



“Minister Shatter has promised to radically reform family law and ensure equality for all children. The legislation, if enacted, will result in some unmarried fathers acquiring automatic guardianship rights to their children. Regretfully for some fathers and children the situation will not change. We welcome that carers such as step parents, grandparents and others will be able to apply for guardianship.”

Margaret Dromey, Chief Executive Officer, Treoir

Chapter 6:

Right to Equality and Non-Discrimination

Grade E



In The News

Closing Our Eyes: Irish Society and Direct Provision By Liam Thornton

Direct provision is front page news in Ireland today. Carl O'Brien has a number of in today's *Irish Times* on inspection reports that have found that asylum seekers live in dismal conditions in direct provision centres.

This of course will be of no surprise to the Department of Justice (and Equality.....) or the current Minister for Justice, Mr Alan Shatter TD. In fact, it is of no surprise to the political system as a whole, given the extensive reports from non-governmental organisations and the Ombudsman and the Ombudsman for Children. Institutions of the state know and have known for quite a bit of time about significant systemic problems with the system of direct provision. Nothing is being done about this.

What many in human rights organisations suspect (or are afraid to admit openly) is that Irish society knows full well about the system of direct provision, the vast majority of the population could not care less. In fact, the vast majority may even want a harsher system (at least if thejournal.ie commentators had their way). Politicians in the Dáil have said to me, over the years that their work on direct provision is costing them support. Not just a few votes here and there, but very noticeable support.

Nevertheless, some TDs (from the government parties and opposition parties) continue to highlight the major problems with the system of direct provision. In the Seanad, Senator Jillian van Turnhout raises the issue of direct provision continuously.

Concerns raised about direct provision since 2001 have included: the lack of any legal basis for the system of direct provision, the reports of poor food quality, infestations, cramped living conditions, individuals institutionalised in direct provision for several years. It might be helpful to put in place a timeline, so we can see just how much the legal and political systems and Irish society as a whole know of these problems with direct provision.

Depressingly, as before, Irish society ignores, punishes and demonizes 'problematic' populations.

Human Rights in Ireland, 8 October 2013
www.humanrights.ie

6 | Right to Equality and Non-Discrimination

Overall
Grade **E**

The Right to Equality and Non-Discrimination

Every child has the right to equal treatment and without discrimination of any kind, irrespective of the race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status of the child or the child's parents or guardian. | Summary of Article 2 of the UNCRC

The 'Right to Equality and Non-Discrimination' chapter continues to track progress on issues affecting Traveller and migrant children as well as examining inequalities in family life. The overall 'E' grade reflects the slow progress made in these three areas. To merit a higher grade, we call on Government to clarify its intentions by making clear commitments and to take action to uphold the rights of the children affected.

The section on 'Traveller Children' gets an 'E' grade in *Report Card 2014*, to reflect little or no meaningful action for Traveller children while the section on 'Migrant Children' gets an 'F' grade as the Government has failed to review the policy of direct provision despite calls at both the national and international level. Furthermore, it has not prioritised necessary legislation which could have a positive impact on the lives of migrant children. Last year was the first time either of these sections received a grade. *Report Card 2013* called on the Government to clarify its intentions by making clear commitments to Traveller and Migrant children in the forthcoming National Children and Young People's Policy Framework and its associated implementation mechanisms. To ensure an improvement in next year's Report Card the Government must make specific commitments and demonstrate that it has taken concrete actions to improve the lives of these children.

'Inequalities in Family Life' was a new section in the Report Card series in 2013 and gets a 'D+' grade. While the grade awarded reflects the lack of real action taken in 2013 it also reflects the Government's promise to enact the Children and Family Relationships Bill in 2014. This legislation will represent a progressive step to address some of the inequalities faced by children of unmarried parents, in particular children of cohabiting or civil partnered parents to whom a commitment has been given in the *Programme for Government*. These legislative reforms will also tackle difficult issues which have come before the courts and currently are not reflected in statute such as assisted human reproduction, surrogacy and the diverse make-up of contemporary family units.

6.1 Traveller Children

Grade E

Government Commitment

The *Programme for Government* commits to promoting greater co-ordination and integration of delivery of services to the Traveller community across Government, using available resources more effectively to deliver on principles of social inclusion, particularly in the area of Traveller education.

Progress

Very limited

What's happening?

A Sub-Group has been established to consider recognition of Traveller ethnicity. The Joint Oireachtas Committee on Justice, Defence and Equality has held consultations on Traveller ethnicity and is due to report back to the Dáil.

