

Irish Human Rights Commission

Submission for the Twelfth Session
of the Working Group on the
Universal Periodic Review: Ireland

March 2011

IHRC

AN COIMISIÚN UM CHEARTA AN DUINE
IRISH HUMAN RIGHTS COMMISSION

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Please note: this document is a reformatted version of the IHRC’s submission for consideration of Ireland under the UPR Process.

EXECUTIVE SUMMARY

1. The Irish Human Rights Commission (IHRC) is Ireland's National Human Rights Institution (NHRI), working in compliance with the Paris Principles.¹

2. The IHRC welcomes the opportunity to provide this report but notes that due to space limits, it has not been able to cover all issues it considers of importance.

I. BACKGROUND AND FRAMEWORK

3. In the preparation of this report the IHRC engaged in consultations with Civil Society in Ireland.² The IHRC also held regional briefings outside of Dublin on UPR to support stakeholders in Ireland to make their reports.³

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS

A. HUMAN RIGHTS AND EQUALITY INFRASTRUCTURE

4. Ireland has undergone a severe economic crisis since late 2008. This should not be used as an excuse to reduce the promotion and protection of human rights.

Severe cuts to the Irish Human Rights and Equality Infrastructure

5. Disproportionate cuts to the human rights and equality infrastructure that have taken place since 2008 will have a long-term negative impact on human rights and equality in Ireland. Among the first cuts made by the Government at the start of the economic crisis were to the IHRC and the Equality Authority,⁴ whose budgets were cut by 32% and 43% respectively.⁵ The IHRC's ability to continue operating as an effective NHRI has been seriously jeopardised by these and other cuts. Any further cuts would put its continued survival into question. In addition, the National Consultative Committee on Racism and Interculturalism,⁶ which monitored racist incidents in Ireland

¹ The IHRC has 'A' Status Accreditation with the International Coordinating Committee of National Human Rights Institutions. From 2006 to 2011 it was Chair of the European Group of NHRIs.

² The IHRC held consultations with Civil Society on 27th October 2010 and 16th February 2011 to discuss its own UPR report.

³ The IHRC held regional workshops on 13th December 2010, 20th January and 9th February 2011.

⁴ The Equality Authority is an independent body set up under the Employment Equality Act 1998. It is the main statutory body tasked with monitoring the implementation of equality legislation including the prohibition against discrimination on grounds of race.

⁵ IHRC Press Release, IHRC Launches Its 2008 Annual Report, 10 July 2009. www.ihr.ie/newsevents/press/2009/07/10/ihr-launches-its-2008-annual-report/ The IHRC has had a 37.5% reduction in funding since 2008, with its total grant-in-aid being reduced from €2,342,000 in 2008 to €1,596,000 in 2009, to €1,532,000 in 2010. Its budget (2011) now stands at €1,463,000. Budget 2009 saw a reduction of the total budget of the Equality Authority (EA) from €5,897,000 to €3,333,000. Equality Authority Press Release Budget 2009 may render Equality Authority unable to carry out the full range of its core functions, 11 November 2008.

⁶ The National Committee on Racism and Interculturalism (NCCRI), an expert advisory body established to advise the Government in relation to racism and integration, was closed down in 2008 and its functions, though not its staff, were subsumed into the Office of the Minister of Integration. The NCCRI had operated a scheme for independent recording of racist incidents and this has been discontinued. It also performed an important role in facilitating contact between the immigrant community and the Government. See IHRC Submission to the UN CERD Committee on the Examination of Ireland's Combined Third and Fourth Periodic Report November 2010, p. 9. www.ihr.ie/download/pdf/20101210101458.pdf

and the Combat Poverty Agency,⁷ were closed down in 2008/2009. The IHRC **recommends** that the budgets of the IHRC and Equality Authority be returned to 2008 levels and the functions of the other bodies - particularly as regards monitoring and recording of racist incidents and promoting anti-poverty policies - be entrusted to another independent state agency. In addition, the independence of the NHRI and Equality Authority should be ensured with direct accountability to Parliament.

6. There is a lack of clear human rights policy in Ireland. The IHRC **recommends** that a National Action Plan for Human Rights be introduced to mainstream human rights in Irish law, policy and practice.

Human Rights Education

7. The State does not provide dedicated human rights education or training for the Civil and Public Service in Ireland.⁸ As a result, the IHRC launched its own time-limited philanthropically-funded human rights education and training project in 2010. The State does not provide systematic and sufficiently resourced human rights education in schools.⁹ The IHRC **recommends** that Ireland implement the 1st and 2nd phases of the WPHRE¹⁰ and prioritise human rights training for the Civil and Public Service and for teachers/educators.

International Human Rights Obligations

8. The IHRC **recommends** that Ireland ratify and incorporate without delay the following conventions: CRPD,¹¹ the OPCAT,¹² the Op-ICESCR,¹³ the Op-CRC,¹⁴ the CRMW,¹⁵ and the CED.¹⁶

9. The IHRC **recommends** that Ireland take immediate steps to effectively incorporate ICESCR, ICCPR, CEDAW, CRC and CERD, and the other international human rights treaties to which it is party, into domestic law.¹⁷ The lack of incorporation

⁷ The Combat Poverty Agency, a statutory agency tasked with promoting social inclusion and making recommendations to Government in relation to the reduction of poverty, was subsumed into the Office of the Minister for Social Inclusion in 2008, thus ceasing to be an independent voice in this area. See IHRC Submission to the UN CERD Committee on the Examination of Ireland's Combined Third and Fourth Periodic Report November 2010, p. 9. www.ihrc.ie/download/pdf/20101210101458.pdf

⁸ However, there are some positive developments in this area. An Garda Síochána (Police) is to be commended for the positive human rights based reform process it is currently embarking upon. The IHRC considers it vital that all the initiatives in the Garda Human Rights Action Plan are fully implemented and reinforced with effective management and training.

⁹ IHRC Submission to the UN Human Rights Committee on Ireland 1 Year Follow-up Report to its Third Periodic Report under the ICCPR, 2009, p. 9. www.ihrc.ie/download/doc/ihrcsubmission_iccpr1yr_followup.doc

¹⁰ World Programme for Human Rights Education.

