

Universal Periodic Review Ireland

Submission by the Irish Civil Society Coalition, *Your Rights, Right Now* for the 12th Session of the UPR Working Group October 2011 21 March 2011

I. Introduction¹

This report is the work of a coalition of 17 leading Irish NGOs, trade unions and civil society groups that came together as the UPR Cross Sectoral Steering Group.² The Steering Group has coordinated cohesive and effective civil society involvement in Ireland's UPR examination. Using the campaign identity, *Your Rights, Right Now*,³ the Steering Group conducted 17 consultation and public information events throughout Ireland, attended by over 200 participants.⁴ It received 84 written submissions.⁵ This report has been endorsed by 82 organisations.⁶

Background and framework

A. Constitution

1. The Irish Constitution was adopted prior to the founding of the UN and does not reflect the full panoply of universal human rights standards.⁷ While it guarantees certain private property rights⁸ and access to primary education,⁹ other socio-economic rights are not justiciable and are only included as Directive Principles for Social Policy.¹⁰ Equality is protected under Article 40.1 of the Constitution.¹¹ However, the Irish courts have narrowly interpreted this provision and have ruled that it only prohibits arbitrary or blatant discrimination.¹² This means that the Constitution does not protect against systemic direct discrimination or indirect discrimination.¹³

B. Legislation

2. The European Convention on Human Rights (ECHR)¹⁴ was given further effect in Irish law via the European Convention on Human Rights Act, 2003 through a weak interpretative model.¹⁵ Every organ of the State must perform its functions in a manner compatible with the State's obligations under the Convention;¹⁶ however, there is a minimalist remedy in the form of a declaration by the Irish High Court that a law or act of a public body is incompatible with the Convention.¹⁷

C. Policy measures

3. Ireland is a champion of human rights abroad but fails to adequately promote and protect human rights at home.¹⁸ The State-sponsored human rights and equality infrastructure is strong in principle but weak in practice.¹⁹ Ireland is without a National Human Rights Action Plan or designated ministry to protect and promote human rights domestically.²⁰ The State has failed to provide any national programme of human rights education for civil and public servants²¹ and human rights proofing of proposed legislation and policy is not carried out in a systematic way.²²

D. National jurisprudence

4. Human rights based challenges to the exercise of the State's authority remain rare. Delays on court lists and before administrative bodies,²³ prohibitive costs and the possibility of the

State's costs being awarded against claimants discourage litigation.²⁴ Amendments to the system of judicial review, particularly around time limits, have created an additional burden for litigants.²⁵

E. Human rights infrastructure

5. The State-funded Irish Human Rights Commission²⁶ and Equality Authority²⁷ have powers that appear extensive on paper but are deficient in practice. Disproportionate cuts to their already modest budgets have further constrained their independence and efficiency, contrary to recommendations of the Human Rights Committee.²⁸ Resourcing for the National Consultative Committee on Racism and Interculturalism²⁹ and the Combat Poverty Agency³⁰ was removed and, with few exceptions, their functions have not been reassigned.³¹

F. Scope of international obligations

6. Despite being a party to six core human rights treaties,³² very few elements of international human rights instruments have been incorporated in Irish law³³ making them effectively unenforceable in the Irish courts.³⁴ Ireland maintains reservations to important aspects of key treaties³⁵ and it has not yet ratified: the Optional Protocol to the Convention against Torture, the Optional Protocol to ICESCR, the Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The Convention on the Rights of All Migrant Workers and Members of Their Families also remains unsigned.³⁶

Recommendations:

- Reform the current state-funded human rights and equality bodies to produce a more coherent and effective institutional framework for the protection and promotion of human rights.
- As a priority, take steps to ratify and incorporate all UN human rights treaties (including Optional Protocols) into Irish law. Ratify and implement the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters 1998.
- Develop a Human Rights Action Plan that includes human rights proofing of policy and legislation and provide meaningful human rights training for civil and public servants.

II. Promotion and protection of human rights on the ground

7. Ireland often fails to submit reports to UN human rights bodies within specified timeframes.³⁷ Recommendations from the Treaty Monitoring Bodies (TMBs) are rarely implemented and there are no institutional mechanisms for follow-up. Concluding Observations are not widely disseminated nor have they been regarded as binding by Government Ministers.³⁸

Recommendation:

- An institutional oversight mechanism for example, a Parliamentary Committee or Cabinet Sub-Committee, should be assigned responsibility to monitor the implementation of TMB recommendations.

A. Implementation of international human rights obligations

1. Equality and non-discrimination

8. The Equal Status Acts 2000-2008 prohibit discrimination in relation to goods, services, accommodation and education on nine grounds.³⁹ However, government functions, actions and policies fall outside the scope of this law⁴⁰ and the Oireachtas (Irish Parliament) has legislated on three occasions to include new exemptions justifying discrimination.⁴¹ Employment-related claims remain the most prevalent;⁴² however, claims of discrimination on equal status or employment cover all nine grounds, with many citing multiple grounds.⁴³ Moreover, complainants face considerable delays before the Equality Tribunal.⁴⁴

9. There are 393,800 people with disabilities in Ireland, representing almost 10% of the population.⁴⁵ The 2004 National Disability Strategy⁴⁶ promised to address the large services deficit endured by people with disabilities but has failed to deliver.⁴⁷ Particularly, there is a lack of support to help people with disabilities access mainstream services and a lack of coordination across issues such as employment, education, housing and social security.⁴⁸

10. The quality of life of people with **intellectual disabilities**, people with **mental ill health and neurological conditions** and **older people** is impaired by the antiquated framework around capacity for decision making, dating from 1871.⁴⁹ The previous government approved the Scheme of a Mental Capacity Bill in 2008 but this has yet to be enacted.⁵⁰

Recommendations:

- Enact a Mental Capacity Bill taking into account the recommendations of the Irish Human Rights Commission⁵¹ and the Law Reform Commission.⁵²
- Strengthen the equality infrastructure by enhancing the efficiency of the Equality Tribunal and strengthen legal protection by broadening the grounds protected under equality legislation.⁵³

2. Right to life, liberty and security of the person

11. Ireland's **prison** population has doubled since 1997 and overcrowding has contributed to an increase in inter-prisoner violence.⁵⁴ Almost a quarter of the Irish prison estate does not have in-cell sanitation despite Government assurances since 1993 that it will abolish the inhuman and degrading practice of "slopping out".⁵⁵ The **detention of minors** (boys between 16 and 18 years of age) in St. Patrick's Institution, a prison facility, has been condemned by the Ombudsman for Children's Office⁵⁶ and the Council of Europe's European Committee for the Prevention of Torture.⁵⁷

12. The Irish **criminal justice process** is not codified⁵⁸ and gaps exist in the application of international standards on procedural safeguards.⁵⁹ There are no specific criminal sanctions for the practices of **corporal punishment**⁶⁰ and **female genital mutilation (FGM)**.⁶¹ Meanwhile the rights of **victims of crime**⁶² (including the **victims of trafficking**⁶³ and victims of **domestic violence**)⁶⁴ are not always fully respected.

Recommendations:

- Penal and criminal justice policy should ensure that imprisonment is a measure of last resort. Urgent measures should be taken to address the prison overcrowding crisis,

including imposing an enforceable ceiling on the prison population. The Government should commit to end slopping out completely by a fixed date. Work should commence on a National Children Detention facility to accommodate minors currently held in prisons.

- The practice of FGM should be outlawed as a matter of urgency.
- The State should bring its domestic law on the protection of victims of crime (including victims of trafficking and domestic violence) into line with its international obligations.

3. Administration of justice and the rule of law

13. Access to justice is limited by the manner in which the State's **civil legal aid scheme**⁶⁵ operates; it only offers support to individuals on low incomes,⁶⁶ in limited circumstances⁶⁷ and has been subject to a number of restrictions and budgetary cuts.⁶⁸

14. The remit of the **non-jury, Special Criminal Court** was recently expanded,⁶⁹ despite consistent UN recommendations for its abolition.⁷⁰ The **inquest system** remains in need of overhaul⁷¹ despite the introduction of a reform Bill in 2007. Independent systems to investigate complaints are crucial for protecting human rights; however, gaps remain within the Irish system, including for prisoners,⁷² migrants⁷³ and people claiming asylum.

Recommendations:

- Ensure access to justice by adequately resourcing the Legal Aid Scheme; abolishing the Special Criminal Court, legislating to reform the inquest system and establishing an independent complaints system for prisoners, migrants and people claiming asylum.

4. Right to freedom of religion and belief and right to freedom of expression

15. **Religious oaths** are required under the Constitution in order to take up the office of President or judicial office.⁷⁴ Furthermore, the Defamation Act 2009 establishes a new criminal offence that includes a broad prohibition of publishing or uttering **blasphemous matter**.⁷⁵ Although no prosecutions have been brought under the Act, it has the potential to have a chilling effect on free speech.

Recommendation:

- Expedite an amendment to the Constitution to remove the requirements for holders of secular offices to take religious oaths and repeal Part V of the Defamation Act 2009.

5. Right to participate in public and political life

16. Political life in Ireland is dominated by white, middle-aged, Irish men and the political system remains closed in many ways to **women**,⁷⁶ **Travellers**⁷⁷ and **minorities**.⁷⁸ Furthermore, there are few formal mechanisms to encourage individuals and civil society groups to engage in policy or legislative developments. In addition, the recently-enacted **Charities Act 2010** has specifically excluded human rights and social justice as categories of activity for which organisations can claim charitable status.⁷⁹

Recommendation:

- Take effective measures to increase effective representation in the Oireachtas (Irish Parliament) by under-represented groups such as women, Travellers and other

minority groups, including through temporary special measures (for example, quotas). In addition, the State should promote participative democracy and foster the input of civil society in legislative and policy developments.

6. Right to privacy, marriage and family life

17. The legal framework for marriage and family life in Ireland is dominated by Article 41 of the Irish Constitution which states that the **family based on marriage** is the natural primary and fundamental unit of society and a moral institution “possessing inalienable and imprescriptible rights.”⁸⁰ Article 41 also provides that “a woman, by her life within the home”, supports the State for the “common good”.⁸¹ The continued perception of women as dependents in Irish public policy promotes persistent traditional stereotyping of **women and men**.⁸² The interpretation by the Courts of Article 41 limits the extent to which the non-marital family, in particular **fathers**, can secure guardianship, custody, access and other rights in respect of their children.⁸³ The Adoption Act 2010⁸⁴ established the Adoption Authority⁸⁵ but no provision was made for the rights of **adopted people** to information⁸⁶ or parental tracing.

18. Same-sex couples can enter into a civil partnership that provides them with certain legal rights and entitlements;⁸⁷ however, there is no recognition of the family of **same-sex couples** in Irish legislation; this impacts most significantly on the rights of children.⁸⁸ Section 37 of the **Employment Equality Act 1998**⁸⁹ facilitates active discrimination against people by providing an exemption that allows for religious orders providing public services (such as in schools or hospitals) to discriminate against current and prospective employees on the basis of moral ethos. This provision impacts disproportionately on people, such as **LGBT people** and **single parents**, who are not part of the constitutionally-defined family.⁹⁰

19. Presently, Ireland and Lithuania are the only two European Union countries that do not allow for legal recognition of **transgender persons**,⁹¹ despite a High Court ruling that this is incompatible with Ireland’s obligations under the European Convention on Human Rights.⁹²

Recommendations:

- Expedite a referendum to amend Article 41 of the Constitution to recognise modern, pluralist and inclusive family relationships.
- Introduce full civil marriage for same-sex couples and amend the Adoption Act to include rights to information and parental tracing for adopted people.
- Immediately repeal section 37 of the Employment Equality Act 1998 and ensure those of minority views have equal rights of participation and employment in the education system.
- Immediately introduce inclusive gender recognition legislation for transgender and intersex people.

7. Right to work and to just and favourable conditions of work

20. In addition to economic benefits, the ability to enter the workforce impacts greatly on social determinants such as health, education and housing. Irish workers do not have the right to bargain collectively under Irish law even though Ireland is a party to several international

agreements⁹³ that protect this right.⁹⁴ In 2002, CESCR called on the government to adequately protect trade unions' **right to collective bargaining**.⁹⁵

21. There are many **barriers to gaining and maintaining meaningful employment** in Ireland, for example childcare costs,⁹⁶ exclusion of asylum seekers from the labour market⁹⁷ and a lack of protection for migrant workers against exploitation.⁹⁸

Recommendations:

- Introduce legislation to underpin the right of all workers to collective bargaining through their trade unions in line with the state's international commitments.
- Take steps to promote the participation of vulnerable and disadvantaged groups in the workforce, including by establishing an affordable and accessible publicly funded childcare system, reforming the work permit system to incorporate freedom to change employers and providing temporary work permits to asylum seekers and opting in to the EU Directive on Minimum Standards for the Reception of Asylum Seekers (EU Council Directive 203/9/EC).

8. Right to social security and to an adequate standard of living

22. Qualification for all means-tested social assistance payments⁹⁹ is contingent on satisfying the **Habitual Residence Condition** (HRC).¹⁰⁰ To qualify as habitually resident, an individual must have a proven close link to Ireland or other parts of the Common Travel Area.¹⁰¹ Overly stringent qualification criteria, lack of available information and widespread misapplication¹⁰² of the HRC severely impacts on vulnerable groups, including children,¹⁰³ asylum seekers,¹⁰⁴ people who have received leave to remain in Ireland, migrant women who are victims of domestic violence,¹⁰⁵ returning Irish emigrants¹⁰⁶ and Travellers.¹⁰⁷ Recent years have also seen significant cuts to social assistance payments including Child Benefit, impacting heavily on the most vulnerable members of society.¹⁰⁸

Recommendations:

- Amend section 15 of Social Welfare and Pensions, Act 2009 to ensure that residency while awaiting a decision on protection or immigration status is taken into account for the purposes of habitual residence.

9. Right to health

23. The current system of health care in Ireland is based on a two-tier public/private model¹⁰⁹ of insurance, thus denying people equality of **access to healthcare**.¹¹⁰ Presently, discrimination in **access and availability** of healthcare disproportionately affects women,¹¹¹ children,¹¹² people with disabilities,¹¹³ people suffering from mental ill health,¹¹⁴ transgender people,¹¹⁵ asylum seekers,¹¹⁶ undocumented migrants,¹¹⁷ and members of the Traveller Community.¹¹⁸ Ireland's Health Strategy is over ten years old¹¹⁹ and CESCR has expressed its regret about the lack of recognition of a right to health within this framework.¹²⁰ Ireland also has a Mental Health Strategy¹²¹ and a Traveller Health Strategy,¹²² but these have not been implemented in a meaningful manner, nor have they been human rights proofed. Ireland remains without a Health Strategy for Women, Older People or Children.¹²³

Recommendations:

- In order to ensure coordinated and change-creating health policies, Ireland should develop a comprehensive Health Strategy for the delivery of appropriate and adequate healthcare, with particular emphasis on vulnerable groups in Irish society. Ireland should implement fully the recommendations from the Traveller Health Strategy and establish a framework to deliver on the Mental Health Strategy.
- Ensure that everyone, especially the most vulnerable groups in society, has access to affordable primary care services close to home and high-quality, timely specialist support services, including those relating to mental health illnesses.

10. Right to housing

24. The State has not incorporated the right to housing into its domestic legislative framework and has opted out of Article 31 of the European Social Charter impacting, in particular, on the standard of **local authority housing**¹²⁴ and **Traveller-specific accommodation**.¹²⁵ Inappropriate or poorly serviced accommodation options have severe health implications as well as impacting on mental well-being; community cohesion and access to services.¹²⁶ In the case of Travellers, prejudice, enforced assimilation¹²⁷ and the legal enablement of forced evictions are further consequences.¹²⁸ Despite the adoption of the Housing (Miscellaneous Provisions) Act, 2009,¹²⁹ the State has failed to meet its own commitment to end long-term occupancy of emergency **homeless** accommodation by 2010.¹³⁰ Furthermore, due to the current economic climate and high levels of unemployment, financial difficulties mean that many are at risk of losing their homes and maintain **distressed mortgages**. Despite this, the 2010 recommendations of the Government's Expert Group on Mortgage Arrears and Personal Debt¹³¹ remain to be implemented.

Recommendations:

- The right to housing should be recognised in Irish law and assimilated into national and local government housing policy. Housing and accommodation plans should be implemented in partnership with representatives of communities affected by them.
- Commitments set down in the homeless strategy should be placed on a statutory footing including setting a revised date to end long-term occupancy of emergency homeless accommodation.
- The Government should implement the recommendations of the Expert Group on Mortgage Arrears and Personal Debt and ensure that no one is rendered homeless due to over indebtedness or unsustainable mortgage repayments.

