

CONFERENCE OF RELIGIOUS OF IRELAND (CORI)

*Submission to the United Nations Universal Periodic Review for Ireland
Twelfth Session of the Working Group on the UPR Human Rights Council
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Introduction

The Conference of Religious of Ireland (CORI) provides a forum where religious can work together in the mission they hold in common. We have a membership of 136 religious congregations representing over 9,000 men and women religious throughout the island of Ireland.

Our member congregations work in education; health; welfare; justice; human rights; ecology and many other areas. We convened as a Social Justice and Human Rights Working Group, identified our priority areas and carried out our consultations using interviews and Working Group meetings.

In our submission, we have focused on the following areas:

- **Human Trafficking**
- **People with Learning Disabilities & Exceptional Abilities**
- **Literacy**
- **Children in Care**
- **Asylum Seekers.**

Promotion and Protection of Human Rights on the Ground

Human Trafficking

1. Irish legislation pertaining to sexual exploitation is concerned less with protecting human rights and more with ensuring that the sex trade remains out of the public domain.¹ Assessing the extent of human trafficking for sexual exploitation is extremely difficult. Research² undertaken over a 21 month period identified 102³ women as having been trafficked into or through Ireland. The same research estimated that up to 1,000 women per day are involved in indoor prostitution in Ireland about 90% of whom are migrant women.
2. While there are many factors involved in trafficking human beings for the purposes of sexual exploitation, by far the most influential is the demand. The importance of developing measures to address the demand side has been raised by the UNHRC⁴ as well as the *Principles and Guidelines on Human Rights and Human Trafficking*.^{5 6}
3. It is accepted that the view of prostitution in the 1949 Convention⁷ is not that expressed in the Protocol⁸ and while the policy line at the level of UN institutions is neutral, there is a strong body of opinion in Ireland that prostitution is a violation of many human rights.^{9 10} Developments in other countries¹¹ have given stimulus to a growing movement in Ireland campaigning for legislative change.¹²
4. The main anti trafficking legislation is the Criminal Justice (Human Trafficking) Act 2008¹³. Investigations of offences under the Act have not lead to any convictions¹⁴, which is in line with trends elsewhere¹⁵. CORI feels that the definition of a trafficked person according to the Act¹⁶ as well as the non provision of strict liability¹⁷ may hinder successful convictions. Offices of national rapporteurs¹⁸ elsewhere¹⁹ have greatly enhanced the state's efforts to combat human trafficking and such an office would be well placed to recommend improvements to the legislation.
5. The terms of protection for potential and suspected victims of trafficking are to be provided for in the Immigration, Residence and Protection Bill 2010 (now lapsed),²⁰ and administrative arrangements²¹ have been in place pending the passing of the Act. Under the current provisions, only the protection path is open to victims of trafficking to remain in Ireland - their accommodation and welfare is devolved to the *Reception and Integration Agency*.²² Direct provision²³ is the only arrangement offered by the

Agency and such arrangements are not suitable²⁴ for victims of trafficking. Such arrangements are in breach of Article 6²⁵ of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. The conditionality²⁶ on protection offered to victims of trafficking²⁷ is a violation of their rights²⁸

6. Current provision²⁹ does not meet Ireland's obligations to provide an effective remedy³⁰ to victims of trafficking. Under the Palermo Protocol, State Parties must ensure that measures are available which afford victims the right to seek compensation. The *Recommended Principles and Guidelines* state that this right must be enforceable which would require - at a minimum - comprehensible information, financial aid (to pursue proceedings) and leave to remain in the country until all proceedings were concluded.

Recommendations

- **Undertake a review of the office of National Rapporteur in Human Trafficking with a view to making such an appointment in Ireland.**
- **Take Ireland's human rights obligations into account in drafting the forthcoming legislation on immigration, residence and protection.**
- **Include options for victims of trafficking to obtain a secure status in Ireland on humanitarian grounds**
- **Cease accommodating potential and suspected victims of trafficking in direct provision centres and provide appropriate accommodation, assistance and supports taking into account the special needs of victims of trafficking, especially children.**
- **Remove all conditionality linked to protection and provide protection to potential and suspected victims of trafficking to the standard which meets our obligations under the Protocol.**
- **Extend legal aid to cover civil proceedings and establish a central compensation fund for victims**
- **Provide an assurance that victims will be allowed leave to remain in order to pursue civil proceedings.**

