



COMMISSIONER FOR HUMAN RIGHTS

COUNCIL OF EUROPE



Strasbourg, 30 April 2008

CommDH(2008)9
Original version

REPORT BY

THE COMMISSIONER FOR HUMAN RIGHTS
MR. THOMAS HAMMARBERG

ON HIS VISIT TO IRELAND

26 - 30 November 2007

For the attention of the Committee of Ministers
and the Parliamentary Assembly

Table of Contents

1. Introduction	4
2. National system for protecting human rights	5
2.1 <i>Status of international human rights standards</i>	5
2.2. <i>The Irish Constitution and its envisaged reform</i>	6
2.3 <i>The judiciary and access to justice</i>	6
2.4 <i>Complaints bodies and human rights structures</i>	7
2.5 <i>Police</i>	9
2.6 <i>Civil society</i>	10
2.7 <i>Human rights education</i>	11
2.8 <i>National coordination of human rights issues</i>	12
3. Children’s Rights	13
3.1 <i>Constitutional reform</i>	14
3.2 <i>Corporal punishment</i>	15
3.3 <i>Separated and missing children</i>	16
3.4 <i>Access to education</i>	18
3.5 <i>Access to mental health care</i>	19
4. Juvenile Justice	20
4.1 <i>Juvenile Justice System</i>	20
4.2 <i>Detention</i>	22
5. Non-discrimination and women’s rights	23
5.1 <i>Legal and institutional framework</i>	23
5.2 <i>Gender discrimination and women’s rights</i>	24
5.3 <i>Violence against women</i>	26
6. Measures against racism and xenophobia	27
7. Situation of Travellers	29
8. Treatment of migrants and asylum-seekers	30
8.1 <i>The current immigration and asylum framework</i>	31
8.2 <i>The proposed Immigration, Residence and Protection Bill</i>	31
8.3 <i>Asylum-seekers</i>	33
8.4 <i>Family reunification</i>	34
9. Fight against terrorism: extraordinary renditions	34
10. Recommendations	36
APPENDIX 1	39
List of authorities, civil society organisations and institutions met or consulted.....	39
APPENDIX 2	42
Response of the Irish government.....	42

1. Introduction

1. The Council of Europe Commissioner for Human Rights Mr. Thomas Hammarberg conducted an official visit to Ireland from 26 to 30 November 2007 upon invitation by the Irish Government. The visit was part of a continuous process of regular country missions by the Commissioner to all Council of Europe member states to assess their effective respect for human rights.¹ The Commissioner was accompanied by Mr. Lauri Sivonen, Ms. Silvia Grundmann and Mr. Stefano Montanari, members of his Office.
2. In the course of his visit the Commissioner met with An Taoiseach Bertie Ahern, Minister for Foreign Affairs Dermot Ahern, Minister for Justice, Equality and Law Reform Brian Lenihan, Minister for the Environment, Heritage & Local Government John Gormley, Minister for Health and Children Mary Harney, Minister of State for Children Brendan Smith, and Minister of State for Integration Conor Lenihan. Mr. Hammarberg visited Dublin and Cork and held discussions with representatives of local authorities, parliamentarians, members of the judiciary, specialised ombudspersons, members of the Irish Human Rights Commission (IHRC), as well as civil society representatives. Furthermore, the Commissioner delivered the IHRC Annual Human Rights Lecture in Dublin and, in Cork, addressed the participants of a seminar on guardianship and migrant children jointly organised by the Centre for Criminal Justice and Human Rights of the University College Cork and the Irish Refugee Council. He also made several institutional visits to facilities and sites with human rights relevance.²
3. The Commissioner expresses his great appreciation for the generous co-operation of the Irish authorities at all levels in facilitating the visit and wishes to thank the Minister for Foreign Affairs and his Department for their shared commitment to the objectives of the mission. Moreover, he extends his gratitude to all people met during the visit for their open attitude and frank exchange of views. The Commissioner is particularly pleased to have had the opportunity to meet with many civil society representatives who shared their expertise and valuable insights regarding the human rights situation in Ireland.
4. The purpose of this report is to identify opportunities for improving the protection and promotion of human rights in Ireland. The Commissioner considers that following on from an open dialogue with the relevant authorities during his visit, this report should serve as a tool for progression, future co-operation and follow-up. He calls upon the authorities and institutions concerned to contribute their collective expertise for further strengthening of human rights protection in Ireland. Continuous efforts are required in every member state to uphold human rights to a high standard. Such work can only be efficient and constructive when it is carried out through permanent dialogue with all stakeholders.
5. This report begins with a brief assessment of the national system for human rights protection in Ireland and is followed by chapters dealing with specific human rights concerns the Commissioner wishes to highlight. It is based on information acquired during the visit along with statements, reports and statistics provided by the authorities and civil society organisations in Ireland. Naturally, relevant reports prepared by human rights monitoring mechanisms of the Council of Europe and other international organisations are also referred to. This first assessment report of the Commissioner in

¹ See the Commissioner's mandate – especially Article 3 (e), Resolution (99) 50 on the Council of Europe Commissioner for Human Rights.

² A full list of people, institutions and facilities visited can be found in the appendix to this report.

relation to Ireland does not provide an exhaustive analysis of the human rights situation in Ireland but rather reflects what the Commissioner considers to be the priorities for improving the protection of human rights in the country.

2. National system for protecting human rights

2.1 Status of international human rights standards

6. Ireland ratified the European Convention on Human Rights and Fundamental Freedoms (ECHR) in 1953. The Northern Ireland Peace Agreement (Good Friday Agreement), which was reached in multi-party negotiations on 10 April 1998, provided for the establishment of a Human Rights Commission in Ireland and for a Human Rights Commission in Northern Ireland. Under the Good Friday Agreement, the Commissions are charged with promoting and protecting human rights in their respective jurisdictions and with working together in order to promote the protection of human rights on the island of Ireland.
7. On 30 December 2003, the European Convention on Human Rights Act 2003 entered into force implementing the European Convention into Irish law subject to the Irish Constitution of 1937. Since then, people have been able to claim the rights and freedoms of the European Convention before domestic courts. As this legal framework is regularly used by the domestic courts, the Commissioner considers the Human Rights Act 2003 to be a core instrument in upholding and promoting human rights in addition to the fundamental rights guaranteed in the Irish Constitution of 1937.
8. Ireland has ratified most of the Council of Europe's and other key international human rights treaties, including the Revised Social Charter and its collective complaints procedure. In 2007, Ireland signed the Convention on Action against Trafficking in Human Beings, and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. The Commissioner welcomes these steps and strongly encourages Ireland to ratify these instruments. Likewise, the Commissioner calls upon the Irish authorities to ratify Protocol No. 12 to ECHR on the general prohibition of discrimination and the Convention on Cybercrime, as well as to sign and ratify its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. Among UN treaties, Ireland has signed but not yet ratified the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT).³ The Irish Government is currently reviewing domestic law in view of possible changes to meet OP-CAT requirements regarding the mandates of bodies intended to constitute the foreseen visiting mechanism to places of detention.
9. Ireland has neither signed nor ratified the Convention on the Participation of Foreigners in Public Life at Local Level, the Convention on the Legal Status of Migrant Workers or the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The Commissioner invites the Irish authorities to reconsider adhering to these treaties as they would enhance the protection of the rights of migrants and foreigners in Ireland.

³ OP-CAT entered into force on 22 June 2006. Its aim is to prevent ill-treatment by establishing a system of regular visits to places of detention to be carried out by independent international and national bodies.

2.2. *The Irish Constitution and its envisaged reform*

10. The Constitution of Ireland was adopted in 1937 by a referendum and may only be amended in the same manner. It established an independent state based on a representative democracy and guarantees certain fundamental rights specifically stated in Articles 40-44 which have been further developed and extended by the jurisprudence of superior domestic courts.⁴ Efforts are currently being made to implement a constitutional reform as part of the Agreed Programme for Government of June 2007 with a focus on children. The proposed new article on children would change current family and criminal law and aim at improved protection of children. A joint *Oireachtas* (Parliament) Committee has been set up to consider the wording and make further recommendations.⁵

2.3 *The judiciary and access to justice*

11. The Irish judiciary comprises superior and lower courts. The superior courts, i.e. the Supreme and the High Court, have been established directly under the Irish Constitution. The Supreme Court is the court of final appeal and is obliged to hear all appeals which are brought before it, albeit in some cases legislation in a particular area may limit appeals to points of law only. Its decisions as to the interpretation of the Constitution and the law are final. The High Court also has authority to interpret the Constitution while its main function is to take up the most serious criminal and civil cases and certain appeals from lower courts. When sitting as a criminal court it is called the Central Criminal Court – its trials occur before a jury. The lower courts have been set up by ordinary law. The Circuit Court when dealing with criminal matters, sits with a jury which decides the guilt or innocence of an accused. The criminal jurisdiction of the District Court is limited to minor matters which may be tried summarily without a jury. If District Courts hear children's cases, they sit as the Children Court. Due to the volume of cases in the areas of Dublin, Cork, Limerick and Waterford, there are dedicated sittings of the District Court as Children Court. The Children Courts hear all charges against children under 18 years of age except those which the judge, due to their gravity or other special circumstances, decides to transfer to the Circuit Court. The procedures in the Children Court are summary ones if the child's parent or the young person has been informed of his/her right to trial by jury and has waived this right.

12. In addition, the Constitution makes provision for the establishment of Special Courts to secure the effective administration of justice where the ordinary courts would be unable to do so. The only example so far is the Special Criminal Court which tries those accused of being members of paramilitary organisations or of leading organised crime, normally without a jury. Finally, a number of separate tribunals or determination bodies have been set up with reference to Article 37.1 of the Irish Constitution. These include the Equality Tribunal⁶, the Labour Court, the Censorship Board and the Refugee Appeals Tribunal⁷.

13. Against the background of increased migration to Ireland, the Commissioner underlines that access to justice should not be hampered by insufficient knowledge of local languages and, therefore, underlines the importance of the availability of interpretation

⁴ Such constitutional rights include: equality before the law, right to life, right to trial by jury, right to bodily integrity, freedom to travel, personal liberty, freedom of expression, freedom of assembly, freedom of association, religious liberty, rights of the family, property rights, right to earn a livelihood, inviolability of dwelling, right to fair procedures and right to privacy.

⁵ For details, see under 3.1.

⁶ See under 5.1.

⁷ See under 8.1.

and translation services.⁸ Furthermore, access to justice is often conditioned by financial resources and the availability of legal aid for those who lack sufficient means. While the right to civil legal aid has been recognised in Ireland since 1979,⁹ the current scheme of civil legal aid has been criticised as being limited in its scope and application.¹⁰ The Irish Human Rights Commission in its Strategic Plan 2007-2011 highlights the need to ensure that vulnerable groups (such as asylum-seekers, refugees, migrant workers, ethnic minorities including Travellers, lesbian, gay, bisexual and transgender people, homeless people, prisoners and people with disabilities) will be in a position to access justice through the courts. Furthermore, civil society representatives have pointed out that judges are not always sufficiently trained to deal with members of these groups as well as children. The Commissioner underlines the importance of regular training for all members of the judiciary. He also stresses the need for a comprehensive and accessible scheme of legal aid that reflects the actual cost of living.

14. Concerning the length of court proceedings, the Commissioner notes with satisfaction that Ireland has had very few cases before the European Court of Human Rights in which a violation for excessive length has been found. In 1999, a Courts Service was established as an independent agency to manage and support the courts with a view to reducing waiting time, especially in criminal and family law matters. Additional judges were also appointed. The report "Justice Matters" of the Irish Council for Civil Liberties (ICCL) of July 2007 finds that the situation has vastly improved with the establishment of the Courts Service, yet voices some concern regarding the adequate funding of the Irish court system. The Commissioner encourages the Irish authorities to monitor the situation so as to ensure that the length of proceedings remains reasonable.

2.4 Complaints bodies and human rights structures

15. The Irish Ombudsman, who is independent in the performance of her functions, investigates complaints about the administrative actions of Government Departments, the Health Service Executive, local authorities and An Post.¹¹ The Ombudsman is appointed by the President following a recommendation passed by both Houses of the *Oireachtas* and she reports to the Parliament. The Ombudsman can investigate an action on the basis of an individual complaint as well as her own initiative. She is empowered to issue recommendations, but her findings are not binding. Where it appears to the Ombudsman that the response to a recommendation which she has made is not satisfactory she may make a special report on the matter to the Parliament. Under the Disability Act 2005 she can deal with complaints related to the accessibility of public buildings. The Ombudsman also acts as the Information Commissioner, set up under the terms of the Freedom of Information Act 1997. The Information Commissioner may review the decisions of public bodies in relation to requests for access to information.
16. The Ombudsman cannot investigate complaints related to recruitment or terms of employment as this is within the remit of the Equality Tribunal. Moreover, the Ombudsman's mandate does not cover aliens or naturalisations and actions taken in the administration of prisons or other places of custody. An extension of the remit is foreseen

⁸ The Irish authorities have informed the Commissioner that the Courts Service provides interpreters in all courts for migrants and asylum seekers where English is not their first language, that information leaflets are available in various languages and that police is currently tendering for the systematic supply of interpretation and translation services.

⁹ Legal aid today is based on the provisions of the Civil Legal Aid Act 1995.

¹⁰ See report "Access to Justice: A Right or a Privilege?", Free Legal Advice Centres, 2005.

¹¹ By the end of 2004 approximately 62,000 valid complaints had been handled by the Office. In addition, the Ombudsman deals with up to 10,000 queries from the public every year.

in an Ombudsman (Amendment) Bill soon to be published. It does not appear to address the latter gaps, although the Ombudsman has actively sought an extension and is one of the few Ombudsman offices in Europe being restricted in these matters.

17. The Ombudsman for Children aims at ensuring that the Government and other decision-makers take the best interests of children into account. She is appointed by the President following a recommendation passed by both Houses of the *Oireachtas*, and she reports to the Parliament. The main areas of work of the Ombudsman are independent complaints handling, communication and participation, research and policy. In accordance with the Ombudsman for Children's Act 2002, the Ombudsman for Children does not have a remit if a case is or has already been dealt with by a court; it affects or relates to national security (including police) or military arrangements; relates to the recruitment or appointment of staff or to a contract of services or employment; concerns exams results; relates to decisions about asylum, immigration, naturalisation or citizenship status; or concerns the running of prisons or other places of detention (i.e. police stations) with the exception of children's detention schools where the Ombudsman for Children does have a role in investigating their management.
18. The Data Protection Commissioner, who reports to the Parliament, is responsible for upholding the rights of individuals set out in the Data Protection Acts 1988 & 2003 and enforces the obligations of data controllers. The Commissioner is appointed by the Government and is independent in the exercise of his or her functions. He receives and investigates individual complaints and takes whatever steps may be necessary to resolve them. The decisions of the Data Protection Commissioner can be appealed to the Circuit Court. An independent Garda Síochána Ombudsman Commission was introduced by the Garda Síochána Act 2005 to deal with all police complaints. It replaced the Garda Síochána Complaints Board on 9 May 2007.¹² In addition there are other specialised ombudsperson institutions such as the independent Pensions Ombudsman and the Ombudsman for the Defence Forces. The Equality Authority is an independent body established in 1999 to combat discrimination and promote equality of opportunity under the Employment Equality Act 1998 and the Equal Status Act 2000.¹³
19. The Irish Human Rights Commission (IHRC) was established in accordance with the Good Friday Agreement as an independent national human rights institution in line with the Paris principles¹⁴. In line with the Human Rights Commission Acts 2000 and 2001, it comprises 15 members appointed by the Government for a period of 5 years, with at least 7 members of each sex. The mission of the IHRC is to endeavour to ensure that the human rights of all people in the state are fully realised and protected in law, policy and practice. It is empowered to make recommendations to the Government on measures to strengthen, protect and uphold human rights. The Commission is currently administratively associated with the Department of Justice, Equality and Law Reform. In the opinion of the Commissioner, the already widely recognised independence and impartiality of the Irish National Human Rights Commission could be further enhanced by rendering it directly accountable to the Parliament through the presentation of its annual reports.

¹² For details see under 2.5.

¹³ For details see under 5.1.

¹⁴ In 1991, the United Nations hosted a meeting in Paris involving representatives of national human rights institutions from around the world to develop a set of internationally recognised principles concerning the status, powers and functioning of national human rights institutions. These principles have been endorsed by the U.N. General Assembly (A/RES/48/134, 85th Plenary Meeting, 20 December 1993).

20. As a non-statutory co-regulatory body, the Press Ombudsman took up office in January 2008. Appointed by the Press Council of Ireland, he may receive complaints from members of the public and considers whether the case is in breach of the Code of Practice for Newspapers and Periodicals. The Press Ombudsman also has the option of referring difficult cases to the Press Council. The Press Council comprises 13 people with a lay majority of seven members, including the Chairman, who are chosen by an Appointments Committee and drawn from suitably qualified persons representative of a broad spectrum of civil society. The remaining six members of the Press Council provide senior editorial and journalistic expertise and perspectives reflective of the media industry.
21. During his visit the Commissioner met with members of many human rights structures and was impressed by their dedicated work for the protection of human rights. He notes however, that due to the number of different bodies and the fact that some of them have been established only recently, it may be difficult for the general public to see where their individual concern might be best placed. The Commissioner welcomes that each of these structures already provides information on its mandate and procedures to the public in an easily understandable format. However, he encourages the Irish authorities to make available more comprehensive and comparative information to guide the potential complainant better in finding the relevant complaints body. The Commissioner underlines that in order to be effective and trusted by the public, the independence and adequate funding of human rights structures is of particular importance. The Commissioner acknowledges the constant efforts taken by the Irish Government to resource the national human rights institutions and encourages them to continue their endeavour.
22. The Commissioner is aware of the ministerial veto enabling members of the Government to stop an investigation conducted by the Ombudsman or the Ombudsman for Children.¹⁵ He understands that the provision is not aimed at preventing the scrutiny of discretionary administrative decisions by the two Ombudspersons but rather excluding value judgments which are better assessed by the *Oireachtas*. There are counterbalancing provisions which require the Ombudsman to inform the complainant of when the veto is exercised and the Minister to give his reasons in writing to the Ombudsman. In fact, the veto has never been used. The Commissioner encourages the Irish authorities to revise the current provision for the sake of clarity as it could be perceived as an impediment to the independence of the Ombudspersons. Moreover, the Commissioner notes the current gaps in the mandates of the Ombudsman as well as the Ombudsman for Children related to questions of asylum and migration and places of detention. He observes that the ratification and implementation of the Optional Protocol to the UN Convention against Torture (OP-CAT) will provide a timely opportunity for reviewing the current mandates of human rights structures with a view to optimising their effectiveness and independence as well as closing any remaining gaps in needs for protection.

