Poverty Reduction: Policy Briefing on the Review at the National Poverty Target, Dublin: Department of Social Protection, p. 3. The Irish figure is based on the 2010 baseline rate of 6.3 per cent. The EU will be tracking the ‘at risk of poverty’ measure.


562 Ibid., commitment 4.2, p. 9.


567 D. MacGuil, ‘Teachers see a worrying rise in Irish children coming to school hungry’, The Irish Times, 12 May 2014, http://www.irishtimes.com/irts- news/2014/05/12/macguil-

568 Food Safety Authority of Ireland (2012) Scientific Recommendations for Healthy Eating Guidelines in Ireland, FÁS.


573 Correspondence received by the Children’s Rights Alliance from the Irish Heart Foundation, 20 April 2015.


575 Ireland has in place a School Meals Programme with almost 207,000 children benefitting from the programme in 2014.

576 The Convent of Mercy of the Holy Cross, 11-128 Parnell Square East, Dublin 7.

577 The quality of emergency accommodation being offered to families – in hotel rooms and temporary and breakfast (B&B) accommodation – is sometimes inappropriate for family life as such accommodation often means whole families living in one room with no kitchen facilities. Long-term living in emergency accommodation is a costly, unsustainable and not conducive to children’s development. Children’s right to play and education are affected as there is little space for them to play or do homework; in some instances, children may have to travel long distances to remain in the school which they were attending prior to their family becoming homeless. Child welfare and protection issues arise where families are living in shared accommodation with people and staff who are not vetted and the service is not inspected. The lack of available accommodation means that families become stuck in emergency accommodation, some living in hotels for one year. Alternative emergency accommodation is urgently required, such as modular housing.
341. Traveller Accommodation: Due to a lack of data, exact figures for Traveller children living in inappropriate accommodation are not available. However, it is clear that many Traveller children continue to live in conditions that are far below the minimum required for healthy child development and this is reflected in their health outcomes. Some Traveller families continue to live on the side of the road with no access to basic amenities including running water or sewage facilities. Adequate and culturally appropriate accommodation is a serious and ongoing issue for the Traveller community and has a direct impact on both the education and health outcomes of Traveller children.

342. The Traveller Accommodation Act 1998, which places an obligation on local authorities to provide accommodation plans for Travelers, has not been adequately implemented. In 2000, it was calculated that over 3,500 units of accommodation were needed for the Traveller population. By 2013 – and despite the provision in the interim – over 1,600 Traveller households were assessed as being in ‘housing need’. Very few units of ‘transient accommodation’ (intended for short-term use as families are moving from place to place) have been provided and this is sometimes used as emergency accommodation rather than serving a transient function. Funding for Traveller accommodation was reduced by 85 per cent between 2008 and 2012. Critically, during that period, significant amounts of allocated funding for Traveller accommodation were not drawn down by local authorities.

343. Legislation introduced in 2002 criminalises the act of entering public or private land without consent, which had previously been a civil offence, effectively criminalising the nomadic aspect of Traveller culture and history.

344. Recommendation: The Committee is urged to recommend that the State ensures appropriate Traveller accommodation, including transient accommodation, is provided by local authorities; ensures that such accommodation is culturally appropriate for Travellers and repeals the Housing (Miscellaneous Provisions) Act, 2002.

582 From €40 million in 2008 to €6 million in 2012.
348. Early Childhood Care and Education: Almost 10 per cent of Ireland’s population is under six years of age compared to the EU average of 6.3 per cent. Childcare in Ireland is among the most expensive in the world.594 At just 0.2 per cent of Gross Domestic Product (GDP), Ireland invests considerably less in early childhood care and education than the OECD countries as a whole, which is 0.8 per cent of GDP.595

349. All children, in the year before they enter formal education, can avail of the ‘Free Pre-School Year’, a part-time, 38-week scheme, which is free of charge.596 While take-up of the scheme is very high, access rates are lower among marginalised groups such as Traveller and Roma children, and children with disabilities.597

350. The quality of early years care and education services is difficult to assess given the lack of official data on these services.598 Evidence from centre-based services suggests that quality is variable.599 In addition, due to the exclusion of childcare from regulation, there is no data on the quality of those services at all.600 An Early Years Quality Agenda was launched in May 2015. A number of its aims have been pursued to date, including the development of a national quality and curriculum frameworks, including the Diversity and Equality Guidelines,601 which have been fully rolled out nationally and the impact for children on the ground has been limited.602 Qualification levels among staff are low by international standards.603 While a national strategy on early years is expected, it has not yet been published.604 Such a strategy should contain a clear and ambitious vision for early years policy and comprehensive measures to improve the quality of early years services.

351. In June 2015, the Minister for Children and Youth Affairs launched a report setting out options and recommendations for Government to enhance affordability of childcare, improve the quality of services and outcomes for children, and promote greater accessibility in the sector.605 This requires a detailed implementation plan in order to ensure that these recommendations become a reality.

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596. The Organisation of Economic Co-operation and Development (OECD) found Ireland’s investment in early care and education to be well below the OECD average of 0.8 per cent, coming in at 0.5 per cent of GDP in 2014. To reflect the early school starting age in Ireland, the OECD figure for Ireland includes children aged 4 and 5 years old in primary schools. When primary school spending is excluded, the percentage of GDP spent on pre-school education in Ireland amounts to less than 0.2 per cent. OECD (2014) OECD Family Database, OECD, Paris, P9.3.1.A. Public expenditure on childcare and early education services, per cent of GDP, 2011. www.oecd.org/social/familydata.htm (accessed 26 January 2015).


599. International rating scales—such as the Early Childhood Environmental Rating Scales and Infant-Toddler Environmental Rating Scale—provide comprehensive standards and tested methodologies but no data from such scales is available for Ireland. See www.hellp.ie/utc/ectf for further information.


602. For example, Better Start: The National Early Years Quality Development Service was launched in May 2015 with the aim of promoting and enhancing the quality of early childhood care and education. For more information on the initiative, see www.betterstart.ie. For further information on the Early Years Strategy, see the Children’s Rights Alliance (2015) Report Card 2015, Dublin: Children’s Rights Alliance, pp. 22–24.


604. Síolta, the National Quality Framework for Early Childhood Education (2016) remains a pilot and limited in its roll-out. While providers must adhere to Síolta, providers are also encouraged to work towards the 12 quality standards contained in the Síolta Quality Assurance Programme. Support for Aistear: the Early Childhood Curriculum Framework (2009), is similarly limited.


606. The working group’s report on the National Early Years Strategy was first announced in 2012 and an Expert Advisory Group published its recommendations in October 2013.

607. The working group’s report on the National Early Years Strategy was first announced in 2012 and an Expert Advisory Group published its recommendations in October 2013.
352. Recommendation: The Committee is urged to recommend that the State:

> Increases investment in early childhood care and education to at least the current OECD average of 8.8 per cent of GDP and links public funding to the achievement of quality standards in services.

Publishes a rights-based National Early Years Strategy, accompanied by an adequately resourced implementation plan which addresses the inclusion in early years services of children with disabilities and children from minority groups, such as Traveller and Roma children.