People with Learning Disabilities & Exceptional Abilities

7. Despite promises of a new draft bill³¹, legislation on mental capacity in Ireland is seriously overdue³² and has attracted criticism³³ from a number of bodies³⁴ in recent years.
8. The *Education for Persons with Special Educational Needs Act 2004* (EPSEN) brought new and significant changes.³⁵ Assurances and provision under the Act would have contributed³⁶ to meeting many children's right to education, but cutbacks have arrested its implementation.
9. Research has demonstrated that early intervention in the lives of children with Autistic Spectrum Disorders (ASDs) is critical to their development and achievement of their potential throughout life. Currently, early assessment and intervention services in Ireland are the responsibility of the Health Service Executive through Early Intervention Teams (EITs)³⁷ and the right to assessment for children less than 5 years³⁸ is enshrined in the Disability Act 2005.³⁹ Assessment and intervention in later years is the responsibility of the education services under the *Education for Persons with Special Educational Needs Act 2004* (EPSEN).
10. Provision is not adequate. The work of EITs throughout the country varies from area to area and is currently under review⁴⁰ as are services for people with autism in general⁴¹. Cutbacks have arrested the implementation of many aspects of EPSEN which has seriously hampered assessment services. Delayed assessment means inappropriate or less than optimum interventions for children or indeed none at all for it is the diagnosis that opens the doors to services. This has very serious and long-term consequences for these children and their families and is a violation of Articles 5 & 6 of the Declaration on the Rights of Disabled Persons.⁴²

11. The state does not currently meet the needs of gifted or exceptionally able children – there is no national policy and the only reference from the state is a set of guidelines for teachers.⁴³ Leaving the needs of this cohort of children to the goodwill and interest of individual teachers and schools or private centres⁴⁴ is not meeting the international human rights standards upholding the right to education.

Recommendations

- **Publish new legislation on mental capacity that is fully compliant with human rights standards.**
- **Release the resources necessary to complete the implementation of all aspects of the *Education for Persons with Special Educational Needs Act 2004 (EPSEN)* to prepare the way for the ratification of the *Convention on the Rights of Persons with Disabilities*.**
- **Ensure the early intervention services and services for autism that emerge arising from the current review processes meet international human rights standards and reflect best practice.**
- **Develop, implement and resource a national policy education for gifted children that meets international human rights standards.**

Literacy

12. A 1997 OECD⁴⁵ survey revealed that half a million adults (one in every four) in Ireland had a very low level of literacy. Research undertaken in 2004 uncovered that over 30% of children in primary schools based in disadvantaged areas also had severe literacy problems and further OECD research published in 2010 revealed that Ireland's children's reading skills had fallen from 5th to 17th place out of 39 countries from 2000 to 2009. Ireland has established national goals to reduce these levels,⁴⁶ however services are largely reliant on voluntary input⁴⁷ and are delivered without a concerted and resourced national strategic plan, in spite of serious recommendations from national research institutions⁴⁸.
13. Without an all-out effort to eradicate restricted literacy, it is not possible to say that the state is upholding the right to education as expressed in a range of human rights instruments⁴⁹ and the right to basic literacy skills outlined in Articles 1 and 5 of the World Declaration on Education for All.⁵⁰

Recommendations

- **Develop, resource and implement a national literacy strategy.**

Rights of children in care

14. The Health Service Executive (HSE) under the Child Care Act 1991 Act, has a statutory duty to promote the welfare of children who are not receiving adequate care and protection and they are responsible for children taken into care, the majority of whom are in foster care.⁵¹ Recent revelations of children who have died while in care⁵² have undermined trust⁵³ in the agency which will no longer retain responsibility for child welfare⁵⁴. Two major omissions in statutory provision which has been noted by many commentators are the non provision of an out-of-hours social worker service and the lack of a requirement for aftercare once children reach the age of 18 years, which may be a breach of Article 3 (3)⁵⁵ of the *Convention on the Rights of the Child*. The scale and consistent pattern of errors which have characterised the HSE's statutory child welfare role in many of these cases violate the inherent right to life of each child and the State's obligation "to ensure to the maximum extent possible the survival and development of the child"⁵⁶.
15. The provision offered to separated children seeking asylum was deemed by the Ombudsman for Children to be of an inferior standard to that offered to Irish children⁵⁷ and their safety was not assured⁵⁸ breaching their rights under Article 2 (1) & (2)⁵⁹ of the *Convention on the Rights of the Child*. The Committee on the Elimination of Racial Discrimination (CERD) also expressed their concerns in their Concluding Observations following their examination of Ireland's most recent report.⁶⁰ No aftercare is offered to separated children – they are currently transferred into the Reception and Integration Agency's direct provision system to commence the processing of their applications for asylum.