2.5 Police

23. The Commissioner attaches great importance to the role of the police authorities in protecting human rights. The Irish authorities have faced serious allegations of police misconduct in the past and have reacted by setting up a special tribunal in 2002, headed by Mr. Justice Morris, which has so far published five reports leading to a number of

¹⁵ Section 11(4) of the Ombudsman for Children Act provides that "Where a Minister of the Government so requests in writing ... the Ombudsman for Children shall not investigate, or shall cease to investigate, an action specific in the request". This provision is also contained in the Ombudsman Act 1980.

reform measures to strengthen transparency and accountability.¹⁶ In 2004, an external audit report of the An *Garda Síochána*'s (the Irish Police) structures, policies, processes and strategic behaviours for human rights compliance was published, based on the Council of Europe manual "Policing in a Democratic Society – Is your police service a human rights champion?". The Police are currently implementing a human rights action plan.

24. During the visit, officials of the Irish Police pointed out that human rights play an important role in police training on all levels. Training, manuals and guidelines aim at enabling the Irish police to perform their functions in a manner compatible with the obligations under the European Convention on Human Rights. Efforts are being made to increase the recruitment of women and members of minorities, including Travellers, in the police service. A working group to review police training and development opportunities for personnel has also been established.
25. The Commissioner recalls that policing in a democratic society requires that police authorities are willing to be monitored and held accountable for their actions. In this context, independent monitoring and complaints bodies are especially apposite. The Commissioner was delighted to meet with a member and staff of the newly established *Garda Síochána* Ombudsman Commission (GSOC) set up in May 2007.¹⁷ The primary task of the Police Ombudsman Commission is to investigate complaints made by the public concerning the conduct of *Garda* members as well as to investigate cases referred to it by the *Garda* Commissioner. The Ombudsman Commission is headed by three Commissioners, appointed by the President of Ireland, and is endowed with a support staff of around 80 persons, about half of them investigators and many of them recruited from abroad to ensure independence. Comprehensive information material is available on line and in print to explain the role of the GSOC. After an investigation, the Commission may initiate mediation as well as disciplinary action or transfer the file to the prosecutor if police misconduct has been revealed. The Commissioner is of the opinion that the independent Police Ombudsman Commission can serve as a model to other countries and encourages the Irish authorities to continue its further development based on the experience gained.

2.6 Civil society

26. The Commissioner was encouraged to observe a very active civil society sector covering all aspects of human rights in Ireland. During his visit the Commissioner met with numerous NGO representatives and is very grateful for having been able to share their expertise and valuable information on the human rights challenges they have encountered.
27. Regarding restrictions on tax-free donations to NGOs, the Commissioner is aware that the current definition of "political purpose" in the relevant legislation is so broad that it may constitute an impediment for legitimate advocacy activities of NGOs. In September 2007, the OSCE's Office for Democratic Institutions and Human Rights recommended

¹⁶ Among them are new Discipline Regulations (S.I. No. 214 of 2007) and Confidential Reporting of Corruption or Malpractice Regulations (S.I.No. 168 of 2007). See also CPT report on its visit to Ireland from 2 - 13 October 2006, CPT/Inf (2007)41 of 10 October 2007, and the Response of the Irish Government to the report available at www.cpt.coe.int.

¹⁷ The new independent *Garda Síochána* Ombudsman Commission was introduced by the *Garda Síochána* Act 2005 to deal with all police complaints in line with previous CPT recommendations (see CPT/ Inf (2002) 36, paragraph 18). GSOC received 1595 complaints in the period 9th May to 31st October 2007 and a further 210 matters were referred to it under Section 102(1) of the *Garda Síochána* Act 2005.

that the Electoral Act 1997 be amended to limit the definition. Furthermore, there seems to be no clarity on whether the promotion of human rights, equality and social justice will be considered as charitable purposes under the Charities Bill 2007 currently under review by Parliament.

28. As to the dialogue between the Irish authorities and civil society, the Department of Foreign Affairs has established a formal framework for regular contacts with NGOs through their joint standing committee on human rights established in 1997. Other departments interact with civil society on specific policy issues. However, there are plans to establish a systematic approach for civil society's consultation in the area of integration with the help of a task force. During the Commissioner's visit, several NGOs expressed their concern about the reaction of the Irish authorities when they publicly questioned the role of Pavee Point, an NGO representing Travellers and Roma, in providing humanitarian assistance to a group of Roma families from Romania in summer 2007.¹⁸ A senior civil servant had been instructed to carry out a review of Pavee Point's role in the matter with potential consequences regarding Government funding to the NGO.
29. The Commissioner underlines the need for constant and constructive dialogue between the authorities and civil society representatives. He encourages the Irish authorities to continue to facilitate and support direct interaction with civil society at all levels to ensure that the experience and expertise of civil society representatives can benefit policy formulation and implementation.

2.7 Human rights education

30. Human rights education is an essential part of a national human rights policy. It ensures that individuals have an understanding of their human rights and those of others, thereby promoting critical thinking and mutual respect. In Ireland, after the Good Friday Agreement of 1998, priority was given to the advancement of human rights, although no national action plan on human rights education has been developed despite the commitments made during the UN Decade for Human Rights Education (1995-2004). State bodies, human rights structures and NGOs are involved in providing human rights education on various levels. The Department of Education and Science with the National Council for Curriculum and Assessment (NCCA) are responsible for formal education and curriculum.
31. For primary education (between the ages of 4-12) the NCCA published guidelines on the integration of intercultural education across the primary school curriculum in 2005. Human rights issues are addressed in the primary school curriculum through the Social, Personal and Health Education (SPHE) programme, which is mandatory. Although human rights terminology is not used, the programme aims at developing an awareness of how to interact fairly with others, learning to treat others with dignity and respect and to appreciate differences. In addition, the 'Lift-Off initiative' was launched in 2001 by Amnesty International in association with the Irish National Teachers Organisation and the Ulster Union of Teachers to encourage the development of a human rights culture as a cross-border human rights education pilot project for primary schools. The "Lift-Off initiative" has developed support materials covering all stages of the primary curriculum, available free of charge to schools. A first evaluation has been largely positive but finds that mainstreaming is needed.¹⁹

¹⁸ The families had set up a make-shift camp on a roundabout on the M50, a major roadway, in June 2007. Most of them left Ireland in July 2007.

¹⁹ Morgan/Kitching, An Evaluation of "Lift Off", December 2006.

32. For secondary education (between the ages of 13-18) the NCCA published guidelines on the integration of intercultural education across the curriculum in 2006. For the junior cycle, Social, Personal and Health Education is mandatory. In addition, a mandatory course on citizenship education including a series of modules in human rights education called Civic, Social and Political Education (CSPE) has been developed in close cooperation with NGOs; CSPE is an exam subject. The NCCA is in the process of overhauling the senior cycle curriculum and has stated that the proposed re-balancing of the curriculum at senior level will provide new opportunities for the inclusion of additional areas of study with a focus on citizenship, human rights and global issues.
33. As part of the CSPE programme, teacher training on human rights issues is provided by the Curriculum Development Unit of the City of Dublin's Vocational Education Committee. Amnesty International is providing human rights education through in-service training for primary school teachers and principals and through post-graduate seminars at higher colleges of primary education. At universities, a number of human rights centres have been developed in association with law faculties at University College Galway, University College Dublin and University College Cork. Human rights are featured in law courses. The Irish Human Rights Commission and Amnesty International also deliver lectures on human rights at universities. As for training of public servants and professional bodies, the Law Society of Ireland organises regular lectures on human rights law and has developed a case-study for the first year syllabus for trainee solicitors. The Irish Human Rights Commission has committed itself to developing a human rights education programme for civil and public servants, legal professionals and the judiciary, among others.
34. Civil society organisations, including NGOs, voluntary and community groups, religiously affiliated organisations and advocacy groups, have been actively promoting human rights in their educational activities for many years, some of them having worked closely with the NCCA and the Development Education Unit of Irish Aid on developing education projects in the past. The National Youth Development Education Programme (NYDEP) is a partnership between the National Youth Council of Ireland and Irish Aid at the Department of Foreign Affairs. The programme aims to integrate development education, including anti-racist and intercultural education, into the core programmes of youth organisations. There are also programmes for community based actions in which NGOs and the IHRC have cooperated, such as training courses to community and women's groups on economic, social, and cultural rights, with particular reference to the themes of poverty and women's rights.
35. The Commissioner welcomes the wide range of on-going initiatives in the field of human rights education in Ireland. He encourages the Irish authorities to strengthen their efforts in the context of immigration bringing new challenges to Irish society. He recalls that a coherent and coordinated approach in human rights education in schools might substantially reduce the risk of bullying in schools, which was described as a problem to the Commissioner during his visit. The need for human rights education of professionals should be assessed and addressed, in particular in the health sector and the judiciary. Furthermore, in view of the many activities undertaken and planned for, it would be useful to prepare a base-line study to assess the extent to which human rights are currently integrated into education and training. Such a study would also help identify further needs for ensuring that human rights awareness reaches all walks of society and facilitate the preparation of a national action plan on human rights education.

2.8 National coordination of human rights issues

36. In his primary role under the Irish Constitution, the Attorney General acts as an advisor to the Government in matters of law. During his visit, the Commissioner was pleased to

learn that in fulfilment of this mandate, the Office of the Attorney General routinely considers the compatibility of draft legislation with the Irish Constitution and the European Convention on Human Rights and advises accordingly. During his visit, the Commissioner also learned that the Department of Justice, Equality and Law Reform reviews legislation for compatibility with equality legislation.

37. However, the Commissioner notes that currently there is no national action plan for human rights in Ireland nor any comprehensive coordinating mechanism among the authorities in this field. The purpose of such an action plan should be to improve the protection and promotion of human rights through a comprehensive and coherent approach involving all stakeholders including representatives of civil society. The United Nations has provided guidance for the preparation of human rights action plans, which should include a baseline study to analyse the current human rights situation and the structural framework for human rights protection.²⁰ The Commissioner is convinced that such an analysis would be useful for clarifying the respective responsibilities of relevant authorities and institutions and identifying and addressing any remaining protection gaps. A national action plan on human rights should be viewed as a coordinated and inclusive process for the continuous improvement of human rights protection in Ireland.

3. Children's Rights

38. Children in Ireland are generally defined as all persons below the age of 18, in line with the UN Convention on the Rights of the Child to which Ireland is a state party. Ireland has a relatively young population as children represent approximately one-quarter of the total population. However, many children in Ireland live under the risk of poverty. Despite progress made due to Ireland's rapid economic development since the mid-1990s, the EU Survey of Income and Living Conditions 2004 demonstrate that around 100,000 children, that is one in 10, were living in consistent poverty. Another 230,000 children, nearly one in four, were at risk of experiencing poverty.²¹ The need to tackle child poverty has been addressed in numerous policy documents,²² the most recent one being Ireland's National Action Plan for Social Inclusion 2007-2016 (NAP inclusion). One of its four policy objectives is to ensure that children reach their true potential by significantly reducing the number of children experiencing consistent poverty to between 2% and 4 % by 2014, and eventually eliminating it by 2016. The Action Plan aims at providing targeted pre-school education, reducing literacy difficulties and tackling early school leaving as well as maintaining child income measures at 33-35% of the minimum adult social welfare payment rate.

39. More generally, over the past years, children's rights have been a growing topic of discussion in Irish society, resulting in the creation of the offices of a Minister of State for Children and an Ombudsman for Children as well as the publication of the National Children's Strategy 2000-2010. The strategy aims at bringing greater coherence to policy-making for children and young people. In an effort to find out what issues are of concern to children and young people in Ireland, the Ombudsman for Children ran a

²⁰ UN Handbook on National Human Rights Plans of Action (2002).

²¹ "Consistent poverty" is defined as living in a household with an income below 60% of the national median income and experiencing enforced basic deprivation. "Being at risk of poverty" is defined as living in a household with an income below 60% of average disposable income after social transfers. See From Rhetoric to Rights, Children's Rights Alliance 2nd Shadow Report to the UN Committee on the Rights of the Child, March 2006 p. 52. It should, nevertheless, be noted that the 60% median income threshold in Ireland increased by 88% from € 102.44 in 1997 to € 192.74 in 2005.

²² For an overview see the study commissioned by the Ombudsman for Children "Obstacles to the realisation of children's rights in Ireland" by Kilkelly, August 2007, p. 36.

participatory project called the “Big Ballot”. In her meeting with the Commissioner, the Ombudsman for Children informed him of its results: of the over 70,000 votes cast by children, one-third ranked “family and care” as the most important issue for children.²³

40. The Commissioner welcomes the initiatives taken to combat child poverty and to promote the possibilities for children to be heard, in particular through the establishment of the Office of the Ombudsman for Children. He calls on the Irish authorities to promote equal opportunities through an effective implementation of the National Action Plan for Social Inclusion so as to protect all children against the negative impact of economic hardship. Furthermore, he encourages the Irish authorities to monitor the effects of their National Children’s Strategy with a view to further enhancing children’s rights and well-being.

3.1 Constitutional reform

41. In November 2006, An Taoiseach announced his intention to hold a referendum on children’s rights to amend the Constitution. After his re-election in June 2007, An Taoiseach and his new Government confirmed this intention and continued work on the Twenty-Eighth Amendment of the Constitution Bill 2007 published in February 2007. The new Article 42.A would change current family and criminal law. With regard to family law and child welfare, under this article “the State will acknowledge and affirm the natural and imprescriptible rights of all children...and ensure that the best interests of the child are put centre stage in the adoption and care systems and in all custody disputes”. In November 2007, an all-party parliamentary Committee was established to examine the amendment and to report back to the *Oireachtas* within four months of its establishment. The date of the referendum had not been decided at the time of writing this report.
42. The Government initiative, while in principle welcomed by Irish society, has stimulated broad and critical discussion on all levels. NGOs²⁴, experts²⁵ and the Ombudsman for Children²⁶ have expressed their concern that the approach taken by the Government is not going far enough to meet the recommendations of the UN Committee on the Rights of the Child²⁷ as it does not make the “best interests of the child” principle generally applicable.
43. With regard to criminal law and child protection against abuse, the Government proposes to allow the use of so-called “soft information”²⁸ about suspected child abusers and to introduce legislation to make it impossible to claim the defence of “honest mistake” about the age of the victim. While there seems to be a general consensus that the current criminal law needs to be revised due to a lack of adequate protection for children, the proposed change is of concern to civil society. This change may severely reduce defence rights and might lead to disproportionate criminal sanctions of sexual activities between teenagers. Furthermore, it appears to afford little control over the gathering of soft information and its use with regard to suspected child abusers.

²³ The other issues were “play and recreation”, “having a voice”, “health, wealth and material wellbeing” and “education”.

²⁴ See the position paper on the proposed referendum “The Constitution and Children” by the Children’s Rights Alliance, January 2007.

²⁵ For a detailed analysis also in the light of Irish case law see Kilkelly/O’Mahony, The proposed Children’s Rights Amendment: running to a stand still? (2007) 10(2) IJFL 19a.

²⁶ Report to the *Oireachtas* on the Twenty-Eighth Amendment of the Constitution Bill 2007, March 2007 and Submission to the Joint Committee on the Constitutional Amendment on Children, February 2008.

²⁷ UN Committee on the Rights of the Child Concluding Observations on Ireland, 29 September 2006, CRC/C/IRL/CO/2.

²⁸ That is information not derived from criminal court proceedings.

44. The Commissioner noted with satisfaction that in June 2006 the Irish Government appointed two independent legal experts as Special Rapporteurs on Child Protection to keep under review legal developments and to audit them. The experts submitted their annual reports, covering various aspects of the proposed constitutional amendment, to the *Oireachtas* in November 2007.²⁹ The concerns raised in the context of defence and information rights should be carefully assessed in the light of Article 6 of the European Convention on Human Rights and its interpretation by the European Court. The Commissioner urges the Irish authorities to seize the opportunity and include in their proposal for constitutional amendment the best interests of the child as a general principle, in line with the UN Convention on the Rights of the Child.

3.2 Corporal punishment

45. While corporal punishment³⁰ in Ireland is prohibited for children in detention and schools as well as all places where a child is in public care, and violence against children is prohibited under the Children Act 2001, parents can still use chastisement under common law.³¹ Following a collective complaint brought by the World Organisation against Torture (OMCT), the European Committee on Social Rights ruled in 2005 that Ireland's common law "reasonable chastisement" defence is in violation of Article 17 of the Revised European Social Charter. The UN Committee on the Rights of the Child in 2006 reiterated its previous recommendation to ban all forms of corporal punishment, including within the family.³² NGOs representing children have expressed their disappointment that although the Irish Government has made a commitment to introduce legislation in line with "developing social standards", no draft legislation, nor any timeline for its introduction, has been proposed.³³

46. The Commissioner has called on all States party to the European Convention on Human Rights to explicitly prohibit corporal punishment, including in the family. The issue is currently under review in Ireland. In late 2007, the specially appointed Child Rapporteur delivered his expert opinion to the *Oireachtas*. He warned that Ireland might be liable to a legal action under Article 3 of the European Convention banning torture, inhuman or degrading treatment or punishment and recommended legislative change invoking the principle of proportionality.³⁴

47. The Commissioner wishes to refer to the ongoing Council of Europe information activities in this field.³⁵ He recalls that although legal reform is needed, sustained public education and awareness-raising, including the promotion of positive parenting, is also necessary to end legal and social acceptance of violence against children. He welcomes the ongoing review in Ireland and urges the Irish authorities to bring Irish law in line with international standards.

²⁹ The reports are available on the website of the Minister for Children, www.omc.gov.ie.

³⁰ For the UN definition and a general overview see the Commissioner's issue paper "Children and corporal punishment: The right not to be hit, also a children's right" CommDH/Issue Paper (2006) 1 REV, January 2008.

³¹ The Children Act 2001 repealed only the statutory confirmation of the common law defence, but that does not render the defence in itself ineffective.

³² UN Committee on the Rights of the Child Concluding Observations on Ireland, 29 September 2006, CRC/C/IRL/CO/2.