> Implements full the roll-out of the national quality and curriculum frameworks for early years – Aisteir and Síolta – and the Diversity and Equality Guidelines for Childcare Providers.

353. Cost of School: Article 28 provides that primary education shall be free to all. In 2006, the Committee expressed concern that the de facto cost of education and materials in public primary schools is in some instances the responsibility of parents.

Austerity measures targeted a plethora of education supports that were designed to assist the most disadvantaged. In one year alone, 2011, school transport costs were increased for parents, capital grants for schools were reduced by 5%, and a cap was placed on the number of educational psychologists. Furthermore, resource teachers for Traveller pupils were cut, language support teachers were withdrawn on a phased basis, and positions such as DES rural school coordinators were abolished.

Offically, there are no school fees in publicly-funded schools. However, there are significant hidden costs associated with sending a child to school. In 2015, the Barnardos annual school costs survey found that parents in 65% of primary and 73% of post-primary schools were asked to pay a ‘voluntary contribution’ to the school in an amount being requested in some cases, parents, who do not pay are sent reminders by letter, text, email or via their child, and children have been denied access to school lockers or journals until the payment is received. The survey showed that 86% of primary schools and 99% of post-primary schools parents reported that uniform costs are underestimated which are more expensive than plain, non-crested uniforms. The only targeted social welfare payment aimed at supporting parents with the cost of the schooling, the Back to School Clothing and Footwear Allowance, was reduced significantly between 2012 and 2015, including a 50% reduction in the payment for children aged four to 11 years.

In addition, the cost of school books is not covered by schools or by the State. While there has been an increase in the availability of School Book Rental Schemes in primary schools, there is a wide variation in what is covered by such schemes. School transport costs have also increased. There is some evidence that the State and schools are beginning to acknowledge the pressure on parents of school costs, though the necessary policy changes at national level have not yet occurred.

354. Recommendation: The Committee is urged to recommend that the State increases the capitation grant investment in primary and post-primary schools, eliminates the need for voluntary contributions from parents to schools and increases supports for school costs to low income families including by reinstating the Back to School Clothing and Footwear Allowance to its 2012 value.

355. Educational Disadvantage: In 2006, the Committee recommended that the State publish and disseminate the Traveller Education Strategy which had been prepared, and that it undertake training activities for teachers in order to sensitize them to Traveller issues and inter-cultural approaches. In 1998, the Committee expressed its concern at the difficulties faced by vulnerable children in accessing a range of rights, including education.

Census 2011 shows that there were 10,500 Traveller children enrolled in primary and post-primary schools. However, 55 per cent had left school by the age of 15, an average of 4.7 years earlier than the general population. Among Travellers, the completion rate at secondary level is only 13 per cent compared to 90 per cent for the general population. For many Travellers their traditional lifestyle, combined with the prejudice they often encounter, creates severe problems in acquiring basic levels of educational qualifications and this constitutes a major barrier to moving out of poor living circumstances. A five-year intercultural Education Strategy was launched in 2010 with the aim of providing all students with an education that respects diversity and of assisting all education providers in ensuring inclusive education.

While the Report and Recommendations for a Traveller Education Strategy was published in 2006, an implementation plan with a timeline was never developed, in spite of numerous calls from representative groups. Implementation has, as a result, been extremely limited. Dedicated education supports included in the Strategy – such as the Visiting Teachers for Travellers Programme, with which there were 42 associated posts – were abolished in 2011. Budgetary increases in other areas of educational support included no additional supports for Traveller children. Resources are provided based on ‘identified individual educational need’ to all children, with no specific provision for Traveller children, such as children in cultural or ethnic background. No data collection on the impact of the Traveller Education Strategy on educational outcomes for Travellers has been undertaken.


There is some evidence that the State and schools are beginning to acknowledge the pressure on parents of school costs, though the necessary policy changes at national level have not yet occurred.
361. Migrant children made up 11 per cent of the primary and 12 per cent of post-primary pupils in the school year 2015–2016. Research points to an ‘achievement gap’ emerging between young migrants and non-migrants in Ireland linked to access and mobility. The streaming of students as a result of the structure of the examination system impacts on migrant participation in third level. In addition, enrolment practices limit the school choices available to young migrants.

362. Approximately 70–75 per cent of children from a migrant background have a first language that is not English and may require additional assistance. English language support no longer has a funding stream distinct from other learning supports and so it is now more difficult to monitor the adequacy and effectiveness of the impact of these supports. Provision in this area is not longer based on the needs of pupils in primary schools; it is based on the number of mainstream teaching posts, and in post-primary schools it is based on the number of pupils. English language support was cut by 19 per cent in 2012, despite a significant number of children in post-primary school who do not speak English at home receiving the lowest scores in reading.

363. In Ireland, 42 per cent of men and 47 per cent of women (in the 25–43 age range) have a higher educational attainment than their parents. However, a person’s socio-economic background remains a strong determining factor in their educational attainment. A person is three times more likely to go to higher education if their parents have higher education than someone whose parents have education below the secondary level. The rapid expansion of education in recent decades and the removal of tuition fees have benefitted most socio-economic groups in accessing higher education but these developments have not had a significant impact on the post-primary school level of entry rates of students from under-represented socio-economic groups. Some progress has been made in the area of access to higher education for people from under-represented socio-economic backgrounds under the two-Action Plans on access to higher education covering 2007–2009, and 2009–2011. The latter Action Plan sets an entry rate target of 54 per cent for all socio-economic groups by 2020. In 2013, just over one fifth of entrants to higher education institutions were from lower socio-economic groups, lower than the projected rate of 31 per cent by 2015. A new national access plan is currently under development.

364. Recommendation: The Committee is urged to recommend that the State:

- Develops a long-term, adequately resource strategy and implementation plan to address educational disadvantage.
- Carries out an assessment on the needs of, and challenges facing, Traveller and Roma children in education with a view to updating the Traveller Education Strategy and effective implementation of this.
- Includes national language policy as a part of the Intercultural Education Strategy.
- Provides specific supports for mother-tongue education such as monolingual and bi-lingual textbooks to assist children who use English as an additional language, as well as further language supports.
- Ensures that the new national access plan builds on the work of the previous plan in this area and provides a more focused framework for the achievement of targets for people of lower socio-economic backgrounds in accessing higher education. Families from such backgrounds should be consulted regarding the new action plan.

365. Special Educational Needs: In 2006, the Committee recommended that the State continues to develop an inclusive school environment for children with special needs by undertaking appropriate professional assessments, reducing class sizes, providing supports and the opportunity to be heard.

366. An estimated 25 per cent of children in Ireland have special educational needs. The seminal piece of legislation in this area is the Education for Persons with Special Educational Needs Act 2000. Key provisions of the Act remain unimplemented, such as those providing for individual needs assessments and individual education plans for children.

