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COMMISSIONER FOR HUMAN RIGHTS
OF THE COUNCIL OF EUROPE

FOLLOWING HIS VISIT TO IRELAND
FROM 22 TO 25 NOVEMBER 2016

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SUMMARY

Commissioner Nils Muižnieks and his team visited Ireland from 22 to 25 November 2016. In the course of the visit the Commissioner held discussions with state authorities and non-governmental organisations. The present report focuses on the following human rights issues:

Human rights of Travellers and Roma

In recent years Ireland has taken a number of measures in favour of Travellers and Roma, including in the context of the first National Traveller/Roma Integration Strategy. However, they continue to suffer from discrimination across all fields of life, including education, employment and accommodation, as well as from racism. The Commissioner recommends that Ireland review its current equality infrastructure to ensure that Travellers and Roma have access to full and effective legal remedies in cases of discrimination.

Noting that Travellers have been affected in a gravely disproportionate manner by budget cuts as a result of austerity, the Commissioner emphasises the urgent need for the Irish authorities to re-invest in this community. Many Traveller families still live in dire conditions, particularly those living on halting, transient or unauthorised sites, mainly due to serious shortcomings in the provision of services by local authorities. This situation has worsened in recent years. Evictions have continued to occur, reportedly without adequate alternative housing being proposed in several cases. The Commissioner stresses the urgency of addressing the insufficient provision of Traveller-specific accommodation, inadequate conditions of many Traveller sites and defective safeguards against forced evictions.

The Commissioner welcomes the recent recognition of Travellers' ethnicity by the Irish Government as a sign of its will to tackle all the difficulties Travellers encounter in their daily lives due to social exclusion and discrimination in a way that fully respects Travellers' dignity and human rights.

Roma, most of whom are from Central and Eastern Europe, experience disadvantage and discrimination in all areas of life as well as racism, exclusion and poverty. Patterns of discrimination and exclusion have a serious impact on access to education for Roma children. As for housing, Roma often suffer from poor living conditions and face a higher risk of homelessness. The Commissioner calls on the Irish authorities to strengthen their efforts to ensure full respect for the human rights of Roma, including their rights to work, housing and education.

Women's rights and gender equality

The Irish authorities have taken a number of positive steps in the field of women's rights and gender equality in recent years, including the preparation of the second National Women's Strategy (which is currently being finalised) and the introduction in 2014 of a Public Sector Duty, requiring public bodies to promote equality in the exercise of their functions, which should facilitate gender mainstreaming. The Commissioner recommends that sufficient resources be devoted to implementing these positive initiatives. The gender quota system introduced into the Irish system of national representation for the first time in 2016 is also a promising development.

However, poverty experienced by women has been significantly exacerbated by austerity measures taken by the state, with a seriously negative impact on the enjoyment of their rights. Public funding for NGOs assisting women who are victims of violence has been significantly reduced. The Irish authorities should ensure sufficient human and financial resources to implement gender equality policies and continue and strengthen their efforts to guarantee much better participation of women in education, employment and political and business life.

Noting the persistence of gender stereotyping in Irish society and continuing disadvantage affecting women in many fields of life, the Commissioner stresses the need to combat harmful gender stereotypes that affect women and lead to discrimination against them, including through long-term measures addressing these stereotypes in education and the media and a review of the relevant constitutional provisions.

The measures taken or to be taken soon (such as the Domestic Violence Bill) to combat violence against women are welcome steps but are still not sufficient and the judiciary's response remains too weak, with few prosecutions and mild sanctions against perpetrators. The lack of emergency housing, including places in shelters for women victims of violence, is particularly acute in Ireland. The Commissioner recommends that the Irish authorities address these issues and other outstanding shortcomings in the fight against gender-based violence. Ireland should also ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence as soon as possible.

Regarding women's access to sexual and reproductive health and rights, the Commissioner welcomes the National Sexual Health Strategy and the National Maternity Strategy. However, in light of information that sexuality education teaching in national schools is patchy and in some cases biased, he urges the authorities to ensure that mandatory, comprehensive and non judgemental sexuality education be taught in all schools in Ireland.

The Commissioner notes that Ireland possesses one of the most restrictive legal frameworks on abortion in Europe, whose negative impact on women's rights has been widely documented in recent years. The Commissioner strongly urges the Irish authorities to make progress towards a legal regime governing the termination of pregnancy, including in the Constitution, that is more respectful of the human rights of women. He recommends decriminalising abortion within reasonable gestational limits. At the very minimum, abortion performed to preserve the physical and mental health of women, or in cases of fatal foetal abnormality, rape or incest should be made lawful.

Human rights of children

In recent years, the Irish authorities have taken a number of positive steps in the field of protecting the human rights of children including by introducing a provision on children's rights in the Constitution in 2015. However, the unique situation in the country whereby the great majority of state-funded primary schools are privately-run by religious patrons raises a number of issues in relation to the prohibition of discrimination on religious grounds and more generally, the need to ensure an inclusive education of all pupils.

As a result of an exemption provided by law, in 96% of primary schools it is possible to use the religion of the child (or lack thereof) as an admission criteria. This has led to difficulties in accessing oversubscribed denominational schools for those children who cannot demonstrate they belong to the predominant religion. In poorly populated places, the problem is that the only stand-alone school available is generally a denominational school, limiting the choice of the children and their parents. Noting that the authorities are exploring avenues to increase the diversity of schools, the Commissioner urges them to rapidly progress towards more inclusive schools including by removing the exemption allowing state-funded schools to use the religion of the child as one of the admission criteria.

In 96% of national primary schools and 58% of national secondary schools, teaching presents an important religious dimension as a result of both religion instruction courses and the fact that religion permeates the whole curriculum and school life. The Commissioner recommends providing low-threshold options for opting out from religious instruction and improving the quality and objectivity of the course on religious education covering different religions and beliefs.

In addition, the Commissioner calls for the removal of the parental rule allowing for the use by state-funded schools of a connection with former students of the school as an admission criteria, notably as it has a discriminatory impact on Traveller children, migrant children and children of parents with disabilities.

Children are among the vulnerable groups whose human rights have been impacted the most by the economic crisis and ensuing measures. Child poverty and homelessness have increased in recent years. The Commissioner encourages the authorities to rapidly offset the negative impact that austerity measures have had on children's rights in the fields of social protection, education and health, particularly in a context of resumed economic growth.

As a result of the excessive waiting period for international protection, the vast majority of asylum seekers have to live for long periods of time in the Direct Provision accommodation system, made up of privately-run accommodation centres under contract with the state. The Commissioner is concerned at the multiple negative effects of this system on the human rights of asylum seeker children, forcing them to live in places with substandard living conditions. The Commissioner recommends that asylum seekers, including children, are not placed there anymore for long periods. He also makes a number of recommendations concerning the legal status of undocumented migrant children and the Habitual Residence Condition, which limits access to social welfare, including child benefits, and impacts negatively on the rights of migrant children and other groups.

Past human rights abuses against women and children in institutions

Several cases of past institutional abuse affecting women and children and raising serious human rights concerns have been brought to light in Ireland in recent years. While the state has addressed these cases, the Commissioner highlights a number of shortcomings in the relevant inquiries, including as regards the lack of a human rights based approach and the adequacy of the redress proposed to the victims. The Commissioner makes specific recommendations with regard to abuses which have occurred in the context of the Magdalene Laundries, the performance of symphysiotomy (during which the mother's pelvis is surgically widened to facilitate childbirth), Mother and Baby Homes, and sexual abuse in national schools.

Given that most of the past institutional abuses concerned amount to serious human rights violations, the Commissioner stresses the need to ensure that all international human rights standards in this field are fully respected at all stages of the restorative processes. The Commissioner urges the Irish authorities to address shortcomings in existing redress measures. He recalls that all victims have a right to be treated with dignity, to truth, full support and effective remedies ensuring reparation, including apologies, compensation, and rehabilitation, as well as to investigations into allegations of abuses that are prompt, independent, thorough and capable of ensuring the accountability of the perpetrators.

INTRODUCTION

1. The Commissioner for Human Rights of the Council of Europe, Mr Nils Muižnieks (the Commissioner), conducted a visit to Ireland from 22 to 25 November 2016.¹ The visit focused on three sets of issues: human rights of Travellers and Roma; women's rights and gender equality; and human rights of children.
2. During his visit, the Commissioner held discussions with the President of Ireland, Mr Michael D. Higgins; the Tánaiste (Deputy Prime Minister) and Minister for Justice and Equality, Ms Frances Fitzgerald; the Minister for Foreign Affairs and Trade, Mr Charles Flanagan; the Minister for Children and Youth Affairs, Ms Katherine Zappone; the Minister for Housing, Planning, Community and Local Government, Mr Simon Coveney; the Minister for Education and Skills, Mr Richard Bruton; the Minister of State for Justice, Mr David Stanton; and the Minister of State for Communities and the National Drugs Strategy, Ms Catherine Byrne. He also met members of Ireland's delegation to the Parliamentary Assembly of the Council of Europe. The Commissioner held discussions with the Chief Commissioner, Ms Emily Logan, and other members of the Irish Human Rights and Equality Commission, and with the Ombudsman for Children, Mr Niall Muldoon.
3. The Commissioner also met with representatives of non-governmental organisations and other members of civil society. He conducted field visits to two Traveller sites in the Dublin area and to a shelter and a counselling centre for women victims of domestic violence in Dublin.
4. The Commissioner wishes to thank sincerely the Irish authorities in Strasbourg and in Dublin for their excellent co-operation and assistance in organising his visit and facilitating its independent and smooth execution. He also extends his thanks to all his interlocutors for their willingness to share with him their knowledge and views.
5. An important part of the background to the issues selected for the Commissioner's visit is Ireland's gradual recovery from a steep economic crisis which hit the country as from 2008. The ensuing austerity measures taken by the government brought about drastic cuts in the state budget devoted to social issues including health, education and housing. As stressed by several human rights stakeholders, these cuts had a disproportionately harsh impact on vulnerable groups, with the already pronounced levels of inequality rising as a result. During his visit, the Commissioner could see that despite the return of economic growth, the most vulnerable had not yet started to benefit from the recovery and were still experiencing long-standing difficulties and the negative impact of budgetary cuts. These issues are reflected across the areas covered in this report: human rights of Travellers and Roma; women's rights and gender equality; and human rights of children. The report furthermore covers the issue of past human rights abuses against women and children in institutions, which have been brought to light in Ireland in recent years. Each section of the report contains the Commissioner's conclusions and recommendations addressed to the Irish authorities. The Commissioner wishes to continue his constructive dialogue with the authorities on these issues. He trusts that this dialogue will be facilitated by the present report.

¹ The Commissioner was accompanied by Mr Giancarlo Cardinale, Deputy to the Director of his Office, and by Ms Claudia Lam and Ms Géraldine Mattioli-Zeltner, Advisers.

1 HUMAN RIGHTS OF TRAVELLERS AND ROMA

1.1 INSTITUTIONAL, LEGAL AND POLICY FRAMEWORK

6. In 2011, Ireland adopted its first National Traveller/Roma Integration Strategy, developed under the EU framework for National Roma Integration Strategies. The first strategy was assessed in 2014 by the European Commission that stressed the need for a better co-ordination of employment, education, housing and health policies and for the measuring of the impact of mainstream measures on Travellers and Roma.² In 2015, the Department of Justice and Equality established a National Traveller and Roma Inclusion Strategy Steering Group consisting of representatives of Traveller and Roma organisations and ministerial representatives. The steering group is entrusted with drafting the second National Traveller and Roma Inclusion Strategy once the three-phased consultation is over. There are also a number of Traveller and Roma consultative bodies in the fields of accommodation³ and education.⁴ However, in the field of health, the committee⁵ that was entrusted with developing a strategy to respond to the 2010 All-Ireland Traveller Health Study has not met since 2012.
7. Traveller and Roma representatives have all pointed to the lack of accurate disaggregated data based on Traveller and Roma ethnicity. In a positive move, an ethnic identifier has been set up in 2014 by the Department of Education and Skills which should enable a better monitoring of the progress in education for Traveller and Roma children.
8. Irish legislation prohibits discrimination against Travellers and Roma in a wide range of fields. The Employment Equality Act 1998 outlaws discrimination in employment on nine distinct grounds including membership of the Traveller community but also race (including colour, nationality, ethnic or national origin). Under the 2000 Equal Status Act, it is illegal to discriminate on the same nine grounds in the following areas: the provision of goods, facilities and services available to the public generally; schools and other educational establishments; the provision of accommodation; and relation to membership of private registered clubs. The equality legislation prohibits discrimination, sexual harassment and harassment.
9. The Commissioner was informed that discrimination claims relating to access to licensed premises were transferred from the Equality Tribunal (now abolished) to the District Court. Prior to the change, many of these discrimination cases concerned Travellers. A 2012 review of equality cases indicated that members of the Traveller community were particularly disadvantaged by this amendment: evidential difficulties requiring legal representation at the outset of the case, as well as the potential risk of an award of costs against the applicant acted as deterrents in bringing forward discrimination cases of this type. The review also demonstrated that the change resulted in unforeseen consequences, with District Courts examining cases involving refusal of entry to facilities other than licensed premises.⁶
10. The Commissioner also notes that the equality infrastructure has been subject to significant changes in recent years, including as a result of the merge of the Equality Authority and the Irish Human Rights Commission into the Irish Human Rights and Equality Commission (IHREC) in 2014. The Workplace Relations Commission has, since 2015, replaced a number of bodies, including the Employment Appeals Tribunal and the Equality Tribunal and is competent for receiving all disputes related to employment and equality. The Commissioner heard a number of criticisms about the operation of the Workplace Relations Commission. The form used for referring claims is reportedly complicated and inaccessible, and there is uncertainty about procedural aspects. Furthermore, civil legal aid is not available for claims dealt with by the Workplace Relations Commission or the Labour Court.

² European Commission, [Report](#), Implementation of the EU framework for National Roma Integration Strategies, 2014.

³ National Traveller Accommodation Consultative Committee

⁴ Advisory Committee on Traveller Education

⁵ National Traveller Health Advisory Committee

⁶ IHREC, [Report](#), Ireland and the International Covenant on Economic, Social and Cultural Rights, May 2015. See also ECRI, [Conclusions](#) on the Implementation of the Recommendations in Respect of Ireland subject to Interim Follow-Up, 1 March 2016.

1.2 HUMAN RIGHTS OF TRAVELLERS

11. The Commissioner has been informed by Traveller representatives and human rights stakeholders that Travellers have been among the groups most impacted not only by the economic crisis but also by the austerity measures taken by the Irish authorities. According to a report by the largest organisation in Ireland working for the rights of Travellers, the period from the onset of the economic and social crisis in 2008 has seen a dramatic disinvestment by the state in the Traveller community.⁷ The Commissioner was struck by the extent of the cuts, which according to the report were as high as 86% in education and 85% in accommodation. The authorities have indicated that in some cases as in housing they have opted for mainstreaming expenditure on the provision of services that would benefit to all including Travellers rather than focusing on Traveller-specific measures.⁸ However, the report concludes that no other section of the community has suffered such a high level of withdrawal of funding and human resources, compounded by the failure of the state to spend even the limited resources that it has made available.

