

Submission on the Replies of Ireland to the List of Issues

15 December 2015



The Children's Rights Alliance unites over 100 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services.

22q11 Ireland Support Group
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
Catholic Guides of Ireland
Childhood Development Initiative
Children in Hospital Ireland
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
Independent Hospitals Association of Ireland
Inspire Ireland
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
Junglebox Childcare Centre F.D.Y.S.
Kids' Own Publishing Partnership
Law Centre for Children and Young People
Lifestart National Office
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
Treoir
UNICEF Ireland
Unmarried and Separated Families of Ireland
youngballymun
Youth Advocate Programme Ireland (YAP)
Youth Work Ireland

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The following submission is a response to the ‘Replies of Ireland to the list of issues’, date received 16 October 2015. The Children’s Rights Alliance consulted with its member organisations in preparing this submission.¹ This submission addresses some but not all of the questions posed under Part 1. The submission also includes a newly identified children’s rights issue relating to the education of Deaf children.

Question 1: Please provide details on independent mechanisms for receiving complaints and conducting investigations in cases involving public bodies, including in issues regarding asylum, immigration, naturalisation and citizenship.

There are no independent mechanisms for receiving complaints or conducting investigations in relation to issues regarding asylum-seekers, immigration, naturalisation and citizenship matters. The only exception is the Refugee Appeals Tribunal, which examines decisions to refuse international protection applications.

Complaints from Children: There is no independent mechanism in Ireland for receiving complaints and conducting investigations on behalf of asylum seeking children living in direct provision centres – currently 1,600 children reside in such centres. In relation to Paragraph 1 of the State’s Response, it should be noted that the Ombudsman for Children is statutorily excluded under from hearing complaints on decisions taken in ‘the administration of the law relating to asylum, immigration, naturalisation or citizenship’.² Similarly, these are excluded areas for investigation by the Office of the Ombudsman under Section 5 of the Ombudsman Act 1980. No rationale has been offered by the State for these exclusions.

Reception and Integration Agency: In relation to Paragraph 7 of the State’s Response, it should be noted that in November 2014 the High Court found in the case of *CA and TA*, that the complaints procedure of the Reception and Integration Agency (RIA) for residents of direct provision centres to be ‘deficient’.³ The Court held that residents are entitled to have an independent complaints handling mechanism. It found that RIA did not have the necessary independence – due to its commercial relationship with the accommodation provider and as the author of the Direct Provision House Rules – to be the final arbitrator in a dispute between the residents in their homes and the commercial accommodation provider. The judgment is under appeal.

The report of the Working Group on Improvements to the Protection Process (McMahon Report), published in June 2015, recommended the extension of the remit of the Office of the Ombudsman and the Office of the Ombudsman for Children to include complaints relating to services provided to residents of Direct Provision accommodation centres and transfer decisions following a breach of the House Rules.⁴

Ministerial Discretion: The Minister for Justice and Equality is responsible for all issues relating to asylum, immigration, naturalisation and citizenship. The administration of decisions, including the refusal of visas, residence permits, naturalisation (citizenship) applications, family reunification, leave to land, and deportation orders are based on ministerial discretion. There is no independent mechanism to appeal a negative decision.

¹ This included consultations with the Immigrant Council of Ireland, the European Network on Statelessness (ENS) and the Institute for Statelessness in the Netherlands (ISN).

² Section 11(e)(i) of the Ombudsman for Children Act 2002.

³ *CA & anor. v The Minister for Justice and Equality & Ors.* [2014] IEHC 532.

⁴ Working Group on the Protection Process (2015) *Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report*, para. 4.135.

Access to Justice: It may be possible for individuals, including children, to seek judicial review in the High Court of an asylum, immigration or naturalisation decision. However, civil legal aid is generally not available for non-asylum related cases. Furthermore, the jurisdiction of the High Court is limited, it is not in a position to review the merits of a case, cannot deal with questions of fact and does not have the power to alter or vary an administrative decision.

Question 2: Please provide information on measures taken by the State party to mitigate the negative impact of austerity measures on the implementation of the Convention, including for children of migrant and ethnic minority backgrounds.

New Poverty Figures: Despite social transfers, child poverty in Ireland remains unacceptably high. The latest figures from the *EU Survey of Income and Living Conditions* (EU SILC), published in November 2015, shows that in 2014, 11.2 per cent of children were living in consistent poverty.⁵ While it is a reduction of half a percent on the 2013 figure, it is a significant increase on the pre-recession figure of 6.3 per cent in 2008. Individuals living in one parent households had the highest consistent poverty rate at 22.1 per cent in 2014.⁶

The Department of Social Protection is preparing a whole-of-government, multi-dimensional Implementation Plan to meet the national target to reduce child poverty by at least two-thirds on the 2011 level by 2020.⁷ In 2015, a subgroup was co-convened by the Department of Social Protection and the Children's Rights Alliance under the Advisory Council of *Better Outcomes, Brighter Futures, the National Policy Framework for Children and Young People 2014-2020*, to feed into the development of this Implementation Plan. The Plan will be a critical tool to guide policy in this area, and therefore it must be rights-based and contain a focus on access to services, participation and income supports.

