



**International Covenant on
Civil and Political Rights**

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**Consideration of reports submitted by States parties under
article 40 of the Covenant**

Fourth periodic reports of States parties

Ireland*

[25 July 2012]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1–6	4
II. General information on Ireland’s political and legal framework	7–14	4
A. The civil service.....	8	4
B. Policing.....	9–10	5
C. Anti-discrimination legislation	11	5
D. International human rights law in the Irish legal framework	12–14	5
III. Articles of the Covenant (1–27).....	15–830	6
Article 1 – The right of self-determination	15	6
Article 2 – Obligation to implement the provisions of the Covenant	16–73	6
Article 3 – The equal right of men and women to the enjoyment of all civil and political rights	74–189	14
Article 4 – Limited rights of derogation	190	30
Article 5 – Limited rights of derogation	191	30
Article 6 – The right to life	192–222	30
Article 7 – The right to freedom from torture or cruel, inhuman or degrading treatment or punishment	223–257	34
Article 8 – The right to freedom from slavery.....	258–301	40
Article 9 – The right to liberty and security of the person.....	302–347	51
Article 10 – Humane treatment of persons deprived of their liberty	348–536	57
Article 11 – The right not to be imprisoned for failure to fulfil a contractual obligation	537	82
Article 12 – The right to freedom of movement.....	538–542	83
Article 13 – The rights of aliens.....	543–545	83
Article 14 – The right to fair and equal treatment before the law	546–607	84
Article 15 – The right not to have criminal sanctions imposed retrospectively	608	94
Article 16 – The right to be recognised as a person before the law.....	609	94
Article 17 – The right to privacy	610	94
Article 18 – The right to freedom of thought, conscience and religion.....	611–647	94
Article 19 – The right to freedom of expression	648–658	100
Article 20 – The prohibition of propaganda for war and incitement to hatred	659–672	101
Article 21 – The right to peaceful assembly.....	673–677	103
Article 22 – The right to freedom of association.....	678–697	104
Article 23 – The rights of the family	698–712	108
Article 24 – The rights of the child	713–772	109
Article 25 – The right to take part in public affairs	773–786	118
Article 26 – The right to equality before the law	787–791	121
Article 27 – Ethnic and linguistic minorities.....	792–830	122

IV.	Consultation with civil society representatives	831–984	129
A.	Introduction	831–833	129
B.	Overview of issues raised under Covenant articles.....	834–977	129
C.	General issues raised.....	978–981	146
D.	Civil society members who participated in the consultation process.....	982–983	147
E.	Amendments to report	984	148
Annex			
	Structure of the Departments of the Irish Government 2007-2011		149

I. Introduction

1. Ireland welcomes this opportunity to submit its fourth periodic report under the International Covenant on Civil and Political Rights in accordance with article 40 thereof. The report outlines the legislative, judicial, administrative or other measures that have been adopted in Ireland, to give effect to the provisions of the Covenant, since the completion of Ireland's third periodic report in 2007.
2. This report relays information applicable to the time period 1 January 2008 to 31 December 2011.
3. Information contained in this report supplements that provided in Ireland's initial report and second and third periodic reports to the Human Rights Committee (the Committee) (CCPR/C/68/Add.3, CCPR/C/IRL/98/2 and CCPR/C/IRL/3) and also that contained in Ireland's core document (HRI/CORE/1/Add.15/Rev.1).
4. During the preparation of this report, due regard was paid to the reporting guidelines of the Committee (CCPR/C/2009/1), the general comments of the Committee and the concluding observations of the Committee on Ireland's third periodic report (CCPR/C/IRL/CO/3).
5. Responses to the concluding observations of the Committee on Ireland's third periodic report are provided on an article by article basis throughout this report.
6. This report consists of four parts;
 - The first part (chap. II) describes the general political structure of the State and the legal framework within which human rights are protected within the State.
 - The second part (chap. III) contains a series of sections devoted to the various articles of the Covenant and outlines the legislative, judicial, administrative or other measures adopted in Ireland to respect, protect and fulfil the rights of the Covenant. In addition, responses to the concluding observations of the Committee on Ireland's third periodic report are provided, on an article by article basis.
 - The third part (chap. IV) provides an overview of the issues raised by civil society representatives during the consultation process which was held by the State as part of the preparation of this report.
 - The fourth part (annex) outlines the changes in the structure of Departments of the Irish Government between 2008 and 2011.

II. General information on Ireland's political and legal framework

7. For general information on Ireland's Political and Legal Framework, please see Ireland's core document (HRI/CORE/1/Add.15/Rev.1) and Ireland's third periodic report (CCPR/C/IRL/3) at pages 220-238. The following paragraphs provide an update on such information.

A. The civil service

8. The end-2011 Civil Service figure was approximately 36,600, which includes approx. 1,500 Industrial Civil Servants. A moratorium on recruitment and promotion was introduced by the Government at the end of March 2009. The moratorium allows for

certain general exemptions in the Education and Health Sectors for the filling of certain key posts as well as for the Local Authorities in relation to certain key posts.

B. Policing

9. Ireland has a single national police service, An Garda Síochána. It has approximately 13,600 full time members and 935 members of the Garda Reserve. An Garda Síochána also serves as the state's security and intelligence service.

10. An Garda Síochána is established by legislation and its internal management is subject to Regulations made by the Minister for Justice and Equality. An Garda Síochána has operational independence subject to the general financial and regulatory framework established by the Minister.

C. Anti-discrimination legislation

11. Ireland now has in place a broad-based anti-discrimination regime in the areas of employment and in the access to and provision of goods and services whether by the private or public sector, including the provision of education and access to accommodation. The Employment Equality Acts 1998 to 2011 and the Equal Status Acts 2000 to 2011 prohibit discrimination on nine grounds against those in employment, seeking access to employment or participating in vocational training, and those seeking goods and services. These grounds are gender, civil status, family status, sexual orientation, religious belief, age, disability, race and membership of the Traveller community. The Acts also outlaw victimisation, that is, discrimination against an individual because he or she has taken a case or is giving evidence under the equality legislation, or has opposed by lawful means discrimination which is prohibited under this legislation.

D. International human rights law in the Irish legal framework

12. Ireland has ratified the following United Nations human rights treaties:

- The International Covenant on Civil and Political Rights and its Optional Protocols
- The International Covenant on Economic, Social and Cultural Rights
- The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol
- The International Convention on the Elimination of All Forms of Racial Discrimination
- The Convention on the Rights of the Child and its Optional Protocol on the involvement of children in armed conflict
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

13. Ireland has signed the following United Nations human rights treaties:

- The International Convention on the Protection of All Persons from Enforced Disappearance
- The Convention on the Rights of Persons with Disabilities
- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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

14. Steps are currently being taken to facilitate the signature of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, with signature of this Optional Protocol expected in early 2012.

III. Articles of the Covenant (1-27)

Article 1 – The right of self-determination

15. There have been no developments relating to this article of the Covenant since Ireland's last report to the Committee.

Article 2 – Obligation to implement the provisions of the Covenant

1. Equality and human rights infrastructure

16. Paragraphs 11-13 of Ireland's third periodic report under the International Covenant on Civil and Political Rights set out the legislative and administrative measures relating to protection against discrimination in law and fact within the fields of employment (the Employment Equality Acts) and of the supply of and access to goods and services (the Equal Status Acts).

17. These Acts have been further amended since 2006. In addition to a number of technical changes to improve the efficiency and user-friendliness of the Equality Tribunal in handling complaints, these amendments have increased the level of compensation that may be ordered to provide for greater redress in situations of low-paid employment. Minor amendments were made to the Equal Status Acts to give full effect in domestic law to Council Directive 2004/113/EC, which prohibits gender discrimination in the supply of and access to goods and services, and meet Ireland's obligations as a member of the European Union to implement Community initiatives

18. The current institutional framework for the protection of human rights is set out in paragraphs 39-61 of Ireland's first national report under the United Nations universal periodic review (UPR) process (A/HRC/WG.6/12/IRL/1). Ireland's UPR Report is available at: http://www.justice.ie/en/JELR/Pages/UPR_Rpt

19. This framework consists of the Irish Human Rights Commission, the Equality Authority, the Equality Tribunal, the National Employment Rights Authority, the Health and Safety Authority, the National Disability Authority, the Ombudsman and Information Commissioner, Ombudsman for the Defence Forces, Ombudsman for Children, the Data Protection Commissioner, Press Ombudsman and Council, An Coimisinéir Teanga (the Language Commissioner), the Inspector of Prisons, the Health Information and Quality Authority, the Financial Services Ombudsman, the Mental Health Commission and Inspectorate of Mental Health Services, the Citizens Information Board, the Money, Advice and Budgeting Service (MABS), the Private Residential Tenancies Board and the Rent Tribunal.

Response to the recommendations in paragraph 7 of the concluding observations on the third periodic report under the International Covenant on Civil and Political Rights (CCPR/C/IRL/CO/3)

20. Proposals for amendments to this institutional framework are outlined below.

21. In September 2011, the Irish Government announced its decision to strengthen Ireland's human rights infrastructure by merging the Irish Human Rights Commission and the Equality Authority into a new Human Rights and Equality Commission in order to promote human rights and equality issues in a more effective, efficient and cohesive way. A Working Group, comprised of an independent Chair, members of both existing bodies and officials from the Department of Justice and Equality, held a consultation process to seek the views of civil society and members of the public on what the new body should do, what features and functions it should have, how it should be structured and what working methods it should employ.

22. It is anticipated that legislation to establish the merged body on a formal basis will be published in 2012. The new Commission will be established in accordance with the Paris Principles and the issue of reporting relationships with the Oireachtas will be dealt with in the Bill.

23. In a similar vein, the Government also announced its decision to streamline the five existing labour relations bodies – the Equality Tribunal, the Labour Relations Commission, the National Employment Rights Authority, the Employment Appeals Tribunal, and the Labour Court – into a more accessible and cohesive body. A consultation process with stakeholders, including employers groups, trade unions and the legal profession, was held in 2011.

2. Decisions of tribunals and courts

24. On concluding investigations, all decisions of the Equality Tribunal are published in full. In addition, the Tribunal publishes annual overviews of the legal issues arising in the decisions issued, such as on interpretation of the concepts of indirect discrimination and of multiple discrimination, as part of the Tribunal's overall policy of making its decisions as accessible and as transparent as possible to the general public. While mediation is private and mediated agreements (which are legally enforceable through the courts) are not published, the Tribunal publishes annual reviews of the significant features of such agreements. The database of decisions, annual legal reviews and mediation reviews are available from the Equality Tribunal's website. <http://www.equalitytribunal.ie>

3. Combating discrimination and promoting good practice

25. Accessible summaries of rights and duties under equality and employment rights legislation are provided and promoted by the Citizens Information Service online and through its offices across the country, which advise and direct people to the relevant state agencies. The Equality Authority and the National Employment Rights Authority (NERA), in consultation with the social partners, produced "The Employment Rights Rule Book" in 2010, in recognition of the need for accessible and accurate information on employment rights; equality and family leave legislation for both employers and employees. The Rule Book was promoted on a national poster and billboard campaign in summer 2010 and distributed through the Equality Authority's Public Information Centre and at a range of conferences and events organised by NGOs, trades unions, business networks.

26. An Equality Mainstreaming Approach activity, co-funded by the European Union (EU) under the European Social Fund Human Capital Investment Operational Programme 2007-2013 is facilitating and supporting institutional change within providers of vocational education and training, labour market programmes and within small to medium enterprises. Managed by the Equality Authority and involving the social partners and civil society, the programme aims to achieve this objective by strengthening the capacity of such organisations to combat discrimination, to promote equality and to accommodate diversity. This approach is supported by the findings of a strong correlation between the existence of formal equality policies in organisations and employees' perceptions of equal pay and conditions within the workplace, in research published by the Equality Authority. 84% of

employees are now working in an organisation with a formal equality policy (National Workplace Survey 2009).

27. Policy development continues to be informed by research undertaken by public bodies into the extent and impact of potentially discriminatory practices and the effectiveness of legislative and other interventions. Research publications issued by the Equality Authority during the reference period have considered the experience of perceived discrimination, gender inequalities in time use, ethnicity and nationality in the labour market, situation testing of discrimination in recruitment, the impact of equality policies and flexible working, and pregnancy at work. All publications are available on its website at www.equality.ie.

28. Ireland is committed to continuing to provide support for human rights education and training domestically in order to enhance awareness and respect for human rights. Human rights issues are addressed at both primary and post-primary levels of the education system and there are human rights programmes in a number of third-level education institutions. Human rights also feature prominently in Police and Defence Forces training at all levels. The Irish Human Rights Commission provides training to civil and public servants on their human rights obligations.

29. Judicial training in Ireland is organised by the judiciary itself in order to ensure that their Constitutional independence is fully respected. An Equal Treatment Guidelines bench book was developed by the Committee for Judicial Studies in 2011 in a project co-funded by the EU, and is now in use by the judiciary. Legislation to provide for a Judicial Council will likely formalise the issue of judicial training.

4. Ireland's combined third and fourth report to the Committee on the Elimination of racial Discrimination

30. Ireland's combined third and fourth report to the Committee on the Elimination of Racial Discrimination (CERD/C/IRL/3-4) was transmitted to that Committee on 22 December 2009. All relevant Government Departments were consulted and contributed material for the report.

31. Civil society groups and members of the public were also invited to submit relevant comments which were used to inform the preparation of the report. A consultation meeting with civil society was undertaken in late 2008. The meeting was chaired by an independent expert and a report of the meeting was drawn up by an independent Rapporteur. Some of the views expressed at this meeting are included in Part IV of the combined State report.

32. In February 2011, a positive dialogue took place between the Irish delegation and the CERD Committee on Ireland's third and fourth reports.

5. National Disability Strategy

33. The following paragraphs are an update on paragraphs 28-29 of Ireland's third periodic report under the International Covenant on Civil and Political Rights.

34. The National Disability Strategy, which was launched in 2004, continues to be the focus of Government policy for the disability sector and the Programme for Government, published in March 2011, commits to publishing, "following wide consultation, a realistic implementation plan for the National Disability Strategy (NDS), including sectoral plans with achievable time scales and targets within available resources and ensuring whole-of-government involvement and monitoring of the Strategy, in partnership with the disability sector".

35. The Implementation Plan will re-focus and revitalise the Strategy and incorporate targets for the completion and implementation of various measures already being undertaken across Government and planned future developments. The plan containing these

targets will be drawn up in 2012, along with a programme for meeting the targets and implementing the plan.

36. The Minister for Disability, Equality, Mental Health and Older People has established and is personally chairing a new National Disability Strategy Implementation Group, to develop and implement the Plan. The Implementation Group includes representation from: Government Departments; the National Disability Authority (the lead state agency for the sector); local authority managers; and a Disability Stakeholder Group, which includes representatives of the main Disabled People's Organisations as well as individuals appointed by the Minister to bring their lived experience to the process.

37. This group replaces the National Disability Strategy Stakeholder Monitoring Group which was previously charged with monitoring ongoing implementation of the Strategy.

6. Convention on the Rights of Persons with Disabilities

38. Ireland was in the first group of countries to sign, subject to ratification, the Convention on the Rights of Persons with Disabilities (CRPD) when it opened for signature on 30 March 2007.

39. It is the Irish Government's intention to ratify the CRPD as quickly as possible, taking into account the need to ensure that all necessary legislative and administrative requirements under the Convention are being met. Ireland does not become party to treaties until it is first in a position to comply with the obligations imposed by the treaty in question, including by amending domestic law as necessary.

40. The ongoing implementation of our National Disability Strategy in many respects comprehends many of the provisions of the Convention. In addition, the Inter-Departmental Committee on the Convention monitors the remaining legislative and administrative actions required to enable ratification. At the Committee's request, the National Disability Authority, the lead statutory agency for the sector, has independently assessed the remaining requirements for ratification so as to ensure conclusively that all such issues will be addressed.

41. One of the key requirements in this regard is the enactment of mental capacity legislation. It is expected that the Mental Capacity Bill will be published in mid-2012. The Bill will replace the Wards of Court system with a modern statutory framework governing decision-making on behalf of adults who lack capacity. The passage of this Bill will add substantially to the overall progress on implementation of the requirements towards ratification of the CRPD.

42. The guiding principles in the Mental Capacity Bill will reflect the Convention principles of respecting the dignity and the autonomy of each individual person, including the freedom to make his or her own choices. The Bill will reassert the common law presumption that a person has capacity unless the contrary is established. The Bill will protect a person's right to decide on all aspects of his or her life and a person cannot be treated as unable to make a decision unless all practicable steps to help him or her to do so have failed. Where a person is unable to make decisions whether alone or with assistance, all acts or decisions done or made with them or on their behalf must be done in the way which is least restrictive of the person's rights and freedom of action; and the right of a person to his or her dignity, bodily integrity, privacy and autonomy must be respected.

7. Treatment and protection of elderly in long-term care homes/patients in residential health institutions

43. The Health Act, 2007 provides for the registration and inspection of designated residential centres for older people (nursing homes), both private and public. The Act assigns responsibility for the registration and inspection function to an independent statutory body, the Health Information and Quality Authority.

44. The Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2009, as amended, contain provisions for the purposes of ensuring proper standards for designated centres for older people. The regulations underpin the National Quality Standards for Residential Care Settings for Older People approved by the Minister for Health. The Standards include supplementary criteria for Dementia-specific Residential Care Units for Older People.

45. In 2011 a national policy on the use of restraint in residential centres— Towards a Restraint Free Environment in Nursing Homes was developed and published.

46. Policy in relation to elder abuse is derived from *Protecting our Future*, the 2002 Report of the Working Group on Elder Abuse, which defined and set out a framework and programme of work to address elder abuse, and the 2009 Review of that Report. The Health Service Executive's Elder Abuse Service is comprised of a dedicated staffing structure throughout the country, unified data collection, national and regional oversight mechanisms, a research facility based in University College Dublin and awareness and training programmes.

47. The staffing structure provides for 32 Social Workers (Senior Case Workers) and 4 Dedicated Elder Abuse Officers. Among the responsibilities of the Senior Case Worker, in conjunction with the appropriate health service providers, is the assessment/investigation and provision of supports where necessary in relation to suspected cases of elder abuse. The duties of Dedicated Elder Abuse Officers include overseeing, reviewing and development of policies at local and national level.

8. The Civil Service Equality Unit

48. The Civil Service Equality Unit now forms part of the Civil Service HR Policy Unit of the Department of Public Expenditure and Reform. The Equality Unit has responsibility for the management of the Civil Service Childcare Initiative which has seven crèches in its remit.

49. A Civil Service Equality Initiatives Report was published in 2006 and is available at the following link <http://www.finance.gov.ie/documents/publications/reports/C.SEqualityInit.pdf>

50. The percentage of female Assistant Principals at December 2011 was 39%, compared with the Government target of 33.3%. The percentage of female Principal Officers at December 2011 was 31%, compared with the Government target of 27%.

51. A Code of practise for the Employment of People with a Disability in the Irish Civil Service was published by the Equality Unit in 2007 and is available at the following link <http://per.gov.ie/wp-content/uploads/codepractdisability2007.pdf>

52. Part 5 of the Disability Act 2005 provides for a statutory report on employment of people with disabilities in the public sector to ascertain if not less than 3 per cent of the persons employed by it are persons with disabilities. The Equality Unit is the monitoring committee for public bodies staffed by civil servants i.e. Government Departments/Offices and bodies under its aegis staffed by civil servants.

53. In 2010 the 15 Government Departments employed 19,631 people, of whom 811 (4.1%) were reported with a disability. All departments met the 3% target, with the results for individual departments ranging from 3.1% to 5.9%. This sector accounted for 9.3% of public sector employment and 14% of employees with disabilities. There were 47 data sets for public bodies staffed by civil servants. This sector employed some 15,554 people of whom 541 (3.5%) were recorded with a disability. It accounted for 7.4% of overall public sector employment and 9.4% of employees with disabilities.

54. The position of Disability Advisory Officer no longer exists. The Code of practice has been published (see above) and the Disability Liaison Officer Network is in place with a central role in ensuring the implementation of the Code.

55. The Equality Unit is currently reviewing the 2005 civil service anti harassment, sexual harassment and bullying policy, with information available at the following link <http://per.gov.ie/wp-content/uploads/APWENov05.pdf>

9. Human rights education

56. Ireland is committed to continuing to provide support for human rights education and training in order to enhance awareness and respect for human rights. Human rights issues are addressed at pre-school, primary and post-primary levels of the education system and there are human rights programmes in a number of third-level education institutions.

(a) Teacher education and human rights including the Teaching Council

(i) Training for staff in pre-school settings

57. In July 2010, the Government approved a Dormant Accounts funded initiative to support clusters of pre-school settings to undertake a nationwide equality and diversity training for their staff in a coordinated manner through the existing City and County Childcare Committee network.

(ii) Primary Teachers

58. The main focus of the five State funded Colleges of Education is the Bachelor of Education in Primary Teaching which is the main path for entry to primary teaching. An 18-month Post-graduate Programme in Primary Teaching is also available in 4 of the Colleges (with the exception of Church of Ireland College of Education). In addition to the five State funded Colleges, one private college offers accredited primary and post-primary initial teacher training (for graduates) and also other post-graduate courses.

59. A variety of courses / modules / electives are provided as part of the initial teacher education programmes at primary level including: Inclusion, Educational Disadvantage, Intercultural Education, Equality and Cultural Diversity, Social Justice (local & global). These courses are integrated across initial teacher education courses and may be provided on either an elective or mandatory basis. Teaching methodologies implemented in each College of Education promote a focus on developing inclusive classrooms.

(iii) Post Primary

60. Post-primary teachers follow one of two models of initial teacher education: a concurrent or a consecutive model. Institutions of higher education are autonomous and course content may vary. Teaching methodologies promote focus on support for the inclusive classroom. The programmes provide for a wide variety of electives/modules on equality & diversity, social justice, multiculturalism and inclusion.

(iv) Teaching Council

61. The Teaching Council in Ireland has a statutory role in relation to the review of standards required for entry into the teaching profession, including the standards of knowledge, skill and competence required for the practice of teaching. All teacher education programmes in Ireland must have professional accreditation if graduates are to be eligible for registration with the Teaching Council.

62. In the context of Section 38 of the Teaching Council Act, 2001, the Teaching Council, in 2009, commenced its process of reviewing and accrediting the 42 teacher

education programmes in Ireland, and this process is continuing with the second round of reviews.

63. The Teaching Council in 2011 published the new criteria which must be met by Higher Education Institutions (HEIs) providing programmes of teacher education in Ireland. The Council has stated that the criteria will guide HEIs in reconfiguring their programmes to ensure that they meet its professional accreditation requirements. The duration of concurrent programmes will be a minimum of four years commencing in 2012/13 while post graduate programmes will be provided over two years commencing in 2014/15.

64. The criteria relate to a range of areas including programme design, areas of study, the duration of programmes, the numbers and qualifications of staff, facilities and resources. Significantly, the criteria:

- Prescribe those areas of study and programmes which will be mandatory to include numeracy and literacy, behaviour management, parents in education, ICT and inclusive education (Special Education, Interculturalism, Disadvantage etc) and legislation relevant to school and classroom;
- Prescribe the learning outcomes, set out by the Council, encompassing the standards of teaching, knowledge, skill and competence together with the values, attitudes and professional dispositions which are central to the practice of teaching including the factors that promote and hinder effective learning, the impact of pupils' backgrounds and identities on learning and the need to provide for the holistic development of the learner, particularly through differentiated approaches.

65. The criteria are set out in a document, Initial Teacher Education: Criteria and Guidelines for Programme Providers (2011) which has been circulated to all Higher Education Institutions providing programmes of initial teacher education. It is based on the Council's Policy on the Continuum of Teacher Education which was also published in July 2011 and which sets out the Council's vision for teacher education at all stages of the teaching career, including initial teacher education, induction into the profession and continuing professional development.

(b) Training of Civil and Public Servants

66. The Irish Human Rights Commission provides training to civil and public servants on their human rights obligations. Human Rights training, provided by the IHRC, was rolled out by the Department of Education and Skills to their own staff in 2011. This training provided their staff with an overview of relevant treaties, conventions, declarations and the obligations of staff and Departments with a specific focus for the Department on the State's obligations with regard to the right to education.

10. An Garda Síochána (National Police Force)

67. The information in this section provides an update on paragraphs 57-61 of Ireland's third periodic report under the ICCPR.

(a) General principle

68. The current Garda Strategy Statement (2010 – 2012) sets out key goals for An Garda Síochána over the three year lifetime of the Strategy. One key goal – “Working with Communities” – commits An Garda Síochána to deliver a policing service that recognises the diverse needs and priorities of all the people and communities in Ireland. One of the initiatives identified to achieve this objective is to “Continue to build trust and confidence with diverse communities through the implementation of the Garda Diversity Strategy”.

69. A Diversity Management Unit has been established whose function is to progress the Diversity Policy internally within the organisation.

(b) Garda Racial and Intercultural Diversity Office

70. The brief of the former Garda Racial and Intercultural Office has been extended to include Diversity issues. The Garda Racial Intercultural and Diversity Office (GRIDO) provides advice and training to all members of An Garda Síochána on measures to adopt in professional policing of the community. This advice focuses on the need for Garda members to carry out their duties and exercise their authority and powers in accordance with law and in a non-discriminatory manner at all times.

(c) Garda Human Rights Training

71. The Garda Síochána has a comprehensive education, training and information system for the professional development of all members. This development programme incorporates human rights training:

- A “first steps” training programme in human rights and anti-racism has been developed and is operational for Garda trainers.
- There is a two and a half day human rights and anti-racism module on all Sergeant and Inspector Development courses.
- Human rights and anti racism training has been integrated into the Student/Probationer Education and Training Programme.
- A programme of Human Rights Training has been developed for all Senior Garda managers of the rank of Chief Superintendent and above.

72. At an operational level there are a number of practical initiatives underway involving the Garda Síochána and various groups within society to ensure that every effort is made to uphold individual human rights and tackle racist and homophobic incidents.

73. These initiatives include ongoing:

- Liaison between An Garda Síochána and the Office for the Promotion of Migrant Integration in relation to the integration of migrants and in relation to monitoring of incidents of racism.
- Extension of the remit of the Garda and Racial Intercultural Office (GIRO), which has responsibility for co-ordinating, monitoring and advising on all aspects of policing in the area of ethnic and cultural diversity, to also include Diversity issues and liaise with groups representing the Lesbian, Gay, Bisexual and Transgender (LGBT) communities and organisations representing persons with disabilities.
- As of 31 December 2011, there were 321 appointed Ethnic Liaison Officers based throughout the State.
- The adaptation of the Garda PULSE computer incident recording system to record incidents of a racist nature.
- The active interaction with members of ethnic minority communities as part of the Garda Síochána’s commitment under the National Action Plan against Racism.
- Close liaison with the Gay and Lesbian Network (GLEN) to develop jointly a guide to best practice on policing and the LGBT communities.
- The development of plans to have a trained LGBT officer in each Garda Division; awareness of LGBT issues now forms part of the professional training of new Garda recruits.

Article 3 – The equal right of men and women to the enjoyment of all civil and political rights

1. The Constitution and the role of women

Response to the recommendations in paragraph 10 of the concluding observations (CCPR/C/IRL/CO/3)

74. In the concluding observations in relation to Ireland's third report the Human Rights Committee remained concerned that Ireland did not intend to initiate a change of Article 41.2 of the Constitution with a view to including a gender-neutral wording in the article.

75. The phrase "women in the home" refers to Article 41.2.1 of the Constitution which states that "In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved" and to Article 41.2.2 of the Constitution which states that "The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home." In accordance with its Programme for Government, it is anticipated that the new Government will announce the establishment of a Constitutional Convention to consider comprehensive constitutional reform with a brief to consider, inter alia, amending the clause on women in the home and encourage greater participation of women in public life.

76. Details of the National Women's Strategy 2007-2016 and progress made there under are provided in paragraphs 82–89 below.

2. Measures taken to eliminate traditional practices and customs affecting the dignity and personal integrity of women and girls

Female genital mutilation

77. In January 2011 the government published the Criminal Justice (Female Genital Mutilation) Bill 2011 to explicitly prohibit female genital mutilation (FGM) along with related offences – some of which apply to certain extra-territorial jurisdictions. The proposed legislation takes a human rights perspective and stipulates that the right to practice one's cultural traditions and beliefs cannot be used to justify FGM, which has been internationally recognised as a form of gender-based violence. The Bill will bring Ireland in line with international best practice as well as providing indisputable legal clarity on the issue.

78. The Bill passed the first stage of Parliamentary scrutiny in July 2011 and it is due to be heard in the Dáil (Parliament) in early 2012. It is hoped that it will be enacted before the summer recess 2012.

79. The Health Service Executive (HSE) is awaiting the enactment of the Bill to progress with the printing of information leaflets on FGM. It is also planned that the prevention of FGM and the care of women who have already undergone the procedure will be included in the HSE Service Plan for next year as a Key Result Area and this would allow for the development of a Key Performance Indicator in subsequent years.

80. Moreover, the HSE has already engaged in significant steps to raise awareness and train health and social care professionals in this area by progressing the health related objectives of the National Action Plan Against Female Genital Mutilation over the last couple of years. Its latest initiative in this field is the introduction of National Maternity Healthcare Record. This new form will be used for all women booking for maternity care and includes for the first time at a national level FGM as a risk factor for obstetric care.

3. Gender equality

81. The Irish Government's approach to the achievement of gender equality is three pronged

- To deliver on the objectives of the National Women's Strategy 2007-2016
- To carry out positive action measures and
- Gender mainstreaming.

(a) The National Women's Strategy 2007-2016

82. The National Women's Strategy 2007 – 2016 (NWS) was published in April 2007. The Strategy is a proactive, overarching commitment on the part of the Irish Government to address a comprehensive range of measures which are intended to foster greater gender equality, wellbeing and security for women in Ireland.

83. The NWS has, as its vision, "An Ireland where all women enjoy equality with men and can achieve their full potential, while enjoying a safe and fulfilling life".

84. The NWS is structured under the three key themes of: Equalising socio-economic opportunity for women; Ensuring the wellbeing of women; and Engaging women as equal and active citizens. The NWS contains over 20 key objectives and more than 200 planned actions.

85. Responsibility for the implementation of the NWS falls to many Government Departments and State Agencies while some aspects also require the co-operation or active involvement of the social partners, particularly employers and trade unions/ staff associations and the political parties in respect of women's participation in politics.

86. Implementation of the NWS is overseen by a Monitoring Committee comprising all relevant Government Departments and State Agencies and the Social Partners and is chaired by the Minister of State for Disability, Equality, Mental Health and Older People.

87. Funding for actions included in the Strategy is provided under the voted moneys allocated to the different Government Departments with responsibility for each objective.

88. A Progress Report on the implementation of the NWS is prepared by the Gender Equality Division, the Department of Justice and Equality, annually. This Report is submitted to the NWS Monitoring Committee and to the Government and is also widely disseminated.

89. The NWS also includes a commitment to undertake a triennial review and the first such review will be underway early 2012. This Review will examine achievements to date; the operating environment and make recommendations to the Irish Government for amendments to the NWS, if necessary. This addresses the concluding observations of the Human Rights Committee which stated that Ireland should ensure that the NWS is regularly updated and evaluated against specific targets.

Key achievements made under the National Women's Strategy 2007-2016

a. Women's employment

90. The downward trend in numbers of people in employment continues to impact more directly on men than on women. There were 233,600 fewer men at work at the end of 2010 than in the second quarter of 2007 when the National Women's Strategy was published, while the decline in female employment was 57,100 in the same period. However, during 2010, for the first time since the recession began the number of women who became unemployed (+17,200) was higher than the number of men (+14,400). The number of women aged 15 and over in employment in Q1/2007 was 891,000. This increased to

925,200 in early 2008 before decreasing to 837,000 in Q3/2011. Male employment increased from 1,196,600 in Q1/2007 to 1,225,900 in early 2008 before dropping back to 968,000 in Q3/2011. The unemployment rate for men in Q3/2011 was 17.6 per cent compared with 11.5 per cent for women in Q3/2011.

b. Gender pay gap

91. The gender pay gap, an indicator calculated by Eurostat, shows that the inequality in pay between men and women in Ireland has reduced from 17.1 per cent in 2007 to 15.7 per cent in 2009. The Gender Pay Gap in Ireland in 2009 of 15.7 per cent was below the EU average Gender Pay Gap of 17.1 per cent.

c. Women's health

92. The National Cancer Control Programme has established eight symptomatic breast centres (with one satellite centre). All patients with any breast symptom are referred to and managed at one of these centres. In 2010, BreastCheck screened approximately 118,846 women.

93. CervicalCheck became available to over 1.1 million women aged 25 to 60 on 1 September 2008. The CervicalCheck Programme Report published in 2010 reported that over 284,800 women were screened during the period 1 September 2008 to 31 August 2009. CervicalCheck screened approximately 250,834 women in 2010.

94. A new CVD Policy on Cardiovascular disease, stroke and peripheral vascular disease was launched by the Minister for Health and Children in 2010. Awareness raising about the incidence of cardiovascular disease among women is facilitated through all women's health training programmes, for both women and health care providers.

95. The Health Service Executive (HSE) has undertaken a number of new initiatives to address and create awareness of post natal depression.

d. Sexual and reproductive health

96. During 2010, the HSE Crisis Pregnancy Programme continued to deliver an active programme of initiatives to promote the use of contraception and reduce the incidence of unwanted pregnancy

97. The estimated abortion rate has now fallen to 4.4 per 1,000 women aged 15 to 44 (compared with 7.5 per 1,000 in 2001). Over €3 million in funding was allocated to the area of crisis pregnancy and post-termination counselling and medical checkups in 2010, including the improvement of standards through training and supervision and for the ongoing delivery of the Crisis Pregnancy Counselling Course with the National University of Ireland Maynooth and associated alumnae seminar.

98. During 2010, there were approximately 86,000 requests for information from the Positive Options service of the HSE Crisis Pregnancy Programme (via SMS requests and website visits) and approximately 50,000 visits to the www.positiveoptions.ie website. In 2010, approximately 95,000 'Positive Options' materials were disseminated through crisis pregnancy counselling services, GP surgeries and colleges. The campaign was re-developed in 2010 with newly executed television, radio, poster and online advertising.

e. Violence against women

99. An action under Objective 12 of the NWS sought the establishment of an executive office to provide a well co-ordinated "whole of Government" response to violence against women.

100. Following a Government Decision, Cosc, the National Office for the Prevention of Domestic, Sexual and Gender-based Violence, was established in June 2007 with the key

responsibility to ensure the delivery of a well co-coordinated “whole of Government” response to domestic, sexual and gender-based violence. The work of Cosc covers issues relating to domestic and sexual violence against women and men, including older people in the community. The office is an executive office of the Department of Justice and Equality.

101. The National Strategy on Domestic, Sexual and Gender-based Violence 2010-2014 was launched by the Minister for Justice and Equality in March 2010.

102. At the core of the approach to the strategy is action based on primary and secondary interventions. Primary intervention relates to the prevention of domestic, sexual and gender-based violence through greater understanding, increasing recognition and raising awareness. Secondary intervention deals with responding to the violence concerned by ensuring better provision of services to and protection for victims, improving coordination and dealing with the offending behaviour of perpetrators.

103. The overall aim of the strategy is the development of a strong framework for sustainable intervention to prevent and effectively respond to domestic, sexual and gender-based violence.

f. Anti-human trafficking

104. Following from Objective 13 in the NWS ‘To address the issue of trafficking of women and children’, the Anti-Human Trafficking Unit of the Department of Justice and Equality was established in February 2008 to ensure that the State’s response to trafficking is co-coordinated, comprehensive and holistic. It works closely with both State and non-governmental organisations and is responsible for the implementation of the National Action Plan to Prevent and Combat Trafficking in Human Beings in Ireland 2009-2012, which was launched by the Minister for Justice, Equality and Law Reform in June 2009.

105. The Action Plan also sets out the structures which brought Ireland into line with its international obligations and allowed for the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime in 2010.

g. Decision-making

106. A Sub-Committee of the NWS Monitoring Committee was established in late 2010 to address the issue of female representation in decision-making. The Sub-Committee examined the issues surrounding the low participation of women in decision-making roles and will propose recommendations, where appropriate, for improving the current situation in the following areas: corporate employment (both in the Public and Private Sectors); corporate and State Boards; Politics; the diplomatic service; and the Judiciary. The Sub-Committee met during 2011 and is due to report shortly.

(b) **Positive actions**

107. Launched in 2008, the Equality for Women Measure is a positive action measure to promote equality of opportunity for women and to complement the Government’s National Women’s Strategy 2007-2016. The measure is supported by European Social funding, under the Human Capital Investment Operational Programme 2007-2013. Initially, the Equality for Women Measure focuses on four main strands:

- Access to Employment;
- Developing Female Entrepreneurship;
- Career Development for Women in Employment; and

- Fostering Women as Decision -Makers.

108. Strand 1, Access to Employment was launched in Dublin Castle on 27 May 2008 by the Minister for Justice, Equality and Law Reform. The Access to Employment strand aims to provide women (who are currently outside the labour market, and in areas of socio-economic disadvantage) with the social skills, education and training to enable them to enter or return to the labour market.

109. In 2009, funding of €30,000 per project was made available to 36 groups and following a re-launch of the Equality for Women Measure in May 2010, a total of €1.9 million in grant funding was made available to 43 projects, enabling a mix of community groups and national bodies to provide developmental support and training for women currently outside the labour market with a view to helping them return to work, or to support female entrepreneurs or to help advance the development of women already in the workforce.

(c) Gender mainstreaming

110. All Irish Government Departments submitting policy proposals for Government decision are required to include a short analysis of the gender equality impact of the proposal.

111. In line with EU policy, gender equality is still dealt with as a horizontal issue in the delivery of programmes which are supported with European Union Structural Funds. This includes the two Regional Operational Programmes which are largely infrastructural and the Human Capital Investment Operational Programme which is employment focussed. This latter Programme also makes funding available for a programme of positive actions to develop women.

112. In 2008, the Department of Justice, Equality and Law Reform (now the Department of Justice and Equality) sought and received funds from the EU PROGRESS programme, to enable it to research gender mainstreaming and enhance gender mainstreaming throughout the policy-making process in Government Departments and their associated Agencies. The focus of the project was to develop a framework to ensure that within these organisations, gender equality would be mainstreamed into policy-making.

113. Following a literature review and visits to a number of EU partners, a systematic framework to implement gender mainstreaming in a more structured manner was developed. However, further work on the implementation of this initiative has been deferred on a temporary basis as the Irish civil service is undergoing a major restructuring process.

114. The Department of Justice and Equality also provides guidance to other Government Departments in relation to the incorporation of a gender mainstreaming perspective in the three year Strategy Statements of individual Departments.

115. The Department of Justice and Equality also engages in inter-Departmental dialogue on a range of topics including social inclusion and employment.

(d) Women on State Boards

116. In March, 1993, the Government set itself the objective of achieving greater gender balance in direct appointments to State Boards, with a target of 40 per cent female membership.

117. By the end of 2010, the percentage of women on State Boards had increased to 34.65 per cent and the percentage of women nominated by external bodies had increased to 34 per cent compared to 30 per cent in 2004. The percentage of women who were chairing such boards increased by 2 percentage points in 2010, but women still only represented 20 per cent of the chairperson roles. In relation to both membership and chairpersons, the

results are not uniform across all Boards and are heavily skewed in favour of women in the Boards which focus on social rather than economic and infrastructural issues.

118. The current Programme for Government contains a commitment that “We will take steps to ensure that all State boards have at least 40% of each gender.”

(e) Women on corporate boards

119. Ireland has only 8 per cent female members of the highest decision-making bodies of the largest publicly quoted companies, according to a European Commission *Report on Equality between Women and Men in 2010*. The EU27 average is 12 per cent female members. Only six of the 27 EU Member States have a lower percentage than Ireland.

120. The slow progress made in addressing the gender balance on corporate boards has fuelled debate across Europe. Corporate Governance Codes that encourage companies to take action are increasingly used to promote gender equality on company boards. EU Vice-President and Justice Commissioner, Ms. Viviane Reding, called on publicly listed companies in the EU to take voluntary steps to increase women’s participation on corporate boards to 30 per cent by 2015 and to 40 per cent by 2020. Commissioner Reding also indicated that she will review the situation in March 2012 and if credible progress has not been made she is ready to take the necessary legislative steps at EU level.

(f) Women in public service employment

121. Much of the increase in female employment over the past ten years took place in the public sector, with increased employment opportunities in the feminised health and education sectors as key drivers of increased female jobs.

122. The table below is drawn from statistics collated by the Department of Public Expenditure and Reform and shows the numbers by sex in each of the main (non-technical) grades of the Irish Civil Service in both 2004 and 2011.

Table 1

Civil Service: General Service Staff: Percentage of each Grade by Gender

Grade	2004		2011		N=
	Men %	Women %	Men %	Women %	
Secretary General	94.1	5.9	81.0	19.0	21
Deputy & Assistant Secretary	90.1	9.9	82.0	18.0	150
Principal Officer	77.6	22.4	70.4	29.6	648
Assistant Principal	66.2	33.8	62.0	38.0	1,848
Administrative Officer	43.6	56.4	41.6	58.4	243
Higher Executive Officer	51.5	48.5	50.8	49.2	3,183
Executive Officer	33.8	66.2	34.6	65.4	5,076
Staff Officer	20.5	79.5	23.1	76.9	1,481
Clerical Officer	19.0	81.0	24.5	75.5	9,930
Services Officer	87.1	12.9	89.5	10.5	715
Services Attendant	88.7	11.3			

<i>Grade</i>	<i>2004</i>		<i>2011</i>		<i>N=</i>
	<i>Men</i>	<i>Women</i>	<i>Men</i>	<i>Women</i>	
Total	34.6	65.4	37.0	63.0	
Total persons	8,395	15,870	8,628	14,667	23,295

Source: Department of Finance and CSO (Central Statistics Office)

123. The table shows a decrease in the overall percentage of women in the Civil Service but, more importantly, it shows quite a significant increase in the percentage of women in each of the top five grades. While this is positive, further steps will be necessary to encourage increasing numbers of women to compete for the highest three grades and in particular for the grades of Assistant and Deputy Secretary which are normally the feeder grade for the Secretary General positions. In a recent development, almost all of the posts in the top three grades (Assistant Secretary and above) are now advertised publicly, which also affords non-Civil Servants, both male and female, the opportunity to compete for them.

(g) Women in the diplomatic service

124. The Irish Diplomatic Network is made up of 76 overseas Missions, in addition to offices in Armagh and Belfast. The Network consists of 58 Embassies, 7 multilateral missions and 11 Consulates General and other offices overseas. In July 2011, 11 women or over 18 per cent of the total were assigned to Ambassador ranked posts. Including Consulates and other offices, a total of 15 women or almost 19 per cent of the total, from various Civil Service grades, were assigned to Head of Mission or equivalent posts. This is in line with the reported average from figures available across the EU Member States.

(h) Women in the judiciary and senior legal posts

125. The percentage of female judges is 25 per cent or higher in all of the Courts with the exception of the High Court which has a female representation of just over 14 per cent. It is clear from the statistics that women are reaching the highest levels in the Judiciary to a much greater extent than in any of the other decision-making areas in Ireland but these statistics still fall short of the 40 per cent target for balanced representation of women and men.

126. Ireland currently has the first female Chief Justice of the Supreme Court, a female Attorney General and a female Director of Public Prosecutions. The President of the District Court is also a woman.

(i) Women and Politics

127. The National Women's Strategy 2007 – 2016 has as one of its key themes "Engaging Women as Equal and Active Citizens".

128. In 2009, a Sub-Committee of the Joint Oireachtas (i.e. Parliament) Committee on Justice, Equality, Defence and Women's Rights undertook a review of the topic to:

(a) Analyse the challenges facing women in relation to entry into politics at local, national and European levels;

(b) Examine potential initiatives which may encourage women to consider a career in politics;

(c) Consider whether a policy of "positive discrimination" which has been successfully used in other countries, could be adopted in Ireland;

(d) Make recommendations to enhance the role of women already active in the political arena.

129. The Sub-Committee identified five challenges to women's entry into politics which are regarded as universal. They are as follows

- Childcare – women are more likely to have this responsibility
- Cash – women have less access to resources than men
- Confidence – women are less likely to go forward for selection
- Culture – a gendered culture is prevalent, even within left-wing parties
- Candidate selection procedures – the processes by which political parties select candidates has been identified as posing a significant obstacle to women's political participation.

130. The Sub-Committee considered the use of awareness raising campaigns and mentoring initiatives to attract more female candidates while the report also examines the issue of quotas, including candidate quotas and reserved seat quotas. The work of the Sub-Committee concluded with a series of recommendations to address each of the challenges which had been identified.

131. The issue of women's role in politics was examined further by the Joint Committee on the Constitution which reported in July 2010 and which addressed a wide range of issues including the representation of women. The Committee brought forward a number of recommendations on the topic including

- That political parties pursue positive measures to promote gender equality in their memberships, including in the selection of candidates for election.
- That the Attorney General be asked to examine the constitutional implications of a proposed measure under which public funding of political parties would be regulated so that a proportion of the funding allocated to a party would be determined by the number of women candidates it nominates for election.
- That political parties be required, as one of the conditions for public funding, to submit an annual statement to the new Electoral Commission [also proposed in the Report], for publication, setting out in detail policies and actions being pursued by them to promote gender equality in their electoral candidates and parliamentary representation.

132. The local authority elections of 2009 produced little change in female political representation. In the 2004 local elections, 18.24 per cent of the candidates were women and 17.21 per cent of those elected were women. In the 2009 local elections, 16.87 per cent of the candidates were women and 16.53 per cent of those elected were women.