1.2.1 RECOGNITION OF TRAVELLERS' ETHNICITY

12. There are an estimated 40,000 Irish Travellers (i.e. Travellers native to the country) in Ireland.⁹ All of the representatives of Traveller groups the Commissioner met stressed the importance of Travellers' ethnicity being officially recognised, a request they have consistently made for many years. Many international and national human rights stakeholders have also spoken in favour of recognising Travellers' ethnicity, including the United Nations (UN) Committee on the Rights of the Child in 2016.
13. According to a Traveller representative, the main point about the recognition of Travellers' ethnicity is "respect and inclusion of (their) identity that has been denied since the foundation of the Irish State. [...] One particular advantage to ethnicity recognition is the opportunity to enhance community esteem and address internalised oppression. Recognising (Travellers') minority ethnic status would mean that (they) would be automatically included, in future anti-racism and integration policies and initiatives."¹⁰ Several stakeholders agree that recognition bears no costs or legal implications. It is mainly a symbolic step allowing for a positive change in the analysis of and approach to public policies concerning Travellers, and therefore contributing to the enhanced protection of Travellers from discrimination, intolerance and ensuing social exclusion.
14. In 2014, the Joint Parliamentary Committee on Justice, Defence and Equality recommended the recognition by the State of the ethnicity of the Irish Traveller community by way of a statement in the Lower House by the Prime Minister or Minister for Justice.¹¹ The Joint Committee on Justice and Equality of the new legislature had just re-opened the discussion on this issue at the time of Commissioner's visit. In January 2017, it concluded its work by expressing the view that Travellers were, de facto, a separate ethnic group and that this was not a gift to be bestowed upon them, but a fact the state ought to formally acknowledge, preferably by way of a statement by the Prime Minister to the Lower House. It strongly encouraged that this step be taken at the earliest possible date in 2017, after which the Government should conduct a review, in consultation with Traveller representative groups, of any legislative or policy changes required because of the recognition of Traveller ethnicity.¹²
15. The Irish Government formally recognised Travellers as an ethnic group by way of a statement by the Prime Minister to the *Dáil Éireann* (Lower House) on 1 March 2017, in a move that was welcomed as historic by the Irish representatives and human rights stakeholders.¹³

⁷ Pavee Point, "[Travelling with Austerity: Impacts of Cuts on Travellers, Travellers Projects and Services](#)", 2013.

⁸ On state housing policies see also below: 3.1 Adverse impact of austerity measures on children's rights.

⁹ Source: Pavee Point.

¹⁰ Intervention of a Travellers representative from Irish Traveller Movement quoted in the Joint Committee on Justice and Equality's 2017 [Report](#) on the Recognition of Traveller Ethnicity.

¹¹ Joint Parliamentary Committee on Justice, Defence and Equality [Report](#) on the Recognition of Traveller Ethnicity 2014.

¹² Houses of the Oireachtas, Joint Committee on Justice and Equality, [Report](#) on the Recognition of Traveller Ethnicity, January 2017.

¹³ [Statement](#) by An Taoiseach Enda Kenny TD on the recognition of Travellers as an ethnic group.

1.2.2 DISCRIMINATION AND RACISM AGAINST TRAVELLERS

1.2.2.1 EDUCATION¹⁴

16. The educational inequalities experienced by Travellers remain significant, materialising in seriously lower educational outcomes for Traveller children. According to the 2011 census, 69% of Travellers had completed primary education at most and only 1% had completed higher education. A recent study shows that Travellers are more likely to have left school early and that the improvement over time of the level of education for Travellers was not as great as for non-Travellers.¹⁵
17. The Report and Recommendations for a Traveller Education Strategy which was launched by the Department of Education and Skills in 2006 following a wide consultation, including of Traveller representatives, was not turned into a specific strategy document. On the contrary, from 2008 to the end of 2013, there was a reported cut of approximately 86% to Traveller-specific support in education. Posts of resource teachers for Traveller children have been withdrawn at primary level. At post-primary level, teaching hours, posts of visiting teachers for Traveller children and all senior Traveller training centres have also been cut. Traveller specific school transport support was removed as from September 2011. While there has been no monitoring of the impact of these cuts, Traveller representatives have indicated that they could already note a reversal of some progress made previous to 2008, with declining attendance and retention rates of Traveller pupils following the removal of the Visiting Teachers for Travellers Service.¹⁶
18. The Commissioner notes that the Action Plan for Education 2016-2019 contains only one specific action focusing on Traveller children, i.e. increasing Traveller participation in third level education.

1.2.2.2 EMPLOYMENT

19. The 2011 census indicated that 84.3% of Travellers were unemployed in 2011, up from 74.9% five years earlier. A recent study confirms that differences in education are very important in accounting for the employment gap between Travellers and non-Travellers.¹⁷ While the employment rate of non-Travellers is about six times higher than that of Travellers, where the two groups had similar levels of education and other characteristics, the gap was very much reduced (from six times to 1.9 times higher). The Commissioner was informed that the problem of discrimination against Travellers in access to employment remained acute in Ireland.

1.2.2.3 ACCOMMODATION

20. While the majority (73.3%) of Travellers live in a house, some of them (18.2%) live in trailers/mobile homes or caravans. These are parked on halting sites (55.3%), unofficial sites (23.8%) or transient sites (i.e. a temporary halting sites, 6.8%). Despite progress in official policies at national level, Travellers continue to face serious disadvantages in access to accommodation and “a disproportionate number of Travellers are living in substandard accommodation”.¹⁸ During his visit to two halting sites for Travellers in the Dublin area, the Commissioner could see the dire conditions in which the Traveller families were living, mainly due to serious shortcomings in the provision of services by the local authorities.
21. This situation has worsened in recent years. Traveller families reportedly responded to the general housing crisis in Ireland by relocating to sites that were already overcrowded and unsafe and/or sharing housing in overcrowded accommodation places. According to the Annual Count of Traveller Families¹⁹, 534 Traveller families were living in unauthorised sites in 2015, showing an increase from 361 in 2013. In 2015, 862 Traveller families were sharing housing while the number for 2013 was 663.

¹⁴ See also below: Section 3.1.3 Other challenges to an inclusive education: 3.1.3.1 Parental rule; and 3.1.3.2 De facto ethnic segregation in education.

¹⁵ D. Watson, O. Kenny and F. McGinnity, A Social Portrait of Travellers in Ireland, [research series number 56](#), ESRI, 2017.

¹⁶ See Pavee Point, “[One more Traveller child left behind](#)”, 29 August 2016.

¹⁷ D. Watson, O. Kenny and F. McGinnity A Social Portrait of Travellers in Ireland, [research series number 56](#), ESRI, 2017.

¹⁸ See Houses of the Oireachtas, [Report](#) of the Committee on Housing and Homelessness, June 2016.

¹⁹ Department for Housing, Planning, Community and Local Government, [Annual Count of Traveller Families](#).

22. In October 2015 a fire ripped through a caravan site in Carrickmines killing ten people, including children, from the Traveller community. As already noted by the Commissioner, following this tragic event, neighbours prevented the authorities from providing alternative accommodation to the surviving members of the group on a nearby site by blocking roads leading to it.²⁰ Subsequently, a national fire safety audit in Traveller accommodation was conducted.
23. Evictions have continued to occur, reportedly without adequate alternative housing being proposed in several cases, including as a result of the fire safety audits. In particular, the Commissioner was informed that in January 2016, the authorities evicted 23 families from an unauthorised site in Dundalk which had been deemed unsafe following a fire safety audit in October 2015 and that, at the time of his visit in November 2016, some of these families had not yet received an offer of adequate alternative accommodation.²¹
24. International human rights bodies have regularly called on Ireland to do more to secure adequate accommodation for Travellers. In December 2015, the European Committee of Social Rights (ECSR) found that the Irish government was in violation of Article 16 (right of the family to social, legal and economic protection) of the Revised European Charter as concerns Travellers on several grounds: insufficient provision of accommodation for Travellers; inadequate condition of many Traveller sites; inadequate safeguards in the Criminal Justice (Public Order) Act 1994 and the Housing (Miscellaneous) Provision Act 1992 for Travellers threatened with eviction; and evictions being carried out in practice without the necessary safeguards.²² The IHREC stated recently that the approaches to provision of Traveller accommodation and evictions of Travellers that gave rise to the complaint made before the ECSR continue to operate.²³
25. Under the Housing (Traveller Accommodation) Act 1998, local authorities in each area are required to develop Traveller Accommodation Plans. However, the Commissioner was informed that local authorities have failed so far to provide adequate accommodation for Travellers. Out of the 1,000 “transient bays” (temporary camp sites) that were to be developed, only 54 have been created in 20 years and not all reportedly function as proper transient sites. The European Commission against Racism and Intolerance (ECRI) stated in 2013 that national authorities should envisage introducing binding measures on local authorities and raising awareness among the general public of Traveller accommodation rights and promoting respect thereof.
26. According to a report on the impact of austerity on Travellers, 36% of the Traveller accommodation budget allocated from 2008-2012 went unspent.²⁴
27. The Criminal Justice (Public Order) Act 1994 criminalises trespassing on land with an object such as a caravan. Combined with the lack of authorised and decent transient sites referred to above, this provision is said to place Travellers in a disadvantaged position preventing them from living their nomadic life. In 2012, the Advisory Committee of the Framework Convention for the Protection of National Minorities noted with regret that the authorities, while acknowledging concerns regarding the consequences of criminalising trespassing, had no plans to amend or review the law concerning trespass.²⁵ The European Committee for Social Rights noted the lack of prior consultation or notice of those threatened with eviction, and the absence of legal aid resulted in judicial review of eviction not being sufficiently accessible to them.

²⁰ Council of Europe Commissioner for Human Rights, “Travellers - Time to counter deep-rooted hostility”, [Human Rights Comment](#), 4 February 2016.

²¹ For other cases of eviction, see Pavee Point, “[Minister – End Pointless Evictions that Solve Nothing](#)”, 25 August 2016.

²² European Committee of Social Rights, Decision on the merits, ERRC v Ireland, Complaint no. [100/2013](#), 1 December 2015.

²³ IHREC, “[IHREC responds](#) to European Committee on Social Rights finding against Ireland on Traveller accommodation”, 16 May 2016.

²⁴ Pavee Point, “[Travelling with Austerity](#): Impacts of Cuts on Travellers, Travellers Projects and Services”, 2013.

²⁵ Advisory Committee on the Framework Convention for the Protection of National Minorities, Third [Opinion](#) on Ireland adopted on 10 October 2012, par. 142.

1.2.2.4 HEALTH

28. Recent studies show that health outcomes and life expectancy for Travellers are significantly lower than those of the rest of the population.²⁶ Life expectancy for Traveller men is 15.1 years and for Traveller women 11.5 years less than men and women in the general population. The suicide rate among Traveller men is reportedly 6.6 times higher than that in the general population. Research has confirmed the greater rate of poor health among Travellers, with 29% reporting fair, bad or very bad health compared to 8% of non-Travellers in the 35 to 54 age group.²⁷

1.2.2.5 RACISM

29. Travellers have continued to face racist attitudes in recent years, as also shown by the hostile reaction of neighbours in the case of the Carrickmines tragedy referred to above. Several elected local representatives have made anti-Traveller statements in recent times, including in connection with the alleged arson of a house that was supposed to be provided to a Traveller family as social housing in 2013. Six cases of Travellers being refused service for coffee, lunch, dinner and an engagement party booking, as well as asked to leave a pub after being admitted, have been reported for the year 2016. There have also been cases of racist verbal abuse and racist statements in the media.²⁸ The Commissioner notes that the National Consultative Committee on Racism and Interculturalism (NCCRI) ceased to operate and the 2005 National Action Plan was not renewed in 2008.

1.3 HUMAN RIGHTS OF ROMA

30. It is estimated that there are 5,000 Roma currently living in Ireland,²⁹ mainly from Central and Eastern Europe. Like in many other countries, they experience disadvantage and discrimination in all areas of life, as well as racism, exclusion and poverty. In partnership with the Department of Justice and Equality, an NGO recently carried out a National Roma Needs Assessment, the results of which have not been published at the time of drafting this report. However, the Commissioner was informed that the preliminary findings indicate a high level of perception among Roma respondents of discriminatory attitudes in fields such as accommodation, social protection and education.
31. Patterns of discrimination and exclusion have a serious impact on access to education for Roma children. Poverty and poor living conditions are consistently identified as a serious barrier to accessing education, as food and shelter are prioritised over access to education. Given that the Roma populations in Ireland are relatively small, in many schools there may only be one or two Roma children. This is said to leave Roma children particularly vulnerable and isolated when identity based bullying occurs, particularly if the response from the school is inadequate.³⁰
32. In relation to employment, most Roma entitled to work in Ireland are employed in low-skilled and low-paid areas of employment, and it is difficult for Roma in general to gain employment due to factors including racism, discrimination and lack of training and formal education.
33. As for housing, Roma face a higher risk of homelessness. Many Roma are unable to meet the Habitual Residence Condition criteria, a condition which applicants must satisfy in order to qualify for certain social welfare assistance payments (including child benefits).³¹ According to the preliminary findings of the Roma Needs Assessment Study referred to above, 66.3% of respondents said they cannot afford to keep the house warm all the time.
34. The Irish media reportedly portray Roma in a negative light, often associating them with criminal activities. Roma are also reportedly the target of racist comments by high ranking public officials and elected representatives. According to a 2014 study, interviews with Roma women unveil experiences

²⁶ See on Traveller men's health, Pavee Point, [Position Paper on Traveller Men's Health](#), November 2016.

²⁷ D. Watson, O. Kenny and F. McGinnity A Social Portrait of Travellers in Ireland, [research series number 56](#), ESRI, 2017.

²⁸ For more information, see ENAR, [Q11 and Q12 Reports of Racism in Ireland](#), January – June 2016.

²⁹ Source: Pavee Point.

³⁰ See the Country [Report](#) Ireland 2016 on Non-Discrimination, by the European Network of Legal Experts in Gender Equality and Non-Discrimination.

³¹ For more information, see below Section 3.3.3 Habitual Residence Condition.

of overt and covert racism, prejudice and inappropriate treatment by health care practitioners.³² This overall negative perception often leads to verbal abuse and in some cases also physical attacks. Roma women in particular report instances where they are not allowed to enter shops or other services, and are subjected to racist comments by service providers.

35. Two cases illustrate the racism and stereotypes experienced by Roma in Ireland. First, in 2014, anti-Roma protests took place in Waterford, in response to the alleged involvement of some members of the local Roma community in crime. A mob of about 200 people chanting anti-Roma slogans attacked a building inhabited by Roma families, destroying doors and windows. The families, including elderly persons and young children, had to be evacuated from their homes by the police.
36. The second incident took place when the Police (Garda Síochána) removed two young Roma children from their families in Athlone and Tallaght in October 2013, on the basis of claims that their physical appearance did not resemble that of their parents, who were suspected of abducting the children. The children were only returned to their parents after a positive DNA test for one of them and a Garda enquiry for the other. A Special Inquiry was carried out in July 2014 by Emily Logan, at the time Ireland's serving Ombudsman for Children, finding that ethnic profiling was a factor in the removal of one of the children and strong stereotypes in the case of the other.³³ The report listed a set of recommendations both specific to the case and generally aimed at improving the relationship between the Roma community and state agencies. Some of the recommendations have been implemented. For instance, the Minister for Justice and Equality issued official apologies. The Garda Síochána Racial, Intercultural and Diversity Office (GRIDO) developed a joint, nationwide Roma-Garda training initiative for 2014: members of the Roma community train frontline Garda members and the Garda Ethnic Liaison Officer in non-discriminatory policing techniques.

1.4 CONCLUSIONS AND RECOMMENDATIONS

37. The Commissioner is deeply concerned at the persisting social exclusion and discrimination Travellers and Roma are confronted with in fields such as education, accommodation, employment, health and access to goods and services. The Commissioner calls on the Irish authorities to strengthen their efforts to ensure full respect for the human rights of Travellers and Roma, including their rights to work, housing, and education and the right to preserve their cultural identity.
38. The Commissioner recommends that the Irish authorities review their current equality infrastructure, including the operation of the newly created Workplace Relations Commission, to ensure that Travellers and Roma have access to full and effective legal remedies in cases of discrimination.
39. The Commissioner invites the Irish authorities to strengthen the measures targeted at Travellers and Roma and in particular to adopt a National Traveller and Roma Inclusion Strategy that contains clear targets, timeframes for implementation, the allocation of responsibilities, a credible system for monitoring progress and budgetary allocations. He wishes to draw attention to the Committee of Ministers Recommendation (2008)5 on policies for Roma and/or Travellers,³⁴ which contains detailed guidance on the elaboration, adoption and implementation of national strategies for Travellers and Roma.
40. The Commissioner welcomes the recent recognition of Travellers' ethnicity by the Irish Government and takes it as an encouraging sign of the government's will to tackle all the difficulties Travellers encounter in their daily lives due to social exclusion and discrimination in a way that fully respects Travellers' dignity and human rights.
41. Noting that Travellers have been affected in a gravely disproportionate manner by budget cuts as a result of austerity, the Commissioner emphasises the urgent need for the Irish authorities to re-invest in this community.
42. In particular, the Commissioner stresses the urgency of addressing insufficient provision of Traveller-specific accommodation, inadequate conditions of many Traveller sites and defective safeguards

³² Pavee Point, Challenging barriers and misconception: [Roma maternal health in Ireland](#), 2014.