³³ "From Rhetoric to Rights, Children's Rights Alliance 2nd Shadow Report to the UN Committee on the Rights of the Child", March 2006, p. 37.

³⁴ For details, see report of the Special Rapporteur on Children Protection, Geoffrey Shannon, November 2007, p. 34 ff.

³⁵ The campaign "Building a Europe for and with children" aims at promoting children's rights and protecting children from all forms of violence, covering the social, legal, educational and health dimensions relevant, for details see www.coe.int/T/TransversalProjects/Children/.

3.3 Separated and missing children

48. Separated children are defined as children under the age of 18 who have been separated from both parents, or from their previous or customary primary caregiver, but not necessarily from other relatives.³⁶ Separated children may be seeking asylum because of fear of persecution or the lack of protection due to human rights violations, armed conflict or disturbances in their own country. They may be the victims of trafficking for sexual or other exploitation, or they may have travelled to Europe to escape conditions of serious deprivation.³⁷ Data on separated children in Ireland vary significantly from one authority to another,³⁸ but the Irish authorities have indicated that the total number amounts to 5,369 between 2000 and 2007 of which 2,635 were reunited with family members. 1,939 children applied for asylum during the period 2000 to 2007. All separated children who enter Ireland are placed in the care of the Health Service Executive (HSE)³⁹, with 180 children in care at year end 2007. It is reported that the proportion of social workers allocated to separated children seeking asylum is considerably lower than that allocated to Irish children in care, even though both groups are protected by the same Child Care Act 1991. In Ireland, there is no regular practice of providing separated children with a guardian *ad litem* to support and represent them during the asylum procedure, where the child is especially vulnerable. However, under the National Children's Strategy the Government has made a commitment to provide a guardian *ad litem* for all separated children. It should be noted that although a representative of the Refugee Legal Service is present at the asylum process, this does not amount to independent legal counsel.
49. The majority of separated children aged 16 to 18 in Ireland do not reside in children's care centers, but in privately managed hostel accommodation with no professional care staff. Children under the age of 16 are placed in foster care or in a residential placement with professional care staff. The Transition Supports Project⁴⁰, has two youth outreach workers who regularly visit separated children in their accommodation and develop special programmes for them. The hostels are not covered by the National Standards for Children's Residential Centres and its system of internal and external complaints. The Health Information and Quality Authority (HIQA) and its Social Services Inspectorate (SSI) are responsible for inspecting accommodation facilities where children are placed. NGOs have reported that nearly all hostels failed the inspection, but no inspection report has so far been made public.
50. The Commissioner notes that some consideration has been given to adapting the asylum process to children in the proposed 2008 Immigration, Residence and Protection Bill, in particular by incorporating the principle of the best interests of the child within some provisions. He is, nevertheless, concerned that this principle is not generally applicable in all provisions of the Bill relating to children. The current absence of

³⁶ See Appendix to Recommendation CM/Rec (2007) 9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors, 12 July 2007; the same definition is used by the UN Committee on the Rights of the Child - see under III of General Comment No. 6(2005) - Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6. Irish law currently defines "separated children" in a narrower way as a child "under the age of 18 years who has arrived either at the frontiers of the State or has entered the State and is not in the custody of any person".

³⁷ Separated Children in Europe Programme (SCEP), *Statement of Good Practice*, 2004, p. 2.

³⁸ See study commissioned by the Ombudsman for Children "Obstacles to the realisation of children's rights in Ireland" by Kilkelly, August 2007, p. 25.

³⁹ In accordance with the Refugee Act 1996 and the Child Care Act 1991.

⁴⁰ The project is funded by the HSE, the Department of Justice, Equality and Law Reform and the Department of Education and Science.

guardians *ad litem* for each child is also a matter of concern. Guardians play a particular role in ensuring that the voice of a separated child is heard during the asylum procedure and that his or her best interests are taken into account in an objective manner.⁴¹

51. The Representative of the UN High Commissioner for Refugees in Ireland expressed concerns to the Commissioner regarding separated children who are not identified as such by Irish immigration officials at a port of entry partly due to the absence of standardised methods for age assessment. Moreover, the Commissioner is of the opinion that separated children should be exempt from procedures related to safe third countries and safe countries of origin, so-called manifestly ill founded applications, and Dublin II transfers. Similarly, in the light of the European Court's case law, they should not be detained on immigration grounds or refused entry to the State.⁴² He therefore welcomes that under the proposed Immigration, Residence and Protection Bill children may not be detained on immigration grounds.
52. The inadequate level of care provided to separated children, along with the lack of mechanisms for identifying separated children who enter the country, has been directly linked to instances of children going missing. These children may be in inherent danger of being trafficked for exploitation.⁴³ The HSE reports that 313 children had gone missing from their care placements between 2001 and 2005 and that 35 of these were subsequently located, giving a net figure of 278 children missing.
53. In 2007, Ireland signed both the Convention on action against trafficking in human beings and the Convention on the protection of children against sexual exploitation and sexual abuse.⁴⁴ Both Council of Europe conventions are victim focussed, aiming at their protection and support through a variety of means, including social ones. In October 2007, the Minister for Justice, Equality and Law Reform published the Criminal Law (Human Trafficking) Bill 2007, which contains provisions criminalising trafficking in children for the purpose of labour exploitation and the removal of organs for exploitative purposes.⁴⁵ NGOs and the Children's Ombudsman have however criticised the Bill for lacking effective measures for victim support. The criticism was partly met in the draft Immigration, Residence and Protection Bill, published in January 2008, which contains provisions for a so-called reflection and recovery period for victims of trafficking. While welcoming these positive developments, the Commissioner notes that the proposed 45-day reflection period may not be long enough in the case of traumatised children.
54. The Commissioner is deeply concerned with the high number of children who have gone missing from accommodation centres in Ireland. A child who finds him or herself in the care of the state should be afforded an equal level of protection and rights as Irish children, while particular attention needs to be paid to the prevention of disappearances. Unaccompanied minors lack the protection normally provided by families and are consequently particularly vulnerable. This is even more so when children have been traumatised through forced participation in armed conflict. In order to provide adequate

⁴¹ The Irish authorities have informed the Commissioner that a social or project worker is assigned to a separated child through the asylum process who is obliged to act in the child's best interest.

⁴² See the case of *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, judgment of 12 October 2006 appl. no. 13178/03, in which a 5-year-old Congolese child remained at a Belgian transit centre before being deported to Congo while her mother was in Canada and her uncle, a Dutch citizen, lived in the Netherlands (violation of Article 3).

⁴³ See also UN Committee on the Rights of the Child, General Comment No. 6 p. 9.

⁴⁴ Ireland has, however, not yet ratified the UN Optional Convention on the Rights of the Child on the sale of children, child prostitution and pornography.

⁴⁵ The bill is expected to be finalised by Parliament in March 2007. The Child Trafficking and Pornography Act 1998 already provides for an offence of trafficking in children for the purpose of sexual exploitation.

care for separated children, and especially the more vulnerable ones, accommodation centres should be staffed by vetted and professional personnel. Children should also be given information adapted to their age regarding the dangers of human trafficking. Moreover, the provision of guardians *ad litem* for each child would benefit the objective of preventing disappearances as well. Finally, the role currently played by NGOs in providing support for victims of trafficking should be recognised and supported by the authorities.

3.4 Access to education

55. In the past, the Irish authorities have been criticised for under-spending on education, resulting in poor infrastructure and equipment and large class sizes,⁴⁶ as well as for a lack of choice due to the fact that the overwhelming majority of primary schools in Ireland are Catholic schools. It should be noted in this context that the vast majority of primary schools in Ireland were originally established by religious authorities, mainly the Catholic Church, and that they still continue to run most of them. While the 2006 budget saw an increase of 500 teachers and much progress has been made in improving the infrastructure,⁴⁷ the lack of choice remains a problem. The Commissioner visited Glanmire Community College, a non-denominational school in County Cork and met with staff and students. The growing diversity of Irish society has seen an increase in the demand for multi-denominational or non-denominational schools that the current practical and legislative infrastructure is unable to meet, in particular when schools are obliged to enrol Catholic applicants first. The European Commission against Racism and Intolerance has recommended that the greater demand for non-denominational or multi-faith schools should be met.⁴⁸ During the visit of the Commissioner, several NGOs expressed concerns about the segregation of non-catholic migrants in education. They highlighted the case of a school in Balbriggan which was almost entirely composed of African pupils who had not been admitted to Catholic schools due to the priority given to Catholic applicants. This case had attracted particular controversy and criticism as regards insufficient preparation for residential and educational integration of immigrant communities.
56. The Commissioner encourages the Irish authorities in their efforts to provide education in a safe and stimulating environment and that the teacher-pupil ratio should be such as promotes active learning for all groups of children. He notes with satisfaction that the Irish Government intends to meet the needs for providing adequate school facilities for the estimated increase of 100,000 children entering Irish primary schools over the next seven years. The Commissioner underlines that providing quality education accessible to all children is one of the most efficient ways of preventing inequality, poverty and social exclusion. He welcomes the new state model of community national school to be piloted in three locations from September 2008. The model aims at facilitating religious education for various denominational groups. There are also plans to set up a tri-religious, intercultural, interdenominational primary school in County Kildare, teaching children of Christian, Jewish and Muslim backgrounds together. Moreover, the Commissioner appreciates the new school enrolment policy of the Archdiocese of Dublin, which has recently set aside a one-third quota for non-Catholic children in two pilot schools located in areas of massive population growth. He encourages the authorities to systematically address the increasing demand for choice within the educational system while involving all stakeholders including children in the process.

⁴⁶ See the study commissioned by the Ombudsman for Children "Obstacles to the realisation of children's rights in Ireland" by Kilkelly, August 2007, p. 130 ff.

⁴⁷ Ibid. For details see also "A social portrait of children in Ireland, Office for Social Inclusion, Dublin 2007, p. 30 ff.

⁴⁸ ECRI, Third Report on Ireland adopted on 15 December 2006, CRI(2007)24.

3.5 Access to mental health care

57. In January 2006, the Government adopted a mental health strategy “A Vision for Change” in an effort to address deficits in the Irish mental health system. Despite a certain progress being observed, the lack of implementation of this strategy has come under criticism by health professionals, NGOs, the Ombudsman for Children and the Committee for the Prevention of Torture (CPT).⁴⁹ On the one hand, the question of whether the current law permits persons who have been detained in the Central Mental Hospital and who are no longer in need of in-patient care, to be released subject to conditions, is unclear and is the subject of litigation.⁵⁰ On the other, there are not enough places for those in need of hospitalisation. This can result in police detention as an interim measure for a disturbed person, notwithstanding that this practice has been ruled illegal by the High Court.⁵¹ The Commissioner visited the Central Mental Hospital which has been in operation since the 1850s as a secure psychiatric institution for those found criminally insane or in need of therapeutic intervention - frequently involuntary - in a secure setting. It has been the subject of a number of reviews, the most recent of which was commissioned by the Mental Health Commission. Its 2006 inquiry report highlighted many concerns that, despite progress in some areas, continued to prevail in the institution and concluded with several recommendations.⁵²
58. During his visit it was apparent to the Commissioner that the principal buildings of the Central Mental Health Hospital were not suitable to meet today’s care standards, a fact that has met with general consensus. In the Irish Minister for Health and Children’s meeting with the Commissioner, she confirmed plans to build a new facility in the vicinity of Thornton Hall, North of Dublin, projected to be completed in 2012. As Thornton Hall will be the site of a new prison complex, NGOs and clinicians expressed their concern to the Commissioner that locating a hospital nearby a prison could lead to stigmatisation of mental health patients. Furthermore, they were concerned about the inaccessibility of the location, which could make efforts for the gradual reintegration of patients more difficult. The Commissioner was impressed by the high level of professionalism demonstrated by the staff in the Central Mental Hospital and their commitment to the social reintegration of patients. The Commissioner encourages the Irish authorities to provide adequate facilities to replace the current Central Mental Hospital, which would continue to facilitate the effective reintegration of patients.
59. The Children’s Rights Alliance has raised concerns about child and adolescent psychiatric services being under-developed and under-funded. As a result, sixteen- and seventeen-year-old children continue to be treated through adult services and in adult psychiatric centres and have to endure long waiting periods (sometimes 3 - 5 years) for assessment. The Irish prison chaplains’ report refers to 3,000 children on waiting lists for assessment and 300 children being treated every year in adult psychiatric hospitals.⁵³ Moreover, there also appears to be significant gaps in community-based care and

⁴⁹ Report of CPT on its visit to Ireland from 2-13 October 2006, CPT/Inf (2007)40 of 10 October 2007. The CPT also notes that the Mental Health Act 2001 actually contains a number of provisions which the CPT has recommended previously.

⁵⁰ This issue was also raised by staff of the Central Mental Hospital in the course of the Commissioner’s visit, see also The Irish Examiner, “Department warned of flaw in law on releases”, 29 January 2008.

⁵¹ The Irish Examiner, “Man remanded to prison after assault”, 29 January 2008 and “Nigerian man finally put in psychiatric care”, 30 January 2008.

⁵² Inquiry Report on Current Care and Treatment Practices in the Central Mental Hospital 2006.

⁵³ Annual Report 2006/07 of the Irish Prison Chaplains submitted to the Minister for Justice, Equality, and Law Reform, November 2007.

access to services for those at risk of self-harm, including children.⁵⁴ Such criticism has also been expressed by the Ombudsman for Children who has stressed that the stigma surrounding mental health issues is preventing children from seeking assistance.⁵⁵ She has called on the Irish Government to implement their mental health policy “A vision for change” with a particular focus on children. This would entail the extension of current social services provided to children and families at risk to a seven-day 24-hour service, the establishment of child and adolescent mental health teams at local level and the development of appropriate in-patient facilities.

60. The Commissioner underlines that placing children who are in need of psychiatric treatment in adult facilities is in breach of the UN Convention on the Rights of the Child. He recalls that the European Court of Human Rights has previously found Ireland in breach of the European Convention on Human Rights for temporary placement of a mentally ill minor into a penal institution in 1997 due to the lack of available places for care.⁵⁶ He calls on the Irish authorities to provide sufficient and adequately resourced separate facilities for mentally ill children. Furthermore, he encourages the Irish authorities to facilitate early intervention at local level and to substantially reduce waiting periods for assessing and treating children.

4. Juvenile Justice

4.1 Juvenile Justice System

61. Juvenile justice is administered through the Irish Youth Justice Service. The service was established as an executive office of the Department of Justice, Equality and Law Reform in December 2005 with a remit to implement the criminal justice provisions of the Children Act 2001, as amended by the Criminal Justice Act 2006. These provisions relate to sanctions in the community, restorative justice, diversion projects and the operation of detention schools. There are plans to invest in the youth justice system under the National Development Plan,⁵⁷ to publish a National Youth Justice Strategy and to develop a youth justice research programme. During his visit the Commissioner met with the Director of the Youth Justice Service.
62. The general age of criminal responsibility in Ireland is 12 years. However, an exception is made for 10 and 11-year-old children charged with the most serious offences on the statute book (murder, manslaughter, rape or aggravated sexual assault), who face trial in the Central Criminal Court.⁵⁸ While the Commissioner welcomes that proceedings can only be taken against a child under the age of 14 with the consent of the Director of Public Prosecutions, he is nevertheless concerned that the current rigid exception makes it possible to charge a very young child with the most severe crimes in an ordinary criminal court not specially equipped to deal with children.

⁵⁴ For details see “From Rhetoric to Rights, Children’s Rights Alliance 2nd Shadow Report to the UN Committee on the Rights of the Child”, March 2006 p. 46 ff.

⁵⁵ Speech at the International Youth Mental Health Conference in December 2007, available at www.oco.ie.

⁵⁶ Violation of Article 5§1, case of D.G. v. Ireland, judgment of 16/05/2002 final on 16/08/2002. The minor suffered from severe personality disorders and was at risk to himself and others.

⁵⁷ €143 million for the development of children detention schools, €104 million for the development of restorative justice and alternatives to custody programmes, and €120 million for *Garda* Youth Diversion Projects.

⁵⁸ Part 5 of the Children Act 2001, as amended by the Criminal Justice Act 2006. The Irish authorities have informed the Commissioner that since 2000 there have been no cases involving defendants under 12 years’ old before the Central Criminal Court.

63. The Commissioner acknowledges the progress made through the Children Act 2001. He highlights the right to be heard and to participate in any proceedings that can affect children and the introduction of sentencing principles to be applied by all courts, such as age and maturity as mitigating factors and the possibility to proceed with education, training or employment without interruption.⁵⁹ The Commissioner is nevertheless concerned about the absence of guidelines to the principles which are numerous and can sometimes be contradictory.⁶⁰ The Commissioner encourages the Irish authorities to ensure full implementation of the Children Act 2001 and its principles, for example by providing guidance and specific training to the judiciary.
64. The Commissioner notes that children appearing before the Children Court are protected by giving them anonymity and that in 2006 this protection was extended to children prosecuted in higher courts facing more serious charges in a trial by jury. However, exceptions apply and anonymity can be lifted in the public interest or to facilitate the enforcement of an Anti-Social Behaviour Order (ASBO). During his visit, the Commissioner discussed the issue with members of the judiciary and underlined that in a world of strong media attention for juvenile crimes, the right to privacy of children must be carefully balanced against the freedom of the press, taking due note of the specific vulnerability of children. In this context, the Commissioner recalls that incorporating the principle of the best interests of the child into the Irish Constitution would provide for a reference point for the courts when having to decide whether to lift anonymity.
65. The Commissioner welcomes that the Children Act 2001 contains the principle that detention must be a measure of last resort. He acknowledges the efforts being made to divert young people from the criminal justice system by providing for a range of alternative sanctions such as the *Garda* (Police) Diversion Programme and community sanctions. Under the *Garda* Diversion Programme police officers can caution a child and work with children and their families to identify together which action is needed to address a child's offensive behaviour. The Irish Government informed the Commissioner that under this Diversion programme, the number of Diversion Projects has increased from 64 in 2006 to 100 today, with a further increase to 168 projects planned by 2012. While the effectiveness of the programme is widely acknowledged, criticism has been raised as to severe under-funding and lack of independent oversight.⁶¹ Furthermore, under the Children Act 2001, a range of new community sanctions for children was introduced, to be operated by the Probation Service. However, it appears that the new system of community sanctions is not yet fully in place across the whole country.
66. Ireland has introduced Anti-Social Behaviour Orders (ASBOs) in the Criminal Justice Act 2006 to respond to 'anti-social behaviour' by both adults and children. In the case of children, the police can but are not required to try other interventions like a warning and a meeting with parents similar to the Diversion Programme prior to applying to a district court for an ASBO. If an ASBO is breached, it constitutes a criminal offence to be sanctioned by either a fine or detention for behaviour that was not in itself criminal, a point for which the ASBO legislation has been criticised. Furthermore, it is not clear whether the system will be independently monitored.
67. The Commissioner is not aware of any ASBOs having been issued so far. However, in his meeting with *Garda* the police confirmed that ASBOs will be applied in accordance with the 2008 policing priorities issued by the Minister for Justice, Equality and Law

⁵⁹ Section 96 of the Children Act 2001.