11. Rights of the child

25. The Irish Constitution is largely silent on the **rights of children**.¹³² Children are treated differently depending on the marital status of their parents, the 'best interests of the child principle' is not applied by the Irish Supreme Court, nor is there provision for the child's voice to be heard in judicial or administrative decisions affecting him or her.¹³³

26. In recent years, authoritative reports (including the 2009 Report of the Commission to Inquire into Child Abuse, or *Ryan Report*, into clerical sexual abuse)¹³⁴ have revealed the prevalence of physical, emotional and sexual abuse carried out against children in a variety of settings. The Government has committed to reform and strengthen the child care and

protection system under the *Ryan Report Implementation Plan*, but progress to date has been inadequate.¹³⁵

Recommendations:

- Expedite a referendum to strengthen children's rights in the Constitution in line with the report of the All Party Oireachtas Committee.
- As a priority, take steps to fully implement the *Ryan Report Implementation Plan*, including by: providing a duty in law to report suspected child abuse, introducing a comprehensive vetting system and ensuring that there is appropriate provision for every child in care (and for those leaving care).

12. Women's Reproductive Rights

27. Criminalisation of **abortion** means that safe and legal terminations are inaccessible in Ireland for all women and girls.¹³⁶ Despite a 1992 Irish Supreme Court ruling clarifying the Constitutional position¹³⁷ and a recent ECHR judgment¹³⁸ requiring that the law be clarified, legislation has not been forthcoming.¹³⁹ By restricting abortion, the State disproportionately interferes with women's rights to health, privacy, life, freedom from inhuman or degrading treatment and non-discrimination.¹⁴⁰

Recommendation:

- Immediately repeal the 1861 Offences Against the Persons Act (criminal sanctions for those who have abortions and those who assist them) and immediately enact legislation to clarify the circumstances under which an abortion may be lawful, as recommended by the Constitutional Review Group in 1996 and the European Court of Human Rights in 2010.¹⁴¹

13. Right to education

28. The provision of education in Ireland is intricately connected to the majority **Christian religion**, particularly the Catholic faith.¹⁴² Since 2005, a number of UN Committees have made statements to Ireland recommending an increase in the availability of non-denominational and multi-denominational schools.¹⁴³ Doctrinal religious instruction is taught in the schools through timetabled religious instruction and through the integrated curriculum where religious teaching must be incorporated into all subjects.¹⁴⁴ This renders impractical the removal of children from religious curricular content.¹⁴⁵

29. A lack of **specialised support services** in education impacts on children who have special educational needs and those with supportive learning needs.¹⁴⁶ Recent cuts to learning support services including Traveller specific supports¹⁴⁷ and language supports¹⁴⁸ disproportionately affect children from minority groups. Although the Constitution declares a right to free primary education for all,¹⁴⁹ in reality, the cost of supporting a child through his or her school years is significant¹⁵⁰ and continues into third level. In this regard, third level students dependent upon State support do not receive adequate funding to meet the real cost of living.¹⁵¹ Students with disabilities cannot avail of the Fund for Students with Disabilities if they are attending a publicly funded institute on a part-time basis.¹⁵²

Recommendations:

- Ireland should provide a national network of schools that guarantee equality of access and esteem to children irrespective of their religious, cultural or social background. In this respect, religious discrimination in enrolment of children should be prohibited. Religious schools should be required to de-couple faith-specific content from the national curriculum and ensure that such content is genuinely optional for all children.
- Free, accessible and appropriate education of adequate quality should be available to everyone. Measures should be taken to support literacy¹⁵³ and prevent early school leaving. Children with special learning needs and supportive education needs should be guaranteed an adequate education.

14. International assistance

30. The previous government's policies on economic recovery ran counter to its public commitment on **overseas development aid** (ODA) (0.7% of GDP by 2015).¹⁵⁴ The National Recovery Plan¹⁵⁵ states that the Government's aim is to consolidate the aid budget around the current level, which locks in substantial cuts in real terms since 2008. Given the Government's own expectation of a return to growth in Gross National Product (GNP), any plan to merely maintain ODA spending in real terms would mean it will not be possible for Ireland to meet its international commitments, since the UN's ODA target is captured as a percentage of GNP. In addition, Ireland's ODA programme must develop a policy on disability and development.¹⁵⁶

Recommendations:

- The Government should demonstrate clearly how it intends to meet the target of 0.7% of GNP to ODA by 2015.
- A rights-based approach should be adopted to foreign policy, international cooperation and policy coherence for development, with indicators of success against which the Department of Foreign Affairs can be held accountable. Upon ratification of the ICRPD, Irish Aid should immediately take steps to implement Articles 11 and 32 of the Convention, including by developing a policy on disability and development.

15. Minorities & Anti-Racism

31. Following the conclusion of the National Action Plan Against Racism 2005-2008,¹⁵⁷ Ireland lacks an integrated, strategic Government response to racism, including that experienced by **migrants, Travellers and Roma people**.¹⁵⁸ Irish criminal law does not define racist or related hate offences as specific offences¹⁵⁹ and there is limited data on the number of hate crimes (including racism, xenophobia, anti-Semitism, homophobia, transphobia and crimes against persons with a disability) experienced by minority groups despite evidence of high levels of reported racism and discrimination.¹⁶⁰ The State has failed to **recognise Travellers as an ethnic group**, contrary to the recommendations of two UN Committees.¹⁶¹ This lack of recognition allows the State to enact legislation which impacts on Travellers' traditional nomadic way of life, leading to the forced assimilation of Travellers into mainstream society. Furthermore, Travellers may not be recognised as suffering racism, and can be excluded from national/local anti-racist measures and positive action initiatives aimed at including minorities in public life.¹⁶²

Recommendations:

- A new national strategic initiative is required to combat racism and discrimination against minority groups in Ireland, including the collection of disaggregated data on racist crime and amendments to the criminal law to take into account racist motivations. As a priority, Ireland should develop strategies around the social inclusion of migrants, including Roma, particularly with regards to educational attainment, access to the labour market and access to services.
- Ireland should take immediate steps to recognise Travellers as an ethnic group.

16. Migrants, refugees and asylum seekers

32. Ireland lacks an efficient and cost-effective independent appeals tribunal for **decisions on immigration and naturalisation**. The current system is based on Ministerial discretion with applicants effectively required to seek judicial review in the High Court in order to challenge decisions.¹⁶³

33. Persons are maintained at subsistence levels in the **Direct Provision**¹⁶⁴ dispersal and accommodation system for unduly long periods of time, impacting on their rights to health, food, housing and family life.¹⁶⁵ A lack of independent inspection further compounds the risk of rights infringements. A lack of independent inspection further compounds the risk of rights infringements. In addition, Ireland has failed to put measures in place to implement a single procedure for refugee and subsidiary protection applications that ensure separated children have equal access to care and are protected by a legal guardian.¹⁶⁶

Recommendations:

- Establish clear legislative guidelines on immigration and naturalisation decisions and establish an independent appeals mechanism to provide more effective and transparent decision-making. The State should carry out an audit of its policy of direct provision and dispersal to ensure it meets human rights standards in Irish law and in international human rights treaties that it has ratified. The State should respect, protect and promote the fundamental human rights of all people regardless of their immigration status.
- The rights of separated children to equal access to care and protection should be established in law.

17. Situations particular to Ireland

34. The **Community and Voluntary sector** plays a key role in the protection and promotion of human rights as well as the provision of services. Budgetary cuts over the last number of years have disproportionately impacted on its capacity to protect the rights of vulnerable or minority people in Ireland.¹⁶⁷

Recommendation:

- The Government should conduct a detailed cost-benefit analysis of the contribution of the Community and Voluntary sector to the promotion and protection of human rights in Ireland. The necessary funding should be made available to restore an adequate level of service provision and to support effective advocacy by the State-supported Community and Voluntary sector.

ANNEX A

Members of the Cross Sectoral Steering Group

1. Children's Rights Alliance (<http://www.childrensrights.ie/>)
2. Dóchas (<http://www.dochas.ie/>)
3. Disability Federation of Ireland (<http://www.disability-federation.ie/>)
4. Educate Together (<http://www.educatetogether.ie/>)
5. Free Legal Advice Centres (<http://flac.ie>)
6. Irish Council For Civil Liberties (<http://iccl.ie>)
7. Irish Penal Reform Trust (<http://iprt.ie>)
8. Irish Senior Citizen's Parliament (<http://iscp.wordpress.com/>)
9. Irish Traveller Movement (<http://www.itmtrav.ie/>)
10. Irish Family Planning Association (<http://www.ifpa.ie/>)
11. Irish Congress of Trade Unions (<http://www.ictu.ie/>)
12. Immigrant Council of Ireland (<http://www.immigrantcouncil.ie/>)
13. National Women's Council of Ireland (<http://www.nwci.ie/>)
14. Simon Communities of Ireland (<http://www.simon.ie/>)
15. Transgender Equality Network (<http://www.teni.ie/>)
16. The Integration Centre (<http://www.integrationcentre.ie/>)
17. Union of Students in Ireland (<http://www.usi.ie/>)

ANNEX B

Consultation and Public Information Events

In February and March 2011, supported by a media campaign which included print and radio advertisements, 17 information and consultation events were conducted across Ireland. These events were organised in collaboration with local partners, targeting civil society organisations and members of the public.

	Date	Event	Place
1	1 February 2011	Consultation with Rialto Rights in Action group	Dublin
2	8 February 2011	Public Information Event	Donegal
3	9 February 2011	Consultation with Integration Centre	Galway
4	10 February 2011	Public Information Event (Session 1)	Galway
5	10 February 2011	Public Information Event (Session 2)	Galway
6	11 February 2011	Consultation with Irish Family Planning Association	Dublin
7	15 February 2011	Public Information Event	Cork
8	15 February 2011	Consultation with Integration Centre	Cork
9	16 February 2011	Public Information Event	Limerick
10	17 February 2011	Public Information Event	Waterford
11	21 February 2011	Consultation with Transgender Equality Network Ireland	Dublin
12	23 February 2011	Consultation with Foróige Youth Group	Dublin
13	24 February 2011	Consultation with Irish Traveller Movement	Dublin
14	25 February 2011	Public Information Event	Dundalk
15	26 February 2011	Public Information Event	Dublin
17	5 March 2011	Irish Congress of Trade Unions, National Women's Seminar	Cork

ANNEX C

Submissions received to the *Your Rights Right Now* campaign

The *Your Rights Right Now* campaign received 84 written submissions, of which 43 submissions were from NGOs, trade unions and civil society groups and 41 were from private individuals. The organisations that submitted information to the *Your Rights Right Now* campaign are listed below.

1. Abstergo Puto Scio (a group that works to assist parents in Ireland in understanding investigations and proceedings under the Child Care Act)
2. Adoption Rights Alliance
3. Alternative Traders Ireland
4. Amnesty International Ireland
5. Atheist Ireland
6. Association of Secondary Teachers in Ireland, Irish National Teachers' Organisation, and Teachers Union of Ireland (Joint submission)
7. Barnardos
8. Blue Drum (a charitable organisation which supports communities to develop their own expressive life)
9. Christian Brothers Movement (CBM) Ireland
10. Children's Rights Alliance
11. Disability Federation of Ireland
12. Dóchas (Irish Association of Non-Governmental Development Organisations)
13. Doras Luimní (non-governmental organisation working on the promotion and protection of the rights of migrants)
14. Educate Together
15. Free Legal Advice Centres
16. Galway Refugee Support Group
17. Galway Traveller Movement
18. Humanist Association of Ireland
19. Immigrant Council of Ireland
20. Integration Centre
21. Inclusion Ireland

22. Irish Congress of Trade Unions
23. Irish Family Planning Association
24. Irish Penal Reform Trust
25. Irish Senior Citizens Parliament
26. Irish Traveller Movement
27. Justice for Magdalenes
28. Limerick Regeneration Watch
29. LGBT Noise
30. Mayo Intercultural Action
31. Meath Primary Health Care Project
32. National Women's Council of Ireland
33. National Institute for Intellectual Disability
34. Respond!
35. Retrieve
36. Rialto Rights In Action Group
37. Shannonwatch
38. Sligo Social Service Council
39. Simon Communities of Ireland, Dundalk
40. Transgender Equality Network
41. The Integration Centre
42. Walkinstown Association
43. Union of Students in Ireland
44. – 84. Forty-one Private Individuals

ANNEX D

Endorsement List

82 NGOs, trade unions and civil society organisations have endorsed this report (full list below). The *Your Rights Right Now* campaign will continue to raise awareness about Ireland's examination under the UPR and we expect to achieve further significant endorsement of the report before 6 October 2011.

1. A.C.T.s Transport
2. Adoption Rights Alliance
3. AdVIC (Advocates for Victims of Homicide)
4. A.P.S.
5. Atheist Ireland
6. A-Z Children's Charity
7. Barnardos
8. BoLT Magazine (Bisexual, Lesbian and Trans Women in Ireland)
9. Cavan Women's Network
10. Children's Rights Alliance
11. Churches' Asylum Network
12. Crosscare Migrant Project
13. Disability Federation of Ireland
14. Dóchas
15. Domestic Violence Advocacy Service, Sligo
16. Donegal Women's Network
17. Educate Together
18. EFL Ireland
19. Equality & Rights Alliance
20. First Out
21. Foróige
22. Free Legal Advice Centres (FLAC)
23. Friends of Londiani, Kenya
24. Galway Refugee Support Group

25. Galway Traveller Movement
26. GLEN - Gay and Lesbian Equality Network
27. Habitat for Humanity Ireland
28. Hospital Family Resource Centre
29. Immigrant Council of Ireland
30. Integration and Support Unit for New Communities
31. Irish Congolese Group of Life
32. Irish Congress of Trade Unions
33. Irish Council for Civil Liberties
34. Irish Development Education Association (IDEA)
35. Irish Family Planning Association
36. Irish National Teachers' Organisation
37. Irish Penal Reform Trust
38. Irish Refugee Council
39. Irish Second-Level Students' Union (ISSU)
40. Irish Senior Citizen's Parliament
41. Irish Translators' and Interpreters' Association
42. Irish Traveller Movement
43. ISPCC
44. Justice for Magdalene's
45. Labour Women
46. Marriage Equality
47. Mayo Intercultural Action
48. Nasc, The Irish Immigrant Support Centre
49. National Adult Literacy Agency
50. National Council for the Blind of Ireland
51. National Traveller Money Advice and Budgeting Service (M.A.B.S.)
52. National Traveller Women's Forum
53. National Women's Council of Ireland
54. NGO Peace Alliance
55. Northside Community Law Centre

56. Offaly Domestic Violence Support Service
57. One Family
58. OPEN
59. Outhouse LGBT Community & Resource Centre
60. Pavee Point Travellers Centre
61. People with Disabilities, Ireland
62. Project Integrate, Mullingar
63. Rialto Rights In Action
64. Ruhama
65. Sexual Violence Centre Cork
66. SIPTU
67. Social Inclusion Ireland
68. Somali Irish Friendship Association
69. Step Forward Disability Group
70. Stir for Change
71. The Integration Centre
72. Tipperary Women's Network
73. Tír Boghaine Teo., Co. Donegal
74. Transgender Equality Network Ireland (TENI)
75. Union of Students in Ireland
76. Vincentian Refugee Centre
77. Violence against Women 365 Poster Int. Exhibition
78. Waterford Immigration Network
79. Waterford Women's Centre
80. Waterford Women's Community Network
81. Women's Aid
82. YMCA Cork

ANNEX E

List of Recommendations

Background and framework

1. Reform the current State-funded human rights and equality bodies to produce a more coherent and effective institutional framework for the protection and promotion of human rights.
2. As a priority, take steps to ratify and incorporate all UN human rights treaties (including Optional Protocols) into Irish law. Ratify and implement the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters 1998.
3. Develop a Human Rights Action Plan that includes human rights proofing of policy and legislation and provide meaningful human rights training for civil and public servants.
4. An institutional oversight mechanism for example, a Parliamentary Committee or Cabinet Sub-Committee, should be assigned responsibility to monitor the implementation of TMB recommendations.

Equality and non-discrimination

5. Enact a Mental Capacity Bill taking into account the recommendations of the Irish Human Rights Commission and the Law Reform Commission.
6. Strengthen the equality infrastructure by enhancing the efficiency of the Equality Tribunal and strengthen legal protection by broadening the grounds protected under equality legislation.

