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on civil and  
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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**Third periodic reports of States parties**

**IRELAND\* \*\***

[23 February 2007]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

\*\* Annexes may be consulted in the files of the Secretariat.

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### Abbreviations

BCI	Broadcasting Commission of Ireland
CAB	Criminal Assets Bureau
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CMH	Central Mental Hospital
CSPE	Civic, Social and Political Education
DAO	Disability Advisory Officer
ECHR	European Convention on Human Rights
EPSEN	Education for Persons with Special Educational Needs Act
EUMC	European Monitoring Centre on Racism and Xenophobia
EU	European Union
FÁS	State Training Authority
FETAC	The Further Education and Training Awards Council
FMS	Family Mediation Service
GAL	Guardian Ad Litem
GCVU	Garda Central Vetting Unit
GNIB	An Garda Síochána and the Garda National Immigration Bureau
HOST	Homeless Offenders Strategy Team
HIQA	Health Information and Quality Authority
HSE	Health Service Executive
IAB	Internet Advisory Board
IBEC	Irish Business and Employers Confederation
ICPO	Irish Commission for Prisoners Overseas
IDC	Interdepartmental Committee
IEP	Individual Education Plan
INTO	Irish National Teachers Organisation
IPS	Irish Prison Service
IRTC	Independent Radio and Television Commission
ISM	Integrated Sentence Management

IYJS	Irish Youth Justice Service
LCA	Leaving Certificate Applied
LCVP	Leaving Certificate Vocational Programme
LTACCs	Local Traveller Accommodation Consultative Committee
MEP	Member of the European Parliament
NCCA	National Council for Curriculum and Assessment
NCCRI	National Consultative Committee on Racism and Interculturalism
NDA	National Disability Authority
NDP	National Development Plan 2000-06
NEWB	National Educational Welfare Board
NUI	National University of Ireland
OECD	Organisation for Economic Cooperation and Development
OMC	Office of the Minister for Children
PPF	Programme for Prosperity and Fairness
PwDI	People with Disabilities in Ireland Ltd
RIA	Reception and Integration Agency
RLS	Refugee Legal Service
RTÉ	Radio Teilifís Éireann
SCP	School Completion Programme
SESE	Social, Environmental and Scientific Education
SPHE	Social, Personal and Health Education
SSI	Social Services Inspectorate
SRSB	Special Residential Services Board
SWA	Supplementary Welfare Allowance
TPSP	Teen Parent Support Programmes
THAC	Traveller Health Advisory Committee
UNCRC	United Nations Convention on the Rights of the Child
VEC	Vocational Education Committee
VPT	Vocational Preparation Training
YAP	Youth Advocate Programme
YHS	Youth Homelessness Strategy

## Introduction

1. The Government of Ireland welcomes this opportunity to submit its third report under the International Covenant on Civil and Political Rights (“the Covenant”) 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 second national report in 1998.
2. The information contained in the report supplements that provided in previous reports to the Human Rights Committee (CCPR/C/68/Add.3 and CCPR/C/IRL/98/2) and also that contained in Ireland’s core document (HRI/CORE/1/Add.15/Rev.1).
3. During the preparation of this report, due regard has been paid to the reporting guidelines issued by the Committee (CCPR/C/66/GUI/Rev.2), the General Comments of the Committee and the Concluding Observations of the Committee on Ireland’s second national report (A/55/40, paras. 422-451).
4. In accordance with Section C.8 of the Committee’s reporting guidelines concerning updates on the general legal framework for the protection of human rights, it should be noted that since Ireland’s last report to the Human Rights Committee was submitted, there have been significant developments in the area of human rights. Chief among these are the establishment of a Human Rights Commission and the giving of further effect in Irish law to the European Convention on Human Rights (ECHR).
5. In the context of the Agreement reached in the Multi-Party Negotiations on Northern Ireland in 1998, the Irish and British Governments undertook to take comparable and complementary steps to further strengthen the protection of human rights in their respective jurisdictions. The relevant details are set out in the section of the Agreement entitled “Rights, Safeguards and Equality of Opportunity”. The most important outcomes in this regard are that Human Rights Commissions have been established in the North and South of the island and that the European Convention on Human Rights has been incorporated into domestic law in both jurisdictions.
6. With regard to the latter, the European Convention on Human Rights Act, 2003 (the ECHR Act) gives effect to the Convention in Irish law. Ireland was one of the first States to sign and ratify the Convention in 1950 and 1953 respectively. The Act came into effect on 31 December, 2003. The Act provides for rights under the Convention to be pleaded directly before Irish Courts and tribunals rather than cases having to be taken before the European Court of Human Rights in Strasbourg. It achieves this in two ways. Firstly, Section 3 of the Act places an obligation on every organ of the State (as defined in Section 1 of the Act) to perform its functions in a manner compatible with the State’s obligations under the Convention. Section 3 of the Act provides that damages may be awarded as of right for a breach of this provision in certain circumstances.
7. Secondly, Section 2 of the Act requires that all statutory provisions or rules of law in force before or after the commencement of the Act must be interpreted and applied in a manner which is compatible with the State’s obligations under the Convention. In this regard, Section 4, which is entitled “Interpretation of Convention provisions”, states as follows:

“Judicial Notice shall be taken of the Convention provisions and of -

(a) Any declaration, decision, advisory opinion or judgement of the European Court of Human Rights established under the Convention on any question in respect of which that Court has jurisdiction;

(b) Any decision or opinion of the European Commission of Human Rights so established on any question in respect of which it had jurisdiction;

(c) Any decision of the Committee of Ministers established under the Statute of the Council of Europe on any question in respect of which it has jurisdiction;

and a court shall, when interpreting and applying the Convention provisions, take due account of the principles laid down by those declarations, decisions, advisory opinions, opinions and judgements.”

8. In circumstances where it is not possible to interpret the statute, statutory instrument, rule of common law etc., concerned in a manner which is compatible with the Convention, provision is made in Section 5 of the Act for the Superior Courts to make a Declaration of Incompatibility which will be laid before both Houses of the Oireachtas. Provision is also made in Section 5(4) for a system of ex-gratia compensation from the State in circumstances where the party to the proceedings concerned makes an application in writing to the Attorney General, in respect of an injury, or loss, or damage suffered by him or her as a result of the incompatibility concerned.

9. It is therefore made clear in the ECHR Act, 2003 that every court, in considering or interpreting any section of any act, statutory instrument or rule of common law must do so in a manner which is compatible with the European Convention on Human Rights and Fundamental Freedoms, unless it is impossible to do so having regard to constitutional considerations.

## **I. IMPLEMENTATION OF SPECIFIC ARTICLES OF THE COVENANT**

### **Article 1**

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

### **Article 2**

11. Ireland is already to the fore in its promotion and protection of the principles of equality and freedom from discrimination as a result of legislation enacted in this regard in 1998, with the Employment Equality Act, 1998, and in 2000, with the Equal Status Act, 2000. This legislation prohibits both direct and indirect discrimination in the areas of employment and access to goods and services on nine grounds; gender, marital status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community. There are also in place the necessary institutional structures, in the shape of the Equality Authority and the Equality Tribunal, to ensure effective implementation of the legislation.

12. Further amendments to both these Acts were made in the Equality Act, 2004 which gives effect in domestic law to Ireland's obligations as a member of the European Union to implement

Community initiatives provided for under Council Directives 2000/43/EC and 2000/78/EC, adopted under Article 13 of the EC Treaty, and Council Directive 2002/73/EC adopted under Article 141 of the Treaty. The directives, commonly known as the equality directives, provide for equal treatment on the grounds of gender, racial or ethnic origin, religion or belief, disability, age and sexual orientation.

13. The overall effect of these three directives is to require member states to prohibit direct discrimination, indirect discrimination and harassment on grounds of gender, racial or ethnic origin, religion or belief, disability, age and sexual orientation in regard to employment, self-employment or occupational and vocational training. Sexual harassment and victimisation are also prohibited. The race directive also applies to discrimination in access to and the supply of goods and services. Thanks to the quality, effectiveness and far-sightedness of our existing equality legislation, many of the amendments required by the EU directives were relatively minor and mostly of a technical nature.

14. The main amendments to the Employment Equality Act, 1998 contained in the Act of 2004 were:

- Provision for the extension of the scope of the Act to persons employed in a self-employed capacity;
- Provision for the extension of positive action provisions to all nine grounds covered by the Act;
- Provision for the extension of the age provisions of the Act to persons under the age of 18 but over the minimum school leaving age and over 65. Employers will still be allowed to set minimum recruitment ages of 18 or under and to set retirement ages;
- Provision for the narrowing of the exclusion from the provisions of the Act of 1998 in respect of employment in private households;
- Provision for the requirement on employers to provide reasonable accommodation for persons with disabilities to be, in future, subject to it not imposing a disproportionate burden rather than nominal cost;
- Provision for the transfer of jurisdiction for discriminatory dismissal cases from the Labour Court to the Equality Tribunal.

15. The main amendments to the Equal Status Act, 2000 were:

- Provision for the shifting of the evidential burden of proof from the complainant to the respondent once the complainant has established a prima facie case;
- Allowing claimants and respondents to choose any person, including an organisation, to represent them before the Equality Tribunal;
- Providing a means of redress for drivers under the age of 18 years who have been discriminated against in motor insurance.



16. The Equality Act came into effect in July, 2004 and makes a further important contribution to the eradication of discrimination from both the workplace and society at large.

### **Equality proofing**

17. The Working Group on Equality Proofing established under the Programme for Prosperity and Fairness [PPF] continues to work towards developing a system for the proofing of policies and services in the public sector in order to avoid unanticipated negative impact on any of the groups protected under equality legislation, to ensure policy coherence and best use of resources. The PPF itself is the result of an agreement between the Government and a broad range of civil society groups. It has a number of aims, including sustained economic prosperity, increased standards of living and a fairer and more inclusive Ireland. The primary task of the Working Group is to develop tools so that an efficient and effective proofing process can be applied. The Working Group is building on the experience of gender proofing under the National Development Plan, poverty proofing and the experience of the Northern Ireland authorities of their analogous processes.

18. An integrated approach to Proofing, involving simultaneous poverty, gender and equality proofing, has been piloted. The Department of Social and Family Affairs, the Equality Authority and the Department of Justice, Equality and Law Reform completed an integrated poverty proofing template which should, however, be seen as a work in progress needing further refinement as proofing in the wider equality area develops.

19. The National Action Plan Against Racism (see below) and the Back to Education Allowance Expenditure Review were used to pilot the template and a report, 'Integrated Proofing: Learning from Pilots', was recently presented to the Working Group on Equality Proofing. Further piloting exercises are planned to progress the refinement of the integrated proofing template.

20. There are a number of programmes which have been completed and some which are continuing in the field of equality proofing. The Equal Status Review in the North Western Health Board has taken place and the Report of the Process is has been finalised providing for an Equal Status Review Template which is now available for roll-out. Follow up to the Pilot Projects on Equality Proofing in FÁS is ongoing with additional areas now being targeted for equality proofing.

21. New equality initiatives were launched in 2005 under the auspices of the Working Group with further Employment Equality and Equal Status Reviews and Action Plans being initiated. Further Equality Proofing exercises are also taking place on national action plans and on initiatives at local level to continue the process of refining and developing equality proofing and integrated proofing tools. A report of the Working Group's activities is expected to be published in early 2007.

### **Disability**

22. Informed by the recommendations of the report of the Commission on the Status of People with Disabilities, there have been significant developments in the disability sector in Ireland.

23. In June 2000, the Government launched the mainstreaming initiative which required public bodies, where possible, to integrate services as far as possible for people with disabilities with those for other citizens. In addition, the National Disability Authority and *Comhairle* were established to support mainstreaming in a special way.

24. The National Disability Authority (NDA) was established by statute in June, 2000 to develop and monitor standards in services for people with disabilities and to advise on disability policy and practice. The NDA is funded by the Government.

25. The Comhairle Act, 2000 established Comhairle as a mainstream information provider funded by the Department of Social and Family Affairs. The agency has a statutory commitment to assist and support people, particularly those with disabilities, in identifying and understanding their needs and options and in accessing their entitlements to social services.

26. There has been a significant increase in spending on disability specific services. Expenditure on disability services was €0.8 billion in 1997 but in 2005, some €2.8 billion, representing almost 7.5% of gross current public expenditure on services, was spent on disability services. These sums are additional to income supports and other services provided through the Department of Social and Family Affairs. Nor does it reflect the fact that many people with a disability participate in, or benefit from, mainstream public services and programmes.

27. In the period 2000-2002, the Government also put in place a three year investment programme for people with intellectual disabilities and autism. This resulted in the provision of additional revenue and capital funding of over €220m over the period of the programme to target key support services.

28. The Government launched the National Disability Strategy on 21 September, 2004 to underpin the participation of people with disabilities in society by building on existing policy and legislation.

29. The key elements of the Strategy are:

- The Disability Act, 2005;
- The Citizen Information Bill, 2006; (formerly Comhairle (Amendment) Bill, 2004) which provides for the expansion and enhancement of the functions of Comhairle by way of the introduction of a personal advocacy service for people with disabilities;
- The Education for Persons with Special Educational Needs Act, 2004;
- Sectoral plans prepared by six Government Departments; and
- A multi-annual Investment Programme worth €900m targeted at high priority disability support services to run until 2009.

30. These initiatives are additional to Ireland's anti-discrimination legislative framework and other anti-discrimination initiatives.

31. The Disability Act, 2005 (the Act) is a crosscutting piece of legislation and is a positive action measure designed to support the provision of disability specific services to people with disabilities and to improve access to mainstream public services for people with disabilities. In drafting this legislation, the Government facilitated extensive consultation nationally.

32. The Act puts on a statutory footing a wide variety of positive action measures to improve the position of persons with disabilities in Irish society including:

- An independent assessment of individual health service needs (and education where appropriate) and a related Service Statement outlining services to be provided with access to independent complaints, appeals and enforcement (to be introduced for children under 5 years with effect from June 2007: for children aged between 5 and 18 in tandem with the Education for Persons with Special Educational Needs Act, 2004 and for adults with disabilities as soon as possible but not later than the end of 2011);
- A duty to make public buildings and services accessible, a requirement for six key Government Departments to publish sectoral plans and a related complaints mechanism with access to the Ombudsman;
- An obligation on public bodies to be proactive in employing persons with disabilities;
- Restriction in the use of genetic testing information for employment and insurance purposes; and
- The establishment of a Centre of Excellence in Universal Design.

33. The Education for Persons with Special Educational Needs Act, 2004 has put in place a strong framework for the transformation of special needs education policy.

34. Under the Disability Act, 2005, six Ministers of the Government were required to draw up plans in key sectors including transport, built infrastructure, housing, training and employment, health and social welfare provision. The Sectoral plans, which were launched in July 2006, set out programmes for action to improve service provision and access to infrastructure by people with disabilities. They give information on how the Government Departments involved, and the public bodies which they oversee, relate to people with disabilities and identify areas for future development.

35. The plans were subject to consultation before being finalised for submission to the Irish parliament, (the Oireachtas). The consultations were open to participation by people with disabilities, their families, carers, advocates and service providers. Each plan includes arrangements for complaints, monitoring and review procedures. Such complaints can be made to the Ombudsman (following a local complaints procedure) in relation to any matters which are the subject of a sectoral plan. These arrangements are in addition to the overall consultation and monitoring arrangements which the Government has put in place at national level as part of the Social Partnership agreement and existing cross Departmental Senior Officials Group. A number of provisions in the Disability Act came into operation on 31 December, 2005. The provisions of the Act will be fully implemented by 2015.

36. Funding is also provided to support the operation of People with Disabilities in Ireland Ltd (PwDI) which evolved from the Irish Council of People with Disabilities. PwDI is an independent, voluntary, non-profit organisation which seeks to represent all people with disabilities, their families and carers through an effective representative structure and to promote self-advocacy of people with disabilities through training, raising awareness and providing information. This is the Irish affiliate organisation of the European Disability Forum.

37. With other Member States of the European Union, Ireland has been actively engaged from the outset in the work of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities and has been fully involved in advancing this process at the European level through working with its European partners. The Committee met for its eighth and final session in August 2006, where it agreed upon a draft Convention on the Rights of Persons with Disabilities. This Convention will help to ensure the effective enjoyment of people with disabilities of their human rights on an equal basis with others.

### **Civil Service Equality Unit**

38. The Civil Service Equality Unit, which forms part of the Personnel and Remuneration Division of the Department of Finance, was formed in 2001. It is responsible for developing and monitoring equality policy and for promoting best practice in equality of opportunity across the Civil Service. The Unit is also responsible for managing the Civil Service Childcare Initiative which currently has 6 crèches within its remit.

39. Responsibility for the effective implementation of equality of opportunity lies with the Heads of Departments, supported by their senior management teams. The achievement of equality goals and objectives are reported on through the existing mechanisms for reporting progress on Strategy Statements.

40. Major policy documents are generally agreed under the industrial relations machinery and form part of the working terms and conditions for staff.

### **Policies developed by the Civil Service Equality Unit**

#### **Equality of opportunity**

41. “Diversity in the Civil Service” was launched in July 2002 and sets out the policy on equality of opportunity in the Irish Civil Service. The policy aims to ensure that all Government Departments are aware of their responsibilities under equality legislation. It commits Government Departments to ensuring equality of opportunity in the key human resource areas and sets out steps which Departments are to take to ensure equality of opportunity in practice. The policy reflects the provisions of the equality legislation which prohibits discrimination on nine grounds: gender, marital status, family status, sexual orientation, age, race, religion, disability and membership of the Traveller community.

42. A separate policy, “Gender Equality Policy for the Civil Service”, introduced on September 25, 2001, sets out a strategic approach to gender equality and specifically addresses the under-representation of women in the senior grades of the Civil Service. The Equality Unit

has conducted a review of recent equality initiatives in Departments and Offices, including the implementation of the Government target of female representation at one third in the Assistant Principal grade by 2005. The material gathered will be included in an Equality Initiatives Report being prepared by the Unit. From information included in the draft of the Report it is clear that this target has been achieved - see Annex 3 - Females in the APO and Civil Service Grades (page 197).

43. The Government approved proposals from the Minister for Finance in 2004 to improve the operation of the existing policy for the employment and career progression of people with a disability in the Civil Service. The measures being undertaken include:

- Adoption of a recruitment target of 3% for people with disabilities to the Civil Service;
- Development, in conjunction with the staff unions, of a new code of practice for all Departments to support staff with a disability; and
- The holding of special recruitment competitions from time to time for people with a disability, to ensure that the recruitment target mentioned above is met.

44. Appointment of a specialist Disability Advisory Officer (DAO) to the Equality Unit in the Department of Finance, whose role is to prepare the new code of practice and to support and advise all Departments and Offices on the implementation of the disability policy.

45. The Civil Service Equality Unit, in consultation with staff unions revised the civil service anti harassment, sexual harassment and bullying policy in 2005. The revised policy places a strong focus on mediation and introduces contact persons as an information and support resource for staff. In addition, timescales for investigation of complaints were revised and a time limit, within which a complaint must be made, was introduced. The Civil Service policy broadly follows practice in other parts of the public and private sectors in Ireland.

46. The Unit is currently reviewing the work life balance arrangements in the civil service in conjunction with the civil service unions. The aim of the review is to identify measures which could be taken to increase access to flexible working. However, it is clear from the information already available that the take-up of flexible working options in the civil service is above the average for the economy as a whole - up to 21% in some Departments.

47. The Equality Unit manages the Civil Service Childcare Initiative that was introduced in 2001 to provide workplace crèches for the children of civil servants. The Initiative has established 6 civil service crèches, three of which have received the National Children's Nurseries Association Centre of Excellence Award.

### **National Action Plan against Racism**

48. The National Action Plan against Racism was launched on 27 January, 2005 by the Taoiseach (Prime Minister) and the Minister for Justice, Equality & Law Reform. The proposal for a National Action Plan against Racism arose from a commitment made at the UN World Conference against Racism in South Africa in 2001 that each member state of the United Nations should develop and implement a national action plan.

49. The Plan will be implemented over a 4 year period (2005 - 2008). The emphasis is on “a whole of system approach” with particular emphasis on mainstreaming intercultural issues into formulation of public policy. The Plan builds on the substantial equality infrastructure which is already in place.

50. The framework underpinning the Plan is based on five objectives and is summarised as follows:

- Effective protection and redress against racism, including a focus on discrimination, assaults, threatening behaviour, and incitement to hatred;
- Economic inclusion and equality of opportunity, including a focus on employment, the workplace and poverty;
- Accommodating diversity in service provision, including a focus on common outcomes, education, health, social services and childcare, accommodation and the administration of justice;
- Recognition and awareness of diversity, including a focus on awareness-raising, the media and the arts, sport and tourism;
- Full participation in Irish society, including a focus on the political level, the policy level and the community level.

51. The overall aim of the Plan is to provide strategic direction to combat racism and to develop a more inclusive, intercultural society in Ireland based on a commitment to inclusion by design, not as an add-on or afterthought and based on policies that promote interaction, equality of opportunity, understanding and respect.

52. A Steering Group, comprising representatives of the social partners and NGO sector, was set up by the Minister for Justice, Equality and Law Reform in January 2005 to oversee the implementation of the National Action Plan against Racism.

53. The Protection Working Group of the National Action Plan against Racism is working closely with An Garda Síochána (National Police Force) to enhance the effectiveness of the Force in providing protection against racism. The Working Group will also work with An Garda Síochána to further develop effective monitoring and analysis of data on racist incidents. The European Monitoring Centre on Racism and Xenophobia (EUMC) found in a recent report that Ireland was one of only six Member States which maintained a comprehensive system that adequately reveals the extent and nature of racist violence in their society.

### **International Convention on the Elimination of All Forms of Racial Discrimination**

54. Ireland ratified the United Nations Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 2000 and was one of the countries that opted in to Article 14, which allows a right of individual petition to the CERD Committee, all local remedies having being exhausted. In March 2005, a very positive dialogue took place between the State Party, led by Mr. Frank Fahey, T.D., Minister of State at the Department of Justice, Equality and Law Reform

and the CERD Committee on Ireland's First and Second National Reports as required by Article 9 of CERD. In its 65th session the CERD Committee adopted a procedure that Committee members could ask questions of national human rights institutions directly with the agreement of the State delegation. The consideration of the Irish Reports was the first time that this procedure was instigated.

55. The Government is committed to working closely with the CERD follow-up Co-ordinator, Mr. Morten Kjaerum, on the CERD Committee's Concluding Observations on Ireland's First and Second National Reports.

56. Mr. Kjaerum was invited by Ireland to conduct an independent examination of its implementation of the CERD Committee's recommendations and the report of his visit in June 2006 was formally endorsed by the CERD Committee at its August 2006 Session. The Committee expressed its great appreciation for the commitment of the Irish Government in pursuing a very constructive dialogue with the CERD Committee. Mr. Kjaerum has commented favourably on the open and effective manner in which Ireland addressed the 21 points of concern raised by the Committee last year and his follow-up report states that "Ireland is seen as a pioneer in the follow-up process and an example of good practice," and notes that Ireland is the first country to arrange for a follow up visit by the Co-ordinator. To facilitate the follow-up visit the Irish Government has elaborated a comprehensive status report, complemented by a report from the NGO sector. Mr. Kjaerum concluded that Ireland is contributing in a constructive manner to the development of the human rights procedures of the UN.

#### **An Garda Síochána (National Police Force)**

57. An Garda Síochána have established the Garda Racial & Intercultural Office, the staff of which has responsibility for co-ordinating, monitoring and advising on all aspects of policing diversity. An extensive programme is in place for all members and trainees to provide training in policing a diverse society.

58. A network of 145 Ethnic Liaison Officers has been established by An Garda Síochána. The primary role of an Ethnic Liaison Officer is:

- To liaise with ethnic community leaders;
- To inform and assure the ethnic communities of Garda services and protection.

59. The adoption of a very wide definition of racially motivated incidents will help encourage reporting of racially motivated crimes. The definition encompasses any incident which is perceived to be racially motivated by either:

- The victim;
- A member of An Garda Síochána;
- A person who was present and who witnessed the incident; or
- A person acting on behalf of the victim.

60. In January 2006, the Commissioner of An Garda Síochána issued a Directive on the National Action Plan against Racism to every member of An Garda, concerning the development of Garda strategies and services to meet the needs of a more diverse society. The Directive addressed a range of issues, including:

- Protection against assaults, threatening behaviour and incitement to hatred;
- Responding to victims of racially motivated incidents;
- Consultation processes with ethnic minority communities; and
- Recording of racist incidents on the PULSE (crime recording) system.

61. The Directive sets out procedures for a regular consultation process at Garda District, Divisional and National level with representatives of cultural and ethnic minority communities.

### **National Consultative Committee on Racism and Interculturalism (NCCRI)**

62. The National Consultative Committee on Racism and Interculturalism (NCCRI) was established in 1998 as an independent expert body focusing on racism and interculturalism. The NCCRI is a partnership body which brings together government and non-government organisations, and receives its core funding from the Department of Justice, Equality and Law Reform. Some of its key activities include:

- The provision of advice and technical assistance to government and non-government organisations to enable them to implement anti-racism and intercultural strategies;
- The provision of anti-racism and intercultural awareness training to government and non-government organisations and other groups;
- Monitoring racist incidents; and
- The raising of public awareness about racism and interculturalism through publication of a range of materials and resources.

63. The NCCRI played a key role in the preparation and consultative phases of the National Action Plan against Racism.

### **Domestic violence**

64. In their concluding observations the Human Rights Committee requested information on improving the remedies for victims of domestic violence. The position is that while a comprehensive range of civil and criminal justice measures are in place to tackle domestic violence, the operation of the law in this area is kept under ongoing review.

65. The Domestic Violence Acts, 1996 and 2002 provide for the protection of a spouse and any children or other dependent persons, and of persons in other domestic relationships, whose safety or welfare requires it because of the conduct of another person in the domestic relationship concerned. Contravention of an order under the Acts (i.e. a safety order, a barring order, an



interim barring order or a protection order) is an offence and subject to sanctions under the criminal law. Under the Acts the Gardaí have powers of arrest without warrant to deal with cases of domestic violence. The Legal Aid Board has in place procedures to provide an immediate appointment to persons requiring legal advice in the context of seeking an order under this legislation.

66. Furthermore, under the code of criminal law, there is a range of sanctions that the court can apply in situations involving this type of violence. The Garda Síochána have in place a Domestic Violence Intervention Policy which stresses the seriousness of this type of crime and Garda training addresses issues particular to the investigation of cases of domestic violence, rape and sexual assault and incorporates input from various experts, including NGOs active in this field. Many of the measures being advanced by the Commission for the Support of Victims of Crime also play an important role in responding to this type of crime, in particular, through the provision of funding for voluntary groups providing supports to victims in this area.

67. It is widely recognised, however, that tackling the problem of domestic violence requires multifaceted solutions, and involves a far broader range of agencies than those associated with civil and criminal justice systems alone. For this reason, a National Steering Committee (NSC), involving all of the relevant Government Departments as well as key voluntary groups, is charged with coordinating the response to this issue. The NSC is currently working on a new Strategy and Action Plan which will build on the work achieved to date and chart progress for the future.

### **The Irish Human Rights Commission**

68. The Human Rights Commission was established in July 2001. It was set up as a direct result of the Good Friday Agreement of 1998 which provided for the establishment of a Human Rights Commission in this jurisdiction and for a Human Rights Commission in Northern Ireland. Under the Good Friday Agreement, the Commissions are charged with promoting and protecting human rights in their respective jurisdictions and working together to improve the protection of human rights on the island of Ireland.

69. The Commission's powers and functions are set out in the Human Rights Commission Acts, 2000 and the European Convention on Human Rights Act, 2003. These Acts confer a wide ranging competence on the Commission to promote and protect human rights as defined both in the Constitution and in international agreements to which Ireland is a party. Chapter 6 of the Good Friday Agreement, 1998, sets out the roles of the Human Rights Commission, the Northern Ireland Human Rights Commission and the Joint Committee of Representatives of the two Human Rights Commissions.

70. Section 2 of the Human Rights Commission Act, 2000, contains a definition of the human rights which the Commission is mandated to protect and promote. The definition is:

- The rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution; and
- The rights, liberties or freedoms conferred on, or guaranteed to persons by any agreement, treaty or convention to which the State is a party.

71. The functions of the Commission include the following:

- To keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights;
- To consult with relevant national and international bodies;
- To make recommendations to Government on measures to strengthen, protect and uphold human rights in the State;
- To promote understanding and awareness of the importance of human rights and, for these purposes, to undertake or sponsor research and educational activities in the field;
- To conduct enquiries. For this purpose the Commission will have the means to obtain information, with recourse to the courts, if necessary;
- To offer its expertise in human rights law to the courts in suitable cases as amicus curiae, or friend of the court, in cases involving human rights issues;
- To take legal proceedings to vindicate human rights in the State or provide legal assistance to persons in this regard; and
- To participate in the Joint Committee of Representatives of members of the Commission and members of the Northern Ireland Human Rights Commission.

72. Its mission is to do its best to ensure that Irish law and practice is in line with the highest international standards, measuring Irish law and practice against the standards set out in the Constitution and in international human rights agreements to which Ireland is a party and where it believes human rights are not being adequately protected, to say so clearly and strongly, and actively seek change in the law, policy or practice concerned. The Commission is committed to operating in an independent, fair, open, accessible and accountable manner.

73. The Commission works with statutory bodies, Government Departments, non-governmental organisations and all involved in human rights issues. It also works closely with other National Human Rights Commissions; the UN and the Council of Europe to endeavour to ensure a high standard of human rights protection.