⁶⁰ One of the principles being that "Any measures ... shall have due regard to the interests of any victim of their offending."

⁶¹ Some areas have few or no juvenile liaison officers, for details see U. Kilkelly, Youth Justice in Ireland, Dublin 2006, p. 69 ff.

Reform in November 2007. The Commissioner is concerned that violating a civil obligation can be transformed into a criminal offence resulting in detention despite the Children Act 2001 containing the principle that detention must be a last resort. Welcoming the transposition of this principle into Irish law, the Commissioner calls upon the Irish authorities to review the current ASBO system and make it mandatory for the police to explore all possible alternatives to detention and to ensure independent monitoring of the ASBO scheme.

4.2 Detention

68. Since 2006 under Irish law,⁶² children should only be detained under the detention school model of care, education and rehabilitation. However, as an interim measure, 16- and 17-year-old boys may continue to be detained in St. Patrick's Institution, a prison in which adults up to the age of 21 are also kept. In view of the report recently published by the CPT, the Commissioner chooses to concentrate on the detention of children in the present report and will not refer to the detention of adults more generally.⁶³
69. St. Patrick's Institution is part of the Mountjoy prison complex in Dublin dating back to 1850. It accommodates young people between the ages of 16 and 21, and it is the only prison establishment in Ireland for children 16 years old. The Commissioner visited St. Patrick's and spoke with staff members and with juvenile prisoners in private. He acknowledged the progress made since the CPT visit in October 2006, which had resulted in numerous changes albeit within the limits of an outdated facility. The Commissioner visited the new unit for 16- and 17-year-old inmates opened in April 2007 as well as the new exercise room, training kitchen, workshops and teaching facilities. He was pleased to learn that there is communal eating for the children in the new unit and that multi-disciplinary teams hold weekly health care meetings. Furthermore, a net had been placed over the exercise yard to prevent drugs being thrown over the perimeter wall. Prison authorities informed the Commissioner of plans to implement further drug prevention measures such as increased security at the entrance.
70. Additional staff has been appointed, in particular to run occupational activities, for drug prevention and psychological as well as psychiatric support. The Integrated Sentence Management (ISM) system that is being introduced in the Irish Prison Service will also be available for young offenders currently in St. Patrick's. The system entails the implementation of an individual risk and needs assessment leading to care and post-release plans. The Commissioner was also informed of plans to close St. Patrick's and to build a modern prison complex in Thornton Hall outside Dublin, which could still hold minors as inmates.
71. The Commissioner visited Trinity House School, Oberstown, Lusk County Dublin, a detention facility for boys under 16 and met with some of them. A new unit for girls in the vicinity had been opened in September 2006. The Commissioner was impressed by the commitment shown by the staff members and the facilities, in particular the step-down unit which aimed at preparing children for their release by accommodating them in a normal house on the site. He also learned of plans to equip all bedrooms with showers and toilets in the course of 2008. In the past, inspectors of the Department of Education and Science had criticised Trinity House on its care plans as some children had none and others lacked clear goals. During his visit, the Commissioner was assured that there

⁶² The Children Act 2001 as amended by the Criminal Justice Act 2006.

⁶³ See the Report of the CPT, which identifies several shortcomings due mainly to a lack of adequate facilities and skilled staff, on its visit to Ireland from 2-13 October 2006, CPT/Inf (2007)40 of 10 October 2007; see also the Annual Report 2006/07 of the Irish Prison Chaplains submitted to the Minister for Justice, Equality, and Law Reform, November 2007.

was an individual care plan for each child, the child being involved in the development of the plan. Staff members, however, pointed out that an increasing number of children was placed in detention for a relatively short period (less than two years) which made it difficult to develop and implement a meaningful care plan providing for education and social integration. Staff members thought it would be beneficial to have on-site family accommodation to enable visiting parents not living in the vicinity to stay overnight, a need that was also expressed by the children spoken to.

72. The Commissioner appreciates the change of law providing that child offenders may no longer be imprisoned but should be subjected to the detention school model when detention is considered unavoidable. The Commissioner is, however, concerned with the current interim provision resulting in imprisonment for children in an out-dated facility together with adult prisoners up to the age of 21. He is perplexed about the plans of the Irish authorities to continue imprisonment in an adult facility as a further interim measure in Thornton Hall as this appears to contradict the current policy on youth justice. He is aware of the Minister for Children's announcement, following recommendations made by an expert group, to build a new detention school complex in Lusk, County Dublin. The Commissioner urges the Irish authorities to live up to their commitment as expressed in the Children Act 2001 and discontinue the imprisonment of children, making the detention school model available whenever detention is deemed necessary.

5. Non-discrimination and women's rights

5.1 Legal and institutional framework

73. The legal basis of Irish anti-discrimination measures are the three Equality Acts: the Employment Equality Act 1998, the Equal Status Act 2000 and the Equality Act 2004. The Equality Act of 2004 was introduced to amend the other Acts to ensure compliance with the EU Employment Framework Directive and the Racial Equality Directive.⁶⁴ These Acts prohibit discrimination on the grounds of gender, race, religion, age, disability, sexual orientation, marital status, family status and membership in the Traveller Community. The major distinction between the Employment Equality Act and the Equal Status Act relates to their scope. The Employment Equality Act prohibits discrimination in the sphere of employment and vocational training, whereas the Equal Status Act prohibits discrimination in the provision of goods and services.

74. A number of concerns have been raised in respect of Ireland's compliance with the EU directives. It is a matter for dispute whether the EU Directives have been fully transposed and, thus, the European Commission has taken formal action against Ireland. The Equal Status Act does not cover all state functions, activities and controlling duties while the available sanctions do not appear to be dissuasive enough. Finally, some exemptions have been allowed regarding non-citizens in the field of education and same-sex couples in the field of social welfare. Ireland does not recognise non-married or same-sex partnerships, which may result in discrimination against children born outside of marriage, unmarried fathers and gay men.⁶⁵ NGOs argue that this situation is

⁶⁴ 2000/78/EC, 2000/43/EC.

⁶⁵ According to the 2002 Census, there were 77,600 couples cohabitating outside marriage, representing 8.4% of all family units in Ireland. Of these families, 29,700 include children. Although the legal distinction between non-marital and marital children was for most purposes abolished by the Status of the Children Act 1987, the Constitution still permits discrimination against the non-marital family and, despite the Act, the position of a non-marital parent is less secure, see in detail the report of the Irish Human Rights Commission "The Rights of De Facto Couples", Walsh/Ryan, Dublin 2006, ch. 4.9 "Duties and Rights in Respect of Children" p. 114 ff.

incompatible with Articles 8 and 14 of the European Convention on Human Rights. The Irish authorities have informed the Commissioner that a Civil Partnership Bill is currently being drafted.

75. Under the Employment Equality Act 1998, two equality bodies were created, namely the Equality Authority and the Equality Tribunal. The latter is the enforcement body of the Equality Legislation. The Equality Authority is an independent body which is charged with informing the public on equality provisions and engaging in dialogue with various stakeholders in Irish society. Individual complaints are dealt with by the Equality Tribunal as the independent and quasi-judicial body to treat complaints of alleged discrimination under equality legislation. Its decisions and mediated settlements are legally binding. Its director reports directly to the Minister for Justice, Equality and Law reform. The Equality Tribunal is seen as a major achievement as it operates in a transparent manner, all of its decisions being publicly available.
76. During his visit, the Commissioner learned that there is a waiting list at the Equality Tribunal and a substantial backlog of cases resulting in delays of up to three years. This is apparently caused by inadequate resources being allocated to the Tribunal. The Commissioner was also informed of plans to relocate the equality bodies from Dublin to Roscrea and Portarlinton as part of Government decentralisation and of concerns that the relocation would result in the Equality Authority being removed from its key partners, such as NGOs, trade unions, Government bodies and the business sector. He was therefore pleased to hear that a liaison office will be kept in Dublin. The Commissioner urges the Irish authorities to ensure and enhance the functioning of the Equality Authority and the Equality Tribunal and, in particular, to provide adequate funding to the latter to minimise the backlog of cases.

5.2 Gender discrimination and women's rights

77. Some figures shed a light on the position of women in Ireland. As of November 2007, only 18.4 % of the total seats in the Irish Parliament were filled by women,⁶⁶ even though it should be acknowledged that women have long played an important role in Irish politics, frequently as ministers and twice as heads of state. As a positive development, the gender pay gap has narrowed from 13 % in 2004 to 9 % in 2006, which is below the EU average of 15 %.⁶⁷ In April 2007, the Irish Government published a National Women's Strategy 2007-2016 with over 200 actions to address needs for the economic and social inclusion of women and with a budget of € 58 million for the period up to 2013.
78. In relation to sexual and reproductive rights, it should be noted that since 1983 under the Irish Constitution the "right of the unborn" is guaranteed "with due regard to the equal right to life of the mother".⁶⁸ No legal definition or case law exists as to whether the "unborn" refers to the foetus at the point of viability, from the moment of conception or at some other point during pregnancy. Since the 1992 Supreme Court judgment in the X case,⁶⁹ abortion is legal if the life of the woman is in danger. However, despite criticism of the constitutional provision in the judgement, there is still no legislation in place

⁶⁶ This compares to an average of 20.5 % in Europe, data from Inter-Parliamentary Union.

⁶⁷ Pay gap is defined as difference between men's and women's average gross hourly earnings as a percentage of men's average gross hourly earnings, Commission of the European Communities, Report "Equality between men and women 2008", p. 23.

⁶⁸ Article 40.3.3, 8th Amendment to the Constitution.

⁶⁹ Attorney General v. X [1992] 1 I.R.1.: the High Court granted an injunction preventing a 14-year-old rape victim from leaving Ireland to have an abortion in England. The Supreme Court overturned the decision ruling that a termination was permissible if there is a substantial risk to the life, as distinct from the health, of the mother.

implementing the judgment and, consequently, no legal certainty when a physician may legally perform a life-saving abortion. In practice, abortion is largely unavailable in Ireland in almost all circumstances. Some NGOs argue that the legal limbo leads to a situation which disproportionately favours the interest of the foetus over the rights of pregnant women, thereby jeopardising women's health and well-being and resulting in abortions performed illegally or abroad.⁷⁰ During the visit, the Irish authorities informed the Commissioner that there were currently no plans to legislate for abortion on the grounds of the 'X' case.

79. Some civil society representatives advocate that access to abortion services should be granted to all women in the country, particularly when a woman's health is at risk, she is pregnant as a result of rape or incest or there is evidence of severe foetal anomaly. There have also been calls to hold a referendum to offer the voters an opportunity to remove from the Constitution the 1983 Amendment and to clarify the language with regard to the 'unborn'. Moreover, NGOs have underlined that certain vulnerable women, especially young and migrant women, have particular difficulties in accessing abortion services abroad. These concerns are illustrated by the case of 17 year-old Miss D from April 2007. When Miss D, who was placed in the care of the state by virtue of an interim care order, learned that she was carrying an anencephalic foetus, a fatal condition whereby a large part of the skull and the brain is missing, she wished to terminate her pregnancy but was prevented from travelling until a High Court decision allowed her to leave the country.⁷¹
80. The Commissioner is concerned that despite the already existing case law allowing for abortion under limited circumstances, no legislation is in place to ensure this happening in practice. This leads to serious consequences in each individual case but especially in such cases in which vulnerable women such as minors and migrants are concerned. In this context, he recalls the European Court's judgment against Poland in which a violation of Article 8, the effective respect for private life, was found due to defective domestic abortion legislation.⁷² He urges the Irish authorities and the legislator to ensure that legislation is enacted to resolve this problem and that adequate medical services are provided in Ireland to carry out legal abortions in line with the jurisprudence of the Supreme Court.
81. Transgender persons in Ireland informed the Commissioner that they experienced discrimination on account of their gender identity. Ireland, unlike nearly all Council of Europe member states, does not have a procedure for birth certificate recognition for transgender persons. The European Court has found several countries including the UK, France and Lithuania in breach of the ECHR for such a lacuna.⁷³ In Ireland, Dr. Lydia Foy has been seeking to obtain a birth certificate reflecting her female gender since April 1997. Upon her appeal, the High Court on 19 October 2007 delivered a landmark judgment ruling that the state is in breach of Article 8 of the ECHR, and in February 2008

⁷⁰ Figures from the United Kingdom Department of Health show that over 5,000 Irish women have terminated pregnancies in the U.K. each year.

⁷¹ The Health Service Executive as the responsible social service had requested the Passport Office not to issue Miss D with a passport and had written to the police to arrest her if she attempted to leave the country. The High Court then ruled that she "could travel abroad for a termination in line with her constitutionally protected right to travel".

⁷² *Tysiac v. Poland* judgment of 20 March 2007, application no. 5410/03, in which the European Court held that the Polish abortion law was defective as it failed to provide for a timely procedure for resolving controversies between the pregnant woman and her doctors as to the availability of a therapeutic abortion. The Court considered that this had created a situation of prolonged uncertainty for the applicant.

⁷³ *Christine Goodwin v. UK*, judgment of 11 July 2002, *B. v. France*, judgment of 25 March 1992, *L. v. Lithuania*, judgment of 11 September 2007.

issued a declaration of incompatibility to be put before Parliament if the state does not decide to appeal the judgment within two months. Furthermore, NGOs have expressed concerns about the discrimination of transgender people in other fields, but in particular in the health sector. The lack of trained staff and familiarity with the specific problems of transsexual persons render transgender people vulnerable to unpredictable and often hostile responses when they use medical services. Moreover, it should be noted that transgender persons are not protected by the Prohibition of Incitement to Hatred Act 1989, which is currently under review. The Commissioner welcomes the High Court decision bringing clarity as to the state's responsibilities towards transgender persons. He expects that legislation bringing the current birth registration law in line with domestic case law and the standards of the European Convention on Human Rights will be in place soon.

5.3 Violence against women

82. Violence against women including domestic violence remains a persisting problem in all Council of Europe member states. Ireland is no exception. The authorities have taken several measures to combat violence against women including the adoption of Domestic Violence Acts, the establishment of a central *Garda Síochána* (Police) Domestic Violence and Sexual Assault Investigation Unit which provides assistance to police divisions countrywide and the introduction of the *Garda* Policy on Domestic Violence. Yet, the UN Committee on the Elimination of Discrimination against Women has noted the high prevalence of violence against women and girls in Ireland and at the same time the low prosecution and conviction rates of perpetrators.⁷⁴ It is estimated that fewer than 1 in 10 complainants in cases concerning sexual violence report their experiences to the criminal justice system.⁷⁵ It should be acknowledged that the conviction rate in cases that are brought to the courts is around 70% (figures for 2004) and that Ireland has severe penalties for those convicted of rape or assault. Yet the Rape Crisis Network in Ireland claims that only 5 % of rape cases reported to police result in conviction in Ireland. NGOs also recommend further training for police, prosecutors and judges in this field and the establishment of a specialised court. Safety and barring orders can be applied against perpetrators.
83. The National Office for the Prevention of Domestic, Sexual and Gender-based Violence (Cosc) was set up in June 2007 with the responsibility of ensuring a well-coordinated response to domestic, sexual and gender-based violence against women and men, including older people. Regarding violence against women, the Irish authorities informed the Commissioner that Cosc aims at supporting state and non-governmental structures already working in this area and to collaborate closely with service providers who support victims and treat perpetrators. Civil society representatives have pointed out that NGOs providing support services to victims are under-funded which results in women having to wait for counselling services. This has particularly negative consequences for vulnerable groups of women such as migrant workers, women asylum-seekers and their children, women with disabilities, Traveller women and women who experience complex problems.
84. The Commissioner visited a women's shelter in Cork in operation since the mid-seventies and was impressed by the long-term commitment demonstrated by staff. He learned about the new challenges resulting from increased migration to Ireland such as language and cultural barriers making the work more complex. He also discussed these

⁷⁴ Committee on the Elimination of Discrimination against Women, Concluding comments on Ireland, thirty-third session, CEDAW/C/IRL/4-5, 22 July 2005.

⁷⁵ See Rape Crisis Network Ireland, "Exploring the Justice Gap in Rape Cases: RCNI Attrition Project, available at www.rcni.ie.

issues with the authorities as well as with civil society representatives. The Commissioner welcomes the measures taken to combat violence against women including the recent establishment of Cosc and the fact that its remit extends beyond domestic violence. In view of its broad mandate, he calls on the authorities to provide Cosc with adequate resources for the effective fulfilment of its tasks. He highlights the need to ensure effective support for women victims of violence through services supplied by both state and civil society operators.

