6. RIGHT TO EQUALITY AND NON-DISCRIMINATION

Chapter Grade
&D+

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

Summary of Article 2 of the UNCRC

“The long-awaited Children & Family Relationships Bill will bring us a giant step closer to equality for all children and the diverse families they live in. Children need to have legal relationships with the adults who raise and love them whether they are their biological parents, step-parents, grand-parents or lesbian/gay parents because this ensures children’s safety and stability. Our responsibility is to make laws and services that meet the actual reality of children’s lives.”

Karen Kiernan, Chief Executive, One Family
IN THE NEWS

FOOD RULES AT DIRECT PROVISION CENTRES SLAMMED AS ‘DEGRADING’

TheJournal.ie 30 January 2014

Direct Provision centres deny people the right to prepare food for themselves and their children. Ann Murphy looks at an issue faced every day by asylum seekers in Ireland.

For food writer and Bridgestone Guide publisher John McKenna, food is not just something you eat.

Instead, it is stands for something much more — it is part of who you are and the ability to cook a meal for your family is a basic human right. He has written strongly in recent weeks about cooking being a basic human right, on a blog by the UK-based Sustainable Food Trust. And in May, he launched a report by the Cork-based Irish Immigrant Support Centre, NASC, examining the issues which residents of direct provision centres have with food in the centres. […]

He added: “These people are already in very difficult circumstances and the one thing that could give them comfort is to cook and share their own food, and cook for their own families. That right is being deprived from them and is very degrading.” […]

… He said that even though their allowance of €19.10 a weekly is “miserly”, they would put it to good use in buying food they would enjoy cooking themselves, if they were granted access to the kitchens in the country’s 34 direct provision centres. Such a measure would make their lives more tolerable, he believes. […]

By Ann Murphy
6.1 TRAVELLER AND ROMA CHILDREN

GOVERNMENT COMMITMENT

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

Progress: Limited

WHAT’S HAPPENING?

In November, the Minister of State for Equality, New Communities and Culture pledged that Traveller ethnic minority status would be a reality within six months. An ethnic identifier was introduced in primary schools. In July 2014, a Special Inquiry into the removal of two Roma children from their families was published.

In the *National Policy Framework for Children and Young People 2014–2020*, published in April 2014, the Government committed to reduce discrimination and intolerance of all types experienced by marginalised groups including Traveller and Roma children, and to improve their educational and health outcomes. The Government reiterated its commitment to implement and monitor the *National Traveller Roma Integration Strategy*.

Ethnic Minority Status: In April 2014, the Joint Oireachtas Committee on Justice, Defence and Equality recommended that the Government recognise the ethnicity of the Travelling Community, and commence a time limited dialogue with the Traveller representative groups about the new legislation or amendments to existing legislation [...] required.

In November 2014, the Minister of State for Equality, New Communities and Culture, Aodhán Ó Ríordáin TD, committed that the State would grant ethnic minority status to Travellers within six months. The Department of Justice and Equality is engaged in consultations on the implications of granting ethnicity to Travellers, including with their counterparts in the UK and Northern Ireland where Irish Travellers have been granted ethnic status.

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565 Ibid., Commitment, 4.9.
567 Kitty Holland, *Traveller ethnicity will be reality in six months, says Ó Riordáin*, The Irish Times, 19 November 2014.
568 Communication received by the Children’s Rights Alliance from the Department of Justice and Equality, 4 November 2014.
Ethnic Identifier: Work continued in 2014 on the Primary Online Database, which will replace the Annual Census of Primary Schools. The new database will collect data on children’s ethnic and cultural background, and is expected to be fully operational for the 2015/2016 academic year. The ethnic identifier will help track the progress of minority and ethnic groups, identifying learning outcomes and informing the development and implementation of future policies and activities.

The 2014 Assessment of Ireland’s National Traveller Roma Integration Strategy by the European Commission raises concerns in relation to the content of the document, lack of targets, lack of detail in some areas and funding mechanisms. A new National Traveller and Roma Integration Strategy Steering Group will be published in 2015, as part of the EU Framework for National Roma Strategies up to 2020. The steering group for the new Strategy will comprise an amalgamation of the National Traveller Monitoring and Advisory Committee (NTMAC) and the High Level Group on Traveller issues (HLG).

In 2014, the Department of Justice and Equality developed a National Strategic Framework aimed at supporting the Traveller Inter-Agency Groups (TIG) to implement local strategies in consultation with Local County Development Committees.