At Ireland's hearing for the UN Universal Periodic Review (UPR) in October 2011, the Minister for Justice and Equality, Alan Shatter TD, announced that the Government was 'seriously considering' recognition of Travellers as an ethnic minority group.⁶⁹² In March 2012, Ireland did not take the opportunity to grant Travellers ethnic minority status when it formally rejected a recommendation as part of the UPR process.⁶⁹³ During the UPR process, the State did, however, accept recommendations on protecting vulnerable groups from discrimination, including the social inclusion and integration of Travellers.

In 2012, the National Traveller Monitoring and Advisory Committee (NTMAC) established a sub-group specifically to consider the issue of Traveller ethnicity.⁶⁹⁴ Following on from this, a conference was held on 27 September 2012 which heard submissions from a number of interested parties. In February 2013, the Minister for Justice and Equality again indicated that the issue of Traveller ethnicity continues to be under 'serious consideration' but there are no plans as yet to introduce any legislation on the matter.⁶⁹⁵ However, in April 2013, the Government responding to the Third Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities (FCNM), a Council of Europe body, reiterated that no legislation to recognise Traveller ethnicity was forthcoming.⁶⁹⁶

692 Pavee Point (2011), *Briefing: Why recognise Travellers as an Ethnic Group?*, <http://www.paveepoint.ie/briefing-why-recognise-travellers-as-an-ethnic-group/> [accessed 13 February 2014].

693 Department of Justice and Equality (2012), Addendum to the Report of the Working Group on the UPR, <http://www.upr.ie/Clients/CEGA/UPRWeb.nsf/page/reports-en> [accessed 7 December 2012].

694 Minister for Justice and Equality Alan Shatter TD, Parliamentary Questions: Written Answers [35587/12; 35588/12], Dáil Debate, 18 July 2012.

695 Minister for Justice and Equality Alan Shatter TD, Parliamentary Questions: Written Answers [6004/13], Dáil Debate, 6 February 2012.

696 Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, Comments Of The Government Of Ireland On The Third Opinion Of The Advisory Committee On The Implementation Of The Framework Convention for the Protection of National Minorities by Ireland received on 19 April 2013 [GVGT/COM/III(2013)003].

The Joint Committee on Justice and Equality held a number of discussions on the issue of Traveller ethnicity, where relevant stakeholders made written and oral submissions calling for the Travellers to be recognised as an ethnic minority.⁶⁹⁷ The Committee is due to prepare a report to the Dáil after considering these submissions. Currently there is no timeframe for when this report will be finalised.

Recognition of Traveller ethnicity would require public authorities and policymakers to ensure that the identity and culture of Travellers is respected in matters affecting them. It would also ensure that Travellers would be afforded protection under the EU Race Directive. Recognition of the ethnic minority status of Travellers would open a new dialogue as to how the State interacts with Travellers into the future.

Comment

The section on 'Traveller Children' gets an 'E' grade in *Report Card 2014*, to reflect little or no meaningful action to improve the lives of Traveller children. The repeated failure to recognise Travellers as an ethnic group as well as the lack of focus or implementation of existing policy for Travellers continues to be of concern.

According to Census 2011, there are 14,913 Traveller children in Ireland, a 30.3% increase on the 2006 Census figures.⁶⁹⁸ Travellers have a very young population with 42% of Travellers under the age of 15.⁶⁹⁹ The UN Committee on the Rights of the Child has expressed its concern about the lack of adequate recognition, action and positive measures taken by Ireland to enhance the rights and life opportunities for Traveller children.⁷⁰⁰ In 2011, the UN Committee on the Elimination of Racial Discrimination found little had changed in relation to the status of Travellers from its previous examination in 2005.⁷⁰¹

Outcomes for Traveller children are almost universally worse than their settled peers. In contravention of the right to life, survival and development (Article 6) of the UN Convention on the Rights of the Child, many Traveller children live in conditions that are far below the minimum required for healthy child development and this is reflected in their health outcomes. In 2011, the UN Committee on the Elimination of Racial Discrimination called on the Irish Government to ensure that concrete measures are undertaken to improve the livelihoods of the Traveller community by focusing on improving students' enrolment and retention in schools, employment, and access to healthcare, housing and transient sites.⁷⁰²

Ethnic Minority Status: Recognition of Traveller ethnicity has been recommended by the Equality Authority, the Human Rights Commission, the National Consultative Committee on Racism and Interculturalism (NCCRI), the UN Human Rights Committee, the Council of Europe Commissioner for Human Rights, the UN Committee on the Rights of the Child and the UN Committee on the Elimination of Racial Discrimination. The Advisory Committee on the Implementation of the Framework Convention for the protection of national minorities (FCNM) called on the Government to recognise Travellers as an ethnic minority and to ensure application of non-discrimination and minority rights standards in both fact and law.⁷⁰³