¹¹ Convention on the Rights of Persons with Disabilities.

¹² Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

¹³ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

¹⁴ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

¹⁵ Convention on the Rights of Migrant Workers and All Members of their Families.

¹⁶ Convention for the Protection of all Persons from Enforced Disappearance.

¹⁷ The IHRC notes that the Irish State has already incorporated into domestic law a number of international human rights treaties by means of legislation. In particular, the Irish Government has given indirect legal effect to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) through the European Convention of Human Rights Act 2003. Other examples

results in less protection and awareness of these rights. In particular, the lack of justiciable Economic, Social and Cultural rights in the Constitution and legislation means that there are gaps in protection for these rights.

10. Ireland's reservations under all treaties should be withdrawn.¹⁸

Equality

11. The IHRC **recommends** that a referendum be held to amend Article 40.1 of the Constitution to guarantee equality to all and to proscribe discrimination (direct or indirect) in any area of law on non-exhaustive grounds (such as race, sex, language or religion).¹⁹

Insofar as Article 41.2 of the Constitution²⁰ continues to perpetuate stereotypical attitudes towards the role of women in Irish society, the IHRC **recommends** that the Government, as a matter of priority, establish a specified timeframe for its replacement with gender-inclusive language.²¹ The grounds of prohibited discrimination in Equality legislation should be expanded to include 'or other status'.²²

include Section 4 of the Criminal Justice (United Nations Convention Against Torture Act), 2000, which gave effect in domestic law to Article 3 of the UN Convention Against Torture and the Genocide Act 1973, which gave effect to certain provisions of the UN Convention on the Prevention and Punishment of the Crime of Genocide. It is unclear why the State will not incorporate the other international conventions.

¹⁸ For example, Article 4 of CERD (see IHRC Submission to the UN CERD Committee on the Examination of Ireland's Combined Third and Fourth Periodic Report November 2010), Article 10(2) ICCPR.

¹⁹ Article 40.1 provides "All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function." See also IHRC Submission to the Irish Government in preparation of Ireland's Sixth Periodic Report to the UN CEDAW Committee, 2008, p. 5 www.ihrc.ie/download/pdf/submission_cedaw.pdf; IHRC Submission to the UN Committee on the Elimination of Discrimination Against Women in respect of Ireland's Combined Fourth and Fifth Periodic Reports under the Convention on the Elimination of all Forms of Discrimination Against Women, 2005, p. 17. www.ihrc.ie/download/pdf/submission_cedaw.pdf

²⁰ Article 41.2 of the Irish Constitution provides "the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved. The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home." In its Concluding Observations to its review of Ireland's record under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 2005, the CEDAW Committee recommended that the State take additional measures to eliminate traditional stereotypical attitudes, including through sensitization and training of all educational actors and sustained awareness-raising campaigns directed at both women and men. It recommended that the All-Party Oireachtas Committee on the Constitution take the Convention fully into account in considering any amendments to Article 41.2 of the Constitution, as well as including a provision to underline the obligation of the State to pursue actively the achievement of substantive equality between women and men. The Committee also suggested that the State party consider replacing male-oriented language with gender-sensitive language in the Constitution to convey the concept of gender equality more clearly. See CEDAW Concluding Observations 2005. The IHRC reiterated these recommendations in its Submission to the Irish Government in preparation of Ireland's Sixth Periodic Report to the UN CEDAW Committee, 2008.

²¹ IHRC ICCPR Submission to the Human Rights Committee on the Examination of Ireland's Third Periodic Report, March 2008, p. 60. www.ihrc.ie/download/pdf/submission_cedaw.pdf

²² Irish equality legislation includes the following: the Employment Equality Acts 1998 and 2004 cover the following aspects of employment: advertising, equal pay, access to employment, promotion or re-grading, dismissal, as well as other issues. In 1999 the National Disability Authority Act was enacted to underpin the new mainstream framework for the provision of services to people with disabilities. Under this Act, the National Disability Authority (NDA), which is an independent statutory body, was established. This is an expert body dedicated to disability issues. The Equal Status Act 2000 provides protection against direct and indirect discrimination outside of employment.

12. The IHRC is concerned at the significant underrepresentation of women in elected political structures,²³ particularly in the Oireachtas (14% of the lower house in the 30th Dáil, which sat from 2007-2011), and in the Civil Service at the higher grades (13% of the top 2 grades),²⁴ on the boards of public bodies and in the highest levels in educational institutions and business. The IHRC **recommends** that Ireland implement special measures, as envisaged under CEDAW, to increase women's representation in these areas. In addition, the Government must ensure that quality and affordable childcare is available to all families.²⁵

13. The IHRC also **recommends** that the Government urgently introduces legislation to ensure full legal recognition of transgender persons in their acquired gender.²⁶

Rights of Persons with a Disability

14. In addition to ratifying CRPD, the IHRC **recommends** that Ireland should fully commence the Disability Act 2005, the Education for Persons with Special Needs Act 2004 and the Health Act 2007 to ensure independent statutory inspections of care homes for persons with disabilities.²⁷ The commitment to educate children with disabilities in mainstream education has also not been matched by an adequate allocation of resources.

Human Rights of Children

15. To avoid duplication, the IHRC supports the recommendations of the Ombudsman for Children in her UPR submission. The IHRC however **recommends** that any

²³ CEDAW Concluding Observations 2005, observations 382/390. See also IHRC ICCPR Submission to the Human Rights Committee on the Examination of Ireland's Third Periodic Report, March 2008, pp. 62-63. <http://www.ihrc.ie/publications/list/ihrc-report-on-iccpr-march-2008/>

²⁴ See Department of Justice, Equality and Law Reform Response of Ireland to UNECE Questionnaire on the Implementation of the Beijing Declaration and Platform for Action and Beijing +5, March 2009, p.27.