133. Following the General Election in February 2011, the percentage of women elected to Dáil Éireann (Lower House of Parliament) stands at 15 per cent, a slight increase on the pre-election figure of 13 per cent. Statistics from the 2011 Seanad Éireann (Upper House of Parliament/Senate) election are more positive with an overall return of 30 per cent female Senators.

134. In the 2011 General Election just 86 of the candidates were women (15.2 per cent). In nine out of the forty-three electoral constituencies there were no female candidates. With women representing 15 per cent of candidates and 15 per cent of those elected, it would appear that there is no voter bias against women although this has not been tested statistically.

135. The issue of the outcomes for women in the political process was discussed in some detail in the post election period and the theme was incorporated in the Programme for Government agreed by the coalition partners which contains the following commitments:

- We [the Government] recognise that there needs to be a substantial increase in the number of women in politics. We will ask the Constitutional Convention, which is examining electoral reform, to make recommendations as to how the number of women in politics can be increased.
- Public funding for political parties will be tied to the level of participation by women as candidates those parties achieve.

136. In December 2011, the Minister for the Environment, Community and Local Government published the General Scheme of the Electoral (Amendment) (Political Funding) Bill 2011. This draft legislation includes a provision that political parties will lose half of their public funding if they do not put forward at least 30 per cent male and 30 per cent female candidates at the next general election. This percentage will then rise to 40 per cent after seven years.

137. In July 2010, the then Minister of State for Equality, Integration and Human Rights initiated a dialogue with the general secretaries and elected representatives of each of the political parties with a view to establishing consensus on a number of the key points raised in these two reports. The dialogue was ongoing when the Government coalition collapsed in early 2011. The successor Minister for Disability, Equality, Mental Health and Older People continued to foster this work and chaired the Sub-Committee on Women and Decision-making. This Sub-Committee is due to report shortly.

(j) Other issues

(i) The Oireachtas Joint Committee on Justice, Defence and Equality

138. The Committee on Women's Rights, whose membership was drawn from both Houses of the Oireachtas (Parliament), was first established in 1983 and Women's Rights Joint Committees were established in successive Dáils from 1983 to 1997. The function of that Committee was then discharged by the Joint Committee on Justice, Equality and Women's Rights which was constituted following the formation of a new Government in July 1997. The current provision in respect of women's rights is part of the wider brief of the present Committee.

(ii) National Women's Council of Ireland

139. The National Women's Council of Ireland (NWCI) groups together approximately 160 NGOs representative of women's interests and concerns. It is recognized by Government as the body which puts forward women's concerns and perspectives. It receives almost all its core funding from the Government as a positive action measure. In 2011, this amounted to €571,000. Budget 2012 indicates that up to €350,000 will be made available to the NWCI for 2012. This decision became necessary because of the pressure on public finances in a Department which had to prioritise national security services such as An Garda Síochána, Courts, Prisons etc. In looking at all other funding, no area was left uncut and the Minister decided he had no option but to favour organisations providing services over organisations which in the main provide advocacy and research. The Minister had a positive meeting with the NWCI which is now looking at its priorities in the circumstances. The NWCI has also been able to supplement its core funding through philanthropic funding for specific projects from a number of sources.

140. The NWCI is completely independent of Government on policy issues, answerable only to its own elected executive committee and members. In addition to its developmental role, it is recognized as an informed and constructive contributor to the implementation and

review of policy initiatives and its leaders interact frequently with senior politicians and policy makers.

(iii) *Convention on the Elimination of All Forms of Discrimination against Women*

141. Ireland acceded to the Convention on 23 December, 1985 and submitted its first report (CEDAW/C/5/Add.47) in 1987. Ireland's most recent report, the combined fourth and fifth report (CEDAW/C/IRL/4-5), was submitted by the Department of Justice, Equality and Law Reform in June 2003. This report was examined by the CEDAW Committee in July 2005. The concluding comments and recommendations of the CEDAW Committee have been circulated to all relevant Government Departments. Ireland's next report under CEDAW is in the course of preparation.

4. Domestic and gender-based violence

(a) Overview

142. Six government departments, their agencies and up to 100 non-governmental organisations are involved in work relevant to the prevention and alleviation of domestic and sexual abuse. Ireland's commitment to tackle violence against women was significantly enhanced by the 2007 decision to establish a dedicated office for this purpose. Cosc, the National Office for the Prevention of Domestic, Sexual and Gender-based Violence, was established in June 2007 as an executive office of the Department of Justice and Equality. The key responsibility of Cosc is to ensure the delivery of a well co-ordinated "whole of Government" response to domestic, sexual and gender-based violence.

143. Cosc, in consultation with a broad range of stakeholders in government and non-governmental organisations, developed the National Strategy on Domestic Sexual and Gender-based Violence for the period 2010 to 2014. The Government approved the Strategy in January 2010 and it was launched in March of that year. Cosc is responsible for driving implementation of the strategy Progress reports on the implementation of the Strategy are published on the Cosc website (www.cosc.ie).

144. The National Strategy is a statement of Government priority actions to address domestic, sexual and gender-based violence in Ireland in the five-year period from early 2010 to the end of 2014. The Strategy sets out a plan for 'whole-of-government' action for a more effective system to tackle these types of violence. The Strategy aims to provide a strong framework for sustainable intervention to prevent and effectively respond to domestic, sexual and gender-based violence. It presents evidence to help understand the complexities of domestic, sexual and gender-based violence and to inform the development of responses. The model chosen for the Strategy focuses on primary and secondary intervention while placing an emphasis on co-ordinated impact assessment and the generation of evidence on which policy and service planning is firmly based.

145. The four High-Level Goals of the Strategy are:

- (1) To promote a culture of prevention and recognition through increased understanding of domestic, sexual and gender-based violence;
- (2) To deliver an effective and consistent service to those affected;
- (3) To ensure greater effectiveness of policy and service planning; and
- (4) To ensure efficient and effective implementation of the strategy.

146. The High-Level Goals cascade down into detailed 'on the ground' activity through 14 key objectives, 23 actions and 59 activities. Progress indicators and structures for implementation are also set out by the Strategy. A mid-term review of the Strategy is scheduled to take place in mid 2012 with a further review in early 2014 to inform future strategic developments.

147. A National Steering Committee on Violence against Woman (NSCVAW) composed of representatives of state organisations and non-governmental organisations is to work in partnership to combat domestic and sexual abuse. The current remit of the NSCVAW is to:

- Advise on the development and implementation of policies and guidelines for action on domestic and sexual violence against women including those concerning services and supports, perpetrators, and State intervention;
- Advise on research to be undertaken and needs assessments nationally;
- Assist Cosc in the promotion of interagency co-operation and sharing of information;
- Assist and advise Cosc in the development of codes of practice for collecting statistics and monitoring responses;
- Assist and advise Cosc in promoting public awareness about the issues involved in violence against women;
- Assist and advise Cosc in identification of legal issues affecting the prevention of, and action responding to, violence against women;
- Share information on international developments in relation to the issue of violence against women.

148. All national non-governmental organisations dealing with violence against women are represented on the NSCVAW which advises Cosc on issues around violence against women. In addition regional advisory committees comprising of locally based government and non-government support services feed into the NSCVAW. Both the regional bodies and the NSCVAW input into the monitoring of the National Strategy.

(b) The National Steering Committee on Violence against Men

149. Cosc set up the National Steering Committee on Violence against Men (NSCVAM) in late 2011 with the ultimate aim of improving the protection and services for men who are, or may become, victims of domestic violence.

150. The NSCVAM is expected to be of great benefit in tackling domestic violence against men. Advice from the committee will inform Cosc's work with all parties to produce real action, to facilitate inter-agency work and to maximise enhancements across the system

151. The NSCVAM remit is to:

- Advise Cosc on the implementation of the National Strategy on Domestic, Sexual and Gender-based Violence 2010 – 2014 in relation to domestic violence against men;
- Advise on the development and implementation of policies and guidelines for action on domestic and sexual violence against men including those concerning services and supports, perpetrators, and State intervention;
- Assist Cosc in the promotion of interagency co-operation and sharing of information;
- Assist and advise Cosc in promoting public awareness about the issues involved in violence against men;
- Assist and advise Cosc in the identification of legal issues affecting the prevention of, and action responding to, domestic violence against men;
- Advise on research to be undertaken and needs assessments nationally;

- Share information on international developments in relation to the issue of domestic violence against men.

152. Membership of the National Steering Committee on Violence Against Men is based on the following principles:

- The NSCVAM will include State and non-State organisations.
- Membership is confined to organisations with a broad range of relevant expertise.
- Member organisations must have significant experience at high level representation, in matters relating to violence against men.
- Members must be in a position to bring to the NSCVAM expertise in areas of major relevance.
- Member organisations must be representative of significant stakeholders in action to prevent and respond to violence against men
- Membership must support an effective NSCVAM and careful consideration will be given to whether the admission of new members would militate against the effective operation of the NSCVAM.

(c) Legislation on domestic abuse: response to the recommendations in paragraph 9 of the concluding observations (CCPR/C/IRL/CO/3)

153. The Programme for Government 2011-2016 includes a specific commitment to reviewing domestic violence legislation. The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 extended the application of domestic violence orders to civil partners, as defined by the Act (the 2010 Act is available at the following link <http://www.irishstatutebook.ie/pdf/2010/en.act.2010.0024.PDF>).

154. The Civil Law (Miscellaneous Provisions) Act 2011 introduces important amendments to the Domestic Violence Act 1996 and 2002 to extend the powers of the court to order protection of persons in cases of domestic violence.

155. The 2011 Act amends the Domestic Violence Act 1996 so that:

(a) A parent may now apply for a safety order against the other parent of their child, even where the parents do not live together and may never have lived together. This ensures that the full protection of the law is available where access to a child is an occasion of intimidation or even violence between disputing parents;

(b) The protections of the Act are available on the same basis to unmarried opposite-sex couples and same-sex couples who have not registered a civil partnership; and

(c) Couples who are not married or are not in a registered civil partnership are no longer required to have lived together for a particular minimum period of time before one of them can obtain a safety order against the other.

156. It should be noted however that couples as mentioned in (a) and (c) above are those who have lived together “in an intimate and committed relationship” prior to the application for the order. The minimum period of living together for a barring order remains an aggregate of six months in the nine months immediately prior to the application. These provisions of the Civil Law (Miscellaneous Provisions) Act 2011 dealing with domestic violence came into operation, with immediate effect, on the 2nd of August 2011.

157. Responses to further elements of this concluding observation are provided in paras. 171–189 below.

(d) Information on training to combat domestic and sexual violence*(i) Garda Síochána*

158. The Garda Síochána Policy on Domestic Violence emphasises the need for the investigating Garda to provide accurate advice on legal and other support services. The advice should include information on both state and non-state services. The Garda policy on the investigation of sexual crimes was updated in March 2010.

159. Both policies emphasise the need to respect the human right of the victim and to provide accurate information on the support services available in the area. The provision of the contact details of the investigating officer and follow up on the complaint is also emphasised in Garda training.

160. The Domestic Violence and Sexual Assault Investigation Unit (DVSAIU) is a unit within An Garda Síochána tasked with the strategic overview of domestic violence and sexual crimes investigation. This unit is part of the National Bureau of Criminal Investigation, which is tasked with the investigation of all forms of serious crime. Development of policy and procedures in relation to domestic violence is a function of the DVSAIU as well as the strategic implementation of the Domestic Violence Acts and the Garda Domestic Violence Intervention Policy. In that respect a Garda Inspector has been appointed in each Garda Division to oversee the implementation of the policy regarding best practice and adherence to the guidelines. Training is provided to all operational staff on the implementation and compliance with the policy regarding domestic violence. The unit provides a nucleus of expertise to other Garda units in the investigation of crimes of a sexual nature, including child abuse and exploitation and it has a similar brief in relation to domestic violence. The DVSAIU cooperates closely with Cosc and represents the Gardaí on all national forums addressing domestic or sexual violence.

(ii) Office of the Director of Public Prosecutions (ODPP)

161. The Prosecution Policy Unit was formed within the Office of the Director of Public Prosecutions (ODPP) in the 1st quarter of 2008. Domestic, sexual and gender based violence have been identified as priority areas of prosecution policy. The development of policy guidelines providing detailed advice to Prosecutors on how to implement legislation on violence against women is ongoing.

162. The ODPP has appointed a solicitor within the District Court Section (where the majority of domestic violence cases are dealt with) to have special responsibility for all matters relating to domestic violence.

(iii) Health Service Executive

163. The Health Service Executive (HSE) has Designated Officers in each region to promote and coordinate services and training for Health Care Professionals in the area of violence against women. The HSE employs a training and development officer for the prevention of violence against women. This officer has developed and delivered workshops for health professionals on recognising and responding to violence against women.

164. The HSE has also developed a policy on domestic, sexual and gender-based violence which includes actions on training, service standards and data collection. The policy actions have been incorporated into the National Strategy on Domestic, Sexual and Gender-based Violence.

(e) Information on awareness raising campaigns

165. Ireland has run campaigns every year from 2005 targeting both domestic and sexual violence, often run in conjunction with national voluntary support services.

166. Cosc has a clear objective to raise awareness about the nature and extent of domestic, sexual and gender-based violence and the services available for those experiencing these forms of violence; and to identify and change the attitudes and behaviours that contribute to these forms of violence. Cosc currently funds a range of awareness raising activity. Some of this activity is being developed directly by Cosc in partnership with many organisations at national level, and other activity is happening at local level, funded through Cosc's grant scheme.

167. In January, 2009 Cosc began its most recent national awareness campaign titled 'Your Silence Feeds the Violence'. The campaign strongly encourages the public to take an active role in supporting people who are experiencing domestic abuse. The campaign message illustrates that inaction in the face of domestic violence allows the abuse to continue. It challenges the public to understand, to be informed and to know where to go to get expert help. A comprehensive list of all services is provided on the Cosc website (www.cosc.ie). The campaign began with national coverage on television, radio, on-line and on billboards. It continues through the display of campaign advertisements in State offices, Garda stations, public offices and non-governmental organisations services.

168. Cosc also supports non-governmental organisations at local level in promoting their victim support services and in raising awareness of domestic and sexual violence every year by way of a grant scheme. A number of these grants are awarded to promote activities around the United Nations 16 Days of Activism against Gender Violence.

169. Under the National Strategy on Domestic, Sexual and Gender-based Violence a five year information plan has been developed and is being implemented. This plan is strongly based on the advice and input of NGOs and those informed about particular target audiences. Each year the general public, a particular high-risk victim group and a professional group are targeted for enhanced knowledge of this violence and services available.

170. The outcome from this work is informing the work of the data committee. This work is already highlighting the importance of data across a wide range of activities relating to violence against women. It is intended that improvements in this area will lead to greater effectiveness of policy and service planning, in addition to informing the monitoring and reviews of the implementation of the strategy.

(f) Statistics

171. Paragraph 9 of the 2008 concluding observations contain a recommendation which covers a number of areas of combating domestic violence. One element of the recommendation is in relation to the preparation of adequate statistics. The present section addresses this element of the concluding observations.

172. It is recognised that there are significant data deficits in relation to domestic violence in particular and that they need to be tackled. The National Strategy contains a specific action the aim of which is to improve data on domestic and sexual violence. A Data Committee has been established to progress this work and it comprises representatives of the Garda Síochána, the Courts Service, the Health Service Executive, the Central Statistics Office and the Probation Service.

173. In furtherance of this action, a data project has been completed which:

- Identifies and examines specific operational difficulties in existing systems of data collection
- Considers best practice for data collection, collation, analyses and reporting, and
- Sets out recommendations for building domestic and sexual violence data.

(g) **Resources allocated to assistance of victims of domestic abuse**

174. Paragraph 9 of the 2008 concluding observations contain a recommendation which covers a number of areas of combating domestic violence. One element of the recommendation is in relation to the provision of services to victims and rehabilitation. The present section addresses this element of the concluding observations.

175. The delivery of domestic and sexual violence services in Ireland takes place through a substantial number of NGOs and government organisations and agencies. Significant funding is provided to NGOs through state agencies support services.

(i) *Domestic violence support services*

176. There is a wide range of domestic violence services available in Ireland. These services include refuge services, helplines, support on an outreach basis, and counselling. Since 2000 the numbers of dedicated service providers offering these services has increased. As a consequence of this, the level of service density has also increased with the effect that activity levels in the domestic violence sector satisfy most of the guidelines set out by the Council of Europe.

177. In 2007, a total of 49 domestic violence support services were available to those who have experienced domestic violence in Ireland. This translates into 1 domestic violence service for every 36,259 women in Ireland. This represents an increase in service density level since 2000 when 31 domestic violence support services were operating (1 service per 48,790 women in 2000).

(ii) *Sexual violence support services*

178. In 2007, a total of 17 sexual violence support services provided support, information and advocacy for both male and female victims of sexual violence in Ireland. This represents an increase of 1 sexual violence support service since 2000 or 1 sexual violence support service for every 102,380 women in Ireland in 2007 compared with 1 support service for every 94,530 women in 2000. Despite this additional support service, between 2000 and 2007 there was a decrease in the level of service density. This is mainly due to a large increase in population over the period.

(iii) *Victims of Crime Office*

179. The core mandate of the Victims of Crime Office, an executive office of the Department of Justice and Equality, is to improve the continuity and quality of services to victims of crime.

180. The office promotes awareness of, and adherence to, the Victims' Charter. This Charter and guide to the criminal justice system provides a non-statutory written framework of rights and entitlements against which crime victims, including victims of violence against women, can measure the level and standard of treatment received in their dealings across all sections of the criminal justice system.

181. A Commission for the Support of Victims of Crime has been in existence under the aegis of the Department of Justice and Equality since March 2005 and has provided for continuity of services from the non-governmental organisations working in the area of supporting victims of crime. A large proportion of these organisations address violence against women. The Commission:

- Disburses funding to victims' organisations, particularly towards court accompaniment.
- Promotes co-operation among non-governmental organisations and between the non-governmental organisations and the State sector to ensure that the victim has a central place in the criminal justice system.

- Engages with non-governmental organisations through a Victims of Crime Consultative Forum

(iv) *Sexual Assault Treatment Unit*

182. The first dedicated Sexual Assault Treatment Unit (SATU) service in Europe for men and women who had been subjected to sexual crime was set up at the Rotunda Hospital, Dublin in 1985. There are now six SATU around the country. In addition to the Rotunda unit there is a SATU in Cork (established 2001), Waterford (established 2004), Letterkenny (providing a service since 1998), Mullingar (established February 2009) and Galway (providing a service since September 2009). Staff of all units are trained and committed to provide holistic clinical, forensic, psychological and contraceptive care, 24 hours a day, seven days a week as required.

183. All units have a Medical Director, 1-2 Clinical Nurse/Midwife Specialists (who have completed a Higher Diploma in Nursing-Sexual Assault Forensic Examination), a Clinical Nurse/Midwife Manager and administrative / support staff. Almost all units have a team of doctors and on-call assisting nurses who provide, for the most part, out of office cover.

184. Staff in the SATU work very closely with the Garda Síochána and local Rape Crisis Centres, in order to ensure high quality care for victims of sexual assaults. Quarterly liaison meetings take place between the Unit Medical and Nursing staff, local Rape Crisis Centre staff and members of the Garda Síochána. The SATU can offer care for men and women who do not wish to report an incident of sexual assault to the Garda Síochána. This is a significant development, as it is recognised that early provision of medical care and psychological support may reduce the long-term health effects of an assault.

185. The Rotunda Unit has recently designed and implemented a secure database, which is being systematically maintained in order to collate information on service-user demographics. The proforma for this database, accompanied by formal tuition, has been provided to every SATU around the country to assist in collation of National statistics. As well as facilitating data collection and formulation of regular clinical reports, its existence will assist with local and national audits and appropriate service planning.

(h) **Measures dealing with attrition levels**

186. Paragraph 9 of the 2008 concluding observations addresses the issue of attrition levels. The present section addresses this element of the concluding observations.

187. The National Strategy on Domestic, Sexual and Gender-based Violence contains a specific action (Action No. 12) to minimise attrition levels in domestic violence and sexual violence cases, where appropriate. The work was carried out by a committee established by Cosc and included representatives of the state bodies involved in investigating and prosecuting domestic and sexual violence offences. The committee recognised that there are often legitimate reasons as to why a complaint will not be prosecuted to a conviction. The withdrawal of domestic violence cases can be a conscious, deliberate and uninfluenced choice of the victim. Where women were satisfied that the situation had been calmed by police presence or swift action, the victim's decision not to proceed could be considered "positive attrition" as their needs had been met. Similarly, if a civil protection order had been granted the victim may have independently decided not to proceed with the prosecution.

188. The Attrition Committee made thirteen (13) recommendations in a report on attrition completed in February 2011. The recommendations covered:

- Initial risk assessment
- Understanding and recognition of domestic violence and sexual violence among the general public, potential jurors and specific audiences

- The production of material for victims of domestic and sexual violence with the aim of dispelling any myths and erroneous preconceptions surrounding the justice process
- Contact between the criminal justice system and the victim during the period between the reporting of the offence and the trial
- The importance and value of photographic evidence in domestic and sexual violence cases
- The provision of information to the victim on legal and support services, and more effective linkage between the justice sector and support services
- The time period of notifications in trials (in particular notification to examine witness on prior sexual history) particularly as a factor in the attrition of sexual violence cases
- Cross-examination on past sexual history for consideration particularly as a factor in the attrition of sexual violence cases
- Issuance of emergency barring orders in high risk cases to the Legal Issues Sub-Committee (LISC) for further consideration
- The sensitivities of court personnel to the complexities surrounding domestic violence and sexual violence
- Specialised courts
- Court accompaniment
- The inclusion of disclosure applications at pre-trial stage.

189. These recommendations have been forwarded to the appropriate bodies for implementation.

Article 4 – Limited rights of derogation

190. There have been no developments relating to this article of the Covenant since Ireland's last report to the Committee.

Article 5 – Limited rights of derogation

191. There have been no developments relating to this Article of the Covenant since Ireland's last report to the Committee.

Article 6 – The right to life

1. The modernisation of the Coroner's Service

192. The Coroners Bill 2007 provides for a fundamental change and improvement to the coronial death investigation process in Ireland to equip coroners to conduct the best possible death investigation and provide them with the necessary administrative and technical supports to carry out their functions.

193. The new measures will transform the existing law and structures and provide for the establishment of a new Coroner Service. These two elements are inter-dependant and together are critical to the achievement of successful reform.

194. The Bill provides a statutory framework extending the scope of the inquest from investigating the proximate medical cause of death, to establishing in what circumstances the deceased met his or her death.

195. A new full time Coroner Service will replace the existing part-time coroner service – administered by individual coroners (48 jurisdictions) in conjunction with local authorities – into a co-ordinated national service under the aegis of the Department of Justice and Equality. It will be organised on a regional basis with the number and extent of the regions to be prescribed by the Minister. The new Coroner Service will comprise a Chief Coroner, Deputy Coroner, a certain number of full-time coroners and a lesser number of part-time assistant coroners. A Director of the Coroner Service will be appointed and will be responsible for the day-to-day administration of the new Service.

196. The transition from the current fragmented service into the new co-ordinated and national service will require considerable planning and preparation. A small Coroner Service Implementation Team was established to commence the necessary arrangements for the new service.

197. The Civil Law (Miscellaneous Provisions) Act 2011 provides for some early reforms in coronial matters, including an amalgamation of the Dublin County and City coronial districts.

2. The Independent Commission for the Location of Victims' Remains

198. The information in this section provides an update on paragraphs 146-148 of Ireland's third periodic report under the ICCPR.

199. The Independent Commission for the Location of Victims' Remains (ICLVR) was established under the Agreement between the Government of the Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland establishing the Independent Commission for the Location of Victims' Remains signed on 27 April 1999, and by legislation enacted in the two jurisdictions. In Ireland, the relevant legislation is the Criminal Justice (Location of Victims' Remains) Act 1999 and in the UK, the Northern Ireland (Location of Victims' Remains) Act 1999.

200. The Good Friday Agreement specifically provided that it was essential to acknowledge and address the suffering of the victims of violence as a necessary element of reconciliation. The establishment by both Governments of the ICLVR was one of the key actions taken in fulfilling this commitment.

201. The ICLVR is responsible for facilitating the location of the remains of victims of paramilitary violence (known as "the Disappeared") who were murdered and secretly buried. Those victims comprehended by the ICLVR are persons killed before 10 April 1998 as the result of acts committed on behalf of, or in connection with, an unlawful organization. The date of 10 April 1998 was considered appropriate as it was the date of signing of the Good Friday Agreement.

202. The overriding priority for the Commission is to return the remains of the victims to their families in order that they can receive a decent burial and that the families may, in some measure at least, achieve resolution or closure in regard to the deaths.

203. The Commission had intended to complete its work by the end of 2009. However, adverse weather conditions prevented working on various sites and it was necessary to extend the timeframe to complete these searches. In addition, two further victims were added to the list of the disappeared, with knock-on effects on timescales.

204. The commission has a total of 16 persons on its list of the Disappeared and, to date, the remains of seven of the Disappeared have been recovered through the Commission's efforts¹

205. The ICLVR largely finished its physical site surveys/excavations in 2011, with the exception of a limited area of bog relating to the Columba McVeigh case which it is proposed to excavate this year once weather conditions allow. In the absence of further credible information being available no new searches are currently planned. However, the Commission will remain in place to receive and evaluate any new information which might arise and to decide, on a case-by-case basis, whether it merits further investigation.

3. The Cory Collusion Investigation and the Smithwick Tribunal

206. The information in this section provides an update on paragraphs 152-154 of Ireland's third periodic report under the ICCPR.

207. It is now expected that the Smithwick Tribunal will make its final report in October 2012.

4. Birth rates, childbirth related deaths, unwanted pregnancies

(a) Statistics

Table 2

<i>Year</i>	<i>Number</i>	<i>Rate (per 1,000 population)</i>
2008*	75,065	17.0
2009**	74,728	16.7
2010**	73,724	16.5

Birth date – Central Statistics Office

* final - based on number of births

** provisional - based on number of births registered

208. Statistics on birth rates and fertility 2001 to 2010 are available at: http://www.dohc.ie/statistics/key_trends/population_and_life_expectancy/table_1-3.html

209. There were 3 maternal deaths in 2008, 2009² and 2010², giving a rate of 4 per 100,000.

210. No statistics are maintained in relation to number of abortions taking place in Ireland each year. Information in relation to the in-patient treatment of women with ectopic pregnancies is coded as management of ectopic pregnancies on HIPE (Hospital In-Patient Inquiry Scheme) system. This system does not differentiate between procedures to terminate an ectopic pregnancy and procedures following a spontaneous miscarriage as a result of an ectopic pregnancy or procedures to treat a ruptured ectopic pregnancy.

Response to the recommendations in paragraph 13 of the concluding observations (CCPR/C/IRL/CO/3)

211. The HSE Crisis Pregnancy Programme (formerly Crisis Pregnancy Agency) was originally established in October 2001. In January 2010, the former Agency transitioned into the HSE.

¹ Eamon Molloy, John McClory, Brian McKinney, all recovered 1999; Danny McIlhone, recovered 2008; Charlie Armstrong, Gerry Evans, Peter Wilson, all recovered 2010.

² Provisional data from personal communication.

212. The primary function of the Crisis Pregnancy Programme is to prepare and implement a Strategy to address the issue of crisis pregnancy, in consultation with relevant Departments of State and with such other persons as are considered appropriate. The Programme's second Strategy was developed and published in 2007 and covered the period until 2011. In 2010, the Programme commenced work on its third national strategy 2011-2016.

(b) Measures to prevent crisis pregnancies

213. The Strategy is the mechanism by which the Programme achieves its three mandates:

(1) A reduction in the number of crisis pregnancies by the provision of education, advice and contraceptive services;

(2) A reduction in the number of women with crisis pregnancies who opt for abortion by offering services and supports which make other options more attractive; and

(3) The provision of counselling and medical services and other health services after crisis pregnancy.

214. Since the establishment of the Crisis Pregnancy Agency in 2001 sustained decreases in the number of women giving Irish addresses at abortion clinics in the UK and the number of births to teenagers have been recorded. The number of women giving Irish addresses at UK abortion clinics has declined by 34% from 6,673 in 2001 to 4,402 in 2010. 2010 saw the number and rate of abortions decrease for the ninth year, down by 38% since 2001. The number of births to teenagers has declined from 3,087 in 2001 to 2,019 in 2010. Teenage births have decreased by 35% since 2001.

215. Crisis pregnancy counselling services are available free of charge to all women living in Ireland and available at 50 locations nationwide. Post-abortion counselling and medical check-ups are also available free of charge in Ireland to women who have had an abortion abroad. All of these services are State-funded by the HSE Crisis Pregnancy Programme.

(i) Right to travel and to access information

216. Women may not be prevented from travelling abroad to get an abortion. It is lawful to provide information in Ireland about abortions abroad, subject to strict conditions. It is not lawful to encourage or advocate an abortion in individual cases.

(ii) Expert Group on ABC v Ireland judgment of the European Court of Human Rights

217. The European Court of Human Rights heard in December 2009 an application by three women that it is a breach of their rights under the Council of Europe Convention on Human Rights for the Irish State not to provide abortion in circumstances where a woman wishes to undergo an abortion (the A, B and C case).

218. The judgment of the Court confirms that Article 40.3.3 of the Constitution is in conformity with the European convention on Human Rights. The Court accepted that Article 40.3.3 of the Irish Constitution, as interpreted by the Supreme Court in the X case, provides that it is lawful to terminate a pregnancy in Ireland if it is established as a matter of probability that there is a real and substantial risk to the life, as distinct from the health, of the mother, which can only be avoided by a termination of the pregnancy. This has not been altered by this judgment.

219. The Court held:

- In the case of the first and second applicants, Ms A and Ms B, the Court dismissed their applications, finding that there had been no violation of their rights under the Convention.
- In the case of the third applicant, Ms C, the Court found that Ireland had failed to respect the applicant's private life contrary to Article 8 of the Convention, as there was no accessible and effective procedure to enable her to establish whether she qualified for a lawful termination of pregnancy in accordance with Irish law.

220. The Court ruled that “no criteria or procedures have been... laid down in Irish law... by which that risk is to be measured or determined, leading to uncertainty...” and held that further legal clarity was required.

221. On 16 June 2011, the Government submitted, as required by the terms of the judgment, an Action Plan to the Committee of Ministers of the Council of Europe in relation to the European Court of Human Rights' judgment on *ABC v Ireland*. The Action Plan contained a commitment by the Irish State to establish an Expert Group drawing on appropriate medical and legal expertise to recommend a series of options on how to implement the judgment.

222. This Expert Group was established on 13th January 2012 and is chaired by a High Court Judge. It is composed of fourteen members and is made up of experts in the fields of obstetrics, psychiatry, general practice, professional regulation and public policy. The Expert Group is to report back to the Government within six months of establishment by means of a written report.

Article 7 – The right to freedom from torture or cruel, inhuman or degrading treatment or punishment

1. Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

223. The information in this section provides an update on paragraph 157 of Ireland's third periodic report under the ICCPR.

224. Ireland signed the Optional Protocol on 2 October 2007. The Office of the Attorney General has advised that legislation is needed to give effect to the Protocol. In May 2011, the Government approved the preparation of a General Scheme of Bill which will, when enacted, enable Ireland to progress to ratification of the Optional Protocol. Drafting is progressing and subject to competing legislative priorities, the General Scheme of the Bill is expected to be complete in 2012.

2. Response to the recommendations in paragraph 11 of the concluding observations (CCPR/C/IRL/CO/3)

225. While Ireland does not have one all-encompassing law on terrorism, the Criminal Justice (Terrorist Offences) Act 2005 provides that certain offences may also be considered as terrorist offences when committed, inter alia, with intent to seriously intimidate a population, unduly compel a Government or international organisation to perform or abstain from performing an act, or seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a State or an international organisation. These offences, which already constitute offences under other legislation, include but are not limited to murder, manslaughter, rape and other sexual offences, torture, and unlawful seizure of aircraft, are set out in Part 1 of Schedule 2 of that Act.

226. Persons charged with serious terrorist (and some organised crime-related) offences are in practice tried without a jury but before a panel of three Judges before the Special Criminal Court. The Court has been established and operates in accordance with the

Constitution and the laws of Ireland. It operates within the general structures of the criminal law and the full range of procedural guarantees available in the general criminal trial process remain available to persons being tried in this Court. Individuals convicted in the Special Criminal Court have recourse to the Irish superior courts to appeal their conviction or to have other points of constitutional or criminal law considered.

227. Persons suspected of offences with terrorist motivation have the same rights of access to a lawyer or legal advice as those suspected of the same offences without such motivation. All persons detained in police custody are entitled to consult a solicitor on as many occasions as the person wishes. Solicitors, however, are not allowed to be present during police interviews. This information is given to detained persons orally and also by way of written notice. The time of the giving of the oral information and the written notice are recorded in the custody record and acknowledged by the arrested person.

228. Persons prosecuted in the Special Criminal Court have the same rights to apply for bail as those charged with other offences. The Bail Act of 1997 provides that persons are entitled to bail except, under Section 2, “where an application for bail is made by a person charged with a serious offence, a court may refuse the application if the court is satisfied that such refusal is reasonably considered necessary to prevent the commission of a serious offence by that person”. The term “serious offence” is defined in the Schedule to the Act and refers to offences (both ordinary as well as terrorist offences) where a person, upon conviction, may be sentenced to a term of imprisonment of five years or more. Where an application for bail has been refused and trial has not commenced within four months of the refusal, under Section 3 of the same Act, a person may make a fresh application for bail on the grounds of delay by the prosecution in proceeding with the trial.

(a) Allegations of extraordinary rendition

229. There is no evidence that any Irish airport has ever been used for the purpose of the extraordinary rendition of persons to countries where they risk being subjected to torture or ill-treatment, a practice to which the Irish Government remains completely opposed.

230. Following initial reports relating to extraordinary rendition in 2004, the United States provided clear and categorical assurances at the highest level that it did not, and would not, transport prisoners through Irish airspace without the permission of the Government. These assurances were reiterated on numerous occasions in subsequent years. Having given careful consideration to this issue, the Government is satisfied that they are entitled under the Vienna Convention to rely on clear and explicit factual assurances given by the Government of a friendly state, on a matter which is within the direct control of that Government. This has included an examination of the European Court of Human Rights’ consideration of a Contracting Party’s entitlement to rely on “diplomatic assurances” made to it by a third state, in the quite different context of extradition or expulsion of known individuals to that state.

231. Furthermore, it has been made clear by the Irish authorities that, in conformity with relevant domestic and international law, under no circumstances would permission be granted for the transit through Irish airspace of an aircraft participating in extraordinary rendition, or any other unlawful act. No Minister can lawfully consent to the transit through Irish territory of a prisoner where he or she knows, or has substantial grounds for believing, that there is a real risk of that prisoner being tortured or subject to inhuman or degrading treatment or punishment.

232. There are only two circumstances under which Irish law permits the authorities of another State to detain a prisoner on Irish territory:

(a) Section 40(1) of the Extradition Act 1940 permits the transit through Irish territory of a person being conveyed from one country to another pursuant to an agreement in the nature of an extradition agreement. Consent for such a transit must be granted by the

Minister for Justice and Equality and is subject to the relevant extradition provisions and any condition the Minister thinks proper. Under the Ireland-US Extradition Agreement, detention by US officials during transit is permitted, but only with the consent of the Minister.

(b) Under the Transfer of Sentenced Persons Act 1995, the Minister for Justice and Equality may consent to the transfer of a sentenced person pursuant to the 1983 Convention on the Transfer of Sentenced Persons where the Minister is satisfied that Article 16 of the Convention is applicable.

(b) Inspection regime

233. Civil aircraft transiting through Irish jurisdiction are controlled, serviced and despatched in accordance with standard practices as set out in the Chicago Convention on International Civil Aviation, which obtain in the civil aviation industry worldwide. The handling of this traffic accords also with the rules and practices set down by the relevant multilateral instruments governing air traffic. Under the Chicago Convention, non-scheduled flights are authorised to operate flights over Ireland and to make landings in the State for non-traffic purposes without the necessity of obtaining prior permission, as is the case in all International Civil Aviation Organization (ICAO) member states.

234. It is acknowledged that a small number of commercially leased aircraft that have travelled through Shannon Airport in pursuit of legitimate commercial activities may also have been involved at various other times in activities related to extraordinary renditions. However, there is no evidence to suggest that they were carrying prisoners at any time when they transited through Irish airports. The identification of certain aircraft or flight movements as suspicious was only possible after an extensive retrospective analysis of information assembled a considerable time after the event. Under the Chicago Convention, private civil aircraft engaged in technical stops in transit through third countries are required to give, with limited notice, their call signs and their previous and next stops, but not their final destinations. During the period 2004-2008 in which the allegations in relation to extraordinary rendition were made, up to 1,750 movements of private aircraft through Irish airports took place each month. In light of the amount of information available and the number of aircraft involved, it is difficult to see how an inspection regime such as proposed would have detected, or would in future detect, illegal activity connected with during the course of a "rendition circuit" where no victim of rendition was on board. Further, the Government is not aware that such a regime is in operation in other countries.

235. Under common law, An Garda Síochána has available powers of entry, search and seizure as part of their duty to prevent and detect crime and in order to protect the constitutional right of individuals (all individuals, regardless of nationality), where there are reasonable grounds to suspect that an offence has been committed. In addition, the Irish Air Navigation and Transport Acts of 1988 and 1998 provide that, in a case where it is suspected that a crime is being committed on a civil aircraft, an authorised officer (which includes a member of An Garda Síochána) may, in the interest of the proper operation or the security or safety of an aerodrome, or the security or safety of persons, aircraft or other property thereon, arrest without warrant any person who assaults, or whom he or she reasonably suspects to have assaulted, another person.

236. Section 49 of the 1998 Act provides a power for an authorised officer to enter an aircraft in an Irish airport when he or she considers it necessary for the purpose of exercising any power conferred upon him or her by, or under, this Act, or the Act of 1988. Subsection (3) provides that the authorised officer may, at any time, require the operator or registered owner of the aircraft to produce for inspection by him or her such documents, relating to the aircraft or passengers or goods on board the aircraft, as he or she may require; or inspect the aircraft for the purpose of ensuring compliance with the relevant legislation.

237. Any additional inspection regime would have to conform fully to international human rights standards and constitutional protections enshrined in Irish law. A member of An Garda Síochána would have to have reasonable cause at that time to believe that a person on board a specific aircraft at an Irish airport had committed or was in the act of committing an offence before a search could be reasonably authorised. An aircraft registration number alone would not provide sufficient evidence of suspicious activity.

238. The Government is satisfied that the existing powers available to An Garda Síochána are sufficient to investigate any concrete evidence of any rendition of persons to countries where they risk being subjected to torture or ill-treatment. Furthermore, there are serious questions over the effectiveness, practicality, proportionality and reasonableness of any such inspection regime, whether random or in relation to an identified list of suspect aircraft. In this context, the introduction of a regime for the control of suspicious flights is not considered necessary, likely to be useful, or justified by the facts and probabilities of the situation as they are known.

(c) Investigation of complaints

239. The Government has consistently called on any person with evidence that persons are being transported through Ireland in extraordinary rendition operations to present this to An Garda Síochána to allow a full investigation to take place. Since 2004, 17 complaints have been received by An Garda Síochána regarding alleged rendition flights to/from Shannon Airport. All of these allegations have been investigated by senior police officers in accordance with Irish law. A number of these investigations were based on multiple complaints. Two investigations resulted in files being forwarded to Ireland's Director of Public Prosecutions (DPP). The DPP is the authority responsible for deciding, independently of An Garda Síochána or the Government of Ireland, whether to charge a person or persons with criminal offences and what those charges should be. However, no prosecutions have been directed by the DPP. The investigations conducted since 2004 are detailed below:

- October 2004: Four persons made an allegation that an aircraft (Registration N379P) had been used to transport prisoners to places of torture and that it had transited through Shannon Airport on several occasions. Inquiries were conducted into this complaint by An Garda Síochána; all four complainants were interviewed; the investigation concluded that the complainants were basing their assertions wholly on the contents of a Swedish television documentary. A file was submitted to the Director of Public Prosecutions, but there was no evidence to support the charge of torture.
- December 2004: An allegation was made by letter that the same aircraft (Registration N379P) was used to transport terrorist suspects and that it transited through Ireland. The complainant was contacted and he acknowledged to investigators that his complaint was based almost entirely on media reports and produced no further evidence when asked. A file was forwarded to the Director of Public Prosecutions; a prosecution was deemed to be not warranted.
- November 2005: An allegation was made that an unmarked white aircraft carrying war munitions landed at Shannon Airport. The complaint was investigated and it was found that the aircraft was used on that particular occasion to transport racehorses from Shannon to Dubai.
- November 2005: A Member of the Oireachtas (Parliament) contacted An Garda Síochána to complain about the aforementioned aircraft (Registration N379P) at Shannon Airport. A Detective Superintendent was appointed by the Garda Commissioner to investigate the matter fully. The former met with the Member who was unable to produce evidence in support of the complaint and appeared to be relying on reports from other jurisdictions in respect of the activities of certain

aircraft, but not anywhere in Ireland. The Member declined to make a statement and had nothing further to add when contacted again in March 2006. Further enquiries could not be pursued.

- February 2006: A Member of the Oireachtas produced copies of documents gathered by staff as to possible breaches of international and domestic law allegedly occurring on CIA aircraft. A Detective Superintendent was appointed to contact this member. At a subsequent meeting, the Member informed the Detective Superintendent appointed that he had no specific evidence in support of these allegations.
- May 2006: A complaint was made about an aircraft (Registration N44CX). It was found that this aircraft was privately owned and was operating in the context of a corporate business flight.
- September 2007: Concerns were raised about an aircraft (Registration N259SK) which landed at Shannon Airport. On investigation it was learned the occupants of the aircraft were in Ireland on a golfing holiday.

3. Measures taken to eliminate traditional practices and customs affecting the dignity and personal integrity of women and girls

Female genital mutilation

240. Further to the information provided at 3.2.1 in relation to the Criminal Justice (Female Genital Mutilation) Act 2012, an act of female genital mutilation could constitute an offence of torture under the Criminal Justice (United Nations Convention Against Torture) Act 2000 if done or made at the instigation of a public official (including a person acting in an official capacity).

4. An Garda Síochána

(a) General

241. The Garda Síochána Act, 2005 provided for the establishment of an independent Garda Síochána Ombudsman Commission; this organisation commenced operations in May 2007. The primary functions of the Ombudsman Commission are to investigate complaints by members of the public against members of the Garda Síochána and to promote public confidence in the process for resolving those complaints. The Ombudsman Commission has comprehensive powers of investigation to deal with complaints and has ultimate control and oversight of all complaints processed in accordance with the provisions of the Act.

242. The Ombudsman Commission has the power to investigate of its own volition, i.e. without a complaint having to be made, any case involving the Garda Síochána where death or serious harm to a person has occurred, or, where it is desirable in the public interest, any matter that appears to it to indicate that a member of the Garda Síochána may have committed an offence, or behaved in a manner that would justify disciplinary proceedings. The Garda Commissioner shall refer to the Ombudsman Commission any matter that appears to the Garda Commissioner to indicate that the conduct of a member of the Garda Síochána may have resulted in the death of, or serious harm to, a person.

243. The Ombudsman Commission may, at the request of the Minister, examine a practice, policy or procedure of the Garda Síochána with a view to preventing or reducing the incidence of complaints arising from the practice, policy or procedure concerned. It is also open to the Ombudsman Commission to recommend to the Minister that a particular practice, policy or procedure is examined

244. The term of office of the inaugural Ombudsman Commission was completed in December 2011 and the current Commissioners were appointed immediately thereafter by

the President following nomination by the Government and recommendations by both Houses of the Oireachtas.

245. One of the purposes of the Garda Síochána Act, 2005 is to reinforce the human rights dimension of policing in Ireland. Under the new legislation, the oath which must be sworn by each member of An Garda Síochána on joining the Force is amended with the effect that a member undertakes to faithfully discharge his or her duties with regard for human rights. In addition, one of the objectives of the Garda Síochána in providing policing and security services for the State is set down as vindicating the human rights of each individual.

(b) Recording of interviews

246. The audiovisual recording of all persons detained in custody in Garda Síochána Stations is governed by the Criminal Justice Act 1984 (Electronic Recording of Interviews) Regulations 1997 and the Criminal Justice Act 1984 (Electronic Recording of Interviews) Amendment Regulations 2010.

247. Audio-visual recording systems have been installed in 147 Stations in a total of 252 interview rooms. The provision of a Custody CCTV system is included in the brief of requirements for all new Garda Stations. Because not all Garda stations are appropriate for the detention and interviewing of suspects, it is not envisaged that all Garda stations will have facilities for the electronic recording of interviews. The intention is to ensure that within each Garda Division there are a sufficient number of Garda stations with the required facilities to ensure that all interviews as specified in the regulations are recorded. Over 99% of interviews are now recorded.

248. The Regulations are strict in terms of their operation particularly in relation to any interruption or discontinuance of the electronic recording of interviews. Under the Regulations an interruption must be recorded and the Master Copy must be sealed and labelled. These regulations must be followed by members of the Garda Síochána.

249. All video recordings have a running time date stamp to counter any manipulations of the recordings. Any interruption in a recording is clearly evident on a review of the tape. A process is in place to ensure that recording units are checked prior to and immediately after all interviews and a contract is in place with an independent 3rd party contractor to repair any faults.

250. Where any issue arises in relation to the conduct of the Garda members during questioning, or if the context in which an admission was made, is an issue at trial the defence Counsel can request a copy of the tape on application to the trial judge.

5. Magdalene Institutions

251. There were ten Magdalene institutions operated by four different religious congregations of nuns at the time the State was founded in the 1920's. They all continued in operation up to the 1960's with the first one closing in 1963 and the last of the Magdalene institutions closed in 1996.

252. In 2009, a campaign was brought to the attention of the State alleging that there had been systematic abuse including forced labour and detention in these institutions and demanding that the State provide an apology and compensation.