³³ [Report](#) of Ms Emily Logan, Special Inquiries relating to Garda Síochána Order 2013, July 2014.

³⁴ [Recommendation](#) CM/Rec(2008)5 of the Committee of Ministers on policies for Roma and/or Travellers in Europe.

against forced evictions. He urges the Irish authorities to ensure that a sufficient number of sites are available to Travellers in accordance with the decision of the European Committee of Social Rights. The national authorities should also ensure that local authorities spend the budget allocated by the state on accommodation solutions that meet the specific needs of Travellers. The Commissioner wishes to refer the Irish authorities to the Committee of Ministers' Recommendation (2004)¹⁴ on the movement and encampment of Travellers in Europe, which contains useful guidance for member states on these issues.³⁵

43. The Commissioner calls on the Irish authorities to take all measures necessary to ensure that Travellers are never evicted from sites occupied by them, especially in the case of long-standing occupation, without provision of adequate alternatives and a careful assessment of the situation and specific vulnerabilities of the sites' occupants, in accordance with the criteria and legal safeguards set down by the European Committee of Social Rights. As reiterated by the European Court of Human Rights, evictions should be carried out in accordance with the law, pursue a legitimate aim and be necessary in a democratic society, i.e. meet a "pressing social need."³⁶
44. Finally, the Irish authorities should also take measures to combat stereotypes and prejudices against Travellers and Roma in society more actively. It draws the Irish authorities' attention to the recommendations made in 2013 by ECRI in this respect.³⁷

³⁵ [Recommendation](#) Rec(2004)14 of the Committee of Ministers to member states on the movement and encampment of Travellers in Europe, 1 December 2004.

³⁶ ECtHR, *Winterstein and others v. France*, Application no. [27013/07](#), 17 October 2013.

³⁷ European Commission against Racism and Intolerance, [Report](#) on Ireland (fourth monitoring cycle), 19 February 2013.

2 WOMEN'S RIGHTS AND GENDER EQUALITY

2.1 INSTITUTIONAL, LEGAL AND POLICY FRAMEWORK

45. During the visit, the Irish authorities informed the Commissioner that they had started the consultation process with a view to adopting the second National Women's Strategy. It replaces the previous strategy, which was in place from 2007 to 2016 and focused on three themes: women's socio-economic opportunity; wellbeing; and equal engagement as active citizens. There is a dedicated Gender Equality Division in the Department of Justice and Equality. It has a coordinating role in respect of the Strategy, carries out specific commitments in the Programme for Government on gender equality, and monitors national and international commitments. The Division also has responsibility for a positive actions budget targeted at women.
46. The Public Sector Duty was introduced by the Irish Human Rights and Equality Commission Act 2014 requiring all public bodies to eliminate discrimination, promote equality of opportunity and treatment, and protect human rights when exercising their functions. This applies to employees and service users and includes gender equality. Public bodies will have to prepare strategic plans; identify policies and practices that they have in place or that they plan to put in place to address human rights issues; and report in a manner accessible to the public on their developments and achievements in that regard. The Irish Human Rights and Equality Commission (IHREC) is entrusted with supporting and monitoring the implementation of the Public Sector Duty. Where the IHREC considers there are failures to fulfil it, it can invite a public body to carry out an equality and human rights review of the work of the organisation, and prepare and implement an action plan. While still at an early stage, this new requirement should facilitate gender mainstreaming in the activities of the public sector.
47. Many have expressed concern at the fact that poverty experienced by women has been significantly exacerbated by austerity measures enacted by the state with a serious impact on women's access to their rights.³⁸ These measures, taken without any prior gender and human rights impact assessment according to NGOs, have had an adverse and disproportionate impact on certain groups of women including rural women, older women, women belonging to Travellers communities, single mothers, and women with disabilities.
48. Some structures devoted to women's rights have disappeared or have been absorbed in recent years. While the Gender Equality Division replaces the Gender Mainstreaming Unit, it has a significantly smaller budget and a lesser remit.³⁹ The Gender Equality Unit in the Department of Education no longer exists and the Department of Health absorbed the National Women's Health Council.
49. In addition, since the start of the recession, funding to Women's Aid, an NGO running the Women's Aid National Freephone Helpline and other services, has been slashed by 31% while demand for services has increased. Funding for locally based NGOs has reportedly been cut by 41% since 2011. The Commissioner was informed that some NGOs have closed while others have been forced to cut back on staff, services provided or advocacy work.
50. As for the legal framework, the 1937 Constitution contains a general provision that allows the state to give "due regard to the differences of capacity, physical and moral, and of social function" between men and women (Article 40. 1) and a provision (Article 45) on equal access of men and women to adequate means of livelihood. The general legislative framework contains provisions prohibiting discrimination on the grounds of sex and gender in employment and other fields of life.
51. Under Article 41.2 of the Constitution, "the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved" and "the State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home." Given that this provision clearly perpetuates gender stereotypes, the Commissioner notes with interest that in 2013, the government-established Constitutional Convention recommended that this provision be replaced with a gender

³⁸ See also below: Section 3.2 Adverse impact of austerity measures on children's rights.

³⁹ European Parliament, The Policy on Gender Equality – [Update 2015](#), In-depth analysis for the FEMM Committee, 2015.

neutral clause valuing care work in Irish society. In May 2016, the Government proposed to hold a referendum on that provision without indicating any timeline.

52. More generally, the Commissioner is concerned at reports indicating persisting gender stereotypes in Irish society, including media and the education system, portraying women essentially as mothers whose role is to take care of the children and the home. In March 2017, the Committee on the Elimination of Discrimination against Women (CEDAW) criticised the persistence of discriminatory stereotypes concerning the roles and responsibilities of women and men in the family and in society.⁴⁰
53. According to a 2015 European Parliament report, inequalities continue to be a persistent feature of women's position in Irish society, given their disadvantage on the labour market and their serious underrepresentation in the political and economic systems.⁴¹ A new positive development relates to the Electoral (Amendment) (Political Funding) Act 2012, which introduces a gender quota system for the first time into the Irish system of representation. Political parties are now compelled to ensure that a certain minimum percentage of all parliamentary candidates selected (30% for the general elections of 2016, and 40% for subsequent elections) are women. State funding of parties will be cut by 50% if they fail to meet the required quota. The quotas produced an increase in the number of female candidates and an increase in the number of female parliamentarians elected from 15% in 2011 to 22% in the *Dáil Éireann* (the Lower House) in 2016. As of today, women constitute 30% of the *Seanad* (the Upper House).

2.1.1 CONCLUSIONS AND RECOMMENDATIONS

54. The Commissioner welcomes that the authorities envisage adopting a new national women's strategy and recommends that the strategy be duly resourced and contain indicators, benchmarks, timelines and a monitoring framework. The Commissioner recommends ensuring sufficient human and financial resources to implement gender equality policies, including in the context of implementing the Public Sector Duty. He draws attention to the Council of Europe standards in this field and in particular the Recommendation of the Council of Europe Committee of Ministers on gender equality standards and mechanisms.⁴²
55. The Commissioner notes the persistence of gender stereotyping in Irish society at large as well as continuing disadvantage affecting women in employment, education and other fields of life in Ireland. He recalls that to advance women's rights and gender equality, it is necessary to combat harmful gender stereotypes that affect women and lead to discrimination against them in all fields of life. Article 41.2 of the Constitution should be reviewed in order to remove the gender stereotyping it contains. More generally, the Commissioner urges the Irish authorities to reinforce their efforts and take long-term measures to fight against gender-based stereotypes in all sectors and in particular education and the media, in consultation with women's rights and gender equality experts. In this respect, he encourages the Irish authorities to make full use of the materials developed by the Council of Europe experts in the context of the Council of Europe Gender Equality Strategy 2014-2017.⁴³
56. The Commissioner recommends that the Irish authorities continue and strengthen their efforts to guarantee much better participation of women in education, employment and political and business life.⁴⁴

⁴⁰ Committee on the Elimination of Discrimination against Women, [Concluding observations on Ireland](#), CEDAW/C/IRL/CO/6-7, 3 March 2017 (advanced unedited version).

⁴¹ European Parliament, The Policy on Gender Equality – [Update 2015](#), In-depth analysis for the FEMM Committee, 2015.

⁴² Recommendation [CM/Rec\(2007\)17](#) of the Committee of Ministers to member states on gender equality standards and mechanisms, adopted on 21 November 2007.

⁴³ Council of Europe Gender Equality [Strategy](#) 2014-2017.

⁴⁴ See, in particular, Recommendation [CM/Rec\(2007\)13](#) on gender mainstreaming in education and Recommendation [Rec\(2003\)3](#) on balanced participation of women and men in political and public decision making of the Council of Europe Committee of Ministers.

2.2 VIOLENCE AGAINST WOMEN

57. Ireland signed the Council of Europe Convention on Combating and Preventing Violence Against Women and Domestic Violence (Istanbul Convention) on 5 November 2015. The authorities have shared with the Commissioner their intention to ratify the Convention in the first quarter of 2018, once the legislation has been brought in line with it.
58. In 2015 there were 12,041 contacts made with the Women's Aid National Freephone Helpline and the Dublin-based One to One Services. In the same year, 16,375 disclosures of domestic abuse against women and 5,966 disclosures of child abuse were reported. Since 1996, 209 women have died violently in Ireland and 16 children were killed alongside their mothers. 131 women (63%) were killed in their own homes. Where the cases have been resolved, 89 women (54%) were murdered by a current or former male intimate partner. 54 women (33%) were killed by a male relative or acquaintance and 21 women were murdered by a stranger.⁴⁵
59. In January 2016, the government adopted the Second National Strategy on Domestic, Sexual and Gender-based Violence (2016-2021) along with its Action Plan. The National Office for the Prevention of Domestic, Sexual and Gender-based Violence (Cosc) was established within the Department of Justice in 2007. It coordinates the government's response to violence against women. A number of awareness-raising campaigns have been conducted by Cosc including the current "What would you do?" campaign⁴⁶ on domestic violence launched in 2016. In 2002, NGOs established the National Observatory on Violence Against Women to monitor the situation in Ireland.
60. The police force has the power to arrest and prosecute a violent family member under the 1996 Domestic Violence Act. Under the law there are two main kinds of protection order available: a safety order, which prohibits the violent person from further violence or threats of violence and a barring order, which requires the violent person to leave the family home. There is a Domestic Violence and Sexual Assault Investigation Unit (DVSAIU) within the National Police (An Garda Síochána) that provides advice, guidance and assistance to Gardáí investigating child sexual abuse, other sexual crimes and domestic violence. The Unit leads the investigations in more complex cases.
61. NGOs have pointed to low rates of prosecution and even lower rates of sanctions for domestic violence crime, but they also stressed that the lack of robust data impedes real knowledge of rates and trends.⁴⁷ In general, there is a lack of gender disaggregated data concerning statistics on crime, prosecutions and convictions. For instance, breaches of domestic violence orders are not disaggregated by gender.
62. The Commissioner expresses concern at reports indicating that reduced funding to front-line services and increased demand for services over the crisis years has resulted in a high proportion of calls that cannot be answered on helplines and women and children being turned away due to lack of refuge (shelter) spaces. While funding to domestic violence support services was increased in 2016 to enhance the availability of additional emergency accommodation units and access to services, this does not seem to be sufficient to meet the demand.
63. The Commissioner was worried to learn during his visit to a refuge for women victims of violence in the Dublin area that there is a serious shortage of housing solutions, including emergency shelter places, for women victims of violence. Ireland's general housing crisis has a disproportionate impact on women seeking protection from violent partners who are regularly turned away by already full refuges. For instance, victims of domestic violence are spending more time in emergency accommodation due to the rising cost of private rented accommodation and the failure of social housing law and policy to provide an appropriate response for victims of domestic violence.
64. A government-led Domestic Violence Bill was introduced in Parliament on 1 February 2017 to improve the protection available to victims of domestic violence, making it easier for them to obtain interim barring orders, provide for more victim-friendly court proceedings and give judges power to refer

⁴⁵ Behind Closed Doors Women's Aid [Femicide Watch](#) 1996 – 2016.

⁴⁶ <http://whatwouldyoudo.ie/>

⁴⁷ Women's Aid, [Submission to CEDAW](#), January 2017.

perpetrators to programmes. It also aims at fighting forced marriages.⁴⁸ If adopted, the Criminal Justice (Victims of Crime) Bill presented at the end of 2016 would also usefully complement the Domestic Violence Bill by giving rights to victims of crime, notably to be informed by the authorities on the progress of their complaint and providing for an individual assessment of the need for special protection measures against secondary and repeat victimisation, intimidation or retaliation.⁴⁹

65. The Commissioner was informed about a number of outstanding concerns in the field of violence against women, some of which would not be addressed by the Domestic Violence Bill if it is adopted as proposed. In particular, the IHREC identified the following obstacles: lack of up-to-date research on the prevalence of sexual and domestic violence; deficiencies in the legal framework on domestic violence and hate crime;⁵⁰ and administrative barriers hampering victims of domestic violence from seeking emergency and longer-term accommodation. Both the IHREC and NGOs have also raised the need for safety orders to be extended to protect women in a dating relationship and not cohabiting with their partners and for emergency barring orders to be issued when the courts are not sitting. They also stressed the need for updated and comprehensive legislation against stalking.⁵¹ While legal aid is technically available to victims of domestic violence, the requirement to pay financial contributions hampers access to justice.⁵² There is also a general need to better train all staff in contact with women victims of violence.
66. Another issue raised was the protection of migrant women who are victims of domestic violence, which should be reinforced by introducing legislation providing for autonomous residence permits.⁵³ Women experiencing violence are subject to the Habitual Residence Condition for accessing a number of social welfare measures,⁵⁴ a circumstance that in the case of migrant women may impede their access to safety.

2.2.1 CONCLUSIONS AND RECOMMENDATIONS

67. The Commissioner welcomes the signature by Ireland of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence in 2015 as well as the many legislative and policy measures which have been taken by the authorities to combat violence against women and domestic violence. He strongly encourages the authorities to sustain their efforts and urges them to ratify the Convention as soon as possible and to duly implement it.
68. The Commissioner encourages the Irish authorities to follow-up as soon as possible on their announced intention to improve legislation on domestic violence and calls on them to address the outstanding shortcomings, including by improving access for women victims of violence to emergency safety orders, legal aid and, for migrant women, autonomous residence permits.
69. The police, prosecutorial authorities, judges, social workers, educational and medical staff should be better trained on and more sensitive to violence against women and domestic violence. The establishment of specialised units in the police, prosecution services, judiciary, health care and assistance centres would also be an improvement.
70. The Commissioner recommends that the Irish authorities allocate adequate and sustainable funds to ensure a sufficient number and the proper running of shelters for women victims of violence run by specialised NGOs throughout Ireland. Emergency, medium-term and long-term housing solutions must be found for all women trying to escape from a violent intimate relationship.

⁴⁸ See [Domestic Violence Bill 2017](#), 1 February 2017.

⁴⁹ See [Criminal Justice \(Victims of Crime\) Bill 2016](#), 27 December 2016.

⁵⁰ In particular the IHREC stressed the need for clear definitions of gender-based violence and the criminalisation of psychological and emotional harm. See IHREC's [Submission to CEDAW](#), January 2017.

⁵¹ Women's Aid, [Submission to CEDAW](#), January 2017.

⁵² See National Women's Council of Ireland, [Shadow Report](#) under the UN CEDAW, January 2017.