74. The Human Rights Commission has 15 members, appointed by the Government for a period of 5 years. Its membership is pluralist in line with the statutory requirement that the Commission must broadly reflect the nature of Irish Society. The first Commission served from July 2001 to June 2006. A new Commission was appointed on 31 August, 2006 and their term commenced on 2 October, 2006. In accordance with the Human Rights Commission Acts, 2000 and 2001, not less than 7 of the members of the Commission are female and not less than 7 are male.

75. It is recognised nationally and internationally that the provisions of the 1993 UN Paris Principles governing such bodies have been fulfilled in the case of the Commission. The Commission is well regarded internationally, particularly by the Council of Europe - the

pre-eminent body in the area of human rights in Europe - and the United Nations. The Commission is a member of the European Coordinating Group of National Institutions and the International Coordinating Committee of National Institutions with which it has an "A" accreditation classification. The Commission is due to take over the Chairmanship of the International Coordinating Committee of National Institutions shortly.

76. The Human Rights Commission is the overarching human rights agency in the State. It may consider and take action on matters affecting human rights on its own initiative or it may rely on other bodies to act within their own specific spheres of competence.

77. The Commission has drawn up a Strategic Plan for the period 2003-2006. The Plan provides information on what the Commission has done to date and key areas of work which it has focused on. The Commission uses the Plan as a key document in its dialogue with various bodies, agencies and individuals throughout the lifetime of the Plan. A copy of the Strategic Plan is annexed to this Report. The Commission is currently in the process of drafting its second strategic plan.

### **Ombudsman for Children's Office**

78. The newly established Office of the Ombudsman for Children has a range of functions related to promoting the welfare and rights of children. It is an independent office, separate from the existing Ombudsman and accountable to the Oireachtas. The Ombudsman for Children Act, 2002 established the Office in 2004.

79. The principal functions of the Ombudsman for Children are:

- To promote the welfare and rights of children;
- To act as a catalyst for change;
- To respond to individual complaints;
- To establish mechanisms through which there will be regular consultation with children; and
- To provide an advisory role to Government.

80. The Ombudsman for Children's Office also works closely with a Youth Advisory Panel. This panel is made up of 15 young people. The role of the panel is to provide advice to the Office ensuring the views of young people and children are taken into account in the work of the Office. The Ombudsman's Office also maintains a detailed child friendly website with information on all its work ([www.oco.ie](http://www.oco.ie)).

81. The Office of the Ombudsman for Children provides an independent mechanism to vindicate the rights of children set out under the United Nation's Convention on the Rights of the Child.

### **Free legal aid**

82. For information on measures in place to provide free Legal Aid see paragraphs 390-396.

### **Human rights education**

83. Human rights education features in many forms throughout the curriculum of primary and secondary schools, as well as more in-depth study carried out as part of third level education courses.

#### *Primary level*

84. At the primary level, concern for human rights informs the whole curriculum. Key issues taken into account in the revision of the curriculum are the spiritual dimension of education, the European and global dimensions, and the promotion of pluralism, equality and fairness.

85. The strongest emphasis on human rights at primary level is in Social, Personal and Health Education (SPHE) and Social, Environmental and Scientific Education (SESE).

86. SPHE is a mandatory part of the curriculum and is supported by Teacher Guidelines and a full-time support service providing in-service training for teachers and support and assistance to schools. The programme is divided into a number of strands, including one entitled “Myself and the Wider World”. This strand concentrates on developing a sense of social responsibility, active citizenship, appreciation for diversity, and a sense of the interdependence of local, national and global communities.

87. The approach to human rights and citizenship education at primary level is to focus initially on exploring a child’s immediate environment, developing an awareness of how to interact fairly with others, sharing, being aware of emotions and feelings, learning to treat others with dignity and respect, and learning to appreciate difference. As the curriculum progresses, broader community issues are brought into play, in terms of how individuals and groups contribute to their community, practising justice and fair play in everyday interactions, becoming aware of diverse groups and the importance of living together in harmony. It also deals with the role of community leaders and community organisations, civic structures in Ireland and Europe, equal rights and how justice and peace can be promoted between people and groups, nationally and internationally. Poverty, discrimination, prejudice, racism, sustainable development and environmental awareness are themes which feature as part of this approach.

88. Human rights issues also feature as part of the SESE programme, which includes the subjects of Science, History and Geography. The aims of SESE include:

- To enable the child to play a responsible role as an individual, as a family member, and as a member of local, regional, national, European and global environments;
- To foster an understanding of, and concern for, the interdependence of all human and living things, and the Earth on which they live;

- To foster in the child a sense of responsibility for the long term care of the environment and a commitment to promote the sustainable use of the Earth's resources through his/her personal lifestyle and participation in collective environmental decision-making; and
- To cultivate humane and responsible attitudes and an appreciation of the world in accordance with beliefs and values.

89. In May 2005, the National Council for Curriculum and Assessment (NCCA) published "Intercultural Education in the Primary School - Guidelines for Schools", which provide practical examples for schools on how the curriculum can be mediated and adapted to reflect the emergence of an expanding multicultural society. Curricula and guidelines at primary level can be accessed at [www.ncca.ie](http://www.ncca.ie).

90. In addition to the above, the Department of Education and Science has been working with a wide range of stakeholders on a Cross Border Primary Human Rights Education Initiative (LIFT OFF). The project is a joint initiative of Amnesty International UK and Irish Sections, the Irish National Teachers' Organisation INTO, the Ulster Teachers' Union and Education International (representatives of the Departments of Education both North and South and the curriculum bodies i.e. National Council for Curriculum and Assessment (NCCA) and the Northern Ireland curriculum body CCEA).

91. The initiative was formally established in 2000 with a primary aim of supporting the development of a human rights culture on the island of Ireland by supporting the mainstreaming of Human Rights Education in the primary education systems of Northern Ireland and the Republic of Ireland. Following an initial pilot phase, an evaluation was carried out and the project was granted funding for a further 3 year period (2003-2006). The aims of the project remain broadly the same with a further development of linking participating schools through ICT. There are currently 34 primary schools involved of which 16 were part of the original pilot.

#### *Second level*

92. These themes are continued at post primary level. The primary objective for the junior cycle at second level is that students shall complete a broad, balanced and coherent course of study in curricular areas relevant to their own personal development to allow them to achieve a level of competence which will enable them to proceed to senior cycle.

93. Social, Personal and Health Education is a mandatory subject, but not an examination subject, at junior cycle. At second level the key emphasis is on promoting self esteem and physical and mental/emotional well-being, and responsible decision making. Belonging and integrating, appreciating difference, self management, communications, physical and emotional health, influences and decision making, bullying, coping with loss, handling conflict, substance abuse, personal safety, getting help, relationships and sexuality are covered. Implementation of SPHE in schools is assisted by a full time support service which operates on an integrated basis in collaboration between the Department of Education and Science and the Health Boards. Comprehensive manuals on Relationships and Sexuality Education have been provided for teachers. Social Personal and Health Education is designed to enable students "to develop the skills and competence to learn about themselves and to care for themselves and others, and to

make informed decisions about their health, personal lives and social development. With such support, students can be enabled to participate as active and responsible adults in the personal and social dimensions of society and to make responsible decisions that respect their own dignity and the dignity of others.” There is a key emphasis on active learning, with a strong focus on group work, role play and experiential learning.

94. Civic, Social and Political Education (CSPE) is an examination subject and part of the core curriculum in junior cycle in post primary schools. It aims to:

- Make pupils aware of the civic, social and political dimensions of their lives and the importance of active, participative citizens to the life of the State and all people;
- Encourage and develop the practical skills which enable pupils to engage in active participatory social interaction and to adopt responsible roles as individuals, family members, citizens, workers, consumers, and members of various communities within a democratic society;
- Encourage pupils to apply positive attitudes, imagination and empathy in learning about and encountering other people and cultures;
- Enable pupils to develop their critical and moral faculties in agreement with a system of values based on human rights and social responsibilities; and
- Develop knowledge and understanding of processes taking place at all levels of society which lead to social political and economic decision-making.

95. The course provides an active exploration and study of citizenship at all levels (personal, national and global) in the context of contemporary social and political issues. A central objective is to instil in pupils an understanding of seven key concepts viz. democracy, rights and responsibilities, human dignity, interdependence, development, law and stewardship. The format allows teachers to deal with such issues as gender equity, racism, interculturalism, environmental protection, development education, poverty, unemployment and homelessness through group work discussions, activities and research and action projects.

96. At senior cycle level, programmes in Social, Personal and Health Education and Civic Social and Political Education are currently being developed by the NCCA as part of an ongoing programme of reform.

97. Transition Year is an optional one year programme followed by approximately 40% of the student cohort, following the end of junior cycle education. The key aim of Transition Year is to experience a wide range of educational inputs, sample subjects which have not been taken at lower second level, and provide for a strong focus on personal development, collaborative and experiential learning, learning in the community and work experience. It is a maturing process and a chance to engage in group work, project work and self directed learning.

98. Young Social Innovators is an initiative to promote social awareness among students, and is available for schools providing the Transition Year Programme. The students are encouraged to identify a social issue, research it, and engage in an action plan to promote change. It is in

keeping with the broad personal development and experiential learning objectives of Transition Year, and with the action-oriented active citizenship approach of the CSPE programme. The skills of teamwork, research, planning, evaluation, critical reflection and active citizenship are developed. The projects are submitted and displayed in a national showcase event each year.

99. Within the Leaving Certificate Applied Programme, all students follow a compulsory module in Social Education. The programme is designed to enhance self esteem and social and interpersonal skills, develop self awareness, an understanding of relationships and sexuality, of contemporary social, economic and political issues and prepare students for the transition to independent living. Contemporary issues and human rights, democratic institutions, active citizenship and voting, and civil rights and responsibilities feature as specific units within the programme.

#### *Third level*

100. Human rights education is forming an increasingly important part of a range of university courses throughout the country. Of the seven universities in Ireland, four provide a year-long course devoted entirely to human rights law to law students at undergraduate level, on an optional basis. The course syllabus in each case involves a detailed examination of the United Nations system for the promotion and protection of human rights, including the International Covenant on Civil and Political Rights. It also involves an examination of the system developed under the auspices of the Council of Europe. Each of these universities further provides the undergraduate option of Public International Law, which includes an examination of international human rights law (encompassing the present Covenant). There are also a number of postgraduate programmes that are exclusively focused on human rights or have human rights as a major component.

### **Article 3**

101. In respect of paragraph 21 of the Concluding Observations on Ireland's last report to the Human Rights Committee relating to gender proofing, there have been a number of notable developments. There has been a general recognition that policy initiatives proposed by Government need to be gender proofed, i.e. assessed for the differential effect they have on women and men. This is because a policy initiative which in itself seems neutral, as between men and women, may not be so in practice because it is based on structures and situations where women are under-represented or exist primarily as dependents. Gender proofing is intended to overcome the potential for indirect discrimination and to contribute towards an integrated equal opportunities policy.

102. All policy proposals submitted to Government for consideration are now required to include an assessment of the likely impact of the proposed policy on both men and women and, if necessary, identify any actions necessary to ensure that the policy promotes gender equality.

#### **Women's representation on State Boards**

103. 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.

104. In July, 2002, the Minister of State at the Department of Justice, Equality and Law Reform (with special responsibility for Equality issues, in particular Disability) wrote to all Ministers requesting them to review the gender balance composition of the State Boards and Committees under the aegis of their Department and to take measures to redress gender imbalances, where the 40% target has not been reached. The Minister of State also advised Ministers that to ensure progress, he intended bringing a six monthly report to Cabinet on the gender composition of Boards for each Department. The 2005 report was noted by the Government in July 2006. At the end of December 2004, women constituted 32% of total membership and 36% of ministerial/government nominees. Provisional figures show that this had increased to 34% by end of December 2005, reflecting the Government's ongoing commitment to increase the participation of women in State Boards as new Boards are established/re-appointed or as vacancies arise.

### **National Women's Council of Ireland**

105. The National Women's Council of Ireland, formerly the Council for the Status of Women, was founded in 1973 to monitor implementation of the recommendations of the first national Commission on the Status of Women. It is an umbrella body which groups together approximately 150 NGOs representative of women's interests and concerns. Membership is open to all women's organisations, or organisations which have a sizeable female membership, which have been in existence for at least a year prior to applying for membership.

106. 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 2006, this amounted to €536,000. It 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.

### **Convention on the Elimination of All Forms of Discrimination against Women**

107. Ireland acceded to the Convention on 23 December, 1985 and submitted its first report in 1987. Ireland's most recent report, the combined fourth and fifth report, 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 asking that they consider them and report on how the issues might be advanced before Ireland's next report under CEDAW.

### **National Plan for Women 2002**

108. Ireland's Report to the UN on the National Plan for Women was submitted to the United Nations in September 2002. It arose from a voluntary commitment given by Governments at the United Nations General Assembly in New York in 2000 to develop and implement national action plans to work towards the advancement of women in all areas of



society. The national action plans are designed to strengthen efforts to implement the Platform for Action which originated at the United Nations Fourth World Conference on Women in Beijing in 1995.

109. As part of the development of the National Plan for Women in 2002, regional consultation fora were held, at which a wide array of issues were raised by the women of Ireland and their representative groups. These were published in a separate document "Aspirations of Women collected in the course of the Consultation Process on the National Plan for Women 2002".

### **National Women's Strategy**

110. Arising from the recommendations of the National Plan for Women 2002 and a commitment in Ireland's most recent social partnership agreement "Sustaining Progress", a National Women's Strategy is currently being developed.

111. An Interdepartmental Committee of senior officials in Government Departments has been established to take responsibility for the drafting of the Strategy. The drafting of a National Women's Strategy will serve to highlight the issues that remain to be addressed on the road to full equality between women and men in Ireland. A Consultation Group, comprising representatives of the Social Partners (Employers, Trade Unions, Farming and Community and Voluntary pillars) and the National Women's Council of Ireland, has also been set up to feed into the development of the Strategy.

112. The development of a National Women's Strategy will serve to highlight the issues that remain to be addressed on the road to full equality between women and men in Ireland. It is intended that the Strategy will be published at the earliest opportunity following its completion.

### **Gender mainstreaming in the National Development Plan 2000-2006**

113. The National Development Plan 2000-06 (NDP) is a plan for the investment of over €52 billion in infrastructure, human resources, industry, regional development and peace and reconciliation within Ireland. Seven percent of the funding for the NDP comes from the European Union Structural and Cohesion Funds.

114. Provision was also made under the NDP for a specific positive action measure to promote and support equality for women. The Equality for Women Measure has a budget of €37m. Phase 1 of the Measure provided grants to support 70 projects which addressed the areas of access to employment, education and training, career development, entrepreneurship, gender balance and innovative projects for disadvantaged women and those over 50. Approximately 7,000 women have participated in training courses and other activities under the Measure. Phase II of the Measure covering the period 2004 to 2006 has a particular focus on poverty and social inclusion. Funding was approved for 58 projects in March 2005.

115. EU regulations on spending these funds require that equal opportunities between women and men be considered by way of gender mainstreaming. The Irish government has adopted gender mainstreaming across the NDP. The main requirements for gender mainstreaming are to:

- Include equal opportunities as part of project selection criteria;
- Disaggregate people indicators by gender;
- Promote gender balance on monitoring committees; and
- Make equal opportunities a criterion in all evaluations of NDP measures.

116. An NDP Gender Equality Unit was established in the Department of Justice, Equality and Law Reform to support gender mainstreaming throughout the National Development Plan and across the implementing Departments and bodies. This is further supported by a Gender Equality Unit in the Department of Education and Science with the objective of promoting gender mainstreaming in all areas of the education system.

117. As part of the monitoring arrangements for the NDP, an Equal Opportunities and Social Inclusion Coordinating Committee was established to oversee progress and monitor the implementation of the Gender Mainstreaming across the NDP.

### **The Oireachtas Joint Committee on Justice, Equality and Women's Rights**

118. The Committee on Women's Rights, whose membership was drawn from both Houses of the Oireachtas, 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 is now being discharged by the Joint Committee on Justice, Equality and Women's Rights which was constituted following the formation of the new Government in July 1997. The current provision in respect of women's rights is part of the wider brief of the present Committee and the relevant provisions in the Committee's orders of reference state that the Committee is to consider:

- Such public affairs administered by the Department of Justice, Equality and Law Reform and the Department of Defence as it may select, including bodies under the aegis of those Departments in respect of government policy;
- Such matters of policy for which the Ministers in charge of those Departments are officially responsible as it may select;
- The strategy statement laid before each House of the Oireachtas by the Ministers in charge of those Departments pursuant to Section 5 (2) of the Public Service Management Act, 1997, and shall be authorised for the purposes of Section 10 of that Act;
- Such matters relating to women's rights generally, as it may select, and in this regard the Joint Committee shall be free to consider areas relating to any government department; and
- Such other matters as may be jointly referred to it from time to time by both Houses of the Oireachtas, and shall report thereon to both Houses of the Oireachtas.

### **Removal of discrimination**

119. In respect of paragraph 29 (d) of the Concluding Observations to Ireland's last report submitted to the Human Rights Committee, it should be noted that one of the effects of the Immigration Act 2004 was that the exemption from the requirement to register with the Garda National Immigration Bureau on the part of a female spouse or the widow of an Irish national, which had been a feature of the Aliens Order 1946, was not re-enacted, thereby removing any discrimination on this basis.

### **The Constitution and the role of women**

120. In the Concluding Observations in relation to Ireland's second report the Human Rights Committee expressed concern that the references to women made in Article 41.2.1 and Article 41.2.2 of the Constitution could perpetuate traditional attitudes toward the role of women.

121. In those provisions, the State "recognizes that by her life within the home, woman gives to the State a support without which the common good cannot be achieved. 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".

122. The All-Party Oireachtas Committee on the Constitution was established in December 2002 to conduct a full review of the Constitution, in order to provide focus on the places and relevance of the Constitution and to establish those areas where Constitutional change may be desirable or necessary. The Committee was tasked with completing the review which had been begun by two previous committees.

123. In January 2006, the Committee launched its tenth Progress report on the Family, in which it addressed the issue of Article 41.2 which reinforced the position of the traditional family by asserting the particular value of the contribution of women in the home.

124. In relation to this Article, the Committee concluded that, a great number of people in Ireland strongly support the retention of the Article and the Courts are disposed to interpret Article 41.2.1 as applying to either fathers or mothers caring in the home. It found therefore that there was no legal necessity, to change the Article to make it gender neutral.

125. However the Committee also noted that many people regard the language to be outdated or sexist and that the UN Convention on the Elimination of All Forms of Discrimination against Women, which Ireland has ratified, regards the employment of sexist language as a practical obstacle to women's drive for equality with men.

126. Therefore the Committee, in its conclusions, proposed an alternative wording which would render Article 41.2.1 and Article 41.2.2 of the Constitution gender-neutral. The proposed alternative version of the provisions read:

1. The State recognises that by reason of family life within the home, a parent gives to the State a support without which the common good cannot be achieved.

2. The State shall, therefore, endeavour to ensure that both parents shall not be obliged by economic necessity to work outside the home to the neglect of their parental duties.

127. The recommendations of the All Party Oireachtas Committee are contained in a report on a much wider brief which is under consideration in the relevant Government Departments. Any amendment of the Constitution would require legislative proposals and must be submitted by referendum to the decision of the people.

#### **Article 4**

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

#### **Article 5**

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

#### **Article 6**

#### **Death penalty**

130. The Twenty-first Amendment of the Constitution Act, 2001 provides for the amendment of the Constitution to delete references to the death penalty and to prohibit its re-introduction under any circumstances even in times of war. Ireland became a party to the second Optional Protocol to the ICCPR on 18 June, 1993.

131. Ireland ratified Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, on 3 May, 2002.

#### **Right to life of the unborn**

132. In the X case, [Attorney General v. X [1992] 1 I.R. 1.], a majority of the members of the Supreme Court held that, if it were established, as a matter of probability, that there was a real and substantial risk to the life, as distinct from the health, of the mother and that this real and substantial risk could only be averted by the termination of her pregnancy, such a termination was lawful in Ireland under the Constitution. The Court accepted the evidence that had been adduced in the High Court that the subject of the proceedings had threatened to commit suicide if compelled to carry her child to full term and deemed that this threat of suicide constituted a real and substantial risk to the life of the mother.

133. As already reported in Ireland's second report to the Human Rights Committee, in December 1997 the Government established a Cabinet Committee to oversee the work of an Interdepartmental Working Group, whose task it would be to prepare a Green Paper on Abortion. This document was drafted having regard to the constitutional, legal, medical, moral, social and ethical issues involved and the views submitted by interested parties on these issues. The Green

Paper was published on 10 September, 1999 and it was welcomed by many interests as a clear and balanced document; it set out and discussed - in an impartial way - the following possible options on the abortion issue, without indicating any preferred Government approach:

- An absolute constitutional ban on abortion;
- An amendment of the constitutional provisions so as to restrict the application of the X case;
- The retention of the status quo;
- The retention of the constitutional status quo with legislative restatement of the prohibition on abortion;
- Legislation to regulate abortion in circumstances defined by the X case;
- A reversion to the position as it pertained prior to 1983; and
- Permitting abortion on grounds beyond those specified in the X case.

134. After it was published, the Government referred the Green Paper to the All-Party Oireachtas Committee on the Constitution “in order to provide focus to the place and relevance of the Constitution and to establish those areas where Constitutional change may be desirable or necessary”.

135. The All-Party Committee embarked on a detailed process of consultation, first seeking submissions on the options discussed in the Green Paper. Over 100,000 submissions were received from individuals and organisations. The Committee then held hearings at which the issues were explored in detail with many of those who had made submissions, including representatives of the medical profession and of the Churches attending. The question of the appropriate response where pregnancy follows a sexual assault was also discussed at considerable length by the All-Party Committee. Although the Committee did not reach agreement on a single course of action, the consultation process was very helpful in examining the complex legal, medical and social issues involved.

136. The Committee’s detailed report was published in November 2000. Having considered the All-Party Committee’s report, the Government announced in October 2001 that a referendum would be held on the issue of abortion. The proposal was based on one of three possible approaches identified by the All Party Committee. Stated briefly, it aimed to protect best medical practice, while providing for a prohibition on abortion and linking such legislation with a referendum to amend the Constitution. The effect of the constitutional changes that were proposed would have been that:

- The life of the unborn in the womb would be protected by a new law to be called the Protection of Human Life in Pregnancy Act, 2002;
- Any proposal to change this law in the future could be made only if the people agreed to this, in another referendum.

137. The Protection of Human Life in Pregnancy Act, 2002, which would itself be protected by the Constitution, would contain a specific prohibition on abortion, replacing the provisions in the Offences against the Person Act, 1861. A threat of self-destruction (i.e. suicide) on the part of a pregnant woman would not have been acceptable under the law as grounds for terminating a pregnancy. This reflected the detailed testimony of a number of experts before the All-Party Oireachtas Committee, that there is no test or fail-safe way of saying that a person will or will not commit suicide and that where suicide occurs it is due to the interaction of multiple factors, rather than just one. The evidence heard by the Committee also indicated that the medical response to a pregnant woman considered to be at risk of committing suicide would be to help and support her and to treat her underlying mental condition - not to offer her an abortion.

138. It should be noted that abortion in other circumstances, such as where a woman is pregnant following a sexual assault, where there is evidence that her child is very unlikely to survive after birth, or where it may be severely handicapped, is prohibited in Ireland and the proposals put to the people in 2002 did not involve changing the Constitution or the law in regard to any of these situations.

139. The referendum was held on 6 March, 2002 and was closely defeated - by 50.4% against to 49.6% in favour of the proposal. The proposed Protection of Human Life in Pregnancy Act, 2002 did not therefore become law.

### **Crisis Pregnancy Agency**

140. Having considered the All-Party Committee's recommendations in October 2001 the Government announced the establishment of the Crisis Pregnancy Agency. The Agency was given the task, in consultation with a wide range of agencies, of drawing up a national strategy to address crisis pregnancy. It is working in partnership with different Government Departments and agencies (not just in the health sector but also, for example, in the education, welfare and employment fields) to promote and co-ordinate the attainment of its objectives by means of an operational plan.

141. The Agency launched its strategy to address the issue of crisis pregnancies in late 2003. In brief, the strategy highlights the actions necessary to prevent crisis pregnancies, to support and counsel those with crisis pregnancies and to provide counselling and medical services to women after a crisis pregnancy.

142. €8.055m revenue funding was made available to the Agency in 2006. The Agency funds a range of programmes including:

- Prevention of crisis pregnancy;
- Counselling services and supports;
- Communications campaigns (such as Think Contraception and Positive Options).

143. The Agency previously reported that it has increased the amount of crisis pregnancy counselling available in the country by more than 50%. Counselling services are free of charge to women experiencing a crisis pregnancy. Information on safe and reputable abortion services

available in other jurisdictions is available from a number of counselling services to women experiencing a crisis pregnancy and who opt for an abortion following non-directive counselling.

144. Ireland has held five separate referenda on three separate occasions on the issue of abortion. There are few issues on which there has been greater national dialogue than abortion.

### **Crime of genocide**

145. Ireland is a Party to the Convention on the Prevention and Punishment of the Crime of Genocide, 1948 and the obligation in Article 6(3) of the Covenant not to derogate in any way from the obligations assumed under the Convention presents no difficulties.

### **Disappearances**

146. During the conflict in Northern Ireland, 16 individuals were abducted by republican paramilitaries and are believed to have been murdered and secretly buried. In 1999 the Irish and British Governments enacted legislation to establish a Commission on the Location of Victims Remains, with one commissioner appointed from each jurisdiction. The purpose of the Commission is to facilitate the location of the remains of the victims of paramilitary violence.

147. At the time of its establishment the Commission was provided with information from the Irish Republican Army (IRA) in relation to the possible location of 9 of the victims. Searches were carried out based on this information and over 85,000 square metres of land was excavated by An Garda Síochána. Three bodies were recovered. A fourth body, that of Jean McConville, was uncovered by accident in August 2003.

148. Following a review of its operations in 2005, the Commission forwarded a report and recommendations to the two Governments. The Governments accepted these recommendations and agreed to a series of key measures which it is hoped will facilitate the provision of further information in relation to the location of victims' remains. Further physical excavation of gravesites will be undertaken where it is felt that there is a good prospect of successful recovery of remains.

### **Investigation of death and the modernisation of the coroner service**

149. Legislation is at an advanced stage of preparation which is to provide for a streamlining of the death inquiry, post-mortem and inquest procedures so as to ensure a better service to society in general, and to the relatives of the deceased in particular, than is currently possible under the Coroners Act, 1962.

150. The new legislation will provide for greatly improved organisational structures in the form of a national Coroner Service but a key element of the reformed service will be, as the central element of a modern death investigation service for non-criminal cases, to widen the scope of the coroner's investigation to require the coroner to establish in so far as practicable the circumstances of death including the medical cause of death. Such an approach would reverse the restrictive legislative intention of the Coroners Act, 1962.

151. This widening of scope was recommended by a review group established to examine the future of the Coroner Service in Ireland and in preparing the legislation regard is also being given to the requirements of the ECHR in this area, including as reflected in UK jurisprudence, and to developments in this field in other common law jurisdictions.

### **The Cory Collusion Investigation**

152. At Weston Park in July 2001 the British and Irish Governments agreed to appoint a judge of international standing to undertake a thorough investigation of allegations of collusion between state agencies and paramilitaries in relation to 6 controversial cases. Four of the cases related to crimes committed in Northern Ireland and coming under the jurisdiction of the British government, namely the murders of Patrick Finucane, Rosemary Nelson, Robert Hamill and Billy Wright. Two of the cases came under the jurisdiction of the Irish Government, namely the murders of RUC Chief Superintendent Harry Breen and Superintendent Robert Buchanan and the murders of Lord Justice Gibson and Lady Gibson.

153. Mr. Justice Peter Cory, a retired judge of the Canadian Supreme Court, was appointed by the Governments in May 2002 to undertake the investigations. In October 2004 the two Governments received Judge Cory's reports. The Reports recommended that public inquiries be established in this jurisdiction and in the UK in five of the six cases examined. Judge Cory did not recommend an inquiry in the case of Lord and Lady Gibson. A copy of the Report is annexed to this report.

154. In May 2005 the Government established the Smithwick Tribunal of Inquiry to inquire into suggestions that members of An Garda Síochána or other employees of the State colluded in the fatal shootings of RUC Chief Superintendent Harry Breen and Superintendent Robert Buchanan on 20 March, 1989. The Smithwick Tribunal has been operational from a practical perspective since November 2005 and currently remains in an investigative phase. Its one-day opening public session was held on 3 March, 2006, and a further one-day public session was held on 16 October, 2006, to adjudicate on the parties entitled to representation before it. However, the Tribunal is not expected to commence public hearings proper until early 2007.

## **Article 7**

### **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

155. Ireland has, since its last report, ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and it came into effect for Ireland on 11 May, 2002. In order to facilitate the ratification of the Convention, Ireland introduced the Criminal Justice (United Nations Convention against Torture) Act, 2000. This Act, the main purpose of which is the creation of a statutory offence of torture with extra territorial jurisdiction, came into effect in June 2000.

156. Section 1 of the Criminal Justice (United Nations Convention against Torture) Act, 2000 was amended by Section 186 of the Criminal Justice Act, 2006 to clarify that the definition of torture is one that is done by, or with the acquiescence of a public official and thereby brings the definition into line with that contained in the Convention.



### **Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

157. Ireland has not yet signed or ratified the Optional Protocol, however work is commencing on a Memorandum for Government seeking approval for signature subject to ratification. The Office of the Attorney General has advised that legislation will be needed to give effect to the Protocol. Ratification will be sought when the necessary legislation has been prepared and enacted.