²⁵ IHRC ICCPR Submission to the Human Rights Committee on the Examination of Ireland's Third Periodic Report, March 2008, p. 64. The availability of adequate and affordable childcare is crucial in supporting working mothers and mothers who wish to re-enter the labour force or further their education. In order to ensure that a support framework is put in place that will lead to women's long-term participation in the labour force, on an equal basis as men, the Government must ensure that adequate and affordable childcare is available to all families and that there is sufficient number of childcare places available. IHRC Submission to the UN Committee on the Elimination of Discrimination Against Women in respect of Ireland's Combined Fourth and Fifth Periodic Reports under the Convention on the Elimination of all Forms of Discrimination Against Women, 2005, p. 4. www.ihrc.ie/download/pdf/submission_cedaw.pdf

²⁶ IHRC Submission to the Gender Recognition Advisory Group, 2010. www.ihrc.ie/download/doc/ihrc_subm_to_gender_recognition_advisory_group_final.doc

²⁷ There are around 8000 adults and 200 children with disabilities in the care of the Health Service Executive (HSE) and HSE funded service providers around the country (Health Service Executive, Statement re complaints at residential centres for people with intellectual disabilities, February 2010). The Health Information and Quality Authority (HIQA) has a statutory remit to carry out inspections of residential services for people with disabilities and residential centres or services for the elderly to monitor compliance with standards set by HIQA. (Health Act 2007, Part 9) HIQA has the power to enter the relevant premises, to inspect records and other items and to interview in private any person working or receiving a service. In an enquiry on the human rights issues arising from the operation of a residential and day care centre for persons with a severe to profound intellectual disability, the IHRC concluded following a comprehensive review of the relevant mechanisms that the right to an effective, accessible remedy that complies with international human rights law standards does not appear to be available to residents and their families in residential and day care centres. See IHRC Enquiry Report on the Human Rights Issues Arising from the Operation of a Residential and Day Care Centre for Persons with a Severe to Profound Intellectual Disability, March 2010. www.ihrc.ie/download/pdf/reporte3.pdf

amendment to the Constitution relating to the human rights of children include an express reference that the best interests of the child shall be a primary consideration and be justiciable.²⁸

International Aid and Trade

16. Human rights should be a central feature of Ireland's international development aid and should also be mainstreamed into all other aspects of Ireland's foreign relations.

B. PRISON CONDITIONS

Conditions in Irish Prisons

17. There are severe problems in Irish prisons. In particular, the physical conditions of prisons are grossly inadequate and fail to comply with Ireland's international obligations.²⁹ Particular concerns relate to increased levels of incarceration and persistent overcrowding, high levels of inter-prisoner violence,³⁰ inadequate sanitation facilities and the on-going process of "slopping out",³¹ inadequate provision of healthcare,³² non-segregation of remand prisoners,³³ and inadequate mental health services.³⁴

²⁸ See IHRC Submission to the Oireachtas Joint Committee on the Constitutional Amendment on Children, 2008. www.ihrc.ie/download/doc/sub_jtcom_childrens_referendum.doc

²⁹ This concern has been expressed by a wide range of international and national actors including the IHRC, the Inspector of Prisons, the Human Rights Committee and the CPT. See for example, IHRC ICCPR 1 Year Follow Up Submission 2009, p. 2; Inspector of Prisons Annual Report 2010, pp. 11-12; Council of Europe, Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 January to 5 February 2010, February 2011 p. 15.

³⁰ The Inspector of Prisons has reported an escalation of inter-prisoner violence and that the existence of gangs has increased in the prison system and on 24 February 2009, 22% of the total prisoner population in Ireland was in protection. The Inspector states that violence is increased by factors such as lack of facilities and constructive activities, shortage of telephones, confined space, overcrowding and poor and inhuman conditions. Inspector of Prisons Annual Report 2008, pp. 47, 50. The Inspector of Prisons is an independent body, empowered to undertake regular inspections of prisons and may at any time enter any prison and request relevant documentation. In accordance with section 30(5) of the Prison Act 2007 the Inspector of Prisons is independent in the performance of his or her functions. However, it is to be noted that the Inspector of Prisons is appointed by the Minister for Justice and Law Reform, he or she holds office on the terms and conditions, including remuneration, as the Minister may determine and is appointed for a term not exceeding 5 years with the possibility for reappointment. Section 30, Prisons Act 2007.

³¹ 'Slopping out' is required in prisons where no in-cell sanitation facilities exist. Prisoners urinate and defecate in buckets or portable units in the cell during lock up, and are required to 'slop out' into slop hoppers/bins at certain times of the day. The CPT in its most recent visit to Ireland reported: "The CPT has repeatedly stated that it considers the act of discharging human waste, and more particularly of defecating, in a chamber pot in the presence of one or more other persons, in a confined space used as a living area, to be degrading ... not only for the person using the chamber pot but also for the persons with whom he shares a cell." The CPT recommended that the Irish authorities "eradicate 'slopping out' from the prison system. Until such time as all cells possess in-cell sanitation, concerted action should be taken to minimise the degrading effects of slopping out; the authorities should ensure that prisoners who need to use a toilet facility are released from their cells without undue delay at all times (including at night), and the implementation of this measure should be monitored by senior management." CPT Report 2011, p. 29

³² The CPT recommended that the Irish authorities review the health care services in the prisons visited, particularly at Cork, Midlands and Mountjoy Prisons. CPT Report 2011 pp. 34 – 44.

³³ See para 21, footnote 39, below.

³⁴ The CPT found that there is a lack of an attached psychologist in four prison institutions; inadequate counselling for prisoners on methadone substitution programmes in some of the main prisons in the State;

Overcrowding is exacerbated by imprisonment for minor offences such as failure to pay fines.³⁵

18. The IHRC **recommends** that the practice of “slopping out” be immediately eliminated. Pending a long-awaited prison building programme, there is an urgent need for interim measures on this issue. The IHRC further **recommends** the immediate ratification of OPCAT and establishment or designation of a National Preventative Mechanism that meets the Paris Principles requirements of independence, expertise and resources to ensure oversight of places of detention in Ireland.³⁶ The IHRC regrets the lack of urgency afforded to this issue.

19. The IHRC **recommends** an independent Prisoner Ombudsman be established to investigate individual complaints made by prisoners in relation to their treatment while in prison.³⁷ The Inspector of Prisons’ mandate does not cover this.³⁸

Penal Policy

20. No published penal policy exists. The IHRC **recommends** that, in the longer term, there should be an increased policy focus on the development of alternative, non-custodial sanctions rather than an increase in overall prison capacity.

lack of psychological support for prisoners who have committed acts of self harm and/or attempted suicide. CPT Report 2011 pp. 41- 46.