6. Measures against racism and xenophobia

85. In recent years, Ireland has experienced rapid growth in ethnic and cultural diversity as a result of immigration. The census 2006 shows that 10 % of the population were foreign nationals while the same figure for 2002 stood at 5.8 %. According to the data on ethnic and cultural background in the 2006 census, 94.8 % of the population are considered "White" (including the Irish Traveller community at 0.5 %), 1.3 % "Asian" and 1.1 % "Black". Among religions, Islam is now placed as the third largest religion in Ireland with Muslims numbering 0.8 % of the population after Roman Catholics (86.8 %) and members of the Church of Ireland (3 %). ECRI has identified Travellers (see the following chapter) and visible minorities, especially Africans and Muslims, as particularly vulnerable to racism and intolerance in Ireland.⁷⁶
86. The Irish Police (*An Garda Síochána*) publish statistics on racially motivated incidents in their annual reports. In 2006, 174 offences were reported while the figure for 2005 was 94, 84 in 2004, 62 in 2003 and 100 in 2002.⁷⁷ These offences fall mainly under the categories of assaults, public order offences and criminal damages. Racist incidents are also reported to the National Consultative Committee on Racism and Interculturalism (NCCRI), which is a Government sponsored independent expert body. In 2006, 65 incidents and, in 2005, 119 incidents were reported to the NCCRI. According to the Equality Tribunal's Annual Report 2006, 146 cases were referred to the Tribunal by employees claiming racial discrimination in the employment field, a 76 % increase in comparison with 2005. It was estimated that about half of the racism claims were successful and that they amounted to a third of the Tribunal's workload. Moreover, ECRI has noted that some Irish media have portrayed asylum-seekers, refugees, migrant workers, Travellers and Black and ethnic minorities in a negative light.
87. Irish penal law does not specifically define racist offences, nor does it expressly provide for the racist motivation of a crime to be considered as an aggravating circumstance in sentencing. However, the Irish judges may, on a discretionary basis, take the racist motivation of the perpetrator into account among other pertinent elements. ECRI and the UN Committee on the Elimination of Racial Discrimination (CERD) have recommended to the Irish authorities that the racist motivation of a crime should be specifically legislated for as an aggravating circumstance.⁷⁸ The Irish authorities are in the process of completing a review on the Irish penal law provisions related to measures against racism. The scope of the review also includes the Prohibition of Incitement to Hatred Act 1989 with particular reference to the proposed EU Framework Decision on Combating Racism and Xenophobia. An expert study on the subject, commissioned by the Government and carried out by the Centre for Criminal Justice at the University of Limerick, should be published in early 2008.

⁷⁶ Third report on Ireland, adopted on 15 December 2006, European Commission against Racism and Intolerance, CRI(2007)24.

⁷⁷ See the Annual Report 2006 and RAXEN data on racist violence in Ireland available at the web-site of the Fundamental Rights Agency. The Policing Plan 2006 gives the figure for 2004 as 67.

⁷⁸ Third report on Ireland, ECRI, CRI(2007)24 and Concluding Observation of CERD: Ireland, 14/04/2005, CERD/C/IRL/CO/2.

88. Ireland is currently implementing a National Action Plan against Racism which runs from 2005 to 2008. Its principal objectives are 1) effective protection and redress against racism, 2) economic inclusion and equality of opportunity, 3) accommodation of cultural diversity in service provision, 4) recognition and awareness of cultural diversity and 5) participation of cultural and ethnic minorities in Irish society. There are 240 action items divided among the major objectives. While civil society representatives have expressed their support for the objectives of the action plan, they have highlighted the need for its effective implementation and monitoring. Local anti-racist and diversity plans have been drawn up in some cities and towns including Galway, Dublin Inner City Partnership and Fingal County Council. In their discussions with the Commissioner, representatives of local authorities pointed out that although current manifestations of racism and xenophobia in Ireland were fairly low-key, it was important to persist in working against such tendencies, especially since a possible economic downturn could risk bringing about increased xenophobic and racist sentiments.
89. In June 2007, a Minister of State was appointed with the specific responsibility of developing an Irish policy for the integration of migrants. The Minister for Integration informed the Commissioner of his intention to set up a Task Force on Integration in 2008, supported by a consultative Forum for Integration composed of the different stakeholders concerned by integration. As regards the relations between the police and minority groups, the *Garda* Racial and Intercultural Office was already established in 2001 to improve communication and consultation with ethnic minorities. Moreover, 500 ethnic liaison officers have been appointed to improve communication with ethnic minorities. However, NGOs have expressed concerns that a measure aimed at introducing ID cards for third country nationals only, as part of the proposed Immigration, Residence and Protection Bill, could result in ethnic profiling in terms of selective identity checks.
90. The Commissioner welcomes the National Action Plan against Racism as well as the local anti-racist and diversity plans, while stressing that their implementation requires resources and should be carried out in close cooperation with civil society, ethnic and cultural minority representatives. It is also obvious that work against racism must be continuous and that new action plans are prepared to follow-up those that are completed. Monitoring the results of action plans should be accompanied by continued efforts to improve and consolidate data collection on racist and xenophobic incidents. The Commissioner also highlights the positive role the recently established Press Council and Ombudsman (see under 2.4) can play in stemming racist and xenophobic discourse in the media. He reiterates the recommendations made by ECRI and CERD to reform Irish legislation so that the racist motivation of a crime is considered as an aggravating circumstance. Furthermore, the Commissioner encourages the Irish authorities' plans to prepare a comprehensive integration policy in cooperation with all the stakeholders concerned. Such a policy, which in the Commissioner's opinion should cover all ethnic and cultural minorities resident in Ireland, should aim at facilitating the integration process of minorities in all walks of life.

7. Situation of Travellers

91. According to the 2006 Census there are 22,435 members in the Irish Traveller community. The Travellers themselves estimate that the real figure may in fact be well above 30,000. According to Traveller representatives, only a minority of Travellers currently follow the traditional life-style of travelling. Ireland has ratified the Framework Convention for the Protection of National Minorities (FCNM) and acknowledges that the Traveller community is protected under the Convention, even if the state does not recognise the Traveller community as a minority ethnic group. The distinct cultural identity of Travellers is nevertheless acknowledged. Ireland has not adhered to the European Charter for regional or minority languages.
92. Both the Advisory Committee of the FCNM and ECRI have assessed the situation of Travellers in Ireland in their 2006 reports.⁷⁹ They have reported that Travellers have been subjected to discrimination and racism in the fields of education, employment, housing, health care, media reporting and participation in decision making. The proportion of Traveller children entering and completing secondary education is substantially below the national average, although their participation rate has increased significantly in recent years.⁸⁰ In 2006, the Equality Tribunal took two decisions related to education, finding discrimination on the ground of membership in the Traveller Community. In 2002, 72 % of Traveller men and 60 % Traveller women were unemployed. According to the Equality Tribunal's Annual Report 2006, 18 cases related to the Traveller ground and 25 cases related both to the Traveller and racism grounds under the Equal Status Acts were brought to the Tribunal in 2006. Also in 2006, the Equality Authority held 88 case files related to the Traveller ground under the Equal Status Acts.
93. In the field of housing, there have been short-comings in the implementation of statutory obligations for the provision of Traveller stopping sites and group accommodation by local authorities. The life expectancy of Travellers is estimated to be significantly lower than that of the majority population, although recent data is lacking. Some Irish media have continued to promote negative stereotypes concerning Travellers. The level of participation of Travellers in elected bodies remains low at all levels, while Travellers are not always represented on the key bodies which implement public policies on Travellers, such as the High Level Group on Traveller Issues.
94. The Irish authorities have responded to the situation of Travellers through a number of sectorial policy initiatives. In implementing the Housing (Traveller Accommodation) Act 1998, local authorities are required to prepare and adopt Traveller accommodation programmes, the second of which covers the period 2005-2008. The Traveller Education Strategy was published by the Government in November 2006 with the aim of ensuring Traveller equality in terms of access, participation and outcomes. An All Ireland Traveller Health Study was launched in July 2007. It is also expected that the implementation of the Ten-Year Framework Social Partnership Agreement 2006-2015 will improve the employment and educational opportunities of Travellers. However, Traveller representatives have criticised the newly established Press Council for not including the prevention of biased reporting about Travellers specifically in its draft code of conduct.

⁷⁹ Second Opinion on Ireland, adopted on 6 October 2006, Advisory Committee on the Framework Convention for the Protection of National Minorities, ACFC/OP/II(2006)007; Third report on Ireland, adopted on 15 December 2006, European Commission against Racism and Intolerance, CRI(2007)24.

⁸⁰ The Irish authorities estimate that the number of Traveller students in mainstream post-primary education has increased from 961 in 1999/2000 to 2,229 in 2005/2006. The completion of primary school is now estimated at 100 per cent.

95. The Commissioner visited Traveller-specific accommodation at Avilla Park and the nearby St. Mary's temporary halting site in Dunsink Lane, north of Dublin, and talked with residents at both sites as well as with representatives of the local authorities. Avilla Park consisted of 40 recently built houses, while at St. Mary's the Traveller families lived in run-down caravans with very basic sanitary facilities in a land area currently considered for redevelopment. Future plans for Traveller accommodation in the area were pending decisions regarding the redevelopment.
96. While the Commissioner acknowledges the significant efforts made by the authorities to address the situation of Travellers, he considers that a great deal of work remains to be accomplished. Since a multisectorial approach is necessary, policy coordination and effective monitoring of results are essential. In order to promote participatory governance and to produce sustainable results, it is especially important that the authorities work closely with the Travellers themselves when preparing, implementing and monitoring policies and programmes designed for Travellers. During his visit to Cork, the city authorities pointed out that the active participation of Traveller representatives in their Traveller Interagency Group had been central to the effectiveness of its work. The Commissioner urges the Irish authorities to adopt a Traveller inclusive approach in all policy and coordination bodies dealing specifically with Traveller-related issues both at national and local level, including the High Level Group on Traveller Issues. The Commissioner also encourages further efforts to involve Travellers in political decision-making. Traveller communities should be adequately represented in local councils, and the possibility of reserving a specific seat for the Traveller community in the Irish parliament, perhaps in the *Seanad*, would merit serious consideration.
97. Traveller representatives have made it known to the Commissioner that many Travellers wish to be recognised as members of an ethnic minority group in Ireland. The UN Committee on the Elimination of Racial Discrimination has encouraged Ireland to work more concretely towards recognising the Traveller community as an ethnic group, while the Advisory Committee of the FCNM has underlined the relevance of the principle of self-identification stemming from Article 3 of the Framework Convention.⁸¹ The Commissioner encourages active dialogue on the question between the Traveller Community and the authorities. Furthermore, the Commissioner considers it essential that Travellers are effectively protected against discrimination and racism under national and international law. While it is true that Travellers are specifically protected against discrimination under the "Traveller" ground in the Irish anti-discrimination legislation, it is also clear that Travellers can be victims of racism more generally. It is therefore essential that Travellers are acknowledged as potential victims of racism in the implementation of the national action plan against racism and the work of the recently established Press Council and its Ombudsman. Travellers should also benefit from non-discrimination provisions under the "race" ground at national, European and international levels.

8. Treatment of migrants and asylum-seekers

98. Ireland's asylum system is a relatively new one as only in the mid-1990s did asylum-seekers begin to enter the country in significant numbers. However, its asylum legislation and institutions did not become operative until the end of 2000. Coupled with this has been the transformation of Ireland from a country of net emigration, with a high unemployment rate and depressed economy, to a multicultural country of net immigration and a fast growing economy. The Irish government seeks to address the

⁸¹ Concluding Observations of CERD: Ireland, 14/04/2005, CERD/C/IRL/CO/2; and Second Opinion on Ireland, adopted on 6 October 2006, Advisory Committee on the FCNM, ACFC/OP/II(2006)007.

challenges posed by this development in its January 2008 Immigration, Residence and Protection Bill. The new legislation aims at reviewing, amending, consolidating and enhancing the current body of legislation, which dates back to 1935. In addition, selective EU law will be implemented.

8.1 The current immigration and asylum framework

99. Ireland is not a member of the Schengen system and has made reservations to the Amsterdam treaty in the areas of visa, immigration and asylum. Ireland may, however, opt in, on a case by case basis, the relevant EU legislation and has chosen to do so in a number of areas. Among the core directives and regulations in the area of asylum and immigration laws, Ireland has transposed the following: The Refugee Qualifications Directive, the Dublin II Regulation (including the EuroDac Directive), the Directive on Mass Influx, and the Free Movement of EU-Citizens and Family Members Directive.⁸² In the process of transposition is the Minimum Standards on Asylum Procedures Directive⁸³, which along with the Refugee Qualification Directive will be implemented through the proposed Immigration, Residence and Protection Bill. Ireland has opted out of the Directive on Minimum Standards for the Reception of Asylum Seekers and the Directive on Family Reunification.⁸⁴
100. On the domestic level, refugee determination in Ireland is currently regulated by the Refugee Act of 1996 and the European Communities (Eligibility for Protection) Regulations of 2006. General immigration is regulated by the Aliens Act 1934, the Aliens Order 1946, the Immigration Acts 1999, 2003 & 2004 and the Illegal Immigrants (Trafficking) Act of 2000. Citizenship is regulated by the Irish Nationality and Citizenship Act, which was amended in 2005 following a change in the Constitution to the effect that constitutional guarantees of Irish citizenship for persons born in Ireland to non-Irish parents have been removed. The current administrative structure for processing asylum applications is made up of the Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal (RAT). RAT was established as an independent mechanism to process asylum appeals from the ORAC, but has been criticised for a number of reasons, among them lack of publicity and alleged bias on the part of board members, who are paid by the number of cases processed. The draft Immigration, Residence and Protection Bill provides for the establishment of a new and independent Protection Review Tribunal in place of the RAT. The new body would be required to improve transparency and consistency, and may have full-time members. It may also publish selected decisions based on their general relevance.

8.2 The proposed Immigration, Residence and Protection Bill

101. In January 2008, the Irish Government published the draft Immigration, Residence and Protection Bill to replace the current body of legislation governing immigration and protection for asylum-seekers.⁸⁵ The Bill introduces a single procedure for reviewing applications for protection, including applications for refugee status, subsidiary protection and other applicable residence permits. The Office of the UN High Commissioner for Refugees in Dublin (UNHCR) and several NGOs have welcomed this step hoping that it will speed up the currently lengthy proceedings, which in a

⁸² Council Directive 2004/83/EC, Council Regulation (EC) No. 2003/343, Council Regulation (EC) No 2725/2000, Council Directive 2005/55/EC, and Council Directive 2004/38/EC.

⁸³ Council Directive 2005/85/EC.

⁸⁴ Council Directives 2003/9/EC and 2003/86/EC.

⁸⁵ A previous version of the Bill was presented in April 2007. Due to the numerous parliamentary steps to be taken, it can be assumed that the bill will not be signed into law until late 2008.

number of cases take three to five years. The draft Bill also introduces a new status of “long-term resident” which grants benefits generally on par with Irish citizens for those immigrants who have at least five years’ residence in Ireland.⁸⁶

102. Like the earlier proposal from April 2007, the 2008 draft Bill has been criticised for lacking sufficient clarity as it retains, to a large degree, the principle of ministerial discretion and does not put core areas such as family reunification on a statutory basis. The proposed Bill does not provide an independent appeal mechanism for immigration decisions and may facilitate the summary deportation of undocumented foreigners, without the right for a review. Another issue that has been highlighted by NGOs is the continuation of the Carriers Liability that was first introduced in the Immigration Act of 2003, imposing penalties on airlines and ferry companies for transporting people not in possession of proper documentation to Ireland. Furthermore, under the draft Bill judicial review for rejected asylum-seekers would be more restricted and applicants may be deported while awaiting such review.
103. The Commissioner welcomes the Irish Government’s initiative to provide a comprehensive immigration system, including in particular the introduction of a single procedure for determining applications for refugee status, subsidiary protection and other leaves to remain. The Commissioner hopes that this improvement would have a significant impact on the length of proceedings for the determination of asylum applications. In relation to the Bill’s aim to transpose the Refugee Qualification and Asylum Procedure Directives, it should, however, be underlined that the EU Directives concerned only set minimum standards. The Commissioner therefore calls on Ireland to implement them in the spirit of improving the protection of refugees, as is stated in preambular paragraph 8 of the Qualification Directive.
104. The Commissioner notes that the new Bill contains an explicit prohibition of refoulement.⁸⁷ However, the UNHCR Office in Dublin has raised numerous concerns related to exceptions to the rule, including its procedural implementation in the context of the asylum seeker’s arrival in the country.⁸⁸ The Commissioner shares these concerns and furthermore points to the proposed power to remove undocumented migrants summarily, which appears not to provide a full assessment of the individual case. The implementation of the principle of non-refoulement and the extraterritorial protection granted by Article 3 of the ECHR call for due process in the form of access to appeals and a right to remain, pending a final decision or judgment, in all cases where deportation might lead to serious harm or torture, inhuman or degrading treatment. Moreover, the Commissioner notes with concern that the proposed Immigration, Residence and Protection Bill contains provisions enabling courts to direct costs of so-called “frivolous and vexatious” proceedings to the legal representative of the applicant. With regard to the imperative importance of independent legal counsel to the safeguarding of human rights, the Commissioner calls for a review of these provisions.
105. The Commissioner has also been made aware of a debate regarding the establishment of closed reception or detention centres for asylum applicants. The draft Immigration, Residence and Protection Bill has been criticised for introducing increased powers of detention for asylum-seekers.⁸⁹ In this context, it should be recalled that already in its report of October 2006, the Committee for the Prevention of Torture (CPT) called upon the Irish authorities to urgently review the current

⁸⁶ Periods passed as an asylum-seeker or short-term student will not be reckoned.

⁸⁷ To return a person to a place where he or she could be harmed.

⁸⁸ UNHCR’s Comments on the Immigration, Residence and Protection Bill 2008, Dublin, March 2008.

⁸⁹ Ibid.

arrangements for accommodating persons detained for immigration offences.⁹⁰ The Commissioner stresses that as a rule asylum-seekers should not normally be subjected to detention when they have not committed any offence and that when failed asylum-seekers are kept in pre-deportation detention they should not be accommodated in the same facilities as sentenced criminal offenders.

8.3 Asylum-seekers

106. In 2006, Ireland received 4,314 applications for refugee status. This is more or less on a par with 2004 and 2005, where 4,769 and 4,324 applications respectively were received, and a significant drop from early 2000 figures, which reached above 10,000. In 2007, 3,985 asylum applications were received, the lowest annual total since 2002. The number of applications outstanding at the first instance, the Office of the Refugee Applications Commissioner (ORAC) at the end of 2006 was 924. This represents a significant reduction from the end of 2005 where more than 1,600 cases were pending and the end of 2004 with more than 3,600 cases pending. The Refugee Appeals Tribunal (RAT) received a total of 3,172 cases and had 2,500 cases pending at the end of 2006. This reflects not only the capacity of the RAT but also a delay caused by a decision to “hold” cases pending a Supreme Court judgment in relation to publications of decision by the RAT.
107. Since September 2003, all newly arrived asylum-seekers have been required to reside and remain in the accommodation allocated to them by the Reception and Integration Agency (RIA) while their application for refugee status is being considered. Failure to comply with this is an offence that may lead to penalties.⁹¹ Asylum-seekers are provided with three meals a day, but are not allowed to store or cook food on the premises of the centre.⁹² They are not entitled to take on paid work. The Commissioner visited Kinsale Road Accommodation centre near Cork airport and spoke to staff members and residents in private. The facility is relatively new, and offers good conditions, including on-site basic medical care. There were, however, no apartments available for families with children; each family shared one room, which resulted in very limited private space. Civil Society representatives have informed the Commissioner that this is a general problem in Irish reception centres. Reports from independent inspectors engaged by the RIA also indicate that deficiencies exist in certain centres, such as lack of recreational facilities, overcrowding and problems of safety.⁹³ The Irish authorities have informed the Commissioner that the safety concerns raised in the inspection reports had been addressed subsequently by proprietors.
108. While acknowledging that the facility visited is, in general, of a good standard, the Commissioner is concerned about the current state of accommodation for families and of the deficiencies reported by independent inspectors. The Commissioner is also concerned about the low degree of personal autonomy asylum-seekers may retain throughout the process, knowing that it can take three to five years to have an asylum application determined. The Commissioner recalls that ECRI has recommended the introduction of provisions allowing temporary work permits for asylum-seekers.⁹⁴ In addition to strengthening the autonomy of asylum-seekers and providing revenues for the receiving country, access to the labour market may actually facilitate reintegration

⁹⁰ CPT report on its visit to Ireland from 2 to 13 of October 2006, CPT Inf (2006) 40.