Recommendations

- **Take human rights obligations and standards into account when drafting the legislation and implementation plan for the new agency with responsibility for child welfare buttressed by human rights proofed monitoring and reporting mechanisms.**
- **Taking account of human rights standards, bring in legislation assuring the rights and safety of separated and unaccompanied children seeking asylum and eliminate any distinction in the standard of care provided to unaccompanied children and that provided to Irish children.⁶¹**
- **Cease immediately the practice of placing unaccompanied young people who have turned 18 years in direct provision centres and provide a statutory assurance to develop an aftercare plan which assures the safety and welfare of these most vulnerable young people, taking account of human rights standards.**

Rights of people seeking asylum

16 The conditions under which those who are in the process of seeking asylum in Ireland are living have been well researched and deplored.⁶² The UNHRC expressed its concerns in its Concluding Observations following the submission of Ireland's third report under the ICCPR.⁶³

Recommendations

- **Conduct a review of all aspects of the asylum determination process to identify and rectify the systemic flaws and to ensure that Ireland meets its human rights obligations in each step of the processes of the asylum system.**
- **Develop a plan to work towards the discontinuation of the direct provision system.**

NOTES

¹ The main piece of legislation in Ireland governing prostitution is the *Criminal Law (Sexual Offences) Act 1993*. Under the Act, it is an offence to solicit in a street or public place for the purpose of prostitution and this offence may be committed by the prostitute, the client or a third party such as a pimp. Other offences under the Act are organising prostitution; coercing or compelling a person to be a prostitute; knowingly living on the earnings of a prostitute or keeping/managing a brothel. The *Criminal Justice (Public Order) Act 1994* criminalises advertising brothels and prostitution – although it prohibits advertisements posted on the internet, this does not apply to agencies or individuals located outside the State. Under the *Criminal Law (Human Trafficking) Act 2008*, it is an offence to knowingly solicit a trafficked person, *in any place*, for the purpose of prostitution. Outside of the circumstances outlined above, in and of itself, it is not an offence to either sell or to buy sex.

² *Globalisation, Sex Trafficking and Prostitution: The Experiences of Migrant Women in Ireland* (2009) was undertaken by Immigrant Council of Ireland, the HSE Women's Health Project and Ruhama and sponsored by the Religious Sisters of Charity. ² The Immigrant Council of Ireland is an independent human rights organisation and independent law centre that provides information, support and legal advice to migrants and their families; advocates for migrants' rights and acts as a catalyst for public debate and policy change. The Health Service Executive (HSE) Women's Health Project was set up in 1991 and is a sexual health and support service for women working in prostitution. Ruhama is an NGO which works with women affected by prostitution and other forms of commercial sexual exploitation. It was established in 1989, as a joint initiative of the Good Shepherd Sisters and Our Lady of Charity Sisters, both of which congregations have a long history of involvement with marginalised women, including those involved in prostitution

³ Of these, 26 knew of a further 64 women who had been trafficked into Ireland – making the total number for this period of time a possible 166. The report states that “*this number of 166 trafficked women is an underestimation; trafficking is covert and illegal, and many women who are trafficked remain invisible.*” The report goes on to state that “*11 per cent of the 102 women trafficked were children at the time they were trafficked to Ireland. Similar to adults, deception was a key factor in their recruitment and many women experienced prostitution, rape, brutality and imprisonment prior to arriving in Ireland.*”

⁴ In its Concluding Observations published 30 July 2008 following Ireland's third periodic report, the Human Rights Committee recommended that Ireland “*should continue to reinforce its measures to combat trafficking of human beings, in particular by reducing the demand for trafficking.*” CCPR/C/IRL/CO/3

⁵ Principle No. 4 outlined in the *Principles and Guidelines on Human Rights and Human Trafficking* propose that “*strategies aimed at preventing trafficking shall address demand as a root cause of trafficking*”

⁶ The *Recommended Principles and Guidelines on Human Rights and Human Trafficking* is an addendum to High Commissioner for Human Rights Mary Robinson's report to the Economic and Social Council in 2002 (E/2002/68/Add.1). They were developed to provide practical, rights-based policy guidance on the prevention of trafficking and the protection of victims of trafficking; to promote and facilitate the integration of a human rights perspective into anti-trafficking laws, policies and interventions and to serve as a framework and reference point for the work of OHCHR in human trafficking.

⁷ The opening of the preamble to the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* presents prostitution as a violation of human rights “*Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community*”.