Right to life, liberty and security of the person

7. Penal and criminal justice policy should ensure that imprisonment is a measure of last resort. Urgent measures should be taken to address the prison overcrowding crisis, including imposing an enforceable ceiling on the prison population. The Government should commit to end slopping out completely by a fixed date. Work should commence on the National Children Detention facility to accommodate minors currently held in prisons.
8. The practice of FGM should be outlawed as a matter of urgency.
9. The State should bring its domestic law on the protection of victims of crime (including victims of trafficking and domestic violence) into line with its international obligations.

Administration of justice and the rule of law

10. Ensure access to justice by adequately resourcing the Legal Aid Scheme, abolishing the Special Criminal Court, legislating to reform the inquest system and establishing an independent complaints system for prisoners, migrants and people claiming asylum.

Right to freedom of religion and belief and right to freedom of expression

11. Expedite an amendment to the Constitution to remove the requirements for holders of secular offices to take religious oaths and repeal Part V of the Defamation Act 2009.

Right to participate in public and political life

12. Take effective measures to increase effective representation in the Oireachtas (Irish Parliament) by under-represented groups such as women, Travellers and other minority groups, including through temporary special measures (for example, quotas). In addition, the State should promote participative democracy and foster the input of civil society in legislative and policy developments.

Right to privacy, marriage and family life

13. Expedite a referendum to amend Article 41 of the Constitution to recognise modern, pluralist and inclusive family relationships.
14. Introduce full civil marriage for same-sex couples and amend the Adoption Act to include rights to information and tracing for adopted people.
15. Immediately repeal section 37 of the Employment Equality Act 1998 and ensure those of minority views have equal rights of participation and employment in the education system.
16. Immediately introduce inclusive gender recognition legislation for transgender and intersex people.

Right to work and to just and favourable conditions of work

17. Introduce legislation to underpin the right of all workers to collective bargaining through their trade unions in line with the state's international commitments.
18. Take steps to promote the participation of vulnerable and disadvantaged groups in the workforce, including by establishing an affordable and accessible publicly funded childcare system, reforming the work permit system to incorporate freedom to change employers and providing temporary work permits to asylum seekers and opting in to the EU Directive on Minimum Standards for the Reception of Asylum Seekers (EU Council Directive 203/9/EC).

Right to social security and to an adequate standard of living

19. Amend section 15 of Social Welfare and Pensions (No.2) Act 2009 to ensure that residency while awaiting a decision on protection or immigration status is taken into account for the purposes of habitual residence.

Right to health

20. In order to ensure coordinated and change-creating health policies, Ireland should develop a comprehensive Health Strategy for the delivery of appropriate and adequate healthcare, with particular emphasis on vulnerable groups in Irish society. Ireland should implement fully the recommendations from the Traveller Health Strategy and establish a framework to deliver on the Mental Health Strategy.
21. Ensure that everyone, especially the most vulnerable groups in society, has access to affordable primary care services close to home and high-quality, timely specialist support services, including those relating to mental health illnesses.

Right to housing

22. The right to housing should be recognised in Irish law and assimilated into national and local government housing policy. Housing and accommodation plans should be implemented in partnership with representatives of communities affected by them.
23. Commitments set down in the homeless strategy should be placed on a statutory footing including setting a revised date to end long-term occupancy of emergency homeless accommodation.
24. The Government should implement the recommendations of the Expert Group on Mortgage Arrears and Personal Debt and ensure that no one is rendered homeless due to over indebtedness or unsustainable mortgage repayments.

Rights of the child

25. Expedite a referendum to strengthen children's rights in the Constitution in line with the report of the All Party Oireachtas Committee.
26. As a priority, take steps to fully implement the *Ryan Report Implementation Plan*, including by: providing a duty in law to report suspected child abuse, introducing a

comprehensive vetting system and ensuring that there is appropriate provision for every child in care (and for those leaving care).

Women's Reproductive Rights

27. Ireland should immediately repeal the 1861 Offences Against the Persons Act (criminal sanctions for those who have abortions and those who assist them) and immediately enact legislation to clarify the circumstances under which an abortion may be lawful as recommended by the Constitutional Review Group in 1996 and the European Court of Human Rights in 2010.

Right to education

28. Ireland should provide a national network of schools that guarantee equality of access and esteem to children irrespective of their religious, cultural or social background. In this respect, religious discrimination in enrolment of children should be prohibited. Religious schools should be required to de-couple faith-specific content from the national curriculum and ensure that such content is genuinely optional for all children.
29. Free, accessible and appropriate education of adequate quality should be available to everyone. Measures should be taken to support literacy and prevent early school leaving. Children with special learning needs and supportive education needs should be guaranteed an adequate education.

International assistance

30. The Government should demonstrate clearly how it intends to meet the target of 0.7% of GNP to ODA by 2015.
31. A rights-based approach should be adopted to foreign policy, international cooperation and policy coherence for development, with indicators of success against which the Department of Foreign Affairs can be held accountable. Upon ratification of the ICRPD,

Irish Aid should immediately take steps to implement Articles 11 and 32 of the Convention, including by developing a policy on disability and development.

Minorities & Anti-Racism

32. A new national strategic initiative is required to combat racism and discrimination against minority groups in Ireland, including the collection of disaggregated data on racist crime and amendments to the criminal law to take into account racist motivations. As a priority, Ireland should develop strategies around the social inclusion of migrants, including Roma, particularly with regards to educational attainment, access to the labour market and access to services.
33. Ireland should take immediate steps to recognise Travellers as an ethnic group.

Migrants, refugees and asylum seekers

34. Establish clear legislative guidelines on immigration and naturalisation decisions and establish an independent appeals mechanism to provide more effective, transparent and cost-effective decision-making. The State should carry out an audit of its policy of direct provision and dispersal to ensure it meets human rights standards in Irish law and in international human rights treaties that it has ratified. The State should respect, protect and promote the fundamental human rights of all people regardless of their immigration status.
35. The rights of separated children to equal access to care and protection should be established in law.

Situations particular to Ireland

36. The Government should conduct a detailed cost-benefit analysis of the contribution of the community and voluntary sector to the promotion and protection of human rights in Ireland. The necessary funding should be made available to restore an adequate level of

service provision and to support effective advocacy by the State-supported Community and Voluntary sector.

ANNEX F

List of Additional Specific Issues Raised During Consultations

The *Your Rights Right Now* campaign conducted 17 information and consultation meetings across Ireland in February/March 2011 and received 82 written submissions. Using the information gathered and through the Cross Sectoral Steering Group, the UPR stakeholder report provides a comprehensive overview of the primary human rights issues on the ground in Ireland. This table lists the additional and specific issues reported to the *Your Rights Right Now* campaign.

Right to Housing¹	Submitted by
Ensure that regeneration schemes are cognizant of the rights of the local community including homeowners and tenants.	Limerick Regeneration Watch
Establish an interdepartmental committee or special advisory committee to review national housing policy including any fiscal components.	Respond!
Improve security of tenure in state-provided housing as well as private rented accommodation.	Respond!
Ensure that adequate play facilities are provided for local authority tenants.	Rialto Rights in Action
Ensure that state housing agents (central or local government) engage and conduct meaningful consultation with residents in relation to developments.	Rialto Rights in Action
Criminal Justice	
Establish a dedicated Garda (police) service for regeneration areas in line with the 2007 Fitzgerald Report	Limerick Regeneration Watch

¹ Additional information is available in the Report.

(http://www.limerickcorp.ie/Housing/HousingPublications/FitzgeraldReport/) .	
Provide alternatives to custodial sentencing for minor offences.	Respond!
Introduce human rights compliant methods to deal with rising crime in particular areas, including the rise in organised crime.	Public Information meeting – Limerick
Policing	
Establish mandatory anti-racism training for An Garda Síochána (police).	Private Individual
Provide human Rights training for public and civil servants.	Private Individual
An Garda Síochána (police) should collect statistics on hate crimes (for example, across race, gender, sexuality or transgender-based crimes).	Private Individual
Ensure the Garda Síochána Ombudsman Commission is supported to conduct investigations into Garda misconduct.	Private Individual
Delivery of public services²	
Ensure meaningful local participation in decision making on relevant issues.	Private Individual
Ensure government targets on delivery of public services are met.	Public Information event – Galway
Access to Public Services³	

² Additional information is available in the Report.

³ Additional information is available in the Report.

Ensure that there are (1) sufficient public facilities within rural Ireland (for example post offices) and (2) transport options available to people in rural Ireland to access the services they need (for example hospitals)	Public information meeting – Donegal Meas
Right to Privacy	
Review the framework around the retention of private information by service providers to ensure its human rights compliant.	Private Individual
Ensure that any legal framework around DNA testing is human rights compliant.	Private Individual
Right to a Family⁴	
Adopt the ECHR definition of the family in Ireland in the Irish Constitution.	One Family
Provide support for one-parent families to access appropriate services that will assist them to move out of poverty.	One Family
Provide adequate services for all families affected by marriage and relationship breakdown.	One Family
Cultural Rights	
Develop a plan for cultural rights in the Arts Council's Strategic Overview (2010).	Blue Drum
Introduce a positive duty for the Arts Council to have due regard to equality and human rights in carrying out their functions and to implement positive action measures to make real equality in service provision.	Blue Drum

⁴ Additional information is available in the Report.

Rights of Indigenous People	
Ratify the Declaration on the Rights of Indigenous peoples and implement into domestic law.	Retrieve Public Information meeting – Dundalk
Access to a Remedy⁵	
In relation to the survivors of institutional abuse, the Government should immediately adopt the IHRC recommendation to institute a statutory inquiry and compensation scheme.	Justice for Magdalenes
Ensure people are aware of information and guidance as to rights and entitlements, particularly when seeking redress from the State.	Consultation meeting (Integration Centre) – Cork Consultation meeting (Integration Centre) – Galway Consultation meeting with IFPA Public Information meeting – Donegal Public Information meeting – Galway Public Information meeting – Waterford Public Information meeting – Cork Public Information meeting – Dublin Public Information meeting – Dundalk
Ensure the bodies established by the State to assist individuals in seeking redress are supported and monitored to ensure delivery.	Public Information meeting – Donegal Public Information meeting – Galway Public Information meeting – Waterford Public Information meeting – Cork Public Information meeting – Dublin Public Information meeting – Dundalk

⁵ Additional information is available in the Report.

Accountability⁶	
Strengthen mechanisms for accountability for the actions of local government.	Private Individual
Introduce effective ‘whistle-blowers’ legislation.	Private Individual (2)
Stereotyping	
<p>Introduce a national policy on combatting stereotyping, including through awareness raising, education, media monitoring and other mechanisms. In particular, stereotyping of the following groups should be targeted:</p> <ul style="list-style-type: none"> - Travellers - Transgender people - LGBT people - Migrants - Asylum seekers - Women - One parent families 	<p>Public Information meeting – Donegal Public Information meeting – Galway Public Information meeting – Waterford Public Information meeting – Cork Public Information meeting – Dublin Public Information meeting – Dundalk National Women’s Council of Ireland LGBT Transgender Equality Network Ireland One Family Private Individuals</p>
Right to Life and Right to Freedom from Torture or Other Inhuman or Degrading Treatment or Punishment	
Review and strengthen legislation governing the search and inspection of suspected rendition flights.	Shannonwatch
Establish a robust and transparent system for identifying aircraft, operators and crews using Irish territory or airports for the purposes of rendition activities.	Shannonwatch

⁶ Additional information is available in the Report.

Establish an independent, impartial and public inquiry into the use of Irish territory, and in particular Shannon airport, in renditions.	Shannonwatch
Put in place procedures should be put in place to ensure that troops, weapons, munitions and associated equipment being transited through Irish territory and airspace are not destined for countries where they could be used to commit human rights violations and war crimes.	Shannonwatch
Review and if necessary strengthen legislation to ensure that civil and police authorities have the necessary power to inspect any aircraft suspected to be carrying munitions or war.	Shannonwatch
Right to Education⁷	
Ensure there is a choice for young people excluded from the mainstream education system.	Edmund Rice Centre
Right to Health and Right to Liberty and Security⁸	
Ensure access to healthcare for prisoners within the Irish prison service, particularly access to dental treatment in line with the UN Basic Principles for the treatment of prisoners.	Private Individual
Right to Freedom of Expression	
Provide adequate protection for the right to freedom of expression under the	Private Individual (2)

⁷ Additional information is available in the Report.

⁸ Additional information is available in the Report.

Constitution.	
Right to Freedom of Association	
Strengthen the right to freedom of association in Irish law.	Private Individual

¹ All endnotes last accessed 21 March 2011. A list of recommendations is available at ANNEX E.

² The members of the UPR Cross Sectoral Steering Group are Disability Federation of Ireland, Children's Rights Alliance, Dóchas (the Irish association of non-governmental development organisations), Educate Together, Free Legal Advice Centres, Immigrant Council of Ireland, Integration Centre, Irish Congress of Trade Unions, Irish Council for Civil Liberties, Irish Family Planning Association, Irish Penal Reform Trust, Irish Senior Citizens' Parliament, Irish Traveller Movement, National Women's Council of Ireland, Simon Communities of Ireland, Transgender Equality Network Ireland, and the Union of Students in Ireland. Further details regarding these organisations can be found in ANNEX A to the report.

³ For further information about this UPR Campaign, including video and photographs, please visit the website (<http://www.rightsnow.ie/>).

⁴ The consultations and public information events were conducted in Donegal, Galway, Cork, Limerick, Waterford, Dundalk and Dublin throughout February and March 2011. Themes arising from the consultations and input to the draft report were further gathered and discussed at the National Review Event in Dublin on 10 March, 2011. For a full list of the consultation and public information events, refer to ANNEX B.

⁵ For a full list of written submissions received, refer to ANNEX C. Due to the volume of information collected, not all specific issues could be referenced in the body of the report. Please see ANNEX F for a table of additional and specific human rights concerns reported during the consultation and information meetings.

⁶ This report is endorsed by 84 non-governmental organisations (NGOs), trade unions and civil society groups. All of the views expressed in the report do not necessarily reflect the policies and positions of each endorsing organisation. For a full list of endorsing organisations, refer to ANNEX D.

⁷ The Irish Constitution is accessible on the website of the Taoiseach (Irish prime minister) http://www.taoiseach.gov.ie/attached_files/Pdf%20files/Constitution%20of%20Ireland.pdf.

⁸ Article 43, http://www.taoiseach.gov.ie/attached_files/Pdf%20files/Constitution%20of%20Ireland.pdf.

⁹ Article 42, http://www.taoiseach.gov.ie/attached_files/Pdf%20files/Constitution%20of%20Ireland.pdf.

¹⁰ Article 45, http://www.taoiseach.gov.ie/attached_files/Pdf%20files/Constitution%20of%20Ireland.pdf.

¹¹ Article 40.1 provides that: "All citizens shall, as human persons, be held equal before the law."

¹² *O'B. v. S.* [1984] I.R. 316 at 335.

¹³ In 2002, **Committee on Economic, Social and Cultural Rights** stated its regret that Ireland had not yet undertaken any measures with regard to the Committee's 1999 recommendation concerning the inconsistency of Article 40.1 of the Constitution on equality before the law with the principle of non-discrimination as set out in Articles 2 and 3 of the Covenant. Committee on Economic, Social and Cultural Rights: Ireland 05/06/2002 E/C 12/1/Add.77, at para 16. See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 11, available at http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

¹⁴ The European Convention on Human Rights was given further effect in Irish law on account of an obligation under the Good Friday (Belfast) Agreement, 1998. The Agreement is a multi-party document that commits all political parties on the island of Ireland to democratic and peaceful means of resolving differences. In Chapter 6, the Irish Government agreed to examine the incorporation of the ECHR. Refer to <http://www.dfa.ie/uploads/documents/Anglo-Irish/agreement.pdf>.

¹⁵ The European Convention on Human Rights Act, 2003 is available at <http://www.irishstatutebook.ie/2003/en/act/pub/0020/print.html>. The Government favoured this model as it viewed direct incorporation as being "undesirable" and "unnecessary" according to the former Minister for Justice, Equality and Law Reform (2002-2007), Mr Michael McDowell, who brought forward the 2003 Act.. Source: McDowell, (2008) "The European Convention on Human Rights Act, 2003 Embarks on its Fifth Year", presentation delivered to the ECHR Conference organised by the Bar Council on 9 April 2008.

¹⁶ Section 3, European Convention on Human Rights Act 2003.