It should be noted that some of the mechanisms used to alleviate the impact of poverty on children are limited in scope. For example, the School Meals Scheme is only available in designated disadvantaged schools (under the Delivering Equality of Opportunity In Schools (DEIS) programme) so it is not reaching all children in poverty, including those who are not attending a DEIS school; and the Area Based Childhood (ABC) programme is a time-limited programme available in only 13 sites.

Migrant and Ethnic Minority Children: The 2015 report of the Working Group on Improvements to the Protection Process (McMahon Report) included a recommendation to increase the weekly direct provision payment for children from €9.60 to €29.80.⁸ No action has been taken to implement this recommendation. This payment has not increased for almost 16 years. See also Question 10 below.

Homelessness: Ireland is experiencing a housing and homelessness crisis. The number of families with children becoming homeless increased dramatically since 2014. In September 2015, there were 738 families, with 1,571 children, living in emergency accommodation.⁹ The lack of available

⁵ Survey on Income and Living Conditions (SILC) 2014
<http://www.cso.ie/en/releasesandpublications/er/silc/surveyonincomeandlivingconditions2014/> [accessed 1 December 2015].

⁶ *Ibid.*

⁷ The target was set in 2014 under *Better Outcomes, Brighter Futures – the National Policy Framework for Children and Young People 2014-2020*, for more information, see http://www.dcy.gov.ie/documents/cypp_framework/BetterOutcomesBetterFutureReport.pdf.

⁸ Working Group on the Protection Process (2015) *Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report*, para. 5.30.

⁹ Department of the Environment, Community and Local Government, *Homeless Persons*, September 2015
<http://www.enviroment.ie/en/DevelopmentHousing/Housing/SpecialNeeds/HomelessPeople/> [accessed 1 December 2015].

accommodation means that families have become stuck in emergency accommodation, some living in hotels over a year.

The quality of emergency accommodation being offered to families – in hotel rooms and bed and breakfast (B&B) accommodation – is sometimes inappropriate for family life as such accommodation often means whole families living in one room with no privacy.¹⁰ Long-term living in emergency accommodation is costly, unsustainable and not conducive to childhood development and well-being. There is often no cooking facilities, and little or no space for children to play or do homework. In many cases children 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, there are no child protection guidelines and the service is not inspected.

Question 4: Please provide clarification on allegations of the “Garda PULSE” system for law enforcement being misused to categorize and record “children of Travellers” as criminals on the sole basis of their ethnicity.

The 2014 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) and called for an urgent review of this practice.¹¹ The State’s Response at Paragraph 26 states that the ‘PULSE’ system ‘is not being misused in the manner alleged’, that is that members of the Travelling community are recorded on the basis of their ethnicity. It should be noted that this analysis of the PULSE records which have children linked to them is ongoing. Only when this analysis is completed will it be possible to say how many children are on the PULSE system, the rationale for their inclusion on the system and if there has been inappropriate use of the system in relation to Traveller or other ethnic minority children. The media has highlighted cases of alleged misuse of the system, including two Traveller children seeking passports for a family holiday who were assigned criminal intelligence numbers.¹²

Question 5: Please provide information on measures taken to ensure freedom of conscience, religion and belief for children. In doing so, please include information on measures to ensure that children are not denied placement in schools on the basis of religion. Please also provide information on measures taken to ensure children have the right to opt-out of religious classes and/or attend alternatives to such classes in accordance with their beliefs.

Ireland has a unique education system. Within the publicly-funded education system 95 per cent of primary schools have religious patrons, with the Catholic Church being the patron of 89 per cent of these schools.¹³ The post-primary level school system is somewhat more diverse, in it about 70 per cent of schools operate under religious patronage.

The State’s Response Paragraphs 31-34 outline proposed changes under the Education (Admission to Schools) Bill 2015 to provide a new framework to govern school admissions policies for all schools.¹⁴

¹⁰ ISPC (2015) Investing in Childhood: ISPC Childline Pre-2016 Budget Submission, <http://www.ispc.ie/news-media/news/investing-in-childhood/13134> [accessed 30 September 2015]; Focus Ireland, Briefing Note: Family Homelessness <http://www.focusireland.ie/files/focus%20ireland%20family%20homelessness%20briefing%201.pdf> [accessed 30 September 2015].