⁵³ *Ibid.*

⁵⁴ For more information, see below: 3.3.3 Habitual Residence Condition.

71. The Irish authorities should draw from the good practices identified in the framework of the Council of Europe Gender Equality Strategy and follow the recommendations made in the General recommendation on women's access to justice issued by the CEDAW in July 2015.⁵⁵

2.3 WOMEN'S SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS

72. The vision of Ireland's National Sexual Health Strategy 2015-2020 (and related Action Plan 2015-2016)⁵⁶ is that "everyone in Ireland experiences positive sexual health and wellbeing". To achieve this vision, the Strategy aims to promote "a mature, non-judgmental attitude to sexual health and to remove stigma associated with sexual health issues in the provision of education, information and services". In addition, the National Maternity Strategy for 2016-2026 highlights a number of issues within maternity services including an over-medicalised model of childbirth.⁵⁷ While welcoming these strategies, the Commissioner wishes to raise a number of concerns at barriers that impede women's access to their sexual and reproductive health and rights in Ireland, thereby jeopardising the full advancement of gender equality.

2.3.1 ACCESS TO SEXUALITY EDUCATION

73. Relationship and Sexuality Education (RSE) has been taught in post-primary schools since 1996. Although there is a common RSE programme for all students, schools can use an approach determined by their ethos, resulting in many schools teaching RSE selectively without covering all aspects of the curriculum. RSE is sometimes taught as a stand-alone subject or in conjunction with other subjects, such as Biology and Religious Education.⁵⁸ As a result, the teaching of RSE in Ireland is reportedly inconsistent and often biased or focused on the negative aspects (disease, risk, crisis pregnancy). It should also be noted that while schools are obliged to provide for RSE courses as part of the post-primary curriculum, parents have the right to opt their child out of instruction which goes against their conscience, and that includes RSE.
74. In 2014, following complaints regarding the approach of some external facilitators to teaching RSE, the Department of Education and Skills advised schools that outside visitors, including those who deliver sex education, should not use scare tactics, sensationalism or moral lectures.⁵⁹

2.3.2 ACCESS TO SAFE AND LEGAL ABORTION

75. Article 40.3.3 of the Constitution guaranteeing the right to life of the unborn, "with due regard to the equal right to life of the mother" was introduced by referendum (Eighth Amendment) in 1983.⁶⁰
76. The *A, B and C v. Ireland* judgment by the Grand Chamber of the European Court of Human Rights concerned the complaint by three women that the restrictions on abortion in Ireland stigmatised and humiliated them, risked damaging their health, and, in the third applicant's case, even her life.⁶¹ In response to this judgment, the Protection of Life during Pregnancy (PLDP) Act was enacted in 2013 and commenced on 1 January 2014. This law criminalises abortion with a maximum sentence of 14 years imprisonment for women, health care providers and anyone assisting them in all cases (including of rape, incest, and fatal foetal abnormality) except where there is a "real and substantial risk" to the life of the pregnant woman (including suicide).
77. The PLDP Act has raised significant criticisms for being very restrictive but also because obtaining an abortion under this law requires a burdensome process of seeking consensus from three medical

⁵⁵ CEDAW, [General recommendation on women's access to justice](#), 23 July 2015.

⁵⁶ National Sexual Health [Strategy](#) 2015-2020.

⁵⁷ Creating a Better Future Together - National Maternity [Strategy](#) 2016-2026.

⁵⁸ National Women's Council of Ireland, [Shadow Report](#) under the UN CEDAW, January 2017.

⁵⁹ See, among others, [Irish Examiner](#), Department warns schools over sex talks, 25 February 2014, [Irish Times](#), "Sex Ed in Ireland: 'It's all disease, risk and crisis pregnancy'", 18 May 2015; IFPA [submission to CEDAW](#), 13 February 2017.

⁶⁰ Article 40.3.3 of the Constitution: "The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right."

⁶¹ ECtHR, *A, B and C v. Ireland*, Application No. [25579/05](#), 16 December 2010.

experts that the pregnancy endangers a woman's life, including by way of suicide, and that the risk can be averted only by performing the abortion. It has proven to be very difficult to draw the line in practice between what constitutes a "real and substantial risk" to the life of the pregnant woman or not, as tragically shown in the case of a woman who had a miscarriage and died in 2012 when she was 17-weeks pregnant with her first child. As for making the difference between a "risk to the life" and a "risk to the health" of the pregnant women, this was called by Amnesty International an "impossible legal fiction" and a disregard of longer-term risks to the life of a pregnant woman.⁶²

78. According to official figures, in 2015, 26 terminations were carried out under the PLDP Act. 14 of these were in connection with a risk to the life of the mother arising from physical illness, nine from a risk to the life of the mother from emergencies arising from physical illness, and three arose from a risk to the life of the mother from suicide. The year before the same number of terminations of pregnancies occurred.
79. Despite an amendment to the Constitution introduced in 1992 allowing freedom of access to information with respect to abortion, the provision of such information remains strictly regulated and "advocacy" and "promotion" of abortion are criminalised by the Abortion Information Act 1995. According to the UN Human Rights Committee, "while the Act prohibits health-care providers from advocating or promoting the termination of pregnancy, it lacks any definition of such conduct. That has a chilling effect on health-care providers, who experience difficulty in distinguishing between 'supporting' a woman who has decided to terminate a pregnancy and 'advocating' or 'promoting' abortion".⁶³
80. Amnesty International reports that state and religious institutions continue to subject women and girls to strict and punitive social controls around their sexuality, producing a strong sense of stigma about abortion in Ireland. Several stakeholders have informed the Commissioner that current practice seems to give precedence to foetal life over the potential risks to the woman's life and health. There have been allegations of a "common practice by hospitals of invoking the Eighth Amendment - with threat of, or actual, court order - to force women to comply with medical decision-making about their care and treatment with which they do not agree".⁶⁴
81. The Commissioner also notes that women's rights defenders working on abortion issues in Ireland have experienced smear campaigns and stigmatisation.⁶⁵
82. Regardless of whether or not prosecutions are actually pursued, the combination of the legal provisions described above and the general stigmatisation of women seeking abortion has a chilling effect both on women who are afraid to consult a doctor and on doctors who do not know what kind of information on abortion they are allowed to give.
83. However, the Commissioner notes that public opinion is increasingly in support of abortion on broader grounds than the current system. According to human rights NGOs, over 70% of Irish people support abortion in cases of foetal anomaly, risk to a woman's health and where pregnancy results from rape/child abuse, and between 36% and 45% are in favour of a woman's right to choose in other circumstances. Those in younger age groups show the highest levels of support.⁶⁶
84. As provided in the Thirteenth Amendment introduced in 1992, traveling abroad to perform an abortion is not criminalised. Every day between 10 and 12 women and girls living in Ireland travel to England for an abortion.⁶⁷ NGOs stress that this travel is a high burden for the woman and has harmful impact on the continuity of care. In addition, they observe that forcing people to travel abroad is discriminatory as not everyone has the freedom or the financial means to do so. This means that poor women, asylum-seekers and undocumented migrants among others cannot access the necessary health care. They either continue unwanted pregnancies to term or resort to clandestine abortion,

⁶² Amnesty International, [She is not a criminal, the impact of Ireland's abortion law](#), June 2015.

⁶³ UN Human Rights Committee, *Mellet v. Ireland*, [Communication No. 2324/2013](#), CCPR/C/116/D/2324/2013 (2016), 3.10.

⁶⁴ Midwife for Choice, [Submission to CEDAW](#), January 2017.

⁶⁵ Report of the UN Special Rapporteur on the situation of human rights defenders, [Addendum: Mission to Ireland](#) (19-23 November 2012), 26 February 2013. See also Amnesty International, *op. cit.*, June 2015, p. 17 and 73.

⁶⁶ See among others Irish Family Planning Association (IFPA), [Abortion In Ireland: Public Opinion](#).

⁶⁷ Amnesty International, *op. cit.*, June 2015.

increasingly by way of abortion pills often without any medical supervision, as this would constitute a criminal offence.⁶⁸

85. UN human rights bodies have consistently criticised Ireland for its restrictive abortion laws. This includes the UN Committee on the Elimination of All Forms of Discrimination Against Women in March 2017,⁶⁹ the UN Committee on the Rights of the Child in 2016, the UN Committee on Economic, Social and Cultural Rights in 2015, the UN Human Rights Committee in 2014, and the UN Committee Against Torture in 2011. At national level, the IHREC has expressed concern that the current legal position in relation to abortion puts in place barriers which impede a woman's right to bodily autonomy and has a disproportionate negative impact on certain groups of women.⁷⁰
86. In the individual complaint *Mellet v. Ireland*, the UN Human Rights Committee concluded on 9 June 2016 that a woman who was forced to choose between carrying her foetus to term, knowing it would not survive, or seeking an abortion abroad was subjected to cruel, inhuman or degrading treatment, a violation of her right to privacy, and discrimination, as a result of Ireland's legal prohibition of abortion. The Committee stated that Ireland should provide the claimant with an effective remedy, including adequate compensation and psychological treatment she may need. In addition, to prevent similar violations from occurring, Ireland should also "amend its law on voluntary termination of pregnancy, including if necessary its Constitution, to ensure compliance with the [International] Covenant [on Civil and Political Rights], including effective, timely and accessible procedures for pregnancy termination in Ireland, and take measures to ensure that health-care providers are in a position to supply full information on safe abortion services without fearing being subjected to criminal sanctions".⁷¹
87. There have been failed attempts in 2015 and 2016 in Parliament to change the legislation allowing for termination of pregnancy in the case of fatal foetal abnormality. According to most legal experts, the repeal of the Eighth Amendment is a prerequisite to any comprehensive reform of the legal regime governing the termination of pregnancy. Under Irish constitutional law, the only avenue to amend this provision is by referendum. The overwhelming majority of women's rights and other NGOs ask for a repeal of the Eighth Amendment.⁷² The government established a Citizen's Assembly, chaired by a Justice of the Supreme Court and comprising 99 citizens randomly chosen from the population to discuss, among other matters, the Eighth Amendment. The assembly will prepare a report to be submitted in April 2017 to the government. The report will then be submitted to a subcommittee in Parliament, which would then be passed on to the Parliament for discussion.

2.3.1 CONCLUSIONS AND RECOMMENDATIONS

88. The Commissioner welcomes the National Sexual Health Strategy 2015-2020 and the National Maternity Strategy 2016-2026. However, he expresses his concern at the current legislation and practice in Ireland which seriously hamper women's access to sexual and reproductive health and rights and jeopardises progress achieved so far in the field of gender equality.
89. The Commissioner stresses that women, including adolescent girls, are entitled to receive sexual and reproductive health information and services that are respectful of their human rights, dignity and autonomy.⁷³ The Commissioner considers that sexuality education in schools is crucial for the protection of the sexual and reproductive rights of all and, in particular, of women. The Commissioner welcomes that the National Sexual Health Strategy aims at ensuring that "everyone living in Ireland will receive comprehensive and age-appropriate sexual-health education and/or information and will have access to appropriate prevention and promotion services". The Commissioner urges the Irish

⁶⁸ See, among others, Center for Reproductive Rights, [Submission to CEDAW](#), 23 January 2017.

⁶⁹ CEDAW, [Concluding observations on Ireland](#), CEDAW/C/IRL/CO/6-7, 3 March 2017 (advanced unedited version), paragraphs 10, 11, 42 and 43.

⁷⁰ IHREC, [Submission to CEDAW](#), January 2017.

⁷¹ UN Human Rights Committee, *Mellet v. Ireland*, [Communication No. 2324/2013](#), CCPR/C/116/D/2324/2013(2016), par. 9.

⁷² For instance, The [Coalition to Repeal the Eighth Amendment](#) is an alliance of over 80 organisations including human rights, feminist and pro-choice organisations, trade unions, health organisations and others.

⁷³ See also for this section Council of Europe Commissioner for Human Rights, [Protect women's sexual and reproductive health and rights](#), [Human Rights Comment](#), 21 July 2017.

authorities to ensure that mandatory, comprehensive sexuality education that is age-appropriate, evidence-based, scientifically accurate and non-judgmental be taught in all schools in Ireland. This would require in particular a review of the current system, which allows schools to adapt the content of sexuality education to their ethos in order to avoid patchy and biased teaching, including by external facilitators.

90. As concerns access to safe and legal abortion, the Commissioner notes that Ireland possesses one of the most restrictive legal frameworks on abortion in Europe, whose negative impact on women's rights has been widely documented in recent years. The Commissioner recalls that the lawfulness of abortion does not have an effect on a woman's need for an abortion, but only on her access to a safe abortion. Abortion bans also do not result in fewer abortions but mainly lead to clandestine abortions, which are more traumatic and increase maternal mortality. Where they result in abortions performed abroad, these bans also entail costs, delay the timing of an abortion and deepen social inequalities.
91. The Commissioner recalls that relevant international bodies, and in particular the UN Human Rights Committee and the CEDAW, have on several occasions highlighted concerns relating to the criminalisation of abortion in Ireland as well as in other countries, notably owing to the severe mental suffering that the denial of abortion services causes to the pregnant woman in cases of rape, incest, serious risks to the health of the mother, or fatal foetal abnormality, in breach of their right to be free from torture, and inhuman and degrading treatment.
92. The Commissioner notes that the criminalisation of abortion has a chilling effect on doctors who must decide whether the restrictive requirements of legal abortion are met in individual cases. He recalls that the European Court of Human Rights has considered that provisions regulating the availability of lawful abortion should be formulated in such a way as to alleviate this chilling effect.
93. The Commissioner stresses that the Eighth Amendment of the Irish Constitution, protecting the right to life of the unborn on an equal basis with the right to life of the pregnant woman, departs from the position consistently held by human rights bodies that the right to life, as enshrined in relevant international treaties, does not apply to prenatal life. Given the crucial role the Amendment plays in preventing a comprehensive reform of the legal regime governing the termination of pregnancy in Ireland, he strongly hopes that it will be removed soon.
94. The Commissioner strongly urges the Irish authorities to make progress towards a legislative regime that is more respectful of the human rights of women, including their right to be free from ill-treatment, the right to the highest attainable standard of physical and mental health, and the right to private life. He stresses that the best way to ensure the attainment of this objective is to remove all legal provisions impeding access to safe and legal abortion, including by decriminalising abortion within reasonable gestational limits. At the very minimum however, the Irish authorities should ensure that abortions performed to preserve the physical and mental health of women, or in cases of fatal foetal abnormality, rape or incest are made lawful.
95. Pending this important review, the Commissioner recommends that the Irish authorities take all necessary measures to ensure that access to safe and legal abortion as provided by law is fully implemented in practice. All existing barriers should be removed, including by ensuring that the practice of opposing conscientious objection by medical practitioners does not hamper access to safe and legal abortion. The Irish authorities should therefore ensure in such cases that throughout the country women seeking an abortion be referred in a timely and efficient manner to another medical practitioner and receive appropriate medical services.

3 HUMAN RIGHTS OF CHILDREN

96. In recent years, the Irish authorities have taken a number of positive steps in the field of protecting the human rights of children. In particular, a provision on children's rights was inserted in the Constitution in 2015. In another positive move, the common law defence of 'reasonable and moderate chastisement' for parents who physically discipline their children was abolished the same year. However, in this section, the Commissioner focuses on some outstanding problems affecting the human rights of children in the context of inclusive education, increasing child poverty and migration and asylum.