¹⁷ Section 5, European Convention on Human Rights Act 2003. Refer to *McD v L & Anor* [2009] IESC 81, available at <http://www.courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/f0acce6d7a4dc3780257688003f5272?OpenDocument>.

¹⁸ For example, the then Minister for Justice, Equality and Law Reform, Mr Michael McDowell, claimed that human rights adversely affect the "entrepreneurial spirit" because they dictate standards. Source: Beesley, (24 May 2003) "McDowell attacks 'rights-based society', *Irish Times*. The former Taoiseach (1998-2008), Mr Bertie Ahern, argued

in the context of the Disability Bill 2004 that people should not have a “right to resources” Source: RTE News (11 May 2005) “Ó Caoláin ejected from Dáil in disability row”. <http://www.rte.ie/news/2005/0511/disability.html>.

¹⁹ See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 5, available at http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

²⁰ See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 6, available at http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

²¹ The Irish Human Rights Commission obtained funding from philanthropic sources for a project on public service education on human rights; however, this has not yet been rolled out in any substantive manner. Refer to <http://www.ihrc.ie/training/>. Reference to this project is also made in Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 11, available at http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

²² While the Attorney General’s Office is consulted on areas of possible incompatibilities, the Government does not proactively set out to prepare legislation which positively implements human rights standards. Regulatory Impact Analysis (RIA), which civil servants must carry out in advance of significant projects such as the development of legislation, does not incorporate a specific space for human rights analysis. Refer to <http://betterregulation.ie/eng/>.

²³ For example there are serious delays at the Social Welfare Appeals Tribunal. Refer to FLAC, *Briefing for the UN Independent Expert on Human Rights and Extreme Poverty*, where it is reported that that average processing times were 27.5 weeks. This report is based on a statement by the Deputy Chief Social Welfare Appeals Officer in October 2010 during a Joint Oireachtas (Irish Parliament) Committee on Social Protection meeting (refer to the transcript of the Committee on debate dealing with Habitual Residence and related appeals, available at <http://debates.oireachtas.ie/FAJ/2010/10/27/00005.asp>). FLAC’s submission is available at http://www.flac.ie/download/pdf/briefing_for_un_independent_expert_on_human_rights_and_extreme_poverty_january_2011.pdf. In 2010, Ireland was found in breach of the European Convention on Human Rights for undue delay in criminal proceedings; refer to *McFarlane v Ireland* [2010] ECHR 1272, available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=mcfarlane&sessionid=68060761&skin=hudoc-en>.

²⁴ Refer to Public Interest Law Alliance (PILA), *Public Interest Litigation: The Costs Barrier & Protective Costs Orders*, available at http://www.pila.ie/download/pdf/flac_pila_report_final.pdf. Refer to the PILA website for further information on barriers to public interest litigation in Ireland, available at <http://www.pila.ie/resources/barrierstopil.html>.

²⁵ For example, section 5 of the Illegal Immigrants Trafficking Act 2000 imposes a 14-day time limit on foreign nationals issuing judicial review proceedings. Committee on the Elimination of Racial Discrimination noted its concern about this time limit in its recommendations on Ireland in 2005 (CERD/C/IRL/CO/2). Accessible at: <http://tb.ohchr.org/default.aspx?country=ie>. Furthermore, recent case law puts certain government actions beyond the reach of the Court. Refer to *Bode (A Minor) -v- Minister for Justice, Equality & Law Reform & Ors*, [2007] IESC 62 (2007).

²⁶ The Irish Human Rights Commission was established under the Human Rights Commission Acts 2000 and 2001 as a State-funded agency with a role to protect and promote the human rights of everyone in Ireland. Refer to <http://www.ihrc.ie>.

²⁷ The Equality Authority was established under the Employment Equality Acts 1998 with a mandate to address discrimination under nine groups which are covered by the legislation. Refer to <http://www.equality.ie>.

²⁸ For example, in 2008 the budget of the Equality Authority was reduced by 43%, resulting in its Chief Executive Officer and six board members resigning in protest amid allegations that the Department of Justice, Equality and Law Reform was punishing the Authority for its successful discrimination challenges against public bodies. Hickey, Shane (12 December 2008) “Equality Authority Chief quits after €2.5 million Budget Cut”, *Irish Independent*, available at: <http://www.independent.ie/national-news/equality-authority-chief-quits-after-836425m-budget-cut-1572746.html>. Also refer to Coulter, Carol (12 December 2008) “Why was the CEO a beacon of equality forced to step down?”, *Irish Times*, available at: <http://www.irishtimes.com/newspaper/opinion/2008/1212/1228864714150.html>. The budget of the Irish Human Rights Commission was reduced by 32% in the same period. Source: Irish Human Rights Commission (November 2010) *Submission to the UN CERD Committee on the Examination of Ireland’s Combined Third and Fourth Periodic Reports*, available at, <http://www.ihrc.ie/download/pdf/20101210101458.pdf>.

²⁹ The National Consultative Committee on Racism and Interculturalism (NCCRI), a private limited company, was set up by the Department of Justice, Equality and Law Reform as a partnership body on racism and interculturalism. It ceased operating in December 2008 when its funding was cut. The NCCRI was not replaced. Refer to <http://www.nccri.ie>.

³⁰ The Combat Poverty Agency was a state agency that worked for the prevention and elimination of poverty and social exclusion. The Agency is now closed and its work has now been partially subsumed into the Social Inclusion Division of the Department of Community, Equality and Gaeltacht Affairs. Refer to <http://www.cpa.ie>.

³¹ Amongst its other functions, the National Consultative Committee on Racism and Interculturalism was the National Focal Point reporting on racism and related forms of intolerance to the European Union Fundamental Rights Agency (FRA). This function has been assumed by the Irish Council for Civil Liberties (ICCL), following a competitive tendering process.

³² ICCPR; ICESCR; CRC; CEDAW; ICERD and UNCAT.

³³ These include the Genocide Act, 1973; Incitement to Hatred Act, 1989 on foot of Article 20 (incitement to hatred) of the ICCPR; and the Criminal Justice (United Nations Convention Against Torture) Act, 2000. As previously mentioned, the European Convention on Human Rights Act, 2003 gives further effect to the European Convention on Human Rights in Irish law.

³⁴ This has been confirmed by the Supreme Court in *Kavanagh v Governor of Mountjoy Prison* [2002] 2 IR 97, [2002] 2 ILRM 81, at para 129. In the more recent Supreme Court case of *McD v. L. & anor*, Chief Justice Murray opined that the obligations under the European Convention on Human Rights had been undertaken by a government which has ratified the Convention and arise under international law and not national law. "Accordingly those obligations reside at international level and in principle the State is not answerable before the national courts for a breach of an obligation under the Convention unless express provision is duly made in national legislation for such liability". He further stated "declarations of the [European Court of Human Rights] Court are not enforceable at national level unless national law makes them so. This is so even though a contracting state may be in breach of its obligations under Article 13 if it fails to ensure that everyone whose rights and freedoms as set out in the Convention have any effective remedy for their breach by the State." In relation to the United Nations Convention on the Rights of the Child, the Chief Justice stated that the Convention "does not envisage its adoption as a part of the domestic law of ratifying states but rather that the states would ensure that their national law or administrative practices provide protection for the rights specified in the Convention. Its effective implementation is politically supervised by specialised agencies of the United Nations such as the United Nations Children's Fund and by the fact that each state must submit periodic reports comprehensively explaining the manner and extent to which that convention has been implemented by national measures. Again, these are obligations owed in international level and direct applicability of the Convention in national law is not contemplated". Refer to *McD v. L. & anor* [2009] IESC 81, available at

<http://www.courts.ie/judgments.nsf/597645521f07ac9a80256ef30048ca52/F0ACCEE6D7A4DC3780257688003F5272?opendocument>. See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 9, available at http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

³⁵ For example, the Government has lodged a reservation to Article 4 of the ICERD and Article 20 of the ICCPR which both cover incitement to hatred on the basis that Article 40.6.1 of the Irish Constitution, which provides for free speech, is incompatible. See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 10, available at http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

³⁶ See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 8, available at http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

³⁷ Ireland ratified UNCAT in 2002 but only submitted its first report to the CAT in 2009. Ireland's report to ICESCR was due in 2007 but has not yet been submitted. This creates severe work planning difficulties for NGOs and civil society groups that wish to engage with the TMB process. In this regard, Ireland also failed to fulfill its reporting obligations under the revised European Social Charter in both 2008 and 2010. Refer to Conclusions of the European Committee of Social Rights 2008 and 2010, available at http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/ConclusionsIndex_en.asp.

³⁸ On 28 June 2005, in response to a Parliamentary Question on the status of a CERD recommendation, the then Minister for Education and Science, Ms Mary Hanafin, downplayed its significance. She stated that: "On 10 March last, the United Nations Committee on the Elimination of Racial Discrimination did not issue a judgment imposing an obligation on the Irish State to promote the establishment of multid denominational schools. Rather the committee encouraged Ireland to promote the establishment of nondenominational or multid denominational schools". This response is available at: <http://www.kildarestreet.com/wrans/?id=2005-06-28.2631.0>

³⁹ The nine grounds are gender, civil status, family status, sexual orientation, religion, age, race, membership of the Traveller community and disability. Refer to Equality Authority, Guide to the Equal Status Acts 2000 – 2008, available at: www.equality.ie or refer to www.irishstatutebook.ie.

⁴⁰ This issue was raised by the Committee on the Elimination of Racial Discrimination in 2005, refer to UN Doc.: CERD/C/IRL/CO/2, 10 March 2005, para. 19.

⁴¹ Section 50 of the Equality Act, 2004 amended Section 7 of the Equal Status Act, 2000 (discrimination on the basis of nationality when providing further and higher education grants) in response to a decision from the Equality Tribunal in 2003, where it was decided that further and higher education grants are a service and that 'non-nationals' who are denied access to this service are being directly discriminated against. In its decision, the Tribunal advised that the current scheme was discriminatory and should be amended accordingly; however, instead the Government brought forward legislation to amend the Equal Status Act, 2000. Section 19 of the Social Welfare (Miscellaneous Provisions) Act, 2004 was introduced to restrict the definition of 'spouse' or 'couple' to a married couple and to opposite-sex cohabiting couples for state welfare schemes following a successful Equal Status case. Under section 25 of the Intoxicating Liquor Act, 2003, jurisdiction for complaints in relation to publicans and hoteliers was moved from the Equality Tribunal to the District Court, limiting the rights of Travellers to access a remedy when alleging discrimination in relation to access to licensed premises.

⁴² Equality Tribunal, *Legal Review 2009*, at page 5, available at: <http://www.equalitytribunal.ie/Publications/Annual-Legal-Reviews/Legal-Review-2009.pdf>.

⁴³ Equality Tribunal, *Annual Report 2009*, at pages 7 - 11, available at: <http://www.equalitytribunal.ie/Publications/Annual-Reports/Annual-ReportFinal2009.pdf>.

⁴⁴ A three-year waiting list has been reported in the past, but up to date figures are not available. Refer to, for example, Equality Authority *Annual Report 2004*, at page 54, available at: <http://www.equality.ie/index.asp?locID=136&docID=380>; Equality Authority, *Annual Report 2005*, at page 15, available at: <http://www.equality.ie/index.asp?locID=136&docID=684> and Equality Authority, *Annual Report 2006* at page 19, available at: <http://www.equality.ie/index.asp?locID=136&docID=684>. The 2007 Annual Report of the Equality Authority further reported delays in the hearing of cases of the Equality Tribunal. For example, in the Equality Tribunal decision of *McCarthy v. Hally's Bar*, (DEC-S2007-020) the incident giving rise to the allegation of discrimination on the Traveller ground occurred in December 2000. However, the date of the decision was March 2007 (the case was assigned to an Equality Officer at the end of 2006). Another Equal Status claim on the disability ground which had been referred in May 2003 had not been assigned to an equality officer at the end on 2007. A direction on notification under Section 21(3)(a)(ii) took 20 months to issue. Refer to Equality Authority, *Annual Report 2007*, at page 25, available at: <http://www.equality.ie/index.asp?locID=136&docID=732>.

⁴⁵ However, this is likely to be under-representative and that prevalence of disability is estimated to be in the range of 19%. Refer to the National Disability Survey 2006, available at: <http://www.cso.ie/statistics/HealthandSocialConditions.htm>.

⁴⁶ Available at www.justice.ie/en/JELR/NDS.pdf/files/NDS.pdf.

⁴⁷ In 2002, **Committee on Economic, Social and Cultural Rights** "strongly" recommended that the State "adopt a human rights-based approach in the Disability Bill." Refer to Concluding Observations of the UN Committee on Economic, Social and Cultural Rights: Ireland, 5 June 2002, UN Doc E/C.12/1/Add.77, at para 25. This Bill, now the Disability Act 2005, did not adopt a rights-based approach and remains on the statute books as the predominant legislative instrument on disability. In 2006, the **committee on the Rights of the Child** recommended that the State

party *inter alia*, adopt “an inclusive and rights-based legal framework that addresses the specific needs of children with disabilities and implement all relevant provisions of the existing legislation related to children with disabilities”, Concluding Observations of the UN Committee on the Rights of the Child: Ireland, 29 September 2006, CRC/C/IRL/CO/2, at para 42. **Towards Recovery – Programme for a National Government 2011-2016** states:

“We will publish, following wide consultation, a realistic implementation plan for the National Disability Strategy, including sectoral plans with achievable timescales and targets within available resources. We will ensure whole-of-government involvement and monitoring of the Strategy, in partnership with the disability sector. We will seek to get best value for money for investment in services and to ensure that services meet the needs of users. A Comprehensive Spending Review will examine all provision for people with disabilities with a view to determining how users can get the best services. We will also ensure that money spent on disability services under the National Disability Strategy is clearly laid out and audited. As part of this Review we will move a proportion of public spending to a personal budget model so that people with disabilities or their families have the flexibility to make choices that suit their needs best. Personal budgets also introduce greater transparency and efficiency in funding services.”

Refer to www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 24.

⁴⁸ Refer to Christian Blind Mission Ireland, *Submission to UN’s Universal Periodic Review of Ireland*, October 2011 and Disability Federation of Ireland, (January 2011), *Submission to the UN Independent Expert on the Question of Human Rights and Extreme Poverty*. **Towards Recovery – Programme for a National Government 2011-2016** states:

“We will ensure that the quality of life of people with disabilities is enhanced and that resources allocated reach the people who need them. To achieve this, we will reform the delivery of public services to bring about back office savings that will protect front line services. We will also facilitate people with disabilities in achieving a greater level of participation in employment, training and education”.

Refer to www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 24. See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 14, available at:

http://www.ihrcc.ie/download/pdf/ihrcc_report_to_un_universal_periodic_review_march_2011.pdf.

⁴⁹ Lunacy Regulation (Ireland) Act 1871, available at:

<http://www.legislation.gov.uk/ukpga/1871/22/contents/enacted>. For example, the person cannot marry nor is he or she free to travel or have control over finances. In 2006, the Law Reform Commission made recommendations for change, however; these have yet to be implemented. Refer to the Law Reform Commission, (2006), *Vulnerable Adults and the Law*, LRC 83 – 2006, available at: http://www.lawreform.ie/Reports_Published/Default.135.html.

⁵⁰ In contravention of Ireland’s obligations under the Hague Convention on the International Protection of Adults, which Ireland signed on 18 September 2008. **Towards Recovery – Programme for a National Government 2011-2016** commits to reforming the law on mental capacity “to ensure the greatest degree of autonomy for people with intellectual disabilities or suffering with mental illnesses in line with the UN Convention on the Rights of Persons with Disabilities.” Refer to

www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 24.

⁵¹ Refer to Irish Human Rights Commission, (November 2008), *Observations on the Scheme of the Mental Capacity Bill 2008*, available at www.ihrcc.ie.

⁵² Refer to the Law Reform Commission, (2006), *Vulnerable Adults and the Law*, LRC 83 – 2006, available at http://www.lawreform.ie/Reports_Published/Default.135.html.

⁵³ Additional grounds that have been suggested include socio-economic status and criminal record.

⁵⁴ Refer to <http://www.iprt.ie/prison-facts-2>. On 10 January 2011, the prison population was 4,369. Refer to Irish Penal Reform Trust, *IPRT Briefing on Overcrowding in Irish Prisons* available at: http://www.iprt.ie/files/IPRT_Briefing_on_Overcrowding_June_2010.pdf. In 2008, the **Human Rights Committee** recommended that the State should address “the overcrowding and the “slopping-out” of human waste” as a “priority issue” and that “alternatives to imprisonment should be promoted”. Concluding Observations of the UN Human Rights Committee: Ireland, 30 July 2008, UN Doc CCPR/C/IRL/CO/3, at para 15.