367. During the economic recession, a cap was placed on the number of Special Needs Assistants available to children in schools. While efforts have been made to increase the cap and support to children with special educational needs since then, there is still a disparity between available supports and the needs of many children.
368. A 2013 report found that, while most schools welcome and enrol children with special educational needs, some schools erect overt and/or soft barriers in the form of restrictive practices that prevent or discourage parents from enrolling their children in these schools. While Section 2 of the Education for Persons with Special Educational Needs Act 2000 on inclusive education for children with special educational needs has been enacted, the necessary regulations have not been put in place. There is evidence that some schools are not co-operating with the regulations. This can lead to the effective exclusion of such children, particularly if they live in rural areas. NGOs have expressed concern that due to a lack of resources, parents of children with special educational needs are faced with the choice of either sending their child to a mainstream school, at which the child will not receive therapeutic inputs, or sending their child to a special class or school with therapeutic inputs.

369. Recommendation: The Committee is urged to recommend that the State publishes and begins action on a plan to fully implement the Education for Persons with Special Educational Needs Act 2000 and that the State provides resources to increase teacher to pupil ratios and training for all staff.

370. Early School Leaving: Article 28(e) of the Convention requires States to encourage regular school attendance and reduce school drop-out rates. In 1998, the Committee expressed its concern about the situation of children who are excluded from school because of sanctions imposed by teachers and the adverse effect generated that may sometimes impact on drop-out rates and school attendance. Early school leaving in Ireland is defined as non-participation in school before reaching the age of 16 years or before the completion of three years post-primary education, whichever is later. In 2012, almost 10 per cent of 18 to 24 year olds had left school early. This is below the EU average of almost 13 per cent. Young people from a lower socio-economic background are disproportionately represented among those who leave school early. According to one study, one fifth of LGBT young people had skipped school because they felt threatened or were afraid of being hurt at school based on their LGBT identity, with five per cent indicating that they left school early because of how they were treated as a result of their identifying as LGBT. A 2013 ERSI Review of the School Completion Programme found that government arrangements were weak and it lacked a national cohesive approach. Tusla – Child and Family Agency has conducted its own review and recently committed to a number of actions.

372. Recommendation: The Committee is urged to recommend that the State comprehensively reforms the School Completion Programme in line with the recent ERSI review.


650 Restrictive practices might include advising a parent that another school might be more suitable to their needs or have more resources available, or by responding that the school does not have the necessary health-funded resources they consider necessary to accommodate a child. National Council for Special Education (2013) Supporting Children with Special Educational Needs in Schools. Dublin: NCSE, p. 89. National Council for Special Education (2013) Supporting Children with Special Educational Needs in Schools. Dublin: NCSE, p. 41.


656 Ibid., p. 111.


373. Guidance Counselling in Schools: Article 28(d) provides that States should ‘[m]ake educational and vocational information and guidance available and accessible to all children’. From 2012 to 2014, a change to the guidance counselling policy saw a reduction of 58.8 per cent in one-to-one guidance counselling for students in post-primary schools. Hours allocated to guidance counselling services were reduced by 23.7 per cent with significant variations across school types. Because counsellors are obliged to prioritise the needs of senior students, junior students in post-primary schools receive even less time during the period of their education where they are most likely to formal educational aspirations that are highly predictive of routes taken later on.

374. Recommendation: The Committee is urged to recommend that the State restores the allocation of guidance counsellors to the pre-2012 level to ensure that both junior and senior post-primary students have adequate access to quality career guidance and counselling to support their personal, social, educational and vocational needs.

376. Complaints Mechanisms in Education: Families of children who wish to make a complaint regarding an aspect of their child’s education must complain to the school’s Board of Management which is appointed by the school’s patron. However, there is no formal legal framework for this process: while section 28 of the Education Act 1998 makes provision for a Grievance Procedure to be established, this section has not been commenced.

377. Recommendation: The Committee is urged to recommend that the State implements section 28 of the Education Act 1998 to establish a formal Grievance Procedure in schools. Children should be permitted to make complaints in their own right, through the available mechanisms.
AIMS OF EDUCATION WITH REFERENCE ALSO TO QUALITY OF EDUCATION

378. Article 29 relates to the aims of education, specifically the development of a child's personality, talents and abilities to their fullest potential; the development of respect for their parents, cultural identity, language and values, their national identity and that of others and respect for the environment.

379. Bullying: In 2006, the Committee recommended that bullying should be dealt with in a sensitive and child-friendly way.667

380. In 2014, Childline received more than 8,000 calls in relation to bullying. A 2011 consultation showed that over a quarter of respondents from secondary schools have said they or someone they knew had been bullied and 25% of respondents from the primary schools said that they or someone they knew had experienced bullying.668 A 2013 survey showed that 23% of 9–16 year olds reported being bullied. Just 4% of those reported having being bullied online.669 Reported face-to-face bullying in Ireland was therefore slightly above the EU average while cyberbullying was slightly lower. The most prevalent type of bullying among nine year olds is verbal, followed by exclusion and physical bullying.670 A report by the ISPCC noted that parents struggle to ensure their child’s safety in dealing with technology.671 There is a lack of empirical research on the impact of cyberbullying on children and young people in Ireland.672

381. The Department of Education and Skills published an Action Plan and Anti-Bullying Procedures for Primary and Post-Primary Schools in 2013.673 Implementation of the Action Plan is intended to be assessed as part of the Department of Education and Skills Inspectors’ Whole School Evaluation.674 The Action Plan and Procedures are envisaged as a starting point to ensure there is common understanding about bullying amongst all members of the school community (staff, parents and students) in keeping with the whole school community approach in order to be better able to identify, prevent and address it.

382. The Action Plan sets out a range of recommendations and immediate actions to address bullying in schools, such as developing a positive school culture and climate, as well as evidence-based intervention strategies. The Anti-Bullying Procedures include a template for schools to record incidents of identity-based bullying such as racist, homophobic and cyber-bullying. However, to complete the template applies only in limited circumstances and the State is missing an important opportunity to gather data and monitor incidents of identity-based bullying.675

383. Bullying is a particular issue for children of Traveller, Roma and migrant backgrounds, children with an illness or disability and lesbian, gay, bisexual and transgender (LGBT) young people.676 Research found high levels of homophobic bullying: 58% per cent of LGBT young people surveyed had experienced verbal homophobic bullying by other students, 40% per cent were verbally threatened by fellow students, 25 per cent were physically threatened by their peers, and 34 per cent had heard homophobic comments from their teachers.677 Only one student in five experiencing homophobic bullying sought help from teachers or the school.678

384. Recommendation: The Committee is urged to recommend that the State:

- Undertakes and publishes a review of the implementation of the Anti-Bullying Action Plan and Procedures in order to determine where impact was made and lessons learned;
- Increases supports to parents to help them deal with bullying, particularly in the area of cyberbullying, and assist them make informed decisions in relation to the issues facing their children;
- Undertakes and publishes research on the impacts of cyberbullying on children and young people;
- Ensures that all incidents of identity-based bullying are recorded in schools and these records are inspected as part of the whole school evaluation process;
- Adequately resources mental health services to ensure children and young people receive timely and child-appropriate services.