³⁵ The Constitutionality of imprisoning a person for not fulfilling a contractual obligation was challenged for the first time in the Irish Courts in 2009 under *McCann v The Judge of the Monaghan District Court & others* in which the IHRC was joined as *amicus curiae* (friend of the court). The Court found that a person facing imprisonment for non payment of a civil debt should be treated in a similar manner to a person facing a criminal charge in terms of some of the safeguards that should apply to the judicial process. Accordingly, the Enforcement of Court Orders (Amendment) Act 2009, was enacted in July 2009, which in a number of respects remedied the specific gaps in the law identified in the Court's Judgment. However, numbers imprisoned for minor offences is still high. In 2009, 24% of the prison population was serving sentences of 2 years or less, with 1.2% serving sentences of 3 months or less. See Irish Prison Service Annual Report 2009.

³⁶ The IHRC regards the ratification of OPCAT as a significant and valuable opportunity for the Irish Government to put in place a comprehensive and effective system of inspections for all places of detention in Ireland that meets the requirements of OPCAT in relation to independence, membership, mandate and powers. There are currently gaps in the inspection system and that existing mechanisms do not fully comply with OPCAT requirements. OPCAT clearly envisions a system of regular visits undertaken by independent international and national bodies. In particular, there is currently no centralised body in Ireland to co-ordinate the activities of the different inspection mechanisms and to ensure co-ordinated communication with the Sub-Committee for the Prevention of Torture. As Ireland's Paris Principle compliant NHRI, the IHRC considers that it can play a key role in advising Government on the designation of an effective NPM and that it may also play a role within an NPM structure where different organisations are designated. Among its key functions the IHRC is empowered to provide recommendations on draft legislation pursuant to section 8(b) and to consult with international bodies or agencies that have a knowledge or expertise in human rights pursuant to section 8(c), which would include for example the Sub-Committee for the Prevention of Torture. These functions which are important elements for OPCAT compliance are clearly deficit in many of the current inspection mechanisms in Ireland

³⁷ IHRC ICCPR Submission, 2008, p. 25.

³⁸ The Remit of the Office of the Inspector of Prisons is set out in Part 5 of the Prisons Act 2007. Under Section 31.6 of that Act it states that it is not the function of the Inspector to investigate or adjudicate on a complaint from an individual prisoner, but he may examine the circumstances relating to the complaint where necessary for performing his functions.

See www.inspectorofprisons.gov.ie/en/IOP/Pages/About%20Us ; See also CPT Report 2011, pp. 55-56.

Remand Prisoners

21. The IHRC **recommends** that separation of sentenced and remand prisoners should be enforced.³⁹ Remand prisoners should be detained in separate facilities from convicted prisoners.

C. MIGRATION AND IMMIGRATION

22. There is still no consolidated framework relating to immigration and asylum issues in place in Ireland, with part of the legislation dating back to 1935.⁴⁰

Direct Provision

23. The system of Direct Provision (which provides refugees and asylum seekers with accommodation, food and a small amount of cash per week (€19.10 for adults) has a negative impact on refugees and asylum seekers.⁴¹ They have a very low degree of personal autonomy and privacy and are not allowed work. Individuals and families may be in this system - originally intended to be for 6 months - for years. There is evidence of high incidences of mental health problems among people in direct provision. There is

³⁹ IHRC, Submission to the UN Human Rights Committee on Ireland's 1 Year Follow-up Report to its Third Periodic Report under the ICCPR, pp. 3-4. Since the coming into effect of the Bail Act 1997, it has been reported that there has been a significant increase in the number of remand prisoners in Ireland and an increase in the length of time spent on remand. (See Irish Penal Reform Trust, Submission to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) in preparation for the 2006 CPT visit to Ireland, at p.4.) Although international human rights law requires that remand prisoners should be separated from convicted prisoners, in a reservation entered by the Irish Government on its ratification of the ICCPR it stated that separation between prisoners on remand from those with convictions and separation of juveniles from adult prisoners will be achieved "progressively" and "as far as practically possible." The Irish Government has entered a reservation to Article 10 (2) of the ICCPR, which states that "Ireland accepts the principles referred to in paragraph 2 of Article 10 and implements them as far as practically possible. It reserves the right to regard full implementation of these principles as objectives to be achieved progressively." In its Concluding Observations on Ireland in July 2008, the UN Human Rights Committee expressed concern on this issue and recommended that "the State should detain remand prisoners in separate facilities and promote alternatives to imprisonment". Human Rights Committee, Concluding Observations in respect of the Third Periodic Report submitted by Ireland under Article 40 of the International Covenant on Civil and Political Rights, CCPR/C/IRL/CO/3 of July 2008, at para. 15.

⁴⁰ The Immigration, Residence and Protection Bill 2008, was the first comprehensive legislation dealing with the legal framework for immigration and asylum, and was introduced in January 2008. There was extensive interest, discussion and comment on this legislation by Statutory Bodies including the IHRC and by Non Governmental Organisations (NGOs) and Civil Society Organisations, as well as before Parliament (Oireachtas). Considerable concern was expressed by Statutory Bodies, NGOs and CSOs in relation to a range of aspects of the Bill. In July 2010, the Bill was withdrawn and a new Bill was published: the Immigration, Residence and Protection Bill 2010. The IHRC wishes to highlight the fact that at time of submission, this legislation is on hold due to a change in Government and there is still no consolidated framework relating to immigration and asylum issues in place in Ireland. See IHRC Submission to the UN CERD Committee on the Examination of Ireland's Combined Third and Fourth Periodic Reports, 2010, p. 6.

⁴¹ The policy of Direct Provision has been in place on an administrative basis in Ireland since 1999. In accordance with this policy, asylum seekers and those seeking humanitarian leave to remain in the State are accommodated on a full board basis in allocated accommodation centres around the country. They are not permitted to work and are not generally entitled to certain mainstream social welfare benefits. IHRC CERD Submission 2010 pp. 12-13.

evidence of a negative impact from the length of the asylum process, the prohibition on working and the resulting social isolation on those in direct provision.⁴²

The IHRC **recommends** that the system of Direct Provision be reformed to increase the level of payments and ensure no one is kept in this system in excess of one year and that there is an independent review process for complaints made by people in Direct Provision accommodation.