⁸ The interpretative notes on article 3 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 63-68) are as follows: (b) *The protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms “exploitation of the prostitution of others” or “other forms of sexual exploitation” are not defined in the protocol, which is therefore without prejudice to how States parties address prostitution in their respective domestic laws.*

⁹ Ruhama's Discussion Paper No. 5 *Prostitution violates Women's Human Rights* outlines their position clearly:

“The illusion that prostitution is a choice is manipulative and deceptive. It allows the buyers and the pimps to obscure the abuse involved and to confer a form of right on the abuser. The fact that money is exchanged cannot disguise the fact that what occurs in prostitution, the bodily and psychological violations involved are in fact sexual abuse and harassment and would be seen as such in any so-called ordinary workplace or social setting. Clearly, many people consider prostitution, even if at times unconsciously, a reasonable choice for a particular sector or class of women. Prostitution is somehow acceptable for poor women, vulnerable women, indigenous women, women of colour, of different race, instead of being seen as sexual exploitation and a human rights violation. We are in reality tolerating the creation of a separate, expendable, throwaway class of women. Intrinsic to prostitution are numerous violations of human rights: sexual harassment, economic servitude, educational deprivation, job discrimination, partner and family violence, racism, classism, vulnerability to frequent physical and sexual assault, and being subjected to body invasions that are equivalent to torture. As well as breaching an individual's human rights, the prostitution system and the trade in human beings is a violation of the rights and dignity of humankind as a whole. ‘When the body and sexual capacity of a person is consumed and exploited as a commodity, it is not only a social and health issue but also an ethical and human rights question’. It is self evident that as long as it is acceptable to deny any group or class its full human entitlement to dignity, we are all vulnerable to human rights abuse.”

¹⁰ Founded in 2005, *Action to Prevent Trafficking (APT)* is a faith-based group working against trafficking in human beings in Ireland. In *Human Trafficking, Prostitution & Sexuality* (2010), they conclude: “*We, the members of APT having worked in various ways over the past four years to prevent trafficking, have come to one definite conclusion about one of the most effective ways of responding to the problem. We have become convinced that, if our society is to put an end to the heinous crime of trafficking, what is called ‘the demand side’ of the problem must be addressed. In other words, it is essential that our laws be changed, making illegal not the action of the women in providing sex but rather the action of the people (almost invariably men) who come to them looking for sex.*”

¹¹ In 1999, Sweden introduced legislation criminalising the purchase and decriminalising the sale of sex. Similar legislation has since been introduced in Iceland and Norway. An evaluation (*The Ban against the Purchase of Sexual Services 1999-2008*) of the effectiveness of the measure in 2008 revealed that the number of men paying for sex had reduced; the number of women involved in prostitution had reduced and the number of women and girls being trafficked into the Swedish sex industry had fallen significantly.

¹² Launched by an alliance of civil society organisations, *Turn Off The Red Light* is a campaign to end prostitution and sex trafficking in Ireland who believe that the best way to combat it is to tackle the demand for prostitution by criminalising the purchase of sex.

Alliance members include Act to Prevent Trafficking; Akidwa; American Women's Club of Dublin; Aoibhness Refuge; Barnardos; Communication Workers Union; Domestic Violence Advocacy Sligo; Doras Luimni; Dublin Rape Crisis Centre; Feminist Open Forum; Focus Ireland; Forum on Migration and Communications; Freedom From Pornography Campaign; ICTU Women; Immigrant Council of Ireland; Inchicore Women Support Group; Irish Country Women's Association; Irish Feminist Network; Irish Nurses & Midwives Organisation; Labour Party; Men's Development Network Waterford; Migrant Rights Centre Ireland; National Women's Council of Ireland; Rape Crisis Centre Sligo; Rape Crisis Network Ireland; Rathmines Women Refuge; Religious Sisters of Charity; Ruhama; SAFE Ireland; Saoirse Refuge; SIPTU Women; SONAS Housing; Soroptimist International Ireland; Stop Sex Trafficking; Technical, Engineering and Electrical Union; Violence against Women 365 International Poster Exhibition; Viva House; Women's Aid

¹³ Other legislation includes the *Child Trafficking and Pornography Act 1998* and the *Illegal Immigrants (Trafficking) Act 2000*.

¹⁴ In 2009 a total of 68 incidents were recorded by the Garda Síochána under the category of human trafficking offences, 52 of which related to possible offences under the Criminal Law (Human Trafficking) Act 2008. Of the 68 incidents, 41 related to sexual exploitation and 19 to labour exploitation. In 7 cases the type of exploitation had not been confirmed and in one case the crime was an attempt to sell a child. At the end of 2009, 53 (80.3%) of the 66 cases were subject to ongoing investigations and 13 cases (19.7%) had been concluded with no evidence of human trafficking. Six persons were prosecuted and no convictions were secured.

