

**IRISH OBSERVATIONS ON THE REPORT BY  
THE COMMISSIONER FOR HUMAN RIGHTS,**

**MR. NILS MUIŽNIEKS, ON HIS VISIT TO IRELAND, 22-25 NOVEMBER 2016**

Ireland is a strong supporter of the Council of Europe and its primary mission to preserve and promote democracy, human rights and the rule of law. Ireland was a founding member of the Council of Europe, and attaches a high priority to the promotion and protection of human rights, both domestically and internationally.

The Council of Europe Commissioner for Human Rights plays an indispensable role in upholding human rights across Europe. Monitoring visits such as Commissioner Muižnieks' visit to Ireland in November 2016 provide a vital insight into the relationship between international human rights standards and the everyday lives of our citizens. Ireland thanks the Commissioner for his constructive report and is grateful for his kind words on the cooperation received during his visit.

The Commissioner's recommendations will be given careful attention by the Irish authorities. The recommendations will be an important tool in Ireland's ongoing work to ensure the protection of the human rights of all citizens of and residents in Ireland. Ireland 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 observations.

**Comments**

The comments refer to individual passages in the Commissioner's report; the numbering corresponds to the numbering of the relevant sections and paragraphs of the report.

## **1. Human Rights of Travellers and Roma**

### **Section 1.2.1 Recognition of Traveller's Ethnicity**

As noted in paragraph 15 of the report, the Taoiseach made a statement in the Dáil (the lower House of Parliament) on 1 March 2017 in which he formally recognised the Traveller community in Ireland as an ethnic group of the Irish nation. The Taoiseach acknowledged that the Traveller community had campaigned for many years to have its unique heritage, culture and identity formally recognised by the State and that this was a deep and personal issue for many Travellers.

The Taoiseach said that recognition of Traveller ethnicity could have a transformative effect on relations between Travellers and wider society. It is expected that recognition of Traveller ethnicity will resonate strongly among the community and increase feelings of respect, self-esteem and inclusion. The move will create no new individual, constitutional or financial rights as Travellers already enjoy all the human rights that are afforded all people under the Constitution and laws of Ireland.

In his statement, the Taoiseach specifically recognised the inequalities and the discrimination that the Traveller community faces and has faced and pointed to the range of special programmes and interventions to help deal with this. The new national Traveller and Roma Inclusion Strategy will be finalised and published shortly. The Inclusion Strategy is intended to bring about important changes to the lives of the Traveller and Roma communities in Ireland. The campaign for recognition of Traveller ethnicity has been part of the discussions for the new strategy. The Taoiseach expressed the hope that his statement, which enjoyed cross-party support, will create a new platform for positive engagement by the Traveller community and Government together in seeking sustainable solutions which are based on respect and on honest dialogue.

It should be noted that for some time, Ireland has implicitly recognised Travellers as having a distinct ethnic identity. Ireland has done so by reporting since 2000 to the Council of Europe on the situation of Travellers in Ireland in our periodic reports on the Council's Framework Convention on National Minorities. Ireland has also done so by reporting on the situation of Travellers to the UN and the Council of Europe in our periodic reports on the main

international conventions and monitoring bodies against racism; and has further done so by explicitly naming Travellers as a protected group in equality legislation.

## **Section 1.2.2: Discrimination and Racism against Travellers**

### ***Paragraph 23***

The Minister for Housing, Planning, Community and Local Government would like to clarify that the eviction of families from the Woodlands Site, Dundalk, in January 2016 was not solely as a result of a fire safety audit conducted in October 2015. The site was unfit for human habitation and constituted a health hazard as it had no services or utilities. The local authority served legal notice to vacate the site in July 2015 and the evictions were carried out in January 2016 in accordance with due legal process. Emergency and alternative accommodation offers were made by the local authority to any family who presented to them for supports. Since the evictions, the site has been regenerated as a fully-serviced Traveller halting site (4 permanent and 10 transient bays) and which opened in December 2016.