CULTURAL RIGHTS OF CHILDREN BELONGING TO INDIGENOUS AND MINORITY GROUPS

385. Article 30 obliges States to ensure that a child from an ethnic, religious or linguistic minority or of indigenous origin shall not be denied the right to enjoy their own culture, to practice their own religion or to speak in their own language.

386. Promotion and Protection of the Irish Language: In 2006, the Committee called on the State to provide information on efforts to promote the Irish language and culture among children and young people.679

387. Under Article 8 of the Constitution of Ireland, the Irish language is recognised as the first official language of the State and the language rights of Irish-speakers have been upheld by the Irish Courts in a number of cases.682 In 2011, some 77,185 people representing 1.8 per cent of the population over the age of three spoke Irish on a daily basis outside of the education system.683 This figure increases to 25 per cent in the seven designated Gaeltacht (Irish-speaking) regions. Since 2008, the Office of the Irish Language Commissioner has experienced a reduction of 45 per cent in its budget, leading to the resignation of the Irish Language Commissioner (An Comisinéir Teanga) in February 2014 after a decade in the role.684

388. Recommendation: The Committee is urged to recommend that the State restores the budget of the Irish Language Commissioner and ensures that the State fulfils its obligations in this area.

> EDUCATION ON HUMAN RIGHTS AND CIVIC EDUCATION

389. While human rights education is a part of primary education under the Social and Personal Education (SPE) programme, as of September 2014, it is no longer a compulsory element in post-primary education. The Civic, Social and Political Education (CSPE) programme at post-primary level, in which human rights education is included, is now optional and no longer examined for all students. Given the crowded and exam-oriented curriculum at post-primary level, the reduction in the status of CSPE may result in it receiving less attention from both teachers and students.

390. Recommendation: The Committee is urged to recommend that the State puts in place a comprehensive and mandatory programme of human rights education in all education curricula, and ensures that human rights principles are embedded in schools policies.

> REST, PLAY, LEISURE, RECREATION AND CULTURAL AND ARTISTIC ACTIVITIES

391. Article 31 provides for the right of children to rest and leisure, to play, to appropriate to the age of the child and to participate freely in cultural life and the arts.

684 The Irish Language Commissioner was established in 2004 with the aim of providing advice to the public on their Irish language rights and to provide advice to public bodies on their obligations and duties.

392. In 2006, the Committee recommended that Ireland places more emphasis on the creation of facilities for children to enjoy leisure, recreation and cultural activities.688

393. The State Report documents the progress and developments that have taken place in this area.689 This includes the adoption of a National Play Policy which ran from 2004 to 2009 and a National Recreation Strategy for Children and Young People, launched in 2007 to provide a framework for the promotion of positive recreational opportunities aimed principally at young people aged 12 to 18.690 The Policies included national oversight mechanism or guidance; this led to patchy implementation, often dependent on the initiative of individuals at local level.691 In addition, although the National Play Policy identified the need for a universal design approach to play spaces, there are no national policies or ‘good practice’ guidelines developed to guide this process.692 Consequently, playgrunds may not be accessible for children with disabilities.

394. A study on outdoor play demonstrates that children between the ages of 7 and 13 like to play in gardens, parks, roads and green spaces in their housing estates, highlighting the importance of planning and design of housing estates.693 However, research has found that 42 per cent of mothers of nine-year-old children reported an absence of safe parks or play areas, and a similar proportion indicated that their local area lacked appropriate recreational facilities.694 A 2014 study on young children’s freedom to travel independently also showed that children in Ireland have less freedom than their counterparts in a number of European countries, including England.695

395. Recommendation: The Committee is urged to recommend that the State conducts a review of the national play and recreation policies to assess their impact and identify key issues which should be addressed in future policies in the area.

396. Youth Work: Youth work is defined in the Youth Work Act 2001 as ‘…complementary to a young person’s formal, academic or vocational education’ and aims at ‘…enhancing the personal and social development of young persons’.696 It also plays a vital role in promoting positive health, in particular mental health, and in the area of youth justice.

397. Recommendation: The Committee is urged to recommend that the State continues to support quality youth work, both as a protective factor contributing to the young person’s overall development and as a mechanism to reach out to the most marginalised young people.
398. Article 32 obliges States to ensure that children seeking or holding refugee status, whether unaccompanied or not, shall receive appropriate protection and assistance in the enjoyment of Convention rights and other applicable human rights treaties. The State is further obliged to assist the child in the tracing of his or her family and in obtaining information relevant for their reunification. In circumstances where the child's family cannot be found, the child is entitled to the same protections under the Convention as other children deprived of their family.

399. In 2006, the Committee called on the State to ‘take necessary measures to bring [its] immigration policy, procedures and practice into line with its international obligations, as well as principles outlined in other documents, including the Statement of Good Practice produced by the United Nations High Commissioner for Refugees and Save the Children’.694

400. Legislative Reform: In 2006, the Committee reviewed the State's proposal for legal reform set out in the Immigration, Residence and Protection Bill 2006.695 The 2006 Bill was not enacted, nor was the revised iteration of the Bill published in 2011. Legislative proposals on the protection system were published in March 2015 (the General Scheme of the International Protection Bill 2015) but to date no legislative proposals on immigration and residence have been published, and so the area remains largely governed by administrative practice.

401. The General Scheme of the International Protection Bill 2015 has many positives, including the introduction of a single procedure for international protection applicants to replace the existing multi-layered system; and the inclusion of ‘child-specific’ forms of persecution as ground for protection.696 The Scheme stipulates that the best interests of the child are a primary consideration, in areas such as the permission to reside for family members of qualified persons,697 but the principle does not apply to the protection determination process, including the exercise of powers in relation to deportation orders. The Scheme does not provide for the right of a child to lodge a separate protection application from that of their parents, nor does it allow for the separate consideration of a child within a family application. It also does not include a definition of an unaccompanied child.

402. Research, published in 2014, found that practice varies among social workers in how they carry out their duties in respect of unaccompanied minors.698 Some social workers delayed in making an application on behalf of the child until the child was older and could better understand the process.699 In other cases, the social worker did not believe that the child had a credible protection case and so no application was made on the child’s behalf.700 The General Scheme of the International Protection Bill 2015 continues with the current practice that Tusla – Child and Family Agency will make the decision on whether or not, and when, to submit a protection application on behalf of a separated child.701 However, it fails to stipulate the key duties of the Child and Family Agency in respect of unaccompanied minors.702

403. Recommendation: The Committee is urged to recommend that the State ensures its laws are compliant with the Committee’s General Comment No. 6, ‘Treatment of Unaccompanied and Separated Children Outside Their Country of Origin’.703 The principle of the best interests of the child as a primary consideration should be extended to apply to both the substantive and procedural aspects of any proposed legislation. Provision should be made for a separate application and assessment process for a child where appropriate. All unaccompanied minors should be entitled to access early and continued legal assistance and to the appointment of an independent Guardian ad Litem. The duties of Tusla – Child and Family Agency should be set out in law.