¹⁵ According to an UNODC report "*The response to human trafficking in terms of number of convictions recorded per year is still weak, especially compared to the number of victims that are estimated to be trafficked in Europe, which is estimated to be around 250,000 per year. Most European countries record national conviction rates for human trafficking below one convict per 100,000 people. In order to contextualize the conviction rates for human trafficking, rates for other crimes may be considered. In Europe, there are more convictions for rare crimes such as kidnapping in Denmark (3 per 100,000 people), homicide in Finland (4 per 100,000 people) or robbery in Norway (5.8 per 100,000 people) than for human trafficking.*" From *Human Trafficking A Crime that shames us all Trafficking in Persons – Analysis on Europe 2009*

¹⁶ The definition in the Act of a trafficked person as "*a person in respect of whom a trafficking crime has been committed*" is open to the interpretation that a conviction for a trafficking offence would need to be secured prior to the authorities pursuing prosecution for buying sex from the trafficked person.

¹⁷ It is a permissible defence for the defendant to attempt to prove that he or she did not know and had no reasonable grounds for believing that the person in respect of whom the offence was committed was a trafficked person. Strict liability is provided for in other jurisdictions, e.g. in the United Kingdom.

¹⁸ Insert here the EU Council Directive recommending the appointment of National Rapporteurs.

¹⁹ Since 1 April, 2000 the Netherlands has a National Rapporteur on Trafficking in Human Beings who reports on the nature and extent of human trafficking, and on the effects of anti-trafficking policies in the Netherlands. Similar offices have been created in Sweden and in the United States.

²⁰ The *Immigration, Residence and Protection Bill 2010* had reached Committee stage at the point of the dissolution of the 30th Dáil on 1 February 2011. Although this Bill has now lapsed, this is the third draft of the Bill in nine years to make its way through the Oireachtas.

²¹ *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking*

²² The RIA is part of the *Irish Naturalisation and Immigration Service (INIS)* which is a division of the *Department of Justice and Law Reform*. Its responsibilities (*as per www.ria.gov.ie accessed 12 February 2011*) are:

- To accommodate asylum seekers in RIA accommodation centres while their applications for asylum are processed
- To coordinate the provision of services (e.g. health, education, etc.) to asylum seekers in RIA accommodation
- To facilitate the voluntary return home of destitute nationals from certain EU states, and to accommodate suspected victims of human trafficking pending a determination of their case and during the 60 day recovery and reflection period.

²³ In 2000 Ireland introduced the direct provision scheme whereby asylum seekers are provided with accommodation, full board and a payment of €19.10 per adult and €9.60 per child per week. Accommodation centres include guesthouses, hotels, hostels, mobile homes and a former holiday camp. While awaiting the outcome of their application, asylum seekers are not permitted to take up waged work or access full time third level education.

²⁴ In a *Survey among housing providers in Ireland (2009)* issued by the Immigrant Council of Ireland, they assert that "*Many specialists working with VOT express concerns in relation to this decision because the direct provision centres do not offer the necessary security and range of services and supports that are deemed essential. These essential supports and services include high security from traffickers, service provision, including risk assessment and support to allow the VOT to be safe and to feel safe in order to recover and make an informed decision about the future, including whether to co-operate with the police in an investigation. Accommodation needs of migrant women who have been trafficked into Ireland for the purposes of sexual exploitation.*

²⁵ 6 (3) Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, [- - -] and, in particular, the provision of:

- (a) Appropriate housing;
- (b) Counselling [- - -]
- (c) Medical, psychological and material assistance; and
- (d) Employment, educational and training opportunities.

6(4) Each State Party shall take into account, [- - -] the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

²⁶ Protection is conditional on their co-operation with the Gardaí in criminal investigations - Section 139 (5) & (8) of the *Immigration, Residence & Protection Bill 2010* as drafted provides that during or following the “*recovery and reflection period*”²⁶, the Minister may grant or revoke temporary residence permission where s/he is satisfied that permission is necessary for the purposes of allowing the foreign national to continue to assist or the foreign national no longer wishes to assist the “*Garda Síochána or other relevant authorities in relation to any investigation or prosecution arising in relation to the trafficking.*”