¹¹ Garda Inspectorate (2014) *Crime Investigation Report*, Dublin: Garda Inspectorate p. 24.

¹² Pavee Point, ‘Remove these children from the Garda PULSE database’ [press release] 27 March 2014, <http://www.paveepoint.ie/tag/pulse/> [accessed 20 March 2015].

¹³ Minister for Education and Skills, Jan O’Sullivan TD, Dáil Debates, 13449/15.

¹⁴ Education (Admission to Schools) Bill 2015, Explanatory Memorandum, p. 1.

However, on 8 December 2015 the Minister for Education and Skills, Jan O’Sullivan TD, stated that the Bill will not be passed during the life time of this government.¹⁵

Admissions: Publicly-funded schools continue to be allowed under law to discriminate against children on the basis of the child’s religious or non-religious belief. An exemption under Section 7(3)(c) of the Equal Status Acts 2000-2012 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. In areas where schools are over-subscribed (around 20% of primary schools), families of minority or no religion are being refused access to their local denominational school.¹⁶ The aim of the exclusion under the Equal Status Act 2000 was to support minority religious schools, however in practice it has been used to prevent children of minority religions or no religion from accessing a local school of the majority religion.

In December 2015, the findings of a national representative opinion poll showed public support for reform of the education system – 84 per cent of respondents support reform of the education system so no child is excluded because of their religion or non-religion;¹⁷ 77 per cent do not think a school should have the right to refuse admission to a child who has a different religion to that of the school’s patron;¹⁸ 46 per cent would not chose a Christian school for their child if they had a choice locally; and one in five are aware of someone who has baptised their child to meet the admissions criteria of a local school.¹⁹

Divestment: The divestment process has been very slow with only a handful of divestments taking place since 2008. This process was instigated as a pilot with a view to a national programme of divestment, but a national programme has not been put in place. More than half of Irish primary schools are located in rural areas (1,700 schools) where the population may not be able to sustain the building of a new multi-denominational or non-denominational school. The report of the Forum on Patronage and Pluralism in the Primary Sector recommended the development of a Diversity Protocol to remove barriers from children’s full participation in their local school.²⁰

Curriculum: Section 30 of the Education Act 1998 provides that a student shall not be required to attend instruction in any subject that is contrary to the conscience of his or her parent. While Section 15(2)(b) of the Education Act 1998 obliges schools to uphold the religious ethos of the patron.²¹ Two difficulties arise in relation to opting out of religious instruction.²² Firstly, it is often difficult for schools to uphold this right as they must provide alternative supervision for the child in place of religious instruction without any alternative subject-matter being taught.²³ Opt-out

¹⁵ The current Government must call a General Election in early 2016. All legislation under discussion will fall once Dail Eireann is dissolved.

¹⁶ Houses of the Oireachtas, Joint Committee on Education and Social Protection, *Report on the Draft General Scheme of an Education (Admission to Schools) Bill 2013*, March 2014.

¹⁷ Equate: Equality in Education, *News*, [website] <http://www.equateireland.ie/#!/news/c6v5> [accessed 15 December 2015].

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ The Forum on Patronage and Pluralism in the Primary Sector (2012) *Report of the Forum’s Advisory Group*, <https://www.education.ie/en/Press-Events/Conferences/Patronage-and-Pluralism-in-the-Primary-Sector/The-Forum-on-Patronage-and-Pluralism-in-the-Primary-Sector-Report-of-the-Forums-Advisory-Group.pdf>, p. 74-75.

²¹ A. Mawhinney (2007) ‘Freedom of Religion in the Irish Primary School System: A Failure to Protect Human Rights?’, *Legal Studies*, Vol 27, No. 3, p. 389–390.

²² Education Act 1998, s. 30(2)(e).

²³ The Forum on Patronage and Pluralism in the Primary Sector (2012) *Report of the Forum’s Advisory Group*, <https://www.education.ie/en/Press-Events/Conferences/Patronage-and-Pluralism-in-the-Primary-Sector/The-Forum-on-Patronage-and-Pluralism-in-the-Primary-Sector-Report-of-the-Forums-Advisory-Group.pdf>, p. 83-84.

measures tend to be ad hoc in nature and inconsistently applied across schools.²⁴ Secondly, 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 school.²⁵ On 8 December 2015, the Minister for Education and Skills announced that the National School Rule underpinning the privilege of religious instruction in the school curriculum is to be repealed.²⁶ This is a welcome development and should be accompanied by reform of the Education Act 1998 to set out how schools should accommodate the opt-out of children of minority or no religions from religious instruction throughout the school day. The Forum for Patronage and Pluralism also recommended that religious education classes should also be administered at the end of the school day to facilitate families in opting out.²⁷

Question 6: Please provide detailed information on measures taken to combat sexual exploitation, violence and abuse against children, including:

On a positive note, the Children First Act 2015 abolished the common law defence of reasonable chastisement and in December the Minister for Children and Youth Affairs signed the relevant commencement order.