#### **An Garda Síochána**

158. The Garda Síochána Act, 2005 provided for the establishment of an independent Garda Síochána Ombudsman Commission. The primary function of the Ombudsman Commission is to investigate complaints by members of the public against members of the Garda Síochána and in that respect it will replace the existing Garda Síochána Complaints Board, which was established under the Garda Síochána Complaints Act, 1986. The Commission has comprehensive powers of investigation to deal with complaints and it will have ultimate control and oversight of all complaints processed in accordance with the provisions of the Act.

159. The Ombudsman Commission has the power to investigate of its own motion, 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.

160. The Garda Síochána Ombudsman Commissioners were appointed by the President in February 2006, following nomination by the Government and recommendations by both Houses of the Oireachtas. The Commission is currently hiring staff and preparing to commence operating as early as possible in 2007.

161. 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.

#### **Recording of Garda interviews with persons detained in Garda stations**

162. On foot of pilot trials undertaken at selected Garda stations and based on the recommendations contained in the Second Interim Report of the Steering Committee on Audio and Audio/Video Recording of Garda Questioning of Detained Persons, the Government decided in July 1999 that a nationwide scheme of audio/video recording of suspect interviews should be commenced. The intention was that a sufficient number of Garda stations in all Garda Divisions would be equipped with the required technical equipment to ensure nationwide coverage.

163. At the present time, audio/video recording facilities for recording of Garda questioning of detained persons are installed in 130 Garda stations.

164. In their most recent report (September, 2004), the Steering Committee found that, with the putting in place of additional units of equipment in a number of stations which already have the facility, there are a sufficient number of Garda stations, in all Garda Divisions, to ensure that all interviews as specified in the Criminal Justice Act, 1984 (Electronic Recording of Interviews) Regulations 1997 are recorded.

165. In effect, this means interviews carried out with persons detained under Section 4 of the Criminal Justice Act, 1984; Section 30 of the Offences against the State Act, 1939 (as amended); Section 2 of the Criminal Justice (Drug Trafficking) Act; 1996, or Section 2 of that Act as modified by Section 4(3).

166. A survey conducted by the Garda authorities indicates that 98.1% of all such interviews are being recorded. In the minority of cases where interviews are not recorded it is mainly because either the arrested person declines to have the interview recorded or the equipment is already in use or is otherwise unavailable.

167. Arising from the Committee's report, the Garda authorities have set up a Working Group to examine the extension of these facilities to other locations and proposals to provide for interview facilities in additional locations are being progressed.

### **Clinical trials**

168. Section 70 of the Mental Health Act, 2001 provides that a person who has been admitted involuntarily for psychiatric care and treatment cannot be a participant in a clinical trial. This section, along with other sections of the Act dealing with the rights of involuntary patients commenced on 1 November, 2006 (see under Article 9 below).

169. The European Communities (Clinical Trials on Medicinal Products for Human Use) Regulations, 2004 (as amended) regulate the conduct of clinical trials on medicinal products for human use in Ireland. The Regulations provide for the establishment of Ethics Committees, whose members are responsible for protecting the safety and wellbeing of human subjects involved in a clinical trial on medicinal products for human use and to provide public assurance of that protection, by, among other things, expressing an opinion on the trial protocol, the suitability of the investigators and the adequacy of the facilities, and on the methods and documentation to be used to inform trial subjects and obtain their informed consent.

### **Article 8**

170. There is a requirement for all convicted prisoners in Irish prisons to work within the prisons. A prisoner may be excused on medical advice or for attendance at educational courses.

171. There is a strong emphasis in the Irish prison system on provision of work and vocational training opportunities for prisoners to help them cope with imprisonment and acquire skills to improve their employment prospects on release. Work activities comprise prison catering, cleaning, laundry and painting/decorating, as well as workshop activities including metalwork, printing, computers, Braille, woodwork, construction, clothing manufacture, craftwork, records

indexing, upholstery, electronics, and outdoor activities such as gardening, farming and horticulture. Community project work such as landscaping and construction are also undertaken by prisoners on a voluntary basis.

### **Measures to combat human trafficking**

172. Under current Irish criminal law it is an offence, punishable by up to life imprisonment, to traffic a person under 17 years of age, male or female, into, through or out of Ireland for the purposes of that person's sexual exploitation. This is provided for in the Child Trafficking and Pornography Act, 1998.

173. Under the Illegal Immigrants (Trafficking) Act, 2000, it is an offence for a person to organize or knowingly facilitate the entry into Ireland of another person whom that person knows, or has reasonable cause to believe, is an illegal immigrant. The penalty, on conviction or indictment for this offence, is a maximum of 10 years imprisonment or an unlimited fine or both.

174. Legislation which will create a specific offence, in accordance with EU, United Nations and Council of Europe instruments on trafficking, of trafficking persons into, through or out of Ireland for the purpose of their sexual or labour exploitation is at an advanced stage of preparation. The legislation, which is contained in the Criminal Justice (Trafficking in Persons and Sexual Offences) Bill, 2006 will be comprehensive, providing further protection to vulnerable persons against sexual abuse and amending provisions in existing Acts making them more relevant in the light of experience gained from their operation. This legislation will provide for compliance with two EU Framework Decisions - the Framework Decision combating trafficking in persons and the Framework Decision combating the sexual exploitation of children and child pornography. The legislation will also take account of several other international instruments, such as the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against transnational organised crime (the Palermo Protocol), the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Council of Europe Convention on action against trafficking in human beings.

175. Bilateral agreements were concluded with Poland and Bulgaria in December 2005. The agreements cover a range of criminal justice matters, including co-operation in combating trafficking in persons. Negotiations are ongoing in relation to proposals for agreements with other Eastern European countries.

176. Insofar as detection and enforcement is concerned, An Garda Síochána and the Garda National Immigration Bureau (GNIB), in particular, take a proactive and vigorous approach in preventing and combating trafficking of human beings. The GNIB works closely with other specialist units, e.g., the Garda Bureau of Fraud Investigation, the Garda National Drugs Unit, the National Bureau of Criminal Investigation and the Criminal Assets Bureau. A number of Garda operations, including "Operation Hotel" and "Operation Quest", are in place to tackle the phenomenon. The approach taken in tackling trafficking is, where possible, to prevent it occurring, or where it does occur, to seek to prosecute the perpetrators and to protect the victims.

177. Garda operations have uncovered a small number of trafficking cases. By its very nature, however, human trafficking is a clandestine activity and, owing to the intimidation associated

with it, victims are often reluctant to come forward to the authorities. This is the experience internationally and, for these reasons, it is impossible to be precise about the extent of human trafficking into Ireland. In a recently published United Nations Report “Trafficking in Persons Global Patterns” Ireland ranks at the low end of destination or transit countries in western Europe, an analysis supported by the US State Department’s Trafficking in Persons Report, 2006.

178. There is, however, no official complacency on this subject. In May 2006, the report of a working group on human trafficking comprised of representatives of the Department of Justice, Equality and Law Reform and An Garda Síochána was published and its conclusions and recommendations are being advanced.

179. In view of the exponential growth in the level of immigration in Ireland in recent years, all members of An Garda Síochána are advised of the need to be mindful of the possibility of trafficking in women and children for sexual exploitation. If evidence of trafficking for such purposes is disclosed in any case, investigations are conducted. A training programme has been prepared for delivery to key Garda personnel throughout the State. This training programme has been designed specifically to enable members of An Garda Síochána identify victims of trafficking whom they encounter in the course of their duties, ensure that members fully understand the complexity of the phenomenon and ensure that victims receive appropriate assistance from all the relevant agencies.

180. In tandem with the launch of the above report, a poster campaign was also introduced with the assistance of Crimestoppers and intended to raise awareness of trafficking amongst the general public and to form an important additional point of contact for those who may be victims of, or vulnerable to, this crime. A free phone number is advertised on the posters and confidential assistance is available for victims or for anyone with knowledge of trafficking activities.

### **Article 9**

181. Prior to the late 1970s the Gardaí operated on the basis that they could ask a suspect of a crime to accompany them to a Garda station to “help them with their inquiries”. This practice has since been found by the courts to be unlawful. In *The People (Director of Public Prosecutions) v. Shaw* (1982) IR 1, Walsh J. said that “if there exists a practice of arresting persons for the purpose of assisting the police in their inquiries it is unlawful. In such circumstances the phrase is no more than a euphemism for false imprisonment”.

182. The Criminal Justice Act, 1984 sets out the conditions under which a person who has been arrested for an offence punishable by imprisonment for 5 years or more may be detained for the purposes of the proper investigation of the offence. Section 4 of the 1984 Act provided that a person arrested in accordance with its terms could be detained for 6 hours. This period could be extended by a further period of 6 hours on the authorisation of a Garda of Superintendent rank. Following recent amendments by the Criminal Justice Act, 2006, an extension of a further 12 hours is allowable on the authorisation of a Garda of Chief Superintendent rank. The maximum is now 24 hours. All the detention periods are exclusive of rest periods which the detained person may avail of between 12.00 midnight and 8.00 am. A detention of 24 hours will include at least one rest period and possibly two, thus giving a potential maximum period in detention of 40 hours.

183. There are a number of safeguards in place to protect individuals against police officers acting ultra vires. The Commissioner of the Garda Síochána is answerable to the Minister for Justice for the way in which the Force is run. Police actions are, of course, subject to the Constitution, civil and criminal law and, in particular, the Garda Disciplinary Regulations and Garda Síochána (Complaints) Act, 1986. As mentioned in relation to Article 7 (see paragraph 158), the Garda Síochána Act, 2005 provides for the establishment of the Garda Síochána Ombudsman Commission to replace the Garda Síochána Complaints Board.

184. Gardaí receive full academic and practical instruction on all matters pertaining to the abovementioned legislation and its provisions. The importance of the complaints legislation is emphasised particularly in regard to its dual role in providing an independent forum for dealing with complaints from the public, whilst ensuring that the operational efficiency of the Force is not restricted.

185. The Criminal Justice (Drug Trafficking) Act, 1996 allows detention of up to seven days in suspected drug trafficking cases. The Act, however, contains a number of safeguards, including the need to bring a person before a court at intervals after the first 48 hours of detention have elapsed. The court may authorize a further period of detention up to 72 hours and thereafter a final period of detention up to 48 hours. In each case the detained person must be brought before the court. Before authorizing further periods of detention, the court must be satisfied that the continued detention is necessary for the proper investigation of the suspected offence and that the investigation is being conducted diligently and expeditiously. The provisions were recently amended by the Criminal Justice Act 2006 to provide that where an application is made to a court to extend the period of detention and where the period would have expired during the court hearing on the application, the period shall, in those circumstances, be deemed not to expire until the determination by the court of the application. The Act states that certain sections shall cease to be in operation at the expiry of 12 months from the date of their commencement unless resolutions are passed by each House of the Oireachtas continuing their operation. In the most recent such instance, the Minister for Justice Equality and Law Reform sought the approval of the Government on 5 December 2006 for the moving of the necessary resolutions before both Houses of the Oireachtas to enable certain provisions of the Act to continue in operation for a further 2 years i.e. 31 December, 2008. The provisions in question are contained in the following Sections of the Act; Sections 2 (power of detention), 3 (amendment of Criminal Justice (Forensic Evidence) Act, 1990), 4 (re-arrest), 5 (application of provisions of Criminal Justice Act, 1984) and 6 (regulations regarding officers of the Customs and Excise service).

186. Before such a resolution could be passed, the Minister laid before each House a report on the operation of the relevant sections, covering the period up to 21 days before the moving of the resolution. A copy of the report by the Minister on the operation of Sections 2, 3, 4, 5 and 6 of the Act during the period 12 November 2004 to 11 November 2006 inclusive, pursuant to Section 11 (3) of that Act is enclosed.

### **Right to bail**

187. The Bail Act, 1997 allows a court to refuse bail to a person charged with a serious offence where it is reasonably considered necessary to prevent the commission of a serious offence by that person. The Act also includes provisions relating to the payment into court of cash or equivalent securities as part of bail; attaching conditions to bail, including conditions relating to

good behaviour of the accused while on bail; allowing forfeiture of bail money where the conditions are breached; and strengthens the provisions of the Criminal Justice Act, 1984 requiring consecutive sentences to be imposed where an offence is committed on bail. That Act is fully in operation since 15 May, 2000.

### **Review of detention under mental health legislation**

188. The most significant development within the Irish mental health services since 2000 has been the enactment of new legislation to bring Irish mental health law into conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Mental Health Act, 2001 was enacted in July 2001 and will be brought into effect on a phased basis over the next few years. This Act will significantly improve safeguards for persons suffering from mental disorders who are involuntarily admitted for psychiatric care and treatment.

189. The main vehicle for the implementation of the provisions of the Mental Health Act, 2001 is the Mental Health Commission, which was established in April 2002. It is an independent statutory body, whose primary function is to promote and foster high standards and good practices in the delivery of mental health services and to ensure that the interests of detained persons are protected.

190. Under the Mental Health Act, 2001, each decision by a consultant psychiatrist to detain a patient for psychiatric care and treatment on an involuntary basis and each decision to extend the duration of such detention will have to be referred to the Commission. The Commission will arrange for an independent review, which must be completed within 21 days, of all such decisions by Mental Health Tribunals which will operate under its aegis. The tribunals will comprise a consultant psychiatrist, a lawyer and a lay-person. The Mental Health Tribunal will arrange, on behalf of the detained person, for an independent assessment by a consultant psychiatrist. A tribunal will be empowered to order the release of a patient if it considers that he or she does not require to be detained involuntarily. A free legal aid scheme for all detained patients will be operated by the Commission. All patients detained in psychiatric hospitals will have their cases reviewed by a Mental Health Tribunal. One of the priorities for the Commission is to put in place the structures required for the operation of Mental Health Tribunals, as provided for in Part 2 of the Act. A Commencement Order was signed to facilitate the bringing into operation of this Section and all remaining sections of the Act from 1 November, 2006.

191. Also, under the Mental Health Act, 2001, the Mental Health Commission will be the registration authority for all hospitals and in-patient facilities providing psychiatric care and treatment. The Commission has appointed a statutory Inspector of Mental Health Services. A team of Assistant Inspectors has also been appointed. The Inspector's annual report and review of the mental health services is published along with the Commission's annual report. Under the provisions of the Act, the Minister is empowered to make regulations specifying the standards to be maintained in all approved centres and the Commission will be responsible, through the Inspector, for ensuring that these standards are adhered to, and for taking legal action against service providers who do not comply with regulations. These Regulations are being prepared and will be enacted in 2006.

192. The Criminal Law (Insanity) Act, 2006 provides for the establishment of an independent body, the Mental Health (Criminal Law) Review Board. The background to these provisions is that the European Court of Human Rights has ruled that, in relation to the detention of persons of unsound mind, the availability of some independent system of review of the lawfulness of detention is required in order to comply with the provisions of the ECHR.

193. Following enactment of the above legislation, the Mental Health (Criminal Law) Review Board was established on 27 September, 2006 and replaces an existing ad hoc Advisory Committee. In order to comply with our obligations under the Convention, the Review Board is statutorily independent of the Executive. Its main function will be the regular review of the detention of persons at the Central Mental Hospital (CMH), currently the only designated centre defined by the Act, who have been referred there arising from a decision of the Courts that they are unfit to stand trial or found to be not guilty by reason of insanity. The Board will also review the detention of military prisoners suffering from mental disorders, who have been transferred to the hospital from prison and military personnel referred by tribunals under the relevant Defence Acts.

194. The Board has been appointed by the Minister for Justice, Equality and Law Reform and is chaired by former High Court Judge, Justice Brian McCracken. The ordinary members are Mr. Tim Dalton, former Secretary General of the Department of Justice, Equality and Law Reform and Dr Michael Mulcahy, Consultant Psychiatrist.

#### **Detention of asylum-seekers**

195. In relation to Concluding Observation 26 (a) on Ireland's last report to the Human Rights Committee, it should be noted that the Refugee Act, 1996 sets out the legislative framework for fulfilling Ireland's obligations under the 1951 Geneva Convention. This Act has been substantially amended by Section 7 of the Immigration Act, 2003 which was commenced with effect from 15 September, 2003.

196. The Refugee Act, 1996 provided for the detention of asylum seekers in a number of exceptional and clearly defined circumstances. However, comprehensive safeguards are in place if detention in any particular case is necessary, subject to national law.

197. One of the changes to the Refugee Act, 1996 introduced by the Immigration Act, 2003 is the increase from 10 to 21 days in the maximum period between court appearances for an asylum applicant detained under Section 9(8) of the Refugee Act.

198. This amendment was motivated by a concern that the 10 day detention period had the potential to place an undue burden on the already heavily stretched resources of the Courts and the Garda Síochána. This change gives increased flexibility to the courts to decide what period of up to 21 days they consider appropriate. It will still be a matter for the District Court Judge to decide how long each period of detention should be within the outer limit of 21 days.

199. It is not the practice to detain people except in exceptional circumstances as a last resort. The provisions of the Refugee Act regarding the detention of asylum seekers are specific and targeted at situations where there is a real risk, on public policy grounds, that the interests of

Irish society and the Irish State can or could be adversely affected. Detention for any appreciable period can only arise in cases where a District Court judge confirms the reasonable suspicion of an immigration officer or a member of the Garda Síochána that an asylum applicant:

- Poses a threat to national security or public order;
- Has committed a serious non-political crime outside the State;
- Has not made reasonable efforts to establish his or her true identity;
- Intends to avoid removal from the State in the event of his or her application for asylum being transferred to another Dublin II Regulation country;
- Intends to leave the State and enter another state without lawful authority; or
- Without reasonable cause has destroyed his or her identity or travel documents or is in possession of forged identity documents.

200. It is accepted that some genuine refugees will have forged papers and it is not intended that any asylum seeker who arrives in the State, and freely admits that his or her documents are forged, should be detained. The provision has been qualified by the addition of “without reasonable cause” to clarify that the intention is not to detain such applicants. However, if a person is found to be in possession of, for example, a number of forged passports it may well give rise to a valid suspicion that the person is engaged in some illegal activity. Before detaining a person the immigration officer or member of the Garda Síochána must have reasonable cause to do so.

201. The Act also provides that applications from persons who have been detained should be processed as a matter of urgency.

202. Every person who arrives at the frontiers of the State and who applies for asylum must be given permission to enter the State. The immigration officer concerned has no discretion to refuse even if there is evidence that the application is unfounded or even if the officer believes that the applicant is a dangerous criminal. Because of this policy it is necessary to have certain safeguards and the Act provides for the detention of an applicant in certain circumstances.

### **Places and conditions of detention**

203. Persons may be detained in any one of a number of Garda stations (for no longer than the first 48 hours) or prisons and designated places of detention (indefinite). Detention in prisons is on the same basis as those on remand.

204. Regulations have been made which set out the places and conditions of detention, because detained applicants have not been charged with any criminal activity they are not subject to the more restrictive aspects of prison routines. They are subject only to such restrictions as are necessary for the orderly and secure functioning of the detention centres concerned.



### **Safeguards - information which must be given to detained persons**

205. Persons detained under the Refugee Act, 1996 (as amended) must be told the following without delay and, where possible, in a language that they understand:

- The reason for the detention;
- That he or she will, as soon as practicable, be brought before a court which will determine whether he or she should be detained;
- That he or she is entitled to consult a solicitor;
- That he or she is entitled to have notification of his or her detention, the place of detention concerned and every change of such place sent to the UNHCR and to another person named by him or her;
- That he or she is entitled to leave the State at any time during the period of his or her detention after consultation with the court; and
- That he or she is entitled to the assistance of an interpreter for the purpose of consultation with a solicitor and for the purpose of any appearance before a court.

### **Article 10**

206. Legislation governing the operation of the prison system comprises a variety of Prisons Acts dating from the nineteenth century, specifically the Prisons (Visiting Committees) Act, 1925 the Criminal Justice Act, 1960 and various Statutory Rules and Regulations, the most important of which are the Rules for the Government of Prisons, 1947. The fundamental and guiding principles laid down in the Standard Minimum Rules for the Treatment of Prisoners are generally in force in Irish prisons. Draft new Prison Rules were published in June, 2005, which have taken into consideration these standards. Included in the draft new Rules are more comprehensive disciplinary procedures which take into account developments in jurisprudence both here and in the European Court of Human Rights. However recent legal advice is to the effect that the most prudent approach would be for certain matters, including the new Prison Disciplinary Procedures, to be included in primary legislation. The necessary provisions are included in the Prisons Bill, 2006 which was published on 14 November, 2006. The Prison rules will be signed into law by the Minister at the earliest opportunity.

207. The Irish Government are strongly committed to the principle that all persons deprived of their liberty shall be treated with humanity and dignity. Where allegations of assault or ill-treatment of prisoners are made, the Garda Síochána are called to investigate. A prisoner may also make a complaint to the Prison Visiting Committee, to the prison chaplain, to the prison doctor, to the Minister for Justice, Equality and Law Reform, and he or she also has free access to the courts. They may also complain to the Committee, the European Court of Human Rights and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). There is free access by prisoners to those avenues of complaints.

208. Ireland recognises the important contribution made by independent oversight bodies in protecting the human rights of persons in custody. The State has a demonstrable record of enabling and facilitating visits to Irish custodial centres by recognised bodies such as the European Committee for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment (CPT) and Prison Visiting Committees. In inspecting prisons, the Prison Visiting Committee focus on issues such as the quality of accommodation, catering, medical, educational and welfare services, and recreational/leisure facilities. Prisoners have free access to the Prison Visiting Committee and may voice any complaints or objections to them. Visiting Committees are required to report any abuses to the Minister of Justice, Equality and Law Reform. The report of the visit of the CPT to Ireland in 2002 and the Irish Government's response to the Committee's report have both been published. The annual reports to the Minister, of Prison Visiting Committees, are published on the Department of Justice, Equality and Law Reform website ([www.justice.ie](http://www.justice.ie)). The CPT conducted its most recent visit during October 2006. The prison system welcomes external scrutiny by international and national bodies as a means of ensuring openness and accountability in the provision of care and proper treatment of prisoners.

209. The Office of the Inspector and Places of Detention was established on a non-statutory basis in 2002. Provision for the establishment of the post of Inspector of Prisons has been included in the Prisons Bill, 2006 which was published on 14 November, 2006. It is hoped that the statutory office can be established in 2007. The Bill provides that the Inspector is independent in the exercise of his functions which relate to the inspection of prisons. The Inspector is required to prepare an annual report for the Minister for Justice, Equality and Law Reform on his or her functions and on such other matters as the Minister may direct from time to time.

210. Since Ireland's last report in 1998, there have been a number of positive developments in the treatment of persons in custody with dignity and respect. These include:

- Provision of a total of 1,200 new prison places built to a high standard. This has largely eliminated the previous long-standing problem of overcrowding and introduced improved in-cell sanitary facilities for a greater proportion of the prisoner population;
- Provision of new separate accommodation for female prisoners (new female prison - the Dóchas Centre, Dublin and a new separate female unit at Limerick Prison);
- Provision of a new dedicated remand prison at Cloverhill, Dublin such that a significant proportion of all unconvicted prisoners are now accommodated separately from convicted prisoners;
- Segregation of four-fifths of all boys under 18 years of age from older prisoners using newly renovated accommodation at St Patrick's Institution;
- Replacement of traditional "padded cells" with new Close Supervision and Special Observation Cells - representing a further step forward in managing disturbed prisoners in a way which preserves their dignity and self-respect while also providing for their safety;

- Provision of new medical, educational, vocational training, recreational and consultation accommodation in conjunction with provision of new cellular accommodation;
- Significant improvements in prison diet and hygiene involving stringent external audits at all prisons. Most prisons have secured industry accreditation and awards in hygiene and food presentation;
- Introduction of much-improved drug treatment options for prisoners, including methadone maintenance and enhanced regimes for prisoners in drug-free areas; and
- Introduction of a cadre of professional nurses and an improved level of visitation by medical specialists.

### **Prisoner accommodation**

211. Ireland currently has an average daily prisoner population of just under 3,200 - of which approximately 1.5% are aged under eighteen years of age and 3% are female. Most of the State's fourteen prisons and places of detention operate at, or near, full capacity. A small number of prisons operate in excess of capacity. The number of prisoners per 100,000 population is 77.

212. Since the presentation of the Ireland's second report to the Human Rights Committee, three new purpose-built prisons - the Dóchas Centre, Cloverhill and the Midlands Prison - have been opened, a significant proportion of accommodation at Limerick Prison has been replaced, additional domestic-style housing has been provided in a low security area within Castlereagh Prison and renovations/improvements have been carried out at a number of other prisons, notably the Training Unit on the Mountjoy Complex.

213. While this new prisoner accommodation has improved living conditions and largely eliminated overcrowding (e.g. two persons being accommodated in a cell designed for one) in Irish prisons, there is still much to be done to bring prisoner accommodation up to modern standards. Construction is currently underway to replace prisoner living accommodation at Portlaoise Prison and to provide new education, workshop and other facilities at both Portlaoise and Limerick Prisons. Tenders will shortly be invited for design and construction, financing and maintenance of a major new prison complex at Thornton, Co Dublin, which will replace the four prisons on the existing Mountjoy campus (Mountjoy, Training Unit, Dóchas Centre and, until such time as a new children detention facilities are provided by the Irish Youth Justice Service, Saint Patrick's Institution). It is hoped that construction will commence in 2007 with completion in 2009. Planning is also proceeding on a priority basis for a second new complex at Spike Island, Cork Harbour, and for new accommodation at Wheatfield Prison (to create separate accommodation for unconvicted prisoners and allow treble-person cells at Cloverhill to be used as double cells) and new prisoner accommodation at the open centres at Shelton Abbey and Loughan House.

214. In all, the current and planned prison developments will result in replacement of outdated prison spaces totalling 40% of the entire prison estate and ensure adequate accommodation to meet anticipated growth in prisoner numbers, at least to 2015. This new accommodation will ensure that the degrading practice of slopping-out will be eliminated at the four remaining prisons which do not have in-cell sanitary facilities (Mountjoy, Limerick, Portlaoise and Cork).

### **Segregation of accused persons**

215. At the time of ratification, Ireland made the following reservation to Article 10(2) of the Covenant:

“Ireland accepts the principles referred to in paragraph 2 of article 10 and implements them as far as practically possible. It reserves the right to regard full implementation of these principles as objectives to be achieved progressively.”

216. Ireland continues to make progress towards full implementation of the principles in Article 10.2. About 70%, of the daily average of 530 unconvicted prisoners in the prison system, are accommodated at a designated remand facility, Cloverhill Prison, which opened in 2000. Further new accommodation for unconvicted prisoners, including new separate accommodation at Wheatfield Prison, is planned. By 2010, almost all of the average daily number of adult male unconvicted prisoners will be accommodated separately from convicted prisoners.

217. Pending provision of further new prison accommodation, two factors have to be considered in regard to separation of unconvicted prisoners from convicted prisoners. Firstly, the number of unconvicted prisoners in the prison system fluctuates by more than 50% during the year from under 400 to over 600. Accordingly, achievement of full separation of unconvicted from convicted prisoners would involve leaving accommodation unused for periods of the year. Such redundancy would be contrary to the interests of the overall prisoner population at this time given the continuing pressure on prisoner accommodation as a whole. Secondly, committals by courts are generally to institutions in the immediate catchment area. Many prisoners prefer to be accommodated closer to home rather than at a more remote facility, where there is separate accommodation for unconvicted prisoners. Ultimately, the intention is that each committal prison would have a separate area for unconvicted prisoners.

218. Accused persons are afforded separate treatment appropriate to their status as unconvicted persons. They are not required to work. They may receive a visit each day rather than once per week and they may receive and send out as many letters as they wish. Such persons are also facilitated insofar as is practicable in continuing to manage any outside business interests while in prison.

### **Juvenile offenders and youth justice**

219. In December, 2005, following a comprehensive review of the youth justice system, the Government announced a series of youth justice reforms including amendments to legislative provisions and the establishment of an overarching body called the Irish Youth Justice Service.

220. These reforms include implementation of the Report on Youth Justice Review's key findings, including the establishment on a non-statutory basis of a Youth Justice Service (YJS) as an executive office of the Department of Justice, Equality and Law Reform under the strategic direction of the new Office of the Minister for Children. This will ensure that all policies and services for children will be developed in a new strategic framework of joined-up Government under the Minister for Children.

221. The new Youth Justice Service has a remit to:

- Develop a unified youth justice policy including crime prevention;
- Devise and implement a national youth justice strategy with links to other child related strategies;
- Manage all youth detention facilities;
- Manage the implementation of the provisions of the Children Act, 2001 in relation to community sanctions, restorative justice conferencing and diversion projects; and
- Establish and administer a national youth justice oversight group and local youth justice teams.

222. The Irish Youth Justice Service (IYJS) is an executive office of the Department of Justice, Equality and Law Reform with both policy and operational responsibilities. The IYJS comes under the strategic direction of the new Office of the Minister for Children.

223. As an initial step a Youth Justice Conference was held in January 2006 to share information on the new measures with stakeholders across the statutory and non-statutory sector and to begin the consultation process on the development of a National Youth Justice Strategy.

224. Of particular importance in the context of the provision of a joined up whole government service response in this area will be the close collaborative working of the HSE and the Irish Youth Justice Service (and other agencies) in a strategic way as well as at an operational level. While respecting their different roles, it is recognised that very close co-operation including joint decision making and problem solving will be needed. Under the auspices of the Office of the Minister for Children, discussions are taking place between the Health Service Executive, the Irish Youth Justice Service and the Probation Service to help plan this new approach.

225. It is proposed that the IYJS will assume responsibility for all detention services for children under the age of 18. This will require the transfer of legal and administrative responsibilities for the detention of young offenders up to age 16 years from the Department of Education and Science to the Department of Justice, Equality and Law Reform.