404. Separated Children: In 2006, the Committee expressed concern that unaccompanied children or children separated from their parents might not receive adequate guidance, support and protection during the asylum process, in particular with respect to access to services and an independent representation.704 In 2006, the Committee called on the State ‘to ensure that the same standards of and access to support services applies whether the child is in the care of the authorities or their parents’.705

405. In 2009, the Health Service Executive adopted an Equity of Care Policy, following criticism of the inadequate care regime for separated children and concern about the high number of such children disappearing from care and feared trafficked.706 This led to a major change as separated children are now accommodated within the mainstream care system. On reaching 18 years, however, the young person is moved from his or her foster family or residential care home and placed in direction provision (see below), except in exceptional circumstances.

406. Direct Provision: Most children of asylum seeking families live in Direct Provision. This is a system of accommodation provided by the State to people seeking asylum in Ireland. It provides room and board within foster homes, hostels or other large buildings. Each centre is managed by private contractors on behalf of the Reception and Integration Agency. In addition to room and board, adult asylum seekers receive a weekly allowance of €19.10 while a child receives a weekly allowance of €9.60. At the end of June 2014, of the 4,324 asylum seekers living in Direct Provision, 80 per cent were adults and 20 per cent were children.707 The average length of stay in direct provision is four years but 16 per cent of residents have been living in the system for more than eight years.708 This means that there are children that have spent their whole lives living in a centre.
407. A number of child protection and child welfare concerns have been raised about children living in the direct provision system, including by the Irish Human Rights and Equality Commission720 and the Ombudsman for Children.721 The Special Rapporteur on Child Protection has stated that direct provision is an infringement in the right to family life.722 In 2014, the University of Derry Magee and RCSI recommended reforms to address child poverty, child welfare and child protection concerns associated with living in the direct provision system.723 These include to increase the weekly payment for children to €29.80; to provide facilities with self-contained units with cooking facilities for family quarters together with communal kitchens; to provide adequate recreational space for children; to extend the remit of the Office of the Ombudsman and Office of the Ombudsman for Children to include complaints from residents, and establish an independent inspection regime against new standards.

408. Asylum seekers are generally not permitted to cook for themselves in direct provision centres or store food in their rooms.724 Residents of the centres have repeatedly criticised the food provision for being neither of adequate quality nor culturally appropriate but also that it lacks nutritional value, particularly for those with specific dietary requirements.725 Residents are denied the autonomy to choose their own food, which raises particular concerns for parents with children who cannot provide their food of choice to their children nor decide when to wean their babies from formula milk onto solid food.726 The communal living environment risks inappropriately exposing children to adult sexuality and increases their risk of sexual abuse and grooming.727

410. Article 30 provides that children in ethnic, religious, linguistic minorities or of indigenous origin shall not be denied the right to enjoy his or her own culture, religion or language.

411. Travellers are an indigenous minority group who have been part of Irish society for hundreds of years. They have a distinctive lifestyle and culture based on a nomadic tradition with a language, customs and traditions which make them identifiable as a group to both themselves and to others.728

412. In 2006, the Committee recommended that the State works towards the recognition of Travellers as an ethnic minority; uses research as a basis for policies for the improvement of minority children, in particular Traveller children with regards to health, housing and education; implements the recommendations of the Task-Force on the Traveller Community and provides detailed information on the enjoyment by Travellers of their rights, in particular to access to education, health services and housing facilities.729 The Committee regretted the lack of information on efforts made to prevent the marginalisation of Roma children and requested further details. In 2014, the UN Human Rights Committee also recommended that Ireland should adopt an effective policy and action plan, developed in consultation with Traveller and Roma communities, to redress situations of inequality.730 These sentiments echo the recommendations of the UN Committee on the Elimination of Racial Discrimination from 2011.731

CHILDREN BELONGING TO A MINORITY OR AN INDIGENOUS GROUP

413. In October 2014, the Minister for Justice and Equality and the Minister of State for Equality, New Communities and Culture established a Working Group to review the protection process and make recommendations on how to improve the standard of living for those in the direct provision system.732 The Final Report of the Working Group (McKenna Report), published in June 2015, recommended reforms to address child poverty, child welfare and child protection concerns associated with living in the direct provision system. These include to increase the weekly payment for children to €29.80; to provide facilities with self-contained units with cooking facilities for family quarters together with communal kitchens; to provide adequate recreational space for children; to extend the remit of the Office of the Ombudsman and Office of the Ombudsman for Children to include complaints from residents, and establish an independent inspection regime against new standards.

Recommendation: The Committee is urged to recommend that the State takes immediate steps to protect the rights of children living in direct provision by implementing in full the recommendations on children of the Working Group on Improvements to the Protection Process, including Direct Provision and Supports for Asylum Seekers.
414. Traveller Children: According to Census 2011, there are 14,913 Traveller children living in Ireland.728 Travellers have a very young population with 42 per cent of Travellers being under the age of 15 years. Outcomes for Traveller children are almost universally worse than their settled peers. In 2014, a Seanad Committee expressed its concern that Travellers in society suffer high levels of racism and discrimination, including indirect discrimination.729 In a welcome development, in November 2014, the Minister for Equality, New Communities and Culture pledged to grant State recognition to Travellers as an ethnic minority within six months.730 This has yet to happen.731

415. Roma Children: It is estimated that there are between 3,000 and 5,000 Roma living in Ireland.732 In 2014, the UN Human Rights Committee expressed concern at the lack of data on the Roma community living in Ireland.733 Research indicates that Roma face many barriers in trying to access education including ‘poverty, racism, discrimination, poor housing and health conditions’ while ‘a lack of access to employment and social protection’ also causes financial difficulties.734 These barriers further marginalise Roma children and perpetuate a cycle of social exclusion. The fear of engagement with authorities can lead to mothers disengaging from the Public Health Nurse Service which may result in children remaining unvaccinated.735

416. In 2014, a Special Inquiry into the removal of two Roma children from their respective families found that the Garda Síochána (Police Service) had acted disproportionately and breached the constitutional rights of the families.736 Of particular concern is the finding that the children’s ethnicity featured in the decision-making, and the actions of the Gardaí in one of the cases conformed to the definition of ethnic profiling.737

417. Recommendation: The Committee is urged to recommend that the State revises the Ireland’s National Traveller and Roma Integration Strategy, in consultation with Traveller and Roma representatives and puts in place a rigorous monitoring mechanism to ensure commitments are delivered.

418. Use of Children in the Illicit Production and Trafficking of Drugs: Article 33 provides that States shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of drugs and to prevent the use of children in the illicit production and trafficking of such substances.

There is no official data on the Roma community living in Ireland.738 There is no official data on the Roma community living in Ireland.732 In 2014, the UN Human Rights Committee expressed concern at the lack of data on the Roma community living in Ireland.738 In 2014, the UN Human Rights Committee expressed concern at the lack of data on the Roma community living in Ireland.733 Research indicates that Roma face many barriers in trying to access education including ‘poverty, racism, discrimination, poor housing and health conditions’ while ‘a lack of access to employment and social protection’ also causes financial difficulties.734 These barriers further marginalise Roma children and perpetuate a cycle of social exclusion. The fear of engagement with authorities can lead to mothers disengaging from the Public Health Nurse Service which may result in children remaining unvaccinated.735

419. Recommendation: The Committee is urged to recommend that the State, as part of support services and Garda (police) diversionary programmes in disadvantaged communities, provides intensive, coordinated and early intervention programmes and activities to prevent and identify vulnerable children at risk of grooming by drug dealers and gangs.