At the time of writing, it appears that the Government will not progress the General Scheme of the Criminal Justice (Victims of Crime) Bill 2015. The failure to progress this legislation means that Ireland is in breach of the EU Directive on Victims which was due to be transposed into law by 16 November 2015.

It is not clear at the time of writing if the Criminal Law (Sexual Offences) Bill 2015 will be enacted in the lifetime of this government. This is an important piece of legislation which creates for the first time an offence of paying, giving or offering payment to a child for the purpose of sexual exploitation.²⁸ The Bill also criminalises the purchase of sexual services.²⁹

²⁴ See for example, Catholic Schools Partnership (2015) *Catholic Primary Schools in a Changing Ireland – Sharing Good Practices on the Inclusion of All Pupils*, Maynooth: Catholic Schools Partnership; RTÉ, 'New church guidelines for schools 'disappointing'', RTÉ News [online], 12 March 2015 <http://www.rte.ie/news/2015/0312/686510-church-school-guidelines/> [accessed 12 March 2015]; A. Mawhinney (2007) 'Freedom of Religion in the Irish Primary School System: A Failure to Protect Human Rights?', *Legal Studies*, Vol. 27, No. 3, p. 393; Department of Education and Skills (2014) *Forum on Patronage and Pluralism in the Primary Sector: Progress to Date and Future Directions*, Dublin: Department of Education and Skills, p. 23.

²⁵ The Integrated Curriculum is based on Rule 68 of the 1965 *Rules for National School*, which states: 'Of all the parts of a school curriculum Religious Instruction is by far the most important, as its subject-matter, God's honour and service, includes the proper use of all man's faculties, and affords the most powerful inducements to their proper use. Religious instruction is, therefore, a fundamental part of the school course, and a religious spirit should inform and vivify the whole work of the school.' Department of Education (1965) *Rules for National Schools*, Dublin: Stationery Office, p. 38. The Rules have been accepted as binding by the Courts and are adhered to by every primary school in the country as a result.

²⁶ Department of Education and Skills, 'Minister Jan O'Sullivan launched Education Matters', 8 December 2015, <http://www.education.ie/en/Press-Events/Speeches/2015-Speeches/SP2015-12-08.html> [accessed 15 December 2015].

²⁷ The Forum on Patronage and Pluralism in the Primary Sector (2012) *Report of the Forum's Advisory Group*, <https://www.education.ie/en/Press-Events/Conferences/Patronage-and-Pluralism-in-the-Primary-Sector/The-Forum-on-Patronage-and-Pluralism-in-the-Primary-Sector-Report-of-the-Forum-Advisory-Group.pdf>, p. 84.

²⁸ Criminal Law (Sexual Offences) Bill 2015, s. 3.

²⁹ *Ibid.* s. 20. Under this section, the person offering sexual acts does not commit any offence.

Question 6(d): Provision of interim protection orders and availability of sufficient refuges for children and their parent who are victims of domestic violence;

Despite the State's Response at Paragraph 51 that Ireland has one space per 9,000 adult women, we know from services working on the ground that these places are not sufficient to meet demand. In 2013, requests for access to emergency refuge accommodation were denied on 3,494 occasions, because refuges were full.³⁰ One service, Sonas 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.³¹

Question 8: Please provide detailed information on measures taken to ensure timely access to mental health services. In doing so, please include information on preventive and early detection measures.

The State's Response at Paragraph 65 states that there are 63 Child and Adolescent Mental Health Services (CAMHS) teams in operation. It should be noted that the Department of Health identified in 2006 that 127 teams are needed for CAMHS to operate effectively.³² There are significant staff shortages within CAMHS teams and a lack of adequate staff training and development.³³ There are no national standards guiding the operation of CAMHS.

The demand for CAMHS is rising: referrals increased by 49 per cent between June 2014 and May 2015.³⁴ However, services have been unable to meet this demand and significant waiting lists have developed. 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.³⁵ In some areas, non-acute cases have waited for up to two years.³⁶

Question 10: Please provide additional information on the criteria for the fulfilment of the so-called "Habitual Residence Condition" in order to access social services. In doing so, please provide information on measures, if any, taken to ensure that this condition does not result in children from asylum-seeking, refugee, migrant, and Traveller and Roma ethnic minority backgrounds being excluded from primary care, child benefits and social protection.