226. Responsibility for the detention of 16 and 17 year olds will transfer from the Irish Prison Service to the new Youth Justice Service and the children detention school system, in operation for those up to the age of 16, will be extended to 16 and 17 year olds. The outcome of these changes will be the removal of all children from the prison system and their inclusion in a system specifically designed to take account of their age and maturity, focusing on the rehabilitation of the child.

227. The Youth Justice Service is also working closely with the Probation and Welfare Service to agree a schedule for the role out of services which will allow for the commencement of the community sanctions provided for in the Children Act, 2001.

228. Responsibility for educational services for children in detention will remain with the Department of Education and Science. In that context the Department is required to prepare an education strategy for all children in detention and special care residential accommodation.

229. In July 2006 legislative amendments to the Children Act, 2001 were passed by both Houses of the Oireachtas and signed into law by the President as part of the Criminal Justice Act, 2006. These amendments will allow for the speedy implementation of the remaining provisions of the Children Act, 2001, as amended. This process should be completed in 2007.

230. The amendments also contain provisions to amend the age of criminal responsibility by abolishing the common law rule and replacing it with a statutory provision under which children less than 12 years of age cannot be charged with offences. An exception will provide that 10 and 11 year old children may be prosecuted for murder, manslaughter, rape and aggravated sexual assault. They also provide for the introduction of anti-social behaviour orders for those less than 18 years of age.

231. To facilitate the speedy implementation of the detention provisions of the Children Act, 2001, as amended, a cross-departmental expert group has been set up to examine the future requirements for secure accommodation for offending children under the age of 18, and to plan for the provision of the necessary facilities. The Special Residential Services Board (SRSB) came into operation in November 2003. The Board has an important role in:

- Advising on the co-ordination of special residential services run by health boards for non-offending children and the Department of Education and Science for offending children;
- Determining whether it is appropriate for a health board to apply for a special care order, under the Act; and
- Operating an on-call 24 hour 7 day system, that is available to relevant agencies, which co-ordinate the placement of children, if required by the courts (under 16 years) in the 5 Children Detention Schools and ensuring the appropriate and official utilisation of such schools.

232. In addition, following Government approval, a National Manager for Detention School Services has been recruited and is due to take up the post in the first quarter of 2007. This National Manager will then take responsibility for the expert group and area of detention school services.

233. The timescale for implementation of these changes has yet to be determined but at this stage it is envisaged that the changes in respect of children up to age 16 years will take place in 2007. The changes in respect of 16 and 17 year olds will take place as soon as the appropriate facilities are available to accommodate them.

234. In the meantime, detention of juveniles under 18 years of age is currently the responsibility of the Irish Prison Service (boys aged 16 and 17 years of age, and girls aged 17 years of age). The Department of Education and Science are responsible for the operation of Children Detention Schools for children under 16 years who have been convicted or placed on remand.

235. The Irish Prisons Service accommodates all 16 and 17 year old boys in the prison system at Saint Patrick's Institution, which also houses older males aged 18 - 21 years. Currently there are about fifty-five boys aged 16/17 years at Saint Patrick's, of whom forty-four are accommodated separately from older prisoners. The remaining 16/17 year olds are accommodated in the Institution's Drug-Free Division where an enhanced regime is in operation.

236. The lack of modern facilities at Saint Patrick's Institution has been the subject of justified criticism by oversight and other bodies. The Irish Government shares the views expressed that Saint Patrick's is no longer suitable as a place of detention for young people and that its complete replacement is now required. The Institution, together with other detention facilities on the Mountjoy Prison Complex, will be closed as soon as planned new facilities are constructed on a site purchased in 2005 at Thornton, Co. Dublin.

237. Girls committed to prison by the courts are currently accommodated at the Dóchas Centre. On any given day there are no more than a small number of girls aged under 18 in custody and indeed there are times when there are no such girls at the Centre. In such circumstances, segregation of unconvicted from convicted girls would represent an additional burden on individual girls and would not be appropriate.

238. The average period of detention of 118 accused 16/17 year olds in the prison system in 2005 was thirteen days, with 40% of them spending seven days or less in custody before adjudication or release on bail.

239. There are 5 children detention schools under the aegis of the Department of Education and Science providing residential services for children generally up to age 16 years, who have been convicted of an offence or placed on remand by a Court. A comprehensive educational assessment is carried out on each child on admission and an individual education plan is drawn up. The aim of the plan is to build upon the strengths and try to remediate the weaknesses of each young person. Educational programmes can 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 prepare students for the Junior Certificate Examination and for the Further Education and Training Awards Council (FETAC) modules in each subject area where suitable.

240. Each of the children detention schools has a drugs/alcohol misuse programme to educate young people about the dangers of taking illegal substances.

### **Female prisoners**

241. While not referred to in Article 10, it might be noted that female prisoners are detained separately from male prisoners. Most female prisoners are accommodated at the designated female prison - the Dóchas Centre - which became fully operational in December 1999. The Centre had a daily average prisoner population of 88 in 2005. It is a purpose-built facility designed to meet the needs of women prisoners. The Centre operates a progressive regime with reduced internal security. It has received favourable reviews from national and international bodies. A further twenty female prisoners are accommodated in separate female accommodation

at Limerick Prison (opened in 2003). It is proposed to relocate this accommodation to a new prison development planned for Spike Island in Cork Harbour. This will ensure that more women prisoners will be accommodated closer to the family home.

### **Medical services**

242. Prisoners have access to all necessary medical treatment either within the prison or, if appropriate, by referral to specialist services in the community for assessment or treatment. They also have access to psychiatric and psychological services, as necessary. To ensure that prisoners medical needs are being met at all times, 24-hour nursing or medical orderly cover is also provided in all closed prisons. The Prison Service has moved to increase the number of professional nurses in the system while reducing medical orderly cover.

### **Prisoners with physical disabilities**

243. Every effort is made by the prison system to accommodate prisoners who are wheelchair users or who have other mobility difficulties. Such prisoners are accommodated on ground floors or on floors with lift access. Entry doors, where possible, have also been widened to allow wheelchair access.

### **Mentally ill patients and those with personality disorders**

244. Mental illness and personality disorders comprise a broad range of individual conditions, which vary considerably in the nature and extent of their impacts on the person. In many cases, a person who is mentally ill or has a personality disorder can be managed within the prison system with continuing care being provided, as appropriate, from psychologists and visiting psychiatrists. There are, however, cases where mentally ill prisoners need in-patient psychiatric care and real difficulties have arisen in securing timely access to such care for individual prisoners.

245. The Central Mental Hospital (CMH) was opened in 1850. It has always operated as a therapeutic rather than a penal institution and therefore, has always operated within a hospital ethos. The hospital provides the base for the National Forensic Mental Health Service (FMHS). This tertiary service is the only centre in the State that provides psychiatric treatment in conditions of maximum and medium security. The hospital provides acute psychiatric intensive care for offenders who are suffering from a mental illness. As such, most of the admissions come from the Prison Service, where they are either on remand, pending trial or serving a sentence. Patients are also admitted from the Community Mental Health Services under Section 208 of the Mental Treatment Act, 1945, and will be admitted under the provisions of the Mental Health Act, 2001, which is fully in force since 1 November, 2006.

246. The National Forensic Mental Health Service is an integral component of the National Mental Health Services and as such comes under the remit of the Inspector of Mental Health Services. The relationship of the National Forensic Mental Health Service with Community Mental Health Services forms the basis of a continuum of care, which is essential for patient welfare.



247. In 2003, the Government established a special committee to draw up a Service Level Agreement on the admission of mentally ill prisoners to the Central Mental Hospital and their treatment there. The committee recommended a phased programme of investment in the hospital to enable it to increase its capacity for admissions from the prison service from 100 per annum in 2003 to 300 per annum. Implementation of Phase 1 of this proposal commenced with the allocation to the hospital of additional revenue funding of €1m and capital funding of €1m in 2004. An additional €1m was provided in 2005 and a further €1m in 2006.

248. A Project Team to progress the re-development of the Central Mental Hospital was established by the Minister for Health and Children in 2003. The Team recommended that the Central Mental Hospital be relocated to a new purpose built facility in the greater Dublin area. In November 2004, the Government agreed in principle to locate the new hospital adjacent to the Mountjoy Prison Replacement Complex at Thornton Hall, North Co. Dublin, and further proposals in this regard are in preparation.

249. In its new location, the hospital will remain under the aegis of the Department of Health and Children and will be owned and managed by the Health Service Executive. The provision of an appropriate governance structure for the hospital, reflecting its importance as a national, tertiary psychiatric service is currently being examined.

250. An Expert Group on Mental Health Policy was established on 4 August, 2003 to prepare a national policy framework for the further modernisation of the mental health services, updating the 1984 policy document, Planning for the Future.

### **A Vision for Change National Mental Health Service Policy Framework**

251. On 24 January, 2006 'A Vision for Change' - a new National Policy Framework for the mental health services in Ireland was published by the Expert Group on Mental Health Policy. The Report has been accepted by Government as the basis for the future development of mental health services. The Report outlines a vision of the future for mental health services and sets out a framework for action to achieve it over the next 7 - 10 years.

252. A number of recommendations suggested in the report were, inter alia, that:

- Service users are partners in their own care, with service user involvement at all levels;
- Care plans reflect services users' needs, goals and potential including addressing community factors which impede recovery;
- Services are holistic, covering all aspects of mental health: biological (e.g. medication), psychological (e.g. "talking therapies") and social (e.g. housing, employment, education/training);
- Services are community-based, involving reduction in hospital admissions, more home-based treatments and outreach services;
- Services are multi-disciplinary. In addition to doctors and nurses, a range of professionals e.g. psychologists, social workers, occupational therapists should be on all mental health teams;

- The services are population based and focus on mental health and well-being of the whole population, from childhood to old age.

253. The recommendations in the Report in relation specifically, to Forensic Mental Health Services (FMHS) are inter alia:

- Every person with serious mental health problems coming into contact with the forensic system should be accorded the right of mental health care in the non-forensic mental health services unless there are cogent and legal reasons why this should not be done. Where mental health services are delivered in the context of prison, they should be person-centred, recovery-oriented and based on evolved and integrated care plans;
- FMHS should be expanded and reconfigured so as to provide court diversion services and legislation should be devised to allow this to take place;
- Four additional multidisciplinary, community-based forensic mental health teams should be provided nationally on the basis of one per HSE region;
- The CMH should be replaced or remodelled to allow it to provide care and treatment in a modern, up-to-date humane setting, and the capacity of the CMH should be maximised;
- Prison health services should be integrated and co-ordinated with social work, psychology and addiction services to ensure provision of integrated and effective care. Efforts should be made to improve relationships and liaison between FMHS and other specialist community mental health services;
- A dedicated residential 10-bed facility with a fully resourced child and adolescent mental health team should be provided with a national remit. An additional community-based, child and adolescent forensic mental health team should also be provided;
- A 10-bed residential unit, with a fully resourced multi-disciplinary mental health team should be provided for care of intellectually disabled persons who become severely disturbed in the context of the criminal justice system;
- Education and training in the principles and practices of FMH should be established and extended to appropriate staff, including An Garda Síochána;
- A senior Garda should be identified and trained in each Garda division to act as resource and liaison mental health officer.

### **Psychological services**

254. There are currently 14 Psychologists employed in the Psychology Service of the Irish Prison Service - this is the largest number since the Psychology Service was established in 1981. The complement is made up of 1 Head of Psychology, 6 Senior Psychologists and 7 basic grade Psychologists. Arrangements are underway to recruit 4 more Psychologists in 2006.

255. The Psychology Service fulfils various responsibilities within the prison system. As well as maintaining a commitment to the provision of a generic mental health care service for prisoners, the Service participates in the development of group programmes for particular prisoner groups; contributes to a variety of training initiatives with Prison Officers aimed at enhancing the role of the Officer and is involved in the development of strategy, policy and protocols in areas significant to the operation of the prison system. The Service also supports and facilitates research projects, including the evaluation of interventions with prisoners.

### **Suicide in the prisoner population**

256. The numbers of suicides in the prisoner population was raised by Non-Governmental Organisations as a particular concern at the time of Ireland's second report to the Human Rights Committee. There were 24 deaths in custody in the period 2003 to 2005. Inquest verdicts are outstanding in most instances. However, the indications are that 8 deaths may have been from natural causes; 8 appear to have been self inflicted and 7 as a result of other reasons - including suspected drug overdoses. One death is a suspected homicide in respect of which a person is currently before the Courts. There are also instances of attempted suicide in prisons each year in which deaths are often prevented through the vigilance and successful intervention of prison staff.

257. The circumstances of every death in custody are subject to scrutiny by the relevant coroner exercising jurisdiction for the county where the death took place. Under the Coroners Act, 1962, the coroner is an independent officer specifically appointed with jurisdiction to investigate any death which may have occurred in a violent or unnatural manner, or suddenly and from unknown causes, or where there is a specific enactment requiring the holding of inquest. She or he may sit with or without a jury of independent citizens, and may summon such witnesses, be they eyewitnesses or expert witnesses, as she or he wishes to enable him or her or the jury to come to a verdict in the case. Recommendations of a general character designed to prevent further fatalities may be appended to the verdict at any inquest.

258. There are strategies and plans in place for the prevention of suicides in all institutions. There also exists a great level of awareness and care in the prevention, in as far as is possible, of suicides within all institutions. 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 to all officers and an information pack has been issued to all training officers in each institution. The importance of this subject in a prisons context is fully accepted. The Samaritans have provided courses for staff in some institutions in how to deal with traumatic situations and how to relate to people who have been traumatised.

259. The circumstances of each death in custody are examined by the local Suicide Awareness Group in each institution, which is chaired by the Prison Governor. These examinations cover fully the background and circumstances of each death. Their objective is to identify, where possible, measures which might be implemented to contribute to a reduction in the risk of deaths in the future.

260. A new Group - The Irish Prison Service Steering Group on Prevention of Self-Harm and Death in the Prisoner Population - was established in 2004. This Group is responsible for promoting best practice in the Irish Prison Service in preventing and, where necessary, responding to self-harm and death in the prisoner population. A research/training project for prison staff in 3 institutions, which will examine their information needs in relation to the suicidal behaviour of prisoners, commenced in March 2006. The Listener Scheme, which is run in conjunction with the Samaritans, is already in operation in some Institutions and is proving very worthwhile. It involves training prisoners as "listeners" to enable them to assist other prisoners who need to confide in somebody. There is continuing attention to suicide-proofing of prison fittings and furniture. A new cell window has been designed for use in all new prison accommodation which minimises possible use for self-harm purposes - as well as affording improved ventilation and light.

### **Reformation and social rehabilitation**

261. Ireland is committed to managing custodial sentences in a way which encourages and supports prisoners in endeavouring to live law abiding and purposeful lives as valued members of society. The following paragraphs illustrate the current investment in prisoner care and rehabilitative programmes in the Irish prison system.

### **Drugs rehabilitation/Treatment**

262. The issue of drug use has been a problem for many years. Meeting the individual needs of drug abusers requires a variety of different interventions which are tailored to address both their particular circumstances and the circumstances of the environment in which intervention takes place.

263. A major new policy initiative on Drugs in the Prisons, entitled "Keeping Drugs Out of Prison: Irish Prison Service Drugs Policy & Strategy" was launched by the Minister for Justice, Equality and Law Reform in May, 2006. This policy addresses in a concerted manner the different aspects of the drugs issue including in particular issues of supply, demand and treatment. It builds on good work already being done as well as introducing new measures and resources. The roll-out of the Drugs Policy & Strategy has begun and it is intended that the targets set out will be reached, the major portion being implemented by end-2006 and the longer-term targets by end-2007.

264. The Irish Prison Service operates a multi-faceted approach to drug treatment. This is in addition to tackling supply through a range of security measures including Closed Circuit Television, over-yard netting, tighter visiting arrangements and staff vigilance.

265. Demand reduction involves a combination of detoxification, methadone maintenance and reduction programmes, education and awareness programmes, addiction counselling, drug therapy programmes and psycho-social support. These programmes continue to be run in co-operation with statutory and voluntary services to the maximum extent possible subject to available resources. A methadone maintenance auditing system has been established in order to improve prisoner release arrangements between prisons and community clinics.

266. Drug Free Areas are in operation in St Patrick's Institution, Cloverhill, Mountjoy and Wheatfield. The Training Unit is an entirely drug free institution. The Open Centres at Loughan House and Shelton Abbey have also long adopted a drug free policy. The Irish Prison Service and the Health Service Executive are currently exploring contractual arrangements for an external service provider to provide an enhanced counselling service in prisons. Central to supporting future supply and demand reduction will be the introduction of mandatory drug testing. The Minister for Justice, Equality and Law Reform has published new draft Prison Rules which will include specific provision for mandatory drug testing, and, in this context, it is intended that in 2007, the Irish Prison Service will commence implementation of a new strategy of mandatory drug-testing, addiction counselling and treatment, and increased measures to prevent drug usage to provide a more complete system of rehabilitation.

### **Letters and phone calls, visits and social contacts**

267. Persons serving sentences are generally allowed to send out two letters per week. Extra letters to family or solicitors may be allowed on request. A prisoner awaiting trial may send out as many letters as he or she likes. There is no limit on the number of letters which may be received. Prisoners are allowed to make a daily phone call not counting calls to their legal advisor. Prisoners register family phone numbers in advance and an automated phone management system regulates the number of calls and the numbers which can be contacted. This also serves to protect victims from potential unwelcome contact.

268. Prisoners' correspondence is censored, especially in the closed institutions, on grounds of security and protection of victims of crimes.

269. Legal provisions in relation to the censorship of mail in prisons are set out under Article 63 of the Rules for the Government of Prisons, 1947. At present, all incoming/outgoing mail to a prisoner, with the exception of mail to/from the European Committee for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment (CPT), the European Court of Human Rights, the United Nations Human Rights Committee and the Samaritans, is opened and perfunctorily read to see if the letter contains any contraband (money or drugs), or anything else that might compromise the security of the institution or those who are imprisoned in it or working in it.

270. Since 2005, in keeping with a High Court decision, the prison system has adopted a policy of facilitating, on a case-by-case basis, applications for access to the media when made by an individual prisoner. Among the factors taken into account are the purpose of the media access (e.g. to address a perceived or alleged miscarriage of justice), the extent to which that purpose can be achieved through other means, the potential impact on the victim and the security and good order of the prison.

### **Education**

271. The prison system is endeavouring to tackle the high level of illiteracy and lack of educational accomplishment prevalent in many prisoners by supporting enhanced educational programmes within prisons. Participation in prison education continues to be greater than 50% which is high by international standards. At the end of 2005, the participation rate was 51%. More than half of the participants (i.e. 27% of the total prison population) were intensively

involved, i.e. for more than 10 hours per week of classes. Literacy work continues to be a priority element of the Prison Education Service curriculum. A number of significant initiatives parallel efforts to address adult literacy problems in the community.

272. Since the late 1990s, most Prison Education Units have become significantly involved in areas that address offending behaviour or the personal problems of prisoners, through pre-release courses, post-release support, health education, addiction awareness, anger management, group skills, parenting etc. Very often such courses or activities are run on a multi-disciplinary basis.

### **Work and vocational training**

273. As indicated in relation to Article 8 of the Covenant, there is a requirement for all convicted prisoners in Irish prisons to work within the prisons. A prisoner may be excused on medical advice or for attendance at educational courses. The prison system places strong emphasis on the provision of vocational training for prisoners. Training activities are chosen to give as much employment as possible for those in prison and to give opportunities to acquire skills which will help prisoners secure employment on their release. These include necessary services such as catering and laundry, as well as workshops covering metalwork, printing, computers, braille, woodwork, construction, clothing manufacture, craft, farming, horticulture, records indexing, painting and decorating, upholstery, baking, electronics etc. These provide work and training opportunities for prisoners whilst ensuring a high quality of service delivery within the prison. Community assistance programmes and community project work are also carried out. Several prisons raised funds and provided a wide range of materials for charitable organisations.

274. The Proposal for Organisational Change, agreed in 2005 with the Prison Officers' Association, provides for a significant expansion and development of vocational work training activities. Partnership arrangements between the prison system and agencies such as the State Training Authority (FÁS) the Probation Service, the Linkage Programme and Area Development Management (now Pobal) are maintained in the interest of improving prisoners' prospects of employability on their return to the community.

### **Sex offender programme**

275. Prisoners serving sentences for sexual offences in the Irish prison system represent just over 8% of the prison population. There are three forms of direct therapeutic intervention available to sex offenders at present. These are as follows:

- Individual counselling from the Irish Prison Service's Psychology Service and from the Probation Service;
- The Sex Offender Programme which has been in operation since 1994; and
- The Psychiatric Service which provides some support to prisoners in this category.

276. Every effort is made to assist sex offenders in custody who are willing to participate at any level in their personal rehabilitation and relapse prevention. Often such work with those who have committed sexual offences involves motivating them to take more responsibility for their

offending and for addressing those issues that may put them at risk of offending in the future. Individual therapeutic, work undertaken by the specialist services, plays an important part in preparing sex offenders to undertake more intensive group programmes.

277. The structured group programme for sex offenders is made available in Arbour Hill Prison. In keeping with international best practice in this area, the programme is a structured, offence-focused programme, employing a cognitive behavioural approach with a relapse prevention component. A total of 122 sex offenders have completed the sex offender programme since its introduction in 1994 up to and including June 2006. An independent scientific evaluation of the programme completed in 2004 found that the Sex Offender Programme complied with the highest international standards of programme delivery and that the programme achieved significant positive changes in the psychological risk factors for sex offending in men who had successfully completed the programme.

### **Anger management**

278. Anger Management group programmes have been provided in a number of institutions in the Irish prison system. In addition to these specific Anger Management courses, which are run by the Psychology Service and Probation Service, there are also other interventions available in many prisons addressing anger issues for prisoners. These include the Alternatives to Violence courses and the generic therapeutic services provided on a one-to-one and group basis by the Psychology and Probation Services. Also, courses aimed at addressing offending behaviour, such as the Sex Offender Programme, do, as appropriate, address anger issues.

### **Integrated sentence management**

279. An important development in the area of rehabilitation will be the further elaboration, from late 2006 onwards, of a system of Integrated Sentence Management (ISM) which the Irish Prison Service intends to pilot on an action-research basis. This new approach to sentence management will contribute to public safety by helping prisoners avoid re-offending. Programmes aimed at specific groups of offenders, and interventions with individual prisoners that address those factors that put them at risk of re-offending are increasingly recognised as an important element in any comprehensive rehabilitative package for offenders. Target groups for such programmes will include violent offenders, sex offenders and offenders with substance abuse problems. The crucial task is to get prisoners to focus on their situation, commit themselves to change and help them bring about that change in themselves. Integrated Sentence Management will construct a tailored package of interventions, including education, vocational training, life skills, offending behaviour programmes and individual work, to address prisoners' needs.

280. Prisons are part of a wider picture in terms of rehabilitation and the role of the community has yet to be fully realised in this area. ISM will provide established processes through which community-based agencies can communicate with the Prison Service so as to ensure greater cohesion in service delivery as prisoners move between custody and the community. ISM when implemented will:

- Provide integrated, cross-disciplinary, sentence management that is focused on the prisoner's resettlement from the moment of committal to release;

- Facilitate the development of formal, structured information systems to improve the flow of information between prisons and community-based agencies, which is important for prisoner assessment and informed sentence management, including decisions on release;
- Take a prisoner-centred approach, involving all disciplines working as a team with each participating prisoner to address his/her individual re-offending risks and criminogenic needs as well as other personal needs;
- Construct a personal development plan for each prisoner, with the active involvement of the prisoner and support key sentence management decisions in regard to the prisoner;
- Use structured risk and needs assessment procedures to measure the prisoner's progress;
- Cultivate the development of an integrated system approach with other criminal justice agencies to support seamless throughcare; and
- Cultivate the development of an integrated system approach that incorporates in-reach service arrangements with community based agencies.

### **Probation service**

281. The Irish Prison Service and the Probation Service have a shared aim of contributing to public safety by working to reduce re-offending by prisoners and common objectives in helping prisoners address their offending behaviour, maintain contacts with their families, and prepare for release into the community. Probation personnel are assigned to all prisons across the country.

282. Within the Probation Service, HOST (Homeless Offenders Strategy Team) works in collaboration with the Irish Prison Service and other partners to ensure that the accommodation needs of offenders are addressed at national and local level in accordance with established policy, that offenders in custody as well as in the community have access as citizens to the full range of mainstream services, and that measures required to reduce homelessness among this population are implemented. Prison in-reach services, aimed at facilitating prisoner reintegration and reducing the risk of homelessness on release, have continued to develop, the following being examples of actions now underway. The in-reach initiative of the Probation Service and the Homeless Persons Unit of the Eastern Region Health Authority community welfare service at the Mountjoy Prison complex, providing accommodation placement and income maintenance support services to prisoners at risk of homelessness on release, which has proved a valuable and effective resource and is now an established model of cross agency practice, expanded during 2005 to all Dublin Prisons and to the Midlands Prison. In addition, a new pilot initiative to facilitate prisoners to secure and maintain tenancies in the private rented sector on release, commenced in early 2005.

283. The Department of Justice, Equality and Law Reform through the Probation Service, provided almost €16m in funding in 2005 to some 70 community projects and initiatives which,



as well as addressing offending behaviour and related issues, provide accommodation, employment placement and support, training and addiction treatment for offenders and ex-prisoners.

### **Post-release courses**

284. The Irish Prison Service continues to engage in structured efforts to help prisoners in the transition from prison to the community, through the putting in place of post-release support in relation to a number of institutions. The following are examples of these developments:

- The Pathways Project, a post-release centre in Dublin city centre, funded by the City of Dublin Vocational Education Committee (VEC), has as its main aim the social and educational reintegration for its client group of ex-prisoners. The project helps supports and advises ex-prisoners on matters concerning employment, accommodation and training and educational courses. The centre's clients are also given support in terms of personal development, gaining confidence and heightening self-esteem as well as personal and vocational guidance counselling;
- The Dillons' Cross Project, Cork, is a pre- and post-release course available to prisoners and their families. Prisoners attend courses pre-release in the Education Unit of Cork Prison and their families attend courses in an outside community venue. Courses offered run for 12 to 14 weeks and cover a range of areas, including: home management, job skills, health and personal development;
- Prison Education units which do not have access to specially designated post-release projects, can refer prisoners to courses that are provided by local Vocational Education Committees, which provide opportunities for full-time "second chance" education;

285. The Probation Service contributes to the preparation and implementation of pre- and post-release programmes for prisoners and assists the Parole Board and the Department of Justice, Equality and Law Reform through the provision of comprehensive assessments and reports. The Probation Service supervises 59 life sentence prisoners in the community on temporary release from prisons. This is in addition to the supervision of other prisoners, on defined periods of temporary release, for the purpose of resettlement and integration. Community based projects and initiatives are funded through the Probation Service which address, inter alia, offending behaviour and assist with the reintegration of prisoners in the community.

286. A joint project, entitled the Linkage Programme, is operated between businesses in the community and the Probation Service and funded by the Department of Justice, Equality and Law Reform. The object of this programme is to provide personalised support and access to training, education and employment for prisoners leaving custody.

### **Prison/Community contacts**

287. The Irish Prison Service (IPS) acknowledges that community and voluntary organisations form an integral part of the delivery of services and supports to prisoners in custody and a bridge

to the wider community. The Service seeks to maintain effective relationships with a broad range of agencies and bodies which provide important supports for prisoners during their sentences and after release. Examples of this interaction include:

- A recognition of the importance attaching to community, especially family, contact so as to sustain prisoners during their imprisonment;
- Individual prisons work with voluntary groups and individuals who can provide support and appropriate services for prisoners;
- Engagement with the wider community, including employers, training and educational bodies, general and psychiatric health authorities (including drug treatment services), voluntary groups, community organisations etc., which are prepared to assist in the integration of prisoners into society prior to and on their release from prison; and
- IPS institutions also have very active community assistance programmes.

### **Structured Temporary Release**

288. The Criminal Justice Act, 1960, provides the legislative basis for the power of the Minister for Justice, Equality and Law Reform to grant temporary release. The Criminal Justice (Temporary Release of Prisoners) Act, 2003, provides a clearer legislative basis for the power to grant temporary release to prisoners by setting down the principles which will apply to the exercise of this power. The Act amends Section 2 of the Criminal Justice Act, 1960 and provides a clear and transparent basis, as well as the necessary safeguards required, for the operation of the system of temporary release.

289. The average number of persons serving sentences who were on temporary release during 2005 (164) represented 5% of the average total number of prisoners in the system. This represents a significant decrease on the previous year's figure of 286. Prisoners may be on a structured temporary release programme for resocialisation or education or training purposes, often under the direct supervision of the Probation Service. Prisoners are also granted temporary release for work purposes. They may also, in certain circumstances, receive short periods of temporary release for compassionate reasons such as ill health or a death in the family. The judicious use of temporary release remains an important instrument in the rehabilitation process.

### **Training for custodial personnel**

290. Human rights training is integrated into formal induction and in-service training courses for custodial personnel and every opportunity is taken in the course of such training to foster and promote respect for human rights in the treatment of persons in custody. The basic training given to prison places significant emphasis on the human rights of prisoners. They are taught that deprivation of liberty is a most sensitive and far-reaching power available to the State and should, at all times, be subject to the rule of law and exercised with respect for the dignity and basic rights to which every person is entitled. The training provided places significant emphasis on the European Convention on Human Rights, the United Nations Standard Minimum Rules for the Treatment of Prisoners, the European Prison Rules, and the work of the European Committee for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment.