Towards Recovery – Programme for a National Government 2011-2016, contains a number of measures which, if implemented, could bring about a reduction in the prison population:

“We will ensure that violent offenders and other serious offenders serve appropriate prison sentences while at the same time switching away from prison sentences and towards less costly non-custodial options for

non-violent and less serious offenders. We will fully implement the Fines Act 2010 and extend the use of Community Service Orders. We will end the practice of imprisoning people who cannot pay fines and debts and introduce a system which takes a small amount of money from wages or social welfare by “attachment order” to pay off a fine or debt over time, as an alternative to imprisonment for people who refuse to pay.”

Refer to www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 18. See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 17, available at:

http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

⁵⁵ Refer to Inspector of Prisons, (July 2010), *The Irish Prison Population: An examination of the duties and obligations owed to prisoners*, at page 20 and **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)**, (February 2011), *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*, paragraph 48, page 29, available at:

<http://www.cpt.coe.int/documents/irl/2011-03-inf-eng.pdf>. **Towards Recovery – Programme for a National**

Government 2011-2016 states that the Government is “conscious of the need to provide in-cell sanitation to all prisons and, in so far as resources permit, to upgrade prison facilities.” Refer to

www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 19.

Refer to Irish Penal Reform Trust, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011. See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 18, available at:

http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

⁵⁶ Refer to Ombudsman for Children’s Office, (9 February 2011), *Young People in St Patrick’s Institution*, available at: <http://www.oco.ie/whats-new/young-people-in-st-patricks-institution.html>. This report concluded that the State was failing to meet its international obligations to children.

⁵⁷ According to the 2011 Report of the **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)**:

“At the time of the 2010 visit, St Patrick’s Institution continued to hold 16 and 17 year olds with no clear timetable as to when they would be transferred to a Children Detention School. Further, the findings of the 2010 visit demonstrate that St Patrick’s Institution does not provide a suitable environment for the detention of juveniles (conditions, regime, staffing). The CPT recommends that the Irish authorities take the necessary steps to ensure that juveniles deprived of their liberty in Ireland are held in appropriate detention centres for their age group.”

Refer to <http://www.cpt.coe.int/documents/irl/2011-03-inf-eng.pdf>, at para 26.

In 2006, the **Committee on the Rights of the Child** recommended that “detention should be used as a last resort. Where detention is deemed unavoidable, the Committee recommends that the State party provide children under the age of 18 with separate detention facilities,” Concluding Observations of the UN Committee on the Rights of the Child: Ireland, 29 September 2006, CRC/C/IRL/CO/2, at para 73. On 7th December 2010, then Minister for Justice and Law Reform, Dermot Ahern T.D., stated that the building of the National Children Detention Facility at Oberstown in Lusk would progress in 2011; however, this has yet to commence. With a 24% cut to the Irish Youth Justice Service budget in 2011 and just €500,000 of the budget assigned to capital expenditure (down from €8.229m in 2010), the new facility at Lusk may be in jeopardy. It is unclear whether there is a protected budget for this project. **Towards Recovery – Programme for a National Government 2011-2016** commits to an end to “the practice of sending children to St. Patrick’s Institution.”

Refer to www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 19.

⁵⁸ The previous government established the Criminal Law Codification Advisory Committee under Part 14 of the Criminal Justice Act, 2006. The provision of a full-time Criminal Law Codification Secretariat by the Department of Justice, Equality and Law Reform ceased in Autumn 2009 and a review of the work of the Committee was due to be undertaken by the Department of Justice and Law Reform in 2010 (no details available). Refer to <http://www.criminalcode.ie/website/clcac/clcac.nsf/page/aboutus-statutoryrole-en>. Refer to Criminal Law Codification Advisory Committee, *Annual Report 2009*, at pages 2 and 8.

⁵⁹ For example, there is no right to have a lawyer present during questioning despite recommendations of the Council of Europe Committee for the Prevention of Torture (refer to 2011 Report of the European Committee for the Prevention of Torture (CPT), at para 17, available at: <http://www.cpt.coe.int/documents/irl/2011-03-inf-eng.pdf>) and the ECHR judgment of *Salduz v. Turkey*, [2008] ECHR 36391/02 [Grand Chamber] (27 November 2008). See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 33, available at: http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

⁶⁰ Although **Committee on Economic, Social and Cultural Rights** commended Ireland for “the legislative measures taken to combat domestic violence and to eradicate corporal punishment in schools” in 2002, (refer to Concluding Observations of the UN Committee on Economic, Social and Cultural Rights: Ireland, 5 June 2002, E/C.12/1/Add.77, at para 7), in 2006, the **Committee on the Rights of the Child** recommended that the State “[e]xplicitly prohibit all forms of corporal punishment in the family; sensitize and educate parents and the general public about the unacceptability of corporal punishment; promote positive, non-violent forms of discipline as an alternative to corporal punishment”, Concluding Observations of the UN Committee on the Rights of the Child: Ireland, 29 September 2006, CRC/C/IRL/CO/2, at para 40.

⁶¹ The government claims that the Non-Fatal Offences against the Person Act, 1997 adequately protects against the practice of FGM. However, this legislation makes no provision for extra-territoriality, for example, in situations where the female is taken out of Ireland in order to have FGM practiced upon her. Refer to AkiDwa and the Royal College of Surgeons in Ireland, (December 2008), *Female Genital Mutilation, Information for Health Care Professionals Working in Ireland* and AkiDwa, (2009), *Briefing Paper for the Legislation for the Prohibition of Female Genital Mutilation (FGM) in Ireland*, both available at <http://www.akidwa.ie/fgm.php>. **Towards Recovery – Programme for a National Government 2011-2016** states that the Government will enact legislation to prohibit the practice of Female Genital Mutilation for the protection of girls and women.” Refer to www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf at page 17.

⁶² Despite the recent establishment of the Commission for the Support of Victims of Crime (www.csvp.ie) and the Victims of Crime office (www.victimsofcrimeoffice.ie) within the Department of Justice, Equality and Defence, victims of crime have few statutory rights in Irish law and consequently, the rights of crime victims around information, privacy, remedy, respect and recognition remain unfulfilled in practice. Refer to Irish Council for Civil Liberties (June 2008), *A Better Deal: The Human Rights of Victims in the Criminal Justice System*, available at: www.iccl.ie and Commission for the Support of Victims of Crime (October 2010), *The Needs and Concerns of Victims of Crime in Ireland*, available at: www.csvc.ie. Ireland has obligations to protect the rights of victims of crime under Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 and the European Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings. The 2011 Programme for Government states, “We will enact legislation to strengthen the rights of victims of crime and their families, to ensure that victims and their needs are at the heart of justice process and that rights to information, advice and other appropriate assistance are met effectively and efficiently”. Refer to www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf at page 17.

⁶³ Refer to Immigrant Council of Ireland, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at section 7. In 2005, **Committee for the Elimination of all forms of Discrimination against Women** recommended that the State adopt and implement a comprehensive strategy to combat trafficking in women and girls, including preventive measures and measures around the prosecution and punishment of offenders and the enactment of specific legislation in the area. The Committee further recommended the provision of physical, psychological and social assistance for the recovery of women and girls who have been victims of trafficking, including the provision of shelter, counseling and medical care. The Committee also recommended that “[b]order police and law enforcement officials should be provided with the requisite skills to recognize and provide support for victims of trafficking” and that the State “provide in its next report comprehensive information and data on trafficking in women and girls and on the measures taken to combat the phenomenon”. Report of the Committee for the Elimination of Discrimination against Women: Ireland, A/60/38, at para 389. The recommendation around prosecution of offenders and rehabilitation of victims was reiterated by the **Committee on the Rights of the Child** in 2006 in addition to a request to provide in its next report further information and data on trafficking in particular with respect to children, refer to Concluding Observations of the UN Committee on the Rights of the Child: Ireland, 29 September 2006, CRC/C/IRL/CO/2, at paras 37 and 77. In 2008, **the Human Rights**

Committee recommended that the State continue to reinforce its measures to combat trafficking of human beings, in particular by reducing the demand for trafficking. The Committee also urged the State to ensure the protection and rehabilitation of victims of trafficking and that permission to remain in the State party is not dependent on the cooperation of victims in the prosecution of alleged traffickers. According to the Committee, Ireland should consider ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, UN Human Rights Committee: Ireland, 30 July 2008, UN Doc CCPR/C/IRL/CO/3, at para 16. The Criminal Law (Human Trafficking) Act, 2008 came into effect on 7 June 2008, criminalising certain activities around trafficking. Furthermore, the Anti-Human Trafficking Unit within the Department of Justice, Equality and Defence has been established to ensure a coordinated State response to trafficking. However, key components of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children are absent within the Irish framework including a recovery and reflection period and entitlement to apply for residence permits. See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 25, available at http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

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⁶⁵ The scheme was established in 1979 on an administrative basis and was placed on a statutory footing by the Civil Legal Aid Act, 1995, available at: <http://www.irishstatutebook.ie/1995/en/act/pub/0032/index.html>. It is administered by the Legal Aid Board (LAB). Refer to <http://www.legalaidboard.ie/LAB/Publishing.nsf/Content/Home>.

⁶⁶ In order to qualify for legal aid, a means test is conducted and a person's annual disposable income must be less than €18,000. Moreover, civil legal aid is not free in Ireland except in cases of undue hardship. Refer to FLAC, (2009), *Civil Legal Aid in Ireland: Forty Years On*, FLAC: Dublin, available at: http://www.flac.ie/download/pdf/cla_in_ireland_40_years_on_final.pdf.

⁶⁷ The Civil Legal Aid Act, 1995 designates certain areas outside the scope of the legal aid scheme including: defamation, disputes over land, licensing, conveyancing, election petitions, and class actions. The legal aid scheme operates a number of exclusions in relation to housing rights, representation before tribunals including the Social Welfare Appeals Office (<http://www.socialwelfareappeals.ie/>), the Equality Tribunal (www.equalitytribunal.ie/) and the Employment Appeals Tribunal (<http://www.eatribunal.ie/>). Disputes within these areas of law can have a major impact on already vulnerable people and exclusion from the legal aid scheme denies people on lower incomes access to the legal system.

⁶⁸ The budget of the Legal Aid Board suffered a six per cent cut in 2009/2010 while the asylum service Refugee Legal Service (RLS) was subject to a 21 per cent cut in funding for 2011 on top of a total combined decrease of ten per cent for 2009 and 2010. Sixteen State-run legal aid centres have a waiting list of more than five months (of which four have a waiting list of seven months or more) as of December 2010. See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 34, available at:

http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

⁶⁹ Section 8 Criminal Justice (Amendment) Act, 2009, available at:

<http://www.irishstatutebook.ie/2009/en/act/pub/0032/index.html>.

⁷⁰ Concluding Observations of the UN Human Rights Committee: Ireland, 24 July 2000, UN Doc A/55/40, at para 15 and Concluding Observations of the Human Rights Committee: Ireland, 30 July 2008, UN Doc CCPR/C/IRL/CO/3, at para 20. Refer to Communication No 819/1998: Ireland 26 April 2001, *Kavanagh v. Ireland*, UN Doc: CCPR/C/71/D/819/1998. See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 32, available at:

http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

⁷¹ Refer to Review of the Coroner Service, Report of the Working Group for the Department of Justice, Equality and Law Reform, available at:

<http://www.justice.ie/en/JELR/ReviewCoronerService.pdf/Files/ReviewCoronerService.pdf>.

⁷² See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 19, available at:

http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

⁷³ Refer to Immigrant Council of Ireland, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at section 1.

⁷⁴ Under Article 12.8, the President must make a declaration to Almighty God; under Article 31.4, the President’s advisors, known as the Council of State, must make a declaration to Almighty God; and, under Article 34.5, judges must make a declaration to Almighty God. Refer to <http://www.taoiseach.gov.ie/upload/static/256.htm>.

In 2008, the **Human Rights Committee** recommended that Ireland should amend the constitutional provision requiring a religious oath from judges to allow for a choice of a non-religious declaration. Concluding Observations of the Human Rights Committee: Ireland, 30 July 2008, UN Doc CCPR/C/IRL/CO/3, at para 21.

⁷⁵ Section 36, see www.irishstatutebook.ie. Section 37 of the Act provides the Garda Síochána with, *inter alia*, powers to seize and remove copies of blasphemous statements following a conviction under Section 36. Section 36 describes “blasphemous matter” as that which is “grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion”.

⁷⁶ Although the incumbent President is female, as was her predecessor, the current Parliament (elected 25 February 2011) is only 15.1 per cent female making Ireland 79th in world rankings for female political representation. Refer to Inter-Parliamentary Union, (2011), available at: <http://www.ipu.org/english/home.htm>. Refer also to <http://www.nwci.ie/takeaction/spotthewoman.html>. The total number of women candidates decreased from 17 per cent in 2007 to 15.1 per cent in 2011. Refer to the Organisation for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, *OSCE/ODIHR Needs Assessment Mission Report, Early parliamentary Elections, 25 February 2011: Ireland*, at page 10, available at: <http://www.osce.org/odihr/elections/75725>. Refer to the cross-party Report of the Joint Committee on Justice, Defence, Equality and Women’s Rights, (October 2009), *Women’s Participation in Politics* (second report). Refer to National Women’s Council of Ireland, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011. See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 12, available at:

http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

⁷⁷ No Travellers ran as candidates in the 2011 elections. It has been reported that Travellers are occasionally the target of negative campaigning by some candidates and that literacy issues and lack of proof of residency are particular challenges to the participation of Travellers in elections. Refer to *OSCE/ODIHR Needs Assessment Mission Report, Early parliamentary Elections, 25 February 2011: Ireland*, at page 10, available at: <http://www.osce.org/odihr/elections/75725>.

⁷⁸ The right to vote in Ireland is linked to citizenship as follows: Irish citizens may vote at every election and referendum; British citizens may vote at Dáil, European and local elections; other EU citizens may vote at European and local elections; non-EU citizens may vote at local elections only. In the local elections in June 2009, a total of 45 immigrant candidates stood for election, ten of these were Fianna Fáil candidates; eight stood for each of Fine Gael and the Green Party, four were Labour and 15 stood on independent platforms. Of these 45, four were elected, giving a share of less than 0.2 per cent of elected local representatives. However, the immigrant percentage of working age population at the time of election was 13.5%. (Refer to Central Statistics Office, *Quarterly Household National Survey 2009*, available at:

http://www.cso.ie/releasespublications/documents/labour_market/current/qnhs.pdf). It must be noted people have to be at least 18 years of age in order to be eligible to vote. Therefore, a small part of the working-age population is not entitled to vote. Refer to New Communities Partnership and the Africa Centre, *Voter Education Report*, at pages 21 and 27, available at:

http://www.newcommunities.ie/download/pdf/ncp_ac_vep_report_full_colour_final_version.pdf.

⁷⁹ Refer to section 3(11) Charities Act, 2009, available at:

<http://www.oireachtas.ie/documents/bills28/acts/2009/a0609.pdf>. For an analysis of the background to the Charities Bill 2007 and the specific exclusion of human rights and social justice from the categories of purpose deemed to be charitable, refer to Irish Council for Civil Liberties, (9 October 2007), *Submission on the Charities Bill 2007 (as initiated 24 April 2007)*, available at: [http://www.iccl.ie/-iccl-submission-on-the-charities-bill-2007-\(october-2007\)-.html](http://www.iccl.ie/-iccl-submission-on-the-charities-bill-2007-(october-2007)-.html).

⁸⁰ Article 41.1:

1° The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

2° The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.

⁸¹ Article 41.2:

1° In particular, 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.

2° 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.

⁸² In 2008, the **Human Rights Committee** expressed concerns that, “despite considerable progress achieved in respect of equality in recent years, inequalities between women and men continue to persist in many areas of life”. In this respect the Committee recommended *inter alia*, that the State party “should take steps to initiate a change of article 41.2 of the Constitution with a view to including a gender-neutral wording in the article”. Concluding Observations of the Human Rights Committee: Ireland, 30 July 2008, UN Doc CCPR/C/IRL/CO/3, at para 10.

⁸³ Refer to Law Reform Commission, (December 2010), *Report on Family Relationships*, LRC 101-2010. The Commission made a number of recommendations on the rights and responsibilities that should apply to fathers, including automatic guardianship rights for fathers (at page 21, para 2.12) and automatic joint registration of both parents on a birth certificate (at page 26, para 2.30 and 2.31). Available at:

[http://www.lawreform.ie/fileupload/Reports/r101Family\(1\).pdf](http://www.lawreform.ie/fileupload/Reports/r101Family(1).pdf).