Migrant Workers

24. The IHRC **recommends** greater legislative and policy protections for vulnerable migrant workers and in particular those working in the hospitality industry, those working in agriculture and women migrant workers, particularly those working in domestic households.⁴³

Trafficking

25. The IHRC **recommends** that permission to remain should be allowed for humanitarian reasons having regard to the personal situation of the victim of trafficking, particularly for child victims of trafficking. The IHRC **recommends** that in approaching the recovery and reflection period for victims, the police (Garda Síochána) in conjunction with the Anti-Human Trafficking Unit should ensure that the standard of proof required in assessing whether they are victims of trafficking is applied in a consistent and correct manner.⁴⁴

⁴² A number of reports by the Health Service Executive (HSE) demonstrate the vulnerable health status of those living in direct provision. The IHRC is concerned at the high incidence of mental health problems among persons in direct provision and the negative impact which the length of the asylum process, the prohibition on working and the resulting social isolation may have on those in direct provision. *Ibid.*, pp. 12-15.

⁴³ The Migrant Rights Centre of Ireland (MCRI) a NGO advocating on behalf of migrant workers, reported that 43% of immigrants employed in the restaurant industry work in excess of the legal limit of 48 hours per week 44% do not receive regular rest breaks. The MCRI study found that 85% worked overtime for no extra pay, 34% received no annual holidays, 51% received no payslip and 84% received no written contract or terms of employment. MCRI, *Realising Integration – Migrant Workers undertake Essential Low Paid Work in Dublin*, p. 6.

⁴⁴ The National Action Plan to Prevent and Combat Human Trafficking 2009- 2012, states that the Garda Síochána take account of all information available to them when considering whether a person is a suspected victim of trafficking. To be regarded as a suspected victim of trafficking there must be reasonable grounds for suspecting the person to be a victim of trafficking. In making this assessment, the Garda Síochána state that they use the indicators published by the United Nations Global Initiative to Fight Human Trafficking. (Anti-Human Trafficking Unit, National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland, 2009-2012 at p. 134.) The IHRC notes that of the 53 investigations ongoing in relation to trafficking only 11 people were granted the recovery and reflection period in 2009 on the basis that they were suspected victims of trafficking. Within the consultation mechanisms established by the Anti-Human Trafficking Unit a number of NGOs have expressed the view that in their experience working with people who they suspect to be victims of trafficking, in some instances the Garda Síochána require potential victims to provide detailed information before the recovery and reflection period is being granted. It has been stressed by NGOs that the assessment of reasonable grounds must be seen as the start of the process and must be distinguished from the process where it is decided whether somebody is or is not a victim of trafficking. See IHRC CERD Submission p. 43.

Deportation

26. Ongoing deportation of parents and siblings of Irish citizen children currently takes place without adequate procedural safeguards.⁴⁵ The IHRC **recommends** the introduction of an administrative residency scheme for the families of Irish citizen children in response to a recent European Court of Justice judgement.⁴⁶

D. TRAVELLERS

27. Irish Travellers are among the most marginalised communities in Irish society.

Non-recognition as an Ethnic Minority

28. The refusal by Ireland to recognise Travellers as an ethnic minority suggests a lack of understanding of their culture and identity.⁴⁷ The lack of recognition may also result in insufficient weight being given in policy making to the need to respect and promote their

⁴⁵ IHRC ICCPR Further Submission on the Examination of Ireland's Third Periodic Report in Relation to the List of Issues, 2008, p. 15. In 2005, The IHRC appeared as amicus curiae before the Supreme Court in the Bode case (see Supreme Court Appeal N° 485/2006). The case resulted in the consideration by the Supreme Court that the Minister for Justice, Equality and Law Reform needs to assess the rights of the Irish born child when the Minister is considering the deportation of non-Irish national parents. In January 2011, the IHRC again appeared as amicus curiae before the High Court to present the human rights issues in four linked deportation cases. The central issue which the IHRC will highlight in these proceedings is the issue of an independent appeals mechanism in relation to deportation orders made by the Minister for Justice and Law Reform and the relevant human rights standards which apply.

⁴⁶ On 8 March 2011, the Court of Justice (CJEU) gave Judgment in Case C 34/09 Gerardo Ruiz Zambrano v Office national de l'emploi (ONEM). The Judgment was to the effect that third country national parents of dependent child citizens of the European Union may not be refused a right of residence. An administrative scheme entitled the "IBC/05 Scheme" was introduced by the Irish Government on 1 January 2005, whereby non-national parents of Irish citizen children born before 1 January 2005 were invited to apply for leave to remain in the State. The IBC/05 Scheme was addressed only to those parents whose applications to remain in the State were outstanding following on the enactment of legislation giving effect to the 27th Amendment of the Constitution. That Amendment removed the automatic right to citizenship for all persons born on the island of Ireland. Successful applicants to the IBC/05 Scheme would be granted permission to remain in the State for an initial two year period which permitted them to work in the State, this being in the words of the High Court Judge "... of immediate benefit to the lives of the citizen children" in terms of their family life, upbringing and welfare. Under the IBC/05 Scheme an applicant was required to satisfy three criteria: residency in Ireland taking care of their Irish citizen children; no involvement in criminal activity and a willingness to commit themselves to becoming economically viable.

⁴⁷ The IHRC has previously outlined its position that the refusal to recognise Travellers as an ethnic minority suggests a lack of understanding by the Government of the importance Travellers place on the recognition of their culture and identity. The lack of recognition may also place obstacles in the way of Travellers accessing protections under international human rights conventions. This point has also been highlighted by the Equality Authority. (See Equality Authority, Traveller Ethnicity- An Equality Authority Report, 2006.) The IHRC is of the view, based on an examination of some of the objective social criteria that establish an ethnic minority, that Travellers should be recognised as an ethnic minority group. Travellers clearly display common cultural values such as a nomadic tradition and culture and a reliance on an expanded family unit. Travellers often marry within their own community. Travellers constitute a distinct social group and have suffered a high level of discrimination. Travellers not only identify themselves as Travellers, but are also identified as such by settled society. The IHRC has expressed the view that in accordance with the CERD Committee General Recommendation VIII on the principle of self-identification and the Concluding Observations of the Committee in respect of Ireland's First and Second Periodic Reports the Government should recognise the Traveller Community as an ethnic minority group. (Concluding Observations of Committee on the Elimination of Racial Discrimination in relation to Ireland's First and Second Periodic Reports, CERD/C/IRL/CO/2, at para. 20; General Recommendation VIII of the CERD Committee, 1990.) IHRC CERD Submission 2010, p. 21.

culture. The IHRC **recommends** that in accordance with CERD,⁴⁸ Ireland should recognise Travellers as an ethnic minority group.