Since the UPR hearing in 2011, the Government has repeatedly stated that it is giving serious consideration to the issue of granting Traveller ethnicity. This year there has been discussions held by the Joint Committee on Justice and Equality on the issue of Traveller ethnicity following on from the NTMAC conference held in late in 2012. While this progress is moving in the right direction, there are currently no plans for legislation on the matter and no timeframe for when the report of the Joint Committee on Justice, Defence and Equality on Traveller Ethnicity will be finalised. This report should be given due consideration.

697 Oireachtas Joint Committee on Justice, Defence and Equality, Committee Discussions: 17 April 2012, 12 June 2013 and 13 November 2013.

698 Central Statistics Office, Census 2011 Profile 7 – Religion, Ethnicity and Irish Travellers, <http://www.cso.ie/en/media/csoie/census/documents/census2011profile7/Profile,7,Education,Ethnicity,and,Irish,Traveller,entire.doc.pdf> [accessed 30 January 2011].

699 Pavee Point Travellers' Centre (2010), *Profile of the Traveller Family For Family Resource Centres* (2010), Dublin: Pavee Point.

700 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, paragraphs 45, 58, 59, 78, 79.

701 UN Committee on the Elimination of Racial Discrimination (2011) *Concluding Observations: Ireland*, CERD/C/IRL/C/3-4, paragraph 13.

702 Ibid., paragraphs 45, 58, 59, 78, 79.

703 Council of Europe Advisory Committee On The Framework Convention For The Protection Of National Minorities, Third Opinion On Ireland Adopted On 10 October 2012, Acfc/Op/iii(2012)006.

Ethnic Identifier: In *Report Card 2013*, it was highlighted that the lack of disaggregated data is hugely problematic. It means that it is not clear how Traveller children are progressing in the fields of education, health and child protection systems. If an ethnic identifier was introduced, it would enable the monitoring and assessment of the effectiveness of the State's initiatives directed at Traveller children. Best practice in this area stresses the importance of a universal question where everyone is asked to identify the group to which they belong, not just minorities. The UN Committee on the Rights of the Child has called for States to employ data-collection mechanisms that can study the situation of specific groups, including ethnic and/or indigenous minorities.⁷⁰⁴

Traveller Representation: The NTMAC was established in 2007 to provide a forum for Traveller organisations to advise on the development of policies which impact on the Traveller community. However, as a non-statutory advisory body, to date, it has had little impact. It is required to report every two years; its first and only report was published in December 2009.⁷⁰⁵

Policy Focus: The National Children and Young People's Policy Framework, which follows on from the *National Children's Strategy*, remains under development and represents an ideal opportunity for the Government to make clear commitments as to how it will further protect and support the rights of Traveller children. The Minister for Children and Youth Affairs has indicated that the Framework will address issues of social inclusion of marginalised groups including those of the Traveller community.⁷⁰⁶ Its related dropdown strategies on early childhood, children and youth must also contain concrete actions as well as measureable indicators.

Inclusion and Bullying: Article 2 of the UNCRC requires States to ensure that children are not discriminated against, including upon grounds of birth, or ethnic or social origin. An Economic and Social Research Institute (ESRI) report on second year students' experiences notes that;

...students from minority backgrounds newly arrived in Ireland or from the Traveller community, are significantly more likely to report having been bullied than other students, a pattern which is in keeping with that found among first year students.⁷⁰⁷

Three consecutive consultations with children undertaken by Pavee Point in 2006, 2009 and 2011 indicate that discrimination continues within the school system.⁷⁰⁸ It is a welcome move that the Government's new *Action Plan on Bullying* makes specific mention of bullying of Traveller children and its negative impact.⁷⁰⁹ It is hoped that the prevalence of such bullying will be recorded as a thematic issue to determine how widespread it may be so appropriate steps can be taken to effectively address it. However, it is not clear that any such records will be relayed back to the Department of Education and Skills or will form part of the school inspection process. There is no provision in the policy for external monitoring to ensure that in any school where anti-Traveller bullying trends are identified, the school will adequately respond to such behaviour.