Roma: In July 2014, the Minister for Justice and Equality, Frances Fitzgerald TD, published the findings of the Special Inquiry carried out by then Ombudsman for Children, Emily Logan, into the removal of two Roma children from their families in 2013. The report found that in December 2013, two Roma children were wrongly removed from their families under the Child Care Act 1991. Ms. Logan recommended an independent audit of Garda special powers, the development of a Protocol and training in cultural competence for all Gardaí.

Following the report’s publication, Minister Fitzgerald apologised for any distress caused to the children and their families. The Minister committed to the full implementation of the report’s recommendations and established an implementation group, which was due to present a report by end 2014. The Department of Justice and Equality has commissioned Pavee Point Traveller and Roma Centre to conduct the first national needs assessment of Roma in Ireland.
The section on ‘Traveller and Roma Children’ gets an ‘E+’ grade in Report Card 2015, a rise from last year’s ‘E’ grade. The increased grade is in recognition of the Government’s commitment to recognise the ethnic minority status to Travellers in 2015 and the inclusion of a universal ethnic identifier in the Primary Online Database.

Outcomes for Traveller children are almost universally worse than their settled peers. According to Census 2011, there are 14,913 Traveller children in Ireland. Travellers have a very young population with 42 per cent of Travellers under the age of 15. (In contravention of the right to life, survival and development (Article 6) of the UN Convention on the Rights of the Child, many Traveller children live in conditions that are far below the minimum required for healthy child development and this is reflected in their health outcomes. The UN Committee on the Rights of the Child has expressed its concern about the lack of adequate recognition, action and positive measures taken by Ireland to enhance the rights and life opportunities for Traveller children. In June 2014, the Seanad Public Consultation Committee expressed its concern that ‘Travellers in Irish society suffer high levels of racism and discrimination, including indirect discrimination’.

In its 2014 review of Ireland’s compliance with the UN International Covenant on Civil and Political Rights, the UN Human Rights Committee regretted the lack of progress for Travellers since the Committee’s 2008 review and expressed its own concern with regard to the failure to grant ethnicity, accommodation and equality. The Committee recommended that Ireland should ‘adopt an effective policy and action plan, developed in consultation with Traveller and Roma communities, to redress situations of inequality’. These sentiments echo the recommendations of the UN Committee on the Elimination of Racial Discrimination in 2011.

Ethnic Minority Status: The pledge by Minister Ó Ríordáin that Traveller ethnicity would be ‘a reality’ within six months is very welcome. 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 including: 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 Council of Europe Framework Convention for the Protection of National Minorities (FCNM).

Recognition of Traveller ethnicity would require public authorities and policymakers to ensure that the identity and culture of Travellers is respected in matters affecting them. It would also ensure that Travellers would be afforded protection under the EU Race Directive. Recognition of the ethnic minority status of Travellers would open a new dialogue as to how the State interacts with Travellers.

581 Pavee Point Travellers’ Centre (2010), Profile of the Traveller Family For Family Resource Centres (2010), Dublin: Pavee Point.
585 Ibid.
Ethnic Identifier: We give a cautious welcome to the inclusion of a universal ethnic identifier within the new Primary Online Database, although concerns remain about the length of time that data is to be retained. Report Cards 2013 and 2014 highlighted that the lack of disaggregated data on Traveller children hinders authorities’ understanding of how Traveller children are progressing within education, health and child protection systems and the planning for better outcomes. The UN Committee on the Rights of the Child has also called for States to employ data-collection mechanisms that can study the situation of specific groups, including ethnic and/or indigenous minorities. The universal nature of the identifier, by which every family is asked to identify the group to which they belong, is an important development, ensuring that minorities will not be singled out when categorising ethnicity. Currently at second level, only Traveller students are asked to identify their ethnicity.

Education: Article 28 of the UN Convention on the Rights of the Child lays out the right to education for all children, while Article 29 affirms that such education must be directed to the development of ‘respect for the child’s parents, his or her own cultural identity, language and values, […].’ These Articles affirm, both themselves, and when read in the context of the non-discrimination right articulated in Article 2, the duty upon the Government to ensure the right to education for all children in Ireland, including Traveller children.

2011 Census found that 55 per cent of Traveller pupils have left school by the age of 15, on average 4.7 years earlier than the general population. The percentage of Travellers with no formal education in 2011 was 17.7 per cent, compared with 1.4 per cent in 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 qualification and this translates into poorer living circumstances.

A 2011 evaluation of the DEIS programme found that the educational attainment of Travellers remains significantly lower than that of their settled peers in both reading and mathematics. Despite the very obvious challenges faced by Travellers in education, the Visiting Teachers for Travellers (VTT) Programme – and the 42 associated posts – were abolished in Budget 2011. While Budget 2015 saw increases in other areas of educational support, it 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 or others based on cultural or ethnic background.