Education

29. Educational outcomes for Travellers remain significantly below that of the settled population.⁴⁹ Budget cuts to specific services may have further impacted on initiatives in this area. The IHRC **recommends** that sufficient resources are provided for the 2006 National Traveller Education Strategy and that there is full participation of Travellers or their representative groups in its delivery through Departmental engagement.

Traveller Health

30. Traveller health outcomes are much poorer than for the general population and as such Travellers, as a disadvantaged group, require 'special measures' to promote and ensure their right to health.⁵⁰ The IHRC **recommends** greater investment in Traveller Health Strategies to reverse this trend.

Traveller Accommodation

31. The IHRC is concerned that not enough good quality accommodation is being provided to Travellers by Local Authorities.⁵¹ This partly arises from the non-recognition of Travellers as an ethnic group insofar as their traditional nomadism is not recognised. The IHRC **recommends** that the Housing (Miscellaneous Provisions) Act 2002, which effectively makes it a criminal offence to camp on public land and disproportionately affects Travellers should be amended or repealed.⁵² Proper recognition and evaluation of

⁴⁸ See General Recommendation VIII, Concluding Observations of the Committee on the Elimination of All Forms of Racial Discrimination in respect of Ireland's Combined First and Second Periodic Reports under the International Convention on the Elimination of All Forms of Racial Discrimination, 2005, p. 2

⁴⁹ The 2006 Census demonstrates that primary school is the highest level of education completed for more than two thirds of Travellers aged 15 years or over. 43% of Travellers over 15 years had left school before the age of 15, compared to around 9.5% of the general population. Central Statistics Office, A Social Portrait of Communities in Ireland, 2007, p. 63. See also IHRC CERD Submission 2010, p. 22.

⁵⁰ The All-Ireland Traveller Health Study 2010, the first official survey of Traveller health in over 20 years, highlighted barriers of access to health care and high rates of poor mental health and disability amongst the Traveller Community (relative to the rest of the population). The study found that the life expectancy level of Traveller males to be at 61.7 years, which is 15.1 years below the national average. The general mortality rate among Travellers was found to be 3.5 times higher than that of the general population. The HSE National Intercultural Strategy 2007-2012, p. 46 also noted that the population profile of Travellers is similar to that seen in developing countries, where high birth rates and high mortality rates at a younger age make a broad based population pyramid. Travellers have a median age of 18 years compared to the national figure of 33 years. The HSE report further noted that the negative experiences of Travellers in accessing healthcare. In relation to mental health, the rate of suicide among Traveller males was found to be 6.6 times higher than that of the general population.

⁵¹ In November 2008, according to the Department of Environment, Heritage and Local Government's annual count there were 524 Traveller families living in what are termed as "unauthorised sites" out of a total of 8,398 families (around 6.2%). The HSE has noted that living in "unauthorised sites" is characterised by the absence of electricity, running water, toilet facilities and refuse collection. In its 2009 CERD Submission, the IHRC expressed concern that the "indigenous" only policy employed by a number of Local Authorities is incompatible with respect for Travellers' nomadic culture, since it only permits a Traveller to be provided with transient accommodation where he or she has resided on a permanent basis for at least three years in a particular area.

⁵² The IHRC is concerned that this law on criminal trespass can lead to the eviction or removal of Traveller families and has exposed them to unjustified and disproportionate interference with their rights,

Traveller needs should occur, in consultation with Travellers, which results in proper planning for public and private housing and proper provision of adequate and appropriate accommodation. The Housing (Traveller Accommodation) Act 1998, which provides for the delivery of appropriate accommodation to Travellers should be enforced at a national level rather than being left to discretion of Local Authorities.⁵³

E. CRIMINAL JUSTICE ISSUES AND LEGAL AID

Criminal Trial without a Jury

32. The jurisdiction of the non-jury Special Criminal Court has been extended in recent years to cover most organised crime offences.⁵⁴ The IHRC **recommends** that any limitation of the Constitutional right to trial by jury should take place only in exceptional circumstances, where the Director of Public Prosecutions (DPP) can clearly establish, on reasonable and objective grounds, that the effective administration of justice cannot be delivered in the ordinary courts in the specific circumstances of a case.

33. The IHRC **recommends** that all persons arrested in connection with criminal offences should be entitled to have a legal advisor present during questioning by the police, particularly in view of increased reliance on adverse inferences in trials.⁵⁵

particularly given the fact that the group targeted by this law is one of the most marginalised in Irish society. The IHRC is concerned that this law criminalises trespass on public lands in circumstances where a public body has failed in its statutory obligation to house Travellers and that the law, though on its face neutral was, according to a Government press statement, aimed at dealing with “large scale encampments of Travellers” See Submission on behalf of the Human Rights Commission, Amicus Curiae, Lawrence and Others v. Ballina Town Council and Others, High Court 5813P/2003 p. 37. www.ihrc.ie/download/doc/sub_amicus_lawrence.doc

⁵³ The IHRC welcomes reports that Local Authorities have largely followed the recommendations set out in the 2008 Department of the Environment Memorandum on Traveller Accommodation Programmes which states that the question of further closures of traditional or unofficial halting sites should be reviewed pending the provision of adequate accommodation. The IHRC welcomes reports that Local Authorities have largely followed that policy and the advice of the National Traveller Accommodation Consultative Committee, which is not to evict a family or confiscate a caravan or seek to fine or imprison them when a family is waiting to be accommodated. The IHRC considers this approach should be a matter of law and not merely discretionary policy.