253. What has yet to be established is:

- Are the allegations of systematic abuse true? and
- If so, what party or parties are accountable and, what sanctions and/or recompense are appropriate?

254. Many of the allegations, if true, would constitute criminal offences. Irish law does not permit torture, slavery, unlawful imprisonment or forced labour. The primary remedy provided for those who are the victims of criminal behaviour is a criminal investigation leading, where appropriate, to the prosecution and punishment of the perpetrators. There is no statute of limitations on criminal offences in the State and it has always been made clear that anyone who has evidence of any criminal behaviour by those involved in the Magdalene institutions should report such matters to the police for investigation. As far as can be established no specific complaints of criminal behaviour against those operating these institutions have been made to the police and the matter has never been brought before the criminal courts.

255. An additional remedy allowing for recompense for any wrongdoing, including any breach of rights by the State, is provided for by access to the civil courts. To the best of our knowledge no civil action relating to abuse within Magdalene institutions has been brought before the courts.

256. No court, tribunal or impartial independent body of inquiry have made any findings of fact on the issue. Furthermore because of the historical nature of these institutions and the allegations made and the fact that they were private, religious institutions, basic facts about their operations are not in the public domain.

257. In light of the above, the Government decided in 2011 that it would establish a committee, independently chaired by Senator Martin McAleese to establish the facts of State involvement. All Government agencies are obliged to give full cooperation to the committee. The interim report by Senator McAleese indicates that the four religious orders concerned have offered their full assistance and the committee has engaged with all groups representing or advocating on behalf of those who were in the Magdalene institutions. The report of this committee is expected to be presented in mid 2012 and will be made public. The Government will decide what further action is appropriate when it has received and considered that report.

Article 8 – The right to freedom from slavery

1. Human Trafficking

(a) Response to the recommendations in paragraph 16 of the concluding observations (CCPR/C/IRL/CO/3)

258. There is no obligation to cooperate with the investigation or prosecution during the initial 60 days Recovery and Reflection period. At the completion of the Recovery and Reflection period, if a suspected victim does not wish to cooperate with the Garda investigation of the trafficking allegation, a person who has no other basis to remain in State, may make representations to the Minister for Justice, Equality and Defence under Section 3 of the Immigration Act 1999 as to why a deportation order should not be made (for instance, on humanitarian grounds). Where the Minister concludes that it is not appropriate to make a deportation order, he/she may grant the person a temporary leave to remain in Ireland and this is notified in writing to the person and their legal representative.

259. Ireland ratified the United Nations Convention on Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in June 2010 and it came into effect on 17 July 2010. Ireland also ratified the Council of Europe Convention on Action against Trafficking in Human Beings which entered into force for Ireland on 1 November 2010.

(b) General

260. Strong legislative, administrative and operational measures have been put in place in Ireland to prevent and combat trafficking in persons for both sexual and labour exploitation purposes or for the removal of body organs.

261. A dedicated Anti-Human Trafficking Unit was established in the Department of Justice and Equality in February 2008 to ensure that Ireland's response to human trafficking is coordinated, comprehensive and holistic.

262. In June 2009 the National Action Plan to Prevent and Combat the Trafficking of Human Beings in Ireland for 2009-2012 was published. The main aim of the National Action Plan is to ensure that Ireland's response to trafficking in human beings is appropriate to the nature and scale of the problem and in line with international best practice. An interim review of the National Action Plan at the end of 2011 concluded that the vast majority of the 144 actions identified in the Plan had either been completed or significantly progressed.

263. In addition, a Human Trafficking Investigation and Coordination Unit in the Garda National Immigration Bureau, an Anti-Human Trafficking Unit in the Health Service Executive and a specialist human trafficking legal team in the Legal Aid Board have been established. These Units have been established to provide services to victims of human trafficking. Dedicated personnel are also assigned to deal with prosecution of cases in the Office of the Director of Public Prosecutions and in the Asylum Seeker and New Communities Unit in the HSE.

(c) Training of all public officials involved in addressing trafficking

264. A number of awareness raising and training initiatives have taken place since the establishment of the Anti Human Trafficking Unit. These measures have been taken both for the purpose of identifying and assisting victims and to reduce demand.

(i) Awareness raising

265. Some of the awareness raising initiatives undertaken are:

- Ireland's participation in the G6 campaign which was run by 6 countries – Ireland, UK, Poland, the Netherlands, Spain, and Italy. The Irish aspect of the Blue Blindfold campaign was launched initially by the Minister for Justice and Equality and the Garda Commissioner on 21 October 2008. The central message of the campaign is "Don't Close your Eyes to Human Trafficking". The Republic of Ireland and Northern Ireland jointly re-launched the Blue Blindfold campaign on 18 January, 2011 to reinforce its central message. This campaign ran to 28 March 2011.
- Articles and/or advertisements have been placed in a variety of publications such as the Judicial Studies Journal, Irish Taxi Drivers Federation yearbook, GAA sport programmes, Informatia – a Romanian newsletter, the Public Sector Journal, Forum – a magazine for GPs.
- The Anti-Human Trafficking Unit regularly gives presentations and information seminars on the issue.
- The Anti-Human Trafficking Unit had bookmarks, leaflets and information cards printed for widespread distribution.
- To increase awareness of Human Trafficking and to coincide with EU Anti-Trafficking Day on 18 October 2010 the Anti-Human Trafficking Unit organised a one day film festival. Two films were shown at the event. Each film was followed by a panel discussion on the issues with experts in the field of human trafficking.

- In September 2011, an educational pack on human trafficking /slavery was distributed to second level schools in Ireland as part of the Human Rights module of the Civil Social and Political Education course.
- In 2011, AHTU produced a Guide to Procedures for Victims of Human Trafficking in Ireland.
- In 2011, a Legal Aid Board Information Leaflet detailing the free legal services available to victims of human trafficking and Guidelines for Department of Social Protection staff who may come in contact with victims of human trafficking.
- In 2011, a presentation on human trafficking was given by AHTU and HTICU to Irish diplomats being posted abroad and THB information packs have been circulated to Department of Foreign Affairs and Trade staff at missions abroad.
- In February 2012, AHTU held an Art Competition for second level schools and Youthreach projects to provide illustrations for the AHTU Guide to Services for Victims of Child Trafficking. Full details of the awareness raising work undertaken to date can be seen on www.blueblindfold.gov.ie

(ii) *Train the Trainer courses*

266. The International Organization for Migration (IOM) developed, designed and delivered a Train the Trainers programme on behalf of the Anti Human Trafficking Unit, which was subsequently rolled out to personnel in Government agencies likely to encounter victims of trafficking. The idea of the programme is that participants on the course will train others in their organisations on the issues associated with human trafficking. Three Train the Trainer courses have been completed with 40 participants from 13 different organisations. The roll-out of this training is being monitored by the IOM. Since the completion of this training a total of 180 persons in four of the above organisations have received training on human trafficking given by those who attended the Train the Trainers course. Training of a further 81 staff is planned in the coming months and additional training is intended thereafter.

(iii) *Awareness raising training*

267. 139 people have participated in basic awareness training which has been provided by the IOM with input from Non-Governmental Organisations, the Garda National Immigration Bureau and the Anti-Human Trafficking Unit. Course participants included representatives of the:

- National Employment Rights Authority
- Private Security Authority
- Department of Enterprise Trade & Innovation
- Irish Naturalisation & Immigration Service
- Health Service Executive
- Department of Social Protection
- Office of the Refugee Applications Commissioner
- Anti Human Trafficking Unit
- Victims' Support Helpline
- Victims of Crime Office.

(iv) Garda Síochána Training

268. An Garda Síochána has placed particular importance on ensuring that its members receive training which will equip them to tackle human trafficking. A continuous professional development training course entitled ‘Tackling Trafficking in Human Beings: Prevention, Protection and Prosecution’ has been designed by the Garda Síochána. Training includes victim identification through recognising indicators of trafficking in human beings.

269. The aim of the course is to alert operational personnel within An Garda Síochána to the existence of the phenomenon of trafficking and to empower them to identify victims so as to provide for their wellbeing and to ensure initiation of criminal investigations, where appropriate. Members of the Police Service of Northern Ireland, UK Borders Agency and London Metropolitan Police have attended this training and the former Head of the United Kingdom Human Trafficking Centre has presented at each of these training courses emphasising the international and cross-border co-operation between police forces.

270. Over 630 operational Garda personnel have received detailed training to enable them to identify and refer victims of human trafficking for support and deal with prosecutions, if appropriate. A further 3,196 personnel have received awareness raising training as part of the final phase of their training. This training is now part of the final phase of training for all Garda recruits. An on-line portal is available to all Garda personnel on PULSE - the Garda Síochána computer system. A web based search on the Garda computer system shows every Garda Officer a step by step guide on what to do if s/he suspects a person to be a victim of human trafficking. 42 members of the Garda Reserve have also received basic awareness raising training and training in human trafficking has also been provided to 80 Senior Investigating Officers of the Garda Síochána and to 192 Ethnic Liaison Officers (of whom 4 were PSNI Liaison Officers. The National Bureau of Criminal Investigation (NBCI) held a one day Organised Prostitution course in January 2010 which was attended by approximately 100 members of An Garda Síochána.

(v) Legal Aid Board

271. A specialised training course was held in September 2009 for staff of the Legal Aid Board who provide legal assistance and advice to potential and suspected victims of trafficking in human beings.

272. Police officers in the Garda National Immigration Bureau (GNIB) have participated in courses run by CEPOL on organised crime and human trafficking.

273. Police officers from other jurisdictions participated in the human trafficking courses run by GNIB including 7 from Police Service of Northern Ireland, 2 from London Metropolitan Police, and 1 Romanian police officer.

(d) Legislation combating trafficking and all forms of servitude

274. The Criminal Law (Human Trafficking) Act 2008 provides for penalties of up to life imprisonment and at the discretion of the court, an unlimited fine for trafficking of persons for the purposes of labour or sexual exploitation or for the removal of a person’s organs with effect from 7 June 2008. In the Act, labour exploitation is defined as “subjecting a person to forced labour” or “forcing him or her to render services to another” or enslavement of the person or “subjecting him or her to servitude or a similar condition of state”. The 2008 Act built on the Child Trafficking and Pornography Act 1998 which had already criminalised the trafficking of children for sexual exploitation. The term “traffics” is broadly defined in the Act. For instance, an offence may be committed under the Act by providing a person with accommodation or employment in order to exploit that person for forced labour if coercion or deception is used. An offence does not require cross-border movement or illegal entry into the State.

275. Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking were also introduced on 7 June 2008. In circumstances in which persons have no legal basis to remain in the State, protection may be granted under the Administrative Immigration Arrangements for the Protection of Victims of Trafficking through the granting of a 60 day recovery and reflection period. There is no obligation to cooperate with the investigation or prosecution during the 60 days recovery and reflection period. Where the trafficked person wishes to assist An Garda Síochána or other relevant authorities in any investigation or prosecution in relation to the alleged trafficking they may be granted 6 month renewable temporary residence permission.

276. A trafficked person who is a non-EEA national may apply for recognition as a refugee under the Refugee Act 1996 (as amended) if they consider that they have a well-founded fear of persecution if they returned to their country of origin. If the trafficked person's application for refugee status is unsuccessful or if they withdraw their application for refugee status and they have no other legal basis to remain in the State they may be granted a 6 month renewable temporary residence permission under the Administrative Immigration Arrangements for the Protection of Victims of Trafficking if they wish to assist An Garda Síochána or other relevant authorities in any investigation or prosecution in relation to the alleged trafficking. The Administrative Arrangements will be given legislative effect in the Immigration, Residence and Protection Bill.

(e) **Prosecution of traffickers**

(i) *2011 - Prosecutions before the courts*

277. 7 cases were prosecuted in 2011 for offences related to trafficking in human beings.

Table 3

Prosecutions before the courts in 2011

<i>Case</i>	<i>Act</i>	<i>Charges</i>	<i>Accused</i>
1	Illegal Immigrants (Trafficking) Act, 2000 Criminal Law (Sexual Offences) Act, 1993	Trafficking an undocumented person into the State and controlling prostitution/brothel keeping.	Adult female
2	Section 2 of Criminal Law (Rape) (Amendment) Act, 1990, Section 3 Child Trafficking and Pornography Act, 1998	Sexual assault and the sexual exploitation of a minor in addition to the possession of child pornography.	Adult male and female
3	Section 3 Child Trafficking and Pornography Act, 1998	Sexual assault of a minor.	Adult male
4	Section 3 Child Trafficking and Pornography Act, 1998	Sexual exploitation of a minor.	Adult male
5	Section 3 Criminal Law (Human Trafficking) Act 2008	Attempted kidnapping for the purposes of sexual exploitation of a minor.	Adult male
6	Section 3 Criminal Law (Human Trafficking) Act 2008	Recruitment by deception and the sexual exploitation of a minor.	Adult male

<i>Case</i>	<i>Act</i>	<i>Charges</i>	<i>Accused</i>
7	Section 3 Criminal Law (Human Trafficking) Act 2008	Sexual exploitation of a minor.	Adult male

Table 4

Convictions and Sentences in 2011

<i>Case</i>	<i>Act</i>	<i>Charges</i>	<i>Accused</i>	<i>Sentence</i>
1	Child Trafficking and Pornography Act, 1998	Controlling and sexual exploiting of a minor for the purposes of prostitution.	Adult female	4 years imprisonment with the final two years suspended
2	Criminal Law (Human Trafficking) Act 2008	Sexual exploitation of a minor	Adult male	3 years imprisonment
3	Child Trafficking & Pornography Act, 1998	Controlling and sexual exploiting of a minor for the purposes of creating child pornography.	Adult male	Convicted and fined €100
4	Criminal Law (Sexual Offences) Act 1993	Controlling/organizing prostitution	Adult male	2½ years imprisonment with the final fifteen months suspended

(ii) 2010 - Prosecutions before the Courts

278. 5 cases were prosecuted in 2010 for offences relating to trafficking of human beings.

Table 5

Prosecutions before the courts in 2010

<i>Case</i>	<i>Act</i>	<i>Charges</i>	<i>Accused</i>
1	Criminal Law (Human Trafficking) Act 2008 Child Trafficking and Pornography Act, 1998	Trafficking of a minor for sexual exploitation.	Adult female
2	Criminal Law (Human Trafficking) Act 2008 Child Trafficking and Pornography Act, 1998 Post Office (Amendment) Act, 1951	Recruitment and trafficking of a minor for sexual exploitation.	Adult male
3	Criminal Law (Human Trafficking) Act 2008	Recruitment and trafficking of a minor for sexual exploitation by means of sexual assault.	Adult male

<i>Case</i>	<i>Act</i>	<i>Charges</i>	<i>Accused</i>
4	Criminal Law (Human Trafficking) Act 2008	Recruitment and trafficking of a minor for sexual exploitation and the production of child pornography.	Adult male
5	Criminal Law (Sexual Offences) Act, 2006	Investigation commenced as human trafficking however charges related to other sexual offences	Adult male

Table 6

Conviction and Sentences in 2010

<i>Case</i>	<i>Act</i>	<i>Charges</i>	<i>Accused</i>	<i>Sentence</i>
1	Criminal Law (Human Trafficking) Act 2008	Recruitment and trafficking of a minor for sexual exploitation.	Adult male	Awaited (Before the Courts in May, 2010)
2	Criminal Law (Human Trafficking) Act 2008	Recruitment and trafficking of a minor for the purpose of sexual exploitation.	Adult male	3 years suspended sentence and placed on the Sex Offenders Register for 5 years and entered into a bond to be on good behaviour for a period of 3 years.
3	Child Trafficking and Pornography Act, 1998 Criminal Law (Rape)(Amendment) Act, 1990	Recruitment and trafficking of a minor for sexual exploitation and production of child pornography.	Adult male	10 years imprisonment. Placed on the Sex Offender's Register for life and he will be subjected to fifteen years post release supervision.
4	Child Trafficking and Pornography Act, 1998	Sexual exploitation of a child – indecent exposure.	Adult male	Eight-month suspended sentence.
5	Child Trafficking and Pornography Act, 1998	Incitement to traffic a minor for sexual exploitation and incitement to the possession of child pornography.	Adult male	Appeal on the grounds of leniency. It was held that no part of the 6 years imprisonment should be suspended and Post release Supervision Order for twenty years.

(iii) 2009 Convictions

279. 6 persons were prosecuted for offences related to human trafficking. This includes:

- 1 person charged with 3 offences in relation to a minor;

- 1 person convicted of an offence of attempting to traffic a child for sexual exploitation and sentenced to 6 years;
- 3 persons in Romania charged with trafficking for labour exploitation to Ireland – the gang leader was sentenced to 7 years and his co-accused to 5 years each. The case involved the trafficking of 28 people (including 1 child) to Ireland for the purposes of labour exploitation where they were paid low wages, required to work in a controlled environment with a debt of €2,500 to pay and where they were threatened, beaten and sometimes held at gunpoint. (All of the evidence in this case was gathered in Ireland.);
- 1 person was prosecuted where the activities took place in 2004.

(f) Concrete measures taken to protect and rehabilitate victims of trafficking

280. All alleged victims of human trafficking are offered protection and support.

(i) Identification of victims of trafficking

281. The identification of suspected victims of human trafficking remains one of the most difficult problems facing any counter-trafficking strategy, not only because traffickers themselves seek to avoid detection, but also because suspected victims – for numerous reasons – often go to great lengths to hide their experience from State authorities. When victims are discovered, or if they come forward, the identification process is often a complex, time-consuming one which requires professional guidance and special victim supports to create a safe environment for the victim. For this reason, all potential victims of trafficking are informed at their first point of contact with a State agency that the services of dedicated anti-human trafficking units in the Legal Aid Board (for legal advice and assistance) and Health Service Executive (for medical, psychological and social assistance) are available to them. These services are not conditional on the victim’s cooperation with the police investigation and are available to EEA nationals and non-EEA nationals alike.

282. The Irish Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking state that a person identified by a member of An Garda Síochána (Irish police), not below the rank of Superintendent, in the Garda National Immigration Bureau, as a suspected victim of human trafficking shall be granted a permission to remain lawfully in the State for period of 60 days (a “recovery and reflection period”) if required, i.e. if the person does not already have a permission to remain lawfully in the State.

283. In determining if a person is a suspected victim of human trafficking, the Garda Síochána takes account of all information that is available to them at the time the case is being considered. The sources of the information can be the potential victim, other agencies, NGOs and other sources. The State and the Garda Síochána are committed to ensuring that no person who is potentially a victim of human trafficking will be removed from the State while the identification of the person as a victim, is ongoing. At the same time, the matter is subject of an investigation by An Garda Síochána.

284. An Garda Síochána apply the model recommended by the International Organisation on Migration which acknowledges that the screening process to determine if a person is a victim of trafficking consists of two stages. The first is an assessment of the varying indicators that can be evaluated before an interview can take place, followed by a detailed interview with the individual. The types of indicators utilised by An Garda Síochána in making a determination include the following and are based on the general indicators published in the Delphi study undertaken by the International Labour Organization (ILO) and the European Commission and those published by the United Nations Global Initiative to Fight Human Trafficking (UNGIFT): was the person deceived about the nature of the work they would be doing, or where they would be working; were the person’s documents confiscated; is there debt bondage; is there a threat of violence. Some other types of

indicators utilised include: the type of deception used; the person's illegal status; has the person been forced to lie to friends, or the authorities; and is the person dependent on the individuals who have exploited him / her.

285. The outcome of the interview will assist the Garda Superintendent in being satisfied that there are reasonable grounds for believing that the person is a victim of human trafficking. An Garda Síochána takes account of Ireland's commitment under the Council of Europe Convention on Action against Trafficking in Human Beings and particularly Article 10 and the accompanying Explanatory Note.

286. Advice on their protection is provided to each and every alleged victim by Crime Prevention Officers from An Garda Síochána (Irish police). Where necessary, a witness protection programme is also available.

(ii) *Assistance provided to victims of trafficking*

287. Comprehensive assistance is provided by the State to alleged victims of human trafficking:

- Accommodation is provided by the Reception and Integration Agency. The system is direct provision accommodation which provides full board accommodation and certain ancillary services to residents.
- Medical care, including an individual care plan, is provided by the Health Services Executive.
- The rehabilitation of each victim is managed through the 9 point Care Plan which is developed with the victim by the HSE Human Trafficking Team key worker. Individual Care Plans cover such things as:
 - General health screening and referral to general practitioners
 - Sexual health – including referral to rape crisis service, sexual assault units in acute hospitals, pregnancy and sexually transmitted infection testing
 - Mental/psychological health service and counselling intervention
 - Relationship and family – clients with young children are referred to a Public Health Nurse. Referrals are also made when appropriate to the child welfare / protection service
 - Assistance with social & spiritual issues including voodoo and juju
 - Assistance with financial management
 - Criminal investigation – issues such as explanation of the process and accompaniment to police interviews
 - Assistance and advice in relation to immigration status
 - Assistance and advice with education / training & employment and accommodation
- Crime prevention advice is provided to each and every alleged victim by Crime Prevention Officers from An Garda Síochána (Irish police).
- Voluntary repatriation, if appropriate, is organised by the International Organization for Migration.
- Legal aid and advice is provided by the Legal Aid Board. This service facilitates each person in making an informed decision on what is best for them. There is no charge to the victim for this service. There is no waiting list, unless a large number of people are discovered around the same time. The Legal Aid Board Trafficking in Human Beings (THB) Unit provides advice on:

- Seeking assistance made under the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (for Recovery & Reflection Periods and Temporary Residence Permissions)
 - Seeking asylum
 - Seeking redress through employment protection legislation
 - Information on regularising their stay in the country
 - A criminal trial – e.g. what is involved
 - Compensation – both criminal and civil
 - Voluntary return home
- Translation and interpretation services are provided, when appropriate.
 - When suspected victims are granted temporary residence under Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking they are given an immigration stamp which gives them the right to work. They may also claim income maintenance and housing support. The Asylum Seekers and New Communities Unit (ASNCU) of the Department of Social Protection supports them in moving into independent accommodation either in the private rented sector, in social/community supported housing or public/council housing as desired and appropriate to their needs. Arrangements are also in place for the referral of suspected victims of trafficking who are ready for vocational training to FÁS (State work/training agency) and other training providers by the HSE as part of their individual Care Plans.

288. Service arrangements for victims of human trafficking continue to be monitored and updated, where appropriate.

(iii) *Compensation*

289. There are a number of methods of obtaining compensation currently available to victims in Ireland. There is a general power in Irish legislation which allows a court to order the payment of compensation to a victim. Section 6 of the Criminal Justice Act 1993 sets out the power of the court to order the offender to pay compensation to an injured party. Section 6 states that on conviction of a person for an offence, the court may make a compensation order requiring that person to pay compensation in respect of any personal injury or loss resulting from the offence, or any other offence taken into consideration by the court in determining sentence, to any person who has suffered such injury or loss. When calculating the amount of compensation to be paid consideration is given to the means of the perpetrator and should not be more than would be awarded in a civil action. This compensation is not paid into the court but is dealt with by the Garda Síochána.

290. Suspected victims of trafficking may also take a civil action to obtain damages. These can be taken under a variety of legislative or common law rules which may relate to an employment situation or personal injuries, e.g. sexual assault, false imprisonment, kidnapping and other offences. The amount of compensation is dependent on the court in which the case is heard. The District Court can make awards up to € 6,348.69 in damages, the Circuit Court can make awards up to €38,092 in damages and the High Court has unlimited power to award damages. The Legal Aid Board may provide legal advice and legal assistance which will be crucial for persons who wish to pursue such cases.

291. Persons who have been trafficked for the purposes of labour exploitation can seek legal redress and compensation through a number of State bodies which deal specifically with work related rights and entitlements. These include the Employment Appeals Tribunal (EAT), the Labour Relations Commission (LRC), the Labour Court and the Equality Tribunal. There are no fees charged for claims taken to these employment rights bodies nor

is it necessary to be legally represented at hearings. The Legal Aid Board may provide legal advice and legal assistance.

292. Another means by which compensation will be provided is through the Criminal Injuries Compensation Tribunal which administers a scheme called the Scheme of Compensation for Personal Injuries Criminally Inflicted. The scheme is funded by the Department of Justice and Law Reform. No legal representation is necessary when applying for compensation and normally applicants do not need to come before the Tribunal in person but the Legal Aid Board may provide legal advice and legal assistance. The scheme pays compensation for expenses and losses (out of pocket expenses and bills) suffered as a direct result of a violent crime or while assisting or trying to assist in preventing a crime or saving a life.

(g) Measures taken to address the demand for trafficking

293. An Garda Síochána conduct on-going operations aimed at preventing and combating prostitution offences. This includes raids of premises being used as brothels and policing of other premises/environments with the potential to attract persons engaged in or facilitating the trafficking of human beings. The Garda Síochána established a dedicated unit in 2009, within the Garda National Immigration Bureau. The Human Trafficking Investigation and Co-ordination Unit serves as an investigation and co-ordination unit for human trafficking cases.

(h) International co-operation

294. Officials from An Garda Síochána and the Department of Justice and Equality have participated in the activities of international organisations such as the EU, Council of Europe, OSCE Alliance against Trafficking, United Nations and UNGIFT, the International Organisation for Migration (IOM) and the Intergovernmental Consultations on Asylum and Migration (IGC) Working Group on Trafficking.

295. Bi-lateral co-operation exists at the highest possible level between the Northern Ireland Office, the Garda Síochána and the Department of Justice and Equality; between the UK Home Office, the UK Human Trafficking Centre, the Garda Síochána and the Department of Justice and Equality and between the Scottish Administration, the Garda Síochána and the Department of Justice and Equality. Officials are meeting regularly to share information and exchange best practices.

296. Ireland had the leading role in the awareness raising strand of a G6 anti-human trafficking initiative commenced in 2008 involving Poland, Netherlands, Spain, Italy, UK and Ireland as well as Europol, Interpol and Eurojust. The campaign featured the 'blueblindfold' logo and its central message was "Don't close your eyes to human trafficking". A North/South cross-border blueblindfold awareness raising campaign was relaunched in January 2011. The Anti-Human Trafficking Unit continues to promote this logo and message through all its awareness raising activities.

2. The Prison Rules 2007

297. The information in this section provides an update on paragraphs 170-171 of Ireland's third periodic report under the ICCPR.

298. Rule 28 of the Prison Rules 2007 requires all sentenced prisoners to do work consisting "of the performance of tasks necessary for the maintenance and operation of the prison". In addition to cleaning and sweeping landings, yards and other parts of the prison, prisoners are engaged in supporting a range of prison services such as catering operations, laundries, waste management and industrial cleaning. Accredited training is provided in these activities to improve the prisoners' employability, skills and competencies so they can better access opportunities for employment on release.

299. Under Section 29 of the Prison Rules 2007, and subject to part 3 of the Prisons Act 2007, each prisoner is eligible for a gratuity of such amount as may be fixed by the Minister for Justice and Equality, with the consent of the Minister for Finance. Different levels may be paid in respect of different prisons, different classes of prisoners and different levels of engagement in authorised structured activities. Since 1 January, 2004, the daily rate of gratuity payable to all prisoners has been €2.35 and has been paid without differentiation as regards prison, class of prisoner or level of engagement in structured activity. Prisoners in closed prisons are eligible for additional gratuities in respect of certain types of prison work, such as catering services. The levels of additional gratuity are set by the senior Governor in each institution and currently the value of these allowances is approximately €10 per week.

300. The Prison Rules 2007 can be accessed at: <http://www.irishstatutebook.ie/2007/en/si/0252.html>

3. ILO Domestic Workers Convention

301. Ireland is committed to the ratification of the Domestic Workers Convention which was adopted by the International Labour Organisation in 2011, and is currently considering the optimal means through which all related obligations can be properly fulfilled.

Article 9 – The right to liberty and security of person

1. General update on detention

302. The following section provides an update to paragraphs 181-186 of Ireland's third periodic report under the ICCPR.

(a) Duration of detention

303. There are a number of statutory provisions of relevance which provide for the detention of suspects prior to being charged. The principal ones are described below.

(i) Criminal Justice Act 1984

304. Section 4 of the Criminal Justice Act 1984 provides for up to 24 hours detention (excluding rest periods) where the offence is an arrestable offence. An arrestable offence, as defined in the Criminal Law Act 1997 as amended, is an offence punishable by 5 years imprisonment or more and includes an attempt to commit any such offence.

305. The 24 hour maximum period of detention arises from an initial period of detention of up to 6 hours with the possibility of 2 extensions. The first extension of up to 6 hours duration must be authorised by an officer of Superintendent rank and the second extension, of up to 12 hours, must be authorised by a Chief Superintendent.

(ii) Criminal Justice Act 2007

306. Section 50 of the Criminal Justice Act 2007 permits detention of up to 7 days for a number of specified offences (including murder involving the use of a firearm, causing serious harm, false imprisonment, threats to kill or cause serious harm).

307. The first 48 hours is made up of a period of 6 hours followed by two possible extensions, the first up to 18 hours duration must be authorised by an Officer of Superintendent rank and the second of up to 24 hours, must be authorised by a Chief Superintendent.

308. Judicial authorisation is required to detain a person beyond this 48 hour period. An initial further period of up to 72 hours may be granted by the District or Circuit Court on

application by a Chief Superintendent and a final extension of up to 48 hours may be granted by the District or Circuit Court again on application from a Chief Superintendent.

(iii) *Other legislation*

309. Similar provisions for detention of up to 7 days are also contained in the Offences against the State Act 1939 as amended and the Criminal Justice (Drug Trafficking) Act 1996.

(b) **Extension to detention by Senior Garda Officers**

310. In all cases where a Senior Garda Officer is asked to authorise an extension of a period of detention he or she must satisfy themselves that there are reasonable grounds for believing that the extension is necessary for the proper investigation of the offence for which the person has been detained. Where the legitimacy of any extension of a period of detention is under question, the Senior Garda Officer involved will have to stand over their decision before the Courts.

311. All detention provisions demand the release of any person being detained if their further detention is no longer required for the proper investigation of an offence to which the detention relates.

2. Court hearings relating to the extension of detention

312. The Criminal Justice (Amendment) Act 2009 amended the powers under which suspects who are arrested in connection with the investigation of serious offences may be detained for the proper investigation of the offences concerned. The amendments deal in particular with court applications to extend the detention of such persons beyond 48 hours. These applications arise in the context of section 30 of the Offences against the State Act 1939 (which permits detention up to a maximum of 72 hours), section 2 of the Criminal Justice (Drug Trafficking) Act 1996 and section 50 of the Criminal Justice Act 2007 (which both permit detention up to a maximum of 7 days).

313. The amendments provide that in order to avoid prejudice to the investigation concerned, the judge may direct that:

(i) The hearing of the application may be held otherwise than in public (only the parties and their representatives are allowed to be present), or

(ii) The public should be excluded but that *bona fide* representatives of the Press, court staff and the parties and their representatives may remain.

314. It is also provided that, in respect of particular information, and on foot of an application by the Garda who made the application (in all cases, a superintendent or above) or on his/ her own motion, the judge may direct that in the public interest “the particular information should be given in the absence of every person” except the member or members of the Garda Síochána whose attendance is necessary to give the information (as well as such court clerks as the judge considers necessary). This provision applies where:

(i) Particular evidence is to be given by a Garda during the hearing (including cross-examination), that concerns steps taken or to be taken in the investigation of the arrested person’s or another person’s involvement in the offence concerned or any other offence, and

(ii) The nature of the evidence could prejudice in a material way the conduct of the investigation.

315. Having heard the evidence, the judge may direct that it be re-given in open court (but if certain parties had already been excluded from the hearing generally, they remain

excluded) if he is satisfied that to re-give it in this way would not, in fact, prejudice the investigation.

316. The amendments also provide that where an application for an extension of the detention period is to be made, or is made, and the period of detention has not expired at the time the person who is the subject of the application arrives at the courthouse, but would expire before or during the hearing (including during any period of adjournment), the period shall be deemed not to expire until the final determination of the application.

Criminal Justice (Drug Trafficking) Act 1996

317. The Criminal Justice (Amendment) Act 2009 repealed section 11 of the 1996 Act which provided that certain sections of the 1996 Act ceased to be in operation unless renewed periodically by resolution of each House of the Oireachtas. The sections which required renewal included section 2 which permits detention of persons suspected of drug trafficking offences for up to 7 days. The effect of this amendment is that the relevant sections shall continue in operation without need for periodic renewal.

3. Right of detained person to access legal advice: response to the recommendations in paragraph 14 of the concluding observations (CCPR/C/IRL/CO/3)

(a) Effective functioning of the Garda Síochána Ombudsman Commission

318. The Garda Síochána Ombudsman Commission has taken a number of targeted efforts and has succeeded in reducing the backlog of cases to a manageable level. Ireland would like to reassure the Committee that the Ombudsman Commission seeks the assistance of the Garda authorities in investigations (either supervised or unsupervised), in accordance with section 94 of the Garda Síochána Act 2005, primarily in relation to offences of a non-criminal disciplinary nature.

319. The term of office of the original members of the Commission has since expired and the newly appointed Commission is now engaged in a review of operations with a view to submitting a paper to the Minister on all relevant issues, including legislative proposals to update the complaints mechanism. Ultimately, any legislative amendments which are being brought forward in this area will be the subject of parliamentary debate and consideration in the usual way.

320. In the meantime the Government is satisfied that GSOC is being provided with all the necessary resources to enable it to fulfil its role effectively.

321. An analysis of cases received shows that about 47% relate to allegations of abuse of authority, 26% relate to discourtesy and about 24% are allegations of neglect of duty.

(b) Right of access to lawyer/ right to silence/use of inference provisions

322. All persons as soon as they are detained in Garda custody are entitled to consult a solicitor on as many occasions as they might wish. The Criminal Justice Act 1984 (Treatment of persons in custody in Garda Síochána Stations) Regulations 1987 provide that the member in charge of a Garda Station shall, without delay, inform an arrested person (or cause him/her to be informed) that he/she is entitled to consult a solicitor. This information is given orally and also by way of written notice. The time of the giving of the oral information and the written notice are recorded in the custody record and acknowledged by the arrested person.

323. New legislation, the Criminal Justice Act 2011, has been enacted to provide that an interview may not commence unless a detained person has actually consulted a lawyer, except where the detained person has waived their right, or in certain specific circumstances where there is a compelling reason to begin, such as risk to life, or the destruction of evidence. The new Act also contains a provision to ensure that there is an

absolute right, subject again to the possibility of waiver and specific exceptions, to consult a solicitor before any provisions whereby adverse inferences from the silence of a detained person are used. While work is ongoing on the regulations necessary to enable these provisions to be commenced, it should be made clear that this legislation merely gives statutory backing to what is already current Garda practice in this area.

324. The 2011 amendments also provide for the ‘detention clock’ to stop from the point at which the detained person requests access to a solicitor to the point at which the consultation starts subject to a maximum of 3 hours (or 6 hours in the case of some night-time detentions). The purpose of this provision is to facilitate the efforts of the Garda Síochána to fulfil the detained person’s request to access legal advice. In the event that the consultation with a solicitor has not taken place within 3 hours (or 6 hours as the case may be) the detention clock starts to run. However, questioning may not start until such time as the consultation has taken place unless one of the compelling circumstances referred to above apply.

325. The 2011 amendments have also strengthened the safeguards that apply before adverse inference may be drawn by a court/jury from the silence of an accused in the face of Garda questions relating to, *inter alia*, suspicious circumstances which clearly call for an answer (sections 18 and 19 of the Criminal Justice Act 1984, as amended) or from the failure of the accused to mention something when questioned which they later seek to reply on in court (section 19A of the Criminal Justice Act 1984). The amendments provide that an inference may not be drawn unless the person was informed before the failure/refusal occurred that they had the right to consult a solicitor and, other than where they waived that right was afforded an opportunity to so consult. Previously, the law simply required the accused to have had a reasonable opportunity to consult a solicitor before the failure / refusal occurred. The amendments were prompted by recent jurisprudence of the European Court of Human Rights. It is expected that the 2011 amendments will be commenced shortly by Ministerial order. Ireland is participating fully and constructively in the negotiations on the EU Directive on the Rights of Access to a Lawyer with a view to securing a final text which we might consider adopting.

4. Suspension of detention - Criminal Justice Act 2011

326. The main purpose of the Criminal Justice Act 2011 is to facilitate the more effective investigation of white collar crime. The Act is targeted at specified serious and complex offences (referred to as “relevant offences”) including offences in the areas of banking and finance, company law, money laundering, fraud and corruption.

327. Section 7 of the Act provides for a new system to make more effective use of detention periods where a person is being detained by the Garda Síochána in respect of a relevant offence.

328. The Garda Síochána may suspend the period of detention under section 4 of the Criminal Justice Act 1984 and release the person from custody where there are reasonable grounds for believing that the suspension of detention is necessary for the purpose of permitting enquiries or investigations to be made for the further and proper investigation of the offence concerned.

329. A person’s detention may be suspended on no more than 2 occasions. The total time for which a person’s detention may be suspended must not exceed 4 months from the date of the first suspension. The person concerned must be given notice in writing that his or her detention is being suspended, of the date and time on which he or she must return for the continuation of the detention, of the Garda station to which he or she must return and of the consequences of failing to return.

5. Right to bail

330. The provision of the Constitution of Ireland on the right to liberty which governs the power of the courts in relation to bail is Article 40.4.1, which provides that “No citizen shall be deprived of his personal liberty save in accordance with law”.

331. A decision to grant bail in a particular case is a matter for the court, which is, subject only to the Constitution and the law, independent in the exercise of its judicial functions.

332. Prior to 1996, bail could be refused essentially only on the grounds that a person would be likely to abscond or interfere with witnesses or evidence. In the light of concerns at the increase in the incidence of offences committed while on bail, following a referendum in 1996, the Constitution was amended to allow the courts to deny bail where there are grounds for believing that the accused person will commit serious offences while on bail.

333. Section 2 of the Bail Act 1997 gave effect to the constitutional amendment. It permits a court to refuse bail to a person charged with a serious offence (a scheduled offence punishable by 5 years imprisonment or more) if such refusal is reasonably considered necessary to prevent the commission of a serious offence by that person.

334. Section 6 of the Bail Act 1997 (as amended by section 9 of the Criminal Justice Act 2007) makes provision for conditions of bail. It is a condition of every bail recognisance that the accused person must appear before the court at the end of the period of remand and not commit an offence while on bail. The recognisance may also be subject to such conditions as the court considers appropriate.

6. Conditional discharge of persons detained under the Criminal Law (Insanity) Act 2006

335. The Criminal Law (Insanity) Act 2006 reformed the law dealing with the criminal responsibility of persons with mental disorders who may have committed offences. It established an independent statutory body – the Mental Health (Criminal Law) Review Board – to review the detention of persons detained by order of a court in a designated centre (the Central Mental Hospital) in accordance with the Act, having been found unfit to be tried or not guilty by reason of insanity.

336. The Review Board is chaired by former High Court Judge, Mr Justice Brian McCracken. The ordinary members are Dr Michael Mulcahy, Consultant Psychiatrist and Ms Nora McGarry, Counsellor Psychotherapist.

337. Section 13 of the 2006 Act requires the Review Board to carry out regular reviews of the detention of persons who are detained under the Act in a designated centre. Such reviews must be carried out at least once every 6 months. In exercising its functions, the Review Board must take into account the welfare and safety of the person concerned and the public interest.

338. The 2006 Act was silent on the question of the Review Board’s powers in a case where it may decide to discharge a person subject to conditions, e.g. to reside at a particular place, to refrain from drinking alcohol or taking illegal drugs, or to follow a particular course of medication. The Criminal Law (Insanity) Act 2010 deals with this issue by amending the 2006 Act to provide that the Review Board may attach enforceable conditions where it orders the conditional discharge of a patient. The Review Board may only make a conditional discharge order where the arrangements considered necessary by the clinical director of the designated centre have been made. These include arrangements for facilitating compliance by the person with the conditions, the supervision of the person and providing for the person’s return to the centre if he or she is in material breach of the conditional discharge order.

339. The conditions must be communicated in writing to the person. The effect of the order and the consequences of non-compliance with the conditions must be explained to the person. The Review Board may vary or remove a condition, or impose further conditions, on application by the person concerned or by the clinical director.

340. A person will be in material breach of his or her conditional discharge order where the clinical director of the designated centre, on reasonable grounds, believes, firstly, that the person is in breach of one or more of the conditions and, secondly, that there is a serious likelihood of the person causing serious harm to himself or herself or others or that the person may be in need of in-patient care or treatment. The clinical director may make arrangements to effect the person's return to the designated centre. The Review Board must be informed of the return of the person and it must subsequently review the detention of the person.

7. Detention in psychiatric hospitals

(a) Mental Health Act 2001

341. The Mental Health Act 2001 provides a modern legal framework for the admission and treatment of persons with a mental disorder, including a high level of protective measures in relation to involuntary patients. The Act provided for the establishment of the Mental Health Commission, the appointment of the Inspector of Mental Health Services and the establishment of Mental Health Tribunals.

342. The Act requires that each decision by a consultant psychiatrist to detain a patient involuntarily or to extend the duration of detention, must be reviewed by a Mental Health Tribunal, which comprises a lawyer, a consultant psychiatrist and a lay person. The review is independent and automatic and must be completed within 21 days of the admission/renewal order being signed. The Tribunal, if satisfied that the patient is suffering from a mental disorder, affirms the order, or if not so satisfied, revokes the order and directs that the patient be discharged. Where a patient is not satisfied with the decision of a Tribunal they have a right of appeal to the Circuit Court on the grounds that they do not have a mental disorder. Patients detained pursuant to the Mental Health Act 2001 have an automatic entitlement to free legal representation.

Table 7

Involuntary admissions

<i>Year</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>
No. Involuntary Admissions	2,126	2,004	2,024	1,952	2,057

343. The Inspector of Mental Health Services has wide ranging powers under the Mental Health Act 2001. The Inspector is statutorily required to visit and inspect every approved centre annually, and as the Inspector thinks appropriate, to visit and inspect any other premises where mental health services are being provided. As part of the inspection process, the Inspector ascertains the degree of compliance by approved centres with Regulations, Rules and Codes of Practice made under the Act. The Inspector is assisted by a multidisciplinary team and publishes a report every year.

344. While the 2001 Act brought Ireland's mental health law into compliance with international conventions, the Government is committed to a human rights based review of the Act. The review will have regard to the very significant changes in thinking about the delivery of mental health services that have taken place over the last ten years, including the shift to community based services, the adoption of a recovery approach in every aspect of service delivery, and the involvement of service users as partners in their own care and in the development of the services. The review will also consider the extent to which the

recommendations of the Government's mental health policy 'A Vision for Change' could or should be underpinned by legislation and the provisions of the Convention on the Rights of Persons with Disabilities.

345. A small working group was established in 2011 to oversee the review. The Group has completed a wide ranging public consultation which sought the views of the public and relevant interested groups/parties, and their interim report is awaited. Following the Minister's consideration of the interim report, the substantive work of the review will commence and it is hoped that the final report will be completed by mid 2012.

(b) Complaints procedures

346. The Health Act 2004, lays strict statutory provisions on the health service in handling all complaints and the HSE has a published complaints policy Your Service, Your Say. The policy outlines a comprehensive process for the management, informal resolution and the investigation of complaints. It details processes for internal and external review mechanisms, and processes for management of complaint data to inform organisational improvement and to demonstrate the effectiveness of the complaints management process. In support of this, Complaints Officers have been designated throughout the HSE to deal with complaints in line with best practice and legislative requirements.

347. It should also be noted that within the approved centres, all mental health service users have access to a trained independent Peer Advocacy Service which is operated by the Irish Advocacy Network. Service Users can, at any time, make a complaint to the Mental Health Commission to have any complaint independently reviewed.

Article 10 – Humane treatment of persons deprived of their liberty

1. Detention of asylum seekers: response to the recommendations in paragraph 17 of the concluding observations (CCPR/C/IRL/CO/3)

348. There is no policy of systematic detention of adults or children seeking asylum in Ireland.

349. The circumstances in which asylum seekers can be detained other than in relation to criminal matters are set out in Section 9 of the Refugee Act 1996 (as amended). Section 9 also makes clear that such provision does not apply to persons who are under the age of 18 years.

350. The Refugee Act 1996 (as amended) also makes extensive provision relating to detained asylum seekers being brought before a judge of the District Court for their detention to be reviewed.

351. Provision is also made for the prioritisation of applications in the case of detained applicants.

352. If an unmarried child under the age of 18 years is in the custody of any person who has been detained, the Act also places a duty on an immigration officer / member of the Garda Síochána to inform the HSE without delay of the detention and of the circumstances relating to the detention. In circumstances where there is any doubt about a person's age, it is a matter for the HSE to determine.

353. The provisions relating to the treatment of asylum seekers while detained and where they may be detained are set out in the Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000. These Regulations make extensive provision for information to be provided to third parties (e.g. the Office of the United Nations High Commissioner for Refugees, the applicant's solicitor) regarding the detention of an individual. Provision is also made for visits and communications, treatment of the detained individual and prohibition on ill-treatment whilst in detention, the personal rights and dignities and the

need to have regard for any special needs they may have. Detainees must also be allowed to have reasonable contact with members of their family group, whether other members of the family group are detained or not.

354. The Regulations also provide that an individual shall not be detained for a continuous period longer than 48 hours in a Garda station, or for any more than two consecutive overnight stays.

355. Persons who have not been convicted of an offence and who are detained in a prison for immigration related reasons such as for removal purposes are housed with remand prisoners, reflecting the common status of both groups as being made up of persons not convicted of a criminal offence.