3.1 INCLUSIVE EDUCATION

3.1.1 THE IRISH EDUCATION SYSTEM

97. Article 42 of the Irish Constitution provides for free primary education and parental choice of school. The Irish State does not manage the primary and post-primary schools itself; each school is run by a private patron and the state has traditionally provided financial support to these schools, called "national schools". Such schools include denominational (or otherwise said, religious) schools, non-denominational schools, multi-denominational schools, and schools that teach through the Irish language (*Gaelscoileanna*).⁷⁴
98. A distinctive aspect of the Irish education system lies in the fact that the vast majority (96%) of primary schools are under the patronage of religious denominations. Approximately 90% of national schools are under the patronage of the Catholic Church, while 5.5% are under the patronage of the Church of Ireland. At the secondary level, patronage is more diverse although denominational schools still represent 58% of the total secondary school population. There are also nine "model schools" (facilitating teachers' training) under the patronage of the Department of Education and Skills, which have evolved to provide primary education within a Christian ethos, although they were originally established as non-denominational schools⁷⁵ and 11 Community National Schools under the patronage of the local Education and Training Board (ETB) that are multi-denominational.
99. For the moment, the main existing alternative to denominational and multi-denominational schools in Ireland are the schools run by "Educate Together". This NGO without religious affiliation manages 81 non-denominational primary schools (out of a total of 3,200) and 9 secondary schools, serving altogether over 22,000 pupils. In 2016, 9 new "Educate Together" schools were opened. These schools are oversubscribed in cities like Dublin where there is a high demand for non-denominational schools. The Commissioner was informed that "Educate Together" has to privately raise 100% of the funds necessary to open a new secondary school and 85% of those necessary to open a primary school.
100. This unique situation in Europe whereby the great majority of state-funded schools are privately-run religious schools raises a number of issues in relation to the observance of prohibition of discrimination on religious grounds and more generally, the need to ensure an inclusive education of all pupils irrespective of religion or belief.

3.1.2 RELIGIOUS DISCRIMINATION IN SCHOOLS

101. Pursuant to the Irish Constitution, state funding for schools shall not discriminate between schools of different religious denominations and it should not impact negatively on the right of any child to attend a publicly-funded school without attending religious instruction. In practice, the current Irish education system is problematic with regard to non-discrimination on ground of religion and belief in two main aspects: access to school and the school curricula.

⁷⁴ In addition to these national schools, there is also a very limited number of fully private schools which do not receive funding from the state and are not discussed in this report. See for more information on the Irish education system the [webpage](#) of the Department of Education and Skills.

⁷⁵ Source: [Department of Education and Skills](#).

3.1.2.1 RELIGIOUS DISCRIMINATION IN ACCESS TO SCHOOL

102. In the Irish education system, each school determines its admission criteria. While there is a general principle of non-discrimination on the grounds of religion or belief in the Irish Constitution, statutory legislation provides for an exemption clause under which denominational schools may give preference to students of a particular religious denomination or refuse students not of that religious denomination (Section 7(3)(c) of the Equal Status Act 2000).⁷⁶ This means in practice that for 96% of the primary schools it is possible to use the religion of the child (or lack thereof) as an admission criteria.
103. The main concern raised by this admission system relates to difficulties in accessing oversubscribed schools in some areas for those children who are not of the religion of that school. In Ireland, 20% of primary schools are oversubscribed due to their presence in highly populated areas. In practice and given the large majority of Catholic schools in Ireland, this means that in some places, mainly in urban areas and particularly in Dublin, it is difficult for a non Catholic child to find a school that would enroll him/her due to the system of preferential admission of Catholic students. This phenomenon has been referred to as the “baptism barrier”, or the “Catholic-first” admission policy.
104. During his visit, the Commissioner was informed that many schools run by Catholic patrons (but also those run by other denominational patrons) clearly state in their admission rules that religion will be a primary criterion in deciding admission. Often, local Catholic children will enjoy priority on the list of preference, followed (immediately or not) by non-local Catholic children. In addition, it is not unusual for a school to require a baptismal certificate for admission. Non-baptised children are not refused as such in most denominational schools (in which case parents could challenge the refusal)⁷⁷, they are just placed at the bottom of long waiting lists with no real prospect of being admitted to the school.
105. There have been numerous reports of parents who have baptised their children only to secure school placement but also parents who encountered huge difficulties in enrolling their unbaptised children in local schools and were forced to search for a school elsewhere. For instance, in one case widely reported in the media a child was rejected by nine schools.⁷⁸ The admission policy described above is also problematic in terms of indirect discrimination on grounds of ethnic origin. Many immigrant children do not find a place in local oversubscribed denominational schools run by the predominant religious patron, as they generally do not belong to that religion.⁷⁹ As a result, they may have to concentrate in non-denominational schools that do not limit their access, a circumstance that can foster ethnic segregation.
106. Another issue of concern is the lack of choice of school in poorly populated areas obliging children to attend a denominational school only because it is the only one available in a reasonable vicinity, a problem that occurs more in rural areas. There are approximately 1,700 primary stand-alone schools (that means, which are at least 3 km from the nearest neighbour schools). In these cases, it would be complicated to increase diversity by expanding the choice of schools. Increasing the number of schools in areas with a small number of residents risks undermining the viability of existing schools, many of which are small. As a result, the existing local school is the only realistic option for most people in many parts of the country.⁸⁰
107. A further shortcoming of this system, highlighted by the IHREC,⁸¹ is that children with a specific disability could be required to attend a school not of their belief in order to access the support they

⁷⁶ Under Section 7(3)(c) of the Equal Status Act 2000, an educational establishment does not discriminate “where the establishment is a school providing primary or post-primary education to students and the objective of the school is to provide education in an environment which promotes certain religious values, it admits persons of a particular religious denomination in preference to others or it refuses to admit as a student a person who is not of that denomination and, in the case of a refusal, it is proved that the refusal is essential to maintain the ethos of the school”.

⁷⁷ In case of refusal, expulsion or suspension of a student, an appeal can be made to the Secretary General of the Department of Education and Skills. However, this does not apply to preferential admission in oversubscribed schools.

⁷⁸ Sheena Madden: [17 applications later... Reuben's finally got a school place](#), 13 January 2017, RTE.

⁷⁹ See for instance the case of an Hindu child from India: Kitty Holland, [Hindu family fails to get place for child in local school](#), 13 October 2015, Irish Times.

⁸⁰ Forum on Patronage and Pluralism in the Primary Sector, [Progress to date and Future Directions](#), July 2014.

⁸¹ IHREC, [Observations](#) on the Education (Admission to School) Bill 2016, November 2016, paragraph 19.

need as it would only be available in a denominational school that has been assigned additional resources and expertise for a particular disability. Under current legislation, a school could even refuse a child with that disability if it could prove that such a refusal was essential to maintain the school's ethos. This could lead to multiple discrimination on the grounds of religion and disability.

108. These practices have so far never been explicitly addressed by the courts, one of the reasons being that, as mentioned above, the law itself allows for an exception to the principle of non-discrimination. Some parents also prefer to avoid bringing a case to the courts as they prefer to avoid the negative impact of a court procedure on the schooling of their child. However, as concerns the general public, the Commissioner notes that in an opinion poll conducted in October 2015 for the NGO Equate, 84% of the persons surveyed agreed that the Irish education system needed to be reformed so that no child was excluded because of their religion (or lack thereof).⁸²
109. The current school admission system has been criticised by numerous human rights stakeholders for a certain time now.⁸³ At national level, in November 2016, the IHREC considered that the paramount concern in balancing the rights of individual children and the rights of institutions such as religious patrons must be the rights of children to an education under reasonable conditions and without discrimination. It recommended that the Equal Status Act be amended to give effect to the principle that no child should be given preferential access to a publicly funded school on the basis of their religion.⁸⁴ The Ombudsman for Children has also criticised the discriminatory impact of the existing legislation.⁸⁵
110. At international level, in recent years, a number of United Nations (UN) treaty bodies have called upon Ireland to take measures addressing religious discrimination in relation to school admission. One of the most recent calls comes from the UN Committee on the Rights of the Child, which expressed concern in 2016 about schools continuing to practice discriminatory admissions policies on the basis of the child's religion.⁸⁶
111. During the visit, the Irish authorities informed the Commissioner that they are exploring avenues to increase diversity in national schools. A first step in that direction was the establishment in 2011 of the Forum on Patronage and Pluralism in the Primary Sector.⁸⁷ According to the Forum and many other experts, there are two main avenues possible that are complementary.
112. One solution is to increase the diversity of schools either by divestment (i.e. the transfer of a school from a denominational patron to another patron) or the opening of new schools. The state has expressed its will to move in this direction by broadening the choice of schools available each year in line with the target of 400 multi-/non-denominational schools by 2030. It is generally agreed that the process of increasing diversity of school patronage through divestment and the opening of new schools has been rather slow. For instance, in 2015 only nine schools were handed over from the Catholic Church to non-denominational patrons.
113. The other measure is a change of the rules on school admissions, a step that Parliament has been considering for years, without a successful outcome so far. An Education (Admission to Schools) Bill 2016 was approved by the government in July 2016 and was still in Parliament at the time of preparing this report.⁸⁸ However, while it provides for long-awaited improvements on a number of issues, the

⁸² See <http://www.equateireland.ie/opinion-poll>

⁸³ Already in its 1996 Report, the Constitution Review Group concluded that "if a school under the control of a religious denomination accepts State funding, it must be prepared to accept that this aid is not given unconditionally. Requirements that the school must be prepared in principle to accept pupils from denominations other than its own and to have separate secular and religious instruction are not unreasonable or unfair" (See under Article 40-44).

⁸⁴ IHREC, Observations on the Education (Admission to School) Bill 2016, November 2016, paragraphs 46 and 49.

⁸⁵ See Ombudsman for Children's Office (OCO), [Education in Focus Report](#), November 2016; and "[School admission Bill will allow discrimination, warns Ombudsman](#)", Irish Times, 23 November 2016.

⁸⁶ UN Committee on the Rights of the Child, Concluding Observations on [Ireland](#), 4 February 2016, CRC/C/IRL/CO/3-4 paragraphs 63-64.

⁸⁷ Forum on Patronage and Pluralism in the Primary Sector, [Report](#) of the Forum's Advisory Group, April 2012. See also Forum on Patronage and Pluralism in the Primary Sector; Progress to date and future direction, July 2014.

⁸⁸ There was an Education (Admission to Schools) Bill 2015 that was published on 8 April 2015 but the bill was not passed before the *Dáil Éireann* (Lower House) was dissolved in February 2016.

Bill has been considered by the IHREC, the Ombudsman for Children and others as failing to tackle the problem of discrimination on grounds of religion.⁸⁹ The Commissioner notes that two alternative Private Bills were also proposed recently, one of which, the Equal Participation in School Bill 2016, removes the exemption provided for by Section 7(3)(c) of the Equal Status Act 2000. At the time of preparing this report, that Bill had not been discussed in Parliament.⁹⁰

114. The Commissioner notes that on 16 January 2017 the government announced plans to ensure that children from non-religious backgrounds are not discriminated against in school admission policies. However, at that stage it had not made a decision as to what would be the best solution. The Minister of Education explained that four possible approaches would be set out for dealing with the issue at primary level. They include: banning religious schools from giving preference to children of their own religion from outside the catchment area, ahead of non-religious children who live inside the catchment; allowing religious schools to give preference to a child of their own religion only where it is the child's nearest school of that faith; allowing preference to be given to a child of the school's religion for a set proportion of places, with remaining places allocated using other admissions criteria like distance from school; introducing an outright ban on using religion as a factor in admissions. Within such an approach, religious schools could be allowed to require parents or students to indicate support or respect for the school ethos. The Minister announced a 10-12 week public consultation on these proposals.⁹¹

3.1.2.2 RELIGIOUS DISCRIMINATION IN SCHOOL CURRICULA

115. The situation of the Irish educational system whereby 96% of the state-funded schools are denominational as described above inevitably results in children attending schools that are not necessarily promoting their or their parents' religious beliefs or lack thereof. In this context, shortcomings in the system of exemption from religious instruction courses coupled with a strong focus on the religious ethos in denominational schools raise a number of issues with respect to the enjoyment of the right to freedom of consciences and religion without discrimination.
116. The Rules for National Schools adopted in 1965 allow patrons to draw up the school's ethos and admission policy. Section 15(2)(b) of the Education Act 1998 obliges schools to uphold the religious ethos of the patron. At the same time, Article 44.2.4 of the Constitution allows parents to opt a child out of religious instruction classes at state-funded schools and Section 30 of the Education Act 1998 provides that a student shall not be required to attend instruction in any subject which is contrary to the conscience of his or her parent.
117. The Commissioner has been informed about the important religious dimension of teaching in many primary schools in practice, as a result of both the religious instruction courses and the fact that religion permeates the whole curriculum and school environment.
118. As regards the former aspect, religious instruction is an integral part of the 1999 primary school national curriculum as 2.5 hours per week are to be devoted to it. At the same time, the patron of each school is free to determine the content of the religion instruction course as the national curriculum does not impose any restriction on content and the Department of Education and Skills does not have to approve the material used to teach religious instruction.
119. Concerning opting-out of religious instruction, the Commissioner has received many concurring reports of difficulties in exercising this right in practice despite the legal framework in force. Opt-out measures tend to be ad hoc and applied across schools in an inconsistent way. Schools rarely provide alternative subject-matter teaching or even alternative supervision for the child. In some cases documented by the Equality Authority, pupils had to stay in the corridor or leave the school premises

⁸⁹ See, among others, IHREC, [Observations](#) on the Education (Admission to School) Bill 2016, November 2016 and Ombudsman for Children's Office (OCO), [Education In Focus Report](#), November 2016; and "[School admission Bill will allow discrimination, warns Ombudsman](#)", Irish Times, 23 November 2016.

⁹⁰ [Equal Participation in School Bill 2016](#). The other Private Bill ([The Equal Status \(Admission to School\) 2016](#)) which will have to be addressed within 12 months of its initiation (that is by July 2017), aims at restricting, rather than removing, the exemption provided in the Equal Status Act.

⁹¹ Department of Education and Skills, Minister Bruton sets out plans to reform the school admission system in relation to religion, [press release](#) - 16 January, 2017.

during religious instruction class. In practice, in the vast majority of cases, the pupils who opt out remain in the classroom during religious instruction class and do other school work or attend to other occupations.⁹² Given the stigma often associated with opting out, many parents reportedly decide not to avail themselves of this possibility to protect their children from social exclusion.

120. The lack of reasonable opting-out possibilities has been widely criticised by international and national human rights stakeholders. In 2016, the UN Committee on the Right of the Child was concerned that children were not ensured the right to effectively opt out of religious classes and access appropriate alternatives to such classes.⁹³ The IHREC recommended setting down in legislation some minimum standards in relation to the nature of exemptions for students who do not want to attend religious instruction or that the Minister of Education and Skills may regulate how schools shall provide for such students.
121. Another problem relates to the fact that besides the religious instruction course, there is no obligation for a primary school to provide information in relation to religions and beliefs in an objective, critical and pluralistic manner that avoids indoctrination. In November 2015 the National Council for Curriculum and Assessment launched a consultation⁹⁴ on the development of a curriculum in Education about Religions and Beliefs (ERB) and Ethics, that would not replace, but be in addition to religious instruction.
122. In secondary schools, the Religious Education (RE) course is separate from the religious instruction course and based on a curriculum established at the national level taught as an optional examination subject. There are reports, however, that most secondary schools teach that subject in a way that does not reflect a neutral and objective approach. Most schools are also reported to merge the two courses together, teaching the optional RE course along with the school's formal religious instruction course and present the combined course as a compulsory core subject.⁹⁵
123. In many schools, religion is not just taught at specified times: it permeates the whole curriculum and ethos of the school, often resulting in religious practices being integrated into all aspects of the school day. For a long time, the Rules for National Schools 1965 stressed that religious instruction was "by far the most important" part of a school curriculum and that "a religious spirit should inform and vivify the whole work of the school".⁹⁶ This rule was finally removed in January 2016.
124. However, religion still permeates school life in the vast majority of national schools. For instance, this could take the form of religious signs in the schools or on compulsory uniforms, prayers before class or children attending mass within school hours on a regular basis. In the framework of a consultation of young people conducted for the Forum on Patronage and Pluralism, 80% of the primary pupils consulted indicated that their schools had prayer during the school day, 83% that their principal/teacher spoke about God during class and 60% that apart from the time spent to prepare for Communion they went to Mass with their class during school time. As noted by the Forum, denominational religious education and sacramental preparation are long-established features of the Irish primary school system.⁹⁷

⁹² Children's Rights Alliance, [Report Card 2016](#), p. 43.