### **Convention on the Transfer of Sentenced Persons**

291. The Council of Europe Convention on the Transfer of Sentenced Persons was ratified following the enactment of the Transfer of Sentenced Persons Act, 1995. The Convention came into force as between Ireland and other parties to the Convention on 1 November, 1995. With effect from that date, it became possible to commence processing requests for transfers to and from prison institutions in Ireland. The Transfer of Sentenced Persons Act, 1995, provides a mechanism whereby non-nationals serving sentences in Ireland may apply to serve the remainder of their sentence in their own countries where that country is also a Convention state and similarly, Irish persons who are imprisoned overseas may apply to serve the remainder of their sentences in Ireland.

292. Under the terms of the Convention, the two States involved in processing a transfer request are required to exchange information about the sentenced person. This information includes a copy of the judgement and the law on which it is based, sentence administration particulars and medical/social reports. These must be obtained from a number of different sources. Owing to the complexity of the documentation required to effect a transfer, the process of information exchange can cause delay.

293. At the end of 2005, a total of 291 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 112 prisoners had transferred into this jurisdiction at the end of 2005 under the Convention/Act. There were 27 inward applications under active consideration at the end of that year. The remainder of the applications have been either resolved without transfer (e.g. withdrawn, released, etc.) or refused.

294. A total of 198 applications for transfer from this jurisdiction to another State had been received during the period 1 November, 1995 to 31 December, 2005. At the end of 2005, 63 prisoners had been transferred out of the jurisdiction since the Act came into operation. There were 24 outward applications under active consideration at the end of 2005. The remainder of the applications have been either resolved without transfer (e.g. withdrawn, released, etc.) or refused.

295. The Minister for Justice, Equality and Law Reform publishes an annual report on the operation of the Act. A copy of this report is included as an annex to this Report.

### **Irish Prisoners Overseas**

296. The Minister for Foreign Affairs, Dermot Ahern, T.D., appointed former junior Minister of State Chris Flood in October 2005 to undertake an in depth study of the needs of Irish prisoners abroad. That study is nearing completion. Its terms of reference are:

- To identify the numbers of Irish people in prison overseas and the countries in which they are being held;
- To examine the needs of Irish overseas prisoners; and

- Based on this identification and estimate, to make recommendations for the future provision of services to overseas prisoners, taking into account the services available in comparable countries.

297. It is hoped that the study will be completed and published in early 2007.

298. The Department of Foreign Affairs also funds the Irish Commission for Prisoners Overseas. The Irish Commission for Prisoners Overseas (ICPO) is a voluntary agency that provides assistance to Irish prisoners overseas and to their families in Ireland. The Department of Foreign Affairs contributed €178, 000 to the agency by the end of October 2006.

### **Article 11**

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

### **Article 12**

300. As indicated in Ireland's previous reports, 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.

301. 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.

302. 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”.

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

### **Traveller Community**

304. Subject to the restrictions provided by law, all people are entitled to the same rights regarding freedom of movement within the State. Issues may arise, however, when some members of the Traveller community move with their caravans/mobile homes, and are in need of a temporary residential facility. The State accepts that there is a need to address these issues, and to ensure that facilities are available.

305. In order to facilitate this requirement for temporary residential facilities, local authorities, when preparing their multi-annual Traveller accommodation programmes, are obliged under

section 10 (3) (c) of the Housing (Traveller Accommodation) Act, 1998, to have regard to “the provision of sites to address the accommodation needs of Travellers other than as their normal place of residence and having regard to the annual patterns of movement of Travellers.”

306. The National Traveller Accommodation Consultative Committee (NTACC) was asked to examine and report on the current position of such sites. The Committee formed a Transient Accommodation Working Group to deal with these issues and, in accordance with its Terms of Reference; the Working Group was requested, *inter alia*, “to develop suggestions for practical approaches which [would] result in the needs of transient families being met.” The Group was not in a position to complete its report before the term of office of the second NTACC expired. It is expected that the third Committee, when appointed, will give priority to this issue.

### **Detention of Asylum Seekers**

307. For further information on the comprehensive safeguards in place in relation to the detention of asylum seekers see paragraphs 195-205.

### **Article 13**

308. The issue of asylum is a fairly recent development in the State with the number of applications for refugee protection increasing considerably in the late 1990s. In terms of asylum trends, the following table sets out how the number of asylum applications increased dramatically from 1997 onwards, to a level where the State was receiving the second highest number of asylum applications per head of population in the European Union. The yearly percentage increase in applications was quite dramatic. For example, the percentage increase in 1999 as compared to 1998 was some 67%, while the increase in 2000 as compared with 1999 was some 42%.

**Table 1**  
**Asylum Applications 1997-2005**

Year	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
1997	235	243	199	380	423	454	378	354	326	307	241	343	3 883
1998	321	425	632	407	390	440	449	407	313	246	278	318	4 626
1999	234	234	358	315	381	453	571	962	938	1 051	1 010	1 217	7 724
2000	976	864	972	1 036	802	677	773	919	963	1 098	1 096	762	10 938
2001	840	706	763	741	838	882	961	983	855	892	904	960	10 325
2002	838	763	932	888	795	869	1 133	995	1 199	1 148	984	1 090	11 634
2003	979	947	892	667	604	661	646	655	611	496	395	347	7 900
2004	392	363	501	377	403	324	371	401	466	329	409	430	4 766
2005	393	377	489	320	322	315	325	348	372	320	346	396	43 23

309. With regard to housing and welfare for asylum seekers, the direct provision system was established under the aegis of the Reception and Integration Agency (RIA) as a means of meeting the basic needs of food and shelter for asylum seekers directly while their claims for refugee status are being processed. Under this system, the State assumes responsibility for procuring and funding suitable accommodation for asylum seekers on a full board basis. Asylum seekers in direct provision are paid €19.10 per adult and €9.60 per child, per week. These payments are in the nature of a basic Supplementary Welfare Allowance (SWA) payment, which is means-tested to take into account the benefit of full board and lodging provided in direct

provision. Asylum seekers are only entitled to the payments to which Irish and EU nationals are entitled. For example, asylum seekers are entitled to once-off “exceptional needs payments” under the SWA Scheme towards the cost of necessary travel, clothes, prams, baby baths etc., weekly/monthly SWA supplements to cover the costs of nappies and other toiletry needs and allowances under the Back to School Clothing and Footwear Scheme.

310. Ireland has also invested substantially in the area of free legal assistance to asylum seekers at all stages of the asylum process with the creation of the Refugee Legal Service (RLS). The RLS was established by the Legal Aid Board in 1999 as a specialised unit to provide independent, confidential legal advice and assistance at all stages of the asylum process to persons applying for asylum in Ireland. The Legal Aid Board provides the service in accordance with the Civil Legal Aid Act, 1995 and the Civil Legal Aid Regulations, 1996.

311. The RLS provides a service to asylum seekers at all stages of the asylum process. Applicants may register with the RLS at any stage of the asylum process - initial application, appeal stage and, post asylum, in relation to matters such as applications for humanitarian leave to remain. Also, in a relatively small number of cases, assistance is provided in relation to judicially reviewing decisions of the Office of the Refugee Applications Commissioner, Refugee Appeals Tribunal or in relation to leave to remain applications or deportation orders. Assistance in relation to Judicially Reviewing decisions is provided only where this is warranted in accordance with the Civil Legal Aid Act, 1995.

312. When an applicant registers with the RLS at any stage of the process, their file is assigned to a solicitor and a caseworker working under the supervision of a solicitor.

313. Interpretation is arranged, where necessary, for all RLS client consultations, at all stages of service provision.

314. In addition, major resources have been allocated to translation and interpretation services for asylum seekers in the Office of the Refugee Applications Commissioner, the Refugee Appeals Tribunal and the Department of Justice, Equality and Law Reform, with all languages being catered for as required by applicants. In 2005, over €1.5m was spent on the provision of these services.

315. In 2005, the total cost to the Department of Justice, Equality and Law Reform and the asylum agencies of asylum and immigration services was in the region of €137m. This included costs directly associated with the processing of asylum applications and also expenditure on, for example, the provision of accommodation for asylum seekers and the operation of the deportation process. The accommodation element of this figure accounted for approximately €84m in 2005.

316. While the costs arising from the provision of services to asylum seekers are primarily a matter for the individual Departments and agencies with responsibility for such services, the most recent information available to the Department of Justice, Equality and Law Reform indicates that the amount spent on asylum seeker services for 2005 was in the region of €307.85m, spread between a number of Government Departments and agencies. This figure also includes some monies expended in the operation of the State’s immigration services and a small proportion relates to services provided for other non nationals.

317. Below is a tabular summary of the estimated costs incurred in the provision of services to asylum seekers in the years 2000, 2001, 2002, 2003, 2004 and 2005.

**Table 2**  
**Estimated costs of provision of services to asylum seekers, 2000-2005**

Year	2000	2001	2002	2003	2004	2005
Cost M	179.32	226.26	341.99	353.17	376.74	307.85

The Departments and Agencies included in the calculation of this figure are:

- Department of Justice, Equality and Law Reform
- Department of Social and Family Affairs
- Department of the Environment, Heritage and Local Government
- Office of Public Works
- FÁS (Training and Employment Authority)
- Department of Health and Children
- Department of Education and Science
- Chief State Solicitor's Office

318. The number of staff employed in the asylum, immigration and repatriation areas of the Department of Justice, Equality and Law Reform has increased substantially over the past number of years. For example, in 1996, there were 4 staff working in the asylum area. By 1997, this number had risen to 22 staff. During 1997, the Government approved a proposal for the recruitment of an additional 72 staff. In July 1998, Government approval was obtained for an additional 72 staff for the asylum, immigration and citizenship areas. A further 120 staff were sanctioned in November, 1999 with an additional 370 sanctioned in summer, 2000. The bulk of the staff were, in line with Government priorities, assigned to the asylum agencies (Office of the Refugee Applications Commissioner/Refugee Appeals Tribunal).

319. The Refugee Act, 1996, as amended, was commenced in full on 20 November, 2000. The Act provides a strong foundation for meeting Ireland's obligations under the 1951 Geneva Convention to which the State is fully committed. The Act places the procedures for processing applications for refugee status on a statutory footing and has resulted in the establishment of two independent statutory offices to provide for processing asylum applications:

- A Refugee Applications Commissioner who makes recommendations to the Minister for Justice, Equality and Law Reform as to whether a person should be granted or refused refugee status.

- A Refugee Appeals Tribunal consisting of individual independent members to deal with appeals against negative recommendations of the Refugee Applications Commissioner and a Chairperson whose role is to allocate work and develop a system of quality control, as well as hearing appeals.
- The scope of the Act is wide ranging dealing, as it does, with first instance decisions, appeals, right to legal representation and interpretation and providing specifically for a direct contribution to be made by the UNHCR to the determination process.

320. Immigration officers operating at ports and airports throughout the State are members of An Garda Síochána. They are obliged under the provisions of the Refugee Act, 1996 (as amended) to grant permission to land to a non-national who arrives at the frontiers of the State seeking asylum in the State or seeking the protection of the State against persecution or requesting not to be returned or removed to a particular country or otherwise indicating an unwillingness to leave the State for fear of persecution.

321. This is the only criterion applied by immigration officers in determining whether or not to grant permission to land to an asylum seeker. Furthermore, an immigration officer has no role to play in determining the validity of an asylum claim - that task is assigned by law to the Refugee Applications Commissioner and the Refugee Appeals Tribunal.

322. The question of considering whether or not a non-national should be given permission to land necessarily involves consideration of the adequacy of documentation presented - but this only arises in cases where an immigration officer has discretion in the matter. The extent of that discretion is set out in Section 4 of the Immigration Act, 2004. However, the effect of an asylum claim is to abrogate any discretion vested in the immigration officer.

### **Removal from the territory of the State**

323. The removal process, as set out at Section 5 of the Immigration Act, 2003 can only be invoked within three months of the arrival of a non-national in the State. It applies to non-nationals who have been refused admission to the State (e.g. on the basis of insufficient funds to support oneself, lack of proper documentation, no employment permit, intention to abuse the UK/Irish Common Travel Area Arrangements). It also applies to a non-national who evades immigration controls and who enters the State other than through an approved port. The person may be arrested and detained for the purposes of removal and arrangements made straightaway for departure.

### **Deportation**

324. The present deportation process contained in the Immigration Act, 1999, follows on from the Supreme Court's judgement in the *Laurentiu* case in 1999 [*Laurentiu v Minister for Justice* [1999] 4 I.R. 26]. The deportation process applies to persons who have applied for asylum but have not been deemed to be refugees by the asylum determination process as well as persons who have overstayed their legal permission and persons who are illegally present having entered the State without permission.



325. The deportation process is set out at Section 3 of the Immigration Act, 1999. The potential deportee is notified of the intention of the Minister for Justice, Equality and Law Reform to deport and is invited (within 15 working days) to make representation as to why the deportation should not proceed. Under Section 3 of the Immigration Act, 1999, all of the papers available to the Minister (including representations made on behalf of the potential deportee and, in the case of a failed asylum applicant, the file generated during the independent asylum process) must then be considered by reference to a wide range of matters including the personal, family and domestic circumstances of the person, employment records and prospects, duration in and connection to the State, humanitarian considerations, national security and common good, before a deportation order can be made. The Minister also takes into account Section 5 (prohibition of refoulement) of the Refugee Act, 1996 and Section 4 of the Criminal Justice (UN Convention against Torture) Act, 2000. Once the order is made, failure to observe the order or to co-operate with arrangements made may result in detention with a view to securing departure.

326. Section 5 (1) of the Immigration Act, 1999 provides that, where an immigration officer or member of the Garda Síochána, with reasonable cause, suspects that a person (other than a person who is under the age of 18 years) against whom a deportation order is in force has failed to comply with any provision of the order, s/he may arrest that person without warrant and detain him or her in a prescribed place of detention.

327. Where a person detained under Section 5 (1) institutes court proceedings challenging the validity of the deportation order concerned, the court hearing those proceedings or any appeal therefrom may, on application to it, determine whether the person shall continue to be detained or shall be released, subject to such conditions as it considers appropriate including requiring the person to reside/remain in a particular place, comply with reporting requirements and surrender travel documents (Section 5 (5)).

328. Section 5 (6) provides that a person shall not be detained for a period or periods exceeding 8 weeks in aggregate.

### **New Immigration Legislation**

329. In 2005, a very comprehensive public consultation process was undertaken by the Department of Justice, Equality and Law Reform. The driver for this consultation process was a policy document entitled "Immigration and Residence in Ireland" outlining the Government's proposals for addressing Ireland's immigration system in a comprehensive manner.

330. More than 120 organisations and individuals made submissions as part of this process. On foot of this process the Department has now proceeded to draft new legislation. The draft heads of the Immigration Residence and Protection Bill were published in September 2006 with a view to presentation of the Bill to the Oireachtas early in 2007. The new legislation will overhaul the State's immigration laws dating back to 1935 and will provide Government with tools to manage migration effectively. It will set out, in an integrated approach and in a single piece of legislation the entire process for foreign nationals coming to the State, staying here and, when necessary, being required to leave.

### **Convention on the Rights of Migrant Workers and Their Families**

331. Ireland has not ratified the Convention on the Rights of Migrant Workers and their Families. In order for Ireland to ratify the Convention, significant changes would have to be made across a wide range of existing legislation, including legislation addressing employment, social welfare provision, education, taxation and electoral law.

332. The rights of migrant workers and their families are already extensively protected under existing Irish legislation and under the Irish Constitution, as well as EU law. In addition, the rights of migrant workers and their families are addressed by Ireland's commitments under the international human rights instruments to which the State is a party. These international instruments include the Covenant on Civil and Political Rights, and the Covenant on Economic, Social and Cultural Rights.

333. At present, there are no plans to sign or ratify the Convention. However as with all outstanding ratifications of international human rights instruments, the position regarding the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families will be kept under review.

### **Article 14**

#### **Reservation**

334. At the time of ratification, Ireland made the following reservation to Article 14 of the Covenant:

“Ireland reserves the right to have minor offences against military law dealt with summarily in accordance with current procedures, which may not, in all respects conform to the requirements of Article 14 of the Covenant.”

335. The Defence Act, 1954 (as amended) is in the process of being further amended to ensure that it is fully compatible with Article 14 of the Covenant and Article 6 of the European Convention on Human Rights. It is intended to have the Defence (Amendment) Bill enacted in early 2007.

336. The provisions of the Bill stipulate that a commanding officer will be no longer able to award a custodial punishment for any offence under military law that may be dealt with summarily by him (described in the draft Bill as disciplinary and not criminal offences). An accused person will also have an absolute right to elect for Court-Martial and to appeal any determination by a commanding or authorised officer to a Court-Martial. The Court-Martial system has been amended to remove any doubt as to its independence or impartiality.

337. Following the enactment of the Bill the issue of withdrawing Ireland's reservation to Article 14 will be reviewed.

### **Offences against the State Act**

338. Since 1998, there has been considerable political development in relation to the conflict in Northern Ireland. In particular, on 10 April, 1998, the Irish and British Governments entered into the *Agreement reached in the Multi-Party Negotiations*, colloquially often referred to as the *Good Friday Agreement*. This Agreement was subsequently endorsed by referenda held on 22 May, 1998, in both Ireland and Northern Ireland.

339. The Agreement sets out an agreed political framework in respect of relationships within Northern Ireland, between North and South on the island of Ireland and between Ireland and Britain. Since 1998, it has been the task of the two Governments and other concerned parties to implement the terms of the Agreement fully and comprehensively.

340. The Agreement itself is multi-faceted and relates to institutional and constitutional arrangements, dealing, inter alia, with democratic institutions in Northern Ireland; a North/South Ministerial Council; a British-Irish Council; rights, safeguards and equality of opportunity on economic, social and cultural issues; decommissioning; security; policing and justice; prisoners; and validation, implementation and review of the Agreement.

341. In particular, as part of commitments relating to security contained in the Agreement, the Irish Government undertook to initiate a wide-ranging review of the Offences against the State Acts, 1939-85 with a view to both reform and dispensing with those elements no longer required, as circumstances permit.

342. On 15 August, 1998, dissident republican terrorists detonated a vehicle-borne improvised explosive device in Omagh, County Tyrone, Northern Ireland, which led to the death of 28 civilians, with 220 injured. In the aftermath of this terrorist atrocity, the Offences against the State (Amendment) Act, 1998 was introduced, which was subsequently included in the aforementioned review mandated by the *Good Friday Agreement*.

### **Hederman Committee Review**

343. In May 1999, the Committee to Review the Offences against the State Acts 1939-98 was established under the chairmanship of Mr. Justice Anthony Hederman, retired Judge of the Supreme Court. The so-called Hederman Committee's terms of reference were to examine all aspects of the Offences against the State Acts 1939-98, taking into account:

- The view of the participants to the multi-party negotiations that the development of a peaceful environment on the basis of the Agreement they reached on 10 April, 1998, can and should mean a normalisation of security arrangements and practices;
- The threat posed by international terrorism and organised crime; and
- Ireland's obligations under international law.

344. The Hederman Committee produced an interim report in June, 2001, with publication occurring in August, 2001. This interim report focused on the Special Criminal Court, which is a specific aspect of the Offences against the State Acts, in order to be of assistance to the Government in deciding on the response to the upholding of a complaint by the Human Rights Committee, considered further below.

345. The Hederman Committee produced its final report in May, 2002, with publication occurring in August, 2002 (electronic version available at [www.justice.ie](http://www.justice.ie)). The final report, *inter alia*, simply repeats the recommendations of the interim report in respect of the Special Criminal Court and, hence, exclusive interest will be afforded the final report.

346. The Hederman Committee's terms of reference required it to take into account Ireland's obligations under international law. In that context, it explicitly recognised the importance of, *inter alia*, the International Covenant on Civil and Political Rights and, in particular, the concluding observations of the Human Rights Committee of July, 2000.

347. It is not practicable to reproduce here the full range of considerations, recommendations and conclusions reached by the Hederman Committee, as the final report is an extensive one, however the report has been included as an annex to this report. The Hederman Committee's final recommendations and conclusions as they relate to the particular concerns of the Human Rights Committee in its concluding observations of July, 2002 will be considered herewith.

348. The Hederman Committee concluded that the Offences against the State Act, 1939 must be seen in its historical context of the threat posed to the democratic order posed by illegal organisations:

“While it is true that some of the provisions of the 1939 Act were gravely illiberal ... or are now offensive to modern standards of due process ... or were found to be unconstitutional or contrary to the European Convention of Human Rights, other provisions of that Act attempted to reach an accommodation with principles of due process and to ensure that the rule of law prevailed ... it [the Hederman Committee] believes that what is now required in a modern environment is for the Oireachtas [Parliament] to repeal the existing Offences against the State Acts and to replace them with one single consolidated item of legislation containing significant reforms in respect of the statutory regime which has heretofore obtained.” [para. 4.45 of the Report.]

349. The Hederman Committee, in the course of its final report, went on to set out its views on such reforms. It should be noted, however, that the Hederman Committee itself often could not agree on its proposals for reform - in many cases and varying according to the specific issue, majority and minority views were expressed. This reflects the gravity of the issues under consideration and the genuine but contrasting evaluations of the balances to be struck within the criminal law in any democratic society which respects the rule of law and fundamental human rights and freedoms.

### **Assignment of Cases to Special Criminal Court**

350. Section 45 (1) of the Offences against the State Act, 1939 provides that, in the case of a person who is charged in the District Court with a scheduled offence which that Court has jurisdiction to deal with summarily, whenever the Director of Public Prosecutions (DPP) requests that such person be sent forward for trial to the Special Criminal Court, the District Court shall send such person forward for trial before that Court.

351. Section 45 (2) [as amended] provides that in the case of a person charged with a scheduled offence which is also an indictable offence and the District Court Judge decides to return that person for trial, such person shall be returned for trial to the Special Criminal Court unless the DPP otherwise directs.

352. Section 46 (1) and (2) [as amended] contain corresponding provisions in respect of non-scheduled offences, save that they provide that such persons are to be tried in the ordinary courts unless the DPP otherwise directs.

353. Section 47 (1) enables the DPP to direct that an accused be charged with a scheduled offence before the Special Criminal Court and Section 47(2) enables the DPP to prefer charges in respect of non-scheduled offences directly before that Court, provided that the appropriate certificate is given.

354. Finally, Section 48 provides for the automatic transfer of a trial pending before either the Circuit Court or the Central Criminal Court, following an application by the DPP, to the High Court.

355. The Hederman Committee noted that, ever since the Special Criminal Court was established, its operation has been the subject of frequent - but unsuccessful - legal challenges. With particular regard to the issue at hand, the Supreme Court confirmed (in *Kavanagh v. Ireland* [1996] 1 IR 321) that the decision of the DPP to send an accused for trial before the Special Criminal Court, while not beyond the reach of judicial control, is practically unreviewable.

356. Following the decision of the Supreme Court, the applicant in *Kavanagh v. Ireland* applied to the Human Rights Committee and complained that the procedures adopted in the reference of his case to the Special Criminal Court violated his entitlement to equality before the law, as guaranteed by Article 26.1 of the International Covenant on Civil and Political Rights. The Human Rights Committee upheld the complaint, observing that:

“No reasons are required to be given for the decisions that the Special Criminal Court would be ‘proper’ or that the ordinary courts are ‘inadequate’, and no reasons for the decision in the particular case have been provided to the Committee. Moreover, judicial review of the DPP’s decisions is effectively restricted to the most exceptional and virtually undemonstrable circumstances.

The Committee considers that the State party has failed to demonstrate that the decision to try the author before the Special Criminal Court was based on reasonable and objective grounds. Accordingly, the Committee concludes that the author's right under Article 26 to equality before the law and to equal protection of the law has been violated." [4th April 2001 CCPR/C/71/D/819/1998]

357. In considering ways in which the view of the Human Rights Committee could be complied with in order to ensure that persons are not tried before the Special Criminal Court "unless reasonable and objective criteria for the decision are provided", the Hederman Committee recommended that any decision of the DPP to send an accused for trial to that Court should be subject to a positive review mechanism. Accordingly, the Hederman Committee gave consideration to four types of possible review mechanisms, as follows:

- Review by the High Court following *inter partes* hearing;
- Application to the High Court *ex parte*, but in camera;
- Administrative review by a retired judge; and
- Review by a judge of the Supreme Court.

358. In considering these four options, the Hederman Committee believed that an "independent counsel" option might, with advantage, be employed in conjunction with any of them. In this option, an independent counsel would represent the interests of the accused, although they would not act for him/her. Such a counsel would be appraised of the material on which the prosecution sought to rely to justify the decision to prosecute before the Special Criminal Court, but once the review decision had been taken he or she would have no further connection with the case. The Hederman Committee opined that such a procedure would go some distance towards meeting the legitimate concerns of the prosecution that sensitive information should not be revealed to an accused's counsel, but would also provide an effective mechanism for the protection of the interests of the accused.

359. A majority of the Hederman Committee recommended that, while recognising that the present arrangements have worked reasonably well in practice, perhaps the fourth option - review by a serving Supreme Court judge, perhaps in conjunction with the independent counsel procedure - should be considered. The Hederman Committee went on to recommend that, if experience were to show that this option was unsatisfactory in practice, then, perhaps at a later stage, other options might be considered.

### **Period of Detention**

360. Prior to the Offences against the State (Amendment) Act, 1998, the maximum period of detention without charge was 48 hours. However, Section 30 (4A) of the Offences against the State Act, 1939 (as inserted by Section 10 of the 1998 Act) now provides that the District Court may, following a hearing, order the extension of the detention period for a further 24 hours, i.e. up to a maximum of 72 hours.

361. The Hederman Committee noted that:

“Contrary to the impression which may be given by some critics of the legislation, this period of time does not seem excessively long by reference to maximum periods of detention permitted in other democratic countries. Nor does it seem that the 48 hour detention period prior to any judicial involvement is problematic as far as Article 5 (3) ECHR is concerned.” [par. 7.33]

362. However, the Committee also went on to note that:

“... prolonged periods of detention in police custody are undesirable. Even with the most elaborate safeguards, experience has shown that the psychological and other pressures inherent in such detention increase with longer detention periods. Accordingly, any legislation providing for detention periods longer than 48 hours requires a particular justification”. [par. 7.36]

363. The Committee was evenly divided on the question of whether Section 10 of the 1998 Act should be retained. The Committee was conscious of the fact that any extension ordered under Section 30 (4A) can only be done by a District Court Judge on notice to both parties and that this fact alone provides a considerable safeguard. Moreover, given that, on occasion, extension orders have been refused, this process of judicial oversight has been shown to be no mere “rubber-stamping” formality.

364. Section 30 (1) of the 1939 Act provides that a member of the Garda Síochána may arrest any person whom he or she suspects of, inter alia, being about to commit any offence under any section or sub-section of this Act or an offence which is a scheduled offence for the purposes of Part V of the Act.

365. The Committee concluded this power of arrest is not triggered by a mere inchoate intention to commit a crime; instead, the Gardaí must have a suspicion (which is not unreasonable) that the arrested person is “about to commit” a crime. The Committee considered that, although there is no authoritative judicial determination as to the meaning of these words, to a very large extent, they overlap significantly with the law of attempt (so that “about to commit” an offence is effectively synonymous with an attempt to commit an offence). Nevertheless, the Committee was of the view that there may be concerns that these powers might be used to justify the detention of persons in respect of conduct which is not criminal and which is not sufficiently proximate to any intended criminal act to constitute a criminal attempt. In these circumstances, the Committee recommended the deletion of the words “being about to commit” and their replacement with language drawn from Article 5 (1 ) (c) ECHR:

“on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence”.

366. Section 2 (1) of the Offences against the State (Amendment) Act, 1998 provides that where, in any prosecution of an accused in respect of membership of an unlawful organisation under Section 21 of the 1939 Act, evidence is given that the accused failed to answer any question material to the investigation of the offence, then the court in determining whether the

accused is guilty of the offence may draw such inferences from the failure as appear proper and the failure may be treated as, or capable of amounting to, corroboration of any evidence in relation to the offence, but a person shall not be convicted of the offence solely on an inference drawn from such a failure.

367. Section 2 (2) of the 1998 Act provides that Section 2 (1) shall not have effect unless an accused was told in ordinary language when being questioned what the effect of such failure might be.

368. Having considered, inter alia, the relevant national and international case law, a majority of the Hederman Committee was of the view that Section 2 (1) should be retained. The Committee considered that it would be unlikely that any constitutional challenge would be successful, nor would the provision be found to be contrary to Article 6 (1) ECHR. Specifically, the inference-drawing power in question is a limited one, and the court is by no means empowered to draw such an inference where, for example, it was of the opinion that the prejudicial effect of such an inference would outweigh its probative value. Moreover, Section 2 (2) contains the essential safeguards necessary to protect the very essence of the right to silence, including the fact that the suspect must be warned in ordinary language of the possible effect of failure to answer. In addition, an accused could never be convicted of the offence by virtue of the inference-drawing provisions of this section merely because of his or her silence.

### **Retention of Special Criminal Court**

369. A majority of the Hederman Committee was of the view that the security risk is sufficiently high to justify the retention of the Special Criminal Court on this ground alone, albeit that they were also of the view that this issue should be kept under constant review. This majority took the view that for so long as there is in existence a paramilitary threat to public peace and order, the need for the Special Criminal Court will probably remain. This view is based on the proven capability of paramilitary groups to wield a sinister influence in respect of certain communities, to discipline their members and supporters by the use of violence (including murder) and generally to intimidate and threaten witnesses. Comparisons with jury practice in the United States of America (where trials with anonymous juries often take place in sensitive cases) are essentially misplaced, given that the small and dispersed nature of Irish society means that the risk of jury tampering and intimidation remains.

370. A majority of the Hederman Committee further concluded that the threat posed by organised crime alone is also sufficient to justify the maintenance of the Special Criminal Court. The Hederman Committee notes that recent experience has shown that juries have been distinctly uncomfortable - and have been made to feel distinctly uncomfortable - in dealing with certain cases involving organised crime. Indeed, there have been instances in recent times where it appears that attempts have been made to tamper with juries in high-profile criminal trials in the ordinary courts.