2. General update

(a) Office of the Inspector of Prisons

356. The Office of the Inspector of Prisons was established on a statutory independent basis under Part 5 of the Prisons Act 2007. Under section 31 of that Act, the Inspector shall carry out regular inspections of prisons and to that end may enter any prison at any time. Particular issues of concern identified in the course of such an investigation may be brought by the Inspector to the attention of the Director-General of the Irish Prison Service or the Minister for Justice and Equality. The Inspector is required to submit an annual report on the exercise of his or her functions containing details relating to each of the prisons inspected, in particular, addressing the general management of any prison inspected; conditions and health and welfare of its prisoners; conduct and effectiveness of persons working in the prison; compliance with national and international practices; programmes and facilities available to prisoners and the level of participation in such; security and discipline. Since his appointment in 2008, the current Inspector has submitted 3 Annual Reports, various Inspection Reports and several Guidelines to the Minister for Justice and Equality. Such guidelines have included:

- Guidance on Best Practice relating to Prisoners' Complaints and Prison Discipline (2010)
- Guidance on Best Practice relating to the Investigation of Deaths in Prison Custody (2010)
- Standards for the Inspection of Prisons in Ireland (2009)
- Women Prisoners' Supplement
- Juvenile Supplement

357. Under new legislation to be prepared, it is intended to make Visiting Committees more effective while they continue their role. The arrangements for membership of the Committees will be changed and a link will be established between the Visiting Committees and the Inspector of Prisons.

(b) Prison Act 2007

358. The Prisons Act came into effect in October, 2007. Part 3 of the Act provides a new appeal mechanism for prisoners to appeal a penalty involving a loss of remission imposed by prison authorities following a finding that they have breached prison discipline. The Act provides for a hearing before an independent Appeal Tribunal and independent professional legal representation for the prisoner where this is requested. The Tribunal may uphold or quash the original finding and may affirm, vary or quash the original sanction applied.

359. The coming into effect of the Prisons Act, 2007 also coincided with the coming into operation of the new Prison Rules. The Prison Rules 2007 deal with all aspects of prison

life including accommodation, visiting rights, discipline, health and education and also set out the duties and responsibilities of Prison Officers and Governors. The new rules also give effect to the compulsory drug testing of prisoners.

360. The Prison Rules represent the first major reform of prison regulation in this State since 1947. The rules themselves reflect the Council of Europe's European Prison Rules and best practice internationally and regulate the behaviour not just of prisoners but also that of prison governors and officers.

(c) Cork Prison

361. The Irish Prison Service recently developed a strategy entitled "Unlocking Community Alternatives – a Cork Approach". On 29th February, 2012 the Minister for Justice and Equality announced that he is proceeding with the implementation of the strategy to address overcrowding and accommodation issues in Cork prison. The strategy comprises two essential elements:

- Exploring the feasibility of replacing the existing prison through the construction of a new prison with all related and support ancillary services, on the adjacent prison car park site (capacity to be in the region of 250 prisoners); and
- The enhancement of sentence management, prisoner interventions and structured release of suitably risk assessed prisoners into the community on a multi agency approach basis.

362. The Irish Prison Service has been asked by the Minister for Justice and Equality to prepare plans for such a development within the existing 2012-2016 Justice Capital Programme. A final decision will be made when detailed plans, design and costs have been finalised.

363. The second element of the strategy "Unlocking Community Alternatives - A Cork Approach" is focused on the reduction of the chronic overcrowding currently being experienced in the prison. In a multi-agency approach, and in partnership with the Probation Service, the Irish Prison Service is developing mechanisms for coordination and cooperation between Cork Prison and community-based services in order to identify effective community based programmes which could act as alternatives to custody for suitably risk assessed prisoners serving short term sentences in Cork Prison.

364. The intention is not simply to relieve overcrowding but also to develop a more integrated approach to the management of offenders while in custody and on release into the community. Building a bridge from the community into the prison ensures that prisoners can tap into, at an earlier stage, the available supports and programmes in their communities, which is essential in aiding their reintegration back into the community on release from prison and reducing repeat offending.

365. Furthermore, the Irish Prison Service is in the process of preparing a draft Strategic Plan 2012-2014 which will be presented to the Minister for Justice and Equality for consideration in April. The Irish Prison Service is also preparing a 40 month Capital Expenditure Plan which will form a central part of this Strategic Plan along with the development of prisoner welfare and resettlement functions.

(d) Conditions of detention

366. A delegation from the Committee for the Prevention of Torture (CPT) visited Ireland in February, 2010. Following that visit, the CPT strongly encouraged the Irish authorities to invest the necessary resources into the existing prison estate to ensure that all prisoners were kept in decent conditions of detention.

367. The CPT recommended that a timeframe for the internal investigation of complaints be incorporated policy on prisoner complaints/allegations and that the effectiveness of the

new policy be assessed after an appropriate interval. It also asked for information on the adoption of any new procedures to ensure effective and impartial investigation of serious complaints

368. The CPT was subsequently advised that a new policy on the investigation of prisoners' complaints provides for;

- A four week timeframe for the internal element of investigation;
- That the Chief officer assigned to investigate must not have been involved in the incident;
- That the full complaint form shall not given to officers involved in the incident;
- That witness statements are now taken from prisoners.
- All complaints and allegations are acted upon and investigated and acknowledgements issued no later than seven working days;
- Prisoners have easy access to complaint forms and a method of submitting complaints directly to the Governor.
- Any allegation of excessive use of force should be reported to the Governor immediately and the Gardaí notified.
- An efficient and effective record system to be put in place and maintained including a standardised journal.

369. This revised procedure has been brought into effect in all prisons. It is the intention of the Department of Justice and Equality to bring forward an amendment to the Prison Rules which will give a statutory footing to the procedure and will introduce an independent element whereby all evidence must gathered within four weeks of the complaint being made and once all the evidence has been gathered, the Governor shall refer the matter to the Director General who shall appoint an external investigation team to carry out the investigation. Draft amendments to the Prison Rules to give effect to these changes were sent to the Office of the Attorney General for consideration. The subsequent advices of the Attorney General are currently under consideration.

370. The Irish Prison Service is satisfied that these new procedures will ensure the effective and impartial investigation of complaints.

371. The CPT also called on the Irish authorities to eradicate "slopping out" from the prison system. Until such time as all cells possess in-cell sanitation, the CPT recommended that concerted action be taken to minimise the degrading effects of slopping out and requested the authorities to ensure that prisoners who need to use a toilet facility are released from their cells without undue delay at all times (including at night). The CPT added that the implementation of this measure should be monitored by senior management.

Response to the recommendations in paragraph 15 of the of the concluding observations (CCPR/C/IRL/CO/3)

a. Slopping out

372. The Government is committed to the elimination of slopping out in all prisons and places of detention. The Programme for Government includes the objective to provide in-cell sanitation to all prisons, and in so far as resources permit, to upgrade prison facilities where possible. 72% of prisoner accommodation has in-cell sanitation at present. This will rise to approximately 80% when the extension currently under construction in the Midlands Prison is opened later this year.

373. A refurbishment project in the C-wing at Mountjoy Prison is now complete and will result in all cells on that wing having in-cell sanitation. These cells should be occupied

from March, 2012. A competitive tender process for the complete refurbishment – to include the provision of toilet, wash hand basin and drinking water to every cell in Mountjoy B wing is currently underway. It is anticipated that the evaluation process will be completed shortly and the contract awarded in March.

b. Safety observation cells and close supervision cells

374. The CPT invited the Irish authorities to establish secure rooms in the hospitals to which prisoners are routinely sent. The Prison Rules are being amended to clearly distinguish between safety observation cells, which are to be used for medical reasons only, and close supervision cells, which are to be used to control violent prisoners.

375. Rule 107A will provide for the use of special safety observation cells for medical purposes only. All decisions relating to these cells will be made by medical staff. Draft amendments to the Prison Rules to give effect to these changes were sent to the Office of the Attorney General for consideration. The subsequent advices of the Attorney General are currently under consideration.

376. Responses to further elements of this concluding observation are provided in paragraphs 380–393 and 501–509 below.

(e) **Complaints procedure**

377. The Prisons (Visiting Committees) Act 1925 provides for a Visiting Committee to be constituted for every prison in the State and one of the statutory duties of such committees is to hear any complaints which may be made to them by a prisoner.

378. The Minister for Justice and Equality has also looked at the question of corporate governance for the penal system generally and arrangements are being made to strengthen the independent oversight of prisons. This will involve the Prison Visiting Committees working closely with the Inspector of Prisons. Legislative proposals will be brought to Government in due course.

379. The Minister for Justice and Equality has also asked the Inspector of Prisons to give consideration to this matter and to advise as to the most appropriate approach to be taken in an Irish context so as to ensure compliance with best practice. The Inspector's views will then be taken into account in relation to the framing of the amended Prison Rules in this regard.

3. **Prisoner accommodation**

380. Paragraph 15 of the 2008 concluding observations contains a recommendation covering a number of areas relating to conditions of detention. One element of the recommendation is in relation to the construction of new accommodation facilities. The present section addresses this element of the concluding observations.

381. Ireland is conscious of the level of overcrowding in its prisons and the impact that it has on services to prisoners. There has been a consistent increase in the total prisoner population in Ireland over recent years. The problem of prison overcrowding therefore remains a challenging issue which unfortunately cannot be resolved overnight.

382. Ireland is primarily dealing with this issue in two ways; by providing new and upgraded prison facilities and by creating a legislative environment which facilitates the greater use of alternatives to custody.

383. The State has been engaged in an ongoing capital programme. During 2009/2010 almost 700 additional prison spaces were introduced.

384. There are also a number of ongoing projects, most notably the construction of a new accommodation block at the Midlands prison. This will provide a potential 300 spaces, a

new kitchen and work training/education block, and an extension to the visits/reception areas. It is planned to have the new block fully commissioned by mid 2012.

385. In addition, an administrative building on the Dóchas site has also just been converted into a new accommodation block which will provide additional spaces. The spaces will become operational in early 2012.

386. Alternatives to custody continue to be pursued and progress is being made. The Criminal Justice (Community Service) (Amendment) Act 2011 requires the sentencing judge to consider the imposition of community service where a custodial sentence of 12 months or less is being considered.

387. The Fines Act 2010 introduced measures to prevent the automatic imprisonment of fine defaulters. It is intended to bring forward new legislative proposals to introduce a system of “attachment orders” allowing a small amount of money to be taken from wages or social welfare facilitating the payment of the debt or fine over time. The concept of restorative justice also has a place in the range of non-custodial options which are available for use by the courts. The focus is to encourage the use of such options to the greatest extent possible.

388. In addition, an incentivised scheme for earned temporary release, the Community Return Programme, under which offenders who pose no threat to the community are offered early temporary release in return for supervised community service has been introduced and is being rolled out on a national basis. The Probation Service in conjunction with the IPS launched the Community return pilot in the final quarter of 2011, to run to the end of quarter 1 in 2012 with the evaluation and development of future options following immediately after that (during quarter 2, 2012). As part of an integrated sentence management approach this programme facilitates the release of selected prisoners to undertake purposeful work within the community as an alternate to continued imprisonment.

389. Prisoners serving 1 – 8 years who are considered, after assessment by the IPS and the Probation Service, as suitable for the Community return Programme, may be approved temporary release onto a Scheme upon serving 50% of their sentence. All assessments are on a case by case basis.

390. In considering whether a prisoner is suitable for community service, regard is given to the normal factors taken into account by the Irish Prison Service/Parole Board when considering whether a prisoner is suitable for temporary/early release including:

- The nature and gravity of the offence to which the sentence being served by the person relates
- The sentence concerned and any recommendation made by the Court in relation to the sentence imposed
- The potential threat to the safety and security of the public (including the victim of the offence to which the sentence of imprisonment being served by the person relates) should the person be released
- The person’s previous criminal record
- The risk that the person might commit an offence during any period of temporary release
- The risk of the person failing to comply with any of the conditions of temporary release
- The extent of engagement with the therapeutic services and likelihood of period of temporary release enhancing reintegration prospects.

391. Prisoners released under this scheme are granted reviewable temporary release and one of the conditions of their release is that they must participate in an identified community service scheme for a defined period. Any prisoner who fails to comply with this condition, or indeed any other condition of their temporary release, will have their temporary release withdrawn and be taken back into custody to serve the remainder of their sentence.

4. Segregation of accused persons

392. Paragraph 15 of the 2008 concluding observations contain a recommendation covering a number of areas relating to conditions of detention. One element of the recommendation is in relation to segregation of remand prisoners. The present section addresses this element of the concluding observations.

393. Within the confines of resources, the Irish Prison Service endeavours to keep sentenced and untried prisoners in separate accommodation areas insofar as possible. On 23 February, 2012 there were 604 prisoners in the system on remand. 71% of remand prisoners are held in purpose built remand accommodation in Cloverhill prison (375) or in the remand block in Castlerea (53). The majority of the remaining prisoners are held in Cork, Limerick and Midlands Prisons.

5. Female prisoners

394. A group will be established shortly to undertake an all encompassing strategic review of penal policy which will incorporate an examination and analysis of all aspects of penal policy including the issue of female prisoners.

395. Aside from the work that will be undertaken by this group, the Irish Prison Service makes every effort to appropriately address the complex physical and mental health needs which are prevalent among women prisoners. The Prison Service seeks to establish a robust system providing enhanced integration and further development of services with statutory and voluntary partners. The Prison Service is also engaged with the Health Service Executive (HSE) in advancing the objective of securing access for all appropriate prisoners to the general community psychiatric services with discussions ongoing to improve access to Community Mental Health Teams.

396. In 2011, the Department through the Probation Service allocated funding to 48 Community Based Organisations working primarily with adult offenders. A number of these organisations provide services, such as accommodation, family support and drug programmes specifically to address the challenges women offenders face integrating back into their communities. The Probation Service also works closely with emergency housing and homeless agencies in relation to the accommodation needs of homeless women. In addition, the Service is reviewing effective programmes and methodologies for engagement and work with female offenders.

6. Prisoner education

(a) Background

397. Education in prisons is delivered in partnership between the Irish Prison Service, the Department of Education and Skills and the local Vocational Education Committees. Other agencies also contribute to prison education services, including the Open University, the Arts Council and the National College of Art and Design. The aim of the education service is to deliver a high quality, broad, flexible programme of education that helps prisoners cope with their sentence, achieve personal development, prepare for life after release and establish a capacity for life-long learning.

(b) Staffing

398. The Department of Education and Skills provides VECs with over 159,000 co-operation hours (approx 220 Whole Time Equivalent teachers) at an estimated cost of €13.6m a year. These hours are approved for the VECs which have prisons located within their geographical area and the teachers are VEC employees. Each education unit is staffed by a head teacher and a complement of qualified teachers.

(c) Provision

399. Participation in education within the prison system depends on factors such as access, facilities, population turnover and segregation. Rates of participation vary from prison to prison, with a low of 14% (Mountjoy, Dublin) to 62% (Shelton Abbey, County Wicklow). In 2010, participation rates averaged 35% across all 14 prisons (*source*: Irish Prison Service Annual Report 2010) and there were 17,179 committals with an average daily population of 4,290. Participation further increased to an average of 38% in 2011.

400. Courses and programmes on offer afford the prisoner a broad curriculum which is adaptive and reflective of the needs of the clients who are accessing the service. Training activities are chosen to give as much employment as possible in prison and to give opportunities to acquire skills which will help prisoners secure employment on their release.

401. Course and programmes can be broadly categorised as follows:

- Basic Education – literacy, numeracy, English as a Second Language and Communications
- General subjects – history, languages, geography, home economics, literature etc.
- Technology – woodwork, metalwork, CAD, IT, horticulture etc.
- Life Skills – personal development, addiction studies, parenting, food hygiene etc.
- Creative skills – arts, drama, crafts, music, creative writing, film production etc.
- Healthy living – fitness, physical education, sports, health education, diet and nutrition etc.

402. In addition, formal training is also provided in prison services such as catering and laundry.

403. Certification options appropriate to the needs of the learner are offered including Junior Certificate, Leaving Certificate, ECDL and Open University. Increasing numbers of prisoners require a more flexible curriculum which has multiple entry and exit points that take account of prior educational attainment. FETAC accreditation is therefore widely used with assessment by portfolio compilation. All prison Education Units meet the quality assurance standards demanded by FETAC.

404. A significant expansion and development of vocational training programmes has taken place in recent years and there are now over 100 workshops in place in our prisons capable of catering for in excess of 800 prisoners each day. There was also a significant increase in the number of prisoners who participated in accredited vocational training courses in 2010 when compared to the numbers recorded for 2009 – 874 prisoners attended such courses in 2010, up from 376 who participated in 2009, an increase of 132%.

405. Education programmes are adapted to take account of the diversity of the prisoner population and the complex nature of prison life, including segregation requirements and high levels of prisoner turnover. Educational courses and curricula, which are based on individuals participating in one or more subject areas for an academic year and sitting terminal examinations, are only appropriate for a small number of prisoners.

406. The Troika Soft Skills Programme is a multi-disciplinary initiative involving Education Units, the Work Training Service and Business in the Community (BITC) personnel, which focuses on the delivery of an agreed suite of interpersonal skills courses with FETAC accreditation. A range of soft skills have been selected for delivery: preparation for work; interpersonal skills; personal effectiveness; communications and self-advocacy. These modules were developed and delivered on a pilot basis in the Mountjoy complex and in Wheatfield Prison during the academic year 2009/2010. Over 270 FETAC Level 3 awards were made to participants in that period. The programme is being rolled out, on a phased basis, to other prisons.

(d) Audit of prison services

407. The Irish Prison Service is conducting an audit of the facilities that are available in prisons with a view to planning and delivering a more efficient service. The Inspector of Prisons recommended in his 2010 Annual report that an independent audit be commissioned by the Irish Prison Service examining the type of education being provided in prisons, the numbers being educated and the value for money being provided. The reports have been compiled and sent to the Inspector.

(e) Prison Education Steering Group (PESG)

408. The Department established the Prison Education Steering Group with representatives of the Department, VECs and the Prison Service with a view to more effective planning of prison education services and improving the quality of outcomes achieved. The PESG has met on a number of occasions and is awaiting the findings of the audit of prison services to progress this work.

(f) Other services

409. In addition to the education services offered in prisons, library services are provided in partnership with the local authorities. Prisons also focus on training programmes aimed at providing employment opportunities on release.

7. Provision of medical services

410. Primary care is the model of care through which healthcare is delivered; it is the linchpin of the prison healthcare system. The effectiveness of this system is crucial to the provision of secondary and tertiary care. The Irish Prison Service (IPS) are working towards a service that is structured and organised in a way that delivers maximum outcomes for patients. The service is currently provided by a mix of part-time and fulltime doctors, who attend the various prisons for varying periods of time. The service is provided using a multi-disciplinary model and intra-disciplinary working processes. This service is heavily dependant on support from Nurses and Medical Orderlies. The IPS are working towards having a structure that will offer, from appropriately competent staff, a system to ensure systematic review of all patients.

411. Delivery of quality primary care interventions is a central tenet of the IPS Healthcare strategy. Critical to this service is the initial health assessment and from this, care interventions are developed, in addition a medical assessment of need is carried out. The IPS are developing a formalised computer based care plan, which will include timed review health screening, diabetic care, vaccination clinics etc. The initial health screen is used as an opportunity to offer advice on general health, hepatitis vaccination, sexually transmitted diseases, infectious diseases and carrying out of a mental health assessment, all of which can be used in devising a care plan. The primary care service strives to provide proactive healthcare with a focus on health awareness and preventative medicine.

8. Prisoners with disabilities

412. All persons committed to prison are seen on committal by the Healthcare Staff and as soon as possible by the prison doctor for a full examination. In order that a doctor can fully assess a prisoner it is incumbent on them to tell the doctor if they suffer from any disabilities that would require special attention. Any prisoner with a disability will have their needs assessed by the IPS and taking account of the nature of their disability e.g. mobility etc, all reasonable steps will be taken to provide appropriate care while in custody.

413. In addition, wheelchair accessible rooms/cells are now available in our newer accommodation such as the accommodation block in Loughan House, the new accommodation blocks in Wheatfield and Portlaoise and the new accommodation block in Midlands and all new accommodation being constructed will include facilities for prisoners with disability.

9. Prisoners with mental illnesses**(a) General update**

414. Funding is included in the Health Service Executive Capital Plan 2012 -2016 to provide for planned infrastructural developments for the National Forensic Mental Health Service. These include the development of a new 120 bed hospital to replace the Central Mental Hospital (CMH), the development of a 10 bed Intellectual Disability Forensic Mental Health Unit, a 10 bed Child and Adolescent Forensic Mental Health Unit, as well as four regional Intensive Care Rehabilitation Units (ICRUs).

415. It is planned to build the new CMH, the Intellectual Disability and Child and Adolescent Forensic Mental Health Units at Portrane, Co Dublin. The HSE has sought expressions of interest for the design team for this project and it is hoped that work on the design will commence in the coming months. It is envisaged that construction will start in 2014 and the facility will be completed and operational by 2016.

416. The development of the new hospital to replace the CMH will improve its capacity for the admission of offenders who are suffering from a mental illness. The availability of additional beds will be of considerable assistance to prison management and healthcare staff in tackling waiting lists for prisoners who require admission to the CMH in providing appropriate mental healthcare to treat acutely mentally ill prisoners.

417. The regional ICRUs will be located at appropriate locations around the country and will serve as a gateway between the community mental health service and the forensic service. One of the ICRUs will be located at Portrane and a decision on the regional locations for the remaining three units will be finalised shortly.

(b) Mentally ill patients

418. All prisoners are medically assessed on committal to prison. This includes a mental health assessment which can be employed to develop an individual care plan. Where clinically indicated a prisoner is referred to a forensic clinician who subject to his/her findings may make certain recommendations to the Governor for the care of a prisoner. If the professional opinion is that a prisoner requires access to an admission bed in the Central Mental Hospital (CMH), this is arranged at the earliest opportunity subject to the status of the waiting list for beds in that institution. The waiting list for admission to the CMH is reviewed weekly by CMH clinical personnel on the basis of reports following assessments.

(c) High Support Unit

419. The High Support Unit (HSU) which is a 9 bedded facility opened in the Medical Unit in Mountjoy Prison in December 2010. The HSU provides expert, supportive, short term input for prisoners who are in an acutely disturbed phase of a mental illness or require

increased observation for a psychical ailment, which has attendant increased risks. The HSU provides a more controlled and supportive environment for a vulnerable prisoner as a short terms intervention. High Support Units have been established in Cloverhill Prison, Cork Prison and Castlerea Prison. All closed prisons will have access to the High Support Units by the end of 2012.

(d) Diversion

420. The Irish Prison System supports the use of the diversion system to divert mentally ill people from the Criminal Justice System. The diversion system ensures as far as possible that those people presenting before the courts, or indeed at an earlier stage of the criminal justice system, where the infraction is a reflection of an underlying mental illness are referred and treated appropriately.

421. The Psychiatric In-Reach and Court Liaison Service (PICLS) is focused on Cloverhill prison, the largest remand prison in the State. This service won prizes at the Irish Health Care Awards 2009 for the Best Hospital Project. There were 132 diversions in 2011.

422. The Irish Prison Service is exploring the possibility of extending the diversion system to remand prisoners committed to Cork, Limerick and Castlerea Prisons. Exploratory discussions have taken place with the NFMHS where remand prisoners who have undergone initial healthcare screening and have been identified as suffering from a severe mental illness could be referred to the PICLS service in Cloverhill Prison for psychiatric assessment.

423. Finally, an inter-departmental group has been established to examine the issue of people with mental illness coming into the criminal justice system. The composition of the group is comprised of representatives from the Department of Health and Children, Department of Justice and Equality, the National Forensic Mental Health Service, Garda Síochána, Health Service Executive and the Irish Prison Service. The Group is expected to report back by end of 2012.

10. Psychological services

424. The primary functions of the IPS Psychology Service are to provide mental health services to prisoners and to help offenders address factors that put them at risk of re-offending. The Service currently comprises 20 staff – 1 Head of Service, 6 Senior Psychologists and 13 Psychologists. These Irish Prison Service staff provide psychology services to all prisons, including one on a part-time basis and in response to specific requests in three other prisons.

425. Overall, 1,623 referrals were made to the Psychology Service for therapeutic interventions with individual prisoners in 2011. A total of 858 individuals were seen by the Service in 2011, 1,301 intake assessments were completed and 6,138 intervention sessions took place. The duration of individual interventions varied significantly by prisoner, ranging from single sessions to twenty or more sessions. Individual work typically focuses on two key areas – mental health issues (coping with imprisonment, depression, anxiety, etc.) and offence-related issues (e.g. motivation to change, anger, substance misuse, sexual and violent offending). Group programmes focus on offence-related issues (e.g. anger management, enhanced thinking skills, risk factors for violent and sexual re-offending), substance misuse (e.g. motivational enhancement, relapse prevention) and personal coping and development (e.g. managing distress, managing relationships, sleep management, etc.).

426. Substance misuse is a major presenting problem in prisons and given its well established relationship with re-offending, it represents a significant criminogenic factor. The Psychology Service in Mountjoy Prison has adapted a manualised motivational programme for drug users to a prison context. This programme is based on the

transtheoretical model of behaviour change and principles of motivational and cognitive behavioural psychology. The aim of the programme is to raise prisoners' motivation to change their drug using behaviour.

427. The Psychology Service also runs a wide variety of group interventions across the prison estate aimed at addressing the mental health and psychological wellbeing of prisoners. These programmes included the following: Mindfulness-based Stress Reduction, Mental Health Workshops, Anger Management, etc.

11. Suicide in the prisoner population

428. Strategies and plans are in place in institutions for the prevention of suicides. There exists in all institutions a great level of awareness and care in the prevention of suicide. Special arrangements are in place for prisoners who have been identified as being at risk, whereby they are placed in special observation cells and checked every 15 minutes. Prisoners who may have received bad news, e.g. a death in the family or loss of an appeal, are also closely monitored.

429. However, unless there is to be a total denial of all personal privacy to offenders at all times, the possibility of suicide in custody cannot be precluded no more than it can be precluded in the wider community.

430. Prison Officers receive appropriate training in the recognition of and response to suicidal behaviour. This is covered in the induction programme for recruit prison officers. In addition, familiarisation training in this area is available and an information pack has been issued to all Training Liaison Officers in each institution. A new training package is being rolled out to key officer groups in the prisons. This is following ongoing discussions between the Irish Prison Service, the Health Service Executive and the National Office for Suicide Prevention. The training is delivered jointly by the Training Liaison Officers and HSE representatives.

431. The Samaritans' Prison Listener Scheme is also available to prisoners in certain prisons. This scheme involves the training of selected prisoners to offer emotional support to other prisoners. The Samaritans' volunteers deliver training, support prison listeners and liaise with prison officers on the management and support of the programme.

432. Counselling is also available to prisoners and staff alike who are affected by suicide.

12. Rehabilitation

433. The Irish Prison Service provides a range of rehabilitative programmes which have the dual purpose of providing prisoners with purposeful activity while serving their sentences and encouraging and equipping them to lead productive lives on release. Programmes provided include healthcare, psychiatric, psychological, educational, work and training, vocational, counselling, welfare and spiritual services. These interventions are important in addressing offending behaviour, drug and alcohol addiction, missed educational and vocational opportunities, anger management, and self management in the interest of encouraging positive personal development in prisoners, and preparing them for re-integration and resettlement on release from custody. These programmes are available in all prisons and all prisoners are eligible to use the services.

434. Following a recommendation by the Inspector of Prisons in his 2010 Annual Report, an independent education audit has been commissioned by the Irish Prison Service on the adequacy, efficiency and relevance of the prison education system.

435. The Irish Prison Service funds the Gate Service operated by Business in the Community Ireland (BITC) which provides a training, education, and employment placement programme for prisoners and ex-prisoners. The GATE Service operates in seven of the country's fourteen institutions. The BITC Linkage Programme provides a similar

service in the remaining institutions and operates in partnership with the Probation Service. The BITC Mentoring Service which is jointly funded by the Prison Service and Dormant Accounts Funding is in place in Castlerea, Cork and the Training Unit. Mentoring has been shown internationally to have a positive impact on the resettlement and desistance of ex-prisoners.

436. Focus Ireland operates a pilot homeless service in Cloverhill Prison which supports remand prisoners in accessing appropriate services and accommodation on the pathway to independent living. The project is supported by the Irish Prison Service, the Probation Service and the Health Service Executive (HSE). Homelessness support services are also provided in Cork and Limerick prisons. A weekly clinic service is provided in ten prisons by the Health Service Executive Community Welfare Service through the Homeless Persons Unit (HPU). Referrals generally are at the pre-release stage and Community Welfare Officers provide information and clinic services, and arrange emergency and other accommodation options, supplementary benefits and fast tracked medical cards.

437. Prisoner resettlement is also an objective of the Prison Service's integrated sentence management system. It is in operation in all prisons and seeks to provide integrated cross disciplinary sentence management focused on the prisoner's resettlement from the moment of committal to release.

438. Finally, the Irish Prison Service is in the process of drafting a new Strategic Plan for 2012-2014 which will be presented to the Minister by the Director General, in the first week of April 2012. The development of prisoner welfare and resettlement functions will form a central part of this Strategy

13. Drugs treatment/rehabilitation

439. As stated previously, substance misuse is a major presenting problem in prisons and given its well established relationship with re-offending, it represents a significant criminogenic factor.

440. The Irish Prison Service continues to implement its Drugs Policy & Strategy, entitled "Keeping Drugs Out of Prison", which was launched in May 2006. This has involved the implementation of stringent measures to prevent drugs from getting into prisons while, at the same time, continuing to invest in services to reduce the demand for illicit drugs in the prisoner population as well as meeting prisoners' treatment and rehabilitative needs.

441. Given the large number of prisoners requiring drug treatment services, the Irish Prison Service endeavours to provide a comprehensive range of interventions, where demand is high. Drug rehabilitation programmes for prisoners involve a significant multidimensional input by a diverse range of general and specialist services provided by the Prison Service and visiting statutory and non-statutory organisations.

442. There are currently drug free units in Wheatfield Prison and St. Patrick's Institution. Allied to this, the Training Unit, Arbour Hill, Loughan House and Shelton Abbey are regarded as drug-free institutions.

443. Merchants Quay Ireland provides an addiction counselling service delivering approximately 1,500 prisoner contacts per month. The service is delivered by 21 counsellors. There were 2,792 referrals to the service in 2011. All those referred are assessed initially by a counsellor to identify the person's addiction and agree a treatment plan.

444. The Health Service Executive (HSE) provides consultant led in-reach addiction services to Cloverhill, Wheatfield and the Mountjoy Complex. A GP with a special interest in substance misuse operates in Mountjoy Prison, Midlands/Portlaoise complex, Limerick

Prison and Cork Prison. Drug Treatment Pharmacist Services are available in Mountjoy, Dóchas, Midlands and Portlaoise Prisons.

445. The Psychology Service in Mountjoy Prison has adapted a manualised motivational programme for drug users to a prison context. This programme is based on the transtheoretical model of behaviour change and principles of motivational and cognitive behavioural psychology. The aim of the programme is to raise prisoners' motivation to change their drug using behaviour.

14. Letters and phone calls, visits and social contacts

446. The Irish Prison Service is committed to facilitating prisoners maintain relationships with their families and friends.

447. Visiting arrangements may vary depending on the type of institution. Entitlements to visits are set out in the Prison Rules 2007. Under these rules a sentenced prisoner over 18 years of age is entitled to not less than one visit per week of 30 minutes duration. A sentenced prisoner under 18 years of age is entitled to not less than two visits per week of 30 minutes duration. A remand prisoner is entitled to a visit per day of 15 minutes duration six days a week, where practicable, but on not less than three days a week. Additional or longer visits are frequently granted where circumstances permit at the Governor's discretion. Prisoners are also permitted to communicate with members of their family and friends by means of telephone calls. Under the Prison Rules if they are serving a sentence they are entitled to at least one telephone call per week and if they are on remand they are entitled to at least five telephone calls per week. They are also entitled to contact their legal representative and the Samaritans. While sentenced prisoners are entitled to one phone call per week in reality they receive in excess of this.

448. Prisoners are also entitled to send and receive letter from family and friends. Prisoners may send up to seven letters per week free of charge. A Prisoner who, after sending seven letters in a week, may be required to pay for postage and writing materials in respect of these letters.

15. Sex Offender Programme

449. In April 2009 the then Minister for Justice and Equality published a new policy on the management of sex offenders in prison, entitled 'Sex Offender Management Policy: Reducing Re-offending, Enhancing Public Policy'. The new policy is aimed at bringing about changes in offenders' lives that reduce the risk of re-offending and enhance public protection. It forms an integral part of the wider range of interventions by criminal justice and community-based agencies.

450. A new programme of group interventions commenced in January 2009, replacing the Sex Offender Programme initiated in 1994 and concluded in 2008. The Building Better Lives (BBL) programme uses a strengths-based psychology approach and comprises three components, namely the Exploring Better Lives (EBL) programme, the Practising Better Lives (PPL) programme and the Maintaining Better Lives (MBL) programme.

451. The EBL group aims to develop motivation and confidence about positive change. The PBL group focuses on obtaining a more detailed understanding of past offending and developing positive offence-free self management plans for the future. The MBL group aims to support ongoing progress and development for men who are serving longer sentences in prison and to ensure a through-care plan from prison to community-based supports.

452. The programme allows responsive and flexible delivery to a greater number of offenders than its predecessor. The interventions take account of individual risk, needs and capacity and priority is given to higher risk offenders. The programme is delivered in Arbour Hill by a team of psychologists, including clinical and counselling psychologists,

who have developed specific expertise in clinical practice including assessment and therapeutic work with men convicted of sexual offences.

453. Prison-based therapeutic interventions with convicted sex offenders also include one-to-one interventions, interventions by approved in-reach services and interventions available to prisoners generally.

454. On 30 January, 2012 there were 319 persons in custody under sentence for a sex offence. 124 persons convicted of a sex offence were released in 2011. Of those 124, 49 had engaged with the Irish Prison Service's psychology service in relation to their offending behaviour with an additional 5 offenders receiving other interventions.

455. All offenders convicted of an offence under the Sex Offenders Act, 2001 are obliged to register with gardaí on release.

456. 114 persons convicted of a sex offence have been or are due for release in 2012. Of those released or to be released in 2012, 39 have engaged with the Irish Prison Service's psychology service in relation to their offending behaviour with an additional 6 offenders receiving other interventions. Additional offenders may engage during the year.

457. In 2011, one hundred and sixty two persons that were in custody under sentence for a Sex Offence engaged with the Psychology Service of the Irish Prison Service. Records show that during this period 124 sex offenders engaged on a one to one basis and 69 engaged in group work.

16. Integrated Sentence Management

458. The Irish Prison Service has introduced an Integrated Sentence Management (ISM) system to ensure co-ordination of interactions with prisoners based on agreed sentence plans drawn up soon after committal. The system focuses on prisoners serving sentences of one year or more. Those serving shorter sentences continue to have access to the same services of course.

459. ISM involves a new orientation in the delivery of services to prisoners and a new emphasis on prisoners taking greater personal responsibility for their own development through active engagement with both specialist and non-specialist services in the prisons. The end result is a prisoner-centred, multi-disciplinary approach to working with prisoners with provision for initial assessment, goal setting and periodic review to measure progress.

460. ISM seeks to provide integrated, cross disciplinary, sentence management that is focused on the prisoner's resettlement from the moment of committal to release. Sentence plans are reviewed regularly specific Community Integration Plans (CIPs) are developed as the prisoners approaches their release date. ISM is now in operation in all prisons and based on current trends, it is anticipated that over 2,000 prisoners will be participating by the end of June 2012.

17. Probation Service

461. The Probation Service is the lead agency in the assessment and management of offenders in our community. Our role is to contribute to public safety by: The effective assessment and management of offenders, challenging offender behaviour and facilitating the integration of ex-offenders.

462. The Service plays an important role in helping to reduce the level of crime by working with offenders to change their behaviour and make good the harm done by their offending.

463. Community Service is one of a number of community sanctions provided by the Probation Service and is a direct alternative to custody. The new model of Community Service provides a streamlined and more efficient process maximising capacity of the

Community Service scheme, increasing benefits to communities and reparation by offenders.

464. A substantial part to the Probation Service Budget is allocated to funding Community Based Organisations to support the Probation Service in the supervision and integration of offenders in their communities. The Probation Service is working with these Community Based Organisations to ensure they provide flexible and effective programmes which assist the Probation Service in offering alternatives to custody. For example, Restorative Justice Services (RJS) is a Community Based Organisation funded by the Probation Service which works in partnership with the Probation Service, An Garda Síochána, Community and Victim organisations to develop and provide restorative justice programmes. The Offender Reparation Programme provided by RJS focuses on accountability responsibility, reparation and non re-offending.

465. The Probation Service also works with prisoners in prisons and places of detention assisting in coping with imprisonment, maintaining contact with family and dealing with areas of difficulty such as addiction. Through personal counselling and structured programmes we address offending behaviour issues identifying risk/needs that underlie such behaviour.

466. Working in partnership with the Irish Prison Service (IPS) the Probation Service assess, as part of a new initiative, prisoners for the 'Community Return' programme, where offenders are released on Temporary Release to perform community reparation work under the management of the Service.

18. Post-release courses and Prison/Community Contact

467. As stated previously, The Irish Prison Service provides a range of rehabilitative programmes which have the dual purpose of providing prisoners with purposeful activity while serving their sentences and encouraging and equipping them to lead productive lives on release. Several programmes and services have a specific post-release focus.

468. The Prison Service funds the Gate Service operated by Business in the Community Ireland (BITC) which provides a training, education, and employment placement programme for prisoners and ex-prisoners. The GATE Service operates in eight of the country's fourteen institutions. The BITC Linkage Programme provides a similar service in the remaining institutions and operates in partnership with the Probation Service.

469. The BITC Mentoring Service which is jointly funded by the Prison Service and Dormant Accounts Funding is in place in Castlerea, Cork and the Training Unit. Mentoring has been shown internationally to have a positive impact on the resettlement and desistance of ex-prisoners.

470. Focus Ireland operates a pilot homeless service in Cloverhill Prison which supports remand prisoners in accessing appropriate services and accommodation on the pathway to independent living. The project is supported by the Irish Prison Service, the Probation Service and the Health Service Executive (HSE). Homelessness support services are also provided in Cork and Limerick prisons.

471. A weekly clinic service is provided in twelve prisons by the Health Service Executive Community Welfare Service through the Homeless Persons Unit (HPU). Referrals generally are at the pre-release stage and Community Welfare Officers provide information and clinic services, and arrange emergency and other accommodation options, supplementary benefits and fast tracked medical cards.

472. The Prison Education Centres, staffed by Vocational Education Committee teachers, provide pre-release and post-release programmes aimed at assisting prisoner resettlement. These are currently being reviewed as part of an on-going comprehensive independent audit of prison education.

473. Prisoner resettlement is also an objective of the Prison Service's integrated sentence management system. It is in operation in all prisons and seeks to provide integrated cross disciplinary sentence management focused on the prisoner's resettlement from the moment of committal to release.

19. Structured temporary releases

474. Temporary release arrangements operate similarly to a system of parole, which is a feature of prison systems worldwide. They are an important vehicle for re-integrating an offender into the community in a planned way. The generally accepted view is that the risk to the community is reduced by planned re-integration of offenders compared with their return to the community on the completion of their full sentence. The Irish Prison Service has also judiciously used temporary release as a means of reducing numbers in times of serious overcrowding. Each case is examined on its own merits and the safety of the public is paramount when decisions are made. In addition, all releases are subject to conditions, which in the vast majority of cases include a requirement to report on a regular basis to the offender's Garda Station. Of course, any offender who breaches his or her conditions may be arrested and returned to prison immediately by the Gardaí.

475. An incentivised scheme for earned temporary release under which offenders who pose no threat to the community are offered early temporary release in return for supervised community service is now in operation. A six month pilot project commenced in October 2011 in which it is envisaged that a total of 130 prisoners will participate. The issuing of guidelines to the Parole Board for the application of a similar scheme to long-term prisoners will be considered in the context of the development of the Community Return scheme.

476. The average number of prisoners on temporary release from 2006 to 2010 is set out in the table:

Table 8

Average number of prisoners on temporary release (2006–2010)

<i>Year</i>	<i>Number</i>
2011	785
2010	732
2009	535
2008	273
2007	153
2006	140

20. Non-custodial measures

477. The Fines Act 2010 has introduced measures to prevent the automatic imprisonment of fine defaulters. The Act is being commenced on a phased basis. However, with the commencement of section 14 on 4 January 2011, no person can be sent to prison for default solely for the reason that he/she cannot afford to pay a fine. Further measures to allow the recovery of fines by means of attachment of earnings are currently being prepared.

478. The Government has introduced a range of measures to divert people away from custody including:

- The development of a pilot scheme under which offenders may be offered earned earlier release in return for community service. New guidelines will also be given to the Parole Board for the application of a similar scheme to long-term prisoners.

- The enacted Criminal Justice (Community Service) (Amendment) Act 2011 requires the sentencing judge to consider the imposition of community service where a custodial sentence of 12 months or less is being considered.
- In July 2011, the Government accepted in principle the recommendations of the Thornton Hall Prison Review Group. The Report recommends a combination of front-door and back-door strategies to reduce the demand for prison places and develop non-custodial options which can be used and are available to the judiciary.
- In 2011 a pilot scheme was introduced by the Probation Service to test a range of restorative interventions for adult offenders. The objective of the scheme is to build the foundation for the implementation of a robust restorative justice model of practice providing an alternative to a prison sentence of less than 12 months.

21. Training for custodial personnel

479. Prison officer training emphasises concepts of humane treatment and awareness of international instruments, as well as an appreciation of the ethical context within which prisons must be administered. All technical skills that are taught are underpinned by a belief in the dignity and humanity of everyone involved in prisons. All training programmes emphasise the need to treat prisoners as individuals with humanity and respect and to act within the law at all times.

480. Since September 2007, all Recruit Prison Officers complete an accredited two year Higher Certificate in Custodial Care programme which replaced the nine week induction training. The course includes modules on Communications and Interpersonal Skills; Human Rights; pro social modelling; Health and Safety in Prisons; Prisoncraft; Professional Development and Practice; Sociology of Irish Society; Equality and Diversity Awareness; Health Care in a Custodial Care Setting; Introduction to Social Psychology; Prison Law; Drugs, Drug Abuse and Communicable Diseases; Custodial Care: Policy and Practice; Education and Mentoring in Custodial Care; Criminology and sociology and Ethics for Custodial Care.

481. Recruit Prison Officers take modules in pro-social modelling to raise awareness of the value of promoting positive behaviours in addition to extensive interpersonal communication skills training. Training emphasises that human rights instruments provide a set of rules to help prison staff perform their duties through policies and practices that are lawful, humane and disciplined. Incorporating such principles into daily conduct strengthens the dignity of the profession. Respect for human rights is incorporated in the Irish Prison Service Mission Statement and is also addressed in sessions relating to Intercultural Awareness and Racism and threaded through all procedural and prison craft training so that the concepts of humane treatment and awareness of international instruments are embedded through all elements of training, not only those specifically directed towards human rights.

482. The use of unnecessary force or using undue force constitutes a breach of discipline under the Prison (Disciplinary Code for Officers) Rules, 1996 (First Schedule, Section 11). Rule 93 of the Prison Rules 2007 deals specifically with this matter. The relevant provisions include a requirement on prison officers to report each incident which involved the use of force to the Governor (specifying the circumstances that gave rise to force having to be used and, also, the nature and degree of force used) and a requirement on the Governor to ensure, where required, that the prisoner concerned is examined by a healthcare professional.

483. The Irish Prison Service has a very advanced Control and Restraint training programme which is on a par with and exceeds international best practice. All officers are required to undertake this training as part of their basic training and officers undertake a refresher course at specified periods during their service.

22. Convention on the transfer of sentenced prisoners

484. At the end of 2010, a total of 417 applications for transfer into this jurisdiction had been formally transmitted to the Irish authorities for consideration since the Act came into force in November 1995. Such transmission is a formal requirement under the Convention/Act and does not constitute approval for transfer by the relevant authorities. A total of 141 prisoners had transferred into this jurisdiction at the end of 2010 under the Convention/Act. There were 11 inward applications under active consideration at the end of that year.

485. A total of 361 applications for transfer from this jurisdiction to another State had been received during the period 1 November, 1995 to end 2010. At the end of 2010, 131 prisoners had been transferred out of the jurisdiction since the Act came into operation. There were 37 outward applications under active consideration at the end of 2010.

486. The Minister for Justice and Equality publishes an annual report on the operation of the Act.

23. Enacted legislation

Criminal Justice (Community Service) (Amendment) Act 2011

487. As an alternative sanction to imprisonment, community service was first introduced under the Criminal Justice (Community Service) Act 1983. Under that Act, a court may make a community service order in respect of an offender who is over the age of 16 years and who has been convicted of a criminal offence for which a sentence of imprisonment would be appropriate. A community service order requires an offender to perform work for between 40 and 240 hours.

488. There are a number of conditions that must be met before the making of an order. A court may not apply a community service order unless satisfied, on the basis of an assessment report of a probation officer, that the offender is a suitable person for the purpose of such an order, that appropriate work is available and that the offender has consented to the order.

489. In 2011, the Criminal Justice (Community Service) (Amendment) Act 2011 introduced a requirement on the courts to consider imposing a community service as an alternative to custody in certain circumstances. The proposed amendment provides that a court before which a person is convicted, and in circumstances where a sentence of up to 12 months would be appropriate, shall consider as an alternative to that sentence, the imposition of a community service order. However, the obligation which has now been introduced is simply an obligation to consider making a community service order. Whether or not the court proceeds to make an order is entirely a matter for the court.

24. Juvenile offenders and youth justice

(a) Key reforms in the youth justice area

490. Following a Government decision, the Irish Youth Justice Service (IYJS) was established in December, 2005. The IYJS funds organisations and projects providing services to young people aged less than 18 years who find themselves in conflict with the law. These children may be involved with An Garda Síochána (the Irish police force), the Probation Service and the Courts Service. The IYJS is also responsible for the management and development of children detention facilities.