The State Response makes no reference to the application of the Habitual Residence Condition to the Child Benefit payment. The Condition is applied to this payment, despite the fact that the Child Benefit payment is not a social welfare payments: it is a 'universal' monthly payment which is not subject to a means test. The Habitual Residence Condition has a disproportionate impact on

³⁰ 'Domestic Violence Special Investigation', *Irish Examiner* [online], 18 and 19 April 2013 <http://www.irishexaminer.com/ireland/domestic-violence-specialinvestigation-lindas-story-228712.html> [accessed 1 May 2015].

³¹ Sonas, *Annual Report 2013: Working for Women and Children Experiencing Domestic Violence*, p. 4 <http://www.domesticabuse.ie/wp-content/uploads/2014/04/Sonas-Annual-Report-2013.pdf> [accessed 1 May 2015].

³² Department of Health (2006) *A Vision for Change*, Dublin: Stationery Office (revised as per Census 2011). Health Service Executive (2012), *Fourth Annual Child and Adolescent Mental Health Service Report 2011–2012*, Dublin: Health Service Executive, p. 9.

³³ Retirements in the Children and Adolescent Mental Health Services has left a gap in knowledge and experience within services. HSE Performance Assurance Report September 2014; CAMHS Annual Report Sept 2013, p. 83.

³⁴ Health Service Executive, *Performance Assurance Report*, May 2015, p. 91. <http://www.hse.ie/eng/services/publications/corporate/performance/may15pr.pdf>

³⁵ *Ibid.*

³⁶ Children's Mental Health Coalition, *Meeting the Mental Health Support Needs of Children and Adolescents*, Dublin: CMHC, p. 10 https://www.iasw.ie/attachments/Childrens-Mental-Health-Coalition-support_needs_children_&_Adolescents.pdf [accessed 1 September 2015].

particular groups of children,³⁷ including Traveller children,³⁸ Roma children,³⁹ and asylum seekers.⁴⁰ 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. Anecdotal evidences indicates that the practice of determining Habitual Residence Condition applications varies across the country.

Question 11: Please provide information on measures to ensure access to water and sanitation for children living in a nomadic context in the State party. In doing so, please provide details on measures taken to provide accommodation facilities and infrastructure that is accessible for Travellers and Roma ethnic minorities.

A recent fire tragedy highlighted the deeply rooted racism in Irish society towards Travellers, even in the face of a significant loss of human life. It also focused national attention on the deficits of Traveller accommodation.

On 9 October 2015, a fire at a temporary Traveller halting site, in Carrickmines, Dublin, killed ten people. The victims were from two related families included five adults and their five children, aged nine, five, four, two years and the youngest was just five months old. Two children (aged four and six) were orphaned by the fire. Fifteen people (nine adults and six children) were left homeless after the fire and all of the survivors lost family members in the fire.

The Local Authority identified a nearby green field site to re-accommodate the survivors on a temporary basis. Local residents blockaded the identified site to prevent it being used. They stated that they had not been adequately consulted on the decision. Some of their comments verged on ethnic profiling and racism.⁴¹

³⁷ Minister for Social Protection, Joan Burton TD, *Social Welfare Benefits*, [5458/11], Dáil Debates, 23 March 2011. Crosscare, Doras Luimni and Nasc (2012) *Person or Number? Issues Faced by Immigrants Accessing Social Protection*, Limerick: Crosscare, Doras Luimni and Nasc; Immigrant Council of Ireland (2014) *ICI Response to FLAC Questionnaire for Shadow Report under the International Covenant on Economic, Social and Cultural Rights*, Dublin: ICI; Barnardos (2014) *Submission to Shadow Report for Ireland on the International Covenant on Economic, Social and Cultural Rights*, Dublin: Barnardos.

³⁸ Pavee Point (2011) *Irish Travellers and Roma Shadow Report: Response to Ireland's Third and Fourth Combined Report under the International Covenant on the Elimination of All Forms of Racial Discrimination (CERD)*, Dublin: Pavee Point, p. 4; Pavee Point (2011) *Position Paper: The Impact of the Habitual Residence Condition on Travellers and Roma*, Dublin: Pavee Point; End Child Poverty Coalition (2014) *Pre-Budget Submission 2015*, Dublin: ECPC.

³⁹ Pavee Point (2014) *Roma Seminar Series, Theme Three, Roma and Education*, Dublin: Pavee Point, p. 6.

⁴⁰ Department of Social Protection, *Guidance for Deciding Officers on the Determination of Habitual Residence*, <http://www.welfare.ie/en/Pages/Habitual-Residence-Condition--Guidelines-for-Deciding-Offic.aspx#sect5>, section 5 and section 7 [accessed 20 May 2015]; S. Arnold (2012) *State Sanctioned Child Poverty and Exclusion: The Case of Children in Accommodation for Asylum- Seekers*, Dublin: Irish Refugee Council.