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588 Proposals for the Primary Online Database provide for the retention of a child’s personal data from the time they enter school until they turn thirty years of age. Department of Education and Skills (2014) Circular 0017/2014, Fair Processing 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 (POD) and how this 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 2003, p. 5.


592 Ibid., p. 32.


595 See Section 2.1 of this report for more information

596 Communication received by the Children’s Rights Alliance from the Department of Justice and Equality, 4 November 2014.
Roma: It is estimated that there are between 3,000 and 5,000 Roma living in Ireland.\textsuperscript{597} The UN Human Rights Committee, in July 2014, expressed concern at the lack of data on the Roma community living in Ireland.\textsuperscript{598} The UN Committee on the Rights of the Child in its 2006 Concluding Observations on Ireland called on the Government to prevent the marginalisation and social exclusion of Roma children.\textsuperscript{599} Emily Logan’s Special Inquiry into the removal of two Roma children from their respective families was a wake-up call. The decisions to remove the children took place in a chaotic situation where everyone thought that they were acting to protect the children. Ultimately Emily Logan found that the Gardaí had acted disproportionately and breached the constitutional rights of the families.\textsuperscript{600} Of particular concern is the finding that the children’s ethnicity featured in the decision-making. The Child and Family Agency needs to respond by developing a robust equality policy and appointing a senior designated social inclusion manager. The cases highlighted the need for concrete action to tackle discrimination against Roma children and their families.

On International Roma Day in April 2014, Pavee Point launched three reports on the Roma in Ireland, focusing on education; maternal health; and child protection considerations. They explore how Roma children 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.\textsuperscript{601} 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 results in children remaining unvaccinated.\textsuperscript{602} In order to fulfil the Government’s commitments to combat the exclusion of Roma children and improve outcomes for this cohort, health and education frontline workers must be adequately trained and properly resourced to build a relationship of trust with these vulnerable families.

\textsuperscript{597} Official sources estimate 3,000 in the National Roma Integration Strategy but civil society organisations such as Pavee Point believe the number is closer to 5,000. The Government does not have figures on the number of Roma in Ireland – Communication to the Children’s Rights Alliance from the Department of Justice and Equality, 4 November 2014.
\textsuperscript{600} E. Logan (2014) Garda Síochána Act 2005 (Section 42) (Special Inquiries relating to Garda Síochána) Order 2013: Report of Ms Emily Logan, Dublin: Department of Justice and Equality.
Immediate Actions for 2015

Deliver on the Government commitment to grant recognition of Traveller Ethnicity in 2015

Swift action is needed to fulfil the commitment of the Minister of State for Equality, New Communities and Culture that the State will recognise Traveller ethnicity by May 2015.

Introduce an ethnic identifier across health and care

The welcome introduction of an ethnic identifier by the Department of Education and Skills should be replicated across the health and care sectors. The collection of disaggregated data is a central to enabling the Government to track outcomes for minorities and to measure the efficacy of Traveller and Roma related initiatives that have been or will be introduced.

Re-energise activities to support the participation of Traveller children in education

A short time-limited assessment is needed to establish the current needs of Traveller children in education and what difficulties are arising, with proper consultation with Traveller representative groups. The assessment should explore the impact of the abolition of the Visiting Teachers for Travellers and Resource Teachers for Travellers Programmes in 2011, and impact to date of the Intercultural Education Strategy. This assessment should then feed into the development of an updated Implementation Plan for the Report and Recommendations for a Traveller Education Strategy.
Government Commitment

The Programme for Government commits to promoting policies that integrate minority ethnic groups in Ireland, and that promote social inclusion, equality, diversity and the participation of immigrants in the economic, social, political and cultural life of their communities.

Statement of Government Priorities 2014–2016 contains a number of commitments in the area of asylum: While ensuring continued rigorous control of our borders and immigration procedures, we will treat asylum seekers with the humanity and respect they deserve. We are committed to addressing the current system of Direct Provision for asylum seekers to make it more respectful to the applicant and less costly to the taxpayer. We will legislate to reduce the length of time the applicant spends in the system through the establishment of a single applications procedure, to be introduced by way of a Protection Bill. Work on an Immigration and Residence Bill will also continue. The Government will also establish an independent Working Group to report to Government on improvements with the protection process, including Direct Provision and supports for asylum seekers.

Progress: Limited

What’s Happening?

In July 2014, the UN Human Rights Committee criticised the direct provision system. In October 2014, the Department of Justice and Equality established a Working Group to review the Protection Process.