## **2. Women's Rights and Gender Equality**

### **Section 2.1 Institutional, Legal and Policy Framework**

Tusla, the Child and Family Agency is the statutory body with responsibility for the provision of care and protection to victims of domestic, sexual and gender-based violence (DSGBV). Investment by Tusla in national domestic, sexual and gender based violence services will increase by €1.5m in 2017. Indeed, funding for domestic, sexual and gender based violence services (DSGBV) has increased as follows over the period 2015 – 2017:

2017	€22.1 million
2016	€20.6 million
2015	€19.5 million

In 2014, Tusla, the Child and Family Agency, undertook a comprehensive review of the domestic, sexual and gender-based violence sector. This review demonstrated that organisations providing services to those experiencing domestic violence were operating in difficult environments and huge efforts were being made to maintain services in the face of funding and other challenges. Despite the best efforts, service delivery was fragmented, with large differences in resources across different areas. There was also some duplication and

overlap in training provision. As a result, services needed to be put on a more sustainable footing. In order to achieve this, the 2015 budget was directed towards protecting frontline services for survivors of domestic and sexual violence.

During 2015, domestic and sexual violence services were developed as a specialist national service with a single line of accountability and a dedicated national budget.

Since 2015, Tusla has prioritised the delivery of frontline services to victims of domestic violence and sexual violence. It is acknowledged that there is an excess of demand over service for refuge spaces. In situations where domestic violence support services cannot provide immediate accommodation, they either help with referrals to other refuges or provide information about other safe accommodation and provide emotional support, information and advocacy to women outside of refuges. Where there is very immediate and/or serious risk of violence, refuges work with women and An Garda Síochána (the national police service) as needed, to find safe short-term solutions.

It should be recognised that the current rate of homelessness impacts on length of stay across all Tusla funded refuges and presents challenges for refuges in supporting service users to find move-on accommodation. This reduced turnover resultant from homelessness contributes to the lack of availability of spaces for women and children with acute safety needs that seek refuge.

Tusla also recognises that there are challenges to be addressed in ensuring that there is an appropriate configuration of spaces available to all women and children who require emergency refuge accommodation, and that those with the greatest need for safe accommodation, are prioritised appropriately.

Tusla data indicates that the current rate of shelter beds, relative to population, is 1.45 per 10,000 adult women, which is higher than the recommended Council of Europe rate. In 2016, Tusla provided funding for eight additional family units of accommodation; six additional family units of emergency accommodation in Dublin and Kildare and two emergency safe housing units in Sligo. The emergency domestic violence accommodation spaces detailed in the Rebuilding Ireland Action Plan for Housing will be in addition to those already funded by

Tusla. These additional spaces will be achieved through redevelopment of some current refuge accommodation, as well as new services.

Whilst there is undoubtedly a need for additional emergency accommodation to be available to women and children at risk of serious harm from domestic violence, Tusla's primary focus is on developing a range of integrated supports to reduce the need for women and families to use emergency accommodation and to ensure that families disrupted by domestic violence can be supported to resume normal and safe family living beyond refuge-type accommodation, within the shortest possible timeframe. Tusla's focus on DSGBV service developments centres on the best outcomes for service users within current resources.

As part of its commissioning approach to developing services, Tusla is identifying priority developments and undertaking work to match needs with services for victims and survivors of domestic violence across the country. Access to support services for victims/survivors of rape and sexual violence will be considered as part of commissioning processes, with a particular focus on equitable and appropriate responses to those who experience sexual violence.

In relation to specific funding to the Women's Aid organization, Tusla expects that service arrangements and funding will be completed early in 2017 and funding will be confirmed with Women's Aid before the end of April, subject to the receipt of all governance documentation. Although the final funding amount has not yet been finalised, Tusla has confirmed that the total will at least equal the 2016 allocation of €600,000.

Tusla is engaging with Women's Aid and Dublin Rape Crisis Centre in a process towards commissioning of National DSGBV Helpline services. The Women's Aid Helpline currently functions both as a helpline and the initial access level for their other services. Tusla is eager to use the experience and resources of the current helpline providers in this initial helpline commissioning process. Women's Aid has been very constructive in engagement with Tusla to date. This is, however, a sensitive process as the outcome will result in independent dedicated DSGBV helpline services and therefore a different model of service. This is a direction taken by many other countries, including England, Scotland, Wales and Northern Ireland.

Tusla has also established a cluster of domestic violence services in the greater Dublin Area (Dublin, Wicklow and Kildare), including Women's Aid. This grouping will support more strategic development of domestic violence responses in Dublin as part of Tusla's commissioning processes.

## **Section 2.2: Violence against Women**

### ***Paragraph 65***

The Government intends to extend Safety and Protection Orders to non-cohabiting applicants by way of amendment to the Domestic Violence Bill. It should also be noted that the Second National Strategy on Domestic, Sexual and Gender-based Violence includes an action aimed at training specific target groups in the public sector.