⁹¹ Section 9 (7) of the Refugee Act 1996.

⁹² Department of Justice, Equality and Law Reform Reception and Integration Agency, “Direct Provision Reception and Accommodation Centre Services, Rules and Procedures”, 29th September, 2005.

⁹³ Reported by The Irish Times “Health and safety risks exposed in asylum centres”, 31.10.2007.

⁹⁴ See ECRI, Third Report on Ireland, adopted 15th December 2006.

into the country of origin by making it possible for the asylum-seeker to return home with a degree of financial independence or acquired work skills. For these reasons, the Commissioner calls upon the Irish authorities to consider providing asylum-seekers with temporary work permits, possibly in the context of the legislative change proposed.

8.4 Family reunification

109. Family reunification in Ireland is primarily governed by administrative schemes based on the discretion of the Minister for Justice, Equality and Law Reform. Family reunification for holders of protection permits, however, is regulated by the Refugee Act, and for EU-citizens by the European Communities (Free Movement of Persons No. 2) Regulations 2006. The lack of provisions regarding groups other than refugees and EU-Citizens has been criticized by Civil Society representatives for lacking transparency and for the *ad hoc* and frequently inconsistent nature of decisions. Criticism has also been raised regarding the lack of family reunification opportunities for non-married couples and same-sex couples as well as of the requirement of foreign nationals to notify the Minister of an intended marriage.
110. The Commissioner recalls that following the European Court's case law for Article 6.i of the ECHR, the importance of accessibility, clarity and foreseeability should not be forgotten. He is therefore concerned about the lack of statutory regulations regarding family reunification for groups other than holders of protection permits and EU citizens and recommends the introduction of statutory provisions for all groups of people. In view of the dynamic interpretation of the concept of "family life" by the European Court of Human Rights, the Commissioner encourages the Irish authorities to consider the introduction of broader provisions allowing family reunification to include less traditional types of family life. The Commissioner also calls for taking into account the important principle of the "best interests of the child" in any decision relating to family reunification of children.
111. NGOs have expressed concerns about Ireland's transposition of EU law on the free movement of persons, as regards family reunification. According to the current Irish law, non-EU nationals married to EU-nationals residing in Ireland are required to show evidence of lawful residence in another EU member state prior to arrival in Ireland before they can receive a residence permit. The objective of the requirement has been to address *pro forma* or "sham" marriages, but it has also affected a large number of *de facto* marriages. This provision and its consistency with EU law has been challenged in a case pending with the Supreme Court, with about 120 similar cases being on hold. The European Commission is examining the matter. Meanwhile, some non-EU spouses have received letters of intent to remove them from the country. The Commissioner encourages the Irish authorities to await the outcome of the pending procedures before removing the people concerned from the country.

9. Fight against terrorism: extraordinary renditions

112. The term 'extraordinary rendition' describes the kidnapping of an individual by the agents of a State and the transfer of that person to a secret prison in another State where s/he can be tortured or subjected to inhuman or degrading treatment or punishment and be interrogated and detained indefinitely without recourse to the courts, to lawyers or to any of the mechanisms set up to protect the human rights of

the individual.⁹⁵ Ireland was one of the member states listed in Senator Marty's report, of 7 June 2006 for the Parliamentary Assembly of the Council of Europe (PACE), to have allegedly engaged in passive collusion in such extraordinary renditions conducted by the United States of America (US) in their fight against terrorism, by allowing Shannon airport to be used by US aircraft as a stopover for refuelling.⁹⁶

113. Since December 2005, the Irish Human Rights Commission (IHRC) has called on the Irish Government to seek agreement from the US authorities to inspect aircraft landing at Shannon Airport and other Irish airports. However, the Irish authorities have asserted ever since that they received assurances from the US administration that prisoners have not been and will not be transported illegally through Irish territory, and that there is no evidence to the contrary. In December 2007 the IHRC published an extensive analysis of the legal situation including recommendations to the *Oireachtas* Joint Committee on Foreign Affairs.⁹⁷ The report concludes that diplomatic assurances are not in themselves sufficient to fulfil a State's obligations to safeguard against torture or ill-treatment. It rejects the Irish Government's position that evidence about suspect aircraft must first be produced and given to the police, arguing that placing the burden to gather evidence on private citizens was inadequate. In its report, the IHRC refers to the numerous international enquiries and reports being made, such as the January 2007 report of the European Parliament, the Council of Europe's PACE reports and the investigations by the Secretary General of the Council of Europe under Article 52 of the ECHR. IHRC finally recommends that the authorities put in place an effective inspection regime to ensure that no foreign aircraft which might be suspected of involvement in the illegal practice of extraordinary rendition may land and refuel in Ireland.
114. During his visit, the Commissioner discussed the position of the Irish Government with the Minister for Foreign Affairs, underlining that the European Convention on Human Rights contains an absolute prohibition of torture and degrading treatment and of aiding and abetting it in any form. The mere suspicion that the government of a country bound by the Convention could have done so seriously undermines the credibility and authority of the authorities possibly involved. It is therefore indispensable, not only for such a government but for the credibility of the entire human rights protection system, to actively seek clarification of such suspicions. The Commissioner notes that in his response to the IHRC's report the Minister for Foreign Affairs continued to rely on diplomatic assurances while reiterating that the Irish Government was totally opposed to the practice of extraordinary renditions.⁹⁸ The Minister also referred to several alleged cases of extraordinary rendition which had been investigated by the police without producing any relevant evidence. Moreover, the Minister called for a review of the Chicago Convention governing civil aviation with a view to considering whether further steps can be taken to provide adequate safeguards against the possibility of extraordinary renditions. The Commissioner welcomes the call for a review of the Chicago Convention and appreciates the efforts of the Irish Police to investigate alleged renditions. However, recalling Resolution 1507 (2006) of the Council of Europe Parliamentary Assembly, the Commissioner calls on the Irish Government to take effective measures to prevent renditions taking place through Irish territory and airspace, and to review the current inspection and monitoring arrangements with a view to ensuring that effective and independent investigations are carried out into any serious allegation of extraordinary renditions.

⁹⁵ This most comprehensive definition is used by the Irish Human Rights Commission (IHRC) in their report 'Extraordinary Rendition', A Review of Ireland's Human Rights Obligations, December 2007.

⁹⁶ AS/Jur (2006) 16 Part II, p.13, 51.

⁹⁷ IHRC, 'Extraordinary Rendition' - A Review of Ireland's Human Rights Obligations, December 2007.

⁹⁸ See the press release of the Department of Foreign Affairs, 11 December 2007.

10. Recommendations

The Commissioner, in accordance with Article 3 paragraphs b, c and e and with article 8 of Resolution (99) 50 of the Committee of Ministers, recommends that the Irish authorities:

National system for protecting human rights

1. Ratify Protocol No. 12 to the European Convention on Human Rights and the Convention on Action against Trafficking in Human Beings.
2. Adjust the legal aid scheme to the extent that it reflects actual cost of living standards.
3. Review the mandates of the different human rights complaints bodies with a view to optimising their effectiveness and independence as well as closing current protection gaps, with particular reference to the remits of the Ombudsman and the Ombudsman for Children.
4. Provide comprehensive and comparative information to the public on the mandates and functions of different complaints mechanisms.
5. Facilitate the interaction of authorities with civil society representatives at all levels to ensure that their experience and expertise can benefit policy formulation and implementation.
6. Conduct a base-line study to assess the extent to which human rights are integrated into education and training, so that further needs can be identified and addressed for ensuring that human rights awareness reaches all walks of society.
7. Develop a national action plan on human rights as an inclusive process for continuously improving human rights in Ireland.

Children's rights

8. Implement the National Action Plan for Social Inclusion 2007-2016 so as to significantly reduce the number of children experiencing consistent poverty.
9. Use the opportunity of the proposed constitutional amendment to incorporate the best interests of the child as a general principle in the Irish Constitution, in line with the UN Convention on the Rights of the Child.
10. Prohibit corporal punishment of children in a comprehensive way.
11. Provide for professional care in the accommodation facilities for separated children and assign a guardian *ad litem* to each separated child.
12. Address the increasing demand for choice within the educational system, in particular with regard to cultural and religious diversity.
13. Provide adequately resourced separate facilities and services for minor psychiatric patients, and make early intervention at a local level possible for such children.

Juvenile justice

14. Ensure full implementation of the Children Act 2001 and its sentencing principles, for example, by providing guidance and specific training to the judiciary.
15. Develop further the system of alternative sanctions for juvenile delinquents and ensure adequate funding for the system across the country.
16. Review the current system of Anti-Social Behaviour Orders so that it does not lead to an increased use of detention and ensure its independent monitoring.
17. Apply the Children Detention School model when the detention of juvenile offenders is deemed a necessary measure and discontinue the imprisonment of children in adult facilities.

Non-discrimination and women's rights

18. Review the resource needs of the Equality Tribunal to minimise its backlog of cases.
19. Clarify the scope of legal abortions through statutory law in line with domestic jurisprudence and provide for adequate services for carrying out such abortions in Ireland.
20. Change the law on birth registration in such a way that transgender persons can obtain a birth certificate reflecting their actual gender.
21. Provide the National Office for the Prevention of Domestic, Sexual and Gender-based Violence with adequate resources for the effective fulfilment of its broad mandate while, in particular, ensuring effective support for women victims of violence through services supplied by both state and civil society operators.

Measures against racism and xenophobia

22. Monitor the implementation of the National Action Plan against Racism and the local anti-racism and diversity plans in close cooperation with civil society and ethnic and cultural minority representatives, while preparing new action plans to succeed the current ones.
23. Improve data collection on racist and xenophobic incidents.
24. Provide for the racist motivation of a crime to be considered as an aggravating circumstance in Irish criminal law.

Situation of Travellers

25. Work closely with Travellers when preparing, implementing and monitoring policies and programmes designed for the Travellers.
26. Promote the participation of Travellers in political decision-making at local and national level.
27. Ensure that Travellers are effectively protected against discrimination and racism under national and international law.

Treatment of migrants and asylum-seekers

28. Ensure that the right to remain in Ireland during the procedure is granted to asylum-seekers who appeal asylum decisions which raise questions in relation to Article 3 of the European Convention on Human Rights.
29. Reconsider the provision in the proposed Immigration, Residence and Protection Bill which would direct costs for so called “frivolous and vexatious” proceedings to the legal counsel of the applicant.
30. Provide family accommodation to families with children seeking asylum in Ireland.
31. Introduce temporary work permits for asylum-seekers.
32. Introduce statutory provisions regulating family reunification for all groups of people.
33. Implement the principle of the best interests of the child in decisions within the field of immigration and refugee law related to children.

Fight against terrorism: extraordinary renditions

34. Review the current inspection and monitoring arrangements in Ireland with a view to ensuring that effective and independent investigations are carried out into any serious allegation of extraordinary renditions.

APPENDIX 1

List of authorities, civil society organisations and institutions met or consulted

Authorities

Members of Government

Mr. Bertie Ahern, An Taoiseach
Mr. Dermot Ahern, Minister for Foreign Affairs
Mr. Brian Lenihan, Minister for Justice, Equality and Law Reform
Mr. John Gormley, Minister for the Environment, Heritage & Local Government
Ms. Mary Harney, Minister for Health and Children
Mr. Brendan Smith, Minister of State for Children
Mr. Conor Lenihan, Minister of State for Integration

Attorney General

Mr. Paul Gallagher

Oireachtas

Mr. Michael Woods, Chairman, Joint Committee on Foreign Affairs
Ms. Jan O'Sullivan, Vice Chairman, Joint Committee on Health and Children
Mr. Sean Connick, Government Convenor, Joint Committee on Justice, Equality, Defence and Women's Rights

Supreme Court

The Hon. Mr. Justice John L. Murray, Chief Justice

High Court

The Hon. Mr. Justice Richard Johnson, President

Director of Public Prosecutions

Mr. James Hamilton

Ombudsman for Children

Ms. Emily Logan

Garda Síochána Ombudsman Commission

Mr. Conor Brady, Commissioner

Equality Authority

Mr. Niall Crowley, Chief Executive Officer

Irish Human Rights Commission

Dr. Maurice Manning, President

Department of Foreign Affairs

Ms. Kathryn Coll, Director, Russia, Eastern Europe and Central Asia Section
Mr. Andrew Noonan, Desk Officer, Eastern Europe and Central Asia Section

An Garda Síochána

Mr. Fachtna Murphy, Commissioner

Irish Naturalisation and Immigration Service

Mr. Pat Folan, Director General

Irish Youth Justice Service

Ms. Michelle Shannon, Director

City of Dublin

Mr. Paddy Bourke, Lord Mayor of Dublin

City of Cork

Mr. Terry Shannon, Deputy Lord Mayor of Cork

Ms. Catherine Clancy, Councillor

Civil Society

University Institutes

- Centre for Criminal Justice and Human Rights (CCJHR), University College Cork
- Irish Centre for Human Rights, National University of Ireland, Galway

Non-governmental organisations

- Age Action Ireland
- Amnesty International
- Children's Rights Alliance
- Free Legal Advice Centres
- Gay and Lesbian Equality Network
- Inclusion Ireland
- Integrating Ireland
- Irish Council for Civil Liberties
- Irish Family Planning Association
- Irish Penal Reform Trust
- Irish Refugee Council
- Migrant Rights Centre
- National Network of Women's Refuges and Support Services
- National Women's Council of Ireland
- Pavee Point
- People with Disabilities in Ireland
- Rape Crisis Network Ireland
- Transgender Equality Network Ireland

Institutions and Sites

- Accommodation Centre for Asylum Seekers, Kinsale Road, Cork
- Central Mental Hospital, Dublin
- Cuanlee Women's Refuge, Cork
- Glanmire Community College, Co. Cork
- St. Patrick's Institution for Young Offenders, Dublin
- Traveller specific accommodation at Avilla Park and temporary halting site at St. Mary's, Dunsink Lane, North of Dublin
- Trinity House Detention School, Oberstown, Lusk, Co. Dublin

International Organisation

Mr. Manuel Jordão, Representative of the UN High Commissioner for Refugees in Ireland

Other

The Commissioner delivered the IHRC Annual Human Rights Lecture at the National Gallery in Dublin entitled “Current Challenges to Human Rights Protection in Europe“. He also delivered the keynote address at a Seminar on Guardianship and Migrant Children co-organised by the CCJHR and the Irish Refugee Council.

APPENDIX 2

Response of the Irish government

As a founding member of the Council of Europe, Ireland considers the promotion and protection of human rights as a key policy priority, both domestically and on the international stage. Ireland remains a strong supporter of the work of the Council and in particular attaches the highest importance to its efforts in the core areas of human rights, democracy and the rule of law.

Respect for human rights is a long-held value of the Irish state and of successive Irish Governments. In 2003, the European Convention on Human Rights was given further effect to in Irish law, allowing citizens to rely on its provisions in domestic court proceedings. This complemented the very extensive protection of citizens' fundamental rights already afforded by the 1937 Irish Constitution and by the body of Irish law.

One of the unique aspects of the Council of Europe's work in the area of human rights is the standard-setting and monitoring work carried out under its aegis. This is evident in the mandate of the Commissioner for Human Rights. The Government recognises that the Office of the Commissioner plays an important role in the architecture of human rights protection in Europe.

The Government takes note of the Commissioner's comprehensive report on Ireland. It is the result of a productive and active dialogue between the Commissioner and the Irish authorities both in advance of and during his visit in November 2007, and the Government is grateful for the Commissioner's kind words on the quality of co-operation with him.

The recommendations it makes will be considered carefully by the Irish authorities, who are committed to continuing to identify and implement improvements in protection of the human rights of all citizens of and residents in Ireland.

The Government looks forward to continued cooperation with the Commissioner for Human Rights in the future.

Ireland would like to take this opportunity to make the following comments.

Recommendation 1: Ratify Protocol No. 12 to the European Convention on Human Rights and the Convention on Action against Trafficking in Human Beings

The Government attaches high priority to tackling the issue of human trafficking including putting in place the necessary legislative and administrative frameworks to enable Ireland to ratify the Convention on Action against Trafficking in Human Beings at the earliest time possible.

The Department of Justice, Equality and Law Reform now has a dedicated Anti- Human Trafficking Unit with a mandate to develop and support the implementation of a new national strategy to address human trafficking. The Unit will act as a pivot at national level, facilitating a well-focused, coordinated approach to tackling the sordid and heinous crime of human trafficking. It will also engage constructively with the NGO community, which will have an important part to play, particularly in relation to follow-up service provision to victims of human trafficking.

Two key pieces of legislation – the Criminal Law (Human Trafficking) Bill 2007 and the Immigration, Residence and Protection Bill 2008 are currently being considered by the Irish Parliament. When they are enacted and the necessary administrative arrangements are in place, Ireland will be in compliance with various international anti human trafficking instruments, including the Council of Europe Convention against Trafficking in Human Beings. The intention would be to then ratify the Trafficking Convention.

Ireland welcomes and supports the Council of Europe's commitment to constantly improve and develop the international body of law for the protection against discrimination, including Protocol No 12 to the ECHR.