491. The remit of the IYJS is to improve the delivery of youth justice services and reduce youth offending. This challenge is met by focussing on diversion and rehabilitation involving greater use of community based interventions and the promotion of initiatives to deal with young people who offend. Providing a safe and secure environment for detained

children and supporting their early re-integration back into the community is also a key function.

(b) Transfer of the Irish Youth Justice Service to the Department of Children and Youth Affairs

492. Following a Government decision in 2011 the Irish Youth Justice Service (IYJS) now operates as an executive office in the Department of Children and Youth Affairs (DCYA) with effect from 1st January, 2012. The IYJS retains the same remit in leading and driving reform in the area of youth Justice and is staffed by officials from both DCYA and the Department of Justice and Equality (DJE).

(c) Children Act, 2001 (as amended)

493. The main legislation covering children in the criminal justice system is the Children Act 2001 and the IYJS is guided by the principles of the Act.

494. Statutory responsibility for the Children Act, 2001 is shared between the Minister for Children and Youth Affairs and the Minister for Justice and Equality:

- The Minister for Children and Youth Affairs is responsible for the 3 Children Detention Schools at Oberstown, Lusk, Co. Dublin which provide detention places to the Courts for girls up to the age of 17 years and boys up to the age of 16 years ordered to be remanded or committed on criminal charges. DCYA is also responsible for the child care aspects of the Children Act 2001.
- The Minister for Justice and Equality retains responsibility for youth crime policy and law, including crime prevention, reduction, detention, criminal proceedings, and diversion and community sanctions (including community projects). The Minister also retains responsibility for dealings with An Garda Síochána and the Probation Service as well as responsibility via the Irish Prison Service for children in St. Patrick's Institution.

495. The age of criminal responsibility in Ireland is covered by section 52 of the Children Act 2001 which came into force in 2007 by way of the Criminal Justice Act 2006. The age of criminal responsibility was raised from 7 years to 12 years and in general, children under the age of 12 years may not be charged with an offence. However, a child aged 10 or 11 may be charged with serious offences such as murder, manslaughter, rape or aggravated sexual assault. A further protection is provided by the Act in that where a child under 14 is charged with an offence, no further proceedings may be taken without the consent of the Director of Public Prosecutions.

496. As was envisaged at the time of its enactment, the Children Act 2001 was implemented on a phased basis to allow for the planned development and strengthening of services. The commencement of all outstanding provisions of the Children Act 2001, as amended, was completed in March, 2007 following amendments made by way of the Criminal Justice Act, 2006 and the Child Care Amendment 2007.

497. The Judiciary were briefed on the legislative changes to the Children Act, 2001 contained in the Criminal Justice Act, 2006. Meetings with the Judiciary on recent developments in the youth justice sector and Children Court situation have taken place and follow up meetings are being arranged where necessary.

498. The Government approved in 2007 the allocation of significant additional resources to allow for effective implementation of the Children Act, 2001. They included:

- Extra staff between Probation Service and Irish Youth Justice Service
- Extra Judges for the Children's Court
- Extra Juvenile Liaison Officers over the following four years.

499. All of these additional resources have been put in place.

(d) National Youth Justice Strategy 2008-2010

500. Central to the work of the IYJS is the National Youth Justice Strategy 2008-2010, published in March 2008 and developed in partnership with the key stakeholders in the area of youth justice. Its aim is to provide a partnership approach among agencies working in that system. It included a number of goals and targets for the Government Departments and Agencies involved to help measure progress and to assess where available resources should be targeted. There has been good progress under each of the Strategy's five High Level Goals and the vast majority of objectives have been completed. IYJS is currently in the process of developing a follow up National Youth Justice Strategy under the umbrella of the National Children's & Young Person's Policy Framework currently being co-ordinated by the Minister for Children and Youth Affairs.

25. Alternative measures to detention

501. Paragraph 15 of the 2008 concluding observations contains a recommendation covering a number of areas relating to detention. One element of the recommendation is in relation to alternative measures to detention. The present section addresses this element of the concluding observations in the specific context of juvenile offenders and youth justice.

(a) Detention as a last resort

502. The Children Act, 2001 provides that detention of children should be a measure of last resort. It states that any penalty imposed on a child for an offence should cause as little interference as possible with the child's legitimate activities and pursuits and take the least restrictive form appropriate in the circumstances. Detention as a last resort is a principle enshrined in the Children Act, 2001 (as amended).

503. There has been a downward trend in the numbers being detained at any one time. The average annual use of detention was 134 places in 2004. This fell to an average of 119 in 2006 and still further to 104 in 2008 and further still to 80 in 2011.

504. The introduction of new community alternatives to detention, further diversion measures and increased inter-agency working should continue to reduce detention trends. However, a rising population may impact upon these trends in future years.

(b) Tackling youth crime

505. The youth justice system should be considered in its entirety, from the Garda Diversion Programme through to the Children Courts and the Children Detention Schools. It is important to note that there it is not a simple question of choice between the Diversion Programme, community sanctions and detention. The principles of the Children Act 2001 require the various authorities to apply, incrementally, a series of "filters" or tests to each case where a child comes into conflict with the law.

506. The first main filter is the Garda Diversion Programme, involving at different stages and depending on the seriousness of the offence, the informal caution (without supervision) and the formal (supervised) caution, including possible involvement with a Garda Youth Diversion Project. The second main filter is provided by the non-custodial sanctions available to the Courts, including dismissal under the Probation Act and unsupervised sanctions (fines, disqualification, peace bond, curfew etc.). The next stage involves the Probation supervised sanctions (community service and other community sanctions). Finally, as a last resort, detention may be used.

(c) Community Sanctions

507. Community sanctions provided for under the Children Act 2001 as amended were introduced on 1 March, 2007. The sanctions provide the Courts with alternatives to custody for young people who offend. These sanctions include the mentor or family support order which is aimed at helping, advising and supporting the child and its family. Parents may also be involved in various steps under the Children Act, 2001, in family and restorative justice conferences as well as good behaviour contracts.

508. The Irish Youth Justice Service is working with the Probation Service to ensure the range of community sanctions, which were introduced on 1st March, 2007 are rolled out to ensure these options are available for the Courts in dealing with young people who offend. These sanctions are aimed at reducing the number of children sentenced to detention by the Courts and improving the outcomes for children in a range of areas, including the rate of re-offending, educational attainment, family supports and substance abuse. The 10 community sanctions available to the Courts are:

- Community Service Order
- Day Centre Order
- Probation Order
- Training or Activities Order
- Intensive Supervision Order
- Residential Supervision Order
- Suitable Person (Care and Supervision) Order
- Mentor (Family Support) Order
- Restriction of Movement Order
- Dual Order

(d) Anti-social behaviour measures

509. Part 13 of the Criminal Justice Act 2006 relating to anti-social behaviour by children was commenced on 1 March, 2007. These provisions set out an incremental procedure for addressing anti-social behaviour. The anti-social measures which apply to young people are separate from those which apply to adults and the protections of the Children Act 2001 apply. With regard to children, these range from a warning from a member of An Garda Síochána, to a good behaviour contract involving the child and his or her parents or guardian, to referral to the Garda Juvenile Diversion Programme and to the making of a behaviour order by the Children's Court. The operation of anti-social behaviour procedures with regard to children is closely monitored by the National Youth Justice Strategy Oversight Group.

26. Children detention schools

510. Up until March, 2007, the Department of Education and Skills had full responsibility for the operation of five residential schools providing for children generally up to the age 16 years who had been convicted of an offence or placed on remand by a Court. The schools were governed by the terms of the Children Act 1908.

511. In March 2007 as a result of the commencement of amended provisions of the Children Act 2001 on that date, responsibility for remand and detention provision in four of the schools became the responsibility of the Department of Justice, Equality and Law Reform (DJELR) Irish Youth Justice Service (IYJS), while the fifth became a residential care facility under the Health Service Executive (HSE).

512. The main legislation covering children in the criminal justice system is the Children Act 2001 as amended by the Criminal Justice Act, 2006 and the IYJS is guided by the principles of the Act. The Act establishes remand centres and children detention schools for the remand and detention of children aged less than 18 years. These provisions came into effect on 1st March 2007.

513. Following a Government decision and since 1st January, 2012, statutory responsibility for the Children Act, 2001 (as amended) is shared between the Minister for Children and Youth Affairs and the Minister for Justice and Equality:

- The Minister for Children and Youth Affairs is responsible for the 3 Children Detention Schools at Oberstown, Lusk, Co. Dublin which provide detention places to the Courts for girls aged less than 18 years and boys aged less than 17 years ordered to be remanded or committed on criminal charges.
- The Minister for Justice and Equality retains responsibility for youth crime policy and law, including crime prevention, reduction, detention, criminal proceedings, and diversion and community sanctions (including community projects). The Minister also retains responsibility for dealings with An Garda Síochána and the Probation Service as well as responsibility via the Irish Prison Service for children in St. Patrick's Institution.

514. At the end of 2006 there were five children detention schools in the country. There are now currently three children detention schools in the State with a total capacity of 52 places (44 for boys and 8 for girls) Trinity House, Oberstown Boys and Oberstown Girls, all of which are located on the same campus at Oberstown, near Lusk, Co. Dublin. St. Joseph's Special School transferred to the Health Service Executive in 2007 and Finglas Child and Adolescent Centre was closed in March, 2010 and staff and services were transferred to the Oberstown Campus.

515. In March 2008, the Government approved the development of new national detention facilities to cater for all children up to 18 years who are ordered to be detained by the courts. The new facility, to be located on the Oberstown campus, was to increase the accommodation capacity to provide sufficient new detention places to enable the accommodation of 16 and 17 year old boys presently catered for by the Irish Prison Service. In 2011, the IYJS developed a reduced scheme for this project which reflects the downward trend in demand for detention places over recent years but still provides sufficient accommodation and ancillary facilities to enable the extension of the child care model of detention to 16 and 17 year old boys.

516. On 2 April, 2012 the Minister for Children and Youth Affairs announced that capital funding of €50 million over three years has been secured to end the detention of 16 and 17 year old boys in St. Patrick's Institution with the construction of new children detention facilities on the existing campus at Oberstown Lusk Co. Dublin. It is envisaged that construction will commence in May 2013 with the project to be fully completed in July 2015. This means that from July 2015 the practice of sending 16 and 17 year old males to St Patrick's Institution will have ceased and from that date onwards all children under 18 years of age sentenced by the Courts will be detained at the newly integrated children detention facilities in Oberstown.

517. The Government remains committed to ending the use of St. Patrick's Institution for the detention of 16 and 17 year old males. To this end, the Irish Youth Justice Service has been tasked with progressing to completion during 2012 the design work and tender documentation for the project in Oberstown.

518. Other measures have recently being implemented in advance of the new children detention facilities as follows:

- From 1 May 2012 the assignment of responsibility for the detention of newly remanded or sentenced 16 year old boys to the Children Detention Schools in Oberstown. This means that since 1st May, 2012 no 16 year old males have been remanded or committed to St. Patrick's Institution but are now being sent to the Oberstown Campus.
- From 1 July, 2012 the extension of the remit of the Ombudsman for Children to cover the 16 and 17 year old boys currently detained in St. Patrick's Institution for the period until such detentions cease fully.

(a) Integration and improvement in procedures

519. IYJS is implementing a number of steps towards integrating existing structures and improving the outcomes for children being detained. Common policies are being developed for all the detention schools. IYJS continues to work with the Board of Management and the management of the 3 children detention schools towards a number of improvements in their operation including measures to integrate services and standardise policies and procedures.

(b) Safeguarding policies

520. A Safeguarding Policy has been developed and is designed to promote children's welfare, to safeguard children from harm or abuse and to protect staff from potential false allegations of abuse. This has been put in place following a review of the Child Protection Policy document which had been developed and was in use across all of the schools. The following policies, procedures and guidelines accompany the Safeguarding Policy: Role of Social Worker in Child Protection Proceedings; Guidelines for Good Practice; Guidelines for Recognising Poor Practice; Abuse, Protection Concerns; Complaints Procedure.

521. In addition to this policy, the Ombudsman for Children and inspections by the Health Information and Equality Authority (HIQA), the IYJS employs a Child Welfare Advisor who deals with child welfare and protection issues as well as standards, inspections and complaint mechanisms in detention.

522. From 1 July 2012, the remit of the Ombudsman for Children will be extended to cover 16 and 17 year old boys detained in St. Patrick's Institution for the period until such detentions cease fully.

(c) Delivery of education services

523. Responsibility for the day to day delivery of education services in the five facilities now lies with the local Vocational Education Committee (VEC), following amendments to the Children Act 2001. At the request of the Department of Education and Skills, the National Council for Curriculum and Assessment (NCCA) prepared a framework for, and guidelines on, curriculum and assessment in the detention and care settings.

524. An Education Strategy for the Children Detention School Service September 2010-2013 has been developed. Responsibility for the implementation and success of this strategy lies with the Department of Education and Skills and Co. Dublin Vocation Educational Committee and also depends on other agencies working together to deliver their services in a coordinated, effective and timely manner. In this regard, the Department of Education and Skills recognises, in particular, the importance of close co-operation and co-ordination of services at local level between the teaching and care staff employed in each child detention school.

525. Implementation of this strategy, along with the National Youth Justice Strategy 2008-2010 of the Irish Youth Justice Service, will be monitored at national level by the National Youth Justice Oversight Group, which the Minister for Children and Youth Affairs (OMCYA) has established in order to ensure effective implementation and to

facilitate the cross-agency collaboration needed to achieve this. The Oversight Group includes representatives from all relevant Government departments, criminal justice agencies and other appropriate agencies.

(d) Inspections in children detention schools

526. The children detention schools are independently inspected by the Health Information and Quality Authority (HIQA) at least annually using national standards for detention facilities. All HIQA inspection reports are published on their website www.hiqa.ie. Policies and procedures are reviewed in light of the findings of the inspections and, in keeping with the particular nature of a detention facility, actions are taken to meet the HIQA recommendations.

527. The following national and international bodies have also visited or reported on the children detention schools.

- Ombudsman for Children
- Council of Europe – Human Rights Commissioner
- Committee of the Prevention of Torture (CPT)

27. Development of national specialist service for young people

528. The Irish Youth Justice Service is working with the Health Service Executive to develop a national specialist service for young people in special care and detention (arising from Actions 12 and 15 of the Commission to Inquire into Child Abuse Report Implementation Plan published by the Office of the Minister for Children in July 2009). Development of a model for this service is at an advanced stage and the HSE is recruiting staff (this includes a psychology post). The new national service will incorporate an assessment service for children at risk of detention. This should reduce the need to remand children for the purpose of assessment. Development of a forensic child and adolescent mental health service is also planned, once established this service will provide in-reach for young people in detention.

28. High Support/Special Care Units

529. High Support/Special Care Units provide residential care for children legally termed “out of control”. This term refers to children who are at risk and in need of care and protection and who require the provision and delivery of an education service in a secure and therapeutic environment. The age profile of these children is 12-17 years.

530. High Support Care is for children with severe emotional and behavioural problems, whose presenting difficulties cannot be met in mainstream services. The service provides an opportunity for additional support to young people, via higher staff ratios and higher levels of therapeutic input. It is less restrictive than secure provision.

531. Special Care facilities accommodate children who are the subject of special care orders granted by the court. These orders allow the Health Board restrict the young people’s liberty for their own safety and welfare. Such orders are only granted by the courts where there is a substantial risk to the child’s health, safety, development or welfare.

(a) Special primary schools

532. To facilitate the provision of education the Department of Education and Skills facilitated a number of “special primary schools” with teachers paid through the Primary Payroll system and in receipt of all education grants for mainstream primary schools. There are currently 7 High Support Special Schools.

(b) Pupil teacher ratio

533. The pupil teacher ratio in these facilities is the same as the ratio recommended for pupils who are severely emotionally disturbed by the Special Education Review Committee Report (SERC). Classes for pupils who are severely emotionally disturbed under the recommendations set down by this committee are entitled to a teacher for each group of six (i.e., PTR 6:1).

(c) Education

534. Similar to other schools, the educational curricula and syllabi on offer are broadly in line with those in primary and second level schools with the intention of providing a positive experience to the young people. The schools not only provide education but also play a large part in their rehabilitation process. The various educational programmes range from intensive learning support in literacy and numeracy to a wide range of academic and practical subjects that can be studied up to State Examination Level. The schools currently prepare students for the Junior Certificate Examination and for the Further Education and Training Awards Council (FETAC) accreditation. Similar to the other schools in this sector, pupils' individual educational ability are assessed and programmes prepared.

(d) Education inspections

535. The Department of Education and Skills Inspectorate visits and reports on these schools.

(e) Care inspections

536. Inspectors within the Health Information and Quality Authority (HIQA) are mandated to inspect the High Support Special Schools under Section 69 of the Child Care Act 1991. While the primary focus of HIQA inspections is not on education, HIQA inspectors may comment on the operation of the education facility in so far as it impacts on the care and protection of the children.

Article 11 – The right not to be imprisoned for failure to fulfil a contractual obligation**Response to the recommendations in paragraph 18 of the concluding observations (CCPR/C/IRL/CO/3)**

537. In 2009 Ireland introduced amending legislation, the Enforcement of Court Orders (Amendment) Act 2009, which introduced additional safeguards for the debtor summoned before the court. The amendments ensure that where a debtor does not appear, a court can issue a summons to ensure that s/he appears and if s/he still fails to appear, issue a warrant for his/her arrest. This amendment enables the court to hear the debtor and satisfy itself as to whether the debtor has wilfully refused to pay and whether all other possible steps have been taken to recover the debt. The court will not imprison the debtor unless it is satisfied that s/he has the means to pay and may also postpone the execution of an imprisonment order until such time as the court thinks just. The Court will inform a debtor of the risk of imprisonment and of an entitlement to apply for legal aid. The Act also gives the Court a clear power to vary the terms of the breached instalment order or alternatively to refer the parties for mediation.

Article 12 – The right to freedom of movement

1. The right to travel and freedom of movement

538. As indicated in Ireland's previous periodic reports under the ICCPR, both the right to travel and freedom of movement within the State have been identified by the Supreme Court as personal rights guaranteed by the Constitution.

539. The rights of refugees in the State are set out in Section 3 of the Refugee Act, 1996. These rights include an entitlement to (a) reside in the State and (b) the same rights of travel in, or to or from, the State as those to which Irish citizens are entitled.

540. This is subject to Section 4 of the Refugee Act, 1996, which provides that:

(1) Subject to subsection (2), the Minister shall, on application in writing in that behalf, and on payment to the Minister of such fee (if any) as may be prescribed with the consent of the Minister for Finance, issue to a refugee in relation to whom a declaration is in force a travel document identifying the holder thereof as a person to whom a declaration has been given.

(2) The Minister may, in the interest of national security or public policy ("ordre public"), refuse to issue a travel document.

541. No restrictions apply to the place of residence of refugees.

542. For an update on the issue of the detention of asylum seekers, please see paragraphs 348–355 above.

Article 13 – The rights of aliens

Response to the recommendations in paragraph 19 of the concluding observations (CCPR/C/IRL/CO/3)

543. In response to earlier concerns about the possibility of "summary removal" it had been agreed by the then Minister to examine the 2008 Bill with a view to determining the extent to which the notice provisions already in the Bill could be enhanced to provide greater clarity for persons liable to removal, and the opportunities for such persons – or at least some categories of them – to be better informed of the possibility to leave voluntarily. This has been done and is reflected in amendments that have been made in the published 2010 Bill. The amendments include extensive notice provisions throughout the Bill (e.g. around the review processes in Part 5) and amendments to Part 6 dealing with removal from the State. The intention is to strike a fair balance between facilitating the persons concerned in putting their affairs in order in advance of leaving the State or being removed while, at the same time, providing for efficient operation of the State's immigration laws.

544. Provision is made in the Immigration, Residence and Protection Bill 2010 for appointments to the Protection Review Tribunal by the Minister but following an open competition conducted by the Public Appointments Service. The position relating to asylum seekers and access to free legal assistance is set out in Ireland's periodic report 2004-2007. Essentially free legal assistance (apart from a nominal registration fee, which is waived in certain circumstances) is available to all applicants. The applicant is notified regarding the availability of legal representation from the Refugee Legal Service (RLS) on the day they apply for asylum. The RLS have an office in the Office of the Refugee Applications Commissioner which has the statutory responsibility for investigating asylum applications.

545. The current Irish Government in its programme for Government made the following commitment. "We will introduce comprehensive reforms of the immigration, residency and asylum systems, which will include a statutory appeals system and set out rights and

obligations in a transparent way”. The question of appeals for immigration decisions will be addressed in the context of an amended Bill.

Article 14 – The right to fair and equal treatment before the law

1. Exceptions to the rule against double jeopardy

546. Part 3 of the Criminal Procedure Act 2010 created two exceptions to the rule against double jeopardy by allowing the Director of Public Prosecutions to make an application to the Court of Criminal Appeal for a re-trial order in respect of a person who is acquitted (following trial on indictment) of an offence:

(a) On the grounds of “new and compelling evidence” which emerges post-acquittal; or

(b) Where the acquitted person or another person has been convicted of an offence against the administration of justice in relation to the original proceedings (a so-called “tainted acquittal”).

547. Having regard to constitutional constraints Part 3 has prospective application only.

548. Part 3 arises from the recommendations contained in the final report of the Balance in the Criminal Law Review Group (report available on www.justice.ie). The review group was established on 1 November 2006 by the then Tánaiste and Minister for Justice, Equality and Law Reform under the chairmanship of Dr. Gerard Hogan S.C. (now a judge of the High Court) with a remit to consider and examine amongst other matters, nullifying an acquittal where there is new evidence or evidence of jury or witness tampering and “with prejudice” prosecution appeals in the case of wrongful acquittals.

(a) “New and compelling evidence”

549. As identified by the review group any procedure for the setting aside of an acquittal on the basis of “new and compelling evidence” should only be used in exceptional cases. Accordingly, before the court may make a re-trial order quashing the person’s acquittal and directing that the person be re-tried, it must be satisfied that:

- There is “new and compelling evidence” and,
- Having had regard to specified matters (whether or not it is likely that any re-trial could be conducted fairly, the amount of time that has passed since the act or omission that gave rise to the indictment, the interests of any victim of the offence and any other matter which it considers relevant) that it is, in all the circumstances, in the interests of justice to make the order.

550. Part 3 defines “new and compelling evidence as evidence which: was not presented by the prosecution at the proceedings in respect of which the person was acquitted (nor in related appeal proceedings), and could not with the exercise of due diligence, have been presented during those proceedings; is reliable, of significant probative value and is such that when taken together with all the other evidence adduced (no matter by whom) in the proceedings concerned, a jury might reasonably be satisfied beyond a reasonable doubt of the person’s guilt in respect of the offence concerned.

551. The scope of the power is restricted to offences that carry a mandatory or maximum sentence of life imprisonment subject to a limited exception in the case of the offences under the International Criminal Court Act 2006, some of which attract a maximum sentence of imprisonment of 30 years in some circumstances.

(b) “Tainted acquittals”

552. In the case of “tainted acquittals” a high threshold must also be surmounted before the acquittal may be quashed and a re-trial ordered. The court must be satisfied that there is compelling evidence and that having had regard to certain specified matters (whether or not it is likely that any re-trial could be conducted fairly, the amount of time that has passed since the act or omission that gave rise to the indictment, the interests of any victim of the offence and any other matter which it considers relevant) that it is, in all the circumstances, in the interests of justice to make the order. For this purpose “compelling evidence” is defined as “evidence which is reliable, of significant probative value and is such that a jury might reasonably be satisfied beyond a reasonable doubt of the person’s guilt in respect of the offence concerned.

553. Safeguards apply in relation to both procedures:

- Having regard to the person’s status as an acquitted person, they remain at liberty (other than where they are in prison in connection with another offence) until such time as a re-trial order (if any) is made by the court and the court makes a decision as to whether or not the person should be remanded in custody or on bail pending the hearing of the re-trial;
- The Director of Public Prosecutions may make an application for a re-trial order on only one occasion in relation to an acquitted person;
- The application for a re-trial order must be on notice to the acquitted person;
- The court when hearing an application for a re-trial order may make a range of orders (including production orders and witness orders) and receive evidence tendered by witnesses such as it considers necessary for doing justice in the application before it;
- The court has discretion to make orders relating to attendance at the hearing and the publication and broadcast of matters relating to the hearing in order to safeguard the fairness of any re-trial ordered;
- The Director or the acquitted person may appeal a decision made by the Court of Criminal Appeal on an application for a re-trial order to the Supreme Court where a point of law of exceptional public importance is involved and it is desirable in the public interest that the appeal be taken to the Supreme Court;
- Provision is made for legal aid for the acquitted person.

2. “With prejudice” prosecution appeals

554. Part 4 of the Criminal Procedure Act 2010 extends the appeal options available to the prosecution in the event of an acquittal so that:

(a) Where a person is tried on indictment and acquitted the prosecuting authority can appeal the acquittal on a “with prejudice” basis, or

(b) Where a person’s conviction is quashed on appeal to the Court of Criminal Appeal and that Court does not order a re-trial the prosecuting authority can appeal the decision not to order a re-trial on a “with prejudice” basis.

555. The appeal is to the Supreme Court on a question of law. The term “with prejudice” refers to the possibility that the appeal will result in the acquittal or the decision of the Court of Criminal Appeal not to order a re-trial being overturned and a re-trial ordered. This appeal option is in addition to the existing “without prejudice” prosecution appeal right.

556. The “with prejudice” appeal is restricted to: rulings which erroneously excluded compelling evidence; or in the case of judge directed acquittals, rulings which were wrong

in law and where the evidence adduced in the proceedings was evidence upon which a jury might reasonably be satisfied beyond a reasonable doubt of the person's guilt in respect of the offence concerned. A jury verdict on the merits of the case based on the reception of all admissible evidence is not subject to appeal under this Part. As is the case with an application for a re-trial order mentioned above safeguards apply.

3. Defence appeals

557. The Criminal Procedure Act 2010 also eased the requirements for the lodging of an appeal by a convicted person to the Court of Criminal Appeal. The requirement that a convicted person must obtain a certificate from the trial judge or leave from the Court of Criminal Appeal in order to appeal to that Court has been removed. Similarly the requirement that a person convicted by the Special Criminal Court must obtain leave to appeal to the Court of Criminal Appeal has been removed.

Response to the recommendations in paragraph 20 of the concluding observations (CCPR/C/IRL/CO/3)

558. It is important to note that the Special Criminal Court has a Constitutional basis in this State. Article 38.3 of the Constitution provides as follows;

1° Special courts may be established by law for the trial of offences in cases where it may be determined in accordance with such law that the ordinary courts are inadequate to secure the effective administration of justice, and the preservation of public peace and order.

2° The constitution, powers, jurisdiction and procedure of such special courts shall be prescribed by law.

559. The Government does not consider that circumstances exist at present which would permit it to abolish the Special Criminal Court. The Government considers that there remains a substantial threat from terrorist activity, in particular from so-called 'dissident' paramilitary groups. In addition the activities of organised criminal groups have given rise to concerns about intimidation of jurors. Consequently, the Government is convinced that the integrity of the judicial process requires that, in exceptional cases, some trials should take place in the Special Criminal Court.

4. Special Criminal Court

(a) The Criminal Justice (Amendment) Act 2009

560. The Criminal Justice (Amendment) Act 2009 was enacted to put in place certain additional legislative measures to combat organised crime when the effective administration of justice could not otherwise be achieved. Among the measures are those contained in section 8 which provides that certain organised crime offences under Part 7 of the Criminal Justice Act 2006, as amended, are deemed to be scheduled offences for the purposes of Part V of the Offences against the State Act 1939 (the Act which provides for the Special Criminal Court).

561. In effect, this means that the offences in question shall be tried in the Special Criminal Court unless the Director of Public Prosecutions directs that a person not be sent forward for trial by that court.

562. The provisions are used sparingly. In the period since enactment to date, no cases were sent for trial by the Special Criminal Court in accordance with Section 8. Furthermore there is a review provision in the Act whereby the section is subject to Oireachtas (Irish Parliament) scrutiny and requires a parliamentary resolution (which takes place on an annual basis) to provide for its continuance in law.

563. With regard to the question of the possibility of the DPP to certify a case for hearing in the Special Criminal Court, it is the case that any such decision by the DPP is capable of being judicially reviewed.

564. In addition individuals who may be convicted in the Special Criminal Court have recourse to the Irish superior courts to appeal their sentence or to have other points of constitutional or criminal law decided upon.

565. The Judges who sit on the Special Criminal Court are independent members of the Judiciary who are experienced in the trial of criminal offences and fully knowledgeable of the procedural guarantees of fair trial for those being tried.

Review of necessity for the Criminal Justice (Amendment) Act 2009 – Parliamentary scrutiny

566. Section 8 (4) provides that Section 8 shall cease to be in operation 12 months from the passing of the Act unless a resolution has been passed by each House of the Oireachtas (Parliament) resolving that the section should continue in operation. Section 8 (6) provides that before a resolution for continuance is passed, the Minister shall prepare a report, which shall be laid before both Houses, on the operation of the Section in the period under report. The Oireachtas has renewed the Section on two previous occasions to date. The next review will take place in June 2012.

5. Legal definition of terrorist acts

Response to recommendations in paragraph 11 of the concluding observations (CCPR/C/IRL/CO/3)

567. Ireland has ratified the various United Nations conventions against terrorism. The Irish Government does not consider it necessary to define terrorist acts in domestic legislation. Instead enhanced sentences over and above those normally handed down for unlawful acts are already provided for in legislation where those illegal acts are committed for terrorist purposes. The Government believes that this is an appropriate response to acts carried out with terrorist intentions. The main body of counter terrorism law in Ireland comprises the Offences against the State Acts 1939-1998 and the Criminal Justice (Terrorist Offences) Act 2005. These are, of course, supported by the general criminal law.

568. The Offences against the State Acts 1939-1998 make it an offence to be a member of an unlawful organisation. Those Acts also make special provision in relation to evidentiary matters connected with the question of membership of such organisations. The Criminal Law Act 1976 makes it an offence to recruit another person for an unlawful organisation or to incite or invite another person to join an unlawful organisation or to take part in or support or assist its activities. Other relevant offences include the offence of directing an unlawful organisation and training persons in the making or use of firearms or explosives, for which provision was made in the Offences against the State (Amendment) Act 1998.

569. There are dedicated provisions in the Offences against the State Acts 1939-1998 directed to the property and funds of organisations that have been declared unlawful organisations for the purposes of those Acts. There are, of course, other provisions in the criminal law relating to the proceeds of crime which also have application to terrorist financing.

570. The Criminal Justice (Terrorist Offences) Act 2005 gives effect in Irish domestic law to a number of international anti-terrorist instruments, including, inter alia, the 2002 EU Framework Decision on combating terrorism; International Convention for the Suppression of the Financing of Terrorism, 1999; the International Convention for the Suppression of Terrorist Bombings, 1997; the International Convention against the Taking

of Hostages, 1979. The offences created by these instruments are established as offences in domestic law in Sections 9, 10, 11 and 13 respectively of the 2005 Act. The Act also amends our law more generally to enhance the capacity of the State to address the problem of international terrorism.

571. The Act contains significant legislative measures to counter the threat posed by terrorist groups. In particular, the Act contains provision for the imposition of enhanced sentences for persons found guilty of offences committed with terrorist motivations. Under the terms of the 2005 Act, specified offences will become terrorist offences when committed with intent to seriously intimidate a population, unduly compel a Government or international organisation to perform or abstain from performing an act, or seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a State or an international organisation. Where appropriate on conviction, these offences will attract enhanced penalties.

572. Moreover, under the terms of the Act, terrorist groups which commit terrorist offences in or outside the State are unlawful organisations for the purposes of the Offences against the State Acts 1939-1998 and the relevant provisions of those Acts, including the offences of membership and directing an unlawful organisation, will have application to such groups.

573. The Act also enables funds which are being used, or which may be intended to be used, for the purpose of committing terrorist offences, including financing terrorism, to be frozen and ultimately made subject to a disposal order in favour of the State by way of court orders.

(a) No. of prosecutions under the Offences against the State Act (2008-2011)

574. The most recent arrest figures in respect of Section 30 of the Offences Against the State Act are as follows:

Arrests:

Year ending 31st May 2008 = 792

Year ending 31st May 2009 = 930

Year ending 31st May 2010 = 880

Year ending 31st May 2011 = 764

575. The number of actual prosecutions differs considerably from the number of people arrested and is outlined hereunder:

Convictions / Cases Pending:

Year ending 31st May 2008 = 34 convictions and 154 cases pending

Year ending 31st May 2009 = 39 convictions and 202 cases pending

Year ending 31st May 2010 = 35 convictions and 127 cases pending

Year ending 31st May 2011 = 38 convictions and 183 cases pending

(b) Conditions under which those who may be arrested/charged under “terrorism” related offences have access to a lawyer

576. Persons held in custody for the purposes of investigations into terrorist related matters enjoy the same access to legal representation as enjoyed by suspects in criminal investigations. There is no distinction between terrorist or criminal detainees in this regard.

577. Access to a solicitor is provided for in the “Treatment of Persons in Custody Regulations, 1984”. The right to access to legal representation is clearly defined by a

number of binding rules of the Superior Courts. When a solicitor calls to a Garda Station, where a prisoner is being detained for the purpose of investigations, he / she is entitled to “immediate access” to the client.

578. Average time from charges laid to trials taking place for those charged with terrorism related offences:

(a) Where accused persons are held in custody trials take approximately 12 months to commence from the date of charging;

(b) Where persons are on bail a trial may take approximately 18 months from the date of charging.

6. Legal aid

(a) Criminal Legal Aid

579. This section is an update on paragraphs 390-394 from Ireland’s third periodic report under the ICCPR. Under the Criminal Justice (Legal Aid) Act, 1962 free legal aid may be granted, in certain circumstances, for the defence of persons of insufficient means in criminal proceedings. Legal aid is granted by the Court and the Department of Justice and Equality has no role in the process.

580. Fees are paid to solicitors for consultations with persons detained in Garda stations in circumstances where:

- A person is detained under the provisions of the Offences against the State Act, 1939 as amended by the Offences against the State (Amendment) Act, 1998 or the Criminal Justice Act, 1984 or the Criminal Justice (Drug Trafficking) Act, 1996 or Section 50 of the Criminal Justice Act, 2007, and
- The person has a legal entitlement to consult with a solicitor, and
- The person’s means are insufficient to enable him or her to pay for such consultation,

and

- In respect of extension hearings in the District Court where the Gardaí wish to extend the time limit for holding suspects under the Offences against the State Acts, the Criminal Justice (Drug Trafficking) Act, 1996 or under the Criminal Justice Act, 2007

581. The Ad-Hoc Legal Aid Scheme was set up in April 1998. The Scheme is applicable to persons who are respondents and/or defendants in certain court proceedings brought by the Criminal Assets Bureau (CAB). The grant of legal aid under the Ad-Hoc Scheme is a matter for the Court.

582. The cost of the criminal legal aid and advice schemes in 2011 was €56.115m. A further €3.581m was spent on the Attorney General’s Scheme which is an ad hoc Scheme to provide legal representation in certain types of legal cases not covered by either civil or criminal legal aid schemes. The kinds of cases covered include certain types of judicial review, bail applications, extradition, European Arrest Warrant and habeas corpus cases.

583. In line with best international practice, amending legislation is under preparation to provide for the consolidation of the legal aid functions with the statutorily independent Legal Aid Board which currently administers the civil legal aid scheme. Administrative functions in respect of the Garda Station Legal Advice Scheme, referred to earlier, were transferred to the Board from October 2011.

(b) Civil legal aid

584. Under the Civil Legal Aid Act, 1995, the Legal Aid Board makes available the services of lawyers to persons of modest means at little or occasionally no cost, subject to a means test. The Board has a nationwide spread of law centres, with 30 full-time and 12 part-time centres around the country in addition to a small number of specialist units. As well as employing solicitors and paralegal staff itself, the Board arranges for the provision of services by barristers where necessary and also engages solicitors in private practice to provide a complementary service in certain family law and asylum matters to that provided by the law centres.

585. The Board's financial allocation by the government has remained relatively stable in recent years (€24.125m for 2012 for general civil services). However there has been a very significant increase in demand for the Board's services in recent years and particularly since the downturn in the country's economy. This has resulted in increased waiting times for some services though the Board is at the moment piloting a system that will enable every applicant to see a solicitor for a consultation within a month. Unlike in a number of other jurisdictions no actions have been taken to limit the scope of civil legal aid or to reduce the number of those financially eligible for services and the Board's main focus to date has been on re-configuring how it delivers services in order to make best use of its resources.

7. Measures to address court delays

586. A number of measures have been introduced over the last number of years designed to reduce delays in litigation. Developments include the Superior Court Fast Track System; the introduction of judicial fellows in 2008 to assist High Court Judges with research and with drafting written judgments; the appointment of additional judges, the opening of the new Criminal Courts of Justice Complex in January 2010 to provide additional courtroom space to deal with criminal business; and the use of 'call overs' to ensure that cases progress through the system.

587. An expert group was established in May 2011 by the Minister for Justice and Equality to develop proposals for an effective domestic remedy as required by Article 13 of the European Convention on Human Rights in respect of violations of Article 6.1 (trial within a reasonable time).

588. As part of its work, the Committee is studying what practical measures might further reduce delays in the preparation and conduct of both civil and criminal litigation and/or what remedies might be afforded to a litigant in respect of any unreasonable delay that might arise during the course of the litigation once it had been identified by the parties to the litigation, the domestic court or court officials. It is the intention of the committee to report in the coming months.

8. Judiciary**(a) Appointment of Judges**

589. Under the Constitution members of the judiciary are appointed by the President on the advice of the Government. Applications for judicial appointments are dealt with by the Judicial Appointments Advisory Board which was established pursuant to the Court and Courts Officers Act 1995. The Board consists of the Chief Justice, the Presidents of the High Court, Circuit Court and District Court, the Attorney General, nominated representatives of the Bar Council and the Law Society and three persons nominated by the Minister for Justice and Equality.

590. Under Section 16 of the Act, where a judicial office stands vacant or before a vacancy in a judicial office arises, the Advisory Board submits the names of all persons

who have informed the Board of their wish to be considered for appointment to that vacancy and the names of at least seven persons whom it recommends for appointment.

591. Section 17 of the 1995 Act provides that these procedures shall not apply where the Government propose to advise the President to appoint a serving judge. The Act further provides that the Government, when advising the President in relation to the appointment of a person to a judicial office, must first consider persons who have been recommended by the Board. It is important to note that the Board cannot submit nor recommend the name of a person unless that person meets the eligibility requirements currently set out in law in relation to the post in question.

592. The qualifications for appointment to the Courts are set out below.

(i) *Qualification for Appointment to the District Court:*

593. In accordance with section 29 of the Courts (Supplemental Provisions) Act, 1961, as amended by section 6 of the Courts and Court Officers Act, 2002, the following persons shall be qualified for appointment as a Judge of the District Court:

(a) A person who is in the time being a practising barrister or a practising solicitor of not less than ten years standing.

(b) A barrister or solicitor who actually practised his/her profession for not less than ten years, if for the time being s/he holds an office in respect of which it was, at the time of his/her appointment thereto, required by statute that every person appointed thereto should be or should have been:

(i) A practising solicitor or,

(ii) A practising barrister or solicitor.

594. Where a person has practised as a barrister and as a solicitor, such periods of practice may be aggregated and reckoned to satisfy the minimum practice requirements for appointment as a Judge.

(ii) *Qualification for Appointment to the Circuit Court:*

595. Under section 17 of the Courts (Supplemental Provisions) Act, 1961, as amended by section 2(2) of the Courts Act, 1973 and section 30 of the Courts and Court Officers Act, 1995 and section 5 and 6 of the Court and Court Officers Act, 2002, a person who is a practising barrister or practising solicitor of not less than 10 years standing is qualified for appointment as a Judge of the Circuit Court:

(a) A Judge of the District Court is qualified for appointment as a Judge of the Circuit Court;

(b) A county registrar who practised as a barrister or a solicitor for not less than ten years before he or she was appointed to be a county registrar is qualified for appointment as a Judge of the Circuit Court.

(c) Where a person has practised as both a barrister and a solicitor, such periods of practice may be aggregated and reckoned to satisfy the minimum practice requirements for appointment as a judge.

(iii) *Qualification for Appointment to the High Court:*

596. Section 5 of the Courts (Supplemental Provisions) Act, 1961, as amended by section 28 of the Courts and Court Officers Act, 1995 and further amended by section 4 and section 6 of the Courts and Court Officers Act, 2002, provides that the following persons shall be qualified for appointment as a Judge of the High Court:

(a) A person shall be eligible for appointment as a Judge of the High Court if the person is for the time being a practising barrister or a practising solicitor of not less than twelve years' standing who has practised as a barrister or a solicitor for a continuous period of not less than two years immediately before such appointment.

(b) A person who:

(i) Is or was at any time during the period of two years immediately before the appointment concerned:

(I) A judge of the Court of Justice of the European Communities,

(II) A judge of the Court of First Instance attached to that Court,

(III) An Advocate-General of the Court of Justice of the European Communities,

(IV) A judge of the European Court of Human Rights established under the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on the 4th day of November, 1950,

(V) A judge of the International Court of Justice established under the Charter of the United Nations,

(VI) A judge of the International Criminal Court established under the Rome Statute of the International Criminal Court done at Rome on the 17th day of July, 1998, upon the entry into force of that Statute,

(VII) A judge of an international tribunal within the meaning of section 2 of the International War Crimes Tribunals Act, 1998,

and

(ii) Was a practising barrister or a practising solicitor before appointment to any of the offices referred to in subparagraph (i) of this paragraph, shall be qualified for appointment as a judge of the High Court.

(c) A Judge of the Circuit Court who has served as such a judge for a period of not less than two years shall be qualified for appointment as a Judge of the High Court.

597. Where a person has practised as a barrister and as a solicitor, such periods of practice may be aggregated and reckoned to satisfy the minimum practice requirements for appointment as a Judge.

(iv) *Qualification for appointment to the Supreme Court:*

598. Under Section 5 of the Courts (Supplemental Provisions) Act, 1961, as amended by Section 28 of the Courts and Court Officers Act, 1995, the following persons are qualified for appointment as a judge of the Supreme Court:

(a) The President of the High Court;

(b) An ordinary Judge of the High Court;

(c) A person who is for the time being a practising barrister of not less than twelve years standing (for this purpose service as a Judge of the Circuit Court, a Judge of the Court of Justice, a Judge of the Court of First Instance attached thereto or as an Advocate-General of the Court of Justice shall be deemed practice at the Bar).

(b) **Tenure**

599. The tenure of judges in office is provided for under the provisions of the Courts (Supplemental Provisions) Act 1961 as amended. Judges are appointed on a permanent full time basis with a statutory retirement age as follows:

- Judges of the Supreme Court retire at age 70 (72 if appointed to office prior to 1995)
- Judges of the High Court retire at age 70
- Judges of the Circuit Court retire at age 70
- Judges of the District Court retire at age 65 (they can seek a series of annual extensions on office to age 70 if they so wish).

600. Article 35.4 of the Constitution of Ireland provides that a judge may not be removed from office except for stated misbehaviour or incapacity and then only upon resolutions passed by both Houses of the Oireachtas.

601. There have not been any cases where charges of corruption have been brought.

(c) Judicial pay

602. The Twenty-Ninth Amendment Of The Constitution (Judges' Remuneration) Act 2011 enabled the Houses of the Oireachtas apply to the judiciary the same pension levy and salary reductions that had been applied to related pay scales across the public service. The wording for the required constitutional amendment was developed by Minister for Justice and Equality in consultation with the Attorney General and approved by the Government on 26th July 2011. The 29th Amendment of the Constitution (Judges' Remuneration) Bill 2011 received support across all political parties. The Referendum was passed on the 27th October 2011 with a substantial 79% of voters voting in support of the amendment. The Bill was signed into law on the 17th November 2011. The Financial Emergency Measures in the Public Interest (Amendment) Act 2011 was required to implement the changes to remuneration for judges.

603. The Twenty-Ninth Amendment of the Constitution (Judges' Remuneration) Act 2011 does not in any way affect the crucial independence of the judiciary nor does it permit the reduction of judicial salaries in isolation from other public service salaries or on a capricious basis. The Act retains the general protection afforded to the judiciary in most countries; it confirms that the imposition of general taxes, levies or other charges on judicial salaries that are imposed on others can apply to judicial salaries and provides that reductions made in the past or in the future in public service pay in the public interest can be applied by primary legislation to judicial salaries. In effect the constitutional amendment allowed for the application of all the provisions of the Financial Emergency Measures in the Public Interest Act 2009 (Pension Related Deduction) and the Financial Measures in the Public Interest Act (No 2) 2009, which had been previously applied to the public service, to the judiciary.

(d) Establishment of a Judicial Council

604. A Judicial Council Bill is in the course of being drafted with a view to being published in 2012. Under the Bill, members of the public will be provided with a framework through which they can pursue allegations of judicial misconduct. This will be centred on a definition of a breach of judicial conduct.

605. A Judicial Council is to be established with responsibility for ensuring high standards of conduct among judges. The Judicial Council will also be more broadly supportive of excellence in the exercise by judges of their judicial functions. The work of the Judicial Council will be supported by a structure which will include a committee with specific responsibility for judicial conduct. This will be tasked, among other things, with the consideration and investigation of complaints. The Chief Justice recently established an interim Judicial Council to consider standards, education and ethical issues pending the enactment of the legislation to provide for a Judicial Council.

(e) **Gender breakdown of judges**

606. There are currently 98 male judges and 34 female judges in the Courts, this breaks down as follows:

District Court - 40 Male, 17 Female

Circuit Court - 21 Male, 10 Female

High Court - 30 Male, 6 Female

Supreme Court - 7 Male, 1 Female

607. It should be noted that four of the highest law offices in the State are now held by women. They are the Chief Justice, the Attorney General, the Director of Public Prosecutions and the Chief State Solicitor.