In April 2014, the National Policy Framework for Children and Young People 2014–2020 recognised migrant children as a vulnerable group and made specific commitments to address their needs. It committed to introduce and enact legislation to ‘address in a comprehensive way the interaction of migrant children with the immigration system and should provide for a speedier and more efficient protection determination system that will shorten the time families and in particular children spend in the Direct Provision system.’ It also committed to ‘[p]romote the child protection and welfare of all children in the asylum system.’

In July 2014, the UN Human Rights Committee raised concerns over the prolonged length of time residents spend in the direct provision system highlighting that the centres are ‘not

605 Ibid. Commitment 3.7.
606 Ibid. Commitment 4.8.
607 Direct provision is a system of accommodation provided by the State to all people seeking asylum in Ireland. It provides room and board within former hotels, hostels or other large buildings, usually in the form of shared rooms. Each centre is managed by private contractors, after a tendering process but remains subject to oversight and standards put in place by 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. The accommodation is not compulsory for those seeking asylum but those who do not avail of it, do not receive their weekly allowance.
In July 2014, in its Statement of Government Priorities 2014-2016, the Government outlined its plans to address the direct provision system and the newly appointed Minister of State for Equality, New Communities and Culture, Aodhán Ó Ríordáin TD, voiced strong concerns about the system. These developments took place against a backdrop of increased media attention on the system and a series of nationwide protests by direct provision residents. In his 2014 report, the Special Rapporteur on Child Protection, Dr. Geoffrey Shannon, again raised concerns about children living in direct provision and called for an immediate review of the system and research on its impact on ‘the specific vulnerability of children accommodated in this system’. Dr. Shannon recommended that in particular the consequences for the best interest principle should be considered.

In October 2014, the Minister for Justice and Equality and the Minister for Equality, New Communities and Culture established a Working Group, chaired by former High Court Judge, Dr Bryan McMahon, to review the protection process and make recommendations on how to improve the standard of living in the direct provision system. The Group is expected to report its recommendations by Easter 2015.

The Government has said that the protection elements of the former Immigration, Residence and Protection Bill would be fast-tracked and that an International Protection Bill will be enacted in 2015. In November 2014, the High Court handed down a judgment in which it found that overall the direct provision system did not breach the right of residents to family life. However, the Judge did find that certain House Rules did interfere with residents’ constitutionally protected right to a home and Article 8 (right to private and family life) of the European Convention on Human Rights (ECHR). The Judge also found that the internal complaints procedure for direct provision residents was ‘deficient’ and not sufficiently independent as the Reception and Integration Agency (RIA), who authored the House Rules, was the final arbiter on complaints.

Education: In the school year 2013/2014, migrant children made up 11 per cent of the primary school population and 12 per cent of post-primary pupils. Published in 2014, The Annual Monitoring Report on Integration 2013, found that it has become difficult to monitor the English as an Additional Language Support (EAL) programme as it no longer has a distinct funding stream. Instead the EAL programme is aligned with other types of learning.

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614 Ibid.
619 Ibid.
620 Communication received by the Children’s Rights Alliance from the Department of Education and Skills, 11 November 2014.
The Department of Education and Skills provides additional learning support hours based on the number of mainstream teaching posts in primary schools; and in post-primary schools the allocation is based on the number of pupils. In the 2013/14 academic year, some permanent EAL posts were made available to primary schools with a high concentration of pupils requiring language support and, while these will be retained, additional permanent posts will not be allocated for the 2014/15 year. The Government in the National Policy Framework for Children and Young People 2014–2020 has committed to ‘strengthen social inclusion measures and re-invigorate efforts to improve educational outcomes’ for migrant children and young people.

The UN Convention on the Rights of the Child protects every child, regardless of nationality or immigration status. Article 2 of the UN Convention on the Rights of the Child requires the State to ensure that children are not discriminated against, including because of their parentage. Article 7 stipulates that a child shall have a right to a nationality, while Article 10 calls for family reunification decisions to be dealt with in a ‘positive, humane and expeditious manner’. Article 30 commits States to ensure that children of an ethnic, religious or linguistic minority are not denied the right to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language. The UN Committee on the Rights of the Child has affirmed that the enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State Party and must therefore, if not explicitly stated otherwise, also be available to all children – including asylum-seeking, refugee and migrant children – irrespective of their nationality, immigration status or statelessness. In Census 2011, 93,716 foreign national children were recorded as living in Ireland. In addition, there are many naturalized Irish citizens that belong to various minority ethnic groups.