The Irish Traveller Movement's Yellow Flag Programme is an innovative model, which supports schools to develop anti-racism policies and procedures.⁷¹⁰ *Report Card 2013* recommended that consideration be given to mainstreaming this model. This was ruled out on cost grounds by the Minister for Education and Skills Ruairí Quinn TD in February 2013.⁷¹¹

704 UN Committee on the Rights of the Child (2003), General Comment No.4: Adolescent Health, CRC/GC/2003/4.

705 National Traveller Monitoring and Advisory Committee, National Traveller Monitoring and Advisory Committee Report to Minister for Justice, Equality and Law Reform (December 2009), <http://www.justice.ie/en/JELR/NTMAC%20Report%20to%20Minister%20Final%20Version.pdf/Files/NTMAC%20Report%20to%20Minister%20Final%20Version.pdf> [accessed 11 November 2012].

706 Minister for Children Frances Fitzgerald TD, Dail Parliamentary Questions, Written Answers, 16 April 2013 [17307/13].

707 E. Smyth et al (2006) *Pathways through the Junior Cycle*, Dublin: Liffey Press and ESRI.

708 Communication received by the Children's Rights Alliance from Pavee Point, December 2011.

709 Department of Education and Skills (2013) *Action Plan On Bullying Report of the Anti-Bullying Working Group to the Minister for Education and Skills*, Dublin: Department of Education and Skills.

710 Irish Traveller Movement, Irish Traveller Movement Submission July 2012, Tackling Bullying in Schools, http://www.itmtrav.ie/uploads/publication/ITM_Tackling_bullying_submission_Aug_2012.pdf [accessed 19 November 2012].

711 Ruairí Quinn TD, Minister for Education and Skills, Dáil Debate, 19 February 2013.

Health Inequalities: The right to health and health services (Article 24) in the UNCRC declares the duty upon States Parties to recognise and ensure each child's right to health and declares that States Parties must take appropriate measures to diminish infant and child mortality. However infant mortality among the Traveller population is 3.6 times the rate of the general population.⁷¹² A higher proportion of Traveller children are underweight at birth.⁷¹³ Other areas of continuing concern include high rates of asthma and speech, hearing and eyesight problems.⁷¹⁴ *The All Ireland Traveller Health Study: Our Geels* commissioned by the Department of Health and undertaken by UCD in collaboration with Pavee Point Traveller and Roma Centre with other Traveller organisations identified barriers that hinder Travellers accessing health services for their children include: a relatively low level of trust in health professionals, waiting lists, embarrassment and a lack of information.⁷¹⁵ Some Travellers have also reported difficulties in securing a medical card due to a lack of, or changing, postal addresses.⁷¹⁶

Education for Traveller Children: Article 28 of the UNCRC lays out the right to education for all children, while Article 29 affirms that such education must be directed to the development of 'respect for the child's parents, his or her own cultural identity, language and values, [...]' These articles affirm, both themselves, and when read in the context of the non-discrimination right articulated in Article 2, the duty upon the Government to ensure the right to education for all children in Ireland, including Traveller children.

In the 2011 Census it was reported that 10,500 young Travellers were enrolled in school, 8,086 of which were primary school students.⁷¹⁷ Out of the Travellers that participated in the census, there is 100% enrolment in primary school and 100% enrolment at the beginning of secondary school. However, 55% of Traveller pupils have left school by the age of 15, on average 4.7 years earlier than the general population.⁷¹⁸ The percentage of Travellers with no formal education in 2011 was 17.7%, compared with 1.4% in the general population. For many Travellers their traditional lifestyle, combined with the prejudice they often encounter, creates severe problems in acquiring basic levels of educational qualification and this translates into poorer living circumstances.⁷¹⁹

Despite the very obvious challenges faced by Travellers in education, the Visiting Teachers for Travellers (VTT) Programme – and the 42 associated posts – were abolished in Budget 2011.⁷²⁰ This change was not reversed by the new Government on taking office. The Resource Teachers for Travellers (RTT) scheme was also abolished at the same time; 569 posts in total were withdrawn across primary and post-primary schools⁷²¹ although approximately 290 were retained in the system and redeployed to be used in adjustment or alleviation measures by schools.⁷²² Research on the impact of austerity measures on Travellers states that the completion rate at second level is only 13% compared to 90% for the general population.⁷²³ *The Survey of Traveller Education Provision in Irish Schools and Report and Recommendations for a Traveller Education Strategy* are important resources but both were published in 2006 so may be out of date. An implementation plan was never developed for the *Report and Recommendations for a Traveller Education Strategy* and delivery on its recommendations has been limited.⁷²⁴ Indeed, progress in some areas has been reversed;

712 Department of Health (2010) *All Ireland Traveller Health Study: Our Geels*, Dublin: Department of Health, p. 87.

713 Department of Children and Youth Affairs (2013) *Ireland's Third and Fourth Consolidated State Report to the Committee on the Rights of the Child July 2013*, Dublin: Department of Children and Youth Affairs.