²⁷ In its Concluding Observations published 30 July 2008 following Ireland’s third periodic report, the Human Rights Committee expressed its concern “*about the lack of recognition of the rights and interests of trafficking victims*” [and its particular concern] “*about lesser protection for victims not willing to cooperate with authorities under the criminal law (human trafficking) bill 2007. (arts. 3, 8, 24, 26)*” The Committee recommended that Ireland “*should also ensure the protection and rehabilitation of victims of trafficking. Moreover, the State party should ensure that permission to remain in the State party is not dependent on the cooperation of victims in the prosecution of alleged traffickers*”. CCPR/C/IRL/CO/3

²⁸ The Recommended Principles and Guidelines are clear that “*trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.*”

²⁹ Legislation does not currently provide the possibility for victims to remain in Ireland with the purpose of pursuing a civil action against those who trafficked them; legal aid is not available for civil proceedings.

³⁰ In a Concept Note following Expert Consultation on Effective Remedies for Trafficked Persons Bratislava, 22-23 November 2010, the Special Rapporteur on Trafficking in Persons, Especially Women And Children noted:

Major international and regional human rights treaties provide that an effective remedy must be available for all individual victims of violations of the human rights guaranteed by international law. Such a remedy involves two elements: a victim’s access to the appropriate authorities to have his or her claim fairly heard and decided; and the reparation that he or she can be awarded. As concerns trafficked persons in particular, furthermore, the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children expressly provides that “[e]ach State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.” In addition to the right to an effective remedy, including reparation³, therefore, all victims of human rights violations also have a right to “appropriate compensation”. As concerns trafficked persons in particular, furthermore, this right to compensation (or more specifically to the “possibility of obtaining compensation for damage suffered”) is explicitly recognised in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (“Palermo Protocol”). Taken together, these two provisions may be interpreted in relation to trafficked persons as involving the following dimensions:

- *access to justice;*
- *reparation, involving: restitution; rehabilitation/ recovery; compensation;* • *enforcement of the remedies granted by the competent authorities; and*
- *the right to information and various forms of assistance as essential preconditions to the full enjoyment by trafficked persons of their right to an effective remedy.*

³¹ A new Mental Capacity Bill was announced in 2008; however it has still not been published.

³² The *Lunacy Regulation (Ireland) Act 1871* is the only legislative provision

³³ In 2006, the Law Reform Commission made a number of recommendations on the principles which should underpin new legislation on mental capacity. It proposed that such legislation should “*promote capacity by having an emphasis which is enabling rather than restrictive in nature and should meet the requirements of constitutional and human rights law*” and recommended a “*functional approach whereby an adult’s legal capacity is assessed in relation to the particular decision to be made, at the time it is to be made.*” The Commission also recommended that the terminology used in the *Lunacy Regulation (Ireland) Act 1871* should be repealed and replaced with language that recognises the dignity of all human beings.

³⁴ The *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)* in its 5th report to Ireland following its visit from 25 January – 5 February 2011 drew the attention of the authorities to *Recommendation R (99) 4 of the Committee of Ministers of the Council of Europe to member States on Principles Concerning the Legal Protection of Incapable Adults*, which contains 27 governing principles concerning mental incapacity. The Committee urged Ireland “*adopt updated mental capacity legislation without further delay*”, taking the 27 governing principles mentioned above into account and also ensuring that the provisions of the new legislation would apply to everyone including the 147 wards of court who are currently subject to the provisions of the *1871 Lunacy Regulation (Ireland) Act*.

³⁵ The Act established the National Council for Special Education and the Appeals Board and it also officially assigned functions regarding the provision of education to children with special educational needs to the Minister for Health and Children and to Health Boards. It also officially acknowledged for the first time that persons with special educational needs have the same right to education as their peers without such needs. The Act aims to ensure that children with special educational needs will leave school with the skills they will need to live independent lives and participate to the level of their ability in society. It further confers specific functions and duties to Health Boards in relation to “*a child who is not a student,*” that is a person less than eighteen years who is not attending a school or similar establishment.

³⁶ Under the Act, children assessed with special educational needs would have a personal education plan which would be resourced and supported and they would attend either special schools; special classes within mainstream schools or ordinary classes in mainstream schools. Plans to put all these systems in place were published by the National Council for Special Education and were intended to be implemented over a four year period from 2006 – 2010, however, plans were put on hold in 2008 and no date has been established to restart.

³⁷ Early interventions services are delivered by multi disciplinary teams working from local health centres throughout the country. On referral from General Practitioners, Public Health Nurses or directly by parents, the EIT carries out assessments and develops a plan of action for a child manifesting signs of developmental delays. From 2005-2008, the HSE invested €28million in the development of these services.