The proposed International Protection Bill will be a key legal development that will affect the rights of children and their families who are seeking protection in Ireland. An Immigration and Residence Bill will, however, be required to consolidate and update existing immigration law and ensure that other migrant children are protected, including children at risk of trafficking and undocumented children. It is critical that both pieces of legislation be proofed against Ireland’s obligations under the UN Convention on the Rights of the Child. The principles of the Convention must apply to decisions and practices affecting children including that: children should not be discriminated against (Article 2), the best interests of the child must be a primary consideration in matters affecting them (Article 3) and that the views of the child should be taken into account in matters affecting him or her (Article 12).

All proposed legislation should pay special attention to vulnerable migrant groups of children, particularly separated children, children of asylum seekers and children at risk of trafficking. These principles must also apply in relation to reception conditions and living standards for applicants awaiting a decision on their claim. In this context, Ireland should sign up to the Recast EU Receptions Conditions Directive: it has currently opted out of this Directive. Article 23 of that Directive requires signatories to ensure that the best interests of the child are a primary consideration in decision-making and States

622 Communication received by the Children’s Rights Alliance by the Department of Education and Skills, 11 November 2014.
623 Ibid.
626 UN Committee on the Rights of the Child, General Comments No.6, CRC/GC/2005/6.
627 An additional 19,020 children were recorded with no response to the question of nationality or as having no nationality. Communication received by the Children’s Rights Alliance from the Central Statistics Office in December 2012.

COMMENT


The UN Convention on the Rights of the Child protects every child, regardless of nationality or immigration status. Article 2 of the UN Convention on the Rights of the Child requires the State to ensure that children are not discriminated against, including because of their parentage. Article 7 stipulates that a child shall have a right to a nationality, while Article 10 calls for family reunification decisions to be dealt with in a ‘positive, humane and expeditious manner’. Article 30 commits States to ensure that children of an ethnic, religious or linguistic minority are not denied the right to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language. The UN Committee on the Rights of the Child has affirmed that the enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State Party and must therefore, if not explicitly stated otherwise, also be available to all children – including asylum-seeking, refugee and migrant children – irrespective of their nationality, immigration status or statelessness. In Census 2011, 93,716 foreign national children were recorded as living in Ireland. In addition, there are many naturalized Irish citizens that belong to various minority ethnic groups.

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must ‘ensure a standard of living adequate for the minor’s physical, mental, spiritual, moral and social development’.

Children in the Asylum System: At the end of June 2014, of the 4,324 asylum seekers in State direct provision accommodation, over one third, or 1,527, were children. 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. This means that some children have spent their whole lives living in a centre.

Direct provision centres are not a normal parenting environment and accommodate residents from many different backgrounds. Parents do not have a choice where they will live, or who they will live with, in communal centres. Of particular concern is the potential exposure to child protection risks. The Reception and Integration Agency (RIA) – a Department of Justice and Equality body responsible for overseeing the direct provision system – updated its child protection policy in October 2014 which is informed by Children First Guidelines and the Child Protection and Welfare Practice Handbook.

In her 2013 annual report, then Ombudsman for Children Emily Logan, indicated that she had received complaints about child protection issues in direct provision. An audit of child protection as well as child welfare concerns should be carried out given that direct provision centres are not covered by any national standards, such as those for children in residential care, nor are they inspected by an independent inspection regime, such as the Health Information Quality Authority (HIQA). Given the expertise developed by HIQA in the area of health and children’s services, it seems logical to extend their remit to inspect the centres.

The High Court held in C.A. and T.A (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland, that a resident’s bedroom was his or her home and thus, unannounced inspections and a requirement to sign in on a daily basis constituted a disproportionate interference with the constitutional protection afforded to the home. The Court also found that the ban on guests visiting a resident’s room was unreasonable and that the complaints procedure lacked independence. On foot of this judgment, the Reception and Integration Agency is required to develop a complaints procedure which is sufficiently independent. The model used by both the HSE and the Child and Family Agency could be adapted by RIA for its own use. This process allows for local resolution of complaints with an independent review by the Ombudsman (or Ombudsman for Children where appropriate) only if the matter has not been resolved. The proposed revision of the complaints process offers an opportunity to formally recognise the Office of the Ombudsman for Children as a legitimate avenue of redress for children and young people. While the Department of Justice and Equality ‘has not accepted that the OCO can address these as cases within the statutory complaints-handling framework of the Ombudsman for Children Act’, the OCO has made it clear that while it cannot consider complaints about the asylum determination process, it does have a role in addressing complaints relating to reception conditions.

The Court, in the C.A. and T.A. case did not rule on whether the UN Convention on the Rights of the Child was applicable in this case pending a decision in another case due before the High Court. In the subsequent Dos Santos case relating to the deportation of a family to Brazil, the 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. 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.