714 Department of Health (2010) *All Ireland Traveller Health Study: Our Geels*, Dublin: Department of Health, p. 160 and p. 80.

715 *Ibid.*, p. 79 and p. 76.

716 *Ibid.*, p. 131.

717 Central Statistics Office, Census 2011 Profile 7 – Religion, Ethnicity and Irish Travellers, <http://www.cso.ie/en/media/csoie/census/documents/census2011profile7/Profile,7,Education,Ethnicity,and,Irish,Traveller,entire,doc.pdf> [accessed 16 November 2012].

718 *Ibid.*

719 The Equality Authority and ESRI (2011) *Multiple Disadvantage in Ireland: An Equality Analysis of Census 2006*, Dublin: Equality Authority and the Economic and Social Research Institute.

720 The éist project, providing training in diversity and equality to staff in the early childhood sector has also been cut. However, some of its work has been mainstreamed through diversity and equality training within the County and City Childcare Committees.

721 Ruairi Quinn TD, Minister for Education and Skills, Parliamentary Questions: Written Answers, [7412/13], Dáil Debate, 12 February 2013.

722 Communication received by the Department of Education and Skills on 30 January 2014. These posts were retained to include Travellers in the valid enrolment for the purposes of allocating additional teaching resources in DEIS schools (Delivering Equality of Opportunity in Schools), as well as under the Revised General Allocation Model for high incidence special educational needs. The posts were also used to implement limited alleviation measures in certain schools which had a high percentage of Traveller pupils who were previously supported by RTT posts (Resource Teachers for Traveller).

723 B. Harvey (2013) *Travelling with Austerity: Impacts of Cuts on Travellers, Traveller Projects and Services*, Dublin: Pavee Point, p.35.

724 Its implementation is overseen by the Traveller Implementation Group, and Traveller Education Strategy Advisory and Consultative Forum.

investment in Traveller education has been reduced from €76.5 million in 2008 to €10.2 million in 2013.⁷²⁵

The Minister for Education and Skills, Ruairi Quinn TD has stated that there has been a deliberate phasing out of segregated education for Traveller children. Instead these supports have been mainstreamed to ensure that allocation of 'additional resources provided in the education system are allocated on the basis of identified individual educational need rather than that of ethnic or cultural background'.⁷²⁶ However, while there continues to be a high drop-out rate and an inequality in the academic achievement made by Traveller children compared with the settled population, it is not clear that reducing targeted supports to Traveller children will address the concern expressed by the FCNM Advisory Committee at the overall situation for the education of Traveller children in Ireland⁷²⁷ despite some minor improvements.⁷²⁸ In September 2012, an 'education passport' was introduced which is an end-of-year report card for 6th class students.⁷²⁹ This report will be sent to the new secondary school to assist the child in his or her transition from primary level to secondary school. The Department of Education and Skills hopes that this will be an important development, in particular for Traveller children.⁷³⁰

The Traveller Education Strategy Advisory & Consultative Forum (TESACF) was established in 2009. It was tasked with ensuring the implementation of recommendations made in the Report and Recommendations for a *Traveller Education Strategy*⁷³¹ and to identify issues and obstacles to its implementation. One of the key issues highlighted by the forum was the lack of comprehensive data on Traveller education. The Department of Education and Skills, following discussions with the Data Protection Commissioner, has committed to introducing an ethnic identifier which asks all children to identify their ethnicity, across the education system in the near future.⁷³² In 2013, the forum was working on a thematic review of the Strategy and intends to develop a plan for its implementation in 2014.⁷³³

In September 2013, a draft General Scheme for an Education (Admission to Schools) Bill 2013 was published alongside draft regulations.⁷³⁴ The Bill requires schools to include in their enrolment policies an explicit statement that they will not discriminate against an applicant for admission on a number of grounds⁷³⁵ including membership of the Traveller community.⁷³⁶ It is intended that this legislation, which is due to be enacted in 2014,⁷³⁷ will ensure greater access to schools for children who are members of the Traveller community. However, there are concerns about the restrictiveness of the proposed appeals system as well as the placing of the 'past pupil criterion' on a statutory footing as the parents of Traveller children are 'statistically much less likely to have been educated to secondary school level'⁷³⁸ or may not have a sibling currently enrolled in the school.⁷³⁹

725 B. Harvey (2013) *Travelling with Austerity: Impacts of Cuts on Travellers, Traveller Projects and Services*, Dublin: Pavee Point, p.36.