⁹³ UN Committee on the Rights of the Child, Concluding observations on [Ireland](#), 4 Feb. 2016, CRC/C/IRL/CO/3-4 para 35-36.

⁹⁴ NCCA, Education about religion and Beliefs (ERB) and Ethics in the Primary Schools: [Consultation Paper](#), November 2015.

⁹⁵ See Atheist Ireland, [How the State Religious Education breaches human and constitutional rights](#), July 2016.

⁹⁶ Rule 68 of the Rules for National Schools 1965 used to read before it was repealed in 2016: "Of all parts of a school curriculum, Religious Instruction is by far the most important, as its subject matter, God's honour and service, includes the proper use of all man's faculties, and affords the most powerful inducements to their proper use. Religious Instruction is, therefore, a fundamental part of the school course, and a religious spirit should inform and vivify the whole work of the school."

⁹⁷ Forum on Patronage and Pluralism in the Primary Sector, [Report](#) of the Forum's Advisory Group, April 2012, p. 87. See also Forum on Patronage and Pluralism in the Primary Sector, [Progress](#) to date and Future Directions, July 2014.

3.1.3 OTHER CHALLENGES TO AN INCLUSIVE EDUCATION

3.1.3.1 PARENTAL RULE

125. Under Irish law, a school can give priority in its admission policies to applicants who are the children of past pupils of that school, in what is called the “parental rule”. In a context of limited school places in certain areas, this has a negative effect on access to school for some children, including the children of Travellers, immigrants and people with disabilities, particularly at secondary school level as early school leaving has affected the parents of some of these children in a disproportionate way.⁹⁸ For instance, 55% of the general Traveller population have left school by the age of 15 (i.e. on average, 4.7 years earlier than the general population) and 17.7% have no formal education (compared with 1.4% in the general population).⁹⁹
126. In the *Stokes* case, the Equality Tribunal found in 2010 that the admission policy of a school was indirectly discriminatory against a child of Traveller parents in so far as it accorded preference to boys whose fathers had been pupils of the school. However, on 24 February 2015, the Supreme Court did not uphold this finding and concluded in last instance that there was insufficient evidence to enable a proper assessment to be carried out as to whether there was particular disadvantage for a child of Traveller parents.¹⁰⁰ It did not rule out, however, that such a disadvantage could be found in the case of an application properly and sustainably made and after proper analysis. Nevertheless, the Commissioner notes that several human rights stakeholders have established that the parental rule has a discriminatory impact on certain groups of the population, in particular those belonging to the Traveller community, migrant children (principally the newcomers) and children of parents with disabilities.¹⁰¹
127. The Commissioner regrets that contrary to a previous version of the Bill (which provided for a general prohibition of the use of the parental rule as admission criterion albeit with a possibility to derogate), the Education (Admission to School) Bill 2016 referred to above does not contain a similar provision.

3.1.3.2 DE FACTO ETHNIC SEGREGATION IN EDUCATION

128. The Commissioner notes that there is a problem of a high concentration of students with a minority ethnic background, including Travellers, in the DEIS establishments. The DEIS (Delivering Equality of Opportunity in Schools) programme was designed to give tailored support to schools with the most concentrated levels of educational disadvantage. Half of Traveller children are in DEIS schools.¹⁰² As for migrant children, figures also indicate patterns of de facto segregation. In 2012, in 18% of schools established under the DEIS programme, more than 20% of the pupils enrolled were migrant children, compared with only 7% in non-DEIS schools.¹⁰³ It should be noted that 94% of DEIS schools accepted all children who applied to be enrolled while only 79% of non-DEIS schools admitted all applicants. More generally, for the school year 2013-2014, 80% of migrant children attended only 25% of schools.
129. In addition, the Commissioner notes that, while there has been a significant improvement in the number of students in DEIS schools who have remained in school until their Leaving Certificate examination (from 68.2% ten years ago to 82.7% for those students who began second-level school in 2009)¹⁰⁴, the drop-out rate remains higher in those schools.

⁹⁸ See IHREC, 16 November 2016, [‘Segregation Out’ of Traveller, immigrant children & children of people with disabilities from schools through preferential access for others should be prohibited](#).

⁹⁹ Figures from the 2011 Census.

¹⁰⁰ Supreme Court, 24 February 2015, *Stokes -v- Christian Brothers High School Clonmel & anor*, [2015] IESC 13, para. 13.2.

¹⁰¹ See IHREC, 16 November 2016, [‘Segregation Out’ of Traveller, immigrant children & children of people with disabilities from schools through preferential access for others should be prohibited](#). The Ombudsman for Children has stated that it raised issues in terms of indirect discrimination and has asked for the removal of the possibility to use it as a criteria for admission in school. Ombudsman for Children’s Office, [Advice](#) on Education (School Admission) Bill 2013, 2013, (3.12-3.13).

¹⁰² Children’s Rights Alliance, [Report Card 2016](#), p. 110.

¹⁰³ Figures concerning migrants are quoted in IHREC, [Observations](#) on the Education (Admission to School) Bill 2015, November 2015, paragraph 34.

¹⁰⁴ Department of Education and Skills Strategy Statement, Ministry of Education and Skills, [Action Plan for Education 2016-2019](#), 15 September 2016, p. 26.

3.1.4 CONCLUSIONS AND RECOMMENDATIONS

130. The Commissioner welcomes that in its Action Plan for Education 2016-2019, the Government has acknowledged the importance of moving towards inclusive education, requiring changes to the education system to make it more adapted to an increasingly diverse Irish society and children of all beliefs. He recalls that inclusive education is a principle that places the responsibility on states to educate all children without any discrimination within the mainstream system. The European Court of Human Rights has stated that, in fulfilling the functions assumed by it in regard to education and teaching, the state must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner, enabling pupils to develop a critical mind with regard to religion in a calm atmosphere which is free of any misplaced proselytism. It is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions.¹⁰⁵
131. Noting the specific features of the Irish education system, whereby the vast majority of primary schools and the majority of secondary schools are owned and run by private religious bodies, the Commissioner stresses that the UN Special Rapporteur on Freedom of Religion and Belief addressed the case of the private denominational schools having a de facto monopoly in a particular locality or region, with the result that students and parents can hardly avoid school education based on a denomination different from their own religious or belief conviction. As stated by the UN Special Rapporteur on Freedom of Religion and Belief, “[i]n such situations it falls upon the State, as the guarantor of human rights, to ensure that freedom of religion or belief is effectively respected, including the right of students not to be exposed to religious instruction against their will as well the right of parents to ensure a religious and moral education of their children in conformity with their own convictions.”¹⁰⁶ The Commissioner also draws attention to the Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools.¹⁰⁷
132. As concerns access to school, the Commissioner urges the Irish authorities to rapidly take all necessary measures to significantly increase the diversity of schools notably through the divestment to non-denominational schools or the opening of such schools. He also recommends that the exemption provided for by Section 7(3)(c) of the Equal Status Act 2000, allowing state-funded schools to use the religion of the child as one of the admission criteria, be removed.
133. The Commissioner calls on the Irish authorities to provide as a matter of urgency low-threshold options for a child and his or her parents to get exemptions, with the purpose of preventing children from being exposed to religious instruction against their own will or that of their parents. In addition, the Irish authorities should take steps to review the content and way of teaching of the course on religion education (RE) in secondary schools and modify it accordingly so as to ensure that it genuinely covers all religious cultures and is no longer perceived as instruction in one particular religion and in particular the prevalent religion.
134. The Commissioner welcomes the removal from the Rules of National Schools in 2016 of the provision that made of religious instruction the most important part of the school curriculum in all schools, as a first step toward a more inclusive way of teaching in Ireland. However, much more needs to be done to ensure that the curricula in state-funded schools are taught in an objective, critical and pluralistic manner. In particular, the Commissioner considers that Section 15(2)(b) of the Education Act 1998 obliging schools to uphold the religious ethos of the patron should be amended to ensure that school ethos always favours inclusive education and does not have a discriminatory impact on children from minority religions or without religion.

¹⁰⁵ ECtHR, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, [Applications. No. 5095/71; 5920/72; 5926/72](#), 7 December 1976. See also Alison Mawhinney, 'The Right to Freedom of Religion or Belief: Norms and Compliance'. In *International Human Rights: Perspectives from Ireland*. Egan S (ed.), (Bloomsbury), (2015), p. 267-282.

¹⁰⁶ [Report](#) of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, A/HRC/16/53, with a focus on freedom of religion or belief and school education, 2011, paragraph 56.

¹⁰⁷ [Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools](#) prepared by the ODIHR Advisory Council of Experts on Freedom of Religion or Belief, 2007.

135. The Commissioner urges the Irish authorities to remove the parental rule allowing for the use by state-funded schools of a connection with a former student of the school as an admission criterion of that school, as it has a discriminatory impact on children of Travellers, immigrants and people with disabilities, particularly in secondary schools.
136. The Commissioner also draws the attention of the Irish authorities to the need to address emerging patterns of de facto ethnic segregation, notably as a result of the overrepresentation of minority ethnic children in DEIS schools and possibly in other schools in some areas. In this regard, the Commissioner recommends that the Irish authorities continue their efforts in favour of an inclusive education by fully implementing the relevant provisions of the Action Plan for Education 2016-2019.¹⁰⁸

3.2 ADVERSE IMPACT OF AUSTERITY MEASURES ON CHILDREN'S RIGHTS

137. Children comprise 25% of Ireland's population, compared to an EU average of 19%. They are among the groups of persons whose human rights have been impacted the most by the economic crisis and ensuing austerity measures.¹⁰⁹
138. Worryingly, child poverty rates have dramatically increased since 2008 in Ireland. In 2011, 9.3% of children were living in consistent poverty¹¹⁰ and this rose to 11.2% in 2014. Children in lone parent families, children in jobless households, Travellers and Roma children, children living in Direct Provision centres¹¹¹, children with disabilities and homeless children are at particular risk of poverty. What is more, food poverty has been exacerbated by the recession.¹¹² Overall, 22% of children report having gone to school or to bed hungry because there was not enough food at home.¹¹³
139. While child poverty has been on the rise, since 2010 the state has been drastically cutting budgets related to children's rights. For instance, from 2010 to 2015 the budget allocation for the Department of Social Protection has reportedly decreased from EUR 21.1 billion to EUR 19.45 billion as a result of austerity measures introduced in the wake of the economic crisis.
140. In the education sector, there have been cuts to grants and reductions in the number of teachers.¹¹⁴ Immigrant children have been particularly affected by the cutbacks to extra language resources. In 2016, the government did not reverse the cuts to the means-tested Back-to-School Clothing and Footwear Allowance which had removed income from vulnerable households. The sum currently granted reportedly does not cover the real costs of a school uniform.
141. In addition, from 2010 to 2014, cuts in child care benefits were particularly severe and had a significant impact on the income of many families with children and consequently, on a range of children's rights. New means-tested benefits for low income families were introduced. Children living in one-parent families have been particularly affected by the economic downturn and by recent reforms of the one-parent family payment and increased taxes.
142. Cuts in health benefits have also had a negative impact on children's access to health.¹¹⁵ However, several positive steps have been taken recently by the government particularly as concerns in-kind

¹⁰⁸ Department of Education and Skills Strategy Statement, Ministry of Education and Skills, [Action Plan for Education 2016-2019](#), 15 September 2016, p. 26.

¹⁰⁹ See among others Center for Economic and Social Rights, [Mauled by the Celtic Tiger: Human Rights in Ireland's Economic Meltdown](#), February 2012; EU Network of Independent Experts on Social Inclusion, Investing in Children: Breaking the Cycle of Disadvantage, A [Study](#) of National Policies, Ireland, European Union 2014, p. 7; UNICEF Innocenti [Report Card 12](#), Children in the Developed World Children of the Recession, The impact of the economic crisis on child well-being in rich countries, 2014, p. 4.

¹¹⁰ Consistent poverty is the measure used to set the Irish social target for poverty reduction. It is the overlap of at-risk-of poverty (below 60% of median income) and basic deprivation (enforced lack of two or more basic necessities).

¹¹¹ See below: Section 3.3.1. Asylum seeker children living in Direct Provision accommodation.

¹¹² IHREC, Ireland and the International Covenant on Economic, Social and Cultural Rights, [Report](#), May 2015, p. 62.

¹¹³ Health Promotion Research Centre National University of Ireland, Galway, The Irish Health Behaviour in School-aged Children (HBSC) [Study](#) 2014, p. 14 and 44.

¹¹⁴ Concerning Traveller children, see above: Section 1.2.2.1. Education.

¹¹⁵ See for instance, European Anti-Poverty Network, What progress on Social Europe? EAPN [Assessment](#) of the National Reform Programmes 2016, p. 28.

benefits in the context of the 2016 budget. For instance, free GP care for children under the age of six years was introduced. The government announced in 2015 that the GP care would be extended to children from six to 11 years old although this has not materialised yet.

143. The Commissioner is concerned at the significant increase in rates of child homelessness in recent times. In December 2016, 1,205 families were reported to be homeless while there were 783 in December 2014. These are conservative figures not including people who are sleeping rough or those who live in squats with extended families or friends. In 2015, children accounted for one third of the homeless population in Ireland. The Ombudsman for Children has observed an increase in complaints from families in this situation.¹¹⁶ It should also be noted that 66% of homeless families are one-parent families.
144. Children have been particularly affected by the housing crisis in Ireland resulting from several factors including reduced incomes, over-indebtedness and unsustainable mortgages, increased housing costs and housing shortages with significant waiting lists¹¹⁷ for social housing.¹¹⁸ At the same time, the social housing budget has fallen significantly since the beginning of the recession from 1.7 billion EUR in 2008 to 597 million in 2014¹¹⁹ and the stock of public housing has been reduced. The State's Rent Supplement support has not increased at the same pace as the rents of private housing.
145. The emergency accommodation provided to people who are homeless following an eviction or for other reasons is not always adequate (sometimes for long periods and in hotel rooms). This has a detrimental impact on children's rights in particular as regards their access to continuity of services such as education and health checks.¹²⁰
146. In recent years, the government has taken a number of measures to address the housing crisis, including by adopting two strategies in 2014¹²¹, and introducing a Housing Assistance Payment scheme. In July 2016, the government also published an Action Plan¹²², designed to accelerate the provision of social housing, deliver more housing, use vacant homes, improve the rental sector and address the needs of homeless people and families. The plan is to provide some 47,000 new social houses by 2021 and to progressively increase the housing output generally towards the target of 25,000 additional houses per year through all channels. While welcoming the Action Plan, NGOs have criticised it for falling far short of planning to produce the number of houses required.¹²³ Another positive initiative was the introduction of a prohibition of discrimination in the provision of housing on the basis of being in receipt of rent supplement or other social welfare payments.
147. In 2014, the national policy framework for children and young people 2014-2020 "Better Outcomes Brighter Futures"¹²⁴ set a target of lifting at least 70,000 children out of poverty by 2020 through commitments to improve rates of parental employment and reduce the number of jobless households, and increase investment in evidence-based, effective services that can improve child poverty outcomes. However, since then the target was increased to 97,000 children due to the increasing number of children living in poverty in Ireland. For the moment, the full impact of the economic recovery is yet to be reflected in poor children's living conditions.

3.2.1 CONCLUSIONS AND RECOMMENDATIONS

148. The Commissioner recalls that child poverty has a potentially devastating long-term effect as it is known to be one of the root causes of poverty and social exclusion in adulthood. Additionally, child poverty usually leads to a number of infringements of the human rights enshrined in the UN

¹¹⁶ Ombudsman for Children, [Report](#) to the UN Committee on the Rights of the Child, April 2015, para. 8.5.1.

¹¹⁷ Up to 90,000 households were waiting for social housing in 2015. See Housing Europe, [The State of Housing in the EU 2015](#), A Housing Europe Review, Brussels, 5 May 2015.

¹¹⁸ See among others Houses of the Oireachtas, [Report](#) of the Committee on Housing and Homelessness, June 2016.