420. Sale, Trafficking and Abduction: Article 35 provides that States shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

421. In 2006, the Committee called on the State to adopt and implement a strategy to combat trafficking, and put in place measures for the physical and psychological recovery and reintegration of victims and requested further data on child trafficking.739 Concerns were also raised by the Council of Europe in 2013740 and the UN Human Rights Committee in 2014.741

422. Since 2006 much progress has been made, the Anti-Trafficking Unit of the Department of Justice and Equality was established in 2008 and the Blue Blindfold public awareness campaign was rolled out.742 Ireland’s first anti-trafficking National Action Plan was launched in 2009.743 This strategy ended in 2012 and a follow-on National Action Plan to prevent and combat trafficking is expected to be published in 2015.744

730 K. Holland, ‘Traveller ethnicity will be reality in six months, says Ó Riordáin’, The Irish Times, 19 November 2014. In 2014, the Joint Oireachtas Committee on Justice, Defence and Equality joined an array of national, European and international bodies and agencies in calling on the Government to grant ethnic minority status to the Traveller community. These bodies include the Equality Authority; the Human Rights Commission; the National Consultative Committee on Racism and Interculturalism; the UN Human Rights Committee; the Council of Europe Commissioner for Human Rights; the UN Committee on the Rights of the Child; the UN Committee on the Elimination of Racial Discrimination; the Advisory Committee on the Implementation of the Convention for the Protection of National Minorities of the Council of Europe Framework Convention for the Protection of National Minorities (FCNM), the Council of Europe Advisory Committee On The Implementation of the Council of Europe Framework Convention For The Protection Of National Minorities, Third Opinion On Ireland Adopted On 16 October 2012, Doc(08)2012/06.
731 Recognition of ‘ethnicity’ would require public authorities and policy-makers to ensure that the identity and culture of Travellers is respected in matters affecting them and ensure that Travellers would be afforded protection under the EU Racial Equality Directive.732 In 2014, a Seanad Committee expressed its concern that Travellers in society suffer high levels of racism and discrimination, including indirect discrimination.739 In a welcome development, in November 2014, the Minister for Equality, New Communities and Culture pledged to grant State recognition to Travellers as an ethnic minority within six months.730 This has yet to happen.731

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737 E. Loggen, ‘Gardaí unable to access gardaí in one of cases’, 10 November 2014, Report of Ms Emily Loggen, Dublin Department of Justice and Equality.
738 Ibid., para. 21.66.
423. The Criminal Justice (Human Trafficking) Act 2008 criminalises the trafficking, selling, offering, purchasing or inviting to make an offer or purchase of a child.748 A person who sexually exploits, trafficks or detains a child for the purposes of sexual exploitation is also guilty of an offence.749 The nature of trafficking in Ireland appears to be changing. There are indications that the profile of victims of trafficking is no longer migrant children from outside the EEA but Irish children. For example, of the 44 potential victims of trafficking identified in 2013 – the latest year for which statistics are available – 16 were children, including 11 Irish children who were trafficked for sexual exploitation.750

424. There is concern that there is not enough legislative protection for victims of trafficking in Ireland.751 Most suspected victims and a significant number of identified victims are housed in Direct Provision as they are not eligible for special Administrative Arrangements for victims of trafficking, which provide, for example, for a 60 day reflection and recovery period.752 This is because the Arrangements do not apply to European Economic Area (EEA) nationals, asylum seekers or those who already hold a residence permit in the State.753

425. In September 2015, the Government published the Criminal Law (Sexual Offences) Bill 2015, which creates for the first time an offence of paying, giving or offering payment to a child for the purpose of sexual exploitation.754 This offence applies to a person offering a child to another person or obtaining a child for himself or herself or for another person for the purpose of sexually exploiting that child. It also criminalises the purchase of sexual services.755

426. Recommendation: The Committee is urged to recommend that the State provides in law for the protection and temporary immigration status of all child victims of trafficking and ensures that the best interests of the child is paramount in decision-making; enacts the Criminal Law (Sexual Offences) Bill 2015; and works with EU Member States to put in place a legal framework to identify and tackle the trafficking of EU nationals.

427. Children Deprived of their Liberty: Article 37 provides that children shall be deprived of their liberty only as a last resort and for the shortest appropriate time, and that such children shall be treated in a matter that takes into account the needs of a person of his or her age, including that he or she be separated from adults unless in the child’s best interests and shall maintain contact with his or her family, and have prompt access to legal and other appropriate assistance.

428. Children in Adult Prisons: In 2006, the Committee expressed its concern that children aged 16 and 17 years were being detained in St. Patrick’s Institution, a closed, medium security prison detention centre for males up to the age of 21 years,756 and called on the State to provide children under the age of 18 with separate detention facilities.757

429. The operation and the practice of detaining children at St. Patrick’s Institution has been criticised as a gross human rights violation by a number of domestic and international bodies, including the UN Human Rights Committee,758 the UN Committee Against Torture,759 the Council of Europe Commissioner for Human Rights,760 the Council of Europe Committee for the Prevention of Torture,761 and the Ombudsman for Children. A 2012 report found St. Patrick’s Institution to be the most violent prison in Ireland, responsible for one third of all assaults in the prison system.762

430. In 2012, the Government committed to ending the practice of detaining children in adult prisons and to detain all those under 18 years in a National Children Detention Facility to be developed on the Oberstown campus in County Dublin.763 In July 2013, the Inspector of Prisons published his 2012 Annual Report calling for the complete closure of St. Patrick’s Institution due to ‘very disturbing incidents of non-compliance with best practice and breaches of the fundamental rights of prisoners.’764 On foot of this report, the former Minister for Justice, Equality and Defence announced his intention to close St Patrick’s Institution, and in April 2015, the Government published the General Scheme of the Prisons Bill, which provides for the complete closure of St. Patrick’s Institution.765

748 Criminal Justice (Human Trafficking) Act 2008, s. 2.
749 ibid., s. 3.
752 Department of Justice and Equality, Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking. http://bit.ly/1Q192E0 (accessed 1 May 2015). The Administrative Immigration Arrangements provide for a 60 day reflection and recovery period and later a renewable Temporary Permit which allows victims to move out of direct provision and into private-rented accommodation and to access social welfare.
754 Criminal Law (Sexual Offences) Bill 2015, s. 2. Under this section, the person offering sexual acts does not commit any offence.
431. Since 2012, the Government has taken steps to remove children from St. Patrick’s Institution. From 2012 onwards, all 16 year olds have been detained in Children Detention Schools and from December 2013, all 17 year olds serving custodial sentences have been transferred to a dedicated unit in Wheatfield Place of Detention, and all adult prison, as an interim measure until the completion of the new facility in Ongar.767

432. For legal reasons, 17 year olds who are detained on remand (i.e. children awaiting trial for criminal offences or who have been denied bail) cannot be detained in Wheatfield Place of Detention so they continued to be remanded to St. Patrick’s Institution. From 10 March 2015, all 17 year olds newly remanded in custody, are remanded to the Children Detention Facility as capacity permits.768 As of 15 September 2015, there were three 17 year-olds detained on remand in St. Patrick’s Institution and thirteen 17 year-olds in Wheatfield Prison.770 The Inspector of Prisons expressed grave concern about the continued detention of a small number of boys in St. Patrick’s Institution describing it ‘at times, tantamount to holding them in isolation and it is certainly inhumane’.771

433. Recommendation: The Committee is urged to recommend that the State invests the necessary resources to ensure that all 17 year olds detained in adult prisons can be accommodated in the National Children’s Detention Facility as a matter of urgent priority.