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527 Ibid.
529 Ibid.
531 Reception and Integration Agency (2014) Child Protection and Welfare Policy and Practice Document for Reception and Integration Agency (RIA) and Centres under contract to RIA, Dublin: Department of Justice and Equality.
533 Article 40.5 of the Constitution states that ‘The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law.’
535 Dos Santos & Ors v Minister for Justice (2014) IEHC 559.
536 Ibid., paras. 47 and 59.
537 Ibid., para. 47.
The Working Group on the Protection Process has been asked to consider the former judgement and address the issues identified by the Court. While the Working Group has been charged with making evidence-based recommendations to improve the standard of living in the current system, the Government has imposed a requirement that any suggestions should be cost-neutral or incur a saving for the Exchequer. This may pose a challenge to achieving real and substantial change. Although discussions are taking place at a policy level to address the issue of inadequate conditions in direct provision and the need to reduce the amount of time spent in the system, without substantive changes to the way in which asylum applications are processed, any changes to the system will be superficial and limited in scope.

The involvement of the Children’s Rights Alliance on the group suggests the Government’s intent to ensure that children’s rights are properly considered in its deliberations. There are a number of key areas where the lives of children living in direct provision could be significantly improved. These include the provision of self-catering accommodation to allow for a more family-friendly environment; an increase in the Direct Provision Allowance for children; and access to the Child Benefit payment to assist parents in meeting the high costs of raising a child and to help prevent further social exclusion and isolation of children who live in direct provision.


MIGRANT CHILDREN

Immediate Actions for 2015

Enact legislation to reform the Protection Process and on immigration issues as a matter of urgency and proofed it against the UN Convention on the Rights of the Child

*Report Cards 2012, 2013 and 2014 all called for immigration and protection legislation to be proofed against the UN Convention on the Rights of the Child. A specific legal provision should be included in the Bill requiring decision-makers to set out in writing how the best interests of the child have been considered in their final determination on that child’s immigration status or any other immigration-related decision which will have a negative impact on that child. Specialist training should be held with all staff and specialist staff should be employed to work directly with children.*

Take steps to protect the rights of children living in direct provision and opt-in to the EU Recast Reception Conditions Directive

*To ensure that children in direct provision maintain an adequate standard of living and their developmental needs are met, self-catering accommodation should be provided for families. In addition, the child component of the direct provision allowance should be increased to at least the equivalent of the Qualified Child Increase, and the parents of children in direct provision should have access to Child Benefit. Opting-in to the Recast Reception Conditions Directive would ensure that the best interests of the child principle is at the forefront of decisions made about accommodating asylum and protection applicants. An audit of child protection and child welfare referrals should be carried out to ensure that there is sufficient oversight in that in relation to children living in direct provision.*
6.3
INEQUALITIES IN FAMILY LIFE

Grade
B

GOVERNMENT COMMITMENT

We will modernise and reform outdated elements of family law.

Progress: Good

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

Progress: Slow

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

Progress: Good

WHAT’S HAPPENING?

The Heads of the Children and Family Relationships Bill were published in January 2014 and revised Heads issued in September.

The Government committed under The National Policy Framework for Children and Young People 2014–2020, published in April 2014, to ‘reform aspects of family law, including the law on guardianship, to create a legal structure to underpin diverse parenting situations and provide legal clarity on parental rights and duties in diverse family forms.’ It also committed to ‘clarify the law in relation to a child and young person’s right to know his or her identity, where the child is adopted or born through the use of Assisted Reproductive Technologies, and to “put in place mechanisms to collect and retain information necessary to enable a child to exercise their right to identity and to facilitate regular family access for children in care.”

Family Law Reform: In January 2014, the General Scheme of the Children and Family Relationships Bill was published by the then Minister for Justice and Equality, Alan Shatter TD. The legislation aims to update and clarify the law on parental rights and duties in the range of different family forms in Ireland, including step-parent families and families headed by cohabiting couples, gay or lesbian couples or by other extended family members. Speaking at a high level seminar on the initial Scheme, Dr. Geoffrey Shannon, Special Rapporteur on Child Protection, noted that the Bill ‘represents the most significant change in family law in a generation and attempts to reflect the social reality of contemporary family life in Ireland.’

642 Ibid., p.104.
The Oireachtas Committee on Justice, Defence and Equality reviewed the initial Scheme, carried out a public consultation and issued a report in May 2014. On foot of this consultation process, a number of changes were made to the initial Scheme and a revised Scheme was published in September 2014. Most welcome was the inclusion in the revised Scheme of a provision to ensure that a child born through assisted human reproduction has the right to know his or her genetic identity. This will be achieved through a prohibition on anonymous donation of genetic material and the establishment of a national donor-conceived person register. Further consultation was undertaken on the revised Scheme and the Bill is expected to be published in mid-February 2015.