⁵⁴ IHRC, Observations on the Criminal Justice (Amendment) Bill 2009. The IHRC stated that while it is fully aware of the need to tackle organised crime, this need does not justify the extension of the non-jury Special Criminal Court for most organised crime offences, under the Criminal Justice (Amendment) Bill 2009. The IHRC considered that any limitation of the Constitutional right to trial by jury should take place in exceptional circumstances, where the Director of Public Prosecutions (DPP) can clearly establish, on reasonable and objective grounds, that the effective administration of justice cannot be delivered in the ordinary courts in the specific circumstances of a case. The IHRC questions the extension of jurisdiction of Special Criminal Court due to jury intimidation as there are other immediate measures to protect jurors.

⁵⁵ The IHRC has expressed concerns that negative conclusions or inferences can be drawn where a person under Garda (police) questioning fails to answer questions that are material to the investigation of the offence in order to build a case against a defendant. The IHRC considered that the proposal has implications for the right to remain silent and recommended that in line with the relevant human rights standards these negative inference clauses should only apply where the accused has first been granted legal advice as a mandatory prerequisite and there is a clear case to answer against the accused. The IHRC recommends that an accused person should have a legal advisor present throughout police interrogation, particularly in light of the increased reliance within criminal law on adverse inference clauses. See IHRC ICCPR Submission 2008, pp. 23-25; Observations on the Criminal Justice (Amendment) Bill 2009.

Legal Aid

34. There is a need for a comprehensive and well-resourced scheme of criminal and civil legal aid covering all areas of the law in Ireland. The scope of the Civil Legal Aid Scheme is limited. The Legal Aid Board which is responsible for administering the scheme concentrates heavily on family law cases and there are long delays before applicants are even seen by a legal advisor.⁵⁶ The IHRC **recommends** that legal aid in all cases be placed on a statutory footing and available as of right. The IHRC further **recommends** the introduction of a comprehensive and well-resourced scheme of civil legal aid covering all civil legal areas including; social welfare, housing, debt, immigration, consumer and employment law.

F. HEALTH

35. The IHRC is concerned with the lack of a definition of the right to health and personal social services in healthcare legislation. Serious challenges face the health care system and are magnified by recent cuts in funding for Health Services Executive regions.⁵⁷ Unequal access to health care on the basis of ability to pay for private health insurance raises questions of discrimination in the delivery of accessible, appropriate, acceptable and quality health care as required under ICESCR. The IHRC **recommends** that public health strategies are human rights-based in accordance with ICESCR requirements.

36. The IHRC **recommends** that Ireland makes an unconditional commitment to move all persons with an intellectual disability out of psychiatric institutions and congregated settings and into appropriate community settings with proper supports within a defined time limit.⁵⁸ The IHRC **recommends** that Ireland should amend the Mental Health Act 2001 to satisfy the requirements of CRPD including Section 2, to deal with “compliant incapacitated persons”.⁵⁹ Ireland should also immediately introduce mental capacity legislation to replace the antiquated Wards of Court system and should ensure that the new system provides an accessible procedure for determining capacity.⁶⁰

⁵⁶ The Legal Aid Board cannot provide representation in legal matters outside the courts, such as, before employment or social welfare tribunals or in cases involving a right or interest over land references.

⁵⁷ Department of Finance, Budget 2011, 2010. See www.budget.gov.ie/budgets/2011/2011.aspx

⁵⁸ In 2011, the CPT recommended the Irish authorities take the necessary steps to ensure that all residents in institutions for persons with learning disabilities benefit from an adequate range of safeguards. See CPT Report 2011, pp. 71-2

⁵⁹ The IHRC recommends that the definition of a voluntary patient in the 2001 Act should be amended to include only those persons who have the capacity to make such a decision and who have genuinely consented to their admission to a psychiatric institution and continue to consent to same. Ideally, such amendment should occur at the same time as the enactment of a comprehensive Mental Capacity Bill. Measures should be taken to strengthen, protect and uphold the human rights of incapacitated persons under Irish law, in line with Article 12 of the CRPD.

⁶⁰ When a person becomes unable to manage his or her assets because of mental incapacity, an application can be made to the courts for this person to become a Ward of Court. Wards of Court are admitted to an approved centre are neither categorised as voluntary or involuntary for the purposes of the 2001 Act, but are administratively considered in category of their own. The Mental Health Commission’s 2007 Annual Report records that there were 70 Wards of Court in psychiatric facilities during 2007. The IHRC is concerned with the lack of procedural safeguards for “wards of court”. The IHRC considers the Lunacy Regulation (Ireland) Act 1871 outdated and unsuitable.

Conditions of detention in adult psychiatric facilities

37. The IHRC is concerned about the conditions of detention in adult psychiatric facilities and in particular the Central Mental Hospital which remains the only 'designated centre' for the detention of people who are deemed unfit to plead to criminal charges or are not found guilty by reason of insanity under the Criminal Law (Insanity) Act 2006.⁶¹

G. POVERTY AND SOCIAL WELFARE

38. Of the EU-15 Member States, Ireland ranks first in terms of income inequality; this inequality has been heightened due to the current economic crisis.⁶² The closure of Combat Poverty Agency, downgrading of Community Development programmes, the cumulative effect of cuts to social welfare, child benefit, the minimum wage, the introduction of the Universal Social Charge and the reduction of tax credits for the most vulnerable people will seriously damage the State's ability to meet its commitment to eradicate consistent poverty by 2016.⁶³ The IHRC **recommends** that Ireland introduces the principle of non-retrogression into all economic policies so that State bodies must undertake an assessment of the impact of welfare and service related decisions on the vulnerable and disadvantaged.