434. Children in Detention: Since 2013, over €56 million has been invested in the operation of the three existing National Children’s Detention Facility, which will incorporate the three existing Children Detention Schools,772 at the Ongar campus in County Dublin.773 An amendment to the Children Act 2001, enacted but not yet commenced, underpins the operation of the new integrated Facility.774 The facility will accommodate all children on remand or serving a custodial sentence, as originally provided for in the Children Act 2001. The building work and related staff recruitment are nearing completion. During 2014, a total of 168 boys and eight girls were remanded or committed to the Detention Schools,775 down slightly on the 179 boys and 12 girls held in 2013.776

435. In its report dated February 2015, the Health Information and Quality Authority (HIQA) – the body charged with inspecting the Children’s Detention Schools – found that the schools met just one of the 10 national standards in full; the education standard.777 Six standards were found to require improvement; and the failure to meet three standards – on single separation, the management of medication, and staffing and training issues – was found by HIQA to present significant risk.778 Children and staff reported that children were in single separation because ‘they were waiting for more staff to come into the unit’.779

436. HIQA found the use of single separation for 83 hours over four days in one case to be totally unacceptable.780 The previous 2012 HIQA inspection report also found that the use of single separation did not comply with the Irish Youth Justice Service Separation Policy as children were being placed in single separation for lengthy periods.781 The isolation of any child or young person from their peers can be damaging in itself, and the standards are clear that it must only be used sparingly and for the minimum appropriate period of time.782

437. In September 2015, the Minister for Children and Youth Affairs launched a review of single separation policies in use in special care, children’s residential centres and the Children’s Detention Schools in Ongar.783 This arose on foot of another HIQA report in August 2015, which showed unacceptable practices had been taking place involving children in single separation units in the Special Care Unit at Ballydowd.784 For example, children had been forced to urinate on the floor and had only been given access to a shower on day four of a five day continuous single separation period.785

438. In addition, HIQA has identified that children in Detention Schools had limited awareness of their rights and there was no mechanism in place for ensuring consultation and participation of children. In addition, there was no centralised mechanism for recording and acting on complaints.786

439. Recommendation: The Committee is urged to recommend that admissions to the National Children’s Detention Facility should be closely monitored on an operational basis to ensure that any increased capacity does not lead to a rise in the number of children in detention and that the use of single separation at the Ongar facility should be greatly reduced. The Standards used to assess conditions in the Children Detention Schools, which were drafted over ten years ago, should be reviewed and revised to ensure that they reflect international standards and best practice.

440. Use of Remand: In addition to Article 37 noted above, international standards provide that ‘[d]etention pending trial should only be used as a measure of last resort and for the shortest possible period of time’;787 that it shall be avoided to the greatest extent possible and limited to exceptional circumstances788 and that ‘[d]etention shall be imposed only as a last resort and for the shortest possible period of time’;789 that it shall be avoided to the greatest extent possible and limited to exceptional circumstances790 and that ‘[t]he continued detention of a small number of boys in St. Patrick’s Institution describing it ‘at times, tantamount to holding them in isolation and it is certainly inhumane’.

441. In addition, figures show that only 27 per cent of children detained on remand in 2013 were subsequently sentenced to detention on conviction.791 The question arises as to whether these breaches Section 96 of the Children Act 2001, which states that detention, including detention on remand, should only be used as a measure of last resort.792

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767 Minister for Children and Youth Affairs, Dr. James Reilly TD. ‘Children’s Detention Centre’, (7807312), Dáil Debates, 24 February 2015.


772 Health Information and Quality Authority Regulation Directorate Focused Inspection Report – Special Care Units Covered under Section 690 of the Child Care Act 1990 as amended by the Child Care (Remedial) Act 2011, Ballydowd Special Care Unit, Inspection 47-76, http://www.hipa.ie/social-care/find-a-centre/inspection-reports?id=47-76, accessed 1 September 2015.


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777 In addition, figures show that only 27 per cent of children detained on remand in 2013 were subsequently sentenced to detention on conviction. The question arises as to whether these breaches Section 96 of the Children Act 2001, which states that detention, including detention on remand, should only be used as a measure of last resort.
442. In some cases, children have been remanded to custody on welfare grounds, contrary to Section 88 of the Children Act 2001 (as amended) which stipulates that the Court shall not remand a child in custody solely on the basis of care or protection concerns.789 Children are remanded for assessment but at times remain longer than necessary in detention due to a lack of an appropriate welfare (follow-on) placement.790

443. Recommendation: The Committee is urged to recommend that the State undertakes an independent review of the use of remand; ensures children on remand are detained separately from children who have been convicted; and invests in effective bail supports. The duration of pre-trial detention should be limited by law and the State should withdraw its reservation to Article 10 (2b) of the International Covenant on Civil and Political Rights.

444. The Sentencing of Children: Article 37(a) obliges States to ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age.

445. The European Court of Human Rights has acknowledged that it is essential that cases involving children are dealt with speedily.791 Due to delays in cases coming to trial, an individual who commits an offence while a child may be over 18 at the time of trial and therefore cannot benefit from the protections of the Children Act 2011, such as child sentencing provisions, the case being heard in the Children’s Court, and reporting restrictions. In a judicial review, the Supreme Court held that the Director of Public Prosecutions (DPP) has a duty to act expeditiously in matters relating to minors.792

446. Recommendation: The Committee is urged to recommend that the State introduces flexibility into its sentencing provisions to ensure that those who commit offences while children are sentenced as children. In addition, vulnerable adults up to the age of 24 years should be granted the protections and benefit that accrue to children in exceptional cases where the individual has impaired cognitive function, mental health issues or other difficulties.
447. In 2006, the Committee recommended that the State ratify the Optional Protocol on the Sale of Children, Child Pornography and Child Prostitution.\textsuperscript{793}

448. Ireland signed the Optional Protocol on 7 September 2000 but has yet to ratify it and is now the only Member State of the EU not to have ratified the Protocol.\textsuperscript{794} The State has indicated its intention to prioritise examination of the Protocol’s ratification.\textsuperscript{795}

449. The failure to bring Irish law into line with the Optional Protocol and to ratify this Protocol means Irish law is failing to fully protect children from exploitation and is failing to support child victims.