⁸⁴ Available at: <http://www.irishstatutebook.ie/2010/en/act/pub/0021/index.html>.

⁸⁵ Refer to <http://www.aai.gov.ie/>.

⁸⁶ For example, information in relation to medical history and birth certificates. In this respect, see Justice for Magdalenes (refer to <http://www.magdalenelaundries.com/>). From 1922 to 1996, many women and girls were housed in the Magdalene Laundries which were operated by religious orders. To date, the State has failed to accept responsibility or to include these women in any state redress schemes. Refer to Irish Human Rights Commission (2010), *Assessment of the Human Rights Issues Arising in relation to the “Magdalene Laundries”*, available at: http://www.ihrc.ie/download/pdf/ihrc_assessment_of_the_human_rights_issues_arising_in_relation_to_the_magdal_en_laundries_nov_2010.pdf.

⁸⁷ Since January 2010, Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010. Refer to <http://www.irishstatutebook.ie/2010/en/act/pub/0024/index.html>.

⁸⁸ Refer to Brian Barrington BL, (10 November 2010), *Opinion on the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*, Marriage Equality; Irish Human Rights Commission, (2008), *Discussion Document on the Scheme of the Civil Partnership Bill*; Irish Council for Civil Liberties, (2009), *The General Scheme of the Civil Partnership Bill: Legal Consequences and Human Rights Implications*, ICCL seminar series, vol. 1; Dr Fergus Ryan, (2009), *The Civil Partnership Bill: Your Questions Answered*, GLEN. Refer to www.marriageequality.ie and www.glen.ie. In 2008, the **Human Rights Committee**, recommended that the State “should ensure that its legislation is not discriminatory of nontraditional forms of partnership, including taxation and welfare benefits”, Concluding Observations of the Human Rights Committee: Ireland, 30 July 2008, UN Doc CCPR/C/IRL/CO/3, at para 8. **Towards Recovery – Programme for a National Government 2011-2016** makes the commitment to “enact legislation to amend tax and social welfare law in respect of civil partnerships” It continues: “[W]e will amend the Civil Partnership and Certain Rights and Obligations of Cohabiting Couples Act 2010 to address any anomalies or omissions, including those relating to children”.

Refer to www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 26.

⁸⁹ Refer to www.irishstatutebook.ie/1998/en/act/pub/0021/index.html/.

⁹⁰ **Towards Recovery – Programme for a National Government 2011-2016** states that “people of non-faith or minority religious backgrounds and publically identified LGBT people should not be deterred from training or taking up employment as teachers in the State”. Refer to www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 13.

⁹¹ Refer to, Transgender Equality Network Ireland, (2009), *Transphobia in Ireland*, which provides an overview of the legal and social situation of transgender people in Ireland and is available at: www.teni.ie/Publications?rename=Transphobia+in+Ireland+Report.pdf&action=AttachFile.

⁹² *Foy -v- An t-Ard Chláraitheoir, Ireland and the Attorney General* [2007] IEHC 470. On foot of this judgment, the previous government established the Gender Recognition Advisory Group in 2010. Refer to www.welfare.ie/EN/Policy/Legislation/Pages/genderrecognition.aspx. Some of the submissions made to the Group include Free Legal Advice Centres, (17 September 2010), *Submission to the Gender Recognition Advisory Group: Public Consultation on Gender Recognition Legislation*, available at www.flac.ie/download/pdf/flacs_submission_to_the_gender_recognition_advisory_group.pdf; Transgender Equality Network Ireland (September 2010), *A Time for Recognition: Submission to the Gender Recognition Advisory Group*

public Consultation on Gender Recognition Legislation, available at www.teni.ie/Publications?action=AttachFile&do=get&target=TENI+Submission+to+GRAG.pdf; Irish Council for Civil Liberties, (30 September 2010), available at www.iccl.ie/gender-recognition-advisory-group.html and the Irish Human Rights Commission, (September 2010), *Submission to the Gender Recognition Advisory Group*, available at www.ihrc.ie/newsevents/press/2010/09/30/ihrc-makes-submission-to-interdepartmental-gender/. In 2008 the **Human Rights Committee** recommended that the State should recognise “the right of transgender persons to a change of gender by permitting the issuance of new birth certificates”, Concluding Observations of the Human Rights Committee: Ireland, 30 July 2008, UN Doc CCPR/C/IRL/CO/3, at para 8. **Towards Recovery – Programme for a National Government 2011-2016** states that the Government will “ensure that trans-gender people will have legal recognition and extend the protections of the equality legislation to them.” Refer to www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 24.

⁹³ The right to organise and to bargain collectively with employers is enshrined under Parts I and II of the International Labour Organisation Convention concerning Freedom of Association and Protection of the Right to Organise 1948 (<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087>); the International Labour Organisation Convention concerning the Application of the Principles of the Right to Organise and Collective Bargaining Convention 1949 (<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C098>); Article 11 of the European Convention on Human Rights (and judgments of the European Court of Human Rights) and Articles 12 and 28 of the EU Charter of Fundamental Rights (Articles 12 and 28).

⁹⁴ Irish Congress of Trade Unions, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011.

⁹⁵ Concluding Observations of the UN Committee on Economic, Social and Cultural Rights: Ireland, 5 June 2002, E/C.12/1/Add.77, at para 29. Furthermore, **Towards Recovery – Programme for a National Government 2011-2016** states:

“We will reform the current law on employees’ right to engage in collective bargaining (the Industrial Relations (Amendment) Act 2001), so as to ensure compliance by the State with recent judgments of the European Court of Human Rights “.

Refer to www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 24.

⁹⁶ Net childcare costs are 45% of the average wage in Ireland, compared to 16-17% in EU and OECD countries, negatively impacting on women and single parents. Calculated as a proportion of family income, the cost is just under 30% in Ireland (only the UK is higher at 33%), compared to an average of around 12.5% in the EU and OECD countries, refer to www.oecd.org/els/social/family/database.

⁹⁷ Under Irish law, asylum seekers are currently ineligible to work within Ireland pending a determination of their status. The denial of the right to work is a cause of huge distress and frustration with long term consequences, particularly for those who have lived longer than six months in Direct Provision. Refer to section 16 of this report. Refer to Free Legal Advice Centres, (2009), *One Size Doesn’t Fit All: A legal analysis of Direct Provision, 10 years on* available at http://www.flac.ie/download/pdf/one_size_doesnt_fit_all_full_report_final.pdf, at page 116 and, AkiDwA, (2010), *Am only Saying it Now- Experiences of Women Seeking Asylum in Ireland* available at <http://www.akidwa.ie/Publications/AmOnlySayingItNowAkiDwA.pdf>, at page 22. A recent decision by the European Court of Justice (*Zambrano v Office National de l’Emploi*, Case C-34/09; [2011] WLR (D) 81), has prompted calls by a High Court judge (Mr Justice John Cooke) for the Government to take a formal position on the judgment, which recognises the right to work of non-EU nationals who are parents of children with EU nationalities (*Judge Calls on State to Consider Ruling*, (10 March 2011), Irish Times, available at <http://www.irishtimes.com/newspaper/ireland/2011/0310/1224291779017.html>). See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 23, available at http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

⁹⁸ Under section 8 of the Employment Permits Act, 2006, an employment permit facilitates the employment of a foreign national for a certain period within a certain sector of work. Under section 9 of the same Act, the Minister for Enterprise, Trade and Innovation may refuse to issue a new permit within a twelve month period of the permit’s validity original period. However, there is no statutory exception for cases of exploitation. Refer to www.deti.ie/labour/workpermits/elements/ineligible.htm and Department of Enterprise, Trade and Innovation, (May 2010), *Employment Permit Arrangements, Guide to Work Permits*, at page 3. In 2002, the **Committee on Economic, Social and Cultural Rights** recommended that Ireland should review the legislation governing work permits and envisage issuing work permits directly to employees. Concluding Observations of the UN Committee

on Economic, Social and Cultural Rights: Ireland, 5 June 2002, E/C.12/1/Add.77, at para 14. Refer to Immigrant Council of Ireland, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at section 3. See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 24, available at http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

⁹⁹ Means-tested payments include: Jobseeker's Allowance, State Pension (Non-Contributory), Blind Pension, Widow's or Widower's Non-Contributory Pension, Guardian's Payment (Non-Contributory), One-Parent Family Payment, Carer's Allowance, Disability Allowance and Supplementary Welfare Allowance (other than once-off exceptional and urgent needs payments). Refer to Department of Social Protection (2008), *Guide to Social Welfare Services*, available at: <http://www.welfare.ie/EN/Publications/SW4/Documents/sw4.pdf>.

¹⁰⁰ Although not means tested, the Habitual Resident Condition must also be satisfied to qualify for Child Benefit. The term "habitually resident" is not defined in either Irish or EU law, but it is intended to convey a degree of permanence evidenced by a regular physical presence for some time. It implies a close association between the applicant and the country from which payment is claimed. Refer to Free Legal Advice Centres, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011. See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 95, available at: http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

¹⁰¹ The Common Travel Area consists of Ireland, Northern Ireland, Great Britain, the Channel Islands and the Isle of Man. Under section 246 (4) of the Social Welfare Consolidation Act, 2005, the habitual residence of a person is judged on five grounds: 1. length and continuity of residence in Ireland or in any other particular country; 2. length and purpose of any absence from Ireland; 3. nature and pattern of employment; 4. main centre of interest; 5. future intentions as they appear from all the circumstances. Refer to Department of Social Protection, (2010), *Guidelines for Deciding Officers on the Determination of Habitual Residence*, available at: <http://www.welfare.ie/EN/OperationalGuidelines/pages/habres.aspx#leg>.

¹⁰² In terms of misinterpretation and misapplication of the HRC, it has been observed that an isolated aspect of a person's situation is often used to refuse a payment without consideration of their full circumstances. However, section 30 of the Social Welfare and Pensions Act, 2007

(<http://www.oireachtas.ie/documents/bills28/acts/2007/a807.pdf>) requires that *all* aspects of a person's situation including the five factors should be considered. Refer to Crosscare, (2010), *Submission to the Joint Oireachtas Committee on Social Protection on the Habitual Residence Condition and Returned Emigrants*, available at: <http://migrantproject.ie/documents/CrosscareSubmissiontotheJointOireachtasCommitteeonSocialProtectionontheHabitualResidenceCond.pdf>.

¹⁰³ While Child Benefit is classified as a universal social welfare payment, the application of the Habitual Residence Condition means some children living in the State are ineligible to receive it. The fact that a person seeking protection may live in the State for a number of years while awaiting a final decision on his or her immigration status is not regarded as relevant in the context of being found habitually resident for the purposes of social welfare. Prior to the introduction of the HRC in May 2004, Child Benefit was paid to the parents of all children living in the State regardless of their immigration status. However, the children of asylum or protection applicants and other persons not regarded as habitually resident are no longer eligible for the payment. This creates an inequality between children within the asylum process, as parents who were in receipt of the payment before May 2004 are eligible for Child Benefit, whereas the parents of children who were born in Ireland or arrived after May 2004 must satisfy the HRC in order to claim Child Benefit.

¹⁰⁴ According to the latest figures available from the end of December 2010 (available at: [http://www.ria.gov.ie/en/RIA/RIADec\(A4\)2010.pdf/Files/RIADec\(A4\)2010.pdf](http://www.ria.gov.ie/en/RIA/RIADec(A4)2010.pdf/Files/RIADec(A4)2010.pdf)), there are currently 6,012 asylum seekers in Direct Provision accommodation of which over 30% are children. The Government originally envisaged that a person would remain within the direct provision system on 'on a short term basis (not more than six months)' however the latest figures (as at 21 March, 2011) show that 2,778 (46%) of residents have spent more than 3 years in such accommodation. People who entered the asylum system after May 2004 cannot satisfy the HRC.

¹⁰⁵ There is no separate immigration status for migrant women who are victims of domestic violence. Refer to <http://www.inis.gov.ie/en/INIS/Pages/WP07000024> and <http://www.inis.gov.ie/en/INIS/Pages/WP07000278>.

¹⁰⁶ Refer to Crosscare, 2010, *Submission to the Joint Oireachtas Committee on Social Protection on the Habitual Residence Condition and Returned Emigrants*, available at: <http://migrantproject.ie/documents/CrosscareSubmissiontotheJointOireachtasCommitteeonSocialProtectionontheHabitualResidenceCond.pdf>.

¹⁰⁷ The HRC is particularly relevant to the Irish Travellers' nomadic way of life, which may include crossing the border to and from Northern Ireland. Refer to FLAC, (January 2011), *Briefing for UN Independent Expert on Human Rights and Extreme Poverty* available at http://www.flac.ie/download/pdf/briefing_for_un_independent_expert_on_human_rights_and_extreme_poverty_january_2011.pdf.

¹⁰⁸ In 2008, the European Committee of Social Rights found Ireland not to be in conformity with Article 12 of the revised European Social Charter (right to social security), on the grounds that minimum levels of social security benefit were inadequate. Refer to European Committee of Social Rights, (February 2010), Conclusions 2009 (Ireland), available at http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Ireland2009_en.pdf. In Ireland 14% of the population were considered to be at risk of poverty in 2009. Furthermore, 5.5 % of the population was considered to be in consistent poverty; they suffered from a combination of income poverty and lack of basic items. Refer to European Survey of Income and Living Conditions, (2009), available at: www.cso.ie/eusilc. The Government committed to reducing the number of those experiencing consistent poverty between 2% and 4% by 2010, with the aim of eliminating consistent poverty by 2016. Refer to National Action Plan for Social Inclusion 2007-2016, available at: <http://www.socialinclusion.ie/nationalactionplan2007.html>.

Towards Recovery – Programme for a National Government 2011-2016 states that the Government is “committed to achieving the targets in the National Action Plan for Social Inclusion to reduce the number of people experiencing poverty.” Refer to www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 22.

¹⁰⁹ **Towards Recovery – Programme for a National Government 2011-2016** states that the government is committed to “developing a universal, single-tier health service, which guarantees access to medical care based on need, not income.” Refer to http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 2.

¹¹⁰ In 2002, the **Committee on Economic, Social and Cultural Rights** recommended that the Government introduce a “common waiting list for treatment in publicly funded hospitals for privately and publicly insured patients.” Refer to Concluding Observations of the UN Committee on Economic, Social and Cultural Rights: Ireland 5 June 2002, E/C.12/1/Add.77, at para 35.

¹¹¹ Some women are still not able to access cervical and breast screening services. The free cervical screening programme is only available for women between the ages of 25 and 60 years. Refer to *Cervical Check - The National Cervical Screening Programme*, available at: <http://www.cervicalcheck.ie/>. Free breast cancer screening is only available to women aged between the years of 50 and 65 years. Refer to *Breast Check*, available at: <http://www.breastcheck.ie>.

¹¹² For example, children and young people experiencing a mental illness can be detained ‘involuntarily’ without their views being sought or an independent advocate being appointed. Also, the inadequate provision of age appropriate services means that children and adolescents are being admitted to adult psychiatric units. Refer to Bonnar, S., E., (December 2010), *Report for the Mental Health Commission on Admission of Young people to Adult Mental Health Wards in the Republic of Ireland*, available at: http://www.mhcirl.ie/News_Events/Report_on_Admission_of_Young_People_to_Adult_MH_Wards_.pdf. Refer to Age Action Ireland, Disability Federation Ireland, Make Room Campaign Alliance, Mental Health Reform, Women’s Human Rights Alliance and Children’s Rights Alliance, (March 2011), *Submission to the Office of the High Commissioner for Human Rights on the occasion of Ireland’s examination under the 12th session of the Universal Periodic Review Report on the right to health and the right to housing*. **Towards Recovery – Programme for a National Government 2011-2016** states that the government will “endeavour to end the practice of placing children and adolescents in adult psychiatric wards”, available at: http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 8.