39. The IHRC **recommends** that Ireland takes steps to remedy the current lack of protection of the rights of local authority tenants by amending the Housing Act 1966, which allows a local authority to summarily recover possession of a dwelling.⁶⁴

⁶¹ IHRC Submission to the UN Human Rights Committee on Ireland 1 Year Follow-up Report to its Third Periodic Report under the ICCPR, 2009 pp. 5-6; CPT Report 2011, pp. 47-48 The unsuitability of the present mental health facilities is acknowledged by the Irish authorities and documented both in previous CPT reports and in the reports of the Inspector for Mental Health Services. Plans to relocate the CMH to the future Thornton Hall site have now been aborted and other sites, such as the grounds of St Ita's Hospital, are currently under consideration. The CPT recommended that the Irish authorities decide on the future location for the CMH without further delay. The IHRC is of the view that the living conditions in some units in the CMH are inadequate and do not provide conditions that are conducive to the treatment and welfare of patients and do not comply with the standards set in the UN Principles for the Protection of Persons with Mental Illness. The IHRC recommends that steps should be taken to improve the conditions without delay and that decisions on a site for the new CMH should be made expeditiously and with the involvement of relevant stakeholders.

⁶²TASC, The Solidarity Factor, May 2009 (TASC is an independent think-tank); OECD, Decile Ratios of Gross Earnings, 2008.

⁶³ See Office for Social Inclusion www.socialinclusion.ie/poverty.html

⁶⁴ Local authorities are charged with providing affordable housing to those individuals who qualify under the provisions of the Housing Acts 1966-2004. Local authorities thus manage much of the State's public housing stock and in the course of this management, they have responsibilities not only to individual tenants, but also to the neighbours of those tenants. Section 62 of the Housing Act 1966 ("section 62") provides for a statutory procedure for the recovery of possession of a local authority dwelling by the local authority. A local authority must first serve the tenant with a Notice to Quit. In the case where a tenant does not give up possession, under the provisions of section 62, a local authority may make an application to the District Court for a warrant for possession. According to the case law to date, the District Court Judge can only consider whether the procedural formalities, as required by Statute, were followed and does not have any discretion in respect of the underlying merits of the application in deciding whether to grant the warrant for possession. Subject to any stay in proceedings put in place by the Court, the local authority may immediately execute the warrant for possession. Where a local authority tenant has been subject to section 62 possession proceedings on the basis of a decision by a local authority that the tenant has engaged in anti-social behaviour, the future entitlements of the individual will also be affected. The IHRC is concerned that the procedure under section 62 does not conform with international human rights standards relating to the security of tenure of tenants living in local authority dwellings. IHRC Policy Statement on Section 62 of the Housing Act 1966 for the Recovery of Possession of a Local Authority Dwelling. 2009.

40. The impact of the Habitual Residence Condition in social welfare law on returning Irish emigrants, and immigrants and asylum seekers, should be reviewed to ensure that it is not resulting in denial of access to essential services.⁶⁵

H. EDUCATION

41. Parents and older children (in accordance with their level of maturity) should have adequate choice in the range of available denominational, non-denominational and multid denominational primary and post-primary schools in keeping with the increased diversity and changing nature of Irish society.⁶⁶ This would include further State policy on how religion and belief are addressed in and beyond the classroom.⁶⁷

42. The IHRC **recommends** that the situation pertaining to would-be teachers should be clarified to ensure persons of non-faith or minority religious backgrounds are not deterred from training or taking up employment as teachers in the State.⁶⁸

⁶⁵ The Habitual Residence Condition (HRC) which applicants for social welfare benefits are required to satisfy, was introduced in 2004. Habitual residence requires a proven close link to Ireland. The term habitually resident is not defined in either Irish or EC law. However, the following 5 factors, which have been set down in Irish and European law, will be examined to find out if you are habitually resident in Ireland: Length and continuity of residence in Ireland or other parts of the Common Travel Area; Length and purpose of any absence from Ireland or the Common Travel Area; Nature and pattern of employment; Your main centre of interest; Your future intentions to live in Ireland as it appears from the evidence. Habitual Residence is required in order to receive: Jobseekers Allowance, State Pension (non-contributory), Blind Pension, Widow's, Widower's or Surviving Civil Partner's (Non-Contributory) Pension and Guardian's Payment (Non-Contributory), One-Parent Family Payment, Carer's Allowance, Disability Allowance, Child Benefit, Supplementary Welfare Allowance. Source: Citizens Information Board: www.citizensinformation.ie/en/social_welfare/irish_social_welfare_system/social_assistance_payments/residency_requirements_for_social_assistance_in_ireland.html

⁶⁶ 98% of Irish primary schools are under religious patronage. There should be an adequate choice in the range of primary and post-primary schools available in keeping with the increased diversity and changing nature of Irish society. The statutory option of withdrawing children from religious instruction in classes is difficult to exercise in practice, particularly in rural areas and where the curriculum is integrated as is the case in the primary schools. IHRC CERD Submission 2010, pp. 16-20.

⁶⁷ IHRC CERD Submission 2010, p. 19.

⁶⁸ Section 12 of the Employment Equality Act 1998 permits bodies providing "vocational training", that is professional teacher training, to primary school teachers to apply to the Minister for Education and Science for orders permitting them to reserve places on their course to ensure the availability of teachers in denominational schools and the maintenance of the "religious ethos" of denominational primary schools. The five institutions presently providing professional training are all under denominational religious control. The Act also permits denominational schools to treat employees or prospective employees more favourably in order to maintain the religious ethos of the institution. In addition, it allows denominational schools to take such action as is reasonably necessary to prevent an employee or prospective employee from "undermining the religious ethos of the institution." See IHRC CERD Submission 2010, pp. 19-20.

ANNEX 1 – IHRC REPORTS

IHRC Submission to the UN CERD Committee on the Examination of Ireland's Combined Third and Fourth Periodic Reports, 2010

<http://www.ihrc.ie/download/pdf/20101210101458.pdf>

IHRC Submission to the UN Human Rights Committee on Ireland's 1 Year Follow-up Report to its Third Periodic Report under the International Covenant on Civil and Political Rights, 2009

http://www.ihrc.ie/download/doc/ihrcsubmission_iccpr1yr_followup.doc

IHRC Submission to the UN Committee on the Rights of the Child On Ireland's second periodic report under the UN Convention on the Rights of the Child, 2006

http://www.ihrc.ie/download/pdf/sub_unrc_200605.pdf

Submission of the Irish Human Rights Commission to the UN Committee on the Elimination of Discrimination Against Women in respect to Ireland's Combined 4th and 5th Periodic Reports under the Convention on the Elimination of All Forms of Discrimination Against Women, 2005

http://www.ihrc.ie/download/pdf/submission_cedaw.pdf