### ***Paragraph 66***

The Irish Nationalisation and Immigration Service (INIS) has published guidelines on how the Irish immigration system deals with cases of domestic violence where the victim is a foreign national whose immigration status is currently derived from or dependent on that of the perpetrator. The key element is to offer the victim an avenue to obtain independent immigration status in his/her own right. INIS will consider each case on its merits. Where it becomes necessary for the victim to work to support themselves or family members lawfully residing in the State, an appropriate status can be granted.

## **Section 2.3: Women's Sexual and Reproductive Health Rights**

### ***Paragraphs 76-77***

The *Protection of Life During Pregnancy Act 2013* was commenced on 1st January 2014 to regulate access to lawful termination of pregnancy in accordance with the X case (*Attorney General v X* [1992] 1 IR 1) and the judgment of the European Court of Human rights in the A, B and C v Ireland case.

### ***Paragraph 79***

The *Regulation of Information (Services Outside the State for Termination of Pregnancies) Act, 1995* defines the conditions under which information relating to abortion services lawfully available in another state might be made available in Ireland.

Medical professionals are not precluded under the Act from giving a pregnant woman all the information necessary to enable her to make an informed decision provided a termination of pregnancy is not advocated or promoted. The Act does not prevent a doctor communicating in the normal way with another medical professional in regard to his/her patient's care nor does the Act prevent the woman receiving a copy of any medical, surgical, clinical or other records relating to her case.

### **3. Human Rights of Children**

#### **Section 3.1.2.2 Religious Discrimination in School Curricula**

##### ***Paragraph 116***

Section 15(2)(b) of the Education Act 1998 requires school Boards of Management to uphold the characteristic spirit of the school, and not the 'religious ethos' as stated in the report. 'Characteristic spirit' encompasses cultural, educational, moral, religious, social, linguistic and spiritual values and traditions. The relevant section of the Education Act 1998 is quoted below.

*15.(2) A board shall perform the functions conferred on it and on a school by this Act and in carrying out its functions the board shall—*

...

*(b) uphold, and be accountable to the patron for so upholding, the characteristic spirit of the school as determined by the cultural, educational, moral, religious, social, linguistic and spiritual values and traditions which inform and are characteristic of the objectives and conduct of the school, and at all times act in accordance with any Act of the Oireachtas or instrument made thereunder, deed, charter, articles of management or other such instrument relating to the establishment or operation of the school.*

#### **Section 3.1.3 Other Challenges to an Inclusive Education**

##### **Section 3.1.3.1 Parental Role**

### ***Paragraph 127***

At present, the Education (Admission to Schools) Bill 2016 is silent in relation to a limitation on the power of a school to determine a priority for children of past pupils. However, the Minister for Education and Skills at his second stage speech on the Bill in November 2016 advised that he intends to bring an amendment to the Bill which will deal, in primary legislation, with a limitation on the power of a school to determine a priority for children of past pupils where a school is oversubscribed. The Minister has indicated that he considers that setting this limitation at 25% is broadly where he sees consensus being possible. Nevertheless, he intends to consult widely and to listen to all views on this matter.

## **3.2 Adverse Impact of Austerity Measures on Children's Rights**

### ***Section 3.2 .1. Conclusions and Recommendations***

The Department of Children and Youth Affairs is continuing to roll out the childcare reforms announced in Budgets 2016 and 2017, on foot of the reports of the Inter-Departmental Groups on Future *Investment in Childcare* and *Supporting Access to the Early Childcare Care and Education (ECCE) Programme for Children with a Disability*. Additional funding of €21.5million has been allocated in 2017 for early years care and education, an increase of 35% on 2016 (this is in addition to a similar 35% increase announced in Budget 2016). Of this additional funding:

- €7.6m is allocated to further roll-out of the free pre-school programme, which was extended from September 2016 to ensure that every child in Ireland is able to enrol in pre-school at age three, and to remain in pre-school until they start primary school;
- €18.07m is allocated to further roll-out of the Access and Inclusion Model (AIM), which enables maximum access and participation of children with disabilities in the free pre-school programme;
- €5m is allocated to increase the number and level of targeted childcare subsidies that will be provided for children under 15 years of age and, for the first time, a universal childcare subsidy is being introduced for children aged 6 months to 36 months (or until the child qualifies for free pre-school);
- €4m is allocated to develop the Single Affordable Childcare Programme which will subsume and replace all existing childcare programmes, both targeted and universal (with the exception of the ECCE Programme); and



- €14.5m is provided for payments to childcare providers in respect of non-contact time entailed in providing children with access to the national childcare programmes.
- €1m is provided for sustainability support to services experiencing difficulties with increased regulation and governance requirements.
- €1m is provided to enhance the registration and inspection of services.
- €0.4m is provided for the design of a national quality audit tool to assess quality within early years services, and for the first wave of data collection.