450. The law in Ireland falls short of obligations under the Optional Protocol as it lacks extraterritorial jurisdiction in relation to child pornography related offences; and does not contain provision for international cooperation regarding the Optional Protocol nor provision for confiscation of the proceeds and closure of premises connected to offences under the Optional Protocol. In addition, Irish law does not contain safeguards for children giving evidence of sexual offences; supports for child victims during judicial proceedings; assistance to victims nor provision to seek compensation. Finally, the best interests of the child is not a primary consideration in dealing with child victims under Irish law.

451. In 2015, the Government published two pieces of legislation which will bring Irish law further into compliance with the Optional Protocol — the Criminal Law (Sexual Offences) Bill 2015 and the General Scheme of the Criminal Justice (Victims of Crime) Bill 2015.

452. Recommendation: The Committee is urged to again recommend that the State ratifies the Optional Protocol on the Sale of Children, Child Pornography and Child Prostitution without reservation and introduces relevant legislation to give it full effect in Irish law as a matter of priority.
Ireland signed the Optional Protocol on the Involvement of Children in Armed Conflict on 7 September 2000 and ratified it on the 18 November 2002, with a declaration relating to the minimum age of recruitment to armed forces.796

Minimum Age of Recruitment: The Optional Protocol amends Article 38 of the Convention and provides that no one under the age of 18 shall take part in direct hostilities or be compulsorily recruited into armed forces.

Ireland was examined by the Committee under this Optional Protocol in 2008. In its Concluding Observations, the Committee called on the State to raise the minimum age for recruitment into the Defence Forces from 17 years to 18 years, to raise the minimum age of cadets participating in arms training provided by the Defence Forces to 18 years, and to explicitly criminalise direct involvement of any persons under the age of 18 in hostilities, both at home and abroad.797

In 2013, the then Minister for Defence increased the minimum age of recruitment for the Defence Forces from 17 to 18 years of age.798 In January 2015, the State made an amended declaration to the Optional Protocol stating that the minimum age for voluntary recruitment into the armed forces is 18 years of age and that all recruitment is voluntary.799 This is a welcome development.

Former Child Soldiers: NGOs have reported coming into contact with, and supporting, former child soldiers originally from other countries but now living in Ireland who have sought counselling and support due to their armed conflict experiences.800 There is no official data to indicate the number of children or young adults living in Ireland that have been identified as former child soldiers. Furthermore, there is no formal identification mechanism or referral service for former child soldiers who come to the attention of statutory agencies and require specialised mental health services.

Recommendation: The Committee is urged to recommend that the State provides a mechanism to identify former child soldiers; and provides specialised mental health services and other supports to assist their psychological and physical recovery and integration into society.

796 Ireland’s declaration to the Optional Protocol read: Pursuant to article 3, paragraph 2, of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, Ireland declares: In general, the minimum age for recruitment into the Irish armed forces is 17. An exception is made in the case of apprentices, who may be recruited at the age of 16. However, apprentices are not assigned to any military duties until they have completed up to four years apprenticeship trade training, by which time all would have attained the age of 18. Ireland has adopted the following safeguards to ensure that recruitment of personnel under the age of 18 is not forced or coerced: All recruitment to the Irish armed forces is voluntary. All applicants must provide proof of age. Applicants must complete four years apprenticeship trade training, by which time all would have attained the age of 18. Ireland has adopted safeguards to ensure that recruitment of personnel under the age of 18 is not forced or coerced: All recruitment to the Irish armed forces is voluntary. All applicants must provide proof of age. Ireland has adopted safeguards to ensure that recruitment of personnel under the age of 18 is not forced or coerced: All recruitment to the Irish armed forces is voluntary. All applicants must provide proof of age. Ireland has adopted safeguards to ensure that recruitment of personnel under the age of 18 is not forced or coerced: All recruitment to the Irish armed forces is voluntary. All applicants must provide proof of age.

797 The additional Declaration of 12 January 2015 states that: ‘Pursuant to Article 3, paragraph 2, of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Ireland declares: The minimum age for voluntary recruitment into the Irish armed forces is 18 years of age. All recruitment to the Irish armed forces is voluntary. Ireland does not practice conscription and recruitment campaigns are informational in nature. Applicants must fill an application and are selected on the basis of suitability. Applicants who are offered a position are under no obligation to accept that position. All applicants are required to provide proof of age.’

798 Communication received by the Children’s Rights Alliance in consultation with SPIRASI, 29 April 2015. Spirasi is an Irish non-governmental organisation that works with survivors of torture. It is the only specialist centre in Ireland for the care and rehabilitation of survivors of torture and severe trauma.
Ireland ratified the Third Optional Protocol to the Convention on a Communications Procedure in September 2014 and the Protocol came into effect on 24 December 2014. This new procedure will enable children and their representatives to complain to the UN Committee on the Rights of the Child when their rights have been breached. Ireland was one of the first States in the world to ratify the Optional Protocol. The State is to be commended for ratifying the Optional Protocol in such a speedy manner.

**Recommendation:** The Committee is urged to recommend that the State undertakes further work to promote awareness of the Third Optional Protocol to the Convention on a Communications Procedure in particular among children, their families and advocates.

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Appendix 1: Consultation Contributors

ORGANISATIONS

Aftercare Forum and Social Care Ireland
AkiDwA’s Young Migrant Women’s Group
ARC
ASH Ireland
Atheist Ireland
Autism Rights Together
Barnardos
Belong To LGBT Youth Services
Centre for Disability Law and Policy, National University of Ireland, Galway
Cork Life Centre
Dental Health Foundation
Disability Federation of Ireland
Educate Together
EPIC
Immigrant Council of Ireland
Institute of Guidance Counsellors
Irish Association of Social Workers
Irish Heart Foundation
Irish National Teachers Organisation (INTO)
Irish Penal Reform Trust
Jesuit Centre for Faith and Justice
Mental Health Reform
National Youth Council of Ireland
North Kildare Network Disability Team
One Family
Pavee Point
Prevention and Early Intervention Network
Rape Crisis Network Ireland (RCNI)
Rialto Springboard
Sonas Domestic Violence Charity
Spirasi
Start Strong
Transgender Equality Network Ireland (TENI)
Women’s Aid
Youth Work Ireland

INDIVIDUALS

Dr. Carol Bannon, School of Nursing and Human Science, Dublin City University
Dr. Jackie Bourke
Eimear Coffey, Social Worker
Dr. Fiona Donson and Dr. Aisling Parkes, School of Law, University College Cork
Mary Gordon, Senior Psychologist, National Educational Psychological Service
Carmen Kealy, Student, National University of Ireland, Galway
Professor Ursula Kilkelly, Dean of the School of Law, University College Cork
Dr. Helen Lynch, Department of Occupational Science and Occupational Therapy, UCC
Colette Murray, EDeNn
Dr. Damien Ó Tuama, Cyclist.ie – The Irish Cycling Advocacy Network
Professor Dr. Geoffrey Shannon, Child Law Expert
Aoife Whitford, School of Law, University College Cork