371. On either or both grounds (paramilitary and organised crime), therefore, a majority of the Hederman Committee was of the opinion that the Special Criminal Court ought to be retained.



372. This recommendation was, however, subject to two qualifications. First, the Hederman Committee stated that the necessity for the Court must be kept under regular review. Second, it considered that the Oireachtas should enact as speedily as possible amending legislation which would, first, remove objectionable features of the Offences against the State Act, 1939 so far as it concerns the Special Criminal Court and, second, take steps to ensure that judges of the Court enjoy traditional guarantees in respect of tenure, salary and independence.

373. In respect of supervision of the necessity of the Special Criminal Court, the Hederman Committee recommended that Section 35 of the 1939 Act should be amended to ensure that any resolution establishing the Special Criminal Court should automatically lapse unless it is positively affirmed by resolutions passed by both Houses of the Oireachtas at three-yearly intervals. Any such resolution, it is recommended, should expressly set out the basis on which the Court is to be established or (as the case may be) continued in force. Any such legislation should also provide for a three-yearly report by the Government to the Oireachtas on the working of the Special Criminal Court and the necessity (if such be the case) for its continued existence.

374. With regard to the composition and independence of the Special Criminal Court, the Hederman Committee was of the view that Section 39 of the 1939 Act should be overhauled to:

- replace the existing provision which allows the Government to remove members of the Court at will;
- provide that only serving judges of the High Court, Circuit Court and District Court should be liable to serve as judges of the Special Criminal Court (which, in any event, is in line with practice since 1986); and
- end the power of Government to appoint particular High Court, Circuit Court and District Court judges to be judges of the Special Criminal Court. Instead, all serving members of the High Court, Circuit Court and District Court should be liable to serve as members of the Special Criminal Court, with power of designation of which judge is to sit on a particular case afforded to the President of the High Court, in consultation with the Presidents of the Circuit and District Courts.

375. The recommendations of the final report of the Hederman Committee remain under consideration at a national level, although priority has had to be given to an overhaul of the legislative framework for dealing with the grave threat posed by international terrorism (see paragraphs 382 et seq). Hence, it is not yet possible to provide the comprehensive, definitive and settled position of Ireland on all these matters.

376. In relation to some of the specific concerns raised by the Human Rights Committee, the Hederman Committee recommends change in some cases and favours the status quo in others. Of particular note are the following.

377. The Hederman Committee was evenly divided on the question of whether Section 10 of the Offences against the State (Amendment) Act, 1998 should be retained. A majority of the Committee favoured the retention of Section 2 of the 1998 Act.

378. It is worth noting that, pursuant to Section 18 of the 1998 Act, both Houses of the Oireachtas have passed resolutions each year that Sections 2 to 12, 14 and 17 shall continue in operation for a further period of 12 months. Before these resolutions have been passed, a report on the operation of each section, including sections 2 and 10, during the previous period of operation is laid before each House of the Oireachtas. Accordingly, there continues to be ongoing parliamentary review of the necessity of section 2 and 10 of the 1998 Act and, on each such review, their continued necessity has been affirmed.

379. Following the decision of the Supreme Court in *Kavanagh v. Ireland*, a procedure was introduced in 1997 whereby the Government would decide on a regular basis on the continuing need for the Special Criminal Court. On foot of that decision, reviews took place in 1997, 1998, 1999 and 2000. Following each such review, the continuing necessity for the Special Criminal Court was considered to be warranted on a number of grounds, including the continuing threat to the security of the State posed by subversive organisations and the ruthlessness of certain organised criminal gangs operating within the State. Concerns were also expressed that attempts might be made to interfere with juries or witnesses in some cases. In 2001, it was decided to defer further reviews of the continuing necessity of the Court pending full consideration of the interim and final reports of the Hederman Committee.

380. As has already been stated, a majority of the Hederman Committee was of the opinion that the Special Criminal Court ought to be retained, albeit with qualifications. It is not envisaged that the jurisdiction of the Special Criminal Court will be discontinued, although the Hederman Committee's ancillary recommendations in this regard remain under consideration.

381. In December 2004, the Government approved the establishment of a second Special Criminal Court, which came into being on 1 January, 2005, in order to expedite trials. In this regard, Section 38 (2) of the Offences against the State Act, 1939 provides that the Government may, whenever they consider it necessary or desirable to do so, establish additional courts.

### **International Terrorism**

382. Since Ireland's second report and the associated Concluding Observations of the Human Rights Committee, it is no exaggeration to state that the environment in which States seek to protect themselves from terrorism has undergone drastic transformation with the rise of certain forms of international terrorism. In particular, the terrorist attacks in the United States of America of 11 September, 2001, and, in a European context, the Madrid bombings of March 2004 and the London bombings of July 2005 illustrate the real, immediate and pernicious threat from certain forms of international terrorism.

383. The preparation of the final report of the Hederman Committee spanned the period of the terrorist attacks of 11 September 2001. However, the Hederman Committee decided not to reopen the report to take account of the serious and far-reaching implications of these attacks for public safety and national security. Accordingly, the Hederman Committee cautioned that its recommendations must not be interpreted as in any way constituting the Committee's views on the adequacy of the law or on any legislative change that may be needed to combat the then new international terrorist threat.

384. Although Ireland does not consider itself to be at the forefront of risk in this regard, Ireland continues to have a duty to pro-actively contribute to international security in the interests of public safety domestically and internationally.

### **Criminal Justice (Terrorist Offences) Act, 2005**

385. Accordingly, the Criminal Justice (Terrorist Offences) Act, 2005 was introduced to give effect to a number of international instruments directed to terrorism and to meet commitments which the State has undertaken as part of the European Union and the broader international community, including commitments arising from United Nations Security Council Resolution 1373 adopted in response to the events of 11 September, 2001.

386. The principal purpose of the Act was to enable effect to be given in law to the:

- European Union Framework Decision on Combating Terrorism;
- International Convention against the Taking of Hostages;
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;
- International Convention for the Suppression of Terrorism Bombings; and
- International Convention for the Suppression of the Financing of Terrorism.

387. With the introduction of the Act, ratification of and/or accession to these instruments has now occurred. This ensured that Ireland has ratified all 12 international instruments against terrorism which was called for by the United Nations in the aftermath of the September 2001 attacks and makes Ireland fully compliant with United Nations Security Council Resolution 1373. Ratification/accession also fulfils commitments set out in the European Council Declaration on Combating Terrorism, made following the Madrid bombings in March 2004.

388. The 2005 Act also amends Irish law and, in particular, the Offences against the State Acts, 1939-1998, to address the problem of international terrorism in a domestic context. Specifically, Section 5 provides that a terrorist group that engages in, promotes, encourages or advocates the commission, in or outside the State, of a terrorist activity is an unlawful organisation within the meaning and for the purposes of the 1939-1998 Acts. Accordingly, these Acts now apply with any necessary modifications and have effect in relation to such a terrorist group, as if that group were an organisation referred to in Section 18 of the 1939 Act.

389. Part 7 of the Criminal Justice (Terrorist Offences) Act, 2005 also provides for the retention of telecommunications data by telecommunications service providers for the purposes of the prevention, detection, investigation or prosecution of crime, including terrorist offences, or the safeguarding of the security of the State. It also introduces safeguards against misuse of the related data by extending the duties of the designated judge and complaints referee under the Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993 to the data retention provisions of this Part.

### **Criminal Legal Aid**

390. 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, Equality and Law Reform has no hand, act or part in the process.

391. The Criminal Legal Aid Review Committee was established to review the operation of the Criminal Legal Aid Scheme and to make recommendations as to the manner in which the Scheme might be improved so that it operated effectively and provided value for money. The Committee recommended that the existing system for providing Criminal Legal Aid was the most equitable, effective and economic at that time.

392. The Committee also examined the issue of whether a fee should be paid to solicitors for consultations with persons detained in Garda stations. On foot of the Committee's recommendations, the Garda Station Legal Advice Scheme was introduced in February 2001.

393. 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, 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.

394. Furthermore, in April 1998, the Ad-Hoc Legal Aid Scheme was implemented. 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. The cost of the criminal legal aid and advice schemes in 2004 was €34.134m.

### **Civil Legal Aid**

395. 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 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. 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 matters to that provided by the law centres.

396. In 2005, and arising from concerns regarding the waiting times for client appointments, the Government increased the Board's financial allocation by 16% to €21.362m. This increased allocation has enabled the Board to make significant inroads into waiting times and at a majority of law centres the waiting time is now less than 2 months. In addition, under new regulations

which came into effect in September, 2006, the income limits and allowances which govern eligibility for the scheme were all increased substantially, thereby greatly enhancing its accessibility.

#### **Article 15**

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

#### **Article 16**

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

#### **Article 17**

399. The Government on 4 July 2006, published proposals for a Privacy Bill. The main purpose of the new Bill will be to introduce a modern statutory framework to protect all citizens from the invasion of their privacy. The range of defences provided under the Bill explicitly recognise the vital and necessary role of bona fide newsgathering. The provision of the new defence of fair and reasonable publication on a matter of public importance in the Defamation Bill is also mirrored in this Privacy Bill. This is designed to facilitate public discussion where there is both a benefit and an interest in such discussion taking place.

#### **Data Protection Acts 1988 and 2003**

400. The Data Protection Act, 1988 gave effect to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108) while the Data Protection (Amendment) Act, 2003 amended the 1988 Act in order to give effect to EU Directive 95/46/EC of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

401. The key features of the legislation are a set of data protection principles and rules for the processing of personal data, a set of rights designed to protect the privacy rights of individuals and provision for the Office of the Data Protection Commissioner.

#### **Data protection principles**

402. The data protection principles enshrined in Irish law are the following:

- Personal data shall be obtained and processed fairly;
- They must be accurate and complete and, where necessary, kept up to date;
- They must be obtained only for one or more specified, explicit and legitimate purposes;
- They shall not be further used in a manner incompatible with those purposes;

- They shall be adequate, relevant and not excessive in relation to those purposes;
- They shall not be kept for longer than is required for those purposes;
- Appropriate security measures shall be taken against unauthorised access to, or unauthorised alteration, disclosure or destruction of the data.

403. The legislation sets out detailed processing rules under which personal data may be processed. More stringent conditions apply when “sensitive” data are involved. This category includes data relating to racial or ethnic origin; political opinions or religious beliefs; physical or mental health; trade-union membership; commission or alleged commission of offences.

404. The legislation contains various exemptions and derogations. It does not apply to data kept for the purpose of safeguarding State security or to personal data kept for managing family or household affairs or for recreational purposes. Certain provisions do not apply to data kept for historical research purposes or where data is kept for statistical, research or other scientific purposes. Personal data that are processed for journalistic, literary and literary purposes are also exempt from many provisions.

### **Data subject rights**

405. The legislation enshrines a set of data subject rights to safeguard personal privacy:

- The right to establish the existence of personal data and, if they exist, to obtain a description of the data and the purposes for which they are kept;
- The right of access to such data - subject to various restrictions - as well as a right to have them rectified or, where appropriate, blocked or erased;
- The right to object to processing personal data for direct marketing purposes;
- The right to object to processing likely to cause damage or distress; and
- Prohibition on automated decisions that produce legal effects in respect of data subjects.

406. Furthermore, the transfer of personal data to a country or territory outside the European Economic Area (EEA) is prohibited unless an “adequate level” of data protection is provided by that country for the data concerned. This prohibition does not apply in certain cases, e.g. where the data subject has given consent or where the transfer is required or authorised by legislation or by an international instrument. Transfers that are necessary for the conclusion or performance of a contract or for reasons of substantial public interest are also exempt.

### **Data Protection Commissioner**

407. The Data Protection Act, 1988 provides for appointment of an independent Data Protection Commissioner with statutory functions and duties. These include:

- Awareness raising and information activities;

- Investigating complaints and alleged contraventions of the Acts;
- Carrying out investigations to ensure compliance;
- Maintaining a public register of those required to register;
- “Prior checking” of any processing likely to cause substantial damage or substantial distress to data subjects or to prejudice their rights or freedoms;
- Encouraging preparation of, or preparing, codes of practice;
- Bringing and prosecuting summary proceedings for offences.

408. A range of enforcement instruments are available to the Data Protection Commissioner including enforcement notices, prohibition notices and information notices requiring the provision of necessary information. Failure to comply, without reasonable excuse, with an enforcement, prohibition or information notice is an offence (penalties range from a fine not exceeding €3,000 on summary conviction to a fine not exceeding €100,000 on conviction on indictment).

### **Article 18**

409. The Education Act, 1998 was the first legislation of general application to address issues relating to the organisation of education at first and second levels in the State. Its provisions are a combination of structural reforms of the education system and a balancing of the interests of the partners in education - parents, patrons, students, teachers and the State. In accordance with the Irish Constitution’s provisions in relation to education, the Act recognises the right of schools to maintain their own distinctive “characteristic spirit”. This is defined as “the cultural, educational, moral, religious, social, linguistic and spiritual values and traditions which inform and are characteristic of the objectives and conduct of the school”.

410. The Act makes provision to have regard to the rights of parents to send their children to a school of their choice. Indeed, aside from resource implications, parents have absolute discretion as to where they send their children to school, subject only to regard for the rights of others. In this context, the Act specifically contains an objective “to promote the rights of parents to send their children to a school of the parents’ choice having regard to the rights of patrons and the effective and efficient use of resources”.

411. Finally, the Act, in addition to providing that the Minister for Education and Science shall determine a curriculum to be followed in all recognized schools, provides a specific exemption for any student to withdraw from any subject which is contrary to the conscience of the parent of the student or, in the case of a student who has reached 18 years of age, of the student.

### **Article 19**

412. The right to hold opinions and the right to freedom of expression are guaranteed by the Constitution in Article 40.6.1°i. At the time of ratification, Ireland made the following reservation with regard to article 19, paragraph 2:

“Ireland reserves the right to confer a monopoly on or require the licensing of broadcasting enterprises.”

413. In 1993, responsibility for broadcasting policy transferred to the Minister for Arts, Culture and the Gaeltacht. Subsequently in 2002, responsibility transferred to the Minister for Communications, Marine and Natural Resources. Responsibility for radio frequency management matters and the technical licensing of transmitting stations remains with the Broadcasting Commission of Ireland.

414. The Broadcasting Authority Acts, 1960-1993, provide for the establishment of Radio Teilifís Éireann (RTÉ) as the national broadcaster and empowers the RTÉ Authority, inter alia, to provide national radio and television services. The RTÉ Authority has statutory autonomy in day-to-day programming matters subject to the Broadcasting Authority Acts. Section 13 of the Broadcasting Authority (Amendment) Act, 1976, which amended Section 17 of the Broadcasting Authority Amendment Act, 1960, requires RTÉ programming to:

(a) Be responsive to the interests and concerns of the whole community, be mindful of the need for understanding and peace within the whole island of Ireland, ensure that the programmes reflect the varied elements which make up the culture of the people of the whole island of Ireland, and have special regard for the elements which distinguish that culture and in particular for the Irish language;

(b) Uphold the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression; and

(c) Have regard to the need for the formation of public awareness and understanding of the values and traditions of countries other than the State, including in particular those of such countries which are members of the European Economic Community.”

415. The Radio and Television Act, 1988 established the Independent Radio and Television Commission (IRTC) to arrange for the provision of broadcasting services additional to those of RTÉ. The functions of the IRTC were transferred to a new body, the Broadcasting Commission of Ireland (BCI), established on 1 September, 2001. The key functions of the Commission include the licensing of independent broadcasting services, including the additional licensing of television service on digital, cable, MMDS and satellite systems; the development of codes and rules in relation to programming and advertising standards and the monitoring of all licensed services to ensure that licence holders comply with their statutory obligations and terms of their contracts.

416. The Government also decided to establish an Irish-language television service as a separate national channel to be known as Teilifís na Gaeilge (subsequently renamed TG4). This new service commenced transmission on 31 October, 1996. It is intended to establish a separate entity to operate Teilifís na Gaeilge. Until such time as the necessary legislation can be put in place, RTÉ has been charged with the establishment, programming and initial operation of the service.



## **Defamation Bill**

417. The Government on 4 July, 2006, published proposals to reform the law on defamation. The main purpose of the new Bill will be to introduce a modern statutory framework to defamation law by replacement of the current legislation - the Defamation Act, 1961. Plaintiffs should have a better sense of their rights under the law and, for those interested in obtaining speedy redress when they have been defamed, new forms of remedy will, in future, be available to them. A clear statement of the law will facilitate responsible publishers and broadcasters in avoiding defamatory statements and will provide guidance as to the limits of the various defences which are open to them.

## **Article 20**

### **Reservation**

418. At the time of ratification, Ireland made the following reservation to Article 20, paragraph 1 of the Covenant:

Ireland accepts the principle in paragraph 1 of Article 20 and implements it as far as it is practicable. Having regard to the difficulties in formulating a specific offence capable of adjudication at a national level in such a form as to reflect the general principles of law recognised by the community of nations as well as the right to freedom of expression, Ireland reserves the right to postpone consideration of the possibility of introducing some legislative addition to, or variation of, existing law until such time as it may consider that such is necessary for the attainment of the objective of paragraph 1 of Article 20.

### **Prohibition of Incitement to Hatred**

419. The Prohibition of Incitement to Hatred Act, 1989 was passed to prohibit incitement on account of race, religion, nationality or sexual orientation. There have been several prosecutions under the Act since its introduction.

420. The Steering Group of the National Action Plan against Racism and the Department of Justice, Equality and Law Reform has commissioned research to assist the Minister for Justice, Equality and Law Reform and the Steering Group of the National Action Plan against Racism in assessing the effectiveness of the current legislation to combat crime that is motivated by racism. These crimes can range from abusive and threatening behaviour through to assaults and incitement to hatred. In particular the research will consider whether the concepts of “race hate crimes” and “race aggravated offences” should be considered for adoption into Irish legislation. The research and report of findings will include:

- A review of literature and best international practice;
- A review and assessment of current Irish legislation in this area;
- A review and assessment of recent (2000-present) available reports and cases (including trends) focussing on those relevant to racism within the Irish criminal justice system;

- An examination of the efficacy of introducing the concept of hate crimes and race aggravated sentencing issues in the Irish context; and
- Specific recommendations to the Department of Justice, Equality and Law Reform.

421. The research will serve to assist and supplement the ongoing review of the Prohibition of Incitement to Hatred Act, 1989 and, in looking at the issue of aggravating circumstance, will provide an opportunity for the Government to address one of the recommendations of the UN Committee on the Convention for the Elimination of All Forms of Racial Discrimination (CERD) that “the State party introduce in its criminal law a provision that committing an offence with a racist motivation or aim constitutes an aggravating circumstance allowing for a more severe punishment”. It is expected that the research will be completed in early 2007.

422. For more information on measures in place to combat racism see paragraphs 48 to 63 above.

### **Article 21**

423. Article 40.6. ii of the Constitution guarantees the right of peaceful assembly subject to public order requirements. In accordance with this provision, electoral law provides that it is an offence for a person to act in a disorderly manner at a lawful public meeting held in connection with an election or referendum. It also prohibits obstruction of electors or canvassing in or near polling stations on polling day. Apart from these provisions, electoral law does not regulate peaceful assembly for electoral purposes.

424. The Intoxicating Liquor Act, 2000 and the Intoxicating Liquor Act, 2003 provide new 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.

425. The Criminal Justice (Public Order) Act, 2003 has also been enacted, the main purpose of which is to provide 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.

426. The most recent information regarding the enforcement of the Criminal Justice (Public Order) Act, 1994 shows that in 2005 proceedings were instituted in respect of 54,565 offences under the Act. The equivalent figure in 2004 was 51,099 and in 2003 was 53,488.

### **Article 22**

427. The law relating to trade unions in Ireland falls into two distinct phases:

- Statutes enacted, mainly between 1871 and 1906, to secure trade union freedom and remove trade unions and their activities from the operation of the law; and

- Statutes enacted since 1940 which have sought to introduce a measure of public regulation of trade unions.

428. The Irish Constitution has had an important impact on industrial relations law and practice. A significant body of case law has developed around the constitutional guarantee of freedom of association, as it applies to the activities of trade unions. Ireland's current international obligations and constitutional provisions on freedom of association, as well as the majority of statutory laws affecting that freedom, are explained in detail in Ireland's first report (paragraphs 227-242). Additional information on statutory regulation and protection of the freedom of association is outlined below.

429. The principal statutes governing the activities of trade unions in Ireland are: the Trade Union Act, 1871; the Conspiracy and Protection of Property Act, 1875; the Trade Union Acts, 1941, 1971 and 1975; and the Industrial Relations Act, 1990. The progress and developments made with the enactment of five of these six statutes were detailed in Ireland's first periodic report.

430. As regards the Industrial Relations Act, 1990 it represents the most significant development in industrial dispute law in Ireland since the Trade Disputes Act, 1906 (now repealed). The general purpose of the Act was to put in place an improved framework for the conduct of industrial relations and the resolution of disputes. The Act covers both trade union and industrial relations law. The system of immunities previously provided for in the 1906 Act has been maintained by the 1990 Act with some amendments.

431. The 1990 Act limits the application of the immunities in certain circumstances (e.g. secondary picketing, "worker versus worker" disputes, one person disputes and situations where the outcome of a secret ballot is against industrial action). It also requires unions to have a provision in their rule books for the holding of secret ballots before engaging in or supporting a strike or any other form of industrial action. These changes had the support of both trade unions and employers.

### **Article 23**

432. The Family Support Agency was established by the Minister for Social and Family Affairs on 6 May, 2003 and brings together pro-family programmes and services introduced by the Government in recent years. Its mission is to promote family and community well being through the provision of appropriate supports and services to families.

433. The Agency's functions are to:

- Provide a Family Mediation Service throughout the country for couples who have decided to separate, helping them to reach agreement on issues such as the family home, financial arrangements and ongoing parenting arrangements so that children retain close bonds with both parents where possible. Funding for the Service in 2006 amounted to €3.7m. The Service is now available in 16 centres nationwide;

- Support, promote and develop the provision of marriage and relationship counselling services, child counselling services and bereavement support for families and provide grant aid, with the approval of the Minister of Social and Family Affairs, to voluntary organisations providing these services in the community. For 2006, the Minister for Social and Family Affairs approved funding of €9.008m to 543 voluntary and community groups nationwide;
- Support, promote and develop the Family and Community Services Resource Centre Programme. The aim of the programme is essentially to help combat disadvantage by improving the function of the family unit. Family Resource Centres involve people from marginalised and most vulnerable groups and areas of disadvantage at all levels in the project. Funding for Family Resource Centres had increased to over €12.937m by 2005. A commitment was given to have 100 Family Resource Centres funded under the Family and Community Services Resources Programme by the end of 2006. There are currently 95 centres in receipt of funding and a further 5 have been identified for inclusion in the programme;
- Commission research into matters such as marriage and family formation, trends in marital breakdown, the effectiveness of relationships counselling and other family counselling supports.

434. The Family Support Agency also has a general information role and provides advice to the Minister for Social and Family Affairs on these matters. It is overseen by a Board, chaired by Michael O'Kennedy, S.C. containing members with experience and expertise in fields such as family mediation, the Family and Community Centre Resource programme, counselling, research and family law.

435. The Family Support Agency launched its first Strategic Plan on 11 May, 2004. The five Strategic Priorities for 2004-2006 are to:

- Support and strengthen families through the delivery of high quality support services for families throughout the country;
- Foster a supportive community environment for families in partnership with the community, voluntary and statutory sectors;
- Contribute to the effectiveness of family policy and services by undertaking or commissioning research into matters related to the Agency's functions or such other matters as the Minister may request;
- Promote the Family Support Agency as a key provider of support services and related information for families in Ireland; and
- Create an environment which recognises the value of Family Support Agency staff and supports their continuing development.

436. The Government has provided €28.025m to the Family Support Agency in 2006 to fulfil its strategic priorities.

### **Public consultation on the family**

437. A series of regional seminars were held by the Minister for Social and Family Affairs in 2003 which sought the views of the public on the main challenges confronting families in Ireland, the effectiveness of Government policies and programmes in supporting families to meet these challenges, and on what the priorities should be for strengthening families. A report of this process, "Families and Family Life in Ireland - Challenges for the Future," published in February 2004, recorded the views of those in attendance and provided an analysis of the outcome of the thematic discussions. Families and Family Life in Ireland: Challenges for the Future is available to download at [http://iyf2004.welfare.ie/Family\\_Life\\_FINAL.pdf](http://iyf2004.welfare.ie/Family_Life_FINAL.pdf).

### **Strengthen families publication**

438. The Minister for Social and Family Affairs is to publish a report in 2007 outlining the key demographic, economic, social and other relevant changes taking place which are impacting on families and family life in Ireland, the likely future trends in relation to family change and the challenges these pose for current policies and programmes.

### **Special awards scheme**

439. €1m was provided by the Government to facilitate the celebration of the 10th Anniversary of the United Nations International Year of the Family. This included a once-off Special Awards Scheme for voluntary and community organisations to facilitate the development of a national programme to celebrate the Anniversary Year. Some 800 groups were approved for awards under the scheme.

### **EU Presidency conference**

440. The first EU Presidency conference on the Family was hosted by the Irish Presidency on 13-14 May 2004. The conference, entitled Families, Change and Social Policy in Europe was supported by the EU Commission and brought together officials and experts from all 25 EU member states as well as the UN and OECD. This conference marked, at EU level, the 10th Anniversary of the UN International Year of the Family by joining the worldwide focus on changes to families and family life, insofar as they have an impact on European Social Policy. Some 250 delegates attended. The conference confirmed the high value placed on families throughout Europe and reaffirmed that families remain among the top sources of individual well being and social cohesion, and as such are a major source of social capital. New pressures placed on families include the fact that the employment of both parents is becoming the norm and these new arrangements are leading to difficulties from the competing demands of work and family. Families at risk of social exclusion throughout Europe include those headed by lone parents, large families, jobless households and older people living alone. Ways discussed for meeting the challenges faced include more family friendly practices, the development of the right mix of income support and other family services and the provision of special targeted measures to assist more vulnerable families. A report is available at [http://www.welfare.ie/topics/eu\\_pres04/fam\\_conf/](http://www.welfare.ie/topics/eu_pres04/fam_conf/).

### **Family mediation service**

441. 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.

442. 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.

443. The benefits of family mediation as a non-adversarial approach to resolving the issues that arise upon separation are increasingly being recognised worldwide.

444. Since the establishment of the Family Support Agency the number of couples availing of the service annually is around 1500.

445. Over the past number of years the FMS has radically expanded to meet a growing need for its service. Since 1998, the FMS has increased from 2 centres in Dublin and Limerick to 16 centres throughout the country.

446. A total of 42 staff are currently employed in FMS offices. There are four full-time offices in Dublin, Cork, Limerick and Galway with part-time offices situated in Athlone, Blanchardstown, Castlebar, Dundalk, Letterkenny, Marino, Portlaoise, Sligo, Tallaght, Tralee, Waterford and Wexford.

### **Family support**

447. Family support programmes are provided by services such as the Community Mothers, Family Support Workers, Teen Parents Support Projects, and Spring Board Projects and encompass specific interventions such as Parents Plus programme, the Family First Parenting Initiative as well as a range of general parenting programmes and supports. A census of all family support services including parenting programmes was carried out as part of the National Review of Family Support Services.

448. This Review of Family Support Services, established in 2003 and funded by the Department of Health and Children, will inform the planning process and ensure the balanced future development of services provision. A Steering Group which included Department of Health & Children officials and nominees of the health board Chief Executive Officers Group was appointed to manage the review. The Steering Group appointed a Consultative Forum, representative of the major stakeholders in family support, to support and advise the Steering Group. This Consultative Forum included representatives from various sectors including the National Children's Office, other relevant Government Departments, the voluntary sector and service users. To further inform the work of the Steering Group two pieces of work were commissioned and consultants were engaged to carry out this work.

449. A Family Support Policy, which will be a blueprint for the future development and delivery of Family Support Initiatives, will set out the basis for expanding family support

services and refocusing child welfare budgets and services in order to provide a more appropriate balance between safeguarding and supportive programmes. It is anticipated that the policy will be completed and published in 2007.

### **Legal developments with regard to the family**

450. The Constitutional boundaries as to what rights can be given to non-married co-habitants, whether homosexual or non-sexual, in civil partnerships or otherwise are the subject of public debate at present.

451. The All-Party Oireachtas Committee on the Constitution in its Tenth Report on the Family published in January 2006 did not favour an amendment to the Constitutional definition of the family. The Committee took the view that a proposal to amend the Constitutional definition of the family would cause deep and long-lasting division and would not necessarily be passed. In May 2006, the Irish Human Rights Commission published a Research Report on “The Rights of *De Facto Couples*”. This report examines in some detail the international human rights standards applicable to *de facto couples* and proceeds to analyse existing Irish law in the light of this international framework.

452. Other recent work on the law relating to cohabitants includes the Options Paper on Domestic Partnership published by the Department of Justice, Equality and Law Reform on 28 November, 2006. The Options Paper considers and describes the categories of partnerships and relationships outside of marriage to which legal recognition can be afforded, consistent with Constitutional provisions. It identifies options as to how and to what extent legal recognition could be given to those alternative forms of partnership. The Law Reform Commission published a report on the Rights and Duties of Cohabitants on 1 December, 2006. The Law Reform Commission Report includes a comprehensive examination of the law as regards cohabitants and makes recommendations for change in many areas ranging from property law and succession to family law, taxation and pensions.