¹¹⁹ IHREC, Ireland and the International Covenant on Economic, Social and Cultural Rights, [Report](#), May 2015, p. 68.

¹²⁰ Ombudsman for Children, [Report](#) to the UN Committee on the Rights of the Child, April 2015, para. 8.5.1.

¹²¹ Construction 2020 - A Strategy for a Renewed Construction Sector; and Social Housing Strategy 2020.

¹²² Rebuilding Ireland - [Action Plan](#) for Housing and Homelessness.

¹²³ Social Justice Ireland, [Response to Action Plan for Housing and Homelessness](#), 20 July 2016.

¹²⁴ Better Outcomes Brighter Futures: [National Policy Framework](#) for Children and Young People 2014-2020.

Convention on the Rights of the Child, such as the right to adequate living standards, education and enjoyment of the highest attainable standard of health.

149. The Commissioner is concerned at the negative impact of growing child poverty on the enjoyment of children's rights in Ireland. Be it in times of economic crisis or economic recovery, the Irish government has the duty to protect the most vulnerable from a reduction in the enjoyment of their human rights, in particular social and economic rights. He draws the Irish authorities' attention to the issue paper on "Safeguarding human rights in times of economic crisis".¹²⁵
150. Especially in a context of resumed economic growth, the Commissioner encourages the Irish authorities to rapidly offset the negative impact that austerity measures have had on children's rights in the fields of social protection, education and health. He stresses that the state should continue to take anti-poverty policies and programmes and pay specific attention to the rights of the child.
151. The Commissioner urges the Irish authorities to strengthen their efforts to address the current housing crisis in Ireland that has a disproportionately negative impact on children. High-quality child-friendly emergency housing is needed while the authorities should make sure these are only used on a temporary basis. It is also important to find long-term solutions to increase access to social housing and, more generally, affordable housing, and to improve access to affordable quality services in the fields of education and health.
152. It is also crucial to ensure that the current economic recovery benefits low income families and lone parent families, as they were severely hit by the austerity measures taken in recent years. The Irish authorities should take all necessary measures to ensure access to affordable full-time and high-quality childcare for children of all ages, and in early childhood in particular, and to well-paid family-friendly employment opportunities.

3.3 HUMAN RIGHTS OF IMMIGRANT CHILDREN

153. In this section, the Commissioner focuses on two issues pertaining to the human rights of immigrant children that he considers merit particularly careful attention from the Irish authorities: the situation of asylum seeker children living in direct provision accommodation; and of undocumented migrant children. He also draws attention to the negative impact of the habitual residence condition on immigrant children's rights.

3.3.1 ASYLUM SEEKER CHILDREN LIVING IN DIRECT PROVISION ACCOMMODATION

154. Since 2012 the Commissioner has expressed concerns at the long time asylum seekers had to wait as a result of lengthy asylum procedures and urged the Irish authorities to address this situation.¹²⁶ He welcomes the introduction of the International Protection Act 2015, signed into law on 30 December 2015. This law aims at speeding up the procedure by replacing the two-stage sequential procedure where qualification for refugee status is assessed first, and qualification for subsidiary protection is assessed only when a negative refugee decision has been issued by a single procedure, although it is too early to say if this will significantly improve the situation in practice.
155. As a consequence of the excessive waiting period for international protection, the vast majority of asylum seekers (4,116 persons as of November 2016) have to live for long periods of time in the accommodation system called Direct Provision, established in 2000 and made up of privately-run accommodation centres under contract with the Reception and Integration Agency. As of September 2016, 628 residents had been in reception centres for five years or more. This is a reduction from 1,237 residents in September 2015 and 1,670 in September 2014. One third of persons living in direct provision are children.

¹²⁵ Council of Europe Commissioner for Human Rights, "Safeguarding human rights in times of economic crisis. Issue Paper published by the Council of Europe Commissioner for Human Rights", [CommDH/IssuePaper\(2013\)2](#), 2013

¹²⁶ See [Letter](#) from the Council of Europe Commissioner for Human Rights, Nils Muižnieks, to the Minister for Justice, Equality and Defence of Ireland, Mr Alan Shatter, 6 December 2012.

156. The majority of Direct Provision units are buildings that were designed originally for different purposes generally aimed at short-term living, including hotels, boarding schools and holiday homes. As highlighted by a Working Group entrusted by the government to suggest improvements to the protection process, including Direct Provision and support to asylum seekers, which delivered its report in 2015¹²⁷, the majority of families are accommodated in such units with no separate living space. Some of these units are described as being in bad material condition. Other problems include the uncertainty overshadowing residents' lives, the lack of personal autonomy over the most basic aspects of their lives and daily living (such as cooking, going to the shops, cleaning), as well as the lack of recreational facilities and privacy. The report also stresses the boredom and isolation, the inability to support themselves or their family and contribute to society in a meaningful way, the impact on children of being born and/or living their formative years in an institutional setting, the impact on parents' capacity to parent to their full potential and on normal family life, the loss of skills and the creation of dependency, and the negative impacts on physical, emotional and mental health.
157. Adults are not allowed to work and are given an allowance of EUR 19.10 per week (an amount that has remained the same since 2000) with an allowance of EUR 15.60 for children (raised from the previous amount of EUR 9.60 only in January 2016). While the allowance is supposed to cover personal expenses and children's extracurricular activities, it is generally agreed that these sums are not sufficient to meet the basic needs of asylum seekers.
158. The Direct Provision system has been repeatedly criticised by national and international human rights actors as having serious adverse consequences on the residents and in particular children. In his 2016 Report, the government-appointed Special Rapporteur on Child Protection recommended that the Direct Provision system should be abolished, and in the interim living standards at Direct Provision centres should be improved.¹²⁸ According to the Ombudsman for Children, the system places children in a "fundamentally unsuitable setting".¹²⁹
159. The Government committed in February 2016 to grant the right to Direct Provision residents to complain to the Ombudsman and the Ombudsman for Children. The commitment is subject to legal advice from the Attorney General.

3.3.2 UNDOCUMENTED MIGRANT CHILDREN

160. NGOs have stressed the need to find solutions compliant with Ireland's obligations under international human rights law for the estimated 2,000 to 6,000 undocumented migrant children living in Ireland (out of an overall population of undocumented migrants estimated between 20,000 and 26,000).¹³⁰
161. To date, there is no legal avenue for undocumented children, including those who were born in Ireland, to secure a legal status. These children have access to healthcare and primary and secondary education. However, for tertiary education they have to pay fees as foreign students, which are significantly high, while they are not entitled to work, even in the context of a traineeship for their studies. This makes undocumented young persons particularly vulnerable to exploitation and human trafficking. The fear of being deported also causes mental health difficulties for these children throughout their childhood and beyond. In the absence of "firewalls" imposing a clear prohibition on the sharing of data about undocumented migrants with immigration authorities for purposes of immigration control and enforcement, they are also generally afraid to report abuse to social services or police.

¹²⁷ Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, [Final Report](#), June 2015.

¹²⁸ Ninth [Report](#) of the Special Rapporteur on Child Protection A Report Submitted to the Oireachtas, Professor Dr Geoffrey Shannon, November 2016, recommendations 1.7.1.

¹²⁹ Ombudsman for Children (OCO), [Report](#) of the Ombudsman for Children to the UN Committee on the Rights of the Child on the occasion of the examination of Ireland's consolidated Third and Fourth Report to the Committee, April 2015, paragraph 10.2.2

¹³⁰ See in particular the Migrant Rights Centre Ireland [website: Presentation](#) to Joint Committee on Children and Youth Affairs, 30 November 2016.

3.3.3 HABITUAL RESIDENCE CONDITION

162. Habitual residence in Ireland is a condition that a person must satisfy for certain social welfare payments and for Child Benefit. This condition took effect from 1 May 2004 and affects all applicants regardless of nationality.¹³¹ At the end of 2009, a right-to-reside test was added, with the consequence that those in the asylum process were automatically excluded. A further amendment in 2014 allows for a review of a person's habitual residence in the event he or she loses the right to reside, which means that a person losing the right to reside would no longer be entitled to a social welfare payment.
163. In addition to immigrant children, the Habitual Residence Condition has an adverse impact on the rights of certain groups covered by this report, including Travellers, Roma and women who are victims of violence when it comes to accessing child benefit and other social protection measures. The IHREC concluded that in practice the operation of the condition can act as a barrier to many vulnerable groups seeking to access social security payments. According to children's rights NGOs, this amounts to indirect discrimination against approximately 10,000 children as they are denied the payment due to their parents' immigration status or migration history. This includes Travellers and Roma children as well as migrant and asylum seeker children, including those living in Direct Provision.
164. Another problem is the inconsistency in the way the Habitual Residence Condition is interpreted and applied by the relevant public services. While the Social Welfare Appeals Office is competent to receive appeals concerning that condition, the European Commission against Racism and Intolerance (ECRI) expressed concern in 2013 at the implementation of this condition and reiterated in 2016 its call to publish appeals decisions related to the condition in order to ensure a sufficient level of predictability in decision-making.¹³²

3.3.4 CONCLUSIONS AND RECOMMENDATIONS

165. The Commissioner is concerned at the multiple negative effects of the Direct Provision accommodation system on the rights of asylum seeker children, undermining their access to several human rights, including the rights to housing, to health and to private life. The Commissioner welcomes the recent introduction of a single procedure for international protection determination and hopes that the length of the procedure will be significantly reduced in practice in the coming years as this would also reduce the waiting time of those currently living in Direct Provision.
166. The Commissioner urges the Irish authorities to take all necessary measures to ensure that asylum seekers, and in particular children, are no longer placed for long periods of time in Direct Provision accommodation. He hopes that the Irish authorities will swiftly implement, as a minimum, the recommendations made in the 2015 report of the Working Group on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers.
167. The Commissioner recommends that the Irish authorities envisage the implementation of a regularisation programme addressing the situation of undocumented children and young people and their families, notably by giving consideration to the regularisation scheme proposed by NGOs specialised in the field. The authorities should create firewalls which allow for undocumented migrants to report exploitation without the fear of being deported as recommended in ECRI's General Policy Recommendation N. 16 on safeguarding irregularly present migrants from discrimination.¹³³
168. The Commissioner urges the Irish authorities to review the Habitual Residence Condition, which acts as a barrier for immigrant children, as well as for other groups including Travellers, Roma and women who are victims of violence, in accessing social protection measures. Pending this review, the authorities should ensure that the condition is applied in a fair, transparent and consistent way throughout the country and by the different public services.

¹³¹ The Habitual Residence Condition (HRC) is set out in Section 246 of the Social Welfare (Consolidation) Act 2005. For more information, see Department of Social Protection, [Information Package](#) on Habitual Residence Condition.

¹³² ECRI, [Conclusions](#) on the Implementation of the Recommendations in Respect of Ireland subject to Interim Follow-Up, Adopted on 11 December 2015, Published on 1 March 2016.

¹³³ European Commission against Racism and Intolerance (ECRI), [General Policy Recommendation N. 16](#) on safeguarding irregularly present migrants from discrimination, adopted on 16 March 2016, CRI(2016)16.

4.1 GENERAL REMARKS AND HISTORICAL CONTEXT

169. Several cases of past institutional abuse affecting women and children and raising serious human rights concerns have been brought to light in Ireland in recent years. The Commissioner wishes to pay specific attention to the abuses that occurred throughout the 20th century in the context of the Magdalene Laundries, the performance of symphysiotomy (during which the mother's pelvis is surgically widened to facilitate childbirth), Mother and Baby Homes, and sexual abuses in national schools. These past abuses have been addressed by the state, but in a way that has attracted a certain amount of criticism from international and national human rights bodies for a number of years. While it is not the Commissioner's intention to examine each type of abuse and redress process in detail, in this report he considers it important to raise a certain number of concerns.
170. Notwithstanding the valid criticism that the state's approach in the establishment of enquiries into institutional abuses has been inconsistent¹³⁴, the Commissioner notes that a common feature of most of these inquiries is that they have not taken a human rights based approach and that the redress proposed to the victims by the government appears to be insufficient, as discussed below for each scheme. The Commissioner notes that Amnesty International considered the 2013 interdepartmental review of the Magdalene Laundries as "a model of how not to carry out effective investigations into past human rights abuses".¹³⁵
171. The Commissioner understands that in at least two cases the terms of reference of inquiry bodies have been criticised for being too narrow. The Committee entrusted with investigating the Magdalene Laundries was only there to inquire into state involvement and not into the role of religious orders. The Commission on Mother and Baby Homes will inquire only into 14 homes, meaning that several homes or other connected institutions are left out of the scope of the inquiry according to researchers.
172. Lack of independence of the inquiry has also been raised in at least two cases, including the report on the Magdalene Laundries. In the case of symphysiotomy, the first Report on the question could not be considered as independent, an important shortcoming given that the two ensuing Reports relied heavily on its findings.
173. Establishing the historical context of the abuses is crucial. Among other elements, the stereotypes about women's roles in society and their sexual conduct outside of marriage can certainly explain the way unwed pregnant women and girls, along with other women and girls who did not conform to the social mores of the time, were treated.¹³⁶ This was also a period during which large-scale institutionalisation was the norm in Ireland. However, while the exploration of the historical context is necessary to understand what happened, it should never be used to downplay, justify or condone the said human rights abuses. For instance, the fact that the Magdalene Laundries were presented as "asylum", as they used to be called then, cannot serve to hide – and could not hide at that time either – the reality of the deprivation of liberty and other abuses committed there. Likewise, it is also difficult to accept the idea put forward by some that antenatal symphysiotomy was an acceptable, or even justified procedure given the medical knowledge at the time.
174. The Commissioner is concerned that in most of the cases, the accountability of the state authorities and/or of the religious institutions has not been fully accepted, if at all. Many of the institutions concerned were run by Catholic entities (patrons for schools, or religious institutions or orders for homes and hospitals, for instance). The state was either aware of, or even involved in, what happened, as in the case of the Magdalene Laundries where the state was one of their clients and funded some of

¹³⁴ IHREC, Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women, [Submission](#) to the CEDAW, January 2017, p.41.

¹³⁵ Amnesty International, [Ireland: 'Mother and baby homes' investigation must be robust and comprehensive](#), 19 June 2014.

¹³⁶ As acknowledged in the public apologies made in to *Dáil Éireann* (Lower House) by the *Taoiseach* (Prime Minister) and the *Tánaiste* (Deputy Prime Minister) on 19 February 2013 concerning the victims of the Magdalene Laundries.

their activities. In other cases such as for national schools, the state was more in a situation of delegating its powers to private entities without ensuring the necessary supervision.

175. The Commissioner stresses that the state and religious institutions should be ready to confront their common past. The Commission to Inquire into Child Abuse stated that "(a)n important aspect of this process of exploration, acceptance and understanding by the State and the Congregations is the acknowledgement of the fact that the system failed the children, not just that children were abused because occasional individual lapses occurred"¹³⁷. The Commissioner stresses that this approach should apply to all abused children (and adult women) concerned.
176. There have also been attempts to use the consent of women victims of placement in institutions or symphysiotomy operations to justify these practices. Regardless of the reality of a consent, which in most circumstances could probably not be considered as free and informed, the Commissioner stresses that this in no way diminishes the responsibility of those taking the decisions for the human rights abuses that took place at that time to place these women or operate on them accordingly.
177. In some cases, the redress schemes established are not inclusive enough, notably due to a narrow interpretation of the category of persons who qualify for compensation, as illustrated below by the scheme opened in the context of the O'Keeffe judgment on sexual abuse in schools. More generally, the relatively limited number of persons who have received compensation so far raises issues about the adequacy and effectiveness of the schemes. For instance, out of over 10,000 women who were detained or who resided in Magdalene Laundries, the number of those who received lump sums in compensation so far is approximately 500.
178. For some redress schemes, the voices of the surviving victims are not sufficiently heard or respected. For instance, both in the cases of Magdalene Laundries and symphysiotomy, the testimonies of the victims were reportedly not given a similar weight to written or medical records by the state or the institutions in question. In the case of symphysiotomy, the approach to the victims has even been rather patronizing if not dismissive, with the last report being criticised for questioning the credibility of the claims or suggesting that the victims have been manipulated into asking for compensation.