¹¹³ For example, in a 2008 report on pregnancy and disability prepared for the National Disability Authority and National Women’s Council of Ireland barriers for women with physical disabilities in the current Irish health care system were found in relation to: 1. Accessibility - particularly relating to the location and models of care, difficulties in transport and moving around the physical environment; 2. -Accommodation barriers centred mainly around the lack of provision of suitable health information and less so around difficulties with communication and 3. Acceptability - particularly in terms of lack of knowledge and negative attitudes and behaviours from staff. Refer to Begley et al, (2009), *Women with Disabilities: Barriers and Facilitators to Accessing Services during Pregnancy, Childbirth and Early Motherhood*, available at: [http://www.nda.ie/CntMgmtNew.nsf/DCC524B4546ADB3080256C700071B049/419BBFC356BC438A80257705003FA51D/\\$File/literaturereview.pdf](http://www.nda.ie/CntMgmtNew.nsf/DCC524B4546ADB3080256C700071B049/419BBFC356BC438A80257705003FA51D/$File/literaturereview.pdf). Refer also to Age Action Ireland, Disability Federation Ireland, Make Room

Campaign Alliance, Mental Health Reform, Women's Human Rights Alliance and Children's Rights Alliance, (March 2011), *Submission to the Office of the High Commissioner for Human Rights on the occasion of Ireland's examination under the 12th session of the Universal Periodic Review Report on the right to health and the right to housing*.

¹¹⁴ For example, in a 2009 review of access to mental health services for people with intellectual disabilities, the National Disability Authority found that "the general population of persons with mental health needs are catered for by the generic mental health services [...] [b]y comparison, persons registered with a generic intellectual disability service provider find it even more difficult or impossible to gain access to appropriate mental health services for assessment, treatment or continuing care. In some areas, local informal arrangements do exist to provide emergency assessment and treatment - but a defined service appropriate to the needs of the dual diagnosis group does not exist nationally." The Review also notes that "difference in experience arises mainly because of policy confusion in the sector, both at national level (in the Department of Health and Children) and 'in the field', as to which of the statutory services has lead responsibility for planning and/or delivering mental health services to the intellectually disabled population. Funding issues between the services also appear to influence attitudes." Refer to National Disability Authority, (2009), *Review of Access to Mental Health Services for People with Intellectual Disabilities*, 2009, available at:

<http://www.nda.ie/cntmgmtNew.nsf/0/815EB07591494D9D80256F62005E6964?OpenDocument>. Refer to Age Action Ireland, Disability Federation Ireland, Make Room Campaign Alliance, Mental Health Reform, Women's Human Rights Alliance and Children's Rights Alliance, (March 2011), *Submission to the Office of the High Commissioner for Human Rights on the occasion of Ireland's examination under the 12th session of the Universal Periodic Review Report on the right to health and the right to housing*. See also Amnesty International Ireland's mental health campaign at: <http://www.amnesty.ie/our-work/mental-health>.

¹¹⁵ Studies have shown that transgender people experience high rates of anxiety, depression and suicidal tendencies. Moreover, transgender people face multiple barriers, including high rates of stigmatisation and discrimination, when accessing any type of medical care in Ireland. For those who choose to physically transition (e.g. undertake hormone replacement therapy and/or sex reassignment surgery) there are very limited health services that provide specialist medical care to transgender people. Refer to Equality Authority (2004), *Access to Health Services for Transsexual People*, available at: <http://www.equality.ie/index.asp?locID=105&docID=254>. [Note there are major difficulties in estimating the population of transgender people in Ireland/anywhere. To date, there are not epidemiologically sound incidence or prevalence rates available].

¹¹⁶ Asylum seekers in direct provision accommodation are eligible for the State Medical Card granting free or subsidised health care on the same basis as the indigenous population. However, the ability to access healthcare depends not only on freedom from payment, but on health literacy, health promotion and health education. Linguistic isolation, variable levels of literacy in the English language, the diversity of the population, and the lack of effective dedicated health promotion services for new residents of Ireland mean that asylum seekers are often unaware not only of their own personal health status but of the availability of important information and life-saving screening, testing and treatment. In addition to communication challenges, cultural beliefs and lack of knowledge of Western health care practices can lead to healthcare disparities. Lack of information and fear of discrimination are also reasons why asylum seekers may not seek or access services that they require and to which they are entitled. Refer to Bartlett, (2009), *Peer Health Workers in Direct Provision Accommodation Centres for Asylum Seekers in Galway – an ERF Intercultural Health Project*, in *Translocations: Migration and Social Change, An Inter-Disciplinary Open Access E-Journal* ISSN Number: 2009-0420, available at: http://www.dcu.ie/imrstr/volume_6_issue_1/Galway%20Refugee%20Support%20Group.doc. Refer to Age Action Ireland, Disability Federation Ireland, Make Room Campaign Alliance, Mental Health Reform, Women's Human Rights Alliance and Children's Rights Alliance (March 2011), *Submission to the Office of the High Commissioner for Human Rights on the occasion of Ireland's examination under the 12th session of the Universal Periodic Review Report on the right to health and the right to housing*.

¹¹⁷ Refer to Immigrant Council of Ireland, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at section 4. Refer to Age Action Ireland, Disability Federation Ireland, Make Room Campaign Alliance, Mental Health Reform, Women's Human Rights Alliance and Children's Rights Alliance, (March 2011), *Submission to the Office of the High Commissioner for Human Rights on the occasion of Ireland's examination under the 12th session of the Universal Periodic Review Report on the right to health and the right to housing*.

¹¹⁸ Travellers continue to suffer extremely poor health outcomes compared to the majority population. A recent peer led All-Ireland Traveller research report indicated that Travellers experience lower life expectancy, higher rates of

infant mortality, higher mortality in relation to external causes (alcohol, drugs, suicide), higher rates of respiratory disease and discrimination when accessing services. Refer to Department of Health and Children (2010), *All Ireland Traveller Health Study*, at p 43, available at:

http://www.dohc.ie/publications/aiths2010/ExecutiveSummary/AITHS2010_SUMMARY_LR_All.pdf. Refer to Age Action Ireland, Disability Federation Ireland, Make Room Campaign Alliance, Mental Health Reform, Women's Human Rights Alliance and Children's Rights Alliance (March 2011), *Submission to the Office of the High Commissioner for Human Rights on the occasion of Ireland's examination under the 12th session of the Universal Periodic Review Report on the right to health and the right to housing*.

¹¹⁹ Refer to Department of Health and Children (2011), *Quality and Fairness: A Health System for You*, available at: <http://www.dohc.ie/publications/pdf/strategy.pdf>.

¹²⁰ In 2002, the **Committee on Economic Social and Cultural Rights** stated that a human rights framework encompassing "the principles of non-discrimination and equal access to health facilities and services", as outlined in paragraph 54 of the Committee's General Comment No. 14 on the right to health, was not embodied in the recently published National Health Strategy." Concluding Observations of the UN Committee on Economic, Social and Cultural Rights: Ireland, 5 June 2002, E/C.12/1/Add.77, at para 22..

¹²¹ Criticism by the Mental Health Commission of *A Vision for Change*, the national strategy for mental health (http://www.dohc.ie/publications/pdf/vision_for_change.pdf) has indicated lack of implementation of the strategy as a significant barrier to the development of effective mental health services. Refer to Department of Health and Children (2009), *From Vision to Action? An Analysis of the Implementation of A Vision for Change, 2009*, available at:

http://www.mhcirl.ie/Publications/From_Vision_to_Action_An_Analysis_of_the_Implementation_of_A_Vision_for_Change.pdf. Refer to Age Action Ireland, Disability Federation Ireland, Make Room Campaign Alliance, Mental Health Reform, Women's Human Rights Alliance and Children's Rights Alliance, (March 2011), *Submission to the Office of the High Commissioner for Human Rights on the occasion of Ireland's examination under the 12th session of the Universal Periodic Review Report on the right to health and the right to housing*. The Government has made a number of commitments to improve mental health services in the programme for government. Refer to **Towards Recovery – Programme for a National Government 2011-2016**, available at:

http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 7.

¹²² Refer to Department of Health and Children (2001), *Traveller Health – A National Strategy*, available at: http://www.dohc.ie/publications/pdf/traveller_health.pdf. See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 30, available at: http://www.ihrcc.ie/download/pdf/ihrcc_report_to_un_universal_periodic_review_march_2011.pdf.

¹²³ The Government has made a number of commitments to improve the care of older people in the programme for government; however, this does not include a national health strategy for older people. Refer to **Towards Recovery – Programme for a National Government 2011-2016**, available at:

http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 6.

¹²⁴ Of the 118,000 local authority tenants in Dublin city alone, conditions of thousands of the housing units are substandard with severe structural problems such as dampness, mould and sewerage (waste water) invasions. According to latest data, 56,249 people were found in need of social housing in Ireland in 2008, representing an increase of 12,565 from 2005. Some 30,699 of those people lived with family members; therefore, the actual number of people affected is far greater than 56,249. Refer to Department of Environment, Heritage and Local Government, (2008), *Local Authority Housing Need Assessment*, available at: <http://www.environment.ie/en/DevelopmentandHousing/Housing/SocialHousingSupport/LocalAuthorityHousing/News/MainBody,19070,en.htm>.

¹²⁵ Legislation designed to ensure adequate provision of culturally-appropriate accommodation for Travellers is weak and ineffectual with many local authorities failing to implement agreed policy. Refer to section 16(1) of the Traveller Accommodation Act, 1998 which provides that, a "relevant housing authority shall, in securing the implementation of an accommodation programme, or an amendment to or replacement of an accommodation programme, take any reasonable steps as are necessary for the purpose of such implementation", available at: <http://www.irishstatutebook.ie/1998/en/act/pub/0033/index.html>. In 2005, **Committee for the Elimination of Racial Discrimination** recommended that Ireland should take all necessary measures to improve access for Travellers to accommodation suitable to their lifestyle. Refer to Committee for the Elimination of Racial Discrimination: Ireland, 14 April 2005, UN Doc CERD/C/IRL/CO/2, at para 21. Refer to European Union Agency for Fundamental Rights (FRA) (2009) *Housing conditions of Roma and Travellers in the European Union*,

Comparative report, at page 34, available at:

http://www.fra.europa.eu/fraWebsite/attachments/Roma_Housing_Comparative-final_en.pdf. See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 31, available at:

http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

¹²⁶ Refer to Submission to the Office of the High Commissioner for Human Rights on the occasion of Ireland's examination under the 12th session of the Universal Periodic Review Report on the right to health and the right to housing by

Age Action Ireland, Disability Federation Ireland, Make Room Campaign Alliance, Mental Health Reform, Women's Human Rights Alliance and Children's Rights Alliance, (March 2011), *Submission to the Office of the High Commissioner for Human Rights on the occasion of Ireland's examination under the 12th session of the Universal Periodic Review Report on the right to health and the right to housing*.

¹²⁷ Refer to Pavee Point, (2011), *Irish Travellers and Roma*, available at:

http://www.paveepoint.ie/publications/UNCERD_RELEASED.pdf

¹²⁸ Section 24 of the Housing (Miscellaneous Provisions) Act, (2002) amended Part II of the Criminal Justice (Public Order) Act, 1994 to introduce offences relating to the occupation of land, available at:

<http://www.irishstatutebook.ie/2002/en/act/pub/0009/print.html#partiii-sec24>. According to the Irish Traveller Movement, a national Traveller representative body specialising in accommodation issues, the law has been used almost exclusively against Travellers. Refer to Irish Traveller Movement (ITM) (undated) *A Briefing document on the use of the Housing (Miscellaneous Provisions) Act, 2002*, available at: <http://www.itmtrav.com>.

¹²⁹ The Housing (Miscellaneous Provisions) Act, 2009 provides a new legislative basis for the delivery and management of housing services by local authorities. It also amends the Residential Tenancies Act, 2004 which regulates the private rental sector, available at: <http://www.irishstatutebook.ie/2009/en/act/pub/0022/sec0002.html>.

¹³⁰ Department of Environment Heritage and Local Government, (2008), *The Way Home: A Strategy to Address Adult Homelessness in Ireland 2008 – 2013*, available at:

<http://www.environ.ie/en/Publications/DevelopmentandHousing/Housing/FileDownload,18192,en.pdf>. While there is no reliable data on homelessness at national level, the Dublin-based Homeless Agency carries out a regular count of rough sleepers to assess the extent of homelessness. The latest data shows that people continue to sleep rough in Dublin, contrary to the commitment by Dublin City Council in its local action plan *Key to the Door, 2007-2010*, (<http://www.homelessagency.ie/homeless-action-plan-2007-2010.aspx>) and that of the Department of the Environment Heritage and Local Government in its National Strategy, *The Way Home. Strategy to Address Adult Homelessness in Ireland, 2008-2013*

(<http://www.environ.ie/en/Publications/DevelopmentandHousing/Housing/FileDownload,18192,en.pdf>).

¹³⁰ Mortgage Arrears and Personal Debt Expert Group, (2010), Interim Report, available at:

<http://www.finance.gov.ie/documents/publications/reports/2010/mortgagearrearsjul.pdf>.

¹³¹ Mortgage Arrears and Personal Debt Expert Group, 2010, Interim Report, Available at:

<http://www.finance.gov.ie/documents/publications/reports/2010/mortgagearrearsjul.pdf>

¹³² **Towards Recovery – Programme for a National Government 2011-2016** states, that the Government will give priority to a specific amendment to the Constitution to ensure that children's rights are strengthened, along the lines recommended by the All-Party Oireachtas (Irish Parliament) Committee. Refer to

http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 17.

¹³³ In 2006, the **Committee on the Rights of the Child** recommended that the government should strengthen its efforts to ensure, "including through Constitutional provisions, that children have the right to express their views in all matters affecting them and to have those views given due weight, in particular in families, schools and other educational institutions, the health sector and in communities." Concluding Observations of the Committee on the Rights of the Child: Ireland, 29 September 2006, UN Doc CRC/C/IRL/CO/2, at para 25 (a). See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 15, available at:

http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf and Immigrant Council of Ireland, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at section 5. .

¹³⁴ Report of the Commission to inquire into Child Abuse (commonly known as the Ryan Report) 20 May, 2009, available at: <http://www.childabusecommission.com/rpt/pdfs/>.

¹³⁵ Office of the Minister for Children and Youth Affairs, (2010), *Report of the Commission to Inquire into Child Abuse, 2009, Implementation Plan*. The report of the Commission to Inquire into Child Abuse makes a number of recommendations under the heading “To prevent where possible and reduce the incidence of abuse of children in institutions and to protect children from such abuse” including with regard to children in care settings. Available at: <http://www.childabusecommission.com/rpt/pdfs/CICA-VOL4-13.PDF>.

¹³⁶ The Constitution was amended in 1983 to acknowledge “the right to life of the unborn”, measured as equal to that of the pregnant woman, and provides that the State will take the necessary steps to vindicate this right.

¹³⁷ Refer to *Attorney General v. ‘X’* [1992] 1 IR 1, available at: <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ie/cases/IESC/1992/1.html&query=x&method=boolean>

¹³⁸ *A, B and C v Ireland*, Application no. 25579/05, 16 December 2010, available at: <http://www.bailii.org/eu/cases/ECHR/2010/2032.html>.

¹³⁹ **Towards Recovery – Programme for a National Government 2011-2016** states,

We acknowledge the recent ruling of the European Court of Human Rights subsequent to the established ruling of the Irish Supreme Court on the X-case. We will establish an expert group to address this issue, drawing on appropriate medical and legal expertise with a view to making recommendations to Government on how this matter should be properly addressed.

Refer to http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 8.

¹⁴⁰ Women cannot access abortion in Ireland including in circumstances including where the pregnancy poses a risk to life or health of the pregnant woman, in cases of rape or incest and in situations where it is established that the foetus will not survive outside the womb. The criminalisation of abortion disproportionately impacts on vulnerable and disadvantaged women and girls who cannot raise the necessary funds to travel abroad, who cannot leave the jurisdiction because of immigration restrictions and young women in the care of the State. Refer to Irish Family Planning Association, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011.

¹⁴¹ Refer to Government of Ireland, (1996), *Report of the Constitution Review Group*. available at <http://www.constitution.ie/reports/crg.pdf>.