Article 15 – The right not to have criminal sanctions imposed retrospectively

608. There have been no developments relating to this Article of the Covenant since Ireland's last report to the Committee.

Article 16 – The right to be recognised as a person before the law

Mental capacity legislation

609. The Mental Capacity Bill, due for publication in mid 2012, will reform and replace the adult wards of court system with a new statutory framework governing decision-making by and on behalf of persons who lack capacity. It will change existing law on mental capacity, shifting from the current all or nothing status approach to a flexible functional one, whereby capacity is assessed on an issue and time specific basis. It will progress the process towards ratification of the Convention on the Rights of Persons with Disabilities and give effect to the Hague Convention on the International Protection of Adults.

Article 17 – The right to privacy

Sexual offences and capacity

610. The law on sexual offences and capacity to consent is being examined by the Law Reform Commission. The Commission issued a consultation paper in October 2011 and will publish a final report in due course.

Article 18 – The right to freedom of thought, conscience and religion

1. Judicial oath

Response to the recommendations in paragraph 21 of the concluding observations (CCPR/C/IRL/CO/3)

611. In 2008 the Human Rights Committee in its concluding observations on Ireland's third periodic report continued to express concern that judges are required to take a religious oath. The Committee stated that the State party should amend the Constitutional provision requiring a religious oath from judges to allow for a choice of a non-religious declaration. This issue of the judicial oath was considered by an All-Party Oireachtas Committee on the Constitution in its Fourth Report - *The Courts and the Judiciary* (published 1999). The majority view of the Committee was that a judge should have a

choice between a religious and non-religious declaration. The Committee stated that “because the majority of people in Ireland hold religious beliefs, it would not be desirable to delete the references to God from the declaration”. Accordingly, the Committee recommended a choice of declaration. A Referendum would be required to amend the Constitutional provision in question and no such measure has been actively considered to date. Notwithstanding this, the issue remains the subject of review. The establishment of a constitutional convention to examine a number of potential constitutional reforms is a specific part of the programme for Government. It is intended that this issue will be referred to the convention for further consideration.

2. Education

Response to the recommendations in paragraph 22 of the concluding observations (CCPR/C/IRL/CO/3)

612. In 2010/ 2011 there were 3169 primary schools in Ireland. 96% are under denominational patronage, with almost 90% under Roman Catholic patronage. In the last twenty years, a number of conferences, reports and international covenants/ conventions, including ICCPR, recognise that Irish society has become increasingly diverse. There are citizens with more varied belief systems, a significant minority of non-believers, as well as more parents who wish to choose multi-denominational education for their children.

613. In the period between the academic years 2007/ 2008 and 2011/ 2012 a number of new primary schools have been opened. The majority of the new schools are multi-denominational, as evidenced in Table 9.

Table 9

New primary schools opened by patron bodies between 2007/2008 and 2011/2012

(Source: Department of Education and Skills, 2011)

Year	Catholic	Educate Together	Foras Patrunachta	Schools in Educate Together Network with own Patron Body.	Other denominational bodies	Other multi-denominational bodies	Total
2007/08	6	3	4	0	1	1	15
2008/09	3	12	3	0	0	3	21
2009/10	0	0	0	0	0	0	0
2010/11	2	2	0	0	0	3	7
2011/12	0	2	1	0	0	0	3
Total	11	19	8	0	1	7	46

614. A number of key initiatives have been put in train by the Department of Education and Skills in the 2008- 2011 period to address the identified need to widen the range of school types, particularly at the primary level. These are summarised below.

(i) Community National Schools

615. Community National Schools represent a new policy initiative approved by Government in 2007 to deal with increasing societal diversity and demand for greater choice in education provision at primary school level. This new model of primary school patronage aims to cater for diversity within a single school setting rather than in more than one school. The ethos of the schools is based on inclusivity and they have a specific aim of seeking to cater for pupils of all beliefs and none during the school day in accordance with the wishes of parents. This does not preclude the future development of non-denominational CNSs where such a model is sought by local communities. It is intended

that the schools will operate under the patronage of local Vocational Education Committees (VECs), reflecting the community focus of the model. The model also offers an alternative to the State's traditional reliance on private sector patron initiatives for the establishment of primary schools.

616. The first two pilot schools began operating in 2008. Currently five Community National Schools have been established. Of the seven new primary schools to open in September 2012, one of these will be a CNS. A further two CNSs will open in September 2013.

617. A multi-belief religious education programme "*Goodness Me! Goodness You!*" is under development in the schools on an Action Research basis. In keeping with the inclusive ethos of the schools the religious education programme seeks to cater for children of all faiths and none in accordance with the wishes of parents. This programme includes provision for differentiated faith-specific teaching for children for a three or four week period, during each school year where parents have chosen this option.

(ii) *Commission on School Accommodation*

618. In September 2008, the Commission on School Accommodation was requested to carry out a review of criteria and procedures for the establishment of new primary schools. Its report was published in February 2011 and it recommends a range of criteria and requirements which should be met by prospective patrons in making applications for the patronage of new schools. The Report also favours the idea of joint campus arrangements whereby schools of different patronage could share facilities.

(iii) *40 new primary and post-primary schools*

619. In June 2011, the Minister for Education and Skills announced that 20 new primary and 20 new post-primary schools are to be established over the next six years to meet the needs of the growing population of school going children. He also announced new arrangements for applications from prospective patrons for the establishment of the schools and also new criteria for deciding on the form of patronage which place a particular emphasis on parental demand for plurality and diversity of patronage. The arrangements and criteria for the new primary schools built further on the recommendations of the Commission on School Accommodation's 2011 Report.

620. The Criteria to be considered in deciding on patronage for primary schools are:

- The development already achieved by recently established schools of a particular patronage in the identified area and the potential for future growth of these schools
- The extent or range of diversity of patronage offered across existing schools in the identified area, having regard to the views of parents
- The proximity of schools of similar ethos to those proposed by the applicant patrons
- How the proposed schools, under the respective patrons, would provide for extending or strengthening diversity of provision in each area, having regard to the views of parents
- Parental demand for the school that a patron is willing to establish
- The extent to which schools of similar patronage in the area have already expanded to at least three streams
- In an area to be served by a single school, the extent to which the needs of all pupils in the area can be met by the school.

621. The criteria for the decision on patronage of new second level schools also seek to generally increase the diversity and plurality of second level school patronage and school provision having regard to the levels of parental demand.

Potential Patrons for the 40 schools

622. Applications from patrons seeking to manage the 20 new primary schools have been received from Educate Together, a number of VECs, An Foras Patrúnachta (for schools where instruction is through the medium of Irish), Redeemed Christian Church of God and Lifeways Ireland.

623. Applications from patrons seeking to manage the 20 new post-primary schools have been received from a number of VECs (six), Educate Together, The Redeemed Christian Church of God, An Foras Patrúnachta, Muslim Primary Education Board, Church of Ireland Archdiocese of Dublin & Glendalough, Marist Education Authority, Le Chéile Schools Trust, Loreto Education Trust and Edmund Rice Schools Trust. The latter four are trusts with a Catholic ethos.

624. Decisions on the patrons for the new primary and post primary schools will be taken in 2012.

(iv) *Discussion Paper on a Regulatory Framework for School Enrolment (June 2011)*

625. The Department of Education and Skills acknowledges the need for a fair and transparent system on enrolment for all of our schools which does not discriminate unfairly on students or parents. To this end, the Department published a Discussion Paper on a Regulatory Framework for School Enrolment in June 2011 which sets out possible options for consideration on how to make the process of enrolling in schools more open, equitable and consistent.

626. The Discussion Paper looks at the content of an enrolment policy, in particular the over subscription criteria to be used when demand for places exceeds supply (in approximately 20% of schools) and the operation of the enrolment policy.

627. On the content of the enrolment policy, suggestions in the discussion document include:

- The enrolment policy of the school be easily and readily available to all,
- The school's ethos and general objectives should be set out clearly,
- Admission to the school cannot be conditional on the payment of a financial contribution or booking deposit, and
- How to deal with over-subscription.

628. One of the main areas where problems do currently arise with enrolment in schools is when demand exceeds supply of places at a school. The discussion document sets out a number of options to be considered in these cases including:

- Age of applicant. Schools could give, as is often the case now, priority to children who are older
- Remove waiting lists. This is seen to disadvantage new comers to an area
- The practice of giving priority on a first come first served basis, which can result in long waiting lists in schools or even queues forming outside schools at the time of enrolment. However, if such a decision was taken, consideration may have to be given as to how to deal with existing waiting lists
- Siblings in the same school. It would seem reasonable to continue to give priority to students who already have siblings in a school

- Remove the practice of giving priority to a student on the basis of being a relative of the staff, board of management, past pupil or benefactor of the school
- Faith. Continue the right of denominational schools to give priority to children of a particular faith
- Give priority to pupils on the basis of proximity to their schools
- Replace requirements for competency of parents in a particular language with a criterion that parents should respect the linguistic policy of the school
- Ensure that admission to a school is not based on a pupil's academic or other skills
- Admission should not be contingent on the payment of a booking deposit.

629. The Discussion Paper also made suggestions in relation to regulations that could standardise timeframes for enrolment, notification requirements, application processes, decision making processes and the appeals process.

630. The overall approach in the discussion document is to regulate only those aspects of enrolment policies and practices where a common or national approach may be desirable. Otherwise, maximum discretion remains with the school and board of management. However, the paper also sets out possible new sanctions in a case where a school or board of management is not compliant with any new legislation. In such cases, the paper sets out as an option that a patron or the Minister might have a power to appoint an external admissions officer and remove the control of enrolment from a board.

631. The Discussion paper was not meant to be prescriptive, nor had any decisions been made as to what elements will be contained in any final regulations or legislation. The purpose of the paper was to lead and provoke debate on enrolment policies and practices. Submissions were sought on the Discussion Paper by end of October 2011. The 89 submissions are currently being co-ordinated by officials. The feedback from this consultation will help inform the nature and scope of a new regulatory framework for school enrolment.

(v) *Non-Denominational Schools*

632. There is a growing non-denominational school sector in Ireland (that is schools where the patron is not representative of a religious denomination), particularly at primary level. These schools cater for all pupils and there is no denominational involvement in their governance. The Minister recently announced that a divesting (transfer of patronage) process is to commence immediately in 44 identified areas where there is a stable population and likely to a demand for diversity of schools. The first phase of this process will be gathering information on parental demand for different school types and this process will commence in autumn 2012.

(vi) *The Forum on Patronage and Pluralism in the Primary Sector*

633. The Government for National Recovery 2011-2016 Programme (March 2011), includes a commitment to “initiate a time-limited Forum on Patronage and Pluralism in the Primary Sector to allow all stakeholders, including parents, to engage in open debate on change of patronage in communities where it is appropriate and necessary”.

634. The Minister for Education and Skills announced the establishment of the Forum on 28 March, 2011, appointed an independent Advisory Group, in April, with concise terms of reference and a maximum of twelve months to complete its work.

635. The terms of reference of the Forum were to advise the Minister on:

- (1) How it can best be ensured that the education system can provide a sufficiently diverse number and range of primary schools catering for all religions and none;

(2) The practicalities of how transfer/divesting of patronage should operate for individual primary schools in communities where it is appropriate and necessary;

(3) How such transfer/divesting can be advanced to ensure that demands for diversity of patronage (including from an Irish language perspective) can be identified and met on a widespread basis nationally.

636. In undertaking this work the Forum would, in particular, have regard for the following:

- The expressed willingness of the Roman Catholic Church to consider divesting patronage of some primary schools under its patronage.
- The current financial constraints within which the State is operating, the need for continued restraint into the future and the requirement in this context to make maximum use of existing school infrastructure in catering for future demands.

637. The overarching aim of the Forum's work was to ensure that schools cater for diversity and ensure an inclusive and respectful environment for all their pupils.

638. The Advisory Group adopted a multi-dimensional approach to its work. It consulted with key stakeholders and also with young people. Almost 250 written submissions were received. There was a 3 day open working session in late June 2011 and a further session in November 2011 where the Advisory Group outlined its reflections. The consultations were complemented by the interpretation and analysis of national and international data as the Advisory Group prepared its Report.

639. The Minister for Education and Skills published the Report of the Advisory Group on 10 April 2012. The recommendations of the Advisory Group report can be broadly divided into three key areas:

- Divesting patronage where there is a stable population and demand for diversity of schools
- Dealing with Irish medium primary schools
- Promoting more inclusiveness in all schools, including 'Stand Alone' schools where divesting patronage to another body is not an option

640. The report recommends achieving diversity of patronage by using the existing stock of schools in areas where the population is stable. Where there is a cluster of denominational schools but also parental demand for alternative school patronage, the report recommends that transfer of patronage be achieved with assistance from the Department. The Advisory Group cautions against a 'big bang' approach and advises that change of patronage should happen in a phased way, through the adoption of a catchment approach, taking account of the preferences of parents. The report recommends that phase one of this work would involve examining school patronage in 43 towns and 4 Dublin areas identified by the Department of Education and Skills in 2010, arising from a request by the Catholic Church, as likely to have substantial demand for diversity. This would occur alongside a programme of provision of new schools in areas of population growth, the patronage of which would be based on parental demand.

641. The report makes a number of recommendations concerning the provision of Irish medium schools, including the piloting of the concept of a "satellite" school, which would be linked to a well established 'parent' Irish medium school.

642. For communities served by one 'Stand Alone' school, where transfer of patronage is not an option, the report makes recommendations aimed at ensuring such schools are as inclusive as possible and accommodate pupils of various belief systems. There are approximately 1700 of these schools, which are at least 3km from their nearest neighbour.

643. The report also suggests the development of a protocol which would facilitate all schools in developing clear policies accessible to parents on how they manage diversity and ensure an inclusive and respectful environment for all their pupils.

644. Areas suggested for inclusion in a protocol include: having Boards of Management of denominational schools reflect the diversity of the local community; development of mechanisms for Whole School and self-evaluation by schools of practice on diversity and ethos; ensuring equitable enrolment policies; dealing effectively with the Constitutional right to opt out of religious instruction; ensuring education about religions and beliefs and ethics is available to all pupils.

645. The report recommends that, while the general primary curriculum should remain integrated, provision is made for religious education/faith formation to be taught as a discrete subject and that sacramental preparation, or education for religious rites of other belief systems, should not encroach on time allocated for the general curriculum. It suggests that there should be agreed policies on religious and cultural celebrations. A review and updating is also recommended of the Rules for National Schools, which date from 1965. The Advisory Group draw attention to the need for complaints and appeals procedures to deal with enrolment issues and with allegations of infringement of human, Constitutional or statutory rights relating to religion. The importance of continuing to make provision for social inclusion and for children with special educational needs while catering for diversity is also emphasised.

646. On 20 June, 2012, the Minister for Education and Skills outlined his formal response to the Advisory Group report. The following actions are being progressed:

- The divesting process is to commence immediately in 44 identified areas (original list of areas updated to reflect population data from Census 2011) where there is a stable population and likely to be a demand for diversity of schools;
- There will be a public consultation in autumn 2012 in relation to recommendations for the promotion of more inclusiveness in all schools, including ‘Stand Alone’ schools where divesting patronage to another body is not an option;
- The Advisory Group recommendations and submissions received from the public consultation will feed into the development of a White Paper in early 2013.
- The National Council for Curriculum and Assessment are being asked to explore, with the education partners, the development of Education about Religion and Beliefs and Ethics Programmes.
- An analysis of the start-up and growth of Irish medium schools to inform policy in this area.

647. The New Schools Establishment Group (NSEG) was set up in 2011 to advise on the patronage of all new schools. The role of the NSEG has been expanded to also advise the Minister on the divesting (transfer of patronage) process.

Article 19 – The right to freedom of expression

1. Article 19.2

Response to the recommendations in paragraph 5 of the concluding observations (CCPR/C/IRL/CO/3)

648. Ireland entered a reservation to article 19.2, upon its ratification of the International Covenant on Civil and Political Rights on 8 December 1989.

649. The reservation read as follows: “Ireland reserves the right to confer a monopoly on or require the licensing of broadcasting enterprises.”

650. Ireland's reservation to Article 19.2 related to allowing the State to maintain a monopoly on broadcasting and to operate a licensing system for broadcasting enterprises.

651. In its concluding observations in July 2008 on Ireland's third periodic report under the ICCPR, the Human Rights Committee urged review of the reservation to Article 19.2 with a view to withdrawing it in whole or in part.

652. At Ireland's universal periodic review on 6 October 2011, the Minister for Justice, Equality and for Defence said that Ireland's reservation to Article 19.2 of the International Convention on Civil and Political Rights would be withdrawn.

653. It was considered that two key circumstances had changed since the reservation was entered into in 1989.

654. First, there are now no provisions under the Broadcasting Act 2009 to confer "a monopoly on broadcasting enterprises". Accordingly, it was considered that this part of the reservation could be withdrawn.

655. In relation to the second part of the reservation "Ireland reserves the right ...to require the licensing of broadcasting enterprises" the Human Rights Committee indicated that independent broadcasting licensing systems, which are reasonable, objective, clear transparent and non-discriminatory (as exist in Ireland under the Broadcasting Act 2009), are compatible with Article 19.

656. In this context it was not considered legally necessary to retain the reservation.

657. Accordingly, the instrument of withdrawal was signed by Ireland on 8 December 2011 and the reservation was withdrawn in full.

2. Defamation Act

658. The Defamation Act 2009 provides for a modern statutory framework for defamation law by replacement of the current legislation which dates back to 1961. The Act, which, was commenced by Order in its entirety on 1 January 2010, provides for comprehensive reform and gives statutory expression to developments in the jurisprudence of Irish courts, and, elsewhere, including the European Court of Human Rights. It respects the necessary balance between the competing rights of freedom of expression and of respect for one's good name and reputation. (Article 40.3 of the Constitution guarantees the right to a good name; Article 40.6.1 guarantees the right to freedom of expression).

Article 20 – The prohibition of propaganda for war and incitement to hatred

Prohibition of incitement to hatred

659. Under the Prohibition of Incitement to Hatred Act 1989 it is an offence, inter alia, to use words, publish or distribute written material, or broadcast any visual images or sounds which are threatening, abusive or insulting and are intended, or, having regard to all the circumstances, are likely to stir up hatred. The word "hatred" is defined as "hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation".

660. The following paragraphs are an update on paragraphs 420-421 of Ireland's third periodic report. The findings of research into racism and the criminal law undertaken by the Centre for Criminal Justice, University of Limerick were published on the 18th December, 2008.

661. The authors of the report made only one recommendation regarding the criminal law and stated that changes in the criminal law would be insufficient by themselves to address racism. They commented that it was clearly established, at both the national and international level, that greater dividends would ensue from more substantial investment in social and education measures.

662. The report concluded “that it would be inappropriate to introduce racially aggravated offences into Irish law. Rather, any aggravating factor should be taken into account at sentencing.” The report goes on to say that the most effective route to combating racism through the criminal law is through sentencing.

663. The authors also weighed the arguments for and against introducing aggravated sentencing provisions and recommended a provision, taking section 11(4) of the Criminal Justice Act 1984 as a guide, that judges must consider racism as an aggravating factor which increases the seriousness of the offence when determining sentence.

664. The aggravated sentencing provision in the 1984 Act (consecutive sentences) was introduced to deal with a very specific problem, i.e., persons before the courts on criminal charges committing offences – often multiple offences – while on bail. However, the introduction of racially aggravated sentencing would involve a restructuring of penalties for basic criminal offences (assault or criminal damage, for example) to increase sentences and have wider implications for the criminal law.

665. In this jurisdiction, the legislature enacts criminal laws which usually provide for maximum penalties in the form of a fine or imprisonment, or both. In general, there are no statutory sentencing guidelines. Within our legislative framework, the determination of penalty in any individual case is largely a matter for the trial judge, taking case law, including appealed cases, into account. This allows the courts to take all the circumstances of the offence and all the relevant aggravating and mitigating factors into account. The gravity of the offence, the facts surrounding the commission of the offence, the criminal record of the accused and the impact on the victim are among the critical factors taken into account before a sentence is imposed. The judge must take into account the circumstances of the offence and the offender. Also, the Director of Public Prosecutions can appeal against the sentence imposed if he believes it to be unduly lenient. In all the circumstances, there are no plans, at present, for amending legislation in this area.

666. Article 20 of the ICCPR provides that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. In addition to the Incitement to Hatred Act 1989, where criminal offences such as assault, criminal damage, or public order offences are committed with a racist motive, they are prosecuted as generic offences through the wider criminal law. The trial judge can take aggravating factors, including racial motivation into account at sentencing.

667. Generally, criminal liability only arises where an accused has engaged in a prohibited action (*actus reus*) with the appropriate state of mind (*mens rea*). In order to satisfy the *mens rea* requirement, the prosecution must show beyond a reasonable doubt that the accused intended to commit the criminal offence. This is a long established and fundamental principle of our criminal law.

668. However, the 1989 Act allows for two possibilities in terms of prosecution – firstly, where the accused intended to stir up hatred and secondly, where the actions of the accused were likely, irrespective of intention, to stir up hatred. This approach was adopted following an analysis of difficulties in other jurisdictions in securing convictions by relying solely on intention.

669. Material on websites and social networking sites is covered by the 1989 Act. The term “written material” in the legislation includes “any sign or other visual representation”. For the purposes of the broadcasting offence at section 3 of the Act, the term “broadcast” is very broadly defined. It means “the transmission, relaying or distribution by wireless

telegraphy or by any other means or by wireless telegraphy in conjunction with any other means of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, signs, visual images or signals are actually received or not”. Also, section 6 of the Interpretation Act 2005, provides for the construction of statutory provisions so as to allow for any changes in law, social conditions and technology which have occurred since the 1989 legislation was enacted.

670. The State’s prosecutorial authorities have not brought to notice any difficulties in bringing prosecutions under the 1989 Act. The review of the Incitement to Hatred Act 1989 was concluded with the publication of research by the Centre for Criminal Justice, University of Limerick in December, 2008. The research was commissioned by the National Consultative Committee on Racism and Interculturalism, and the National Action Plan Against Racism.

671. The authors of the report made only one recommendation regarding the criminal law – provision for aggravated sentencing. This is dealt with in paragraphs 659–672 of this periodic report. The University of Limerick report did not recommend the introduction of racially motivated offences on the basis, among other reasons, that “such offences can actually make convictions more difficult to obtain because the offence and motive have to be proven”. It also argued that “due to the social stigma attached to being convicted of a ‘hate crime’ or a ‘race crime’, defendants are unlikely to plead guilty to such an offence, thus leading to lengthy and expensive court proceedings”.

672. Ireland reported full compliance with the requirements of the EU Framework Decision on Racism and Xenophobia to the EU Commission by the November, 2010 deadline. The Offences against the State Acts provide for an offence of membership of a proscribed organisation.

Article 21 – The right to peaceful assembly

673. The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Public order

674. The following paragraph is a specific update on paragraph 424 of Ireland’s third periodic report under the ICCPR.

675. The Intoxicating Liquor Acts, 2000, 2003 and 2008 contain provisions to deal with alcohol abuse and its effect on public order, including a compulsory temporary closure order in the case of convictions for the supply of intoxicating liquor to under-age persons and for a range of behaviour, including permitting drunkenness and disorderly conduct. The 2008 Act gives further powers to the Garda Síochána for the seizure of alcohol from persons under 18 years old which is suspected to be for consumption in a public place. Alcohol may also be seized to forestall public disorder or damage to property. In addition fixed charge notices may be issued for the offences of intoxication in a public place and disorderly conduct in a public place. These are a more efficient use of resources and they avoid court proceedings when an offender pays the penalty.

676. The Criminal Justice (Public Order) Act, 2003 provides the Garda Síochána with additional powers to deal with late night street violence and anti-social conduct attributable to excessive drinking. It does this by providing for the closure of premises such as pubs, off

licenses, late night clubs and food premises, as well as the making of exclusion orders on individuals, in addition to any penalty they might receive under the Public Order Act, 1994.

677. The above provisions are used to uphold public order. The level of public order offences recorded in recent years were 61,822 in 2008, 57,351 in 2009 and 54,687 in 2010 – an update on paragraph 426 of Ireland’s third periodic report under the ICCPR.

Article 22 – The right to freedom of association

1. Trade unions

(a) Legislation governing trade unions

678. The legislative provisions regarding the regulation of trade unions in Ireland have been set out in Ireland’s third periodic report under the ICCPR (paras. 427-431).

(b) Structure of trade unions

679. There is one central trade union authority in Ireland, the Irish Congress of Trade Unions (ICTU), formed in 1959 through the merger of two trade union organisations. The ICTU serves the whole of Ireland, including Northern Ireland, and the vast majority of unions on the island are affiliated to it. The Congress is the national policy making body of the trade union movement and it conducts national level negotiations on behalf of affiliated unions with the Irish Government and employer organisations.

680. Based on statistics published by the Central Statistics Office in its Quarterly National Household Survey of Q2 2009, Irish trade union density was 34% of employees. This represents an increase of 2% in the rate as compared to the Q2 2008.

(c) Trade union membership and density

681. See table 10 for information on trade union membership and density.

Table 10

Trade Union membership and density 2003-2009

<i>Year</i>	<i>Density</i>	<i>Membership</i>
2003	37%	553,000
2004	35%	538,000
2005	34%	542,000
2006	34%	562,000
2007	31%	565,000
2008	32%	561,000
2009	34%	535,000

(d) Economic sector and employment characteristics

682. Union membership varies strongly by economic sector. In 2009 the highest level of membership was the “Public administration and defence” category, where 81% of employees were union members. Membership was lowest in “Accommodation and food service” activities where only 6% of employees were union members.

683. Unionisation also varies by employment patterns, and by form of enterprise.

- Full time employees were more likely to be union members (37%) compared to part-time employees (20%).
- Employees of larger (100+ employees) enterprises were more likely to be union members (50%), compared to employees in smaller (1-10 employees) enterprises (17%).
- Trade union membership is strongly patterned by age, with the youngest and oldest employees far less likely to be members. Unionisation is lowest for employees aged 15-19 (4%) and those over 65 (16%), and highest for those aged 45-59 (47%).
- In 2009 32% of male employees were union members compared to 35% of women.
- Union membership was twice as likely among Irish nationals (37%) as non-Irish nationals (14%);
- Married employees had a far higher rate of membership (41%) than single employees (25%);

(e) Negotiation licences

684. The number of employee trade unions that hold negotiation licences has declined in the past thirty years, largely as a result of rationalisation - from 96 in 1970, to 86 in 1980, 67 in 1990 and a figure of 43 at end of 2011. The State, with the support of the trade union movement, has sought to promote union rationalisation by helping unions defray the costs they incur in mergers and by simplifying merger procedures. The Trade Union Act 1975 was enacted for this purpose. A number of United Kingdom-based unions operate in the Republic of Ireland – 3 at end 2011. Unions with headquarters in the United Kingdom are required by the Trade Union Act 1975 to devolve certain functions upon their Irish membership

(f) Employer organisations

685. Employer associations, which engage in negotiations on pay or conditions of employment, must also hold negotiation licences like trade unions. There were 10 licensed employer associations in Ireland with a total of just over 9,000 members at the end of 2011. The largest of these, the Irish Business and Employers Confederation (IBEC), had approx. 3,000 members, drawn nationally from a broad range of firms in industry and services.

(g) Financial support from the State to trade unions

(i) Grant to Education, Training and Advisory Services

686. An annual grant is paid to assist the Irish Congress of Trade Unions in meeting the cost of providing its “Education, Training and Advisory Services” (ETAS), which provides training and advice for union officials and activists in affiliated unions. The ETAS supports a diverse range of courses including Health & Safety, Pensions, promoting Equality and Diversity, certificate courses in Collective Bargaining and degree courses in Business Studies. The ETAS also involves the provision of all-year-round advisory services to trade unions affiliated to the ICTU.

687. The grants paid by the Department to meet costs incurred by the ICTU in the operation of the Education, Training and Advisory Services may cover up to 80% of expenditure on training and advisory services for union officials and activists. The following amounts were paid to the Irish Congress of Trade Unions over the period 2008 to 2011.

Table 11

Grants paid to the Irish Congress of Trade Unions (2008–2011)

<i>Year</i>	<i>Amount Paid</i>
2008	€1,510,000
2009	€1,200,000
2010	€804,750
2011	€874,000

(ii) *Trade Union Amalgamations*

688. The Trade Union Act 1975 is designed to facilitate amalgamations and transfers of undertakings among trade unions by simplifying merger procedures and by making grants available from the Exchequer towards the costs incurred by unions in the process. The payment of grants is governed by Section 15 of the Act, as amended by Section 22 of the Industrial Relations Act 1990. The following amounts were paid in respect amalgamation efforts between 2008 and 2011.

Table 12

Grants paid in respect of amalgamation efforts (2008–2011)

<i>Year</i>	<i>Amount Paid</i>
2008	€10,000
2009	Nil
2010	€14,780
2011	Nil

(iii) *Workplace Innovation Fund (WIF)*

689. The Workplace Innovation Fund was introduced in fulfilment of part of a Government commitment in the national social partnership agreement – “Towards 2016”.

690. The Workplace Innovation Fund consisted of three Strands. Strand 2 provided ‘Support for Capacity Building among Social Partners’ and supported a range of social partner practices impacting on workplace innovation. The total amount drawn down by the Irish Congress of Trade Unions under Strand 2 for activities undertaken between 2008 and 2011 was as follows:

Table 13

Amount drawn down by the Irish Congress of Trade Unions under Strand 2 (2008–2011)

<i>Year</i>	<i>Amount Paid</i>
2008	Nil
2009	€ 231,788
2010	Nil
2011	Nil

2. National Framework Committee for Work-Life Balance

691. The National Framework Committee for Work-Life Balance was established in 2000 arising from a commitment in the national social partnership agreement – “Programme for

Prosperity and Fairness”. It comprised representatives from the social partners and various Government Departments. The Committee was charged with supporting and facilitating the development of family friendly policies aimed at assisting in the reconciliation of work and family life at the level of the enterprise. The Irish Congress of Trade Unions received the following funding under the programme between 2008 and 2010.

Table 14

Funding to the Irish Congress of Trade Unions under the Programme for Prosperity and Fairness (2008–2011)

<i>Year</i>	<i>Amount Paid</i>
2008	€5.000
2009	Nil
2010	Nil

692. Funding for the Committee ceased in 2010.

3. Employee representation

693. The 2007 decision of the Supreme Court in *Ryanair v. The Labour Court* cast doubt on the mechanism that had been established in the Industrial Relations Acts, 2001 and 2004 to resolve problems between employers and workers on employee representation issues where that could not be done through existing procedures. Prior to the outcome of the Ryanair Supreme Court case, the original legislative arrangements had been seen as a workable compromise. The legislative model for resolving issues relating to employee representation had reflected a shared commitment that, where negotiating arrangements are in place, the most effective means of resolving differences which arise between employers and trade unions representing employees is by voluntary collective bargaining. In the absence of a practice of voluntary collective bargaining, subject to agreed qualifying criteria, the Industrial Relations Acts, 2001 and 2004 provided for a mechanism by which the fairness of the employment conditions of workers in their totality could be assessed.

694. While Article 40 of the Irish Constitution guarantees the right of citizens to form associations and unions, it has been established in a number of legal cases that the constitutional guarantee of the freedom of association does not guarantee workers the right to have their union recognised for the purpose of collective bargaining.

695. The Social Partnership Towards 2016 Transitional Agreement of 2008 committed to establish a review process to consider the legal and other steps necessary to enable the employee representation mechanisms that had been established under previous agreements – and in legislation – to operate as they had been intended. The Agreement also provided for a commitment to bring forward legislative proposals to prohibit the victimisation of trade union members and to prohibit the incentivisation of persons not to be members of a trade union.

696. The review process did not result in any substantive progress being made on the issue.

697. There is a commitment in the Programme for Government 2011–2016 to ensure that Irish law on employees’ right to engage in collective bargaining is consistent with recent judgements of the European Court of Human Rights. This process will require consultation with stakeholders, including employer and worker representatives, and a review of the experience of the operation of the existing legislative framework as put in place under the Industrial Relations Acts of 2001 and 2004 and the consequences of the litigation that has arisen in the course of the operation of these Acts.

Article 23 – The rights of the family

1. Legal developments with regard to the family

Responses to the recommendations in paragraph 8 of the concluding observations (CCPR/C/IRL/CO/3)

(i) *Civil partnership legislation*

698. The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, referred to in paragraph 450 of Ireland's third periodic report under the ICCPR was signed into law in July 2010, and came into operation on 1 January 2011.

699. The Act provides a system of civil partnership registration for same-sex couples, which confers on the couple a broad range of legal rights, obligations and protections. Civil partners have protections in relation to their shared home, obligations to maintain each other, and a large range of rights in relation to pensions, inheritance and common property. Civil partners are treated in the same way as spouses for immigration purposes and under the tax and social welfare codes. Same-sex couples in certain relationships registered in other jurisdictions are also recognised as entitled and obliged to be treated in the same way as civil partners under Irish law.

700. The Act also provides a separate set of protections for opposite-sex and same-sex cohabitants, drawing on recommendations made by the Law Reform Commission. These protections include enabling a person who has cohabited with another person in an intimate and committed relationship for a substantial period to apply for maintenance from the other person, or for a pension or a property adjustment order, or, if the relationship ends on death, for provision from the estate of the deceased cohabitant.

701. In addition, the Government has committed to remitting to a Constitutional Convention the question of whether or not to proceed with a constitutional referendum on opening marriage to same-sex couples. The Convention is expected to be established shortly.

702. Issues relating to same-sex couples parenting children together will be considered in the context of a planned Family Law Bill. Detailed consideration is being given to the recommendations made by the Law Reform Commission in its Report on the Legal Aspects of Family Relationships which proposed certain reforms in relation to guardianship and parental responsibility.

(ii) *Legal recognition of transgender persons*

703. The Gender Recognition Advisory Group (GRAG) was established in 2010 to advise the Government on the legislation required to give legal recognition to the acquired gender of transgender persons. The Report of the Group, which recommends a scheme for the legal recognition of transgender persons, was approved by the Government on 12 July, 2011, and was subsequently published on 14 July, 2011.

704. Since the publication of the Report, discussions which have taken place with the relevant medical health professionals and with representatives from interested NGOs. Legal advice has also been sought on the main issues arising. These discussions, and the advice received, are informing the drafting of legislation which is progressing. It is expected that the draft Heads of a Bill will be completed in May / June 2012.

2. Family Mediation Service

705. The Family Mediation Service (FMS) is a free, professional, confidential service that enables couples who have decided to separate to reach agreement on all issues related to their separation. It assists couples to address the issues on which they need to make

decisions including post separation living arrangements, finances and parenting arrangements to enable children to have an on-going relationship with each parent.

706. When a couple has reached agreement, a session is offered to parents with their children to discuss their new family arrangements in an encouraging and positive way.

707. The benefits of family mediation as a non-adversarial approach to resolving the issues that arise upon separation are increasingly being recognised worldwide.

708. Since the establishment of the Family Support Agency the number of couples availing of the service annually is around 1500.

709. The FMS has 16 service delivery centres located throughout the country.

710. In March 2011 the FMS, with the Courts Service and the Legal Aid Board, launched a joint pilot initiative aimed at encouraging certain family disputes involving the welfare of children away from the court process and towards a mediation process. Early indications are that the pilot is working very successfully.

711. In November 2011 responsibility for the management of the FMS was transferred to the Legal Aid Board. The rationale for this action was to allow for the development of a more coherent approach to resolving family disputes (noting that most of those who seek legal services from the Legal Aid Board do so in relation to family disputes).

3. Family literacy scheme

712. The Department of Education and Skills funds a family literacy scheme annually from the adult literacy budget. The aim of the family literacy scheme is to address parents' literacy skills to enable them to participate in their children's education. In 2009, family literacy guidelines were produced and circulated to the VECs as part of the Family Literacy DEIS Initiative. The purpose of the guidelines was to assist practitioners in developing family literacy projects.

Article 24 – The rights of the child

1. National Children's Research Programme

(a) Growing Up in Ireland, the National Longitudinal Study of Children in Ireland

713. The aim of Growing Up in Ireland is 'to study the factors, which contribute to or undermine the well-being of children in contemporary Irish families, and, through this, contribute to the setting of effective and responsive policies relating to children and to the design of services for children and their families'. The study monitors the development of almost 20,000 children – an infant cohort of 11,100 9-month olds and a child cohort of 8,570 9-year-olds – yielding important information about each significant transition throughout their young lives. Data collection for the child cohort commenced in 2007 and the first wave of data collection has since been completed for both cohorts. The second wave of data collection for the infant cohort has also been completed and initial findings published. Wave 2 data collection for the child cohort is due for completion in March 2012.

714. A series of research reports, key findings, conceptual and technical documents have been published. A wide range of topics including family structures, income and living conditions, health – in particular overweight and obesity, and influences on learning have been addressed in the outputs to date. In addition to the reports generated by the Study Team, anonymised microdata files from both cohorts and from both the quantitative and qualitative elements of the study are now being widely used by the general research community. The 2011 Growing Up in Ireland conference demonstrated the breadth of institutions and disciplines now engaging with Growing Up in Ireland data with papers on a

diverse range of topics, including family structure, physical health, mathematics education, well-being of migrant children, child poverty, and vulnerable families among many others.

(b) State of the Nation's Children Reports

715. Ireland's first State of the Nation's Child Report, based on the National Set of Child Well-Being Indicators, was compiled in 2006. The reports have been published biennially since then with the fourth in the series due for publication in 2012. The reports have evolved over time, with the addition of new data and indicators as new or improved data sources became available, for example data on middle childhood, childcare, children's nutritional outcomes. The 2012 report will contain data on sexual health and behaviours for the first time. All indicators have been disaggregated as far as possible by sex, age, social class and geography since the first publication, and the most recent report in 2010 further extended these disaggregations to include disability, nationality and membership of the Travelling Community for as many indicators as possible. The 2010 report was disseminated electronically through the mapping interface of the All-Ireland Research Observatory and it is intended to continue this form of dissemination for future reports in addition to production of a printed volume.

(c) National Strategy for Research and Data on Children's Lives

716. The Department of Children and Youth Affairs published the National Strategy for Research and Data on Children's Lives, 2011-2016 in November 2011. The strategy was developed in the context of substantial investment in the creation and transfer of knowledge for the purpose of improving citizen's lives and increased support and concern for evidence-informed policy and practice. A Government decision in 2003 had stated that all Government Departments should produce a data / statistics strategy, however the current strategy went beyond the type of approach used by other Departments, which tended to focus on data needs for their core business, in aligning and mobilising key issues of relevance to both research and data around children's lives. In doing so, it now provides a framework for improving understandings of children's lives across all sectors, including policy-makers, service providers, researchers, children, families and communities. The inclusion of both data and research is an explicit recognition of the importance of achieving a comprehensive understanding of children's lives. The strategy sets out priority areas for policy information needs under five outcome areas based on the National Service Outcomes of the Agenda for Children's Services. It contains a strategic action plan involving 24 statutory and research bodies in the implementation of 59 actions to improve data and research on children's lives in Ireland.

(d) Research Ethics Guidelines for Children's Research

717. A Working Group has been established to develop good practice guidelines in the ethical review of children's research on behalf of the DCYA. These Guidelines will be published in 2012.

2. Education

(a) Pre-school

718. Universal free pre-school provision was introduced in January 2010. The free pre-school year scheme is open to all children aged between 3 years and 3 months and 4 years and 6 months on 1st September each year. All children residing in Ireland are entitled to avail of pre-school education regardless of their legal status. The scheme provides an opportunity to accelerate the achievement of inclusive, high quality, publicly funded pre-school education for all children. Nationally, 63,000 children availed of the scheme from September 2010, which represents 94% of the eligible age cohort. By international standards, it is unparalleled to have such strong participation in the first year of operation.

A further 4% of pre-school children joined other State schemes. Service providers participating in the scheme are paid a capitation fee for each qualifying child enrolled. In return, the service is required to provide an appropriate programme of activities that adheres to the principles in *Síolta* and *Aistear*. See www.ncca.ie/en/Curriculum_and_Assessment for further information on *Síolta* and *Aistear*.

(b) Early school leaving / retention rates

719. The Department of Education and Skills' latest Report on Retention Rates in Post Primary Schools (2011) presents the retention rates of pupils who entered the first year of the junior cycle in the years from 1991 to 2004 and completed second level schooling no later than 2010. The report shows that:

- The percentage of students who sit the Leaving Cert overall has risen by more than 6% to 87.7% in 8 years.
- The average unadjusted Leaving Certificate retention rate in DEIS schools increased by 5 percentage points from 68.2% to 73.2% for students who entered second level in 2001 to 2004 while the (unadjusted) retention in non-DEIS schools increased from 85.0% to 87.4% for the same entry cohorts.

(c) Education for Persons with Special Educational Needs Act (EPSEN) 2004

720. The full implementation of the Disability Act 2005 and the EPSEN Act 2004 has been delayed due to current financial circumstances. In the meantime, children with special education needs will continue to receive an education appropriate to their needs. An additional 350 posts over the number of posts provided in 2010 are being provided to support special needs education in 2011/2012.

721. In September 2011 an information booklet for parents was published by the National Council for Special Education and the Department of Education and Skills on "Children with Special Educational Needs".

(d) Delivering Equality of Opportunity in Schools

722. The Department of Education and Skills launched 'DEIS (Delivering Equality of Opportunity in Schools)', the action plan for Educational Inclusion in May 2005. The action plan provides for a standardised system for identifying levels of disadvantage and a new integrated School Support Programme (SSP). Over €158 million is being made available this year to provide additional teaching and other resources and supports for primary and second level schools included in DEIS. In all, 669 primary and 195 post primary schools are currently included in the School Support Programme (SSP) under DEIS.

723. DEIS provides various supports for both primary and post primary schools which include, inter alia:

- Reduced pupil teacher ratio in primary schools in urban areas with most disadvantage;
- Allocation of an administrative principal on lower figures than generally apply in primary schools in urban areas;
- Additional capitation funding based on level of disadvantage;
- Additional funding for schools books;
- Access to the School Meals Programme;
- Access to numeracy/literacy supports and measures at primary level;
- Access to the integrated NEWB service.

724. The Department of Education and Skills commissioned the Educational Research Centre (ERC) to conduct an independent evaluation of DEIS measures over the period of the DEIS action plan 2005 to 2010. (www.erc.ie).

725. The Evaluation of the School Support Programme (SSP) under DEIS published in January 2012 found that:

- The DEIS programme is having a positive effect on tackling educational disadvantage
- Improvement is taking place in the learning achievements of pupils in DEIS primary schools in urban areas.
- Achievements are gained in the literacy and numeracy levels of pupils in DEIS primary schools with statistically significant improvements in both the mathematics and reading levels of pupils in 2nd, 3rd and 6th class between 2007 and 2010.

726. The Department's Inspectorate published a report in January 2012 which concurs, in general, with the findings of the ERC report.

727. The Inspectorate evaluation focussed on the quality of the planning processes used by DEIS schools to achieve improvement across a range of areas including attendance, attainment levels in literacy and numeracy and in examinations (post-primary level), and partnership with parents.

728. The reports highlight a number of encouraging findings. Practically all of the primary schools reported significant, measurable improvements in the attendance levels of their pupils while the majority of post-primary schools had effective measures in place to improve attendance. While targets to improve partnership with parents were broad, making it difficult to establish progress made, most schools had a variety of measures in place to encourage parental involvement in the school and in their child's learning. The report shows that the schools in the Inspectorate evaluations had prioritised improved attainment in literacy and numeracy.

(e) Literacy and numeracy

729. In November 2010, the Department of Education and Skills published, for consultation, "Better Literacy and Numeracy for Children and Young People: A Draft National Plan to Improve Literacy and Numeracy in Schools". Over 470 written submissions were received and a range of focussed stakeholder consultation meetings were also held. The final strategy, "Literacy and Numeracy for Learning and Life: The National Strategy to Improve Literacy and Numeracy among Children and Young People, 2011-2020" was launched in July 2011. The full text of the Strategy is available on the Department of Education and Skills website (www.education.ie).

(f) Implementation of Literacy and Numeracy Strategy July 2011 to December 2011

730. There has been a significant degree of activity in relation to teacher education, curriculum and assessment areas, which are the focus of many of the early actions of the Strategy. The key areas where work has commenced are noted below.

(i) Enabling Parents and Communities to Support Children's Literacy and Numeracy Development

731. This includes:

- The holding of a "Working with Parents" workshop for Newly Qualified Teachers in October 2011.
- The mapping of existing good practice by libraries in supporting schools and Early Childhood Care and Education (ECCE) settings by the Library Association of

Ireland to inform the development and support of models of engagement between libraries, schools and ECCE settings.

- The making of initial contacts with authorities in Northern Ireland to discuss a possible joint public information campaign in relation to literacy and numeracy.

(ii) *Improving Teachers' and Early Childhood Care and Education Practitioners' Professional Practice*

a. Early years

732. To improve professional practice, the Department of Education and Skills, through the Early Years Education Policy Unit (EYEPU) has funded the National Council for Curriculum and Assessment (NCCA) to develop exemplars of good practice. This work was completed in November 2011.

b. Initial teacher education

733. The lengthening of degree courses and changes to content have been incorporated into the Teaching Council's Policy on the Continuum of Teacher Education and Initial Teacher Education: Criteria and Guidelines for Programme Providers.

734. Discussions have taken place between the Department and the primary initial teacher education providers and planning for the changes needed has commenced.

c. Induction

735. Units on literacy and numeracy are in place within the National Teacher Induction Programme for the 2011/12 school year.

d. Continuing professional development (CPD)

736. A number of staff members have been appointed to the Professional Development Service for Teachers (PDST), including a Deputy Director, to support the implementation of the Literacy and Numeracy Strategy.