4.2 MAGDALENE LAUNDRIES

179. It is estimated that over 10,000 women and girls were detained or resided in Magdalene Laundries. These were laundry enterprises which operated since the 18th century under the management of religious orders of the Catholic Church -- and with state funding and oversight between the 1930s and 1996, when the last laundry closed. These women were allegedly subjected to a range of human rights abuses, including arbitrary deprivation of liberty, inhuman and degrading treatment and forced labour. The Commissioner recalls that these are all serious violations of human rights. Some women died there while others remain disappeared as they are unidentified to date. According to testimonies, many women did not know why and for how long they would be placed there.
180. The government set up an "Inter-Departmental Committee to establish the facts of State involvement with the Magdalene Laundries" that issued its final report in February 2013. It was accompanied by an official apology by the government.
181. The Redress for Women Resident in Certain Institutions Act 2015 provides for free access to a certain number of enhanced healthcare services for women formerly placed in Magdalene Laundries. However, some 40 women are still excluded from the scheme as they are considered as having legal capacity issues. They will only be able to benefit from it once the Assisted Decision-Making (Capacity) Act 2015 is fully commenced. Those who live abroad have also received no health or community care services. The standard of healthcare provided has also been criticised for not meeting the higher than ordinary standards recommended in the report. In spite of public apologies from the government, the dedicated unit to assist the beneficiaries in accessing benefits and the memorial promised by the government were not established as of this writing.

¹³⁷ Commission to Inquire into Child Abuse, Final [Report](#), volume IV, Recommendations - 7.03, The lessons of the past should be learned, 20 May 2009.

182. In addition to the above-mentioned Act, following the 2013 report, an ex-gratia mechanism was also established providing for a payment of between EUR 11,500 and EUR 100,000 depending on the length of stay. Some have criticised the narrow interpretation of the notion of placement, excluding from the ex-gratia compensation scheme those women who were not formally admitted to the Laundries while *de facto* working there.
183. For these and other reasons, several stakeholders have found that the inquiry into the Magdalene Laundries abuses cannot be considered as thorough, comprehensive and independent and that, as a result, the ensuing *ex-gratia* compensation scheme to which over 500 women applied fell below adequate standards of truth, justice and reparations.

4.3 SYMPHYSIOTOMY

184. It is estimated that 1,500 women underwent symphysiotomy in Ireland mostly between the 1940's and the 1980's. Symphysiotomy is a surgical procedure that involves sundering the mother's pelvis to enable difficult childbirth. This procedure was not performed in other European countries during the same time period, as caesarian section was the procedure generally used in cases of difficult births. Symphysiotomy is said to have various health consequences including in some cases life-long pain, disability and emotional trauma. There have been three reports commissioned by the government on this practice. On the basis of the first two reports, the government set up an ex-gratia redress scheme for the victims. The third report dealt with the operation of the scheme itself.
185. During his visit, the Commissioner was informed of a number of concerns from civil society about the way the redress scheme works. The scheme admits no wrongdoing or liability on the part of the state and public authorities, any private hospitals or nursing homes, or any medical staff. The level of compensation offered is considered to be very low compared to the level of abuse endured. In addition victims had to accept a legal waiver by which they agree not to question the amount of the indemnity allocated and they had to abandon their right to take further legal action against any responsible individual or body in order to obtain a payment under the scheme. Lastly, the window of opportunity for applying for compensation was of 20 working days since the commencement date of the Scheme, which was 10 November 2014.
186. The above mentioned report on the operation of the scheme (The "Clark Report"), which was published during the Commissioner's visit, was subject to particularly strong criticism from human rights NGOs and other stakeholders. The Commissioner himself was particularly struck by the patronising tone and the kind of information provided in the report. The report does not give acknowledgement to women's suffering and seems to perpetuate some gender stereotypes against (elderly) women. This is all the more unfortunate as the aim of the report was in principle only to describe the operation of the compensation scheme. The Commissioner notes that the government has chosen to endorse this report without giving any credit to the wide criticism that it had generated among human rights stakeholders in Ireland.¹³⁸
187. For survivors of symphysiotomy who seek to obtain an effective remedy through the courts, evidential barriers represent a serious obstacle, as noted by the IHREC. In one of the cases brought to courts, the High Court accepted that the claimant suffered from a range of physical and psychological difficulties caused or contributed to by the antenatal symphysiotomy which took place in 1963 but rejected her claim that it was done without any justification.¹³⁹

4.4 MOTHER AND BABY HOMES

188. So-called "mother and baby homes" were operated by religious orders with state funding for unmarried mothers to give birth, from the 1920s to the 1990s, at a time when bearing a child outside marriage carried significant social stigma. Following allegations¹⁴⁰ of past abuses against women and

¹³⁸ See Department of Health, Publication of the Report of the Surgical Symphysiotomy Ex-gratia Payment Scheme, press release 22 November 2016 where the Minister of Health declared that he hoped that "the conclusion of this process will help to bring closure for women involved and their families".

¹³⁹ High Court, 14 October 2016, [2016] IECA 281; RTE, [Woman loses appeal over symphysiotomy finding](#), 14 October 2016.

¹⁴⁰ See Amnesty International, Ireland: ['Tuam babies' mass grave allegations must spark urgent investigation](#), 5 June 2014.

children in these homes, including high child mortality rates, illegal adoption practices, vaccine trials conducted on children without consent, separation of the mother and the child to place the latter in industrial schools or orphanages, and denial of medical care to some women, in February 2015, the government established a Commission of Investigation into the Mother and Baby Homes and Certain Related Matters whose final report was to be published in two years.

189. Here again, the scope of the Commission of Investigation has been criticised because its focus is limited to 14 institutions, leaving out some others. The Commissioner notes the creation of a civil society initiative called “Clann” (Ireland’s unmarried Mothers and their Children: Gathering the Data) intended to help establish the truth of what happened to unmarried mothers and their children in the 20th century in Ireland.¹⁴¹ He hopes that the authorities and the institutions will all fully co-operate with this project.

4.5 CHILDREN’S INSTITUTIONS AND NATIONAL SCHOOLS

190. The Commission to Inquire into Child Abuse was established in 2000 to investigate sexual abuse in institutions run by the Catholic Church and subject to state regulation or inspection.¹⁴² The final Report (the “Ryan Report”) covering the period from 1936 to 2009 was released on 20 May 2009. It found that “physical and emotional abuse and neglect were features of the institutions” and that “sexual abuse occurred in many of them, particularly boys’ institutions”. The Commission dealt principally but not exclusively with reformatory schools (for young offenders) and industrial schools (for abandoned children or children in difficulties).¹⁴³ A redress mechanism, the Residential Institutions Redress Board, was created in 2002 (now closed) and received until 2014 a total of 16,626 applications and granted at least 15,545 awards.
191. In 2015, the IHREC noted the lack of prosecutions following the Ryan Report and that five of the actions arising out of the Report had not yet been fully implemented: two of these call for research to be carried out in relation to transitioning out of care and court services for children and families; and the others relate to the construction of a memorial to survivors and a central repository for the records for all children in care.
192. As concerns past sexual abuse in the context of national schools (non-residential regular open schools), in 2014 the Grand Chamber of the European Court of Human Rights delivered an important judgment in the *O’Keeffe* case regarding the sexual abuse in 1973 of the applicant, aged nine at the time of the events, by a lay teacher in a national school under Catholic patronage¹⁴⁴. The Court found that the Irish state had failed to meet its obligation to protect the applicant from sexual abuse because it had entrusted the management of primary education to non-state actors without putting in place any mechanism of effective state control against the risks of such abuse (substantive violation of Article 3 of the ECHR). On the contrary, at the time, potential complainants had been directed away from the state authorities and towards managers of the national schools. The Court also found that none of the domestic remedies were effective as regards the applicant’s complaint about the Irish state’s failure to protect her from abuse (violation of Article 13 of the ECHR, in conjunction with the substantive aspect of Article 3).
193. In a positive move, since the past abuse that occurred in the 1970’s, Ireland has taken a number of general measures to avoid the repetition of sexual abuse in schools. It developed and improved its child protection arrangements notably through the adoption of legislation (including the Child First Act 2015 to be fully commenced by the end of 2017 according to the authorities) and of successive

¹⁴¹ <http://clannproject.org/>

¹⁴² Another Commission of Investigation into the Catholic Archdiocese of Dublin set up in 2004 dealt more with the institutional response to sexual abuse by priests and found in a Report (the “Murphy Report”) published in 2009 that between 1975 and 2004 the Archdiocese “did its best to avoid any application of the law of the State” ([Report](#) para. 1.15).

¹⁴³ See, among others, the findings of the Confidential Committee set up in the framework of the Commission to Inquire into Child Abuse established in 2000 which [heard](#) evidence in relation to 161 settings in addition to the Industrial and Reformatory Schools, including primary and second-level schools, Children’s Homes, foster care, hospitals and services for children with special needs, hostels, and other residential settings.

¹⁴⁴ ECtHR, Grand Chamber, *O’Keeffe v. Ireland*, [Application No. 35810/09](#), 28 January 2014.

guidelines between 1991 and 2011. The Child and Family Agency (Tusla) established in 2014 is tasked with receiving and acting upon formal referrals of any child protection concerns.

194. As concerns compensation for claims of historic abuse similar to the applicant's in the abovementioned case, the State Claims Agency (SCA)¹⁴⁵ has been entrusted with offering out of court settlements where the cases are not statute barred. The government announced that the SCA would offer ex gratia payments to those falling within the parameters of the Court's judgment and who had discontinued their cases before it was delivered, under a number of conditions including that their circumstances involved sexual abuse of a school child by a school employee in respect of whom there was a prior complaint of sexual abuse to a school authority (as this was the case in the individual circumstances of Ms O'Keeffe).
195. Several stakeholders, including the IHREC,¹⁴⁶ have voiced concern about the limited number of claimants having been compensated so far. To date, the SCA has made settlement offers of EUR 84,000 each to seven individuals whose claims were pending at the time of the Court's judgment. Of the approximately 210 cases which had been discontinued prior to the Court's judgment under threat of costs following the domestic proceedings in O'Keeffe v Ireland, 46 applications have been submitted to the SCA as of January 2017, of which 18 were declined principally because there had been no prior complaint of a sexual abuse committed by the school employee concerned. The authorities have indicated that they are establishing an independent assessor process to adjudicate on differences between the state and victims in some of these cases.¹⁴⁷
196. The Commissioner notes that according to the IHREC and others, this situation follows from an overly narrow interpretation of the Court's judgment, whereby the Irish state can limit the award of compensation to cases where school authorities had failed to take action in response to a prior complaint of abuse. He also notes that the IHREC has asked that the Committee of Ministers uses its powers under Article 46(3) of the ECHR to refer a question of interpretation to the Court's Grand Chamber by way of interim solution in this respect. The Child Law Clinic of the University of Cork stressed that potential applicants (an estimated 360 persons) who cannot prove prior complaint have simply not been applying, because they know that their application will fail. It added that with no remedy available to them either via the redress scheme or via the courts, their only remaining course of action is an application to the European Court of Human Rights.¹⁴⁸

4.6 CONCLUSIONS AND RECOMMENDATIONS

197. The Commissioner welcomes that the Irish authorities have taken a number of measures to address the past human rights abuses against women and children in institutions, including through apologies, the creation of inquiry bodies, compensation schemes and other measures of redress as described above. However, the Commissioner urges the Irish authorities to strengthen their efforts to deal with all uncovered abuses against women and children, including in women's homes, schools and healthcare institutions in a human rights compliant way.
198. Given that most of the abuses concerned amount to serious human rights violations, including torture, inhuman and degrading treatment, forced labour and breaches of bodily integrity and human dignity, the Commissioner stresses the need to ensure that all international human rights standards in this field are fully respected at all stages of the restorative processes. In particular the Irish authorities should publicly acknowledge that these abuses were human rights violations and accept its responsibility as established in each case.
199. The Commissioner urges the Irish authorities to address shortcomings in existing redress measures as described above, in close co-operation with human rights and other stakeholders He recalls in

¹⁴⁵ The government's State Claims Agency (SCA) manages personal injury and property damage claims on behalf of its client state authorities, their servants or agents.

¹⁴⁶ See Rule 9.2 communication received from IHREC on 6 October 2016 ([DH-DD\(2016\)1167](#)).

¹⁴⁷ See Action Plan O'Keeffe v. Ireland, Information submitted by the Government of Ireland, 28 January 2017, ([DH-DD\(2017\)114](#)).

¹⁴⁸ See Rule 9.2 communication received from The Child Law Clinic - School of Law - University College Cork on 4 November 2016 ([DH-DD\(2016\)1274](#)).

particular that all victims have a right to truth, full support and effective remedies ensuring reparation, including apologies, compensation, and rehabilitation, as well as to investigations into allegations of abuses that are prompt, independent, thorough and capable of ensuring accountability of the perpetrators. All victims should be treated with compassion and respect for their dignity.

200. In this respect, the Commissioner draws the Irish authorities' attention to the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law¹⁴⁹, and the 2011 Council of Europe Guidelines of the Committee of Ministers of the Council of Europe on Eradicating Impunity for Serious Human Rights Violations.¹⁵⁰
201. As for the remedy mechanisms, they should be widely publicised. Time limits for applying should be reasonable so as to leave enough time to become aware of the abuse, overcome psychological and practical barriers, and alleged victims should receive psychological, legal and financial support during the time their claim is being processed. Claimants should be given prompt and full access to their personal files including medical records and the authorities should take extra care in ensuring that the records are handed over to the victims and not hidden or destroyed by the institutions concerned, in full respect of international standards on personal data protection. It is important to avoid double victimisation by perpetrating bias against and stigmatising the victims seeking redress.
202. In the field of accountability, the Commissioner stresses that effective prosecutions and sanctions are necessary to remove any feeling of impunity and avoid repetition.
203. The Commissioner recommends that the Irish authorities establish an independent and thorough investigation into the broad range of human rights abuses suffered by large numbers of women and girls in the "Magdalene Laundries", provide redress to the victims and ensure accountability, including under criminal law, of all responsible individuals or entities.
204. The Irish authorities should investigate thoroughly in an impartial and independent way and including by hearing the testimony of the alleged victims, the practice of symphysiotomy. On the basis of this investigation, the authorities should ensure that victims receive prompt and adequate remedies and that those responsible be duly prosecuted. Particular attention should be given to removing obstacles, such as difficulties in obtaining evidence or a restrictive statute of limitations. The alleged victims wishing to bring their case before courts should be given the legal and financial assistance to do so without having to pay for the costs of the proceedings in case they lose, as this could have a deterrent effect on taking any legal action against the state or another institution.
205. The Commissioner recommends that the Irish authorities widen the investigations into Mother and Baby Homes and ensure that the Commission of Investigation into the treatment of women and children in Mother and Baby Homes has proper regard to the human rights framework in its methodology, findings and recommendations.
206. As for claims from children victims of sexual abuse in national schools, the Commissioner recalls that the Committee of Ministers urged the Irish authorities in June 2016 to ensure that the State Claims Agency continues to take a holistic and flexible approach to all such claims and concludes its work without delays.¹⁵¹ The Commissioner recommends that the authorities envisage widening the category of victims who may claim compensation in line with the IHREC's recommendations. The authorities should also continue to take action to prevent further abuse occurring in schools, notably by fully implementing the legislation adopted so far, including the Children First Act 2015. The Commissioner also calls on the Irish authorities to ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse which they signed in 2007.

¹⁴⁹ UN [Basic Principles and Guidelines](#) on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Resolution 60/147 of 16 December 2005

¹⁵⁰ 2011 Council of Europe [Guidelines](#) of the Committee of Ministers of the Council of Europe on Eradicating Impunity for Serious Human Rights Violations.

¹⁵¹ Committee of Ministers of the Council of Europe, [Decisions 1259th meeting](#) (7-8 June 2016).