726 Ruairi Quinn TD, Minister for Education and Skills, Parliamentary Questions: Written Answers [49494/13], Dáil Debate, 19 November 2013.

727 Council of Europe Advisory Committee On The Framework Convention For The Protection Of National Minorities, Third Opinion On Ireland Adopted On 10 October 2012, Acfc/Op/Iii(2012)006, p.2.

728 Ibid., p.21.

729 Communication received by the Children's Rights Alliance from the Department of Education and Skills on 14 January 2014.

730 Ibid.

731 Department of Education and Skills (2006) *Report and Recommendations for a Traveller Education Strategy*, Dublin: Stationery Office.

732 See further information at: http://www.education.ie/en/Schools-Colleges/Services>Returns/National-School-Annual-Census-Return/stat_census_form_instructions.pdf [accessed 22 January 2014]. This question can only be answered with parental consent.

733 Communication received by the Children's Rights Alliance from, the Department of Education and Skills on 14 January 2014.

734 Department of Education and Skills, 'Minister Quinn publishes draft Admission to Schools bill to regulate the admission of children to primary and post primary schools' [press release], 2 September 2013 <http://www.education.ie/en/Press-Events/Press-Releases/2013-Press-Releases/PR13-09-02.html> [accessed 15 January 2014].

735 The grounds set out in the bill are: disability, special educational needs, sexual orientation, family status, membership of the traveller community, race, civil status, gender, faith or religious tradition or on the grounds of the student being of no faith.

736 Department of Education and Skills, Head 3 Draft General Scheme of an Education (Admission to Schools) Bill 2013, <http://www.education.ie/en/The-Education-System/Legislation/Draft-General-Scheme-of-an-Education-Admission-to-Schools-Bill-2013.PDF> [accessed 15 January 2014].

737 Communication received by the Children's Rights Alliance from the Department of Education and Skills on 14 January 2014.

738 Irish Traveller Movement, 'Submission to Joint Oireachtas Committee on Education & Skills Re: Draft General Scheme of an Education (Admission to Schools) Bill 2013', 30 October 2013, http://itmtrav.ie/uploads/publication/ITM_Submission_to_Joint_Oireachtas_Committee_on_Education.pdf [accessed 3 February 2014].

739 See also Pavee Point Traveller and Roma Centre, 'Submission to the Oireachtas Joint Committee on Education and Social Protection on the Draft General Scheme of an Education (Admission to Schools) Bill 2013', 31 October 2013, http://www.paveepoint.ie/temp/site3/wp-content/uploads/2010/08/Pavee-Point_Submission-to-Joint-Committee-on-Education-and-Social-Protection_-Admissions-Bill.pdf [accessed 3 February 2014].

Immediate Actions for 2014

Grant recognition of Traveller Ethnicity

This was an immediate action of *Report Card 2013* which has not been addressed. Travellers should be recognised as an ethnic minority, in line with their wishes and in respect of the principle of self-identification. This would improve the consideration of Traveller children's identity and needs in the policy arena. The Report of the Joint Oireachtas Committee on Justice, defence and Equality should be presented to the Government and made public.

Include specific commitments to Traveller children in the forthcoming National Children and Young People's Policy Framework and its associated implementation strategies

This was an immediate action of *Report Cards 2012 and 2013* and remains unaddressed. There is no document outlining Government commitments on Traveller children. The forthcoming National Children's and Young People's Policy Framework provides an opportunity to make commitments to improve outcomes, with associated actions, timeframes and accountability structures. Minister Fitzgerald has indicated that this will be the case.

Introduce an ethnic identifier across health and care

This is an immediate action from *Report Card 2013* and it is welcome that the Department of Education and Skills plans to introduce an ethnic identifier which will require all parents to identify to which group their child belongs to, not minorities only. The collection of disaggregated data is a key factor in the ability of the Government to measure the efficacy of Traveller specific initiatives that have been introduced. Similar questions should also be asked in terms of health and children in care. It is key that the Government is able to measure outcomes so as to improve the position of Traveller children.

Re-energise activities in supporting the participation of Traveller children in education

This was an immediate action in *Report Card 2013* which has made some limited progress. A short time-limited assessment is needed to establish the current needs of Traveller children in education and what difficulties are arising, with proper consultation with Traveller representative groups. The assessment should explore the impact of the abolition of the Visiting Teachers for Travellers and Resource Teachers for Travellers Programmes in 2011, and impact to date of the *Intercultural Education Strategy*⁷⁴⁰ This assessment should then feed into the development of an updated Implementation Plan for the *Report and Recommendations for a Traveller Education Strategy*.