⁴¹ See: "Sarah Jane Dunne: Residents' 'victory' over Travellers is a sad day for equality in Ireland" (Sun 25 Oct 2015) <http://www.independent.ie/opinion/comment/sarah-jane-dunne-residents-victory-over-travellers-is-a-sad-day-for-equality-in-ireland-34138697.html>; "Carrickmines fatalities: Anger distilled from shock and grief" – (Sat 24 Oct 2015) <http://www.irishtimes.com/news/social-affairs/carrickmines-fatalities-anger-distilled-from-shock-and-grief-1.2404029>; "The policy of leaving things as they are" (Sun 25 Oct) <http://www.independent.ie/opinion/columnists/gene-kerrigan/the-policy-of-leaving-things-as-they-are-34138646.html>

After a week of negotiations, the Local Authority had to identify an alternative site – a car park – to accommodate the homeless survivors of the fire.⁴²

The site of the Carrickmines tragedy had originally been deemed to be a temporary site but despite this, the families had been living there for eight years. The site was overcrowded, with trailers (caravans) situated close to each other, in breach of fire safety regulations. Overcrowding is a common issue due to a scarcity of Traveller accommodation.

Local authorities are charged with providing Traveller accommodation but between 2008 and 2013, 25 local authorities failed to meet their targets for accommodation provision. There are no sanctions against those who failed to achieve their target. The Irish Human Rights and Equality Commission has raised concerns as to whether the rights of the Traveller community are being properly vindicated in the manner in which the Council is discharging its housing obligations.⁴³ A Supreme Court judgment in *O'Donnell & Ors -v- South Dublin County Council & Ors* highlighted the fact that poor quality Traveller accommodation, may not only be a breach of a local authority's statutory duty, but may in certain circumstances also amount to a breach of the constitutional right to autonomy, bodily integrity and privacy.⁴⁴ Traveller representatives have called for the establishment of a dedicated Traveller Agency to drive improvements and implementation of policy and legislation for Travellers.⁴⁵

Question 13. Please provide information on measures, including independent inspections, taken to ensure that the Direct Provision system for accommodating children and families in asylum-seeking or refugee situations in private centers is compliant with the Convention and child-friendly.

Inspection Regime: In *CA and TA*, the High Court held that elements of the Reception and Integration Agency's House Rules in Direct Provision were unlawful.⁴⁶ The High Court determined that the bedroom of the applicants was their home, and protected by Article 40.5 of the Constitution and Article 8 of the European Convention on Human Rights (Private and Family Life). It found that the overarching manner and unannounced nature of the inspections was not proportionate; the monitoring of residents' presence and requirement to notify intended absences was not proportionate. The outright ban on person's having guests in their home was a disproportionate interference with constitutional rights and rights under the European Convention on Human Rights.

The Reception and Integration Agency (RIA) operates an inspection regime of all accommodation centres.⁴⁷ The Working Group noted that the RIA inspection regime focused on compliance with the

⁴² The Local Authority took this step reluctantly and it was largely due to threats of legal action by residents which would have delayed a decision on the initial site identified to accommodate the survivors.

⁴³ The Irish Human Rights and Equality, '*Statement by the Irish Human Rights and Equality Commission in response to recent tragedies at a temporary Traveller halting site at the Glenamuck Road in South Dublin*' [press release], 23rd October 2015, <http://www.ihrec.ie/news/2015/10/23/statement-by-the-irish-human-rights-and-equality-c/> Section 42 of the Irish Human Rights and Equality Commission Act 2014, places a duty on public bodies, including local authorities, to have regard to the need to eliminate discrimination, promote equality of opportunity and protect human rights in the performance of their functions.

⁴⁴ [2015] IESC 28.

⁴⁵ Pavee Point Traveller and Roma Centre, '*Almost 5,500 sign up for Traveller agency*', 11 November 2015 [press release] <http://www.paveepoint.ie/almost-5500-sign-up-for-traveller-agency/> [accessed 15 December 2015].

⁴⁶ *CA & anor. v The Minister for Justice and Equality & Ors.* [2014] IEHC 532.

⁴⁷ This comprises three inspections annually; two by an in-house RIA inspectorate and a minimum of one by an independent assessor with expertise in fire and food safety.

existing contractual obligations, mainly relating to accommodation and catering provision.⁴⁸ While they contain some standards, e.g. relating to health and safety, fire safety and food preparation, there is an absence of standards across a number of qualitative areas, e.g. in relation to the training of staff in diversity issues, the provision of facilities for children, and ensuring that residents (including children) are heard.