737. Over 10,000 primary teachers completed summer courses in literacy in 2011 as well as over 1,600 completing courses in Irish. Over 1,250 completed courses in mathematics.

(iii) *Building the capacity of school leadership*

738. The actions focus around CPD, school self-evaluation and leadership programmes for new and aspiring school leaders.

(iv) *Improving the curriculum and learning experience*

739. The National Council for Curriculum and Assessment (NCCA) is prioritising curriculum development work arising from the Strategy. This includes work on early years and primary level as well as work in relation to reform of the junior cycle.

(v) *Helping students with additional learning needs to achieve their potential*

740. There have been a number of initiatives including the involvement of more than 2,500 primary children, aged 7 – 11 years, attended DES-funded week long Irish and English literacy camps in July and August 2011 which explored literacy, comprehension, reading and thinking skills through activities such as art, drama, music and dance.

a. Special Needs

741. The EYEPU funded Mary Immaculate College to develop a Framework for the Inclusion of Children with Special Needs in early years' settings. Based on this Framework, the College developed a one year course leading to a Level 6 award. The first intake to this course began in 2011.

b. Adult literacy

742. Work is also underway in the context of adult literacy programmes. Literacy and numeracy are being prioritised. In particular, the integration of literacy and numeracy in vocational education and training into qualification programmes and also CPD programmes for tutors is being progressed.

(vi) *Improving Assessment and Evaluation to Support Better Learning in Literacy and Numeracy*

743. There has been significant progress in putting in place the frameworks for improved assessment arrangements not only in early years' settings but also for primary and post primary. For the primary sector, school management and staff are requested to review their assessment policies and practices and improve their reporting on student progress.

744. Literacy and numeracy have been included in all Whole School Evaluation (WSE) reports prepared by the Inspectorate at primary level from September 2011.

745. The National Educational Welfare Board (NEWB) was established in 2002. The NEWB has a statutory function to ensure that every child either attends a school or otherwise receives an education. The NEWB also has responsibility for children who are being educated outside of schools (e.g. at home) and 16-17 year-olds who leave school to take up employment.

746. The remit of the NEWB was expanded with effect from 1st September 2009 to include responsibility for the Home School Community Liaison (HSCL), the School Completion Programme (SCP) and the Visiting Teachers Service for Travellers (VTST) as well as the Educational Welfare Service (EWS). The Integration of these Education Services brings together these individual services under one common management team, thereby providing for a single, more focussed structure at local, regional and national levels. The newly integrated service also acts as an important early warning mechanism for identifying children, at an early stage, who may go on to experience other severe difficulties in their lives. For this reason, the NEWB is actively working with the HSE to develop protocols for collaboration and cooperation as well as exchange of information, including the reporting of child welfare and safety concerns. In June 2011, the functions of the National Educational Welfare Board transferred to the Office of the Minister for Children and Youth Affairs. It is expected that the transfer of the NEWB to this new Department will provide opportunities to explore further integration of these services aimed at supporting children at risk.

3. Corporal punishment

747. The Department of Education and Skills, in September 2011, published its 'Child Protection Procedures for Primary and Post-Primary Schools'. The procedures have been developed following extensive consultation with the education partners and are based on 'Children First – National Guidance for the Protection and Welfare of Children' 2011. They are designed to ensure a consistency of approach in relation to each school's Child Protection Policy and the oversight arrangements for its implementation at school level.

4. Equal Status Act 2000

748. There is no change to the position as outlined in paragraph 490 of Ireland's third periodic report under the ICCPR, as regards obligations under the Equal Status Acts on educational establishments to provide reasonable accommodation to pupils with disabilities.

5. Proposed legislation

(a) National Vetting Bureau Bill

749. The Vetting Bill will provide a legislative basis for existing vetting arrangements conducted by the Garda Central Vetting Unit. It will establish a register of organisations that will have access to vetting. Those organisations with responsibilities for the employment of persons in positions involving access to children and vulnerable adults will be required to seek vetting of such persons. Under the Bill, the Vetting Bureau will disclose details of criminal convictions and prosecutions to prospective employers. In addition, the Bill will also provide for the disclosure of relevant information (or so-called "soft information") for the purpose of the protection of children and other vulnerable persons. Such information is information relating to a person which gives rise to a bona fide concern that an individual may cause or attempt to cause harm to a child or vulnerable adult. This information may arise in the context of criminal or administrative investigations. The Bill will also establish procedures for the resolution of disputes and appeals concerning the disclosure of information on foot of a vetting request.

(b) Children First: National Guidance for the Protection and Welfare of Children.

750. In July 2011, the Minister for Children and Youth Affairs published "Children First: National Guidance for the Protection and Welfare of Children". This is a revised guidance of previous guidelines which have been in place since 1991. The Guidance requires cooperation across all organisations and individuals working with children to safeguard and protect them. An implementation framework for the revised Children First guidance is being overseen by an Interdepartmental Committee chaired by the Department of Children and Youth Affairs. The Minister for Children and Youth Affairs also committed to placing the Children First Guidance on a statutory basis. Heads of Bill providing for this legislation have been published.

6. Cyber-safety for children and young people

Access to the Internet

751. The following paragraphs are an update on paragraphs 514-518 of Ireland's third periodic report under the ICCPR. The Internet Advisory Board continued its work on promoting awareness around internet safety and potential risks for children and young people in the period 2006 and 2007. It also continued to oversee the role of the internet hotline (hotline for persons to anonymously report suspected illegal content on the internet).

752. The Office for Internet Safety (OIS) was established in 2008 as an Executive Office of the Department of Justice & Equality, as a response to growing concerns about internet safety. The Office has responsibility for co-ordinating measures so as to ensure a safer internet environment, particularly for children and young people, within a self-regulatory and co-operative framework. The particular focus of the Office is the fight against child pornography. The Office took over the responsibilities of the previously existing Internet Advisory Board. The Office has published a range of advisory publications on aspects of internet safety:

- A Parents Guide to New Media Technologies

- A Parents Guide to Filtering Technologies
- A Parents Guide to Social Networking Sites
- A Guide to Cyberbullying.

753. The Office manages the Safer Internet Ireland project which receives funding from the European Union's Safer Internet Programme. A variety of initiatives are ongoing in this regard including:

(i) Ongoing operation of the Internet Hotline (www.hotline.ie), which is co-funded and operated by the Internet Service Providers' Association of Ireland, which deals with confidential reports of illegal content on the internet; the Irish internet hotline is a member of the International Network of Internet Hotlines, INHOPE see www.inhope.org;

(ii) Development of internet safety awareness campaigns, particularly in cooperation with the National Centre for Technology in Education www.ncte.ie, which operates the Irish internet safety awareness node, www.webwise.ie; The NCTE works to disseminate internet safety messages through the educational curriculum;

(iii) Engagement with relevant stakeholders including statutory, industry and child protection interests via the Internet Safety Advisory Council, which advises the Office for Internet Safety;

(iv) Operation by the Irish Society for the Prevention of Cruelty to Children (ISPCC – www.ispcc.ie) of a national confidential helpline CHILDLINE, www.childline.ie for children and young people who may wish to raise concerns about illegal and/or harmful content related to their use of online technologies;

(v) Operation by the National Parents Council (Primary) www.npc.ie of a Parent Helpline. This is a national confidential helpline for parents where parents can find information and support if their children encounter issues on the internet, in particular cyberbullying.

754. In 2010 the Irish Safer Internet Youth Advisory Panel was launched to ensure that the views of children and young people feed into the awareness raising activities of the NCTE and the policy development work of the Office for Internet Safety.

755. Work to further develop and enhance all of the activities listed above will continue in 2012/2013.

756. In May 2012 the Minister for Education and Skills convened a Forum to explore ways of tackling bullying, including cyber bullying in schools. The Minister has also established a working Group to advance work in this area and devise methods of tackling bullying, including bullying through modern communications and social media.

7. Juvenile offenders and youth justice

757. The issue of juvenile offenders and youth justice is dealt with under Article 10. Please see paragraphs 490–500 of this report.

8. Aftercare / youth homelessness

(a) Legal provision

758. Section 45 of the Child Care Act 1991 places a statutory duty on the HSE to form a view in relation to each person leaving care as to whether there is a "need for assistance" and if it forms such a view, to provide services in accordance with the legislation and subject to resources. All young people who have had a care history with the HSE, be it foster care, residential care or high support, are entitled to an aftercare service based on their assessed needs. The core eligible age range for aftercare is 18 years and up to 21

years. This can be extended until the completion of a course of education in which he/she is engaged up to the age of 23 years of age.

759. Legal advice, received from the Attorney General confirmed that Section 45 is legally sound and places a statutory responsibility on the HSE to form a view in relation to each person leaving care as to whether there is a “need for assistance” and if it forms a view to provide services in accordance with the section and subject to resources.

(b) HSE National Aftercare Policy

760. The HSE National Aftercare Service is underpinned by a National Policy and Procedures Document which has been developed in cooperation with the key stakeholders. Prior to the introduction of the national policy, each area had their own after care policies, practices and aftercare workers in place. The national policy was developed to provide a consistent approach to the provision of aftercare services.

761. The HSE National Policy on Aftercare is being implemented nationally and is monitored by the HSE’s Aftercare Implementation Group. The function of the National Aftercare Implementation Group is to ensure the operation of an Aftercare Service across all areas within existing resources, to identify the gaps in current resources.

762. As 91% of children in care are in placed in family care, many young people remain in these placements when they are over 18 and the HSE supports the continuing placement financially. Information on the current number of young people supported in this manner is being sought.

763. The most vulnerable group of young people leaving care are those that have dropped out of education and training and those that have left residential care. Some of these young people have mental health problems or a disability. The HSE is alert to this group and the implementation group is working together to improve their circumstances.

(c) Special care

Assessment, consultation and therapy service

764. The Implementation plan, published in 2009 in response to the Commission to Inquire into Child Abuse (Ryan Implementation Plan), included a commitment to the establishment by the HSE in consultation with the Irish Youth Justice Service (IYJS) of a national therapeutic and multi-disciplinary care team for children in detention and special care.

765. The HSE has been fully funded for this service has committed in its National Service Plan for 2012 to completing the establishment of this team. Children who are detained in secure units need a specialist multidisciplinary team to provide assessment and intervention. Many of these children and young people require therapeutic work to enable them to begin to deal with the impact of abuse and other traumatic events, including multiple placement breakdown and significant loss through separation or bereavement.

766. This key national service will ensure all children placed in secure care, whether on welfare or offending grounds, will have access to specialist clinical interventions in line with their assessed individual needs. The national service is an essential support towards meeting the needs of these most vulnerable children.

(d) Research

(i) “Tracing and Tracking of Children Subject to a Special Care Application”

767. This report, published in October 2010, provides an overview of the applications for admission to special care made by Health Service Executive Local Health Offices in 2007

and traces and tracks outcomes for the children who were subject of those applications up to November 2009. This research was undertaken by Mark Brierley of Social Information Systems (SIS) and was commissioned by the former Children Acts Advisory Board (CAAB).

768. The report was based on scrutiny of anonymised special care applications and their supporting documents, interviews with social workers, children, parents/carers, staff from the special care units, guardians *ad litem* and solicitors.

769. SIS had previously researched the application process and case characteristics for applications for special care made between January and June 2007 (“Review of Special Care Applications” SIS July 2008).

(ii) *Review of alternative care services*

770. In 2011, the Health Service Executive commissioned independent consultants to undertake a review of the capacity for alternative care services. The review examined services, including Special Care. The purpose of the review was to audit the current need and current capacity for alternative care services and to establish the projected need for care placements in the HSE for the period 2011 to end 2013. It also made recommendations regarding the development of services to meet the projected needs for the period 2011 – end 2013. It is anticipated that the HSE will publish the report in mid 2012.

9. Proposed referendum

771. The Department of Children and Youth Affairs is continuing to progress the Government’s commitment to a referendum to amend the Irish Constitution to ensure that children’s rights are strengthened along the lines recommended by the Joint Committee on Children and the Constitution (JCCAC). The JCCAC was established by resolution of both Houses of the Oireachtas (Parliament) in November 2007 and has published three reports. The immediate focus of this engagement is the preparation of a draft wording to be put to the people for consideration during 2012. The process is strongly focused on ensuring that the proposed wording of the Constitutional amendment reflects the deliberations and conclusions of the Joint Committee and the commitment in the Programme for Government.

10. Children’s and young persons’ participation

772. The Department of Children and Youth Affairs (DCYA) takes the lead national role in ensuring that children and young people under the age of 18 have a voice in the design, delivery and monitoring of services and policies that affect their lives, at national and local level. The DCYA ensures the development and improvement of structures that enable participation by children and young people in decision-making, such as *Dáil na nÓg* and *Comhairle na nÓg*.

Article 25 – The right to take part in public affairs

1. Right to vote

(a) General

773. In so far as the right to vote is concerned, this is outlined in detail in Ireland’s third periodic report under the ICCPR (paragraphs 567-583).

774. In summary, all Irish citizens that meet the residency, registration and age requirements can vote in Presidential Elections, *Dáil* Elections, Referendums, European Parliament and Local Elections. All Irish and UK citizens that meet the residency, registration and age requirements can vote in *Dáil* Elections, European Parliament and

Local Elections. Electoral law provides for similar arrangements that apply to UK citizens in the case of Dáil elections to apply also to other EU citizens, where similar mutual entitlements to vote for each other's national parliaments apply. All EU Citizens resident in Ireland that meet the residency, registration and age requirements can vote in the European Parliament and Local Elections. All non-EU Citizens who meet the residency, registration and age requirements can vote in Local Elections.

(b) The electoral system and the measures adopted to guarantee genuine free and periodic elections

775. Responsibility for developing and overseeing a modern, efficient, accessible and fair electoral system falls within the remit of the Department of the Environment, Community and Local Government. The Department is responsible for the various legislative codes dealing with the registration of electors and the conduct of elections and referendums. This involves, on an ongoing basis, the review of electoral law, general election and European constituencies and local electoral areas; the provision of guidance and support to registration authorities (local authorities who maintain the electoral registers) and returning officers (the statutory officers whose responsibility is to conduct elections and determine the results within the electoral legal framework); information and advice to the general public; and the publication of election results.

776. The electoral system is based on a secret ballot on the principle of proportional representation in multi-seat constituencies, each elector having a single transferable vote. General elections for the National Parliament are required by law to be held every five years. Presidential elections are held every seven years. European and Local Elections are held every five years. Referendums to amend the Constitution arise from time to time.

777. The compilation and maintenance of the register of electors is the responsibility of each city and county council, 34 local authorities in all. The register of electors is broken down into four categories of electors: Irish citizens, British citizens, other EU citizens and non-EU citizens.

(c) Practical implementation of these guarantees in the period covered by Ireland's fourth periodic report under the ICCPR

778. During the period covered by Ireland's fourth periodic report under the ICCPR, there was one General Election to the National Parliament in 2011; there was one Presidential election in 2011; there were four referendums held (one in 2008, one in 2009 and two in 2011) and four by-elections to fill vacancies arising in the National Parliament (two in 2009, one in 2010 and one in 2011).

(d) Measures taken to overcome factors which impede citizens from exercising their right to vote

779. The measures taken to assist people with disabilities are outlined in Ireland's third periodic report under the ICCPR (paragraphs 582-583).

780. In summary, these arrangements are:

- Assistance in voting at the polling station by a companion or the presiding officer for people with a visual impairment, physical disability or literacy difficulty;
- Postal voting by electors living at home who cannot go to the polling station due to a physical disability or illness;
- Special voting facilities provided in hospitals, nursing homes or similar institutions for residents who cannot go to the polling station due to a physical disability or illness;

- The use of photographs and party political emblems on ballot papers to assist visually impaired people and people with literacy difficulties;
- The display of a large print copy of the ballot paper in polling stations to further assist visually impaired people and people with literacy difficulties;
- A series of 8 information leaflets on the Irish electoral system are available in Braille, audio CD and cassette and online in PDF. The leaflets cover important topics such as how to register to vote, information for voters with disabilities and information on how on elections to the National, European and local parliaments take place. The information was distributed to local authorities to be made available at public offices, libraries etc.
- Voting at an alternative polling station if a person's local station is inaccessible.

781. Electoral law provides that local authorities, in making polling schemes, shall endeavour to appoint polling places where at least one polling station is accessible to wheelchair users. While the selection of buildings to be used as polling stations and count centres at an election or referendum is a matter for returning officers, they are required, where practicable, to ensure that such buildings are accessible to wheelchair users. Returning officers must, in addition, where practicable, give public notice of all polling stations which are inaccessible to wheelchair users not later than eight days before polling day. If an elector has difficulty gaining access to his or her polling station, he or she may apply in writing for authorisation to vote at another polling station in the same constituency.

2. The right to stand for election and conditions for holding elective public office

Conditions on the right to stand for election and for holding elective office

782. These conditions, including age limits were outlined in detail in Ireland's third periodic report under the ICCPR. There have been no further developments since the submission of that report. (paragraphs 551-566)

3. Access to public service

783. Recruitment to the Irish Civil Service is governed by the Public Service Management (Recruitment and Appointments) Act, 2004 and by the Civil Service Regulation Acts, 1956 to 2005. The 2004 Act provides for the establishment of the Commission for Public Service Appointments (CPSA) and of the Public Appointments Service (PAS). The CPSA establishes the standards of probity, merit, equity and fairness and other principles as they consider appropriate, to be followed, in the selection and recruitment of persons for positions in the Civil Service and other public bodies. These standards are set out in codes of practice published by the CPSA. The PAS provides a centralised recruitment, assessment and selection body for the Civil Service and provides a similar service, where requested, to the local/municipal authorities and the Health Service Executive, the Garda Síochána (police) and any other public service body. The Act also provides for the issuing of recruitment licences to the Secretary (Director) General of a Department of State and to other designated officers in the Public Service.

784. Recruitment to the Civil Service is by way of open competition and all competitions held by the PAS are advertised in one or more of the national papers and on the PAS website at: www.publicjobs.ie. Application forms, together with all relevant details, are made available when competitions are announced. Potential candidates can register their interest in a position on the PAS website and will then automatically be notified by email when a competition is announced.

785. Recruitment to posts within the Civil Service is on the basis of codes of practice developed by the CPSA. The codes of practice cover such areas as probity, merit, equity

and fairness, selection on the basis of merit, protection of the public interest, implementation of best practice and good governance. Anyone can apply for a position in the Civil Service but candidates must fulfil the eligibility requirements/criteria of the grade or post being filled.

4. Equality monitoring by the Public Appointments Service

786. The Public Appointments Service is committed to a policy of equal opportunity under the nine grounds as set out in Employment Equality legislation. Equality monitoring is conducted, particularly in relation to selection tests, to ensure that selection procedures are fair and merit based and do not unfairly discriminate against any specific groups. Monitoring is carried out by inviting candidates to voluntarily complete an Equality Monitoring Questionnaire in which they may describe themselves in terms of the nine grounds. High completion rates are reported for the questionnaire, frequently between 70% and 90%. The information gathered is used anonymously and has no bearing on the manner in which the application is considered. It is used to inform qualifying standards for aptitude tests and to highlight any potential concerns relating to the performance of different groups.

Article 26 – The right to equality before the law

787. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

1. Unfair Dismissals Acts 1977-2007

788. While there have been a few minor amendments to the Unfair Dismissals Acts in recent years, the main amendments since 2007 were made by the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007. The main amendment made to the Unfair Dismissals Acts by the 2007 Act was to clarify that the Acts would apply to a situation where all the employees in an industrial-dispute situation were dismissed and none were re-engaged (i.e. “non-selective” dismissal). The criteria on which the fairness or otherwise of the dismissals in these situations may be adjudicated on were also set out in the 2007 Act. The type of situation where one or more of the employees involved in a dispute had been re-engaged (i.e. “selective” dismissal), but other employees had not been re-engaged, had already been expressly covered in the Unfair Dismissals Acts, in that those remaining employees who had not been re-engaged were deemed to have been unfairly dismissed.

2. The Employment Equality Act

789. The position as set out in paragraphs 592-596 of Ireland’s third periodic report under the ICCPR remains unchanged. Further initiatives to raise awareness of and compliance with obligations under this legislation are outlined in the measures under Article 2.

3. Diversity in the teaching profession

790. The Programme for Government entitled ‘Government for National Recovery 2011-2016’ contains a number of commitments and has committed that “People of non-faith or minority religious backgrounds and publically identified LGBT people should not be deterred from training or taking up employment as teachers in the State”.

791. The Department of Education and Skills booklet “Constitution of Boards and Rules of Procedure for the Boards of Management of National Schools” published in 2011, and

Circulars in relation to the appointment of teachers both bring the attention of the Boards of Management of schools to their responsibilities under the Employment Equality Acts 1998-2008.

Article 27 – Ethnic and linguistic minorities

792. In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

1. Travellers

(a) Recognition of Travellers as an ethnic minority

Response to the recommendations in paragraph 23 of the concluding observations (CCPR/C/IRL/CO/3)

793. The term national minority is not legally defined in Irish law. However, the special position of Ireland's Traveller community has been explicitly recognised in a range of legislative, administrative and institutional provisions, in order to protect their rights and to improve their situation. Irish Travellers do not constitute a distinct group from the population as a whole in terms of race, colour, descent or national or ethnic origin. Therefore, in the preparation of equality legislation, it was considered that discrimination against Travellers would not be covered by the term "discrimination on the ground of race". Therefore a separate ground "membership of the Travellers Community", on which it is unlawful to discriminate was put into equality legislation. The separate identification of Travellers in equality legislation guarantees that they are explicitly protected. To date, the Government has taken the view that while Travellers are clearly an indigenous minority community, there is no firm rationale for specific "ethnic recognition".

794. The Government has maintained that Travellers in Ireland have the same civil and political rights as other citizens under the Constitution. The key anti-discrimination measures, the Prohibition of Incitement to Hatred Act, 1989, the Unfair Dismissals Acts 1977, the Employment Equality Acts and the Equal Status Acts specifically identify Travellers by name as a group protected. The Equality Act 2004, which transposed the EU Racial Equality Directive, applied all the protections of that Directive across all of the nine grounds contained in the legislation, including the Traveller community ground. All the protections afforded to ethnic minorities in EU directives and international conventions apply to Travellers because the Irish legislation giving effect to those international instruments explicitly protects Travellers.

795. During the course of the examination, in 2011, by a working group of the United Nations Human Rights Council, of Ireland's report to that Council, prepared under the universal periodic review procedures of the Council, the Minister for Justice and Equality, Mr Alan Shatter was asked, among many other matters, about the position of Travellers in Irish society. One delegation specifically recommended that Ireland should recognise Travellers as an ethnic minority while other interventions were of a more general nature. The Minister replied that serious consideration is being given to granting such recognition. This consideration is ongoing.

796. In accordance with the provisions of the Housing (Traveller Accommodation) Act, 1998, responsibility for the assessment of the accommodation needs of Travellers and the preparation, adoption and implementation of multi-annual Traveller accommodation programmes, designed to meet the accommodation needs of Travellers, rests with individual housing authorities. The Department of the Environment, Community and Local

Government is to ensure that there is an adequate legislative and financial system in place to assist the authorities in providing such accommodation.

797. The current round of Traveller accommodation programmes will run until 2013 and local authorities were requested to carry out a review of their programmes by 31 December 2011. The Department of the Environment, Community and Local Government oversees the implementation, through the local authorities, of the programmes. Regular contact is maintained with the local authorities in regard to the provision of appropriate and high-quality Traveller specific accommodation and refurbishment works, funded by that Department, in addition to Traveller housing needs being met through the mainstream social housing programme.

798. Each local authority is required to conduct an assessment of accommodation needs on a periodic basis. The most recent assessment was carried out in March 2011 which revealed a major preference among Travellers for standard housing rather than permanent halting sites. The majority of Travellers already live in standard housing, whether standard local authority housing or private housing with local authority assistance, rent supplement or the Rental Accommodation Scheme—which assists persons in receipt of rent supplement usually for more than 18 months and who require long term housing.

799. Notwithstanding the above, Traveller specific accommodation continues to be provided by many local authorities where required. For example, during the second round of Traveller Accommodation Programmes (2005-2008), 775 units of new and refurbished Traveller specific accommodation were provided. Since 2009, over 350 units of new and refurbished Traveller-specific accommodation have been provided, including over 150 halting site units.

800. In addition, there has been a significant reduction in the number of Traveller families living on unauthorised sites. In 1999, prior to the first Traveller Accommodation Programme, the Annual Count of Traveller families estimated that there were a total of 4,790 Traveller families in the State. 25.2% of these families were living on unauthorised sites. The 2010 Annual Count (the most recent information available) identified a total of 9,470 Traveller families in the State. In spite of the huge increase of 4,680 families between 1999 and 2010, only 4.7% of the 9,470 families were living on unauthorised sites in 2010. Notwithstanding the good progress which has been made, the Department of the Environment, Community and Local Government continues to encourage local authorities to reduce the number of families living on unauthorised sites or sharing accommodation.

801. The Government supports efforts being made by the Irish Traveller Movement to establish a Traveller-led voluntary housing association (TVAA). It is hoped that, in the future, this TVAA will be in a position to develop and manage Traveller-specific accommodation. This development has the potential to place Travellers at the forefront of the provision of their own Traveller-specific accommodation and could potentially open up alternative funding streams.

802. In addition, the Approved Housing Body movement may also be in a position to work with the Traveller community in the provision of Traveller accommodation.

(b) National Traveller Monitoring and Advisory Committee

803. The following paragraphs are an update of paragraphs 597-598 of Ireland's third periodic report under the ICCPR. A National Traveller Monitoring and Advisory Committee (NTMAC) was established in March 2007. This committee replaced the Traveller Monitoring Committee which reported on implementation of the 1995 Task Force Report. The NTMAC provides a broadly based and inclusive forum for dialogue between the relevant social partners, and its establishment followed on a commitment in the national partnership agreement Towards 2016 to give concentrated attention to achieving greater progress for Travellers. The NTMAC, which includes four national Traveller organisations

along with a number of prominent individual Traveller representatives, has a specific remit to advise on policy in relation to the Traveller Community.

804. The First Advisory Report of the NTMAC was submitted to Government for information in April 2010.

(c) High Level Group on Travellers

805. The following paragraphs are an update of paragraphs 599-601 of Ireland's third periodic report under the ICCPR. In December 2003 at the request of An Taoiseach, a High Level Group on Traveller issues was established under the aegis of the Cabinet Committee on Social Inclusion. Its remit, to ensure that the relevant statutory agencies involved in providing for the delivery of Traveller specific services, would focus on improving outcomes based on the integrated delivery of services at local level. The Group issued a report to Government in March, 2006.

806. A key aspect of the approach recommended by the High Level Group is developing effective coordination of actions among agencies operating under the 34 County and City Development Boards (CDBs), coupled with effective consultation with Travellers and their representatives. Since 2006 Traveller Interagency Groups (TIGs) have been established under each CDB to coordinate the efforts of state agencies and other stakeholders. The Traveller Policy Division, in the Department of Justice and Equality, is monitoring progress and supporting the dissemination of good practices in implementing the interagency approach.

(d) Equality legislation

807. Travellers in Ireland have the same civil and political rights as other citizens under the Constitution. The key anti-discrimination measures, the Prohibition of Incitement to Hatred Act, 1989, the Unfair Dismissals Acts 1977, the Employment Equality Acts and the Equal Status Acts specifically identify Travellers by name as a group protected. The Equality Act 2004, which transposed the EU Racial Equality Directive, applied all the protections of that Directive across all of the nine grounds contained in the legislation, including the Traveller community ground. All the protections afforded to ethnic minorities in EU directives and international conventions apply to Travellers because the Irish legislation giving effect to those international instruments explicitly protects Travellers.

(e) All Ireland Traveller Health Study

808. The findings of the All Ireland Traveller Health Study were published in September 2010. The Study was carried out on behalf of Travellers, with and by Travellers and this was an innovative approach that enabled the study to achieve a high response rate. Therefore the results are seen as more robust and will be all the more useful to policy makers and service providers as a result. The findings of the Study provide a strong evidence base for assessing existing and future service delivery. The importance of this study to Travellers was demonstrated by their very high participation rate in the study and by the depth of information that they provided. A review of the recommendations of Traveller Health – A National Strategy 2002-2005 is currently being undertaken by the Traveller Health Advisory Committee in light of the findings of the All Ireland Traveller Health Study.

809. *Key findings of All Ireland Traveller Health Study:*

- The Traveller population in the island of Ireland was estimated at 40,129 in 2008, 36,224 in the Republic of Ireland and 3,905 in Northern Ireland.
- Older Travellers aged 65+ make up only 3% of the Traveller population compared to the general population where 13% of the population is in this age bracket.

- Life expectancy at birth for male Travellers has remained at the 1987 level of 61.7 which is 15.1 years less than men in the general population, representing a widening of the gap by 5.2 years. This is equivalent to the life expectancy of the general population in the 1940s.
- Life expectancy at birth for female Travellers is now 70.1 which is 11.5 years less than women in the general population representing a narrowing in the gap of just 0.4 years. This is equivalent to the life expectancy of the general population in the early 1960s.
- Traveller infant mortality is estimated at 14.1 per 1,000 live births which is 3.6 times the general population rate of 3.9 per 1,000 live births. In 1987 the rate was 18.1 per 1,000 live births at which time it was 2.4 times that of the general population rate of 7.4.
- Travellers, in particular males, continue to have higher rates of mortality for all causes of death, but the biggest gap is seen in heart disease and stroke (4 times higher for males, 5 times higher for females), respiratory disease (7 times higher for males, 5 times higher for females) and external causes of death (5 times higher for males, 4 times higher for females).
- Suicide rates are nearly 7 times higher in Traveller men compared with the general male population.
- There have been improvements in Traveller women's health, notably (1) narrowing the gap in life expectancy, (2) reduction in fertility rates to 2.7 per 1,000 population and (3) uptake of cervical screening at rates higher than the general population and uptake of breast screening at rates similar to the general population.
- Access to health services is good, with Travellers stating that their access is at least as good as that of the rest of the population. However, the healthcare experience was not reported to be as good as the general population, with communication cited as a major issue by Travellers and service providers.
- The All Ireland Traveller Health Study found that over 94% of Travellers have a Medical Card with this figure rising to 99% in the older age group and nearly 97% of all Travellers are registered with a GP. The Traveller Primary Health Care workers are part of the HSE Primary Care Teams.
- While Traveller infant mortality rates have decreased since the 1987 study, the study team found a higher infant mortality rate than the general population. This was 12.0 per 1,000 live Traveller births in 2008/2009 and 14.1 in 2007/2008 compared to 3.9 and 3.2 per 1000 live births in the general population for the same periods.

(f) Traveller education

(i) Report and Recommendations for a Traveller Education Strategy

810. In November 2006 the *Report and Recommendations for a Traveller Education Strategy* was launched. The Strategy covers, in a very comprehensive manner, aspects of Traveller Education from pre-school right through to further and higher education within a lifelong learning context.

811. The Strategy recommended that the "principle of individual educational need" rather than "Traveller identity" is the criterion for all children, including Traveller children for provision of additional resources. The Report sets out a way forward in relation to Traveller education, taking account of the complexity of the issues involved in the history of provision, and the existing measures.

(ii) *Traveller Education*

812. One of the areas of immediate priority was the mainstreaming of provision for Travellers by ending, in a phased manner, segregated provision in pre-schools, primary, post primary and further education.

813. The Traveller Implementation Group (TIG) consisting of senior officials of the Department of Education and Skills, with responsibility for different aspects of Traveller education, was established in 2006 to steer progress in the implementation of recommendations of the Strategy and is chaired by the Principal Officer in the Social Inclusion Unit.

814. The Traveller Education Strategy Advisory & Consultative Forum was established in late 2009 as a forum for consultation on the ongoing implementation of the Traveller Education Strategy. The Forum includes key stakeholders in the education sector with an interest in or a responsibility for Traveller education in Ireland as well as Traveller Representative Groups and Travellers.

815. The object of the Forum is to identify issues, including obstacles, to the implementation of recommendations of the Traveller Education Strategy. It will also examine appropriate responses to issues identified and report to the Traveller Implementation Group, from time to time, to highlight key issues of concern.

(iii) *Traveller participation rates at primary & post-primary*

816. Traveller participation rates at primary and post primary:

- Improvements of Traveller participation rates in education in recent years have been recorded. In September 2009, there were over 11,300 young Travellers enrolled in school with 8,301 at primary level and 3,014 in mainstream post-primary school.
- Progress at primary level has been taking place on a steady basis over the past twenty five years. Progress at post-primary level has been more evident in recent years. The September 2009 enrolment level represents more than a doubling of Traveller enrolment since September 2000 when there were 1,165 Traveller students enrolled in mainstream post-primary schools.
- Early school leaving is still a feature among the Traveller community with the majority of young Travellers failing to complete senior cycle post-primary school.
- 813 Traveller students were enrolled in first year in September 2009.
- In 2009 442 Traveller students sat the Junior Certificate compared with 371 in 2008.
- In 2009 103 Traveller students sat the Leaving Certificate compared with 91 in 2008.
- The number of Traveller learners attending Youthreach (VEC) has increased in recent years. In 2007 there were 394 Travellers in Youthreach and in 2010 this figure had increased to 520.
- In 2010, there were an estimated 857 Travellers in Back to Education Initiative courses.

(iv) *Early years education*

817. The target set in the Traveller Education Strategy was for the integration of all segregated pre-school services for Travellers over a 10 year period, i.e., by 2016

818. In December 2009, the Department of Education and Skills wrote to the 26 Traveller pre-schools funded by it and asked them to begin the process of applying for inclusion in the free pre-school year scheme from September 2010 onwards or alternatively, to look at

the closure of the pre-school where sufficient places were available in community or private pre-schools locally. 22 of these pre-schools decided to either join the free pre-school year or had decided to close because of the availability of alternative places locally. The Department of Education and Skills continues to fund 4 remaining Traveller pre-schools and will work collaboratively with the Boards of Management of the remaining Traveller pre-schools, and their local City and County Childcare Committees, to ensure that young Traveller children have continued access to pre-school places.

(v) *Segregated Traveller Schools*

819. There are four segregated Traveller primary and post-primary schools in total, remaining in operation. The strategy provides for a phased closure of these schools in favour of mainstream provision.

(vi) *Support for Travellers*

820. The functions under the Education Welfare Act including the National Educational Welfare Board (NEWB) and the integrated services under the remit of the Board transferred in May 2011 from the Minister of Education and Skills to the Minister for Children and Youth Affairs. The new integrated service, incorporating the School Completion Programme, the Home School Liaison Service and the Education Welfare Service under the NEWB, will have a renewed focus to more effectively target and support all children at risk, including Traveller children.

(vii) *School transport*

821. Traveller pupils are eligible for school transport on the same basis as all other pupils. The Department has retained provision in the scheme to deal with very exceptional cases where unique school transport arrangements may be required. It is envisaged that such instances will be rare and are likely to relate to the placement of the child.

(viii) *Adult & Further Education*

822. All Adult and Further Education programmes funded by the Department are already open to Travellers. These include part-time programmes funded under the Adult Literacy and Community Education scheme and the Back to Education Initiative as well as full-time programmes such as Youthreach, Vocational Training Opportunities Scheme and the Post-Leaving Certificate programme. Travellers are accessing these programmes in increasing numbers.

823. The Senior Traveller Training Centre (STTC) programme has been in operation since 1974. In line with the Traveller Education Strategy and the 2008 value for money review of Youthreach and Senior Traveller Training Centres (STTCs), integrated further education provision for Travellers will be implemented through the phasing out of STTCs by June 2012 and replacement places, prioritised for Travellers, being provided under the Back to Education Initiative (BTEI). There have been no new enrolments in STTCs from 1 January 2011.

(ix) *Higher Education*

824. The Higher Education Authority's National Office for Equity of Access to Higher Education (the "National Access Office") is responsible for co-ordinating, developing and advising the Department of Education and Skills on national policy. It is also responsible for implementing funding measures which facilitate greater educational access and opportunity for groups who are under-represented in higher education. The Traveller community is one of the target groups identified in their *National Access Plan 2008-2013* (the "National Access Plan").

825. Analysis of data collected by the Higher Education Authority on behalf of the Department of Education and Skills for 2010-2011, indicates that 31 students in higher education institutions that year were from an Irish Traveller background. This compares to 27 entrants in 2009-2010. While there has been progress, participation by young Irish Travellers in higher education (estimated at 5 percent of the overall national population in the relevant age cohort) is very low, compared to overall national participation rates (estimated at 60 percent of the relevant age cohort). It should be noted that there may be more students from Traveller backgrounds in higher education as the Higher Education Authority survey is voluntary and incorporates the principle of self-identification.

826. The Department of Education and Skills with the National Access Office has recently agreed to assist the Irish Traveller Movement with the Supporting Travellers in College network. This network was established in September 2009 by the Irish Traveller Movement as a peer support group for Travellers who are currently in higher education. The group aims to develop its work to encourage more young Travellers to attend further and higher education and mature Travellers to return to education.

2. Irish language

(a) 20-Year Strategy for the Irish Language 2010-2030

827. In December 2010, the Government published the 20-Year Strategy for the Irish Language 2010-2030. The Strategy is designed to promote a holistic, integrated approach to the Irish language which is in line with international best practice and is the culmination of academic research and stakeholder consultation. The Strategy is built on the foundation of the constitutional status of the Irish language and follows on the Government Statement on the Irish Language published in December 2006.

828. The Strategy sets out a number of areas of action to benefit the Irish language over the period from 2010 to 2030, namely, education, the Gaeltacht, the family, the community, public services, the economy, the media, legislation and cross-cutting initiatives. The Strategy is focussed on increasing people's knowledge of Irish; creating opportunities for the use of Irish and fostering positive attitudes towards the use of Irish.

(b) Official Languages Act 2003

829. In November 2011, the Department of Arts, Heritage and the Gaeltacht initiated a review of the Official Languages Act 2003 which provides a statutory framework for the delivery of public services through the Irish language. The objectives of the review are to ensure that the Act is an effective mechanism that supports the development of the Irish language in an efficient and cost-effective manner and that the obligations arising from the Act are appropriate to ensure the satisfactory provision of services in Irish by public bodies, in line with public demand. Following completion of the review, the case for amending the legislation will be considered.

(c) Irish language in the EU

830. A number of supports are being developed with the assistance of the Irish government to ensure that sufficient resources are in place by 2017 so that the derogation relating to the translation of certain types of document into Irish will no longer be required. These supports include the provision of terminology, as well as the funding of third level courses in a number of institutions to ensure an increased number of qualified, skilled personnel in the areas of translation and interpretation. Currently, co-decisions are translated into Irish, and this volume of work has expanded significantly arising from the ratification of the Lisbon Treaty. Irish is now ranked 14th out of the 23 official languages for the number of terms in IATE, (Inter-Active Terminology for Europe), despite the relatively recent achievement of working status. Staff numbers for Irish translation in the

Commission, Council and Parliament have increased since the achievement of official working status.

IV. Consultation with civil society representatives

A. Introduction

831. Recognizing the important role that civil society plays in human rights matters, the Department of Foreign Affairs and Trade, in the drafting of this report, carried out a consultation process with civil society. A complete list of those who took part in the consultation process can be found below.

832. The purpose of the consultation process was threefold:

- To ensure Ireland's Fourth Periodic Report was a comprehensive reflection of the current state of civil and political rights in Ireland;
- To pinpoint the key concerns of civil society and to afford them a meaningful opportunity to present to Government Officials their views on how Ireland could achieve fuller implementation of the International Covenant on Civil and Political Rights; and
- To ensure that the implementation by Ireland of the International Covenant on Civil and Political was viewed from an alternative perspective and that this was recorded in a specific part of this report.

833. An initial briefing session was held with members of civil society where the drafting process was outlined and civil society were invited to submit lists of issues which they wished to see included in the Report. Following the drafting of the Report, the Department held a consultation meeting and invited written submission from members of civil society. Submissions were circulated to Government Departments providing an opportunity to make amendments to the Report. Amendments made following the consultation process are reflected in the Report. The following paragraphs outline the issues raised in both the written submissions and at the consultation meeting. The paragraphs are ordered on an Article by Article basis.

B. Overview of issues raised under Covenant articles

Article 2 - Obligation to implement the provisions of the Covenant

834. With regard to the issue of the economic recession, one stakeholder expressed concern over the lack of detail in the Report on the impact of recent budget cuts and the moratorium in public sector recruitment on civil and political rights. Concern was also expressed at the failure to outline what steps the Government has taken to ensure that there will be no retrogression in civil and political rights, especially of marginalised groups.

835. On the issue of asylum seekers, one stakeholder commented on the inability of asylum seekers within the Direct Provision system to participate in Irish society, with the length of time spent in the system negatively impacting on their ability to become self-sufficient and independent members of society. Comments were also made regarding the lack of an independent complaints mechanism for residents of Direct Provisions or remedy for individuals who are aggrieved. Another stakeholder raised an issue with the fact that asylum seekers do not fall within the remit of the Ombudsman for Children and the negative impact this has on children in the asylum system.

836. With regard to giving effect to the Covenant, one stakeholder recommended that the ICCPR be incorporated into domestic law to ensure that the rights enshrined in the Covenant are given full effect.

837. A number of stakeholders raised concern over the budget cuts to equality and human rights infrastructure since the submission of Ireland's last report, with one stakeholder outlining that this has been disproportionate and has reduced the State's capacity to respond to incidents of racism. Further concern was noted in relation to the cuts to the community and voluntary NGOs working in the area of combating racism and the negative impact this is having on the recognition and the role of such work. The stakeholder also raised the issue that Irish equality legislation does not include certain functions of the State, including immigration, residence process and social welfare services, which it was outlined include provision of public services to certain groups of non-Irish nationals.

838. On the proposed merger of the Irish Human Rights Commission and the Equality Authority, a number of stakeholders recommended that the new Irish Human Rights and Equality Commission (IHREC) should be a robust, independent and effective body which should be able to provide representation for individuals or organisations in appropriate cases, bring legal proceedings if necessary and intervene as *amicus curiae* in relevant cases. One stakeholder called for the IHREC to have racism as a priority in its agenda, with a specific request that a consultation be carried out with relevant stakeholders on this. Furthermore, it was recommended that the IHREC maintain the current functions of both bodies, as well as expand their functions in line with developments in the area of equality in the EU.

839. Another stakeholder felt that the Report should outline the defined legal functions of the IHREC's equality pillar and outline how complaints under the Equal Status Acts will be processed by the IHREC and the new Workplace Relations Commission (WRC).

840. While a number of initiatives in the area of combating racism were welcomed, notably the Intercultural Health Strategy and the Intercultural Education Strategy, numerous stakeholders expressed concern over the closing of the National Consultative Committee on Racism and Interculturalism (NCCRI) in 2008 and the lack of a successor to the National Action Plan Against Racism 2005-2008. It was recommended that the IHREC should include the mandate of the Combat Poverty Agency and the National Consultative Commission on Racism and Interculturalism (NCCRI), as well as protecting the rights incorporated in the Equal Status Acts.

841. One stakeholder welcomed the introduction of legislation in relation to female genital mutilation.

842. In relation to the training of An Garda Síochána, one stakeholder outlined that it is crucial that there is sufficient knowledge and capacity to address racist crimes as well as to be able to identify and address issues of racism within the police force.

843. Referring specifically to the section of this Report on CRPD (paras. 38-42 above), one stakeholder agreed that the proposed Mental Capacity Bill will be crucial to the State's compliance with the CRPD, but expressed concern that the Report did not outline the approach to be taken to that legislation. The stakeholder felt that there was a risk that the State would adopt an outdated approach overly based on guardianship and substitute decision-making, with limited focus on enhanced protections and references to supports and no clear legal obligation on the state in this regard. Another stakeholder felt that the need for reform of mental capacity legislation was not the only obstacle to ratification of the UNCRPD and that other obstacles included, existing legislation impacting on the right to marry and found a family and the right to participate in public affairs.

844. Referring to the National Disability Strategy, one stakeholder noted that the Irish Human Rights Commission and the Committee on Economic, Social and Cultural Rights had both expressed concern at the omission from the Disability Act (2005) of the right of

persons with disabilities to seek judicial remedies where any of the provisions of the Act are not carried out.

845. The same stakeholder also expressed concern that the right to an independent assessment of health and education needs of persons with a disability, established in law under the Disability Act (2005), had only partially commenced. It was also noted that the Education for Persons with Special Educational Needs Act 2004 had not been fully commenced.

846. Referring specifically to the section on treatment and protection of elderly in long-term care homes/patients in residential health institutions (paras 43–47 above), one stakeholder noted that while the Health Information and Quality Authority (HIQA) had introduced regulations to underpin the National Quality Standards for Residential Care Settings for Older Persons, similar mandatory protection has not been applied to residential services for people with disabilities. The stakeholder expressed concern that while standards had been developed which were available as guidance, no regulatory framework existed for inspection under those standards. The stakeholder noted that a commitment to place the National Standards for People with Disabilities on a statutory footing had been included in the Programme for Government in 2011 but felt that no progress had been made on this.

847. The stakeholder also noted that the Health Service Executive had published the *Time to Move on From Congregated Settings Reports* which identified 4,000 people with disabilities who lived in congregated settings (a residential setting with 10 or more people), and laid out a pathway to achieve more appropriate support for individuals. The stakeholder expressed concern that no detail in relation to this development was included in the Report.

848. A major concern of one stakeholder was the lack of regulation and inspection of disability services for vulnerable adults and children with intellectual disabilities. The stakeholder noted that despite the findings of a number of inquiries and investigations, residential services for persons with disabilities remain unregulated and uninspected. The same stakeholder also expressed grave concern at the fact that adults with intellectual disabilities continue to be accommodated in psychiatric hospitals and that no specific unit exists to provide for the acute treatment of intellectually disabled persons with serious mental health problems.