In light of a pending Supreme Court decision, provisions relating to children born through surrogacy were not included in the revised Scheme. Legislation addressing the issue of surrogacy will instead be developed by the Department of Health at a later date.

The revised Scheme is subject to change when published as a Bill and to further change on foot of amendments as the Bill progresses through the Houses of the Oireachtas. The revised Scheme provides that the best interest of the child will be the paramount consideration in decisions on custody, guardianship and access. It proposes repealing the Guardianship of Infants Act 1964 and extending the class of persons who can apply for guardianship of a child to civil partners, cohabitees, step-parents and others acting in loco parentis. In certain cases, it proposes that unmarried fathers will automatically be awarded guardianship of their children, and access applications will be simplified for interested persons who are not parents of the child, such as grandparents or step-parents. It will also set out how parenthood is to be assigned in cases of assisted reproduction and provide for the views of the child to be heard in decision-making, through the use of 'an expert to make known the views of the child'.

In another positive legislative development in 2014 was the enactment of the Civil Registration (Amendment) Bill 2014 in December. This legislation requires unmarried parents to register the name of the child’s father on a child’s birth certificate. This will help ensure the child’s right to know their parent’s identity is respected.

Civil Partnership and Cohabiting Couples: The Civil Partnership and Certain Rights and Obligations of Cohabiting Couples Act 2010, since coming into effect, provides legal recognition through civil partnership for same-sex couples including a wide range of marriage-like rights and obligations for civil partners. The Finance (No. 3) Act 2011 addressed some anomalies for children of civil partners, relating to taxation, so children of civil partners are now treated the same and have the same rights as children of married couples in terms of taxation, capital gains tax relief and inheritance tax relief. In December 2014, the Government announced that it will hold a Marriage Equality referendum in 2015 which will ask the People of Ireland if they wish to insert the phrase ‘Marriage may be contracted in accordance with law by two persons without distinction as to their sex’ into the Constitution.

Family Courts: In 2014, the then Minister for Justice and Equality, Alan Shatter TD, indicated that a referendum may not be necessary to reform the family courts system and that this could be done through legislation. The Department of Justice and Equality intended to publish legislation by end 2014 but this has now been delayed and is expected in 2015.
**COMMENT**

This year ‘Inequalities in Family Life’ receives a B grade, a significant rise from last year’s D+ grade. The improved grade reflects the publication of the initial and revised Scheme of the Children and Family Relationships Bill. It acknowledges that both the former Minister for Justice, Equality and Defence, Alan Shatter TD, and current Minister for Justice and Equality, Frances Fitzgerald TD, engaged in an open consultation process and demonstrated a real willingness to take on board suggestions for improving the Bill.

Of particular note is that following calls from the Children’s Rights Alliance, our members and the Ombudsman for Children, the revised Scheme was amended to include provisions on the child’s right to identity.654 This is a very significant positive development as it brings Irish law in this area into line with Articles 7 and 8 of the UN Convention on the Rights of the Child, which state that every child has a right to know his or her parents and have access to information concerning their genetic identity (which may be accessed when the child reaches 18 years of age). The inclusion of the provisions on the child’s identity required liaison between the Department of Justice and Equality and the Department of Health, which development these provisions. The requirement – under the Civil Registration (Amendment) Bill 2014 – for unmarried parents to register the names of both parents on a child’s birth certificate is also a welcome step to uphold the child’s right to identity.

The UN Convention on the Rights of the Child recognises the central role played by parents in the lives of children. Under the Convention every child has the right to be cared for by his or her parents insofar as possible.655 The term ‘parent’ is interpreted to mean genetic, birth and psychological or social parent (referring to someone who is not biologically related to the child but cares for the child for significant periods of their childhood). Children also have the right to contact with both their parents on a regular basis, to maintain personal relations and not to be separated from their parents against their will, unless the separation is in the child’s best interests.656 Children have the right to know their parents and to have accurate information about their identity as well as the assistance and protection of the State where the child has been denied an element of their identity.657 The UN Convention recognises that both parents have a role in the child’s life and focuses on the parental responsibilities involved in raising a child.658 In ‘all actions concerning children’, including those that fall outside the direct scope of the Convention, the best interests of the child principle must apply.659

The structure of Irish family life has changed significantly in recent decades with 36.1 per cent of registered births being outside of marriage in the second quarter of 2014.660 These include situations where a child is born to a lone, unmarried parent; an unmarried couple who are living at the same address; blended families, for example where the parents who have become separated, divorced or widowed and formed a new relationship, the child lives with one parent and a new partner; a child living with grandparents or other family members; or a child living with their parent and non-biological civil-partnered parent. According to the latest figures available, almost 352,000 children lived with a lone parent,661 104,665 children lived with co-habiting, unmarried parents662 and there were 230 same-sex couples with children.663

Many children have no legal relationship with the person who provides them with day-to-day parental care. The legal ability to formalise the relationship between a child and their de facto

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656 Ibid., Article 3(1).