#### **4. Past human rights abuses against women and children in institutions**

##### *Sections 4.1, 4.3, and 4.6 Symphysiotomy*

The Government's aim was to take as person-centred and dignified an approach as possible to help bring closure for as many of women who underwent a surgical symphysiotomy.

The *Surgical Symphysiotomy Payment Scheme* was established in November 2014 following engagement by the then Minister for Health with the three patient advocacy groups that support women who underwent the procedure. Two of those advocacy groups strongly welcomed and supported the Government-approved Scheme and one of the groups did not support the Scheme.

The Scheme was designed to provide an alternative, non-adversarial and person centred option for women, many of whom were elderly, and did not wish to pursue their cases through the courts. Government was cognisant of the advice at the time that many women would face an uphill struggle in proving their claims in the courts.

The Scheme was established following two independent reports on Symphysiotomy.

The first independent report commissioned by the Department was undertaken by Professor Oonagh Walsh. Professor Walsh is a renowned medico-social historian with a special interest in female medical history. Professor Walsh outlined the history of symphysiotomy in Ireland and recommended that an ex-gratia scheme be established. The research also included a national public consultation process with the women themselves and with other interested bodies. Professor Walsh undertook a number of public meetings, individual meetings and she also received written submissions by post and by email in order to hear views from the women directly. The Walsh Report noted that symphysiotomy was an exceptional and rare

intervention in obstetric practice in Ireland and was used in mild to moderate disproportion and in obstructed labour.

The second report was prepared by Judge Yvonne Murphy, who was commissioned by Government in 2013 to undertake a further independent review on the legal aspects of symphysiotomy in Ireland. Judge Murphy also placed advertisements in national and local newspapers seeking the views of women, including on what would bring closure for them.

Judge Murphy met in person with all those who wished to meet her, had telephone conversations with those who were too frail to travel and also received letters from other women with their views as to closure. Judge Murphy also recommended that an ex-gratia payment scheme be established.

Judge Clark provided a comprehensive report on the Surgical Symphysiotomy Payment Scheme and this was published in November last year. With this report we now have available a very thorough overview of the historical and medical context of symphysiotomy. The report also included a number of appendices, including extracts from the Annual Clinical Reports of the major maternity hospitals between 1940 and 1960 on the indications for use of this rare procedure and extracts from the Transactions of the Royal Academy of Medicine between the 1940s and 1960s on symphysiotomy. They show that the use of symphysiotomy was reviewed and discussed by obstetricians at the time.

399 women accepted awards under the Government approved Scheme. The majority of women were aged over 75 years and the levels of awards available were €50,000, €100,000 or €150,000. The total cost of the Scheme was just under €34 million. Part of this funding included the costs of independent legal advice obtained by the women during the process.

The Scheme was designed to offer women an alternative to pursuing their case through the courts, if they wished. The women were not expected to give oral testimonies as they might do in a court setting. Although the Scheme was non-adversarial, the Scheme took into account that women may have wished to consult a solicitor and take legal advice and assistance in submitting their applications to the Scheme.

In the interests of accountability, the Scheme required each applicant to prove that she had a surgical symphysiotomy or pubiotomy in order to be considered for the assessment of an award and the proof required was considerably lower than the burden of proof required by

the courts. The Scheme worked with each woman or her legal representative to locate medical records.

Applicants did not give up their right to pursue their case through the courts. It was only on accepting an award under the Scheme that a woman had to discontinue her legal proceedings. The vast majority of women opted to do so.

One of the principal reasons for use of symphysiotomy in rare circumstances was the dangers associated with caesarean section, which were very real in the 1950s and 1960s. Irish and international studies indicate that symphysiotomy is not a banned procedure but has a place in obstetrics in certain limited circumstances. For example, it may still be used in the western world in the delivery of a trapped head in breech delivery, or in emergency obstetric situations.

The health of women affected by symphysiotomy has continued to be a priority. Medical services, including medical cards, are provided for the women whether or not a woman has availed of the Scheme.

In summary, the Government has taken account of the concerns of the women who have undergone this procedure and has responded to help bring closure to the women by providing an independent ex-gratia scheme, a comprehensive independent reports on symphysiotomy which included national consultation with the women, and a broad range of medical services to the women, through the Health Service Executive.