849. The failure to establish a Personal Advocacy Service, provided for under the Citizens Information Act (2007) was also highlighted. It was noted that as a consequence, advocates seeking to support vulnerable adults in residential services do not have the statutory power to make inquiries in relation to the vulnerable person as he or she considers appropriate.

850. Referring specifically to the Section on Human Rights Education (paras. 56–66 above), one stakeholder welcomed the statement that Ireland is committed to continuing to provide support for human rights education and training but felt that the Report should have outlined a publication by the Irish Human Rights Commission in 2011. That Report identified significant gaps in the provision of human rights education across all education sectors in Ireland.

851. One stakeholder raised the issue of the rights of adopted people. The stakeholder felt that there is an ongoing denial of the rights of Irish adopted people to know their identities and discrimination against adopted people due to the circumstances of their birth. The stakeholder felt that there is an on-going official denial of illegalities in Irish adoption practices and that no effective remedy exists for those who suffered loss of family life as a result of forced adoption. The stakeholder also raised concern over unauthorised and illegal vaccine trials which took place in mother and baby homes. The stakeholder noted that in 2003, the Vaccine Trials inquiry was permanently suspended as part of the Child Abuse Commission, as a result of Judicial Review proceedings. The stakeholder raised concern

over the inability to access medical records on this issue and the denial of access to an effective remedy.

852. On Travellers, one stakeholder noted that Travellers experience discrimination in a number of settings, including education, employment and access to public places. Such discrimination was evidenced by the All Ireland Traveller Health Study. The stakeholder expressed concern over funding cuts to equality, human rights and anti-racism infrastructure which undermined the effective protection of Travellers' rights, as well as the right of the Roma community and other minority groups. The stakeholder questioned how the Government would ensure that individuals would continue to have access to legal representation following the merger of the Equality Authority and the Irish Human Rights Commission.

Article 3 - The equal right of men and women to the enjoyment of all civil and political rights

853. On the issue of asylum and immigration, one stakeholder referred to the negative impact which the Habitual Residence Condition is having on migrant women fleeing domestic violence where their immigration status is linked to that of their partner. The stakeholder recommends that the Habitual Residence Condition should not be applied in such a way as to adversely affect the status of persons forced to leave an abusive relationship for the purposes of accessing social welfare.

854. Another stakeholder raised the issue of a lack of gender-proofing in the asylum system, mentioning the absence of female only accommodation for vulnerable women. Concern was raised over the absence of an interviewer and interpreter in the gender of their choice, as is best practice.

855. Referring specifically to the Section of the Report on Domestic and Gender-Based Violence (paras. 142–189 above), a stakeholder raised concern over the need for formal recognition of domestic violence in immigration law. It was noted that this would enable dependent family members to apply to remain in Ireland as victims of domestic violence and to have access to safe emergency housing and essential welfare benefits. A stakeholder called for a coordinated administrative response by the Irish Naturalisation and Immigration Service and the Department of Social Protection/HSE in the short term, and a legislative response in the longer term.

856. On the National Women's Strategy, one stakeholder expressed concern over the failure to adequately implement the Strategy, in particular regarding the formulation of targets, indicators and outcomes. The stakeholder also noted concern in the decrease in funding available for the Equality for Women Measures and the reallocation of funding from the Measure to other Government Departments. The stakeholder stressed the need for an independent review of the National Women's Strategy to be carried out and to ring fence funding to enable full implementation of a revised National Women's Strategy.

857. Another stakeholder also expressed concern that the Report does not comment on the government's approach in dealing with issues outlined in the National Women's Strategy, including the rise in women's unemployment and the gender pay gap. The stakeholder recommended that the Government adopt a sustainable employment strategy with a range of labour market programmes on a flexible basis appropriate to women's skills, needs and work patterns. The same stakeholder also recommended the establishment of an affordable, accessible and well-funded, quality childcare system to maximise the opportunities for women to participate in all aspects of economic and public life.

858. On Women in Politics, one stakeholder felt that participation in electoral politics remains largely closed to women, particularly women from disadvantaged or minority backgrounds. The stakeholder acknowledged that the under representation of women in

politics is partially being addressed by moves towards a 30% quota system. However, the stakeholder felt that the legislation is not ambitious enough and is too slow moving.

859. Concern was also raised at the few proactive measures completed to achieve balanced representation between men and women on State and Corporate Boards. The stakeholder noted that that Government had made a commitment to achieving 40% female representation across State Boards but that this target had not been met. The stakeholder felt that the Government should initiate family friendly reform of parliament, introduce measures to ensure maximum participation of women from diverse backgrounds in political life and pass legislation which requires a rebalancing of all State Boards to comply with the 40% minimum target.

860. With regard to the impact of the economic recession, one stakeholder felt that the Report should have made more detailed reference to the impact of the economic downturn on women's lives in Ireland, particularly those women who experience multiple forms of discrimination.

861. One stakeholder expressed concern over the disproportionate impact of budgetary cuts on the capacity of women's organisations and recommended that the Government ring-fence funding to restore an adequate level of service provision and to support effective advocacy to women's groups at local, regional and national level. Another stakeholder noted with concern that Government funding to the National Women's Council of Ireland had been cut by the 2012 budget. The stakeholder felt that the State has taken a decision not to fund advocacy work. The stakeholder recommended that the Government continue to fund advocacy organisations and recognise the contribution which of civil society makes towards accountability and democratic participation.

862. On the issue of discrimination against women, one stakeholder was concerned that under Article 3, the Report did not adequately address the particular challenges faced by women from a diversity of backgrounds, including those contained under Irish equality legislation. The stakeholder felt that the current understanding and analysis of inequality does not give due weight to the depth of discrimination against or the forms of multiple discrimination against particular groups of women.

863. On the issue of violence against women, one stakeholder felt that funding for existing specialist services must at a minimum be protected from further cuts and should be increased. The stakeholder also felt that in order to ensure access to safe, emergency accommodation for women experiencing domestic violence a target of at least 1 refuge place per 10,000 of population should be agreed. The stakeholder also recommended that Ireland ratify the relevant international Convention on the issue.

864. A stakeholder welcomed the commitment of the Government to hold a Constitutional Convention which will examine article 41.2 of the Irish Constitution (referred to in para. 75 above). The stakeholder recommended the removal from the Constitution of Article 41.2 and the inclusion of gender-sensitive language. The stakeholder also welcomed the explicit link made by the Government between removing article 41.2 and maximising women's participation in public life. The stakeholder also supported the Government's decision to examine electoral and parliamentary reform and noted the importance of ensuring women's maximum participation in these institutions.

865. The stakeholder expressed concern at the format and process of the Constitutional Convention, adding that the Constitutional Convention should be fully participatory and democratic, and that it should be empowered to agree of its own agenda and to instigate activities leading to Constitutional reform, all of which clearly would be subject to the approval of citizens in referenda.

866. Referring specifically to the Section on Violence against Women (paras. 99–103 above), and referring to a 'mainstream' approach in relation to Travellers, the stakeholder noted that the National Strategy on Domestic, Sexual and Gender-based Violence 2010-

2014 is insufficiently focussed on the specific needs of Traveller women. The stakeholder felt that, rather than adopting a 'one size fits all' approach, the Government should give systematic consideration to the needs of minority groups and how these are to be included in national strategies.

867. In referring specifically to the Section on the National Women's Council of Ireland (paras. 139–140 above), it was noted that the 35% cut to the budget of the National Women's Council of Ireland budget has weakened efforts to address gender inequality, particularly for women from minority ethnic groups who experience multiple forms of discrimination.

868. A stakeholder welcomed the inclusion of the Section on sexual and reproductive health (paras. 96–98 above), adding that sexual and reproductive health rights are indispensable to gender equality. The stakeholder noted that this section should include recent policy reform in this area, namely, the availability since 2010 of over-the-counter emergency contraception without need for a prescription. The stakeholder felt that this policy change has made a major contribution to women's reproductive health rights.

869. The stakeholder noted concern over the high cost of contraception and the lack of a clear legislative framework in relation to young people's access to contraception. The stakeholder felt that the Report should include information on the Government's strategy to address certainty in the law. The stakeholder also felt that the Report should include information on the development of a National Sexual Health Strategy as well as on sexuality education and its positive impact on gender equality and to the realisation of sexual and reproductive health and rights. The stakeholder was of the opinion that sexuality education should also be addressed in the sections of the report dealing with education, such as prisons, young people in care and the rights of minorities.

870. One stakeholder asked that Ireland's intentions regarding signature and ratification of the Council of Europe Convention on Violence against Women and Domestic Violence be outlined in the Section on Domestic and Gender-based Violence (paras. 142–189 above). The stakeholder expressed dissatisfaction at the fact that the situation of Traveller women was not discussed in this section.

Article 6 - The right to life

871. On the issue of abortion, one stakeholder recommended that the Report give further particulars regarding the work of the Expert Group, including on whether the Group will advise on the lawfulness of terminations in case of fatal foetal abnormalities where the life of the mother is not at risk.

872. Another stakeholder felt that the Report did not adequately reflect the concern raised by a number of Human Rights bodies, including the Committee against Torture, the Committee on the Elimination of Discrimination against Women, the European Court of Human Rights and the Council of Europe Commissioner for Human Rights on Ireland's restrictive regulation of abortion. The stakeholder also recommended that the Offences Against the Persons Act 1861 be immediately repealed, that legislation be enacted to give effect to the Supreme Court ruling in the *X* case to clarify the circumstances in which abortion is lawful, to enact measures to bring Ireland's laws and policies on abortion in line with the ICCPR and to address the violation of the rights of *C* in *A, B, C v Ireland*.

873. Referring specifically to the Section on childbirth related deaths (paras. 208–212 above), one stakeholder was of the opinion that the Report should give further information on the collection of statistics on maternal death and on the Confidential Enquiry into Maternal and Child Health (CEMACH) and to comment on its impact. Another stakeholder also expressed concern over the lack of clarity in this Section.

874. Referring specifically to the Section on measures to prevent crises pregnancies (paras. 213–222 above), one stakeholder welcomed the inclusion of this paragraph but

noted that under the information on *A, B, C v Ireland*, the Report did not refer to the enhanced supervision to which the execution of the judgment was subject. It also did not mention the decision that was issued by the Committee of Ministers of the Council of Europe in September 2011 pursuant to the enhanced supervision process. The stakeholder noted that these decisions underscored the need to enact substantive measures to implement the European Court of Human Rights judgment and asked that the Report include information on the interim measures which have been put in place until the judgment is executed.

875. The stakeholder also felt that the Section on measures to prevent crises pregnancies did not adequately deal with the 2008 Concluding Observations of the Human Rights Committee in relation to a number of key aspects of the abortion issue that were raised by the European Court of Human Rights, the Committee against Torture and during Ireland's UPR in 2011. The stakeholder expressed concern that there was no reference was made to unsafe abortion in the Report

876. Another stakeholder felt that the Report should reflect Ireland's good record of care in protecting the lives of women during pregnancy while also affording legal protection to the unborn.

Article 7 - The right to freedom from torture or cruel, inhuman or degrading treatment or punishment

877. On the issue of deportation, a number of stakeholders raised concern over the way in which deportations are carried out. Concern was raised that this may amount to inhuman or degrading treatment or punishment. A particular criticism was made of the practice of collecting women, children and men for deportation in the early hours of the morning without notice.

878. With regard to the asylum process, a number of stakeholders felt that in view of the State's *non-refoulement* obligations under the ICCPR, the Report paid insufficient attention to assessing the effectiveness of the asylum/protection determination system, what gaps or flaws exist and how these will be corrected. In this regard, one stakeholder noted a large number of High Court challenges to the decisions of the Refugee Appeal Tribunal, with significant backlogs and delays for applicants waiting to have their protection needs assessed. The stakeholder noted that, as a consequence, many people remain in the 'direct provision' system for years, with overcrowding and lack of privacy in many centres, especially for families and children.

879. With regard to the issue of survivors of the Magdalene Laundries, a number of stakeholders noted with concern the failure to deal with this issue in the Report. Stakeholders felt that the Report should include a reference to the State's commitment to ensure access to justice for victims of the Magdalene system. Stakeholders noted that the issue had been dealt with during Ireland's UPR and had been noted by the Committee against Torture in 2011. The stakeholders recommended that the Government comply with the recommendations of the Committee against Torture and of the Irish Human Rights Commission to institute a statutory inquiry and compensation scheme for victims of the Magdalene Laundries abuse. One stakeholder also felt that the State should provide full information to the UN Human Rights Committee of when the independent inquiry would commence its work and when the State will apologise to survivors of the Magdalene system. Such moves would enable restorative justice for survivors. In this regard, one stakeholder expressed the view that the State was in violation of Article 2 of the Covenant due to its failure to provide an effective remedy and ensure a prompt and impartial investigation.

880. With regard to the issue of corporal punishment, one stakeholder recommended that the State should consider providing detail on any plans it might have to introduce legislation to remove the common law defence of 'reasonable chastisement' within the

family and in care settings, and in parallel any initiatives to strengthen positive parenting support systems.

881. Referring specifically to the Section on Extraordinary Rendition (paras. 225–239 above), a number of stakeholders expressed disappointment at the State’s response to the Human Rights Committee’s concluding observation. In particular, stakeholders noted that the State’s response appeared to be based on what they refer to as a narrow interpretation of the use of an airport for the purpose of extraordinary rendition, which extends only to the use of an airport by an aircraft which is carrying a victim of rendition at that time. The stakeholders expressed concern at the possibility that the Government considers that an aircraft refuelling during the course of a rendition circuit did not amount to the use of airport for the purpose of rendition if no prisoner is present in the aircraft at that time. In this context, one stakeholder queried the statement in the Report that there is no evidence that any Irish airport has ever been used for the purpose of extraordinary rendition, and called for this statement to be amended.

882. A number of stakeholders expressed concern that despite the recommendation of the Human Rights Committee in 2008 to establish an inspection system for suspicious flights, no such system has been established by the State. One stakeholder called for a review of Irish legislation governing the search and inspection of suspected rendition flights to ensure that civil authorities have the necessary powers in this regard. As well as expressing dissatisfaction with investigations carried out to date, one stakeholder expressed concern over the fact that only seven investigations are listed and called for information on how each complaint was investigated.

883. Referring to the issue of relying on official assurances, one stakeholder outlined that the reliance placed on these diplomatic assurances is not sufficient to comply with Ireland’s international human rights obligations.

884. One stakeholder asked that the Report note that the Cabinet Committee on Aspects of International Human Rights only met three times and did not produce any report or recommendations.

885. Referring specifically to the Section on the Garda Síochána Ombudsman Commission (paras. 241–250 above), one stakeholder felt that the description of the Garda Síochána Ombudsman Commission’s role and powers should clarify that GSOC may only conduct a wider examination of the practices, policies and procedures of An Garda Síochána under sections 67(2)(F) and 106 of the Garda Síochána Act 2005 if requested to do so by the Minister. The Minister may make a request following a recommendation by GSOC that the practice, policy or procedure be examined, but is under no obligation to do so. Another stakeholder expressed concern that despite the Concluding Observation of the Human Rights Committee in 2008 which requested more detailed information on the types of complaints filed with the GCOC, the Report contains little detail on the subject. The stakeholder also expressed concern that the top level statistics noted in the Report referred only to three out of the four types of allegations that GSOC itself defined as ‘most prevalent’, omitting the fourth, namely, ‘ non-fatal offences’.

Article 8 - The right to freedom from slavery

886. On the issue of anti-human trafficking, a number of stakeholders criticised the requirement under the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking, that an individual must be formally identified as a victim of trafficking by a member of An Garda Síochána not below the rank of Superintendent. It was further alleged that individuals who have lodged an application for asylum are excluded from the scope of the Administrative Arrangements and do not benefit from the recovery and reflection period or temporary residence permission.

887. Referring specifically to the Sections on Anti-Human Trafficking (paras. 104–105 above) and Human Trafficking (paras. 258–296 above), one stakeholder highlighted that the rights afforded to asylum seeking victims of trafficking versus other suspected victims of trafficking are not the same. Concern was also raised regarding the exclusion of protection of EU/EEA nationals under current trafficking legislation.

888. Referring specifically to the Sections on the Legal Aid Board (paras. 271–273 above) and measures to protect victims of trafficking (paras. 287–288 above), one stakeholder raised concern over the requirement that a potential victim of trafficking must present herself/himself to An Garda Síochána and provide details of their identity and situation before being eligible for legal assistance. Criticism was also raised regarding the current avenues for obtaining compensation or financial redress for victims of trafficking.

889. One stakeholder recommended that the State should introduce legislation to criminalise the purchase of sex, to criminalise forced labour by amending the Criminal Law (Human Trafficking) Act 2008 to include a provision on forced labour and servitude as a separate offence from trafficking, and should immediately ratify the International Labour Organization Convention concerning Decent Work for Domestic Workers.

890. In relation to child trafficking, one stakeholder recommended that, in line with the best interests of the child, specific provisions relating to the protection of suspected trafficked children and the specific entitlements of those who are granted temporary residency be added to Irish legislation. One stakeholder recommends that the State should consider providing details on its position in relation to ratifying the Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography. In addition to the detailed information provided in the area of human trafficking, the stakeholder recommended that the State should also elaborate on any provision to establish protocols between the Health Service Executive and an Garda Síochána in relation to identification, accommodation, care and protection of victims or suspected victims of child trafficking.

Article 9 - The right to liberty and security of the person

891. Referring specifically to the Section on detention in psychiatric hospitals (paras. 341–347 above), a number of stakeholders expressed the view that there is inadequate protection for voluntary but incapacitated patients in approved centres, and that the Report should reflect this. The stakeholders expressed concern about the lack of legislative protection for users of in-patient mental health services who lack capacity. The stakeholders recommended that either the capacity or mental health legislation provide that people who lack capacity when they are admitted to an approved centre for mental health treatment or who become incapacitated following admission to an approved centre will receive the protections and review mechanism presently afforded to ‘involuntary’ patients under the Mental Health Act, 2001. It is further recommended that the definition of voluntary patient under the Mental Health Act, 2001 should be amended to refer solely to a person with the capacity to consent to admission and treatment.

892. Another stakeholder welcomed Government’s allocation of €35 million to mental health services in the 2012 budget. Referring specifically to the Section on the Mental Health Act 2001 (paras. 341–345 above), the stakeholder noted that the Government had committed to a human rights-based review of the Mental Health Act, 2011. The Stakeholder felt that in the absence of the review, it was not appropriate that the Report refer to the Act as “a modern legal framework for the admission and treatment of persons with mental disorders”.

893. Referring specifically to the Section on Complaints Procedures (paras. 346–347 above), a stakeholder commented on the need to improve the complaints’ procedures for people involuntarily detained in approved centres. Stakeholders outlined that legislation should provide a complaints’ mechanism independent of the service provider. The

stakeholder further commented that the Mental Health Commission should be given a direct role in receiving, investigating and resolving complaints about mental health service delivery. It was expressed that the legislation should also provide for advocacy support in making a complaint and for a proxy decision-maker to be empowered to make a complaint on behalf of an incapacitated person.

894. The stakeholder was of the opinion that there are many challenges within Irish mental health services such as the slow implementation of ‘A Vision for Change’, the national strategy for mental health and the need to close antiquated treatment facilities, issues which were likely to arise in the final review.

895. With regard to the right to access a solicitor and the right to silence, one stakeholder expressed concern at the State’s response in the Section on the right of detained person to access legal advice (paras. 318–325 above), to the Human Rights Committee’s Concluding Observation made in 2008. The stakeholder noted reference to the Criminal Justice Act, 2011 and to the assertion that amendments made thereunder were prompted by recent jurisprudence of the European Court of Human Rights. The stakeholder felt that the Report failed to explain why the State has not fully implemented that jurisprudence.

896. The stakeholder also expressed concern at the fact that access to counsel during interrogation at Garda stations is not prescribed by law. The stakeholder also noted that the Government established a Standing Committee in 2010 to advise on Garda interviewing of suspects and expressed concern that no clear timetable had been published with regards to the Committee’s work. In this regard the stakeholder noted that Ireland had not officially opted into the EU Proposal for a Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest.

897. On the detention of asylum seekers, one stakeholder criticised provisions of the Refugee Act which allow for the detention of asylum seekers, outlining that these do not take into account the special circumstances of persons fleeing persecution.

Article 10 - The rights of prisoners

898. Referring specifically to the Section on mentally ill patients (para. 418 above), one stakeholder opined that there is a gap in the provision of appropriate treatment to those suffering from what is often referred to as a personality disorder and that the Report should reflect this.

899. Referring specifically to the Section on diversion (paras. 420–423 above), one stakeholder outlined that there are gaps in the existing court diversion system, and that the Report should reflect this. The stakeholder outlined a need for legislation to enable court diversion of individuals who would benefit from mental health treatment to receive that treatment in the community instead of having a custodial sentence.

900. Referring specifically to the Section on Children Detention Schools (paras. 510–527 above), one stakeholder raised concern over the continued practice of detaining children in St. Patrick’s Institution, and re-iterated previous recommendations that the State extend the remit of the Ombudsman for Children to allow her to hear complaints from children who are in prison or detained elsewhere.

Article 11 - The right not to be imprisoned for failure to fulfil a contractual obligation

901. On the issue of non-payment of fines, one stakeholder highlighted that the Fines Act 2010 has not yet been completely commenced leading to the continued imprisonment of persons for non-payment of fines in 2010. The stakeholder recommended that appropriate mechanisms should be put in place to ensure that a proper assessment of a person’s financial circumstances is carried out and that no-one is imprisoned for failure to pay a civil debt or fine that he or she cannot afford.

Article 12 - The right to freedom of movement

902. On the issue of asylum seekers, one stakeholder commented that asylum seekers are deprived of the right to liberty of movement and the freedom to choose their place of residence due to the lengthy delays in the asylum process and the lack of a right to work for asylum seekers. Criticism was also raised in relation to the requirement on persons granted leave to remain to apply for a passport first in their country of origin.

903. One stakeholder, in the specific context of the right to freedom of movement, noted the need for the State to recognise Travellers as an ethnic minority group in the State. The stakeholder felt that the failure to do so would mean that Traveller organisations in Ireland would have to continue to seek the right to culturally appropriate accommodation for the Traveller community. The stakeholder noted that Travellers face forced evictions. The Stakeholder recommended that the State undertake a gender impact assessment of the implementation of the Housing (Miscellaneous Provisions) Act, 2002.

Article 13 - The rights of aliens

904. A number of stakeholders criticised the uncertainty as to whether proposed amendments to the Immigration, Residence and Protection Bill will address the concerns raised by the Human Rights Committee in their Concluding Observations on Ireland's Third Periodic Report. Stakeholders called for the drafting of any legislation in this area to be fully compliant with Article 13 of the ICCPR.

905. One stakeholder recommended that the Immigration, Residence and Protection Bill should be amended to deal with immigration and refugee issues separately. It was recommended that a single procedure to determine asylum and protection claims should be introduced as a matter of urgency.

906. One stakeholder criticised Ireland's low rate of granting of refugee or subsidiary protection status. A stakeholder commented on the lack of early legal advice during the initial application process for asylum seekers, as well as the absence of any mention of such in the Immigration, Residence and Protection Bill.

907. A number of stakeholders called for the introduction of a single and independent immigration and protection appeals process which would realise the right to an effective remedy.

908. A stakeholder highlighted that there are currently 5,500 people in the asylum system who will not be affected by the proposed new procedures, and that their situation must be addressed alongside reforming the protection process for future applicants.

909. A number of stakeholders expressed concern over direct provision services in Ireland noting that although the accommodation of persons in direct provision centres was intended to be short term with a maximum of 6 months, many people had been housed in such centres for over 4 years. One stakeholder noted such centres are unsuitable for women and children and expressed concern that victims of trafficking are accommodated in direct provision centres. This constitutes a breach of the right to appropriate accommodation, security and safety under the Palermo Protocol and the European Convention against Trafficking.

910. A number of stakeholders recommended that the State should carry out an audit of its policy of direct provision and dispersal to ensure it meets human rights standards in Irish law and in the international human rights treaties which the State has ratified. Stakeholders concluded that Ireland should respect, protect and promote the fundamental human rights of all people seeking its protection regardless of their immigration status.

Article 14 - The right to fair and equal treatment before the law

911. With regard to legal aid, one stakeholder referred to the pressure faced by the Legal Aid Board as a result of increased demand, a reduced budget and the moratorium on public sector recruitment. The stakeholder recommended that the State take steps to ensure that all those in need of, and entitled to, civil legal aid are able to access those services in a timely fashion. The stakeholder highlighted the exclusions in legal aid in relation to housing rights, representation before tribunals including the Social Welfare Appeals Office, the Equality Tribunal and the Employment Appeals Tribunal and defamation, and noted that no-one should be excluded from accessing legal aid simply because of the area of law of his/her legal issue.

912. One stakeholder queried the independence of the Refugee Appeals Tribunal and the Social Welfare Appeals Office.

913. With regard to the Special Criminal Court, one stakeholder felt that the Report should provide information on threats from terrorists or organised criminal activities which justify the continuing existence of the Special Criminal Court. The stakeholder also felt that the State should provide information as to why the ordinary courts are deemed insufficient to administer justice in cases of terrorist or organised criminal activities. The same stakeholder was also of the opinion that the Report should provide the criteria which assist the Government's consideration of whether or not certain circumstances exist which warrant the continued existence of the Special Criminal Court, and information on how regularly its existence is evaluated. Lastly, the stakeholder felt that the Report should provide the 'objective and reasonable grounds' that the Director of Public Prosecutions (DPP) uses to determine whether a case is eligible to be heard before the Special Criminal Court, and clarify why the DPP has not published these grounds.

914. With regard to persons with disabilities, one stakeholder expressed concern over the lack of legal capacity legislation in Ireland, meaning that people with intellectual disabilities and people with mental health difficulties can be denied their right to take part in legal proceedings and to testify in court.

915. The stakeholder expressed concern regarding the Wards of Courts system established under the Lunacy Regulations Act, 1871 which is the only formal mechanism for managing the affairs of people who lack capacity in Ireland. The stakeholder noted that under the current system, there had been a number of cases of people with intellectual disabilities or mental health difficulties who were deemed incapable of giving evidence and/or taking an oath, and who could not therefore exercise their legal rights.

916. The stakeholder was also concerned that people with hearing impairments had difficulties in participating in all elements of legal proceedings in the courts due to the inadequate provision of Irish Sign Language interpreters.

917. With regard to Travellers, one stakeholder recommended that the Government take steps to eliminate racial discrimination in the administration and functioning of the criminal justice system.

918. With regard to reform of the legal system, a number of stakeholders recommended that the State include in the Report any plans it has to establish and adequately resource an independent, national Guardian ad Litem service and bring into force the necessary legislative provisions to ensure that all children are heard in their own right in court and administrative hearings that directly affect them.

Article 16 - The right to be recognised as a person before the law

919. A number of stakeholders raised concern that the Report states that there have been no updates since the submission of Ireland's Third Periodic Report. Stakeholders felt that this was inaccurate and that a number of issues should have been addressed.

920. One stakeholder felt that the Report should have included information on the introduction of mental capacity legislation. The stakeholder noted that current legislation dates back to the Lunacy Regulations Act 1871 which includes provision for the Wards of Courts system.

921. With regard to transgender persons, one stakeholder raised concern that the Government has still not introduced legislation to provide for legal recognition of transgender persons following the declaration by the Irish High Court of incompatibility with the European Convention on Human Rights as well as the State's withdrawal of appeal against that declaration in 2010. The stakeholder called for the immediate enactment of gender recognition legislation.

922. One stakeholder noted the appointment by the Government of the Gender Recognition Advisory Group and the proposed Gender Recognition legislation. However, the stakeholder expressed disappointment with the recommendation that a married person must obtain a divorce in order to secure recognition in their transgendered status. The stakeholder expressed the view that transgender persons should be able to obtain a birth certificate in their acquired gender so that they can fully exercise their fundamental rights, including their right to enter a marriage or civil partnership.

Article 17 - The right to privacy

923. On the issue of Mental Capacity legislation, one stakeholder felt that the lack of such legislation impacted upon many areas of people's lives including the right to marry, to found a family and the right to enter into a sexual relationship. In this regard, the stakeholder noted that under the Criminal Law (Sexual Offences) Act 1993, it is an offence for a person to have sexual intercourse with a person who is mentally impaired (other than a person to whom s/he is married or to whom he believes with reasonable cause that s/he is married).

924. The stakeholder felt that the Report should have reflected the fact that the issues which prevail in relation to the right to marry or participate in a sexual relationship were excluded from the first draft of the scheme for mental capacity legislation.

Article 18 - The right to freedom of thought, conscience and religion

925. One stakeholder criticised the negative impact of Direct Provision on the free practice of religion, noting in particular the regular meal times and the failure to accommodate for certain religious dietary requirements. Further, the denominational patronage of primary schools was criticised given the mainly rural location of accommodation centres.

926. One stakeholder called for the Constitutional Convention to amend Article 44 on religion in order to give equal protection without discrimination to religious and non-religious persons, and Article 40.1 on equality before the law with the principle of non-discrimination. This stakeholder further calls for the removal of any religious references under the Constitution.

927. On the issue of freedom of religion in education, a number of stakeholders felt that the Report did not adequately address the concern expressed by the Human Rights Committee in 2008 regarding the continued use of a religious integrated curriculum. One stakeholder felt the Report should outline in more detail the review process currently underway in the State, regarding school admissions systems. The stakeholder also felt that the Report should address whether the State intends to review the current integrated curriculum, and if so, provide the proposed timeframe for review and implementation.

928. A number of stakeholders recommended the removal of the requirement in the Constitution for the President, Judges and Council of State to swear a religious oath.

929. A number of stakeholders criticised the failure of the Report to address the issues of an integrated curriculum in schools, recommending that all children have equal access to a basic moral, intellectual and social education in schools and not one just permeated by religious values.

930. A number of stakeholders referred to the failure of the State to protect the human rights of parents seeking secular education for their children and called for an amendment to equality legislation in order to ensure children have guaranteed access to educational establishments and hospitals without discrimination of any kind.

931. The issue of patronage of schools was raised, with a recommendation that the State regain control of primary schools and ensure that all primary schools are open to children of all religions, and none, on an equal basis.

932. A stakeholder called for equal regard to be given at all times in the formulation and evaluation of State policy to the positive dimensions of the right to religious freedom, in particular the freedom to manifest one's beliefs in "worship, observance, practice and teaching", and to the important contribution made by religious believers and communities to the common good and to a free and democratic society.

933. Referring specifically to the Section on Education (paras. 612–647 above), a number of stakeholders welcomed the statement around religious freedom in schools. A stakeholder recommended that the State ensure that in the process of creating more educational diversity, denominational education is not undermined.

934. One stakeholder recommended that any future legislation regulating admissions, employment and curriculum should promote and protect a school's freedom to foster and maintain its own distinctive ethos, including one that may diverge at points from a society's dominant "ideology".

935. Another stakeholder called for the existing provision in employment law for the protection of school ethos to be retained in the interests of religious freedom and the associational and expressive freedoms of parents.

936. A stakeholder also raised concern over the alleged failure of the State to properly protect freedom of conscience under domestic legislation referring in particular to professional Codes of Conduct of statutory bodies.

Article 19 - The right to freedom of expression

937. A number of stakeholders recommended the amendment of the Constitution and the Defamation Act 2009 to remove the offence of blasphemy.

Article 20 - The prohibition of propaganda for war and incitement to hatred

938. One stakeholder noted with regret the demotion to the now Office for Integration. Concern was raised regarding alleged rising levels of racism in Ireland, specifically in relation to the isolation and stigmatisation of asylum seekers in accommodation centres.

939. A number of stakeholders expressed concern over the current incitement to hatred legislation, outlining that emerging issues, including racism on the internet, are not covered by this legislation. The increasing occurrence of incident to hatred of Travellers on the Internet, in particular on social media websites, was noted. In this regard, one stakeholder felt that An Garda Síochána are often unaware of what legislation exists to deal with racist crimes and how to enforce it. Another stakeholder called for a combined approach in the legal framework which recognises racially aggravated offences as well as provides for penalty enhancement provisions.

940. With regard to racist crime, one stakeholder felt that there were certain weaknesses in Incitement to Hatred Act 1989, including that the legislation related to ‘incitement’ and not to racist crime in itself. The difficulty to prove intent was also noted.

Article 23 - The rights of the family

941. One stakeholder raised concern over the effects of recession on families, in particular in the negative impact which reduced social welfare payments is having on standards of living.

942. On the issue of the rights of same-sex couples, one stakeholder welcomed the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 but expressed concern that the Act fails to provide recognition for the families of same-sex couples, including their children.

943. As noted above with regard to gender recognition, a number of stakeholders welcomed the proposed legislation referred to in paragraphs 698–704 above, but expressed concern about the exclusion of people already in a marriage from the proposed gender recognition framework unless they divorce.

944. As noted above, on the issue of Mental Capacity legislation, one stakeholder felt that the Report should have reflected the fact that under existing legislation, a person with an intellectual disability may encounter difficulties if they wish to marry.

945. As noted above, on the issue of adoption, one stakeholder felt that the closed adoption system in Ireland is outdated and secret, thereby denying adopted people and natural parents the right to a family.

Article 24 - The rights of the child

946. One stakeholder called for adequate resources for the Child and Family Support Agency, noting it is part of the necessary re-organising of child welfare and protection services in Ireland.

947. One stakeholder called for the urgent implementation of a number of key areas of the Commission to Inquire into Child Abuse.

948. One stakeholder called for the establishment of a statutory entitlement to aftercare services for all those leaving the care system, with a suggestion that this could be done through the forthcoming Child and Family Support Agency Bill.

949. While welcoming the 2011 establishment of an Assessment, Consultation and Therapy Service (ACTS) to provide on-site specialist therapeutic care to children in special care, high support and detention, one stakeholder sought a review of how services are operating and the outcomes for children receiving services.

950. One stakeholder raised concern at the accommodation of families in the Direct Provision system, particularly where more than one family shares the accommodation, and asked whether the system adequately meets the protection, medical, nutritional, developmental and educational needs of children. Particular concern was placed on the denial of Child Benefit payments to those in the direct provision system.

951. On the issues of child mental health, one stakeholder raised the issue of the Mental Health Commission’s pledge to end the practice of placing children with mental health difficulties in adult psychiatric wards. It was recommended that the State should consider including in the Report a revised timeline for fulfilling this pledge, with the original deadline of December 2011 now passed. It was further recommended that the State could also consider including the means by which children in care and detention that experience mental health difficulties are assessed and receive necessary services and supports.

952. A number of stakeholders expressed concern that the Report did not provide information on the proposed constitutional referendum on children's rights.

953. On the issue of adoption, one stakeholder expressed concern that there was no provision in adoption legislation to ensure that children who were adopted, either domestically or overseas, had a corresponding entry in the Register of Births.

954. A number of stakeholders expressed dissatisfaction with the system of requiring children born in Direct Provision to apply for asylum in order for them to remain in Direct Provision. Concern was also raised regarding the practice of transferring families between centres, and the break this causes in ties children may have with local schools and communities. Criticism was raised over the practice of transferring a separated child to Direct Provision once they turn 18 and no longer fall within the remit of the Health Services Executive, in light of the interruption this causes to their schooling and private life. While acknowledgement was made of the decrease in the number of children who have gone missing due to the placement of children in foster care and in residential care, concern was raised in relation to the number of separated children who are still missing from the care of the HSE.

955. Concern was raised over issues of quality, accessibility and affordability within the Early Childhood Care and Education sector, particularly regarding the underdevelopment of children aged 0-3 years. Dissatisfaction was also expressed with access to education, with stakeholders outlining concerns over inadequacies in the education system and limited frontline support services.

956. One stakeholder recommended that the "Child Protection and Welfare Practice Handbook", which is a professional guide for practitioners that accompanies the "Children First: National Guidance for the Protection and Welfare of Children" should be mentioned in the Report.

Article 25 - The right to take part in public affairs

957. As noted above, a number of stakeholders recommended that the State should take steps to enable deaf persons to serve on juries with appropriate assistance and safeguards in order to ensure deaf persons are facilitated to take part in this aspect of public affairs and to have access on an equal basis to public service. Another stakeholder raised concern regarding the issue that as recently as 2008, the Civil Law (Miscellaneous Provisions) Act specifically defined people who have "insufficient capacity to read, deafness or other permanent infirmity as unfit to serve on a jury".

958. One stakeholder welcomed the move to address the gender imbalance in political structures, by the introduction of legislation to maximise incentives for political parties to select women candidates. The stakeholder expressed concern that the legislation did not include local elections and that the target was too low. The stakeholder also expressed concern at the low level of participation of women on State Boards and the exclusion of women from the boards of private companies.

959. With regard to persons with disabilities, one stakeholder felt that persons with disabilities are not represented adequately in Irish and European democratic institutions and in public affairs. In terms of physical accessibility, the stakeholder noted that while improvements had been made on ensuring physical accessibility of public buildings there were still occasions when polling stations were not fully accessible. It was noted that while it was possible to request a change of one's polling station, the process was cumbersome.

960. Concern was also expressed over the lack of legislative clarity regarding the capacity to vote of a person with an intellectual disability. It was noted that while legislation states that a person is eligible to be included on the Register of Electors if they are 18 years of age, the Presiding Officer can at his/her discretion refuse a person with an intellectual disability access to vote if he/she believes that the person does not have the

capacity to vote. The stakeholder expressed concern that no guidelines on this matter existed and that the current draft of mental capacity legislation did not include the issue of participation in voting.

961. One stakeholder noted the low participation of ethnic minorities, including Travellers, in public life. It was further noted that problems accessing legal citizenship impact on any right of migrants to participate in public life including the right to vote.

Article 26 – The right to equality before the law

962. One stakeholder recommended that limitations in the equality legislation need to be addressed, including for example, the exclusion of certain Government functions including “controlling duties”; other exemptions including in the area of education and on religious ethos of certain bodies/institutions; and penalties.

Article 27 - The rights of minorities

963. As noted above, on the issue of direct provision and the rights of women seeking asylum in Ireland, one stakeholder felt that an audit should be carried out of Government policy of direct provision and dispersal to ensure it meets international human rights standards, that domestic gender guidelines should be introduced with the asylum and reception system and that a separate women’s only accommodation centre be established for women seeking asylum who have experienced gender-based violence. Gender disaggregated data should also be collected and collated by the relevant Government Department, the Refugee Appeals Tribunal and the Refugee Legal Services.

964. A number of stakeholders recommended that the State take immediate steps to recognise Travellers as an ethnic group.

965. With regard to the recognition of Travellers as an ethnic minority, one stakeholder was of the opinion that the Report should provide information on the specific steps being taken to recognise Travellers as an ethnic minority, following Ireland’s statement at its UPR examination on this issue.

966. Another stakeholder felt that Travellers should have been referenced throughout the Report and not contained to Article 27. Concern was also expressed at the fact that Roma communities were not referred to in the Report.

967. One stakeholder also highlighted the concern expressed by the Human Rights Committee in its 2008 Concluding Observations regarding the criminalisation of trespassing on land in the 2002 Housing Act which disproportionately affects Travellers. The stakeholder felt that the description of the accommodation situation for Travellers in the Report did not reflect the reality on the ground.

968. Concern was also raised over the Section on recognition of Travellers as an ethnic minority (paras. 793–802 above) which notes that the Department of the Environment, Community and Local Government is to ensure that an adequate legislative and financial system is in place to assist local authorities in providing accommodation. In this regard, the stakeholder noted that the budget for traveller accommodation has been cut despite the continuing need for appropriate and high quality Traveller specific accommodation.

969. Referring specifically to the Section on the National Traveller Monitoring and Advisory Committee (paras. 803–804 above), one stakeholder welcomed the establishment of the National Traveller Monitoring and Advisory Committee and the inclusion of Travellers on the Committee. However, it was noted that the Committee remains purely an advisory body with no decision-making authority.

970. Referring specifically to the Section on the High Level Group on Travellers (paras. 805–806 above), concern was expressed at the fact that the group does not have any

Traveller participation and the long time periods that elapsed between meetings of this Group.

971. With regard to the Traveller Health Study, it was noted that the Report does not refer to the key findings of that study that relate to the social determinants of health. The need to develop a new National Traveller Health Strategy or action plan with Traveller representative organisations was also highlighted.

972. Referring specifically to the Section on Traveller Education (paras. 810–826 above) and welcoming the inclusion of statistics regarding the number of Traveller children who enrol in school, one stakeholder requested that additional statistics be included showing the number of Traveller children who complete primary, secondary and third level education.

973. One stakeholder raised concern over the cessation of the Traveller pre-school service in favour of integration into mainstream services without providing additional supports to those mainstream services. Further, one stakeholder noted the increased enrolment rates of Traveller children in primary education which are referenced in the Report. The stakeholder felt that the Report should reflect the low level of enrolment by Travellers in post-primary schools.

974. The stakeholder felt that there is no recognition of native Irish speakers in the education system. The Irish curriculum is based on the needs of the student and this does not cater for the particular needs of Irish speaking students. The stakeholder felt that there is a need to distinguish between the needs of the native Irish speaker, other competent Irish speakers and those with English as their first language and to develop an appropriate curriculum to meet these needs.

975. The stakeholder also felt that there was a need to strengthen the rights of those living in Gaeltacht areas to receive services through the Irish language.

976. The stakeholder expressed the view that there are insufficient public servants who can provide services through the Irish language.

977. The stakeholder also noted the Government's decision to close the office of the Irish Language Commissioner as an independent statutory office and was of the opinion that the independence of the office should be retained.

C. General issues raised

978. In addition to the above, the following general issues were also raised:

1. Constitutional Convention

979. A number of stakeholders felt that the Report should provide more detailed information on the Constitutional Convention and reflect the concerns expressed by civil society regarding its likely composition and future role.

2. Reservations

980. On the issue of Ireland's reservations on a number of Covenant articles, one stakeholder welcomed the withdrawal of Ireland's Reservation under Article 19.2 but expressed concern that the Report did not provide a meaningful rationale for the maintenance of reservations under Article 10 (2), Article 14 and Article 20 (1).

3. Distribution of information to the public

981. One stakeholder recommended that the Report should provide further detail on any public awareness initiatives in which it has engaged over the past four years on the

dissemination of information on the ICCPR and the previous recommendations of the Human Rights Committee on Ireland.

D. Civil society members who participated in the consultation process

982. Organisations

- Amnesty International Ireland
- Atheist Ireland
- Autism Rights and Equality Alliance
- Barnardos
- CBM Ireland
- Children's Rights Alliance
- Conradh na Gaeilge
- Council for the Education of the Irish Episcopal Conference
- Council for the Status of the Family
- European Anti Poverty Network, Ireland
- European Network Against Racism, Ireland
- Free Legal Advice Centres
- Immigrant Council of Ireland
- Inclusion Ireland
- Iona Institute
- Irish Centre for Human Rights, National University of Ireland, Galway
- Irish Council for Civil Liberties
- Irish Family Planning Association
- Irish Heart Foundation
- Irish Human Rights Commission
- Irish Penal Reform Trust
- Irish Refugee Council
- Justice for Magdalenes
- Mental Health Reform
- Migrant Rights Centre Ireland
- NASC (Irish Immigrant Support Centre)
- National Women's Council of Ireland
- Older Women's Network
- Pavee Point
- Pro Life Campaign
- Rehab
- Shannonwatch

- Trinity College Dublin
- UNICEF
- University College Dublin
- Women's Human Rights Alliance

983. Individuals

- Monica Reilly
- John Suttle

E. Amendments to report

984. The following sections of the Report were added and/or updated in light of the comments made during the civil society consultation process:

- Chapter III, article 2, section 6
- Chapter III, article 3, section 3 (a)
- Chapter III, article 3, section 3 (j)
- Chapter III, article 7, section 4 (a)
- Chapter III, article 7, section 5
- Chapter III, article 8, section 1 (a)
- Chapter III, article 8, section 1 (d)
- Chapter III, article 8, section 1 (f)
- Chapter III, article 8, section 3
- Chapter III, article 9, section 3
- Chapter III, article 13
- Chapter III, article 16, section 1
- Chapter III, article 17
- Chapter III, article 20, section 1
- Chapter III, article 23, section 1
- Chapter III, article 24, section 8
- Chapter III, article 24, section 9

Annex

Structure of the Departments of the Irish Government 2007-2011

2007

Department of the Taoiseach
Department of Finance
Department of Transport
Department of Foreign Affairs
Department of Health and Children
Department of Enterprise, Trade and Employment
Department of Justice Equality and Law Reform
Department of Arts, Sport and Tourism
Department of Social and Family Affairs
Department of Community, Rural and Gaeltacht Affairs
Department of Agriculture and Food/ Department of Agriculture, Fisheries and Food (with effect from 20/10/07)
Department of Education and Science
Department of Defence
Department of the Environment, Heritage and Local Government
Department of Communications, Marine and Natural Resources/Department of Communications, Energy and Natural Resources (with effect from 20/10/07)

2010

Department of the Taoiseach
Department of Finance
Department of Transport
Department of Foreign Affairs
Department of Health and Children
Department of Enterprise, Trade and Innovation
Department of Justice and Law Reform
Department of Tourism, Culture and Sport
Department of Community, Equality and Gaeltacht Affairs
Department of Agriculture, Fisheries and Food
Department of Social Protection
Department of Defence

Department of Education and Skills
Department of the Environment, Heritage and Local Government
Department of Communications, Energy and Natural Resources

2011

Department of the Taoiseach
Department of Finance
Department of Foreign Affairs and Trade
Department of Children and Youth Affairs
Department of Health
Department of Jobs, Enterprise and Innovation
Department of Justice and Equality
Department of Arts, Heritage and the Gaeltacht
Department of Transport, Tourism and Sport
Department of Environment, Community and Local Government
Department of Agriculture, Food and the Marine
Department of Social Protection
Department of Defence
Department of Education and Skills
Department of Communications, Energy and Natural Resources
Department of Public Expenditure and Reform