The report of the Working Group on Improvements to the Protection Process (McMahon Report), published in June 2015, recommended that the Minister for Justice and Equality establish a standard-setting committee to recommend a set of standards to the Minister; establish an inspectorate (or identify an existing body), independent of RIA, to carry out inspections in Direct Provision centres against the newly approved standards.⁴⁹

Child Protection and Welfare: The planned consultations with children and young people living in Direct Provision being undertaken by the Department of Children and Youth Affairs in co-operation with the Reception and Integration Agency (RIA) are to be warmly welcomed.

The Health Information and Quality Authority (HIQA) has raised concerns about a significantly higher referral rate of child protection and welfare cases from direct provision centres than for the general population.⁵⁰ It also found that there were no standardised protocols on how Tusla – Child and Family Agency and providers of direct provision should work together. The Final Report of the Child Care Law Reporting Project, published in November 2015, noted cases where mothers in Direct Provision suffered from severe episodes of mental illness, leading to their children being taken into care.⁵¹

The Working Group made a number of recommendations 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 families with self-contained units with cooking facilities or family quarters together with communal kitchens; to provide adequate recreational space for children; to ensure extend the remit of the Office of the Ombudsman and Office of the Ombudsman for Children to include specific categories of complaints from residents. These recommendations remain unimplemented.

Question 14: Please provide information on measures undertaken to ensure that asylum seeking children and their families, as well as those in irregular migration situations, have access to independent legal advice. Please also provide information on measures to ensure that unaccompanied minors in an irregular migration situation are not left stateless or in a situation of legal ambiguity on their migration status upon obtaining the age of majority.

Statelessness: Ireland is a party to 1954 UN Convention relating to the Status of Stateless Persons and the 1961 Convention in the Reduction of Statelessness. Despite this, Ireland has no formal domestic stateless determination procedure, including for persons seeking international protection. The situation of statelessness can be remedied under Section 6(3) of the Irish Nationality and Citizenship Act 1956 (as amended) which provides access to Irish citizenship at birth if the child is not entitled to citizenship of any other country; and through Section 16 which permits the Minister to dispense with the general criteria for granting naturalisation, if the applicant is a stateless person.

⁴⁸ Working Group on the Protection Process (2015) *Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report*, para. 4.216.

⁴⁹ *Ibid.* para. 4.226.

⁵⁰ Health Information and Quality Authority (2015) *Report on inspection of the child protection and welfare services provided to children living in direct provision accommodation under the National Standards for the Protection and Welfare of Children*.

⁵¹ C. Coulter (2015) *Final Report, Child Care Law Reporting Project*, Dublin, p. 45.

Migration Status: Under Section 9(6) of the Immigration Act 2004, all migrant children are required to be registered with immigration authorities at the age of 16 years. The International Protection Bill 2015, currently being debated in the Oireachtas (Parliament), requires Tusla – Child and Family Agency to seek legal advice before making a decision on whether a separated child should apply for asylum. If enacted, this will hopefully address incidences of poor practice where a social worker delayed in making an application or failed to make an application on behalf of a separated child.⁵²

Question 15. Please provide updated information on the minimum age of criminal responsibility. Please also provide information on measures to ensure that deprivation of liberty is a measure of last resort for children in conflict with the law, and that if applied, this takes place in conditions that are compliant with the Convention.

There high proportion of children remanded to detention as compared to the proportion of adults remanded to detention is of concern. In addition, only 27 per cent of children detained on remand in 2013 were subsequently sentenced to detention on conviction.⁵³ This practice implies a breach of 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. 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.⁵⁴

⁵² E. Quinn *et al.* (2014) *Policies and Practices on Unaccompanied Minors in Ireland*, ESRI Research Series 38, Dublin: The Economic and Social Research Institute.

⁵³ Minister for Children and Youth Affairs, Dr. James Reilly TD, Parliamentary Questions: Written Answers 20 January 2015 [2192/15].

⁵⁴ Ombudsman for Children's Office (2013) *A Meta-Analysis of Repeat Root Cause Issues Regarding the Provision of Services for Children in Care*.