740 Department of Education and Skills (2010) *Intercultural Education Strategy 2010-2015*, Dublin: Department of Education and Skills.

6.2 Migrant Children

Grade F

Government Commitment

The *Programme for Government* commits to promoting policies that integrate minority ethnic groups in Ireland, and that promote social inclusion, equality, diversity and the participation of immigrants in the economic, social, political and cultural life of their communities.

Progress

Unsatisfactory

What's happening?

There is little evidence of targeted activity to support migrant children. Key legislation remains unpublished.

An updated version of the Immigration, Residence and Protection Bill remains unpublished despite assurances by the Minister for Justice and Equality, Alan Shatter TD, that the Bill would be published 'as soon as possible in 2013'.⁷⁴¹ In October 2011, Ireland's human rights record was examined by other UN countries for the first time, under the Universal Periodic Review (UPR) process.⁷⁴² During its hearing, the Government stated that treating national, religious or ethnic minorities as inferior was unacceptable, as was discrimination against children and failure to recognise their vulnerability.⁷⁴³ In March 2012, Ireland accepted several recommendations with regard to discrimination of migrants during the UPR process, but reiterated its position against the ratification of the UNESCO Convention on Discrimination in Education.⁷⁴⁴

In 2013, Council of Europe bodies, the European Commission against Racism and Intolerance (ECRI) and the Group of Experts on Action against Trafficking in Human Beings (GRETA) published their reports and recommendations following official visits to Ireland to monitor progress in relation to migrants, minorities and victims of trafficking.

The National Children and Young People's Policy Framework has not yet been published but it is expected to go to Cabinet in the first quarter of 2014. It is also expected that it will address some of the needs of marginalised groups including migrant children.⁷⁴⁵

741 Letter from Minister for Justice and Equality Alan Shatter TD to Nils Muižnieks, Council of Europe Commissioner for Human Rights, 29 November 2012, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2196541&SecMode=1&DocId=1960438&Usage=2> [accessed 13 December 2012].

742 For more information on the Universal Periodic Review process, see: <http://www.iccl.ie/the-universal-periodic-review.html> [accessed 15 December 2011].

743 UN Human Rights Council, Draft Report of the Working Group on the Universal Periodic Review: Ireland, A/HRC/WG.6/12/L.7 (10 October 2011).

744 Department of Justice and Equality, Addendum to the Report of the Working Group on the UPR, <http://www.upr.ie/Clients/CEGA/UPRWeb.nsf/page/reports-en> [accessed 7 December 2012].

745 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs, 18 December 2013.

Comment

The Migrant Children section gets an 'F' grade in *Report Card 2014* to reflect the continued lack of clear focus or action from Government. It is not clear that efforts have been made to improve the situation for migrant children, including those who may be particularly at risk of social exclusion such as children living in direct provision who were identified in *Report Card 2013* as a vulnerable group. Therefore, this 'F' grade reflects an unacceptable performance having little or no positive impact on the issues affecting migrant children.

In Census 2011, 93,716 foreign national children were recorded as living in Ireland.⁷⁴⁶ In addition, there are many naturalized Irish citizens that belong to various minority ethnic groups.

The UN Convention on the Rights of the Child protects every child, regardless of nationality or immigration status. Article 2 of the UNCRC requires the State to ensure that children are not discriminated against, including because of their parentage. Article 7 stipulates that a child shall have a right to a nationality, while Article 10 calls for family reunification decisions to be dealt with in a 'positive, humane and expeditious manner'. Article 30 commits States to ensure that children of an ethnic, religious or linguistic minority are not denied the right to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.⁷⁴⁷ The UN Committee on the Rights of the Child has affirmed that the enjoyment of rights stipulated in the UNCRC is not limited to children who are citizens of a State Party and must therefore, if not explicitly stated otherwise, also be available to all children – including asylum-seeking, refugee and migrant children – irrespective of their nationality, immigration status or statelessness.⁷⁴⁸

Revised Heads of the Immigration Residence and Protection Bill were due to be published in 2013 but these have not yet been finalised. Preparations for this piece of legislation were first carried out as far back as 2001⁷⁴⁹ and the first draft of the Bill was published in January 2008.⁷⁵⁰

The Bill will be a key legislative development that will affect the rights of migrant children living in Ireland. It is critical that the Bill be proofed against Ireland's obligations under the UNCRC. The procedural safeguards currently laid down must apply to decisions and practices affecting children including that: children should not be discriminated against (Article 2), the best interests of the child must be a primary consideration in matters affecting them (Article 3) and that the views of the child should be taken into account in matters affecting him or her (Article 12).