## **Article 24**

### **National children’s strategy**

453. The National Children’s Strategy, ‘Our Children - Their Lives’, was published in November 2000 after extensive consultation with parents and groups working with children, as well as with children themselves. The strategy is a 10-year plan of action, which calls on the statutory agencies, the voluntary sector and local communities to work to improve the quality of all children’s lives. It includes a range of actions across such areas as giving children a voice so that their views are considered in relation to matters that affect them, eliminating child poverty, ensuring children have access to play and recreation facilities, and improving research on children’s lives in Ireland.

454. The Strategy provided the first comprehensive national policy document for the full range of statutory and non-statutory providers in the development of services for children and is underpinned by the UN Convention on the Rights of the Child. The strategy adopts a ‘whole

child perspective', recognising the multidimensional nature of all aspects of children's lives. The recognition that all parts of children's lives are interlinked has, in turn, implications for public policy-making and the integration of services relating to children.

455. The National Children's Office (NCO) was established in 2001 to lead and oversee the implementation of the National Children's Strategy. The NCO was given the lead responsibility for Goal 1 (children's participation) and Goal 2 (research). In regard to Goal 3 (improving supports and services), the NCO had a particular responsibility for progressing key policy issues identified as priorities by the Cabinet Committee on Children and which require cross-departmental/inter-agency action.

456. The Minister for Children was given responsibility for overseeing implementation of the strategy and coordinating government policy on children in order to maintain the policy coherence achieved through the publication of the strategy. The Minister has specific statutory delegated functions in each of the three departments - Health and Children, Education and Science, and Justice, Equality and Law Reform.

### **Establishment of the Office of the Minister for Children**

457. The Government announced an expanded role for the Minister for Children in December 2005. The effect of the decision is to provide for the bringing together of a range of policy matters related to children under a single umbrella within the Office of the Minister for Children (OMC). The OMC is an integral part of the Department of Health and Children.

458. Children now have a stronger voice, through the Minister for Children, who attends all Cabinet meetings.

459. The OMC focuses on harmonising policy issues that affect children in areas such as early childhood care and education, youth justice, child welfare and protection, children and young people's participation, research on children and young people and cross-cutting initiatives for children. The OMC will support the Minister in:

- Implementing the National Children's Strategy (2000-2010);
- Implementing the National Childcare Investment Programme (2006-2010);
- Developing policy on child welfare and child protection;
- Implementing the Children Act, 2001.

460. The OMC also maintains a general strategic oversight of bodies with responsibility for developing and delivering children's services.

### **Child welfare and protection**

461. The importance of family support and earlier intervention is a very important element in the development of a national family support policy, which is being supported by the OMC and the Health Service Executive.



462. Prevention in the wider sense is not only a narrow juvenile justice issue. It involves education, social welfare, family support and protection among a range of other services.

463. While the whole area of alternative and earlier intervention, community based family support services needs to be further developed, significant progress has been made in establishing these services in recent years, for example, the Springboard Family Support Projects were established in 1998. Springboard is a community based early intervention initiative to support families. The Projects focus on strengths within families and work at the families pace to find solutions to their problems. They work intensively with families and young people who are most vulnerable, including those for whom there are child protection concerns. Projects cater for between 15 and 25 children and their families at any one time. Springboard offers a range of interventions including individual work, group work, peer support, family work, advocacy and practical help. There are currently 22 projects in operation nationally which are funded by the Health Service Executive. The Executive is in the process of establishing 5 additional projects.

464. The Youth Advocate Programme (YAP), which has been established in a number of locations, is a private, community-based programme that aims to reintegrate so-called “out-of-control” young people into the community and to create effective long-term links with formal and informal services such as schools, recreational clubs, employers, welfare services and religious organisations. The ‘wraparound’ model characteristic of the programme refers to a mix of individualised in-home and community-based services that are developed around each young person and their family structure. At the core of the programme is a mentoring service that matches a young person for a six month period with a locally recruited adult ‘advocate’ who has little or no formal training, in the hope that the adult will advise and guide the young person to choose wisely and resist from partaking in anti-social behaviours. Where this programme particularly differs from other services currently available for the group is the fact that it offers 24-hour intervention.

465. There are also currently 8 Teen Parent Support Programmes (TPSP) in operation. The Programme arose from the recognition by professionals of the vulnerability of families headed by teen parents. It targets young people who become parents at the age of 19 or under. It aims to provide support to them until their children reach two years of age. In the period 2000-2005, 1,395 parents and their children were provided with assistance by the programme. Supports include advice on health and social welfare issues, housing and education. Young parents are encouraged in their new role, given skills to enhance their confidence to enjoy parenthood and to understand child development. The initiative emphasises the importance of preventative support services for vulnerable families. It demonstrates the huge benefit that interventions which support young parents in their parenting role and in achieving other life goals such as in their education and training have not only on parents but in the well being of their children as well. While all individual TPSP Projects provide support in core areas, strong links with other state and voluntary bodies are maintained to facilitate referrals to other services where these are appropriate.

466. Family Welfare Conferences were also provided for in the Children Act and regulations relating to them were commenced in 2004. The principles underlying the family welfare conference are that the child’s best interests are paramount and that children are best looked after in a loving, stable family. These principles fit into the ethos contained both in the Child Care Act, 1991 and also the amended Children Act, 2001. The family welfare conference is a forum

which allows the family to determine, with the help of the HSE, how their child's need for care and protection can best be secured. It allows the child to recognise the difficulties which their wayward actions may have brought about. It is an early intervention device, which aims to maximise the use of the child's social and family support networks at a time of crisis in their lives and empowers families to come to their own solutions to their child's problems in co-operation with appropriate professionals. It also aims to foster within the child a responsibility for their actions which will, hopefully, persuade them not to repeat their offences.

### **Youth homelessness**

467. The Youth Homelessness Strategy (YHS) was published on 31 October, 2001. The former Health Boards (now the HSE) have lead responsibility for implementation of the Strategy and they prepared detailed action plans in this regard, for the period 2002-2004. The Department of Health and Children has requested that the HSE undertake a review of the action plans to ascertain the extent of their implementation. The Review of the Implementation of the Youth Homelessness Strategy by the Health Service Executive Report was received on 24 February, 2006 and is under consideration by the Department.

### **Role of the Office of the Chief Inspector of Social Services**

468. The Social Services Inspectorate (SSI) was established in April 1999, initially on an administrative basis but plans are currently underway to establish it on a statutory basis under the Health Information and Quality Authority (HIQA). The main function of the Inspectorate at present is to support child care services by promoting and ensuring the development and the implementation of quality standards.

469. The role of the Office of the Chief Inspector of Social Services will be to:

- Register and inspect residential services for children in need of care and protection, for persons with a disability and for older people, including private nursing homes, in line with regulations made by the Minister for Health and Children and standards set by HIQA;
- Monitor in relation to the compliance of non-residential services provided by the HSE or on its behalf with any standards set by HIQA.

470. It will also have powers to cancel registration of a service, or to add conditions to a registration and have the power to seek urgent cancellation of registration by application to the Courts in situations where it is considered the health and well-being of a resident is at risk.

471. A national set of standards entitled National Standards for Children's Residential Centres against which all children's residential homes both statutory and non-statutory are being inspected was published in September 2001.

472. The Child Care (Special Care) Regulations, 2004 apply to Special Care Units. A set of Standards for the Special Care Units has been issued.

473. A working group was established to develop Guidelines on the Use of Single Separation and these Guidelines were issued in 2003.

474. A working group was established to develop National Standards on Practices and Procedures on Foster Care.

### **National review of compliance with Children First**

475. Children First are guidelines for the protection and welfare of children which were published in 1999. A review of the Children First Guidelines has been commenced along with a nationwide publicity and awareness campaign on child sexual abuse. This review which was originally to be carried out by the National Children's Office became part of the work programme of the newly established Office of the Minister for Children. This review is emanating in a climate of considerable interest in child protection issues. In addition, this will be the first review of Children First to take place under the new HSE structure.

### **Guardian Ad Litem**

476. The Guardian Ad Litem (GAL) is an independent representative appointed by the court to represent the child's personal and legal interests. The introduction of the GAL system in Ireland reflected the increasing emphasis, internationally and nationally, on the rights of the child.

477. Section 26 of the Child Care Act, 1991 provides that the court may appoint a GAL in any proceedings, where the child might become the subject of a care or supervision order or is being placed in the care of a health board. The court may only make such an appointment where the child is not party to the proceedings. Where the child becomes party to the proceedings the order appointing a GAL ceases to have effect. It should be noted that the Act requires the statutory authorities, in carrying out its functions, having due regard to the rights and duties of parents, to act in the best interests of the child and in so far as practicable have regard to the wishes of the child. The Child Care Act covers public law proceedings. Private law proceedings are governed by the Guardianship of Infants Act, 1964 and the Children Act, 1997.

478. The National Children's Strategy included a commitment to review the guardian ad litem service. The former National Children's Office undertook an overall review of the operation of the service and commissioned a review of the public and private law Guardian Ad Litem services. The consultants were required to undertake the review and to make recommendations in relation to the operation of the service.

479. The review included an international literature review, consultations with interested parties and questionnaires to the judiciary, court personnel and health officials. Work is ongoing in the Office of the Minister for Children on an examination of the recommendations of the Review and the Minister hopes to be in a position in the near future to produce legislative proposals to address this matter.

### **National Longitudinal Study**

480. The Government has established a National Longitudinal Study of Children in Ireland. This Study is underpinned by the "whole child perspective", which is central to the National Children's Strategy and will describe the lives of Irish children, to establish what is typical and normal as well as what is atypical and problematic. Specifically, this Study will monitor the

development of 18,000 children - a birth cohort of 10,000 and a 9-year-old cohort of 8,000 children, yielding important information about each significant transition throughout their young lives.

### **State of the Nation's Children Report**

481. Ireland's first State of the Nation's Child Report has been compiled. The report will be published on 28 February, 2007 in fulfilment of a commitment given in the National Children's Strategy (2000) that a regularly updated statement of key indicators of children's well-being would be made available.

482. The State of the Nation's Children Report is based on a National Set of Child Well-Being Indicators which was developed by the OMC in 2005 and includes forty-eight indicator areas of children's lives. The development of these indicators is regarded as "cutting-edge" internationally. The indicators were developed with the input of policy-makers, academics, practitioners and professionals, parents and children.

483. The key purpose of the Report is to allow the Government the first opportunity ever to properly benchmark, across government, the state of children's lives in Ireland.

### **Prevention and Early Intervention Programme**

484. The Prevention and Early Intervention Programme for Children was established by Government in February 2006 to support and promote better outcomes for children in disadvantaged areas, through more innovation, effective planning, integration and delivery of services.

485. The Programme targets three areas of severe disadvantage in which there is evidence of the need for early intervention. The purpose of the programme is to support the development of plans for children at local level drawn up by the statutory and relevant non-statutory agencies operating in the areas concerned. The Programme will provide for the introduction and evaluation of a range of integrated interventions for children and their families and test if they make a positive difference to children.

486. The focus of the programme is on supporting proposals for interventions, which fit with national policy objectives, have been developed in conjunction with the local community, are based on clear evidence of local need and which are informed by evidence of 'what works'. Learning and evaluation are important components of the programme and individual services, area projects and the overall programme will be subject to ongoing and robust review and evaluation. If these models prove successful, the results of these projects may provide the basis for enhanced resource allocation processes and policy changes.

### **Youth justice**

487. For more information on Youth Justice see paragraphs 219-240.

### **Early childhood care and education**

488. The Irish Government fully accepts current international/OECD thinking in regard to the importance of early education services and the role they play in tackling a range of policy issues from child poverty to child development. Government policy is consistently moving to support access to and the availability of early education services with a view to meeting the Barcelona targets. This is reflected in the National Childcare Strategy 2006-2010 which places an emphasis on the provision of pre-school places for 3-4 year olds and in the important initiatives being undertaken by the Department of Education and Science in the form of the Early Start and DEIS programmes for children in disadvantaged areas. In Ireland, State provision of early education services has been largely within the school system which incorporates a well-regarded system of infant classes for children aged 4-5 years. (see para. 493).

### **Education Act, 1998**

489. The provision of a high quality education to each person, including persons with special educational needs, is the central aim of the Education Act. To facilitate this, the Act sets out for the first time a clear statutory framework for Irish education at first and second levels. The rights and roles of all the partners are clearly laid out in the Act and considerable emphasis is placed on the principle of partnership throughout the Act. This principle is particularly evident in the provisions relating to boards of management of schools. Patrons, teachers and parents will all be represented on the boards of management which, it is envisaged, will be established in all recognised schools. The Act also seeks to respect the traditions and diversity in the school system and, in addition to partnership, stresses the principles of transparency and accountability.

### **Equal Status Act, 2000**

490. Section 7 of the Act deals with the question of discrimination and educational establishments. Discrimination on the grounds of disability can occur if there is a failure to do all that is reasonable to accommodate the needs of a person with a disability.

### **Education for Persons with Special Educational Needs Act (EPSEN) 2004**

491. The purpose of the Act is to provide for the education of children under the age of 18 with special educational needs. The Act establishes a new framework for the assessment of and provision for children with special educational needs. A special educational need refers to a person who has restricted capacity to participate in and benefit from education due to an enduring physical, sensory, mental health or learning disability or any condition which results in a person learning differently from a person without a condition. A child with special educational needs is to be educated in an inclusive setting, unless this is not in the child's interests or there are very good reasons why it is not practical. The Act sets out a range of services, which must be provided, including assessments, education plans and support services. For more information on the Education for Persons with Special Needs Act see paragraph 33 above.

### **Educational disadvantage**

492. Education policy in this area prioritises investment in favour of those most at risk and optimises access, participation and outcomes at every level of the system for disadvantaged groups.

493. Pre-school interventions, supports for tackling children's literacy problems, reduced pupil teacher ratios, increased capitation grants, measures to tackle early school leaving and strengthen ties between the school, the family and the community are in place. In addition, there are interventions in support of youth and in providing "second chance education" for young people and adults.

### **Delivering Equality of Opportunity in Schools (DEIS)**

494. DEIS (Delivering Equality of Opportunity in Schools) addresses the educational needs of children and young people from disadvantaged communities, from pre-school to completion of upper second level education (3 to 18 years).

495. Its core elements comprise: a standardised system for identifying, and regularly reviewing, levels of disadvantage; and a new integrated School Support Programme (SSP) which will bring together, and build upon, some ten existing educational inclusion measures.

496. The key principle of early intervention underpins both the early childhood education measure and many of the literacy and numeracy measures being adopted under the new action plan.

### **Early school leaving**

497. The available statistical evidence indicates that ongoing measures at primary and second level and the increasing range of further education and training opportunities available for students who leave school early are having a positive impact and these measures will be further strengthened and expanded as outlined in the new social partnership agreement.

498. Significant progress is being made in meeting the Lisbon target of reducing the number of early school leavers to not more than 10% by 2010. The latest CSO data show that the proportion of 18-24 year olds who left school with, at most, lower secondary education in Ireland was 12.3% in 2005 compared with an EU average of 14.9%. The educational profile of 20-24 year olds in Ireland has improved steadily over the last five years, as increasing opportunities have been made available in the further education and training sector. Almost 87% of 20-24 year olds in 2005 had completed second-level education (or higher), up from 82.4% in 2000.

499. The Government has pursued a dual strategy of both encouraging more young people to finish school and ensuring much greater second chance and further education opportunities for those who have left school early.

500. With regard to curriculum, the Department's strategies have included widening the educational experience available to students, which aim to achieve a greater level of inclusiveness in curricular provision and meet the needs of the diversity of pupils in our second

level schools, by expanding funding for programmes such as the Leaving Certificate Vocational Programme (LCVP), Vocational Preparation Training (VPT) and the Leaving Certificate Applied (LCA).

501. The School Completion Programme (SCP) was implemented to directly target those in danger of dropping out of the education system and is a key component of the Department's strategy to discriminate positively in favour of children and young people who are at risk of early school leaving, and in line with current thinking favours an integrated cross-community and cross-sectoral approach based on the development of local strategies to ensure maximum participation levels in the education process. It entails targeting individual young people aged 4-18, both in and out of school, and arranging supports to address inequalities in education access, participation and outcomes.

### **The Education Welfare Board**

502. The Education Welfare Act and the establishment of the National Educational Welfare Board (NEWB) is an important part in the campaign to keep students at school and will provide a comprehensive framework for promoting regular school attendance and tackling the problems of absenteeism and early school leaving.

### **Youth work**

503. In the area of non-formal education or Youth Work, the Department has provided for the development and expansion of the Special Projects for Youth Scheme which supports some of our most marginalised and vulnerable young people.

### **Law reform**

504. The rights of children are central in existing Irish statute family law which gives a particular emphasis to their interests. In all family law proceedings relating to the upbringing of a child, the court must always regard the child's welfare as the first and paramount consideration. Where appropriate and practicable, the court will also take into account the child's wishes in the matter having regard to the age and understanding of the child.

### **Child protection under domestic law**

505. Under Irish law as it stands, married parents living together are joint guardians and custodians of their child. If they separate, the custody is normally with the parent with whom the child primarily resides, but the other parent still remains a guardian. An unmarried father may apply to the court to be appointed a guardian of his child.

506. Alternatively, where there is agreement between the parents, they can make a statutory declaration under Section 2 (4) of the Guardianship of Infants Act, 1964, as inserted by Section 4 of the Children Act, 1997, appointing the father as a guardian of his child, without having to go to court. Under Section 11 of the 1964 Act, as amended by the Status of Children Act, 1987, a father (whether married to the child's mother or not) may apply to the court for its direction on any question affecting the welfare of the child, including the right of access.

507. The 1997 Act also provides for an emphasis on counselling and mediation as alternatives to court proceedings concerning the custody of and access to children.

### **Child protection under international law**

508. Ireland has ratified the European Convention on Human Rights and the United Nations Convention on the Rights of the Child, thus subscribing to best practice, internationally, on protection and vindication of rights of children.

509. Ireland is a signatory to the Hague Convention on the Civil Aspects of International Child Abduction which is designed to ensure immediate return of children who have been removed from one contracting state to another.

510. In addition to the abovementioned Convention, custody matters in the EU are covered by Council Regulation (EC) No. 2201/2003 of 27 November, 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000. This Regulation, which is often referred to as Brussels II bis, came into effect on 1 March, 2005. This Regulation covers matters of parental responsibility in respect of all children in respect of whom parental responsibility orders are made, even independently of any link with matrimonial proceedings.

511. In matters of child abduction, this Regulation puts in place some new provisions relating to applications under the 1980 Hague Convention on Child Abduction for the return of a child wrongfully removed from one EU State to another.

### **Cyber-safety for children and young people**

512. Under the Child Trafficking and Pornography Act, 1998, the possession, distribution, importation and exportation or sale of all forms of child pornography - films, videos, or material in written or auditory form including material produced or transmitted via the internet, are offences with penalties of up to 14 years' imprisonment. Mere possession of child pornography can be punishable by imprisonment for up to 5 years. Using a child or allowing a child to be used for the production of child pornography is also punishable by up to 14 years' imprisonment.

513. Substantial Garda resources are utilised in the investigation of child pornography on the Internet.

514. On the structural side, the Government established a Working Group in 1997 to examine and report on the whole question of the illegal and harmful use of the Internet with particular reference to child pornography. The Report of the Working Group on the Illegal and Harmful Use of the Internet was published in July 1998. The main recommendation of the Report was for a system of self-regulation by the Internet service provider industry and the components of such a system were to include:

- An Internet Advisory Board (IAB) - established February 2000 - to promote awareness of the downsides of the Internet, co-ordinate efforts to combat child pornography on the Internet and monitor the progress of self regulation by the Internet Service provider industry;



- A public hotline for reporting child pornography (established 1999 and funded by the industry);
- An industry Code of Practice and Ethics setting out the duties and responsibilities of each Internet service provider (agreed February 2002 and reviewed in 2004).

515. The Internet Advisory Board oversees and monitors progress on anti-child pornography measures, and supervises a self-regulatory regime for the Irish Internet Service Provider industry.

516. The Internet Advisory Board's brief also extends to general downside issues on the Internet including general safety for children while online, the conduct of research, and information campaigns.

517. The Hotline ([www.hotline.ie](http://www.hotline.ie)), funded by the Internet Service Providers' Association of Ireland with support from the EU Safer Internet Action Plan, was launched in November 1999 and has been operating since that time. Special protocols operate between the Gardaí and the Hotline that maximise co-operation on law enforcement issues so that offences in the area of child pornography can be detected and prosecuted.

518. The Hotline works closely with, and is a founding member of, the international INHOPE Association ([www.inhope.org](http://www.inhope.org)), a network of European hotlines which is expanding to all parts of the world. The INHOPE Association develops procedures and shares information on the best practices for the tracing and tracking of illegal child pornography.

519. International co-operation is a vital part of the fight against child pornography on the Internet, and Ireland is fully committed to playing its part.

520. Ireland signed the Council of Europe Convention on Cyber crime in June 2002.

521. The EU Council adopted a Framework Decision on Combating the Sexual Exploitation of Children and Child Pornography on 22 December, 2003. The Department of Justice, Equality and Law Reform is currently considering the question of whether additional legislative provisions are required to give effect to this Framework Decision.

### **Measures to combat trafficking**

522. For information on measures to combat trafficking please see paragraphs 172-180.

### **Garda vetting**

523. In September 2004, the Minister for Children announced the extension of Garda vetting services to all persons working with children and vulnerable adults.

524. Since that announcement considerable preparation work has been underway to ensure that Garda vetting (i.e. police criminal records checks) is available in respect of all prospective employees, students on placements and volunteers who would have substantial, unsupervised access to children and vulnerable adults.

525. By way of background information, the Garda Central Vetting Unit (GCVU) was established in January 2002 to deal with the then known demand for vetting applications. At the time, the Unit processed vetting requests in respect of, inter alia, the following:

- prospective full-time employees of the Health Service Executive;
- Prospective full-time employees of certain agencies funded by the Health Service Executive;
- Childcare places funded by the Equal Opportunities Childcare Programme of the Department of Justice, Equality and Law Reform;
- Special education facilities;
- Special needs assistants in the general education sector;
- School transports; and
- Prospective adoptive parents and fosterers.

#### **Roll out of vetting**

526. A Working Group on vetting submitted its final report to the Minister for Children in March 2004, and this report sets out a comprehensive national strategy for the expansion in Garda vetting arrangements, including recommendations in relation to the associated human and financial resource requirements, work processes and legal issues.

527. New liaison mechanisms have been successfully implemented in the HSE and are now being extended to all organisations previously registered for vetting. Significant changes have been made in the work processes of the Unit in order to streamline the processing of vetting applications, and these have resulted in an improved service being provided.

528. During the course of 2007, it is planned that vetting will be extended to remaining sectors and organisations that legitimately require child protection vetting and which are not encompassed by the roll out plans for the remainder of this year. These include private hospitals, residential childcare centres, agencies working with the homeless, local community initiatives, arts organisations and private tuition centres.

#### **Employment registers/Soft information**

529. In accordance with the recommendations of the report of the Working Group on Garda Vetting, both the Department of Education and Science and the Department of Health and Children are examining the possibility of developing non-Garda, employment-related vetting registers to provide information on those previously dismissed, suspended, moved or made redundant from posts for harming children or vulnerable adults in the education and health sectors, respectively.

### **Retrospective vetting**

530. When the phased roll-out of vetting to all relevant sectors and organisations is complete, it is intended to engage in a retrospective vetting exercise in respect of those for whom vetting was not available at the time of their recruitment. This retrospective exercise is not expected to commence until late 2007 or early 2008.

### **Checks using records from other jurisdictions**

531. In Ireland's case, however, there exists a long-standing area of free movement of persons between Ireland, Northern Ireland and Britain. Populations in each of these jurisdictions have made use and will continue to make use of this free movement to seek employment in the neighbouring jurisdictions. In recognition of this extensive movement of potential employees - and its abuse by persons unsuitable to work with children - efforts are currently underway to establish reciprocal vetting arrangements between the GCVU, on the one hand, and the agencies responsible for vetting in Scotland, England and Wales, namely, *Disclosure Scotland and the Criminal Records Bureau*.

532. Given the common land border, long-standing reciprocal vetting arrangements have been in place between Ireland and Northern Ireland, and these arrangements continue to work well.

### **Statutory basis**

533. In accordance with the recommendations of the report of the Working Group on Garda Vetting, work has commenced in the Department of Justice, Equality and Law Reform on scoping out legislation to regularise vetting arrangements in Ireland.

### **Corporal punishment**

534. Article 40.3 of the Irish Constitution guarantees a person the right not to be subjected to torture and cruel, inhuman or degrading treatment. Any child is entitled to invoke this guarantee. Section 12 of the Criminal Law Act, 1997 abolished the power of a court to impose a sentence of corporal punishment.

535. It is also an offence of cruelty under Section 246 of the Children Act, 2001 "for any person who has the custody, charge or care of a child to wilfully assault, ill-treat, neglect, abandon or expose the child or to cause or procure or allow the child to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause unnecessary suffering or injury to the child's health or seriously to affect his or her wellbeing". The Act goes on to provide that "the reference to a child's health or wellbeing includes a reference to the child's physical, mental or emotional health or wellbeing", while "ill-treatment of a child includes any frightening, bullying or threatening of the child".

536. In the school setting, Section 24 of the Non-Fatal Offences against the Person Act, 1997 abolished the common law rule under which teachers had immunity from criminal liability for physically punishing pupils. Article 8 of the Childcare [Pre-School Services] Regulations, 1996, provides that "a person carrying on a pre-school service shall ensure that no corporal punishment

is inflicted on a pre-school child attending the service.” Practice guidance contained in ‘Our Duty to Care’ published by the Department of Health and Children states that workers should “never use physical punishment with children”.

537. With regard to parents and corporal punishment, the common law recognises the right of a parent to inflict moderate and reasonable physical chastisement on a child. However, any such chastisement is subject to objective and independent review by a jury, by reference to developing social norms. Punishment cannot be administered “for the gratification of passion or rage or with an instrument unsuited for the purpose”. Common assault and battery are offences, which can be committed, inter alia, against children, including by their parents or guardians.

538. Ireland is cognisant of the fact that putting children at the heart of policy and practice is a new way of working and is at an early stage of development. This shift is significantly helping to change attitudes to and understanding of children and young people in Ireland. This positive and constructive approach is the best means of ensuring that children are valued and respected at all times, by all adults in all situations.

539. Ireland’s view is that there is a balance to be found in trying to dissuade parents from using physical chastisement, supporting them in effective parenting and, at the same time, acknowledging parents as the best judges of how to bring up their children within the letter of the law. It is anticipated that there will be an appropriate time for the introduction of an outright ban on corporal punishment in the family setting, which will be widely accepted and endorsed by society.

### **Referendum on the Rights of the Child**

540. On November 3, 2006, the Government announced its intention to hold a Constitutional referendum on children’s rights with a view to putting these rights in a central place in the Constitution. The Minister for Children initiated a process of consultation and discussion with the other parliamentary parties and with all other relevant groups, with the aim of achieving consensus on the wording of an appropriate amendment regarding the place of children in the Constitution. The aim is to find a wording which will reflect the desire of the Irish people to establish robust safeguards for the rights and liberties of all our children and that enshrines the very highest possible standards for the protection of children. At the time of writing this report the date of the referendum had yet to be decided.

### **Registration of children at birth**

541. The Civil Registration Act, 2004 provides for the rationalisation of the procedures for registering births, stillbirths and deaths. The Act makes provision to streamline the existing procedures governing the registration of adoptions, and enables the establishment of new Registers of Divorce and Civil Nullity. The Act provides for the registration of a birth by the parents of the child within three months of the birth.

542. A new Civil Registration Act was passed into law in 2004. Parts 1-3, 5 and 8 of the Act are in force and make provision, inter alia, for the registration of births and stillbirths.

543. With regard to children who are born to parents who are not married to each other Section 22 of the Act provides for the registration of a child's father's details. The emphasis in the section is to facilitate the registration of the father's details in the register of births through the co-operation of both parents. However, the Section also provides for an application to name the father in the register from either the mother or the father of the child acting alone but such applications must be supported by a court order. The Act also provides that where a birth has been registered without paternity details being recorded; it may be re-registered to include the father's details on the application of the parents or on the application by one of the parents supported by a court order.

### **The right to nationality**

544. A recent change to the Constitution means that children born in Ireland to non-national parents (since the constitutional amendment) have no automatic entitlement to Irish citizenship. However with regard to a child's right to acquire a nationality, in particular where the child would otherwise be stateless (UNCRC article 7, paragraph 2), the Minister for Justice, Equality and Law Reform has the power to dispense with the conditions of naturalisation in certain cases, including those where the child would otherwise be stateless. In such cases, where the applicant is a person who is a refugee within the meaning of the United Nations Convention relating to the Status of Refugees of the 28 July, 1951, and the Protocol Relating to the Status of Refugees of the 31 January, 1967, or is a stateless person within the meaning of the United Nations Convention relating to the Status of Stateless Persons of the 28 September, 1954 the Minister, in his absolute discretion, may grant an application for naturalisation.

545. A child may only be deprived of Irish citizenship in certain very limited circumstances. He or she cannot be deprived of Irish citizenship acquired by birth or adoption. The process in many cases is overseen by a committee of inquiry appointed by the Minister for Justice under the terms of the Nationality and Citizenship Acts, 1956 and 1986. However, it should be emphasized that deprivation of citizenship is a very rare occurrence.

### **Psychiatric services for young people**

546. At present psychiatric services for young people aged 16 to 17 years (including those on an involuntary basis) are provided in adult psychiatric units. Approximately 350 young people each year are admitted into residential psychiatric services (see Annex 4). The Government has accepted that placement of children with mental health problems in adult facilities is inappropriate.