³⁸ The judgement HSE v Dykes [2009] IEHC 540 may have implications for the interpretation of the age cut off at 5 years, however no definitive conclusions are currently available on this matter.

³⁹ Effective from June 2007, Part 2 of the Disability Act 2005 children with disabilities have a right to: An independent assessment of their health and educational needs arising from their disability; an assessment report; a statement of services they will receive & the right to make a complaint if they are not happy with any part of the process. The applicable standards are laid out by the Health Information and Quality Authority (HIQA)

⁴⁰ A process to ensure a standardised, consistent approach to the delivery of EIT was initiated by the HSE in March 2009, the outcome of which is still pending.

⁴¹ The HSE has conducted a National Review of Autism Services originally due for publication in Autumn 2010. At the time of writing, the report has still to be published.

⁴² Article 5: *Disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible.* Article 6: *Disabled persons have the right to medical, psychological and functional treatment, including prosthetic and orthetic appliances, to medical and social rehabilitation, education, vocational training and rehabilitation, aid, counselling, placement services and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration.*

⁴³ *Exceptionally able students – Draft Guidelines for Teachers* was published by the National Council for Curriculum and Assessment (NCCA) and the Council for Curriculum, Examination and Assessment (CCEA), Northern Ireland.

⁴⁴ Established in 1992, the Irish Centre for Talented Youth is the only organisation in Ireland providing challenging academic programmes for young people with high ability from 6 – 16 years. The main centre is at Dublin City University with programmes at a number of third level institutions throughout the country.

⁴⁵ The International Adult Literacy Survey (IALS) survey was a first in literacy profiling 16 – 64 year olds worldwide developed by the Organisation for Economic Co-operation and Development (OECD) and carried out in 20 countries – including Ireland from 1994 – 1998.

⁴⁶ The *National Action Plan for Social Inclusion 2007-2016* aims to reduce adult literacy to between 10%-15% by 2016 and to halve those with literacy difficulties in disadvantaged schools to less than 15% by 2016.

⁴⁷ Current figures show over 50,000 adults in literacy courses nationwide with services provided by the Vocational Educational Committee Adult Literacy Services which is largely dependent on over 4,000 volunteer tutors. The National Adult Literacy Agency (NALA) also offers a distance education service where adults can learn with a tutor over the phone or internet.

⁴⁸ The *2009 Child Literacy and Social Inclusion: Implementation Issues* published by the National Economic & Social Forum (NESF) underpinned their report with the overarching recommendation that “*a National Literacy Policy Framework be put in place that has a ‘life-cycle’ emphasis, with the involvement of the various education and community stakeholders*”.

⁴⁹ UDHR Article 26; ICCPR Article 13; CRC Articles 28 & 29; CEDAW Article 10; ICERD Articles 1, 2 & 5; UNESCO Convention Against Discrimination in Education Articles 1, 3 & 4.

⁵⁰ *World Declaration on Education for All, Article 1:* Every person - child, youth and adult - shall be able to benefit from educational opportunities designed to meet their basic learning needs. These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning. *Article 5:* Literacy programmes are indispensable because literacy is a necessary skill in itself and the foundation of other life skills.

⁵¹ At the end of November 2008, there were 5,449 children in the care of the HSE (Performance Monitoring Report 2008), 89% (4,851) were in foster care and 7% (400) were in residential care. The remaining 4% (198) were in “other” care arrangements.

⁵² A total of 199 children have died in care or in contact with social services over the past decade. They include 37 children who died while in the care of the HSE. Of these, 18 died of unnatural causes. The factors included suicide (five), drugs (five), unlawful killings (two), road traffic incidents (three) and other accidents (three). A further 19 died of natural causes or health-related conditions such as brain tumour, leukaemia, surgical complications and heart disease. A total of 151 young people known to the HSE or in aftercare have died. Of these, 84 died of unnatural causes. These included suicide (21), unlawful killings (10), drugs (14), road traffic incidents (15) and other accidents (24). A further 67 died of natural causes. In the course of transferring files, the HSE discovered a further 11 cases.

⁵³ An Independent Review Group on Child Deaths (IRGCD) was set up on 8 March 2010 to investigate the deaths of children while in the care of the HSE – it was due to publish its report in February 2011, however with the dissolution of the Dáil, it is likely to be later.