¹⁴² Christian religious bodies run 98% of primary schools. Section 15 – 2 (b) of the Education Act 1998 obliges schools to uphold the religious ethos of the patron and admissions policy also may be determined in accordance with religious ethos; thereby, limiting or in some cases removing educational choice to children and parents of other religious faiths, atheists, humanists and agnostics. This has more extreme implications for people living in areas outside the main urban areas. Refer to Educate Together *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011. Refer to Atheist Ireland, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011. Refer to Immigrant Council of Ireland, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011 at section 8. See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 41, available at http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

¹⁴³ In 2006, the **Committee on the Rights of the Child** urged the government to take “fully into consideration the recommendations made by the Committee on the Elimination of Racial Discrimination which encourages the promotion of the establishment of non-denominational or multid denominational schools and to amend the existing legislative framework to eliminate discrimination in school admissions”. Concluding Observations of the Committee on the Rights of the Child: Ireland, 29 September 2006, UN Doc CRC/C/IRL/CO/2, at 61. In 2008, the **Human Rights Committee**, recommended that Ireland increase “efforts to ensure that non-denominational primary education is widely available in all regions of the State party, in view of the increasingly diverse and multi-ethnic composition of the population” of the country. Concluding Observations of the Human Rights Committee: Ireland, 30 July 2008, UN Doc CCPR/C/IRL/CO/3, at para 22. In March 2011, the **Committee on the Elimination of Racial Discrimination** recommended that Ireland accelerate its efforts “to establish alternative non-denominational or multi-denominational schools and to amend the existing legislation that inhibits students from enrolling into a school because of their faith or belief”. Concluding Observations on the Elimination of Racial Discrimination: Ireland, 10 March 2011, (advanced unedited edition), UN Doc CERD/C/IRL/CO/3-4, at 26.

¹⁴⁴ Rule 68 of the *Rules for National Schools; the Primary School Curriculum 1999; the Teachers’ Handbook*). Under section 30 (2) (e) of the Education Act, 1998, students do not have to attend “instruction in any subject which

is contrary to the conscience of the parent of the student or in the case of a student who has reached the age of 18 years, the student.” However, in reality, this ‘opt out’ clause is illusory as are responsible for the supervision of their children when the religious instruction class takes place. Furthermore, as set out in Rule 68, religious instruction and formation is not confined to the religious instruction class and is integrated into all subjects and into the daily life of the school. Refer to Educate Together *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011. Refer to Atheist Ireland, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011. Refer to Immigrant Council of Ireland, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011 at section 8. See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 41, available at http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

¹⁴⁵ **Towards Recovery – Programme for a National Government 2011-2016** states, that the Government “will initiate a time-limited Forum on Patronage and Pluralism in the Primary Sector to allow all stakeholders including parents to engage in open debate on change of patronage in communities where it is appropriate and necessary”. Refer to www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 12.

¹⁴⁶ Special education is educational provision that is designed to cater for pupils with special educational needs, and is additional to or different from in the teaching provided in mainstream classes for pupils of the same age. Special education may take place in mainstream schools, special schools or a special class or unit. In contrast, supportive learning assists children with language support requirements, children from culturally marginalised backgrounds such as Travellers. Recently there has been a revision of classroom ratios for the allocation of Support Teachers for Traveller pupils. Refer to Department of Education and Skills circular, Circular No. 0017/2011, available at: http://www.into.ie/ROI/InformationforTeachers/DESCirculars/DESCirculars2011/Circular%2017_2011.pdf. Refer to E. Eivers, G. Shiel and F. Shortt (2005) *Literacy in Disadvantaged Primary Schools: Problems and Solutions*, Dublin: Education Research Centre, p. 6. Under **Towards Recovery – Programme for a National Government 2011-2016**, the Government has committed to publish a plan for the “implementation of the Education for Persons with Special Needs Act 2004 to prioritise access for children with special needs to an individual education plan. The priority will be to move to a system where necessary supports follow a child from primary to second level and to achieve greater integration of special needs-related services”. The Programme further commits to “support diversity in education of children with special needs, recognising that both intensive education and mainstreaming can be seen to work for individual children”. Refer to www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 12.

¹⁴⁷ The budgetary cuts in Traveller education are disproportionate compared to mainstream educational cuts. Refer to Pavee Point, Irish Traveller Movement, National Traveller Women’s Forum, (2011), *Joint Statement on Cuts to Traveller Education*, available at: <http://paveepoint.ie/2011/02/joint-statement-on-cuts-to-traveller-education>.

Towards Recovery – Programme for a National Government 2011-2016 states,

We will improve co-ordination and integration to delivery of services to the Traveller community across all Government departments, using available resources more effectively to deliver on principles of social inclusion, particularly in area of Traveller education through the DEIS programme.”

Refer to www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 12.

¹⁴⁸ Refer to Irish National Teachers Organisation (INTO) (2010), *INTO calls for EAL support*, available at: <http://www.into.ie/ROI/NewsEvents/PressReleases/PressReleases2010/INTOCallsforEALSupport29062010/Title,16204.en.php>.

¹⁴⁹ Refer to Article 42.4 http://www.taoiseach.gov.ie/attached_files/Pdf%20files/Constitution%20of%20Ireland.pdf.

¹⁵⁰ Research published in August 2010 by Bank of Ireland Life in association with online parent resource website Schooldays.ie, estimated the total annual cost of Primary education (including books, uniform, subsistence and transport) at €1,691. The total cost of 8 years mandatory primary education is estimated at €13,528. Refer to <http://bankofirelandlife.ie/Latest-News/Parents-Advocate-Saving-from-Birth-for-the-Estimat.aspx>.

¹⁵¹ The highest maintenance grant rate is €6,355, whereas the estimated annual cost of living is €10,335.68. Refer to <http://bankofirelandlife.ie/Latest-News/Parents-should-plan-ahead-to-ease-the-financial-he.aspx>. Current grant schemes assess the income of students under the age of 23 on the reckonable household income of their parents. Even in cases where students have no contact with their parents and receive no actual financial support from their parents they are unable to be assessed on their own income. Refer to

<http://usi.ie/images/usidocuments/prebudgetsubmission.pdf>, at page 8. In addition, third country nationals are excluded from receiving financial aid under the existing grant scheme. Eligibility criteria for receipt of third level financial aid are set out in section 4.5 (page 7) of the Higher Education Grants Scheme, available at:

http://www.education.ie/servlet/blobServlet/he_heg_scheme.pdf?language=EN.

¹⁵² Refer to <http://www.studentfinance.ie/mp7233/check-participating-colleges-and-approved-courses/index.html>.

¹⁵³ **Towards Recovery – Programme for a National Government 2011-2016**, which commits to the development of a national literacy strategy for children and young people “as a matter of urgency, with school-level targets that are related to national targets”. Refer to

www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 10.

¹⁵⁴ Ireland has committed to reaching the UN target of spending 0.7% of national income by 2015. **Towards Recovery – Programme for a National Government 2011-2016**, states, we are “committed to the 0.7% of GNP target for Overseas Development Aid. We will seek to achieve this by 2015.” Refer to

www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 57.

See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 16, available at:

http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf. Also refer to

Dóchas, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011.

¹⁵⁵ At page 25, refer to <http://www.budget.gov.ie/The%20National%20Recovery%20Plan%202011-2014.pdf>.

¹⁵⁶ Ireland has not yet ratified the International Convention of the Rights of People with Disabilities. Refer to Status of Ratification, available at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-15&chapter=4&lang=en.

¹⁵⁷ Refer to Steering Group of the National Action Plan Against Racism, (2008), *Ireland Embracing Cultural Diversity: National Action Plan Against Racism – Not an End, Just a Beginning*, available at:

[http://www.integration.ie/website/omi/omiwebv6.nsf/page/PCHK-7PNHH41312727-en/\\$File/NPAR%20Final%20Report%20Not%20an%20End%20Just%20a%20Beginning.pdf](http://www.integration.ie/website/omi/omiwebv6.nsf/page/PCHK-7PNHH41312727-en/$File/NPAR%20Final%20Report%20Not%20an%20End%20Just%20a%20Beginning.pdf).

¹⁵⁸ There is very little data on the number of migrant Roma in Ireland with demographic information currently collected on the basis of nationality and not ethnicity. The most recent report (2005) estimated that there are at least 3,000 migrant Roma in Ireland. Refer to Lesovitch, L (2005) *Roma Educational Needs in Ireland*, available at: http://www.pavepoint.ie/pdf/Roma_Report.pdf.

¹⁵⁹ Furthermore, Irish criminal law does not expressly provide for racist motivation as an aggravating circumstance to be taken into account, except through the exercise of judicial discretion when sentencing. The Prohibition of Incitement to Hatred Act, 1989 legislates exclusively on hate crime (including racist crime); however, offences with a racist motivation, not defined as incitement, are prosecuted in a generic fashion under the ordinary criminal law. Refer to Scheppe, J. and Walsh, D. (2008), *Combating racism and xenophobia through the criminal law*. Available at: [http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7UPE6D1121207-en/\\$File/Combating%20Racism%20with%20the%20Criminal%20Law.pdf](http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7UPE6D1121207-en/$File/Combating%20Racism%20with%20the%20Criminal%20Law.pdf).

¹⁶⁰ The Central Statistics Office releases one headline figure on the number of racist incidents reported to an Garda Síochána (police) each year. (<http://www.integration.ie/website/omi/omiwebv6.nsf/page/statistics-RacistIncidentsstatisticscrime-en>). In 2010, 122 incidents were reported; however, research has demonstrated higher levels of racist incidents experienced by people in Ireland. Refer to EU Fundamental Rights Agency, (2009), *European Union Minorities and Discrimination Survey*, available at:

http://fra.europa.eu/fraWebsite/attachments/eumidis_mainreport_conference-edition_en.pdf. In March 2011,

Committee for the Elimination of Racial Discrimination recommended that Ireland establish “appropriate mechanisms to encourage the reporting of racist incidents and crimes”. Refer to Concluding Observations of the Committee for the Elimination of Racial Discrimination: Ireland, 10 March 2011, (Advanced unedited version), UN Doc CERD /C/IRL/CO/3-4, at para 18. Refer to Immigrant Council of Ireland, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at section 9.

¹⁶¹ Refer to Concluding Observations of the Committee for the Elimination of Racial Discrimination: Ireland, 10 March 2011, (Advanced unedited version), UN Doc CERD /C/IRL/CO/3-4, at para 12, Concluding Observations of the Human Rights Committee: Ireland, 30 July 2008, UN Doc CCPR/C/IRL/CO/3, at para 23 and Concluding Observations of the Committee for the Elimination of Racial Discrimination: Ireland, 14 April 2005, UN Doc CERD/C/IRL/CO/2, at para 20. See also Irish Human Rights Commission, *Submission for the Twelfth Session of the*

Working Group on the Universal Periodic Review: Ireland, March 2011, at para 28, available at: http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf.

¹⁶² Refer to Equality Authority 2006, *Traveller Ethnicity* available at: www.equality.ie/getFile.asp?FC_ID=263&docID=556

¹⁶³ Under Section 17 of the Refugee Act, 1996 (as amended), the Minister for Justice and Law Reform is the person who will make the decision to either grant or refuse a declaration as a refugee. The decision of the Minister will be based on the recommendation of the Refugee Applications Commissioner (<http://www.orac.ie/pages/Blue/Agencies.htm>) or the Refugee Appeals Tribunal (if appropriate) (<http://www.refappeal.ie/>). In the case of a person who has been issued a notice of refusal for a declaration as a refugee, the Minister may make an order in accordance with section 3 of the Immigration Act, 1999 requiring that person to leave the State. The Minister also decides applications for leave to remain. Refer to section 17 of the Refugee Act, 1996) available at: <http://www.irishstatutebook.ie/1996/en/act/pub/0017/sec0017.html#sec17>. Under section 14 of the Irish Nationality and Citizenship Acts, 1956-2004, the Minister for Justice, Equality and Defence may in his absolute discretion, grant an application for a certificate of naturalisation provided certain statutory conditions allowing a person to apply are fulfilled. Refer to <http://www.inis.gov.ie/en/INIS/consolidationINCA.pdf/Files/consolidationINCA.pdf>. In 2008, the **Human Rights Committee** recommended that Ireland should introduce “an independent appeals procedure to review all immigration-related decisions”. The Committee considered that engaging “in such a procedure, as well as resorting to judicial review of adverse decisions, should have a suspensive effect in respect of such decisions”. Refer to Concluding Observations of the Human Rights Committee: Ireland, 30 July 2008, UN Doc CCPR/C/IRL/CO/3, at para 19. **Towards Recovery – Programme for a National Government 2011-2016**, contains a commitment to introduce “comprehensive reforms of the immigration, residency and asylum systems, which will include a statutory appeals system and set out rights and obligations in a transparent way”. Refer to www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf, at page 21.

¹⁶⁴ The State’s Reception and Integration agency operates a system of dispersal and direct provision. Refer to http://www.ria.gov.ie/en/RIA/Pages/Reception_Dispersal_Accommodation.

¹⁶⁵ Refer to FLAC, (2009), *One Size Doesn’t Fit All: A legal analysis of Direct Provision, 10 years on*, available at: http://www.flac.ie/download/pdf/one_size_doesnt_fit_all_full_report_final.pdf and AkiDwA. (2010). *Am only Saying it Now- Experiences of Women Seeking Asylum in Ireland*, available at: <http://www.akidwa.ie/Publications/AmOnlySayingItNowAkiDwA.pdf>. See also Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, at para 23, available at: http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf. **Committee for the Elimination of Racial Discrimination** has also commented on Ireland’s system of direct provision. In 2005, the Committee expressed its concern “at the possible implications of the policy of dispersal of and direct provision for asylum-seekers” and encouraged Ireland to take all necessary steps to “avoid negative consequences for individual asylum-seekers and to adopt measures promoting their full participation in society”. Refer to Concluding Observations of the Committee for the Elimination of Racial Discrimination: Ireland, 14 April 2005, UN Doc CERD/C/IRL/CO/2, at para 13. The Committee reiterated this point 6 years later in March 2011, referring to the “negative impact that the policy of ‘direct provision’ on the welfare of asylum seekers who, due to the inordinate delay in the processing of their applications, and the final outcomes of their appeals and reviews, as well as poor living conditions, can suffer health and psychological problems that in certain cases lead to serious mental illness”. The Committee recommended that all necessary steps should be taken to expedite the processing of asylum applications to mitigate any negative consequences for asylum seekers in direct provision centres. In this respect, the Committee also recommended that necessary measures to improve the living conditions of asylum seekers should be taken, including, by the provision of “adequate food, medical care and other social amenities”. The Committee further recommended a “review of the direct provision system”. Refer to Concluding Observations of the Committee for the Elimination of Racial Discrimination: Ireland, 10 March 2011, (Advanced unedited version), UN Doc CERD/C/IRL/CO/3-4, at para 20.

¹⁶⁶ Although this group is numerically small (The number of unaccompanied minors applying for asylum in Ireland has fallen from 131 in 2006 to less than 50 in 2009), it is considered at high risk. According to a report by the Ombudsman for Children’s Office, “children seeking asylum are more likely to experience poverty and social

exclusion than many other groups in Irish society due to: higher levels of dependence on social welfare, direct provision, lower levels of welfare payments and higher levels of housing deprivation. Language difficulties, racism and institutional barriers, in addition to having fewer rights and entitlements also mean that asylum seekers experience greater difficulties. This situation places these children at serious risk of multiple breaches of their rights.” Refer to Ombudsman for Children’s Office, (2009), *Separated Children Living in Ireland*, available at: http://www.oco.ie/assets/files/publications/separated_children/SeparatedChildrenProjectReport.pdf. In March 2011, **Committee for the Elimination of Racial Discrimination** recommended that Ireland enact legislation to adequately protect “the rights and welfare of separated and unaccompanied children seeking asylum in line with the standards set by international law”. The Committee suggested that Ireland “adopt immediate measures to ensure that a guardian *ad litem* or advisor be appointed for all separated and unaccompanied children irrespective of whether they have made a protection application or not”. Refer to Concluding Observations of the Committee for the Elimination of Racial Discrimination: Ireland, 10 March 2011, (Advanced unedited version), UN Doc CERD/C/IRL/CO/3-4, at para 20.

¹⁶⁷ For example, the National Women’s Strategy (2007 – 2016) faces real challenges due to severe funding cuts to its implementation fund.

Under section 2 of the Charities Act 2009, the definition of ‘excluded body’ includes a body that promotes a political cause. Under section 3(11) of the Bill, the list of matters designated a “purpose that is of benefit to the community” does not include organisations working on the advancement or promotion of human rights, social justice, equality or diversity, despite this category being expressly included in an early version of the legislation. For an analysis of the background to the Charities Act 2009 and the specific exclusion of human rights and social justice from the categories of purposes deemed to be charitable, refer to Irish Council for Civil Liberties, (9 October 2007), *Submission on the Charities Bill 2007 (as initiated 24 April 2007)*, available at [http://www.iccl.ie/iccl-submission-on-the-charities-bill-2007-\(october-2007\)-.html](http://www.iccl.ie/iccl-submission-on-the-charities-bill-2007-(october-2007)-.html). The Charities Act 2009 is available at: <http://www.oireachtas.ie/documents/bills28/acts/2009/a0609.pdf>.