547. Under the Mental Health Act, 2001 the definition of 'child' extends to all young people under 18 years of age. Therefore, when the Act was fully implemented (1 November, 2006), responsibility for 16 to 17 year olds transferred to the child and adolescent mental health services. €3.25m has been allocated this year by the HSE for acute beds for children and adolescent psychiatric patients and the further enhancement of child and adolescent psychiatric services.

548. The HSE has put in place interim arrangements for the treatment of children in adult units, pending the provision of dedicated child and adolescent beds. All children admitted to adult units

will be treated on a one-to-one basis by appropriately trained staff. The Mental Health Commission has also issued a code of practice relating to the admission of children under the Mental Health Act, 2001.

549. The HSE has identified two adult units in each of four HSE regions which will deal with under-18s on an interim basis, pending the provision of additional dedicated child and adolescent units. Staff of these units will receive additional training. Eight dedicated child and adolescent multi-disciplinary teams will be provided for in these units.

## Article 25

### Eligibility for election

#### *Office of the President*

550. Article 12 of the Constitution provides that every citizen who has reached his or her thirty fifth year is eligible for the office of President. This article also provides that the President's term of office is seven years, that no person may hold the office for more than two terms and that the President cannot be a member of the Dáil or Seanad. There are no statutory disqualifications from holding the office of President.

#### *Dáil Éireann*

551. The Dáil is comprised of 166 members. The maximum life of the Dáil is 5 years as set by law; however, it may be dissolved by the President on the advice of the Taoiseach at any time.

552. Article 16.1.1 of the Constitution provides that every citizen, without distinction of sex, who has reached the age of 21 years and who is not placed under disability or incapacity by the Constitution or by law, shall be eligible for membership of the Dáil. Persons precluded by the Constitution from Dáil membership are holders of the offices of President, Comptroller and Auditor General and judges. Article 18.2 provides that a person, to be eligible for membership of the Seanad, must be eligible to become a member of the Dáil. A person is not eligible for membership of Dáil Éireann if he or she:

- (a) Is a member of the Commission of the European Communities; or
- (b) Is a Judge, Advocate General or Registrar of the Court of Justice of the European Communities; or
- (c) Is a member of the Court of Auditors of the European Communities; or
- (d) Is a member of the Garda Síochána; or
- (e) Is a whole time member of the Defence Forces; or
- (f) Is a civil servant who is not by the terms of his or her employment expressly permitted to be a member of the Dáil; or
- (g) Is a person of unsound mind; or

(h) Is undergoing a sentence of imprisonment for any term exceeding six months, for any period imposed by a court of competent jurisdiction in the State; or

(i) Is an undischarged bankrupt under an adjudication by a court of competent jurisdiction in the State; or

(j) Is a member of a local authority.

#### *Seanad Éireann*

553. The Seanad is comprised of 60 members. Eleven members are nominated by the Taoiseach, 6 members are elected by university graduates and 43 are elected from panels of candidates representing specified vocational interests.

554. Under Article 18.2 of the Constitution a person must be eligible to become a member of the Dáil in order to be eligible for membership of the Seanad. Therefore, the same disqualifications as apply to membership of the Dáil, as set out above, also apply to membership of the Seanad.

#### *The European Parliament*

555. Direct elections to the European Parliament are held every five years and the first direct elections were held in Ireland in 1979. The elections take place in each Member State within a four-day period in the month of June fixed by the Council of Ministers.

556. Irish citizens and citizens of the European Union ordinarily resident in the State are entitled to stand for election to the European Parliament.

557. Article 6 of the Act attached to the EU decision of 20 September, 1976, as amended by Council Decision 2002/772/EC, Euratom of 25 June and 23 September, 2002 - now renumbered Article 7 - which is directly binding on member States, provides that membership of the Government, membership of a national parliament and membership of and employment by EU institutions are incompatible with the office of member of the European Parliament (MEP).

558. Irish electoral law provides that a person who is not eligible for membership of the Dáil may not stand for election as an MEP. Irish law also provides that, if the Attorney General, a Minister of State (junior minister) or the Chairman or Deputy Chairman of Dáil or Seanad Éireann is elected as an MEP, he or she ceases to hold such office. In accordance with the terms of a 1993 EU Directive, Irish law provides that a citizen of the European Union ordinarily resident in the State is eligible to stand for election in the State to the European Parliament, provided he or she is not disqualified from standing in the home Member State. The Directive and Irish electoral law also provides that a citizen cannot stand for election in the home Member State if he or she is contesting the election in the Member State of residence.

559. A person is not eligible for election to the European Parliament if he or she:

(a) Is a citizen of Ireland contesting the election in any other Member State; or

- (b) Is a national of an EU Member State (other than the State or the United Kingdom) who has been deprived, through an individual criminal law or civil law decision, of the right to be a candidate under the law of the home Member State; or
- (c) Has not reached the age of 21 years on polling day; or
- (d) Holds the office of Minister of the Government or is a member of the Government of another member state, Judge or Comptroller and Auditor General; or
- (e) Is a member of the Commission of the European Communities; or
- (f) Is a Judge, Advocate General or Registrar of the Court of Justice of the European Communities or the Court of First Instance attached to that Court; or
- (g) Is a member of the Board of Directors of the European Central Bank; or
- (h) Is a member of the Court of Auditors of the European Communities; or
- (i) Is the Ombudsman of the European Communities; or
- (j) Is a member of the Economic and Social Committee of the European Communities or of the European Atomic Energy Community; or
- (k) Is a member of a committee or other body established pursuant to the Treaties the European Community and the European Atomic Energy Community for the purpose of managing the Communities' funds or performing a permanent direct administrative task; or
- (l) Is a member of the Board of Directors, Management Committee or staff of the European Investment Bank; or
- (m) Is an active official or servant of the institutions of the European Communities or any of the specialised bodies attached to these institutions or the European Central Bank; or
- (n) Is a member of the Garda Síochána; or
- (o) Is a wholetime member of the Defence Forces; or
- (p) Is a civil servant who is not by the terms of his or her employment expressly permitted to be a member of the European Parliament; or
- (q) Is a person of unsound mind; or
- (r) Is undergoing a sentence of imprisonment for any term exceeding six months imposed by a court of competent jurisdiction in the State; or
- (s) Is an undischarged bankrupt under an adjudication by a court of competent jurisdiction in the State.



*Local authorities*

560. There are 114 local authorities in Ireland comprising 29 county councils, 5 city councils, 5 borough councils and 75 town councils. There are 1,627 elected members in total.

561. Every Irish citizen and every person ordinarily resident in the State, over 18 years, who is not subject to any of the disqualifications outlined below, is eligible for election.

562. A person is not eligible for election to a local authority if he or she:

(a) Is a member of the Commission of the European Union or a member of the European Parliament; or

(b) Is a Judge, Advocate General or Registrar of the Court of Justice of the European Union; or

(c) Is a member of the Court of Auditors of the European Union; or

(d) Is appointed under the Constitution as a Judge or as the Comptroller and Auditor General; or

(e) Is a member of the Garda Síochána; or

(f) Is a wholetime member of the Defence Forces; or

(g) Is a civil servant who is not by terms of employment expressly permitted to be a member of a local authority; or

(h) Is a person employed by a local authority and is not the holder of a class, description or grade of employment, designated by order under section 161 (1) (b) of the Local Government Act, 2001 or deemed to have been made under that section; or

(i) Is undergoing a sentence of imprisonment for any term exceeding six months imposed by a court of competent jurisdiction in the State; or

(j) Fails to pay any sum or any portion of any sum charged or surcharged by an auditor of the accounts of any local authority upon or against that person; or

(k) Fails to comply with a final judgement, order or decree of a court of competent jurisdiction, for payment of money due to a local authority; or

(l) Is convicted of, or has had a conviction confirmed on appeal for, an offence relating to fraudulent or dishonest dealings affecting a local authority or corrupt practice or acting when disqualified.

*Public servants and politics*

563. Civil servants are disqualified from standing for or becoming a member of the Dáil, Seanad or European Parliament, unless expressly permitted by their conditions of service. This disqualification was reaffirmed in the case of Dáil elections in the Electoral Act, 1992 and, in the case of European elections, in the European Parliament Elections Act, 1997. A civil servant wishing to contest a Dáil, Seanad or European election must resign from the service. Civil servants above clerical level are completely debarred from political activity, while civil servants below clerical level may - subject to specific permission in certain cases - take part in political activity, including standing for and membership of local authorities.

564. The rationale behind these restrictions is the overriding necessity for civil servants to act, and be seen to act, impartially and free from political motivation. The Civil Service Code of Standards and Behaviour, which was promulgated by the Minister for Finance on 9 September, 2004, brings together the rules in regard to civil servants and politics and reiterates, in Section 5, the restriction on civil servants engaging in politics.

565. There are few restrictions on local authority employees engaging in political activity; they may join political parties and stand for election at Dáil, Seanad or European elections. If so elected, they are granted special leave without pay. However, under local government law, there is a general disqualification on local authority employees becoming members of a local authority and on members being employed by a local authority. The most junior grades are exempt from this prohibition by Ministerial order.

566. The legislation governing most recently established State sponsored bodies provides that staff who stand for election to the Dáil, Seanad or European Parliament are granted special leave without pay for the duration of the election and of their membership of these bodies. Such staff are also generally granted special leave without pay if they become members of local authorities - the requirement to take special leave may be waived in the case of lower grade staff.

**Right to vote***Presidential elections*

567. Article 12.2 of the Constitution provides that the President shall be elected by direct vote of the people and that every citizen who is eligible to vote at a Dáil election has the right to vote at a presidential election.

*Dáil elections*

568. Article 16.1.2 of the Constitution confers the right to vote at Dáil elections on all citizens, and such other persons in the State as may be determined by law, without distinction of sex, who have reached 18 years of age, are not disqualified by law and comply with the provisions of the law relating to Dáil elections. The law provides that the right to vote at Dáil elections may, by order approved in draft by the Dáil and Seanad, be extended to persons ordinarily resident in the State who are nationals of other EU member states which extend the right to vote at their national parliamentary elections to Irish citizens resident in those member states.

569. Every citizen of Ireland and British citizens ordinarily resident in the State and whose names appear on the register of electors are entitled to vote.

*Seanad elections*

570. Article 18 of the Constitution provides that the Seanad shall be composed of 60 members of whom 11 are nominated by the Taoiseach. A further 43 are elected from panels of candidates having knowledge and practical experience of certain interests and services viz. Cultural and Educational, Agriculture, Labour, Industrial and Commercial and Administrative. The remaining 6 members are elected by university graduates of the National University of Ireland and the University of Dublin. Article 18 also provides that elections of Seanad members shall be regulated by law.

571. Electoral law provides that the electorate for the 43 panel seats at every Seanad general election comprises the newly elected Dáil members, the outgoing Seanad members and the members of every county and city council.

572. Electoral law prescribes the National University of Ireland and the University of Dublin as three-seat constituencies at Seanad elections. Every person who, on the qualifying date for the register of electors, is a citizen of Ireland, has received a degree from the National University of Ireland or the University of Dublin and has reached the age of 18 years, is entitled to be registered and to vote in the relevant constituency at a Seanad election. The other universities and institutions of higher education in the State are not represented in the Seanad.

573. There is no residency requirement for voting at Seanad elections.

*European Parliament elections*

574. Electoral law provides that every person who, on the qualifying dates for the annual register of electors, is either an Irish citizen or a national of another EU member State, has reached the age of 18 years and is ordinarily resident in a constituency, is entitled to be registered and to vote in that constituency at a European Parliament election.

*Local authority elections*

575. Electoral law provides that a person who has reached the age of 18 years and is ordinarily resident in a constituency, is entitled to be registered and to vote at local authority elections in that constituency. There is no citizenship requirement for voting at local elections.

**Referendum**

576. Article 46.2 of the Constitution provides that every bill containing a proposal to amend the Constitution must be referred by referendum to the people for a decision, in accordance with the law relating to a referendum. The proposal is approved if a majority of those voting support it (Article 47.1).

577. Article 27 of the Constitution provides for the referral of a bill by the President to the people by referendum, following a joint petition by a majority of Senators and at least one third of Dáil deputies, on the grounds that the bill contains a proposal of such national importance that the will of the people on it ought to be ascertained.

578. Article 47.3 of the Constitution confers the right to vote at a referendum on every Irish citizen who has the right to vote at a Dáil election.

### **Registration of travellers**

579. The Human Rights Committee, in its comments on Ireland's first periodic report, suggested that Ireland undertake additional affirmative action aimed in particular at improving the situation of the Traveller Community in public affairs, including the electoral process. Electoral law provides that "ordinary residence" in a constituency on a specific date is a condition for registration and voting at Referenda, Presidential, Dáil, European and local elections. However, the Electoral Act, 1992 recognizes that a person may be ordinarily resident in more than one place and thus have a prima facie claim for registration in respect of more than one premises (in law "premises" does not necessarily imply a structure of any kind). The law provides that, in such circumstances, a person may only be registered once and the decision on where the person is to be registered is "subject to any expression of choice by such person". These provisions enable Travellers to be registered as electors, even where they have a nomadic lifestyle.

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

### **Registration of political parties**

581. Electoral law provides that the Clerk of the Dáil shall be the registrar of Political Parties and requires him/her to register any party applying for registration which is, in his or her opinion, a genuine political party organised to contest elections in the State. At the commencement of the 29th Dáil on 6 June, 2002, fourteen parties were confirmed as being registered political parties. Since June 2002, three parties applied for registration of which none were approved. There were no appeals against the Registrar's ruling.

### **Assistance given to visually impaired or illiterate voters**

582. Sections 26, 27, and 28 of the Disability Act, 2005 oblige public bodies to make their services accessible to people with disabilities. This includes all local authorities. A general Code of Practice relating to these sections has been approved by the Minister for Justice, Equality and Law Reform and has legal force as a Statutory Instrument. Electoral law sets out various provisions to assist electors with disabilities exercise their voting rights. Ballot papers including

the candidates' photographs and party emblems are currently in use to assist visually impaired persons and persons with literacy difficulties to exercise their right to vote. In addition, large print versions of the ballot papers are displayed in polling stations to further assist voters with a visual impairment or with literacy difficulties. The Department of the Environment, Heritage and Local Government, in consultation with the National Council of the Blind, is arranging provision of information on registration and voting in accessible formats by the end of 2006. Such information will also be distributed to local authorities where it will be readily accessible to the public.

### **Assistance given to voters with a physical disability**

583. Electoral law provides for a number of measures in relation to accessibility to polling stations. The Electoral (Amendment) Act, 1996 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. Persons with a disability or with a literacy difficulty may avail of companion voting or may seek the assistance of the presiding officer. Alternatively, persons with a disability or illness which prevents them from going to a polling station may be included in the postal voters' list.

## **Article 26**

### **Unfair dismissals acts 1977 to 2001**

584. The purpose of the Acts are to protect employees from unfair dismissal. They set down criteria according to which the fairness or otherwise of dismissals are judged. They also provide an adjudication system and redress for an employee whose dismissal has been found to be unfair.

585. In general, the Acts apply to any person working under a contract of employment or apprenticeship, or employed through an employment agency.

586. In the case of persons employed through an employment agency, the third party (hirer/user) is deemed to be the employer for the purpose of redress under the Acts.

587. The Acts generally do not apply to a person who has been in the continuous service of the employer for less than one year. Continuous service is determined by rules set out in the amended First Schedule to the Minimum Notice and Terms of Employment Act, 1973.

588. The requirement of one year's continuous service does not apply where the dismissal results from:

- An employee's pregnancy, giving birth, breastfeeding or any matters connected therewith;
- The exercise or proposed exercise by an employee of a right under the Maternity Protection Acts, 1994 and 2004;
- The exercise or contemplated exercise by an employee of the right to adoptive leave, or additional adoptive leave under the Adoptive Leave Act, 1995;

- The exercise or proposed exercise by the employee of the right to parental leave or force majeure leave under and in accordance with the Parental Leave Act, 1998;
- An employee's entitlements, future entitlements, exercise or proposed exercise of rights under the National Minimum Wage Act, 2000;
- The exercise or proposed exercise by the employee of the right to carer's leave under and in accordance with the Carer's Leave Act, 2001;
- An employee's trade union membership or activities.

589. In determining whether an employee has the necessary service to qualify under the Acts, a Rights Commissioner, the Employment Appeals Tribunal or the Circuit Court, as the case may be, may consider whether the employment of a person on a series of two or more contracts of employment, between which there was no more than 26 weeks' break, was wholly or partly connected with the avoidance of liability by the employer under the Acts. Where such a connection is found, the length of the various contracts may be added together to assess the length of service of an employee for eligibility under the Acts.

590. Dismissals will be unfair under the Acts where it is shown that they resulted wholly or mainly from any of the following:

- (a) An employee's trade union membership or activities, either outside working hours or at those times during working hours when permitted by the employer;
- (b) Religious or political opinions;
- (c) Race or colour or sexual orientation;
- (d) The age of an employee;
- (e) An employee's membership of the Traveller Community;
- (f) Legal proceedings against an employer where an employee is a party or a witness;
- (g) Unfair selection for redundancy;
- (h) An employee's pregnancy, attendance at ante-natal classes, giving birth, breastfeeding or any matters connected therewith;
- (i) The exercise or proposed exercise by an employee of the right to protective leave or natal care absence or to time off from work to attend ante-natal classes or to time off from work or a reduction of working hours for breastfeeding under the Maternity Protection Acts, 1994 and 2004;
- (j) The exercise or contemplated exercise by an employee of the right to adoptive leave or additional adoptive leave under the Adoptive Leave Act, 1995;

(k) The exercise or proposed exercise by the employee of the right to parental leave or force majeure leave under and in accordance with the Parental Leave Act, 1998;

(l) An employee's entitlements, future entitlements, exercise or proposed exercise of rights under the National Minimum Wage, Act 2000;

(m) The exercise or proposed exercise by the employee of the right to carer's leave under and in accordance with the Carer's Leave Act, 2001.

591. It can also be construed as dismissal if a person's conditions of work are made so difficult that he or she feels obliged to leave. This is called constructive dismissal.

### **The Employment Equality Act, 1998**

592. The Employment Equality Act, 1998 prohibits direct and indirect discrimination, as well as harassment and victimisation, on the grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller Community in the area of employment. The scope of the Act is comprehensive and covers discrimination in relation to access to employment, conditions of employment, equal pay for work of equal value, training, promotion and work experience. The 1998 Act is complemented by the Equal Status Act, 2000 which prohibits discrimination on the same nine grounds in relation to the provision of goods and services. The Equality Act, 2004, which was enacted on 18 July, 2004, amends the Employment Equality Act, 1998 and the Equal Status Act, 2000. The Act transposes into Irish law three EU Equality Directives.

593. In the Concluding Observations of the Human Rights Committee concern was raised that exemptions made under the Employment Equality Act, 1998 which allow religious bodies directing hospitals and schools to discriminate in certain circumstances on the grounds of religion in employing persons whose function is not religious, may result in discrimination contrary to Article 26 of the Covenant.

594. The exemptions referred to by the Human Rights Committee are outlined in Section 37 of the Employment Equality Act, 1998 which permit the difference of treatment in certain occupations. The provisions provide that it shall not be unlawful for a religious, educational or medical institution, run by a body established for religious purposes, to discriminate on religious grounds where such discrimination is essential for the maintenance of the religious ethos of the institution or is reasonable in order to prevent an employee or prospective employee undermining that ethos.

595. The provision was drafted to meet Constitutional considerations which protect the religious ethos of many educational, religious and medical institutions of the State. It is strictly conditional on the institution concerned being one under the direction or control of a body established for religious purposes. The distinction is made in Section 37 (1) between permitting more favourable treatment of one person compared to another, under subparagraph (1) (a), and taking action to prevent a person from undermining such an ethos, under subparagraph (1) (b). In the case of more favourable treatment of one person compared to another, discrimination is permitted by reference to the religious ground and must be defended by reference to the religion

or non-religion of the person discriminated against. In the latter case, the religious ethos of the employer may give rise to a need to take action to prevent another person, regardless of that person's religion or non-religion, from undermining this ethos. Strict tests apply to the application of the exemption in subsection 37 (1) (b). First, the discrimination must be essential for the maintenance of the religious ethos of the institution, second, it must be reasonable in order to avoid undermining that ethos. These are balanced, objective tests which can be adjudicated upon by independent third parties, that is, equality officers, the Labour Court or other courts.

596. For more information on measures addressing equality and non discrimination see measures outlined under Article 2.

## **Article 27**

### **Traveller monitoring committee**

597. The second progress report of the Committee to Monitor and Co-ordinate the Implementation of the Recommendations of the (1995) Task Force on the Travelling Community was published in December 2005. The report reflects the fact that most of the recommendations of the Task Force Report have been implemented, although much work still remains to promote effective social inclusion for Travellers. The Committee which included representatives of Government Departments, Traveller Organisations and social partners, is being reconstituted with a view to broadening the representation from the Traveller Community and providing a more dynamic forum for consultation and interaction between stakeholders.

598. A mapping exercise giving the current position on each of the original Task Force recommendations accompanies the second progress report. The report represents a consensus view of the members of the Monitoring Committee and this in itself is a positive reflection on the interaction between Government Departments and Traveller organisations. The progress report acknowledges progress in a number of areas, including the Traveller Health Strategy and the adoption by local authorities of targets for Traveller accommodation programmes. However, despite sustained investment in Traveller specific measures, progress has been slow. The health, education and employment status of Travellers differs markedly from the majority population which contributes to a situation where Travellers, in general, have a much narrower range of life choices.

### **High level working group on traveller issues**

599. In December 2003 at the request of the Taoiseach, a High Level Group on Traveller Issues was established. Its remit is to ensure that the relevant statutory agencies involved in providing a full range of services to Travellers, focus on improving the practical delivery of such services. The High Level Group, which is chaired by the Department of Justice, Equality and Law Reform, comprises members of the Senior Officials Group on Social Inclusion and other senior public servants with key responsibility for the delivery of Traveller specific services. The Group produced a comprehensive report with 59 conclusions and recommendations which was approved by the Government for implementation in March 2006. The report emphasised the



need for interagency cooperation, meaningful consultation with Travellers and their representatives and the incorporation of law enforcement measures into the interagency approach.

600. To support the work of the High Level Group a total of ten pilot projects were initiated during 2004 and 2005 to examine ways of promoting an effective interagency approach to the planning and delivery of services at local level. These projects have helped increase awareness of the need to ensure close cooperation between public bodies and close consultation with local Travellers who are the direct service users. The projects have also helped to highlight a number of critical issues which have a cross-sectoral dimension (e.g. targeted family supports, transition to mainstream provision in education and training, gender roles, barriers to employment).

601. The interagency approach is now being pursued nationwide under the supervision of City and County Development Boards. To emphasise the importance of implementing this approach the Taoiseach wrote to key Ministers on 10 April, 2006 asking them to ensure that relevant Departments and public bodies play a full part in the process. The Department of Justice, Equality and Law Reform will monitor and support the establishment of the interagency mechanisms in consultation with other Departments represented on the High Level Group.

### **Traveller health**

602. Significant progress has been made in the area of Traveller health since Ireland's second report to the Human Rights Committee in 1998.

603. The Report of the Task Force on the Travelling Community recommended the appointment by the Minister for Health of a Traveller Health Advisory Committee and that its brief should include the drawing up of a national strategy to improve the health status of the Traveller Community. The Traveller Health Advisory Committee (THAC) was established at the end of 1998 and has members from the Traveller community, Health Service Executive and the Department of Health and Children. THAC advises the Minister in relation to the development of Traveller health policy.

604. "Traveller Health - A National Strategy 2002-2005" was recently implemented throughout the country. It provides the basis for current policy, focusing on the underlying problems associated with the poor health status of Travellers and contained over 120 actions for specific improvements in that status.

605. There is a Traveller Health Unit in each Health Service Executive area which is responsible for the Traveller health budget and the development of Traveller health services in that area. Travellers/Traveller groups are members of each Traveller Health Unit and work in partnership with Health Service Executive personnel in the development of services and the allocation of resources.

606. The Department of Health and Children and the Department of Health, Social Services and Public Safety, Northern Ireland, are jointly committed to carrying out a Travellers' All-Ireland Health Study to develop and extend the indicators collected in the 1987 study of Travellers' health and to inform appropriate actions required in the area of Travellers' health. Tenders for the conduct of the study have been invited and it is expected to commence in early 2007.

607. A pilot project took place in 2005 to establish an ethnic identifier on hospital information systems in a general and maternity hospital. When the results of the pilot have been analysed, consideration will be given to extending the identifier to other health information systems to enable the collection of data on the access to health services by Travellers.

608. Traveller women work as Community Health Workers in Primary Health Care for Travellers Projects, allowing primary health care to be developed based on the Traveller community's own values and perceptions so that positive outcomes which have a long term effect can be achieved. Over 40 Primary Health Care for Travellers Projects are currently in place in all Health Service Executive Areas.

609. Since 1997, over €11m has been allocated to the Health Service Executive for Traveller specific health initiatives, including implementation of the Traveller Health Strategy.

### **Traveller accommodation**

610. The Government's objective is to enable every household to have available an affordable dwelling of good quality, suited to its needs, in a good environment and, as far as possible, at the tenure of its choice. Travellers may apply for standard local authority accommodation but may also apply for Traveller-specific accommodation, which includes group housing and bays on halting sites.

611. Local authorities carry out an annual count of the number of Traveller families already in local authority accommodation or living on unauthorised sites. They also estimate the number of such families providing their own accommodation. This count is carried out in late November each year. The local authorities reported that on 25 November, 2005 there were 7,266 Traveller families living in the State. This figure included 5,177 families living in accommodation provided by local authorities or with local authority assistance, and 589 families living on unauthorised sites.

612. In July 1998 the Housing (Traveller Accommodation) Act, 1998 was enacted. This Act provides the legislative framework within which the accommodation needs of Travellers are to be met by local authorities. All relevant local authorities are obliged, under the Act, to adopt and implement Traveller accommodation programmes, with the aim of improving the rate of provision of accommodation for Travellers.

613. The 1998 Act sets out comprehensive consultation procedures to be followed by local authorities when the multi-annual accommodation programmes are being prepared. The authorities are also required to establish local consultation bodies, called Local Traveller Accommodation Consultative Committees (LTACCs). The membership of the LTACCs comprises elected members of the appointing authority, officials of the appointing authority, and representatives of local Travellers and Traveller bodies. The local committees advise the local authorities on their Traveller accommodation programmes.

614. Under the provisions of the Act the Minister for the Environment, Heritage and Local Government appoints a national consultative body (National Traveller Accommodation

Consultative Committee), with twelve members representing government Departments, local authorities, and Traveller support groups, to advise the Minister on Traveller accommodation matters.

615. The first Traveller accommodation programmes ran from 2000 to 2004. During the lifetime of these local programmes, 1,371 additional Traveller families were accommodated in permanent accommodation, and the number of Traveller families on unauthorised sites reduced by 50%, from 1,207 to 601. During this period other Travellers families found accommodation in the private rented sector, while some purchased their own accommodation. In the period 2000-2004, €130m was expended on new and refurbished Traveller-specific accommodation. In addition Travellers were accommodated in standard local authority accommodation.

616. All relevant local authorities have adopted their second accommodation programmes, to cover the period 2005 to 2008. Authorities are obliged to include in these programmes annual targets, broken down by accommodation type, for the provision of accommodation for Travellers. €37m was spent on Traveller-specific accommodation in 2005, and the budget for such accommodation has been increased to €45m for 2006.

### **Irish language**

617. Following the enactment of the British-Irish Agreement Act 1999, the name of the statutory body charged with the promotion of Irish as a living language throughout the whole island of Ireland was changed from Bord na Gaeilge to Foras na Gaeilge.

618. The Official Languages Act 2003 was signed into law on 14 July 2003. The Act is the first piece of legislation to provide a statutory framework for the delivery of public services through the Irish language and its primary objective is to ensure better availability and a higher standard of public services through Irish.

619. In June 2005, following approval by EU Foreign Ministers of the Irish Government's proposal, the Irish language was accorded official and working status in the EU. This represented a particularly significant practical step for the Irish language and was a further complement to the Irish Government's wider policy of strong support for the language.

620. This proposal, which will take effect from 1 January 2007, was to provide that key EU legislation (that adopted jointly by the Council and the European Parliament) will be translated into Irish. Interpretation from Irish will also be provided at certain Ministerial meetings as requested. Other practical benefits include Irish being one of the languages taken into account for the purposes of recruitment into the EU institutions.

### **Measures to Combat Racism and Promote Interculturalism**

621. Ireland has undertaken positive measures to combat racism and to promote interculturalism. For more information see paragraphs 48-63.

## **II. FIRST OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

622. Since the submission of Ireland's last report in September 1998 a number of cases have been taken before the Human Rights Committee. The Human Rights Committee found against Ireland in respect of one of these cases.

623. The Human Rights Committee found against Ireland in respect of a communication by Joseph Kavanagh regarding his trial by the Special Criminal Court. The Committee considered that the State had failed to demonstrate that the decision to try Mr. Kavanagh before the Special Criminal Court was based on reasonable and objective grounds. Accordingly, the Committee concluded that Mr. Kavanagh's right under Article 26 to equality before the law and to equal protection of the law had been violated.

624. Mr. Kavanagh, on foot of the Committee's finding, was offered financial compensation but he sought release. The Supreme Court rejected his claim.

625. Mr. Kavanagh's subsequent claim before the Committee of violation of the Covenant by virtue of Ireland's failure to provide him with an adequate remedy in respect of the Committee's initial finding of a violation was rejected.

626. For more information on developments since the Human Rights Committee found against Ireland in respect of the communication by Joseph Kavanagh see paragraphs 343-381.

## **III. SECOND OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

627. See section on article 6, paragraphs 130-131 above.

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