As a signatory to Protocol 12, which seeks to enlarge the original prohibition on discrimination in Article 14 of the ECHR, Ireland keeps the question of ratifying the Protocol under review. The major issue is the lack of clarity as to the precise extent of the obligations imposed on States Parties by the very broad general prohibition on discrimination in Article 1 of the Protocol. We will watch closely how the European Court of Human Rights interprets the scope of this Article when it comes to rule on individual cases. The open, non- exhaustive list of discrimination grounds in the Protocol contrasts with the prescriptive list of discrimination grounds enshrined in Ireland's Employment Equality and Equal Status Acts and in EU anti-discrimination law.

Recommendation 2: Adjust the legal aid scheme to the extent that it reflects the actual cost of living standards

The Civil Legal Aid Board provides legal aid to persons of modest means in accordance with the provision of the Civil Legal Aid Act, 1995. The Board has received increases in funding in recent years, and its allocation in 2008 is almost €27 million with an additional €9.89 million for Refugee Legal Aid.

The financial eligibility limits under the Civil Legal Aid scheme reflect actual cost of living expenses. Certain amendments were made to the qualifying criteria which extended the number of people who can qualify on income grounds and also had the effect of improving access to the scheme.

A study has been commissioned to analyse actual eligibility levels of the civil legal aid scheme and the early indications from this exercise are that a substantial proportion of the population qualifies for civil legal aid.

Ireland also operates a criminal legal aid scheme which provides for the granting of free legal aid, in certain circumstances, for the defence of persons of insufficient means in criminal proceedings. In 2008, the criminal legal aid scheme had a significant budget allocation of

€45.6 million. The decision to grant free legal aid in criminal proceedings is a purely discretionary matter for each court. It is based on the applicant's means and allows that he or she may have legal aid where the court is satisfied that this is essential in the interest of justice, having regard to the gravity of the charge.

Ways of improving the provision of state services against the background of increased migration to Ireland are reviewed on an ongoing basis. A strategic study with a view to the development of quality and cost-effective interpretation and translation services for Government service providers is due to be completed by mid 2008. It will assess the strengths and weaknesses of the current provision from the perspective of providers and users of services, identify models of good practice and develop preferred options for future provision.

Recommendation 3: Review the mandates of the different human rights complaints bodies with a view to optimising their effectiveness and independence as well as closing current protection gaps with particular reference to the remits of the Ombudsman and the Ombudsman for Children

The Irish Government recognises the importance of independent complaints bodies which function to maintain public confidence and support in the organs of public administration.

Bodies such as the Equality Authority, the Irish Human Rights Commission and others are required by legislation to submit an annual report on their activities to the relevant Minister (these reports are also usually laid before parliament). This enables the Government to continuously monitor the work of the various complaints bodies, including issues such as their mandates, effectiveness and independence. The more recently established bodies need to optimise their effectiveness and assert their independence on the basis of their existing mandates before these are reviewed individually in due course.

The current national social partnership agreement, *"Towards 2016 - Ten-Year Framework Social Partnership Agreement 2006 – 2016"*, includes a commitment to review expenditure on the equality infrastructure provided by the Equality Acts to reduce the incidence of discrimination. As part of this exercise, the Department of Justice, Equality and Law Reform and the Board of the Equality Authority plan to carry out a value for money review of the Equality Authority.

On 31 March 2008, the Government published a Bill providing for the establishment of a Legal Services Ombudsman who will be independent in the performance of his or her duties. The functions of the office will include receiving and investigating complaints as well as developing initiatives to improve public understanding of issues relating to complaints against members of either branch of the legal profession.

The Government welcomes the Commissioner's acknowledgement of its efforts to resource the national human rights institutions and of the dedicated work for the protection of human rights done by the members of many human rights structures whom he met during his visit.

The Government notes the Commissioner's comments concerning the Ombudsman's remit. Subject to Government approval, it is expected that legislation will be published in the near future to update the Ombudsman Act 1980 and significantly expand the remit of the Ombudsman, although there are no proposals to include the asylum/immigration area, or

places of detention. There are also no proposals to amend or review the provision in the Ombudsman Act (at section 5(3)) which permits a Minister of the Government to request the Ombudsman not to investigate particular actions.

The Ombudsman for Children does not have statutory functions relating to the inspection of, or investigation of complaints in prison institutions. The statutory powers of inspecting prison institutions and hearing prisoner complaints are vested in the Inspector of Prisons and the Prison Visiting Committees. However, if an individual detained in the Irish prison system and who is less than eighteen years of age wishes to see the Ombudsman for Children, the Irish authorities will facilitate access for that person.

At the invitation of the Governor, the Ombudsman for Children has visited St. Patrick's Institution which currently accommodates 16 and 17 year old boys, as a temporary measure. Once the Irish Youth Justice Service takes on responsibility for them, 16 and 17 year old boys will automatically be included in the Ombudsman's remit.

The Ombudsman for Children has a statutory role relating to the investigation of any actions or complaints in the four children detention schools which accommodate boys up to the age of 16 years, and girls up to the age of 18 years who are remanded or committed by the criminal courts.

Recommendation 4: Provide comprehensive and comparative information to the public on the mandates and functions of different complaints mechanisms

The report acknowledges positively that each of the many human rights structures in Ireland already provides information to the public on its mandate and procedures in an easily understandable format.

On the issue of helping members of the public to understand where best to direct their individual concerns, the website of The Citizens Information Board which contains comprehensive information on State services, includes a booklet "Where to complain" giving detailed advice along the lines recommended by the Commissioner. The booklet is currently being updated to reflect the many relevant developments since 2004. See: http://www.citizensinformationboard.ie/publications/publications_booklets.html

The public can also get relevant information from the network of Citizens Information Services and from the national Citizens Information Phone Service. In 2007, information, advice and advocacy services provided from 268 locations dealt with more than 600,000 callers while the national Citizens Information Phone Service had over 100,000 callers.

Recommendation 5: Facilitate the interaction of authorities with civil society representatives at all levels to ensure that their experience and expertise can benefit policy formulation and implementation

The Irish Government recognises the important role of civil society and appreciates the valuable input made by civil society during the policy formulation and implementation processes.

Appropriate mechanisms are designed to meet the needs of specific policy issues as they arise and these generally incorporate the invitation of submissions from the public and representative groups followed by engagement with specific groups on details of proposals. Examples of involvement of civil society in policy formulation in recent years include the consultative processes which supported the development of *inter alia* the National Women's Strategy, the preparation of the Immigration Residence & Protection Bill and the National Action Plan to Prevent and Combat Trafficking in Human Beings. In the Integration area, the planned establishment of a Task Force on Integration as well as the establishment of a Ministerial Council will also enable stakeholders to input into Integration policy.

Regulatory Impact Analysis (RIA) was formally introduced in Ireland in June 2005. It is a far reaching instrument applicable to all proposals for primary legislation and other significant regulations. Consultation and the consideration of social, economic and environmental impacts, including impacts on the rights of the citizen, are integral elements of the RIA process. In addition, equality proofing tools have been developed as a mechanism to ensure that policies and programmes do not adversely impact on any vulnerable groups protected by national equality legislation.

Ireland has a very strong social partnership structure and has had seven social partnership agreements to date including the current "Towards 2016" agreement. The Social Partnership structure allows for extensive interaction and negotiation between the Government and the Social Partners - that is, the main trade union, employer and farming organisations as well as the community and voluntary sector.

Recommendation 6: Conduct a base-line study to assess the extent to which human rights are integrated into education and training so that further needs can be identified and addressed for ensuring that human rights awareness reaches all walks of society

The wide range of on- going initiatives in the field of human rights education in Ireland is known to the Commissioner and is welcomed in his report. Insofar as the school system is concerned, the Government does not see the added value of a base line study of human rights education.

The human rights perspective permeates the curriculum of primary and post-primary schools. From developing the young child's awareness of how to interact fairly with others, treat them with dignity and respect and learn to appreciate difference, the curriculum gradually widens to include, through the teaching of history and geography for example, the themes of poverty, discrimination, prejudice, racism, sustainable development and environmental awareness among others. Mental health issues and child protection issues, specifically bullying, are also featured. Human rights education is a core element of both Social Personal and Health Education (SPHE) which is a mandatory part of the national curriculum in primary schools and in lower second level education and Civic Social and Political Education (CSPE) which is an examinable subject taken by all junior cycle pupils. Senior cycle programmes in Politics and Society and in SPHE are currently being developed.

In relation to the reference in paragraph 35 of the report to human rights education for professionals, in particular the judiciary and the health sector, information has been provided to the Commissioner's Office on human rights programmes and research at 12 third level education institutions in Ireland. Information has also been provided on the Judicial Studies

Institute, which provides for the ongoing education of the Judiciary. Arrangements will be made to draw the Commissioner's comments on the need for human rights education of the judiciary to the attention of the Judicial Studies Institute. See also response to recommendation 14.

The principles of equality, maximum participation and choice for individuals are basic elements of the approach to health care training in Ireland. Human rights awareness is already addressed in the curriculum for training nurses and midwives. The Government has noted the Commissioner's point in relation to the need for human rights education for health sector professionals generally.

Recommendation 7: Develop a national action plan on human rights as an inclusive process for continuously improving human rights in Ireland

The promotion and protection of human rights is an important element of Ireland's domestic and foreign policy. To target areas of concern in a human rights context, Ireland has developed a number of National Action Plans, including those related to racism, women and social inclusion. The emphasis in these plans is on a 'whole of system' approach, with particular focus on mainstreaming issues into the formulation of public policy. Our approach is further informed by a desire to develop the most effective strategies to address human rights issues.

Ireland has also developed a number of National Strategies to tackle specific areas of concern. Among these strategies are those relating to children and childcare, disability, health, homelessness, prison policy, the Traveller Community and youth justice. Work is currently underway to develop a strategy in the area of violence against women.

Ireland keeps policy regarding the promotion and protection of human rights under constant review. Priority is given to consideration of recommendations arising from the reporting mechanisms of the Council of Europe and the United Nations. The Irish authorities continue to closely monitor strategies and experiences elsewhere to see if they can usefully be applied in Ireland.

Recommendation 8: Implement the National Action Plan for Social Inclusion 2007-2016 so as to significantly reduce the number of children experiencing consistent poverty

Ireland is determined to achieve a very high level of social inclusion. The main policy instrument in this area, which builds on progress already achieved, is the National Action Plan for Social Inclusion (NAPinclusion) which aims to reduce consistent poverty to between 2% and 4% by 2012 and to eliminate it by 2016. Moreover, the National Development Plan 2007-2013 includes a commitment to spend nearly €50 billion over that period on social inclusion targets, including over €12 billion for children's needs. Most recently, Budget 2008 included a €194 million improvement in income supports to combat child poverty focused on increases in the early childcare supplement and in child benefit. The increases in Child Benefit came into effect on 1 April 2008.

The latest survey results from the Central Statistics Office (CSO) for 2006 show that the overall consistent poverty rate is on a downward trajectory.

A key focus of education policy is to prioritise investment in favour of those most at risk and to optimise access, participation and outcomes at every level of the system for disadvantaged groups. Investment in tackling educational disadvantage has increased significantly in recent years. In 2008, some €800m is being provided for targeted initiatives at all levels - an increase of some €70m on the comparable 2006 figure and a 75% increase on the comparable figure for 2003. Under the social partnership agreement, Towards 2016, the Government and the social partners have agreed to work together towards the goal that every child should leave primary school literate and numerate and that the proportion of the population aged 20 – 24 completing upper second level education or equivalent will exceed 90% by 2013. It has also prioritised the tackling of early school leaving. The first integrated educational inclusion strategy for 3 to 18 years olds from disadvantaged communities, *DEIS (Delivering Equality of Opportunity in Schools)*, was launched in 2005. It provides for a standardised system for identifying levels of disadvantage and an integrated School Support Programme (SSP) which will cover 873 schools. On full implementation, it will involve an additional annual investment of some €40m. Details of implementation measures to date and priorities for 2008 have been provided to the Commissioner.

Recommendation 9: Use the opportunity of the proposed constitutional amendments to incorporate the best interest of the child as a general principle in the Irish Constitution in line with the UN Convention on the Rights of the Child

The Irish Government notes the Commissioner's comments regarding the proposed amendment to the Constitution. It awaits the conclusions of the Joint Committee on the Constitutional Amendment on Children following its examination of the Twenty-Eighth Amendment of the Constitution Bill 2007 before proceeding further.

Recommendation 10: Prohibit corporal punishment of children in a comprehensive way

The Irish Government notes the Commissioner's comments in relation to the full prohibition of corporal punishment and the acknowledgement of the need for sustained public education and the promotion of positive parenting, aside from legal reform. The Government is actively promoting a policy of positive parenting and further developing family support services. As the Commissioner is aware, research already underway will inform further consideration of this issue.

Recommendation 11: Provide for professional care in the accommodation facilities for separated children and assign a guardian ad litem to each separated child

The Office of the Minister for Children and the Health Service Executive (HSE) are working towards the provision of appropriate services which meet the needs of separated children. The HSE are devising a National Operational Policy for separated children. This is at an advanced stage and will support the principle that all children in the care of the HSE should receive the same standard of care whether they are separated children seeking asylum or indigenous children in care. The policy will also reflect the principle of good practice that younger children under 12 should be placed in foster care, while older, less vulnerable young people can be placed in residential care or supported lodgings as appropriate. When implemented, this policy will fulfil the Commissioner's recommendation in relation to the professional care for these minors.

New national protocols regarding missing children are currently being drafted and will be finalised shortly. The HSE are in consultation with the Garda (police) Missing Persons Bureau on this matter.

A number of staff in both the Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal (RAT) have received specialised training in dealing with cases of unaccompanied minors. This training is currently facilitated by the UNHCR and involves presentations to practitioners from child care experts focusing on issues such as psychological needs, child specific aspects of the refugee process, the role of the social worker and other issues particular to refugee determination for separated children.

Specific provision of guardian ad litem services for separated children would need to be considered in the context of a wider range of policy considerations which go beyond the needs of this particular group of children. Full implementation of the National Operational Policy regarding the care of these minors (referred to above) will also impact on the potential need for such services.

See also response to recommendation 33.

Recommendation 12: Address the increasing demand for choice within the educational system, in particular with regard to cultural and religious diversity

As noted by the Commissioner the demand for choice is being actively pursued by the Department of Education and Science in consultation with the key stakeholders in education.

The current shape of our school system reflects the historical reality that the vast majority of primary schools in this country were established by religious authorities – mainly the Catholic Church. Such schools have traditionally welcomed pupils from all backgrounds and continue to do so and many have large numbers of non-Catholics enrolled. There has been an increase in the number of patron bodies seeking recognition for new schools and in recent years most of the new schools opened have been multi-denominational in ethos.

In February 2007 the Minister for Education and Science announced her intention to devise a new model of primary school patronage which has the capacity to cater for the wishes of parents of all faiths and of none within the framework of a single patron model and a single board of management structure. The framework for the new model would be representative of and designed to cater for the diversity of religious beliefs within an area served by a primary school. It was stated that the new model was not intended to replace the existing models but to provide an additional option, likely to be used particularly in growing areas. It is important that all schools have the range of pupils that is fully representative of their wider communities, both Irish and non-Irish.

Following consultations with key stakeholders in the intervening period, the Minister has announced that the new State model of community national school, under the patronage of County Dublin Vocational Education Committee (VEC), is to be piloted in three locations in Dublin from September 2008. A core principle of the new model is that the school would facilitate religious education for various denominational groups as part of the school day.

In March 2008 the Minister for Education and Science announced that she is planning a major conference this June to consider the implications of the new societal diversity on the future organisation of schools in Ireland. This conference will also focus on the balance between parental choice and capacity to deliver; the need to ensure that all schools are inclusive and the implications of this for enrolment policies.

The Government is very conscious of the need to ensure timely provision of extra accommodation for the estimated 100,000 extra children who will enter our primary schools over the next seven years or so. To this end, €95 million – or 30% - extra is being provided for primary school buildings in 2008, bringing total capital expenditure on the building programme to nearly €600 million next year. This has been acknowledged “with satisfaction” by the Commissioner.

There are now almost 2,000 English language support teachers in the system catering for the needs of immigrants in primary and post-primary schools at a cost of approximately €120 million per annum; this is up from 260 support teachers in 2001/2002.

The above initiatives confirm that the Government is actively addressing the increasing demand for choice within the education system and is involving the key stakeholders, as the Commissioner has recommended.

Recommendation 13: Provide adequately resourced separate facilities and services for minor psychiatric patients, and make early intervention at a local level possible for such children

Government policy for the development of Child and Adolescent mental health services is outlined in “*A Vision for Change*”. It recommends the recruitment of additional Child and Adolescent Multidisciplinary Mental Health Teams and the development of additional in-patient accommodation.

In 2008 eight additional Multidisciplinary Teams will be recruited and 18 additional beds provided. Construction of two 20 bed units (in Cork and Galway) for children and adolescents will also commence in 2008.

With reference to paragraph 58 the Government’s decision to relocate the Central Mental Hospital (CMH) to Thornton Hall, Co Dublin is consistent with “*A Vision for Change*” which recommends that the CMH should be replaced or remodelled to allow it to provide care and treatment in a modern, up-to-date humane setting and that capacity should be maximised. The new hospital facility will provide a therapeutic, forensic psychiatric service to the highest international standards, in a state-of-the-art building. This redevelopment of the CMH will constitute a separate capital development project independent of the prison complex to replace Mountjoy Prison. It will be built on its own campus with an entrance and an address separate to those of the prison complex; it will be owned and managed by the Health Service Executive (HSE) and it will retain its identity as a distinct therapeutic health facility.

Recommendation 14: Ensure full implementation of the Children Act 2001 and its sentencing principles for example by providing guidance and specific training to the judiciary

Ireland is committed to supporting the rights of children and young people and the Government encourages the detention of children only as a very last resort. To achieve this goal the Government established the Irish Youth Justice Service.

Last year, the Government agreed the allocation of additional resources to allow for the effective implementation of the Children Act 2001. The additional resources include staff for the Probation Service, 28 new Juvenile Liaison Officers and three additional District Court Judges.

In the area of juvenile justice the Irish Youth Justice Service plays a key role in the implementation of the Children Act 2001 by leading and driving reform in this area. This has led to the development of a National Youth Justice Strategy for the period 2008-2010, which has recently been approved by Government.

With regard to the specific reference to “providing guidance and specific training to the judiciary”, it should be noted that the Irish Constitution guarantees the independence of the judiciary.