The Education of Deaf Children in Ireland⁵⁵

It is estimated that there 3,300 children up to the age of 17 years with a deafness ranging from a moderate level to severe to profound.⁵⁶ They included Deaf children who have no active hearing to those who have a level of hearing achieved through a cochlear implant or digital hearing aid. Ninety per cent of Deaf children are born to hearing parents. The majority of Deaf children, more than eighty percent, attend mainstream schools.⁵⁷ There are three standalone schools for Deaf children and some children attend special units attached to mainstream schools. Deaf children have very poor educational outcomes. Irish research, published in 1991, found that the reading age of Deaf school leavers is that of an average nine year old;⁵⁸ and a Deaf person is seven times less likely to hold a third level qualification than the average Irish person.⁵⁹

Under Article 2 (non-discrimination) of the Convention, children are entitled to access all the rights of the Convention without discrimination. However, Deaf children in Ireland are being indirectly discriminated against as children cannot always access the educational curriculum through the medium of Irish Sign Language (ISL), their first language.⁶⁰ This means the child cannot always fully participate in and benefit from education; their language and cultural needs' are unmet and they are hindered from achieving educational outcomes on a par with their hearing peers of similar ability.

It should be noted that the family of a deaf child sought a remedy through the Courts, for State failure to provide an education suitable to their child's needs through ISL: the case was settled out of Court.⁶¹

There is no national policy on the education needs of Deaf children. In 2011, following a request from the Minister for Education and Skills, the National Council for Special Education produced a Policy Advice Paper, *Education of Deaf and Hard of Hearing Children in Ireland*.⁶² The recommendations of this paper have yet to be acted upon. This leaves a policy vacuum. Irish Sign Language (ISL) is not recognised as an official Language in Ireland: although it is recognised as an official language in Northern Ireland.

Two key challenges exist in relation to the education of Deaf children. Firstly, anecdotal evidences suggests that some parents are discouraged from learning ISL, with sign language being seen as a

⁵⁵ This issue was brought our attention by Dr John Bosco Conama and Andrew Geary of the Irish Deaf Society.

⁵⁶ National Disability Survey carried out by the Central Statistics Office (CSO, 2006). This figure was quoted in The National Council for Special Education (2011) *Education of Deaf and Hard of Hearing Children in Ireland: NCSE Policy Advice Paper*.

⁵⁷ Ryan, 2006, Mathews 2011.

⁵⁸ National Rehabilitation Board James and O'Neill 1991. These findings are in line with the Conrad Study of 1979.

⁵⁹ Conroy, P. (2006) *Signing In and Signing Out: the Education and Employment Experiences of Deaf Adults in Ireland*. Dublin: The Irish Deaf Society.

⁶⁰ For a general discussion of this topic see John Bosco Conama, Chapter Three *Who Decides? Language Education Policies for Deaf Children - Selected Findings from a Comparative Analysis of Finnish and Irish Policies on Signed Languages* Centre for Deaf Studies, Trinity College Dublin, Ireland.

⁶¹ See Irish sign language action settled (Wed, Nov 26, 2008) *The Irish Times* and Signing case to be taken against State Tue, Feb 28, 2006 *The Irish Times*.

⁶² The National Council for Special Education (2011) *Education of Deaf and Hard of Hearing Children in Ireland: NCSE Policy Advice Paper*.

'last resort' rather than the child's first language.⁶³ This approach deprives their child of an essential tool for language acquisition development. Research shows that for Deaf children need to be fluent in their first language, Irish Sign Language, to acquire literacy skills in a second language, written and spoken English (or Irish).⁶⁴

Secondly, there is a lack of adequately trained teachers and signers who are fluent in ISL (Level 8 qualification) and therefore able to effectively deliver the curriculum.⁶⁵ There are over 80 Trained ISL/English interpreters in Ireland,⁶⁶ however none of these are employed as interpreters in the school system. Teachers, in particular primary school teachers, should be drawn from the Deaf Community, to provide a communications 'bridge' and role model for their pupils. In addition, teachers, including those at post-primary level, should be required to have a minimum level of ISL.

Recommendation: The Committee is urged to recommend that the State ratify the UN Convention on the Rights of Persons with Disabilities and recognise Irish Sign Language as an official language. It is further recommended that it adopt a national policy on the education of Deaf children and introduce a minimum ISL qualification for teachers of Deaf children, along the lines of Policy Advice of the National Council for Special Education (NCSE).

⁶³ Komesaroff, L. (2008) *Disabling Pedagogy: Power, Politics and Deaf Education*. Washington, D.C.: Gallaudet University Press.

⁶⁴ Komesaroff, L. (2008) *Disabling Pedagogy: Power, Politics and Deaf Education*. Washington, D.C.: Gallaudet University Press.

⁶⁵ Conroy, P. (2006) *Signing In and Signing Out: The Education and Employment Experiences of Deaf People in Ireland. A Study of Inequality and Deaf People in Ireland*, Dublin: Irish Deaf Society.

⁶⁶ Leeson, Lorraine (2012) Interpreting in Tertiary Education. In Leeson, Lorraine and Vermeerbergen, Myriam (eds) *Working with the Deaf Community: Education, Mental Health and Interpreting*. Dublin: Interresource Group Publishing.