⁵⁴ “*The Government plans to remove child protection and welfare services from the responsibility of the Health Service Executive and hold a referendum on children's rights*”, Minister for Children Frances Fitzgerald has said. She said the HSE had experienced major problems in providing child welfare services and a new dedicated child protection agency would be set up. “*Clearly there have been major problems; we have had report after report and indeed more reports to come that highlight the inadequacies in our childcare services. We believe that there should be a new way of delivering those services, and we need to have new criteria about transparency and the work that actually being done, about the outcomes, and to avoid having the sort of tragedies that we have had in the past,*” Ms Fitzgerald told RTÉ's *Morning Ireland*”. Irish Times 11 March 2011

⁵⁵ Article 3 (3) *States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*

⁵⁶ Convention on the Rights of the Child (CRC) Article 6 (2)

⁵⁷ In 2009, the Ombudsman for Children's Office undertook a project with separated children living in Ireland to consult with them on their experiences of the State, and therefore to identify gaps in how the State was protecting this vulnerable group. The Ombudsman for Children called for the inferior care for separated children to stop and published a report in November 2009 with detailed recommendations, which included:

- The cessation of inferior care provided to separated children living in unregistered hostel accommodation;
- The review of the Joint Protocol between An Garda Síochána and the Health Services Executive and its adaptation to take account of the particular circumstances of separated children who go missing;
- The allocation of a social worker for these children; and
- That the best interests of the child should guide any forthcoming Immigration, Residence and Protection Bill affecting these children.

During the course of this intervention, the HSE took steps to improve how these children were cared for and by December 2010, all unregistered hostels for separated children were closed, with children being placed for assessment and subsequent foster care.

⁵⁸ 515 separated children went missing in Ireland from 2000 to 2010, 440 of these remain unaccounted for. In 2009, 47 children went missing. This number was reduced to 11 in 2010. While it is completely unacceptable that any child in the care of the State should go missing, the closure of the hostels, an unsafe environment and the transfer of the children to an environment of either residential or foster care was certainly a contributing factor in the reduction in numbers.

⁵⁹ CRC Article 2 (1) *States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*

CRC Article 2 (2) *States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.*

⁶⁰ "the Committee regrets that legislation on this area does not provide adequate protection as required by the standards set by the Office of the United Nations High Commissioner for Refugees (UNHCR). In this context, the Committee notes with concern the lapsing of the Immigration, Residence and Protection Bill 2010, which presented the opportunity to amend the Child Care Act 1991 in order to outline the legal obligations of the HSE towards these children.(article 2 and 5) The Committee recommends to the State party to enact legislation that adequately protects the rights and welfare of separated and unaccompanied children seeking asylum in line with the standards set by international law. The Committee, therefore, invites the State party to adopt immediate measures to ensure that a guardian ad litem or advisor be appointed for all separated and unaccompanied children irrespective of whether they have made a protection application or not". Committee on the Elimination of Racial Discrimination Concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/IRL/CO/3-4) Advance unedited version 10 March 2011

⁶¹ As per the Equity of Care policy recommended in the Ryan Implementation Plan

⁶² Refugee Lives: The failure of Direct Provision as a social response to the needs of asylum seekers in Ireland Comhlámh, 2001;; .Direct Provision and Dispersal - 18 Months On; O'Connor, Irish Refugee Council; Direct Discrimination? An analysis of the scheme of Direct Provision in Ireland Free Legal Advice Centres, 2003; The Needs of Asylum Seeker Men Living in Viking House Direct Provision Centre, Waterford Area Partnership, the Men's Development Network & RAPID, November 2006; After Optimism: Ireland, racism and globalisation Lentin, R. and McVeigh, R. 2006, *From Catastrophe to Marginalisation: the Experiences of Somali Refugees in Ireland* Moreo and Lentin Migrant Networks Project, Trinity Immigration Initiative, Trinity College Dublin In association with HAPA – Horn of Africa People's Aid 2010

⁶³ "The Committee is concerned at the negative impact that the policy of 'direct provision' has had on the welfare of asylum seekers who, due to the inordinate delay in the processing of their applications, and the final outcomes of their appeals and reviews, as well as poor living conditions, can suffer health and psychological problems that in certain cases lead to serious mental illness. The Committee is further concerned at the failure by the State party to provide for an independent appeals tribunal considering that the remit of the Office of the Ombudsman does not extend to asylum and immigration matters (article 2, 5 and 6). The Committee encourages the State party to take all necessary steps with a view to expediting the processing of asylum applications [- -]. The State party should take all necessary measures to improve the living conditions of asylum seekers by providing them with adequate food, medical care and other social amenities including also a review of the direct provision system. CERD/C/IRL/CO/3-4