The Judicial Studies Institute was established by the judiciary in 1996. The role of the Department of Justice Equality & Law Reform is limited to the provision of funding for training and a sum is provided annually to the Institute. The Institute produces a journal periodically and organises conferences, seminars and lectures for judges with the object of enhancing their knowledge and understanding of the law and legal principles with particular regard to new developments. The Commissioner's recommendations will be brought to the attention of the Institute.

Recommendation 15: Develop further the system of alternative sanctions for juvenile delinquents and ensure adequate funding for the system across the country

The Government is committed to continuing the development of alternative sanctions for juvenile offenders. The Children Act of 2001 emphasised the importance of diverting young people from the criminal justice system. The provisions of the Act provided for the introduction of a range of new Community Sanctions for children to be operated by the Probation Service. The number of Garda (police) Youth Diversion Projects has been increased significantly and the full range of Community Sanctions is being implemented. Twenty nine new projects were established in 2007, bringing the total number of such projects to 100. A further 68 projects will be established over the next five years in line with the commitment given in the Programme for Government.

Under the National Development Plan 2007-2013, a sum of €120 million has been allocated to Garda Projects and €104 million to the implementation of Community Sanctions.

Recommendation 16: Review the current system of Anti-Social Behaviour Orders so that it does not lead to an increased use of detention and ensure its independent monitoring

The provisions of the Children Act 2001 provide for a range of community sanctions to the courts. The sanctions are aimed at reducing the number of children sentenced to detention by the courts. They also seek to improve the outcomes for children in a range of areas including such matters as re-offending, education attainment, family supports and substance abuse. An investment of €104 million is being made under the National Development Plan 2007- 2013 for the implementation of these new community sanctions.

Anti-Social Behaviour Orders offer an alternative for dealing with anti- social behaviour to the criminal process, which is particularly important when dealing with children. A Behaviour Order is the last in a series of steps which give the child concerned the opportunity to address the behaviour.

It should be noted that the system of Anti-Social Behaviour Orders for children has a separate range of procedures which were framed in the context of the overall philosophy and policy that underpins the Children Act. These include a "good behaviour contract" which can be drawn up at a meeting involving the child, their parent(s) or guardian and the Gardaí (police). The option of referral to the Garda Juvenile Liaison Programme may also be pursued before the question of application to the court for a behaviour order arises.

Under the recently approved National Youth Justice Strategy 2008-2010, An Garda Síochána (the police service) will monitor the use and effectiveness of the anti-social behaviour measures. In addition, statistical returns on the use of such measures will be made to the Irish Youth Justice Service on a regular basis. There is no evidence to suggest that any additional and/or independent monitoring is warranted at this stage.

Recommendation 17: Apply the Children Detention School model when the detention of juvenile offenders is deemed a necessary measure and discontinue the imprisonment of children in adult facilities

The Irish Government is committed to ensuring that children who are detained as a measure of last resort are given the opportunity for full rehabilitation and reintegration into society. Children's detention schools provide separate remand and committal facilities, focused on rehabilitation and all children attend full time education while in detention.

Following consideration of the Expert Group report on this issue, the Government approved, in March 2008, the development of a new national children detention school to cater for all children under 18 detained by the courts.

The new detention school will facilitate the transfer of responsibility for 16 and 17 year old boys from the Irish Prison Service (St. Patrick's Institution) to the Irish Youth Justice Service. Planning for the new facility will begin immediately and it is anticipated that the first phase of the development, which will include the removal of all children from the prison system, will be operational by 2012.

Planning for the use of a separate facility on the site of the new prison complex at Thornton Hall for juvenile offenders is a contingency to ensure that accommodation for these young offenders is available should the closure of St. Patrick's Institution occur prior to the completion of the new children's detention school. If this proves necessary it will be used for as short a time as possible.

Recommendation 18: Review the resource needs of the Equality Tribunal to minimise its backlog of cases

Ireland continues to be committed to overcoming discrimination and promoting equality for all, and this commitment is underpinned by a strong body of legislation.

Among the commitments contained in "*Towards 2016 - Ten-Year Framework Social Partnership Agreement 2006 – 2016*" is the review of expenditure on the equality infrastructure provided by the Equality Acts to reduce the incidence of discrimination. A particular priority is the removal of the current backlog of cases before the Equality Tribunal. The Department of Justice Equality and Law Reform, as a matter of urgency, is addressing this issue, in collaboration with the Tribunal.

Recommendation 19: Clarify the scope of legal abortions through statutory law in line with domestic jurisprudence and provide for adequate services for carrying out such abortions in Ireland

The Government is satisfied that any medical treatment necessary to safeguard a woman's life during pregnancy is available in Ireland. It has no plans to bring forward further constitutional or legislative proposals in relation to abortion.

Recommendation 20: Change the law on birth registration in such a way that transgender persons can obtain a birth certificate reflecting their actual gender:

This Recommendation, and the High Court decision to which reference is made in paragraph 81 of the Commissioner's report, relate to the Civil Registration Act. However any proposal to change this legislation along the lines suggested would involve a number of broad and complex issues which require detailed consideration across many Departments.

In view of the significance of the High Court judgement not merely for this case but for future cases under the European Convention on Human Rights Act, an appeal has been lodged in the Supreme Court against the High Court decision mentioned, in the interest of seeking clarity on all its implications.

Recommendation 21: Provide the National Office for the Prevention of Domestic, Sexual and Gender-based Violence with adequate resources for the effective fulfilment of its broad mandate while, in particular ensuring effective support for women victims of violence through services supplied by both state and civil society operators

The Government is committed to addressing the closely related problems of domestic, sexual and gender- based violence. In June 2007, the Government established Cosc - the National Office for the Prevention of Domestic, Sexual and Gender-based violence - with the key

responsibility to ensure delivery of a ‘whole of government’ response to, and support for, victims of domestic and sexual violence. Cosc has been resourced as required currently to fulfil its coordination mandate.

Recommendation 22: Monitor the implementation of the National Action Plan against Racism and the local Anti-Racism and Diversity Plans in close co-operation with civil society and ethnic and cultural minority representatives, while preparing new action plans to succeed the current ones

The implementation of the National Action Plan against Racism confirms Ireland’s dedication to combating racism and to developing a more inclusive and intercultural society based on policies that promote interaction, equality of opportunity, understanding and respect.

The National Action Plan against Racism runs from 2005 to the end of 2008. NPAR is now under the remit of the newly established Office of the Minister for Integration (OMI). It is recognised that there is a need to maintain a focus on racism within the new integration agenda and to have anti racism programmes nestled within an intercultural framework.

A Strategic Monitoring Group meets regularly to monitor the implementation of the National Action Plan. This Group comprises Government officials as well as representative of civil society and minority groups.

Several Anti-Racism and Diversity Plans have been supported under the National Action Plan against Racism on a pilot basis. The Office of the Minister for Integration is planning to support the further development of City and County Integration Plans. It is recognised that the development of these Plans should involve a wide range of stakeholders including local authorities; key service providers; social partners and the community and voluntary sector, including those groups representing minority ethnic communities.

Recommendation 23: Improve data collection on racist and xenophobic incidents

Official statistics on racially motivated incidents are recorded by An Garda Síochána (the police service). The National Consultative Committee on Racism and Interculturalism (NCCRI) established a voluntary reporting mechanism in 2001 and this provides a valuable complementary source of information and analysis of racist incidents. The NCCRI, in common with other EU Member States, periodically makes a return of these incidents to the EU Fundamental Rights Agency.

One of the priorities set out in the National Action Plan against Racism is to support the development of a comprehensive and integrated data collection strategy in relation to racist incidents. This would include Garda crime statistics, and sources such as national crime surveys and complementary reporting mechanisms, having regard to harmonisation of data collection for comparative purposes across the EU.

Recommendation 24: Provide for the racist motivation of a crime to be considered as an aggravating circumstance in Irish criminal law

Under the National Action Plan against Racism, research has been commissioned into the adequacy of Ireland's legislation on racially motivated crime. The research is expected to be finalised shortly. The findings of this research will provide important information on whether it is necessary to add to existing legislation to provide for the racial motivation of a crime to be considered as an aggravating circumstance in Irish criminal law.

Recommendation 25: Work closely with Travellers when preparing, implementing and monitoring policies and programmes designed for the Travellers

Ireland is committed to improving continuously the coordination and effective delivery of services and supports for Travellers.

A key aspect of Irish Government strategy in relation to Travellers is an integrated approach among agencies operating under the County and City Development Boards, coupled with effective consultation with Travellers. This approach is outlined in two priority recommendations contained in the Report of the High Level Group on Traveller Issues, which was approved by Government in 2006.

At national level there is direct Traveller representation on policy advisory and monitoring committees in relation to Traveller Accommodation, Education and Health. In addition, following on the 2006 national partnership agreement, *Towards 2016*, a new National Traveller Monitoring and Advisory Committee was established as a forum for dialogue between the relevant social partners. This Committee, which includes four national Traveller organisations along with a number of prominent individual Traveller representatives, also has a specific remit to advise on policy in relation to the Traveller Community. It is due to make its first advisory report in 2009. The Irish authorities have ensured, through primary legislation, the active participation of Travellers in formulating and implementing policies for the provision of accommodation of Traveller families both at national level and locally in every local authority throughout the country.

The 2006 Census showed a total Traveller population of 22,400. The *Report and Recommendations for a Traveller Education Strategy* was launched in November 2006. It covers all aspects of Traveller education from pre-school right through to further and higher education. It is estimated that there is 100% completion of primary school by Traveller children. In relation to the reference in paragraph 92 to the proportion of Traveller children entering and completing secondary education, it is important to note that their participation rate has risen from 961 in 1999/2000 to 2,229 in 2005/2006. In addition there are 33 Senior Traveller Training Centres located throughout the country. There are approximately 1,000 students attending the centres. They cater for the needs of Travellers and others aged 15 years and upwards. There is no upper age limit so as to encourage parents and older Travellers to become involved.

In February 2008, an allocation of €320,000 in funding for local Traveller support projects was approved. The grants support a number of local projects which were already in progress from 2006/2007. These were locally based projects involving a partnership between state

agencies and community based groups. Most of them were aimed at assisting young Travellers remain in education by providing homework support, mentoring etc, and others address the access by Travellers in mainstream Youth support (Youth clubs, sports etc).

Recommendation 26: Promote the participation of Travellers in political decision-making at local and national level

Irish electoral law enables members of the travelling community to be registered as electors, even where they have a nomadic lifestyle.

The Guidelines for Registration Authorities recommend that as far as possible, the names of all members of the travelling community who are eligible to vote are included in the Register. While it can sometimes be difficult to ascertain the place of ordinary residence, registration authorities are advised that those members of the travelling community who regularly occupy the same site for considerable periods of the year should be registered and, in this regard, should liaise with all other relevant bodies to ensure that as many eligible members of the travelling community as possible are included in the Register.

The selection of candidates to stand for election is a matter for each political party and the question of actively promoting such activity rests with them.

The Office for Democratic Institutions and Human Rights (ODIHR) sent an Election Assessment Mission to Ireland to observe the electoral process in the context of the General Election 2007. The Mission met with representatives of Traveller organisations who, prior to the election, had carried out election information and awareness activities including voter education initiatives to target, in particular, the relatively high number of illiterate voters in their community and to encourage broader participation. Candidate forums were also organised to raise awareness of the issues most important to Travellers.

While no Travellers have yet been elected to parliament nor did any Traveller candidate run in the 2007 General Election, members of the travelling community are more active in local elections and the current Mayor of the town of Tuam is a Traveller. Representatives of the travelling community told the ODIHR Mission that they did not have any complaints about specific incidents of racist or intolerant discourse during the election campaign.

Recommendation 27: Ensure that Travellers are effectively protected against discrimination and racism under national and international law

The key anti-discrimination measures, the Incitement to Hatred Act, 1989, the Unfair Dismissals Acts 1977, the Employment Equality Acts and the Equal Status Acts specifically identify Travellers by name as a protected group. The Equality Act 2004, which transposed the EU Racial Equality Directive, applied all the protections of that Directive across the categories contained in the legislation, including the Traveller community ground. All the protections afforded to ethnic minorities in EU directives and international conventions apply to Travellers because the Irish legislation giving effect to those international instruments explicitly protects Travellers. It should also be noted that Travellers have successfully invoked the European Convention on Human Rights Act, 2003.

Recommendation 28: Ensure that the right to remain in Ireland during the procedure is granted to asylum-seekers who appeal asylum decisions which raise questions in relation to Article 3 of the European Convention on Human Rights

The asylum determination system in Ireland aims to compare with the best in the world in terms of fairness, decision making, determination structures and support services for asylum seekers including access to legal advice.

Current legislation provides that asylum applicants are entitled to remain in the State pending a final determination of their applications (which includes both first instance and appeals decisions). A person, whose application for refugee status is rejected, having had a claim examined by the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal, is afforded a further extensive and detailed examination before a deportation order may be issued. In addition, failed asylum applicants are eligible to apply for subsidiary protection in accordance with the relevant legislation.

The Minister is also obliged, under current legislation, to consider the issue of risk to a person before a deportation order is made.

The Immigration, Residence and Protection Bill 2008, which is currently before the Irish Parliament, proposes to comprehensively reform and simplify the current asylum determination system through the introduction of a single procedure for the investigation of all grounds, including protection ones, put forward by applicants for protection. This reform of the processing framework will lead to the removal of the existing multi-layered and sequential process and will allow applicants to get a final decision on applications in a more timely and efficient manner. The Bill does not propose any change to the asylum applicant's entitlement to remain in the State pending a final decision on their application.

Recommendation 29: Reconsider the provision in the proposed Immigration, Residence and Protection Bill which would direct costs for so called "frivolous and vexatious" proceedings to the legal counsel of the applicant

The Immigration, Residence and Protection Bill 2008 contains provisions to prevent the misuse of the judicial process. The issue raised in regard to the Bill will be considered.

Recommendation 30: Provide family accommodation to families with children seeking asylum in Ireland

The Reception and Integration Agency (RIA) has always provided family accommodation to families with children seeking asylum in Ireland.

The variety of accommodation in use allows RIA to meet the needs of all family configurations claiming asylum. The accommodation centres are of varying sizes and include hotels, hostels and purpose built centres. Kinsale Road, the Centre visited by the Commissioner is a purpose built centre and was constructed to allow for adaptation for different family profiles.

Families are never assigned to a room suitable only for a single person. In all cases, service providers are contractually obliged to conform to relevant statutory requirements in relation to room capacity.

RIA operates a robust inspection system to ensure that these contractual obligations are met. Issues raised in the inspection reports are addressed and corrected speedily.

Recommendation 31: Introduce temporary work permits for asylum seekers

It is not proposed to allow asylum applicants to take up paid employment pending a final decision being made on their applications. Current legislation provides that an applicant for asylum shall not seek or enter employment. The new Immigration, Residence and Protection Bill 2008 which is before Parliament does not propose any change to this policy.

The Government believes that, as a matter of public policy, asylum seekers should not be allowed to work while their applications are being considered. Any change to this policy would undermine the asylum process and the wider immigration system, as well as the work permit and other labour market access schemes. These systems would be undermined by giving immigrants who secure entry to the State, on the basis of unfounded asylum claims, the same access to employment as immigrants who follow the lawful route to employment.

Under current legislation, asylum seekers have temporary permission to remain in the State pending the determination of their applications. It is clear that some persons seek protection for the purpose of avoiding legitimate immigration controls in order to enter the State for economic reasons.

Recommendation 32: Introduce statutory provisions regulating family reunification for all groups of people

There are already statutory provisions in place in respect of family reunification for persons granted refugee status and for the family members of EU nationals exercising their rights of free movement. In addition, the Immigration, Residence and Protection Bill 2008, currently being considered by the Irish Parliament, will provide the framework for expanding through secondary legislation the family reunification regime applicable to other categories of residence. In this regard a review of current policies in relation to family reunification is taking place.

Recommendation 33: Implement the principle of the best interest of the child in decisions within the field of immigration and refugee law related to children

The Office of the Refugee Applications Commissioner recognises that certain applicants or groups of applicants in the asylum process may have special needs, including in particular unaccompanied minors and separated children.

Current legislation, provides that, where it appears to an authorised officer of the Refugee Applications Commissioner or to an Immigration Officer that a person who has arrived in the State is under the age of 18 years, that child must be referred to the relevant Health Services Executive (HSE) area which will then decide whether or not to make an application for asylum on their behalf. It is the responsibility of the HSE to decide whether it is in the best interests of the child to make such an application.

The Health Service Executive assists children throughout the asylum process, including accompanying them to their interviews. In addition, the Office of the Refugee Applications Commissioner has a system to ensure that an unaccompanied child is accompanied to the interview by a legal representative and it also provides interpretation facilities.

See also response to recommendation 11.

Recommendation 34:

Review the current inspection and monitoring arrangements in Ireland with a view to ensuring that effective and independent investigations are carried out into any serious allegation of extraordinary renditions

The Irish Government has repeatedly stated both domestically and internationally its total opposition to the practice of extraordinary rendition. The Commissioner's report refers to *"Extraordinary Rendition' A Review of Ireland's Human Rights Obligations"* published by the Irish Human Rights Commission (IHRC) in December 2007. The Taoiseach and the Minister for Foreign Affairs both responded to the publication of the Review, setting out the Government's position in extensive and robust terms.

As was set out in detail in its response to the IHRC Review, the Irish Government remains confident that, under international law, it is fully entitled to rely on the categorical and absolute assurances secured from the United States Government that they have not engaged in extraordinary rendition through Ireland. The assurances received are of a clear and categorical nature and relate to a factual situation over which the US authorities have full knowledge and control.

On the matter of inspections, no other European country has an inspection regime such as that proposed in the IHRC report. The Government has made clear its view with regard to the necessity, practicality and propriety of such a regime. The Garda Síochána already have full powers to search civil aircraft of the type alleged to have been involved in extraordinary rendition where they have reasonable grounds for suspecting illegal activity. They have investigated a number of allegations and found no basis on which to proceed. No evidence has ever been produced, nor any concrete allegation made, that any person has ever been subject to extraordinary rendition through Ireland

The Government continues to be active in its opposition to extraordinary rendition, and has consistently demonstrated its willingness to engage with international bodies, including the Council of Europe and the European Parliament, on any investigation into the issue, and in efforts to ensure that the practice does not occur. In this context, the Minister for Foreign Affairs has called for a review of the Chicago Convention governing civil aviation, and we welcome the fact that this is acknowledged in the Commissioner's report.