657 Ibid., Article 9.

658 Ibid., Articles 7 and 8.

659 Ibid., Article 9.


662 Ibid.

663 Central Statistics Office (2012) This is Ireland Highlights from Census 2011, Part 1, Dublin, Stationery Office, p.27.
parent is critical to ensure security, fairness and clarity in the child’s life and upbringing. The limitations placed in granting guardianship means that, in families with a step-parent or civil partner, only the biological parent can be recognised as the guardian of the child and the other party will always be a stranger to the child in legal terms. This can make routine family practicalities very difficult, as the non-biological parent cannot consent to emergency medical treatment, vaccinations or school forms. It can also have a devastating impact in the context of family break up.

Irrespective of the legal relationship entered into by parents, children should not be discriminated against due to the status of that relationship. The UN Convention on the Rights of the Child provides that a child must not be discriminated against because of their 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.

The Children and Family Relationships Bill will be the most comprehensive amendment to the law on children and family relationships in many years. It provides a unique opportunity to modernise the law in the area and provide legal recognition to the many different and diverse family relationships that exist in modern day Ireland. Given the complexity of modern family structures this Bill needs to be given careful consideration and enacted at the earliest opportunity.

The revised Scheme also provides for two key children’s rights principles, namely the best interests principle as well as the voice of the child. However, under the proposals the court will only hear from the child at the judge’s discretion so there is no automatic right for the child’s voice to be heard. In addition, it is not clear what mechanisms will be put in place to ensure that the child’s views are properly heard and considered. The UN Committee has been clear in relation to Article 12 of the UN Convention on the Rights of the Child that the way in which the child’s views are represented ‘should be determined by the child (or by the appropriate authority as necessary) according to her or his particular situation’ requiring consultation with children in how best to present their views to ensure that they are ‘transmitted correctly’ to the judge.

To support the roll out of the legislation a court welfare service is needed. This service would provide an appropriate mechanism to carry out assessments of the child’s welfare and best interests, ascertain his or her views, while also carrying out family risk assessments. It would help to support the judiciary make informed decisions in accordance with the proposed legislation and with the State’s children’s rights obligations.

The requirement under the Civil Registration (Amendment) Act 2014 for unmarried parents to register the names of both parents on a child’s birth certificate is also a welcome step to uphold the identity rights of children. However, the lack of a Central Register for Statutory Declarations for Joint Guardianship continues to cause problems for some unmarried fathers who have not retained a copy of the declaration and are unable to prove that they are a joint guardian. The statutory declaration is the only non-judicial mechanism to enable an unmarried father to gain guardianship rights – the safe keeping of these documents should be fully supported by the State.

Guardianship is ‘the duty to maintain and properly care for a child and the right to make decisions about a child’s religious and secular education, health requirements and general welfare.’ Geoffrey Shannon, Family Law Practitioner, Dublin: Thomson Roundhall, 2003, at I-034.


UN Committee on the Rights of the Child (2009) General Comment No. 12: The right of the child to be heard, CRC/C/GC/12, para. 36.
Immediate Actions for 2015

Enact the Children and Family Relationships Bill ensuring that the provisions on best interests of the child, voice of the child and the right to identity are retained

The Children and Family Relationships Bill should be enacted to reform the law on parentage, guardianship, custody and access. The Bill should ensure that children’s rights can be vindicated by the people in their lives that fulfil the parenting role and that the best interests of the child forms the basis for decisions. The Bill must ensure that mechanisms are put in place to allow the child to have his or her voice heard directly in decisions and that the child’s right to identity to protected.

Establish a Central Register for Statutory Declarations for Joint Guardianship

The Scheme does not provide a facility for the establishment of a Central Register for Statutory Declarations for Joint Guardianship as recommended by the Law Reform Commission in 2010. The statutory declaration is the only non-judicial mechanism to enable an unmarried father to gain guardianship rights – the safe keeping of these documents should be fully supported by the State.

Establish a court welfare service to support the roll out of this legislation

A court welfare service is needed to provide an appropriate mechanism to carry out assessments of the child’s welfare and best interests, ascertain his or her views, while also carrying out family risk assessments. This service would help to support the judiciary make informed decisions in accordance with the proposed legislation and with the State’s children’s rights obligations.