The Bill must ensure that every child has access to public services and benefits provided by the State, regardless of their or their parents' legal status, even if unlawfully present (undocumented).⁷⁵¹ For example, a child must be entitled to access education without restriction,⁷⁵² medical treatment, child protection/family support services and any welfare benefits. At present, due to the application of the Habitual Residence Condition to means-tested social welfare payments, many children are denied access to the Child Benefit payment.⁷⁵³ Further, the Bill should pay special attention to vulnerable migrant groups of children particularly separated children, children of asylum seekers, children at risk of trafficking and undocumented children.

746 An additional 19,020 children were recorded with no response to the question of nationality or as having no nationality. Communication received by the Children's Rights Alliance from the Central Statistics Office in December 2012.

747 UN Convention on the Rights of the Child, A/RES/44/25 (20 November 1989).

748 UN Committee on the Rights of the Child, General Comments No.6, CRC/GC/2005/6.

749 Department of Justice, Equality and Law Reform, 'Launch of new Immigration Bill' [press release], 29 January 2008, <http://www.justice.ie/en/JELR/Pages/Launch%20of%20new%20Immigration%20Bill> [accessed 13 February 2014].

750 Houses of the Oireachtas, Committee on Justice, Defence and Women's Rights – 2010, <http://debates.oireachtas.ie/committees/2010/JU.asp> [accessed 14 February 2014].

751 UN Committee on the Rights of the Child (2005) *General Comment No.7, CRC/GC/7/Rev.1*, para.24.

752 *Timishev v Russia*, ECHR, Application nos. 55762/00 and 55974/00 (13 December 2005).

753 The Habitual Residence Condition (HRC) is a set of criteria relating to a person or person's residency within the State, in order to qualify for certain social welfare payments including the One Parent Family Payment and Child Benefit.

Migrant Children and Education: In its report on Ireland, ECRI notes that approximately 10% of primary school children and 12% of post-primary school children living in Ireland come from a migrant background.⁷⁵⁴ In particular it highlights that up to 75% of children for whom English is not their first language may require extra English language support.⁷⁵⁵ *The Annual Monitoring Report on Integration 2012* found that despite the fact that 'one-third of migrant pupils in secondary schools received the lowest scores in reading', expenditure on English language support was cut by 19% in 2012.⁷⁵⁶ It is important that migrant children are supported in schools to enable them to participate in education on the same basis as their peers to ensure that all children receive an adequate education.

Children in the Asylum System: Of the 4,434 asylum seekers in State direct provision accommodation⁷⁵⁷ at the end of 2013, over one third, or 1,666, were children.⁷⁵⁸ In 2012, the Special Rapporteur on Child Protection, Geoffrey Shannon, called for an examination to establish whether the system itself is detrimental to their welfare and development and, if appropriate, an alternative form of support and accommodation would be more suitable for families and particularly children.⁷⁵⁹ In July 2013, the then Ombudsman, Emily O'Reilly also criticised the direct provision system and its potential impact on children⁷⁶⁰ following an investigation into the circumstances of one family who left direct provision due to mental health concerns for a teenage daughter.⁷⁶¹

The direct provision centres are managed by private providers through contracts with the Reception and Integration Agency (RIA) – a Department of Justice and Equality body. RIA does have a child protection policy that obliges it to report any incidences of suspected child protection or welfare matters to the Health Service Executive. It also employs an independent inspection company to carry out physical inspections of the premises with an aim of three inspections per year⁷⁶² but these do not take into account the views of staff or residents. This policy and inspection system does meet the requirements of the national standards for children in care and accompanying independent inspection regime that is carried out by Health Information Quality Authority (HIQA). The distinction in systems is based on the fact that children living in direct provision are 'not in the care of the State' as they live with their families, but they are living in an environment created and controlled by the State.

Moreover, direct provision centres are not a normal parenting environment and accommodate residents from many different backgrounds; parents do not have a choice where they will live, or who they will live with, in communal centres. Of particular concern is the potential exposure to child protection risks.⁷⁶³ While RIA's *Child Protection Policy* is based on *Children First Guidance*, it dates from 2005 and does not reflect the revisions which have taken place in policy since then. RIA is in the final stages of revising its current policy following the establishment of the Child and Family Agency in order to make 'the process clearer and more easily understood'.⁷⁶⁴ In 2012, 120 cases of child protection or welfare concerns were reported to social services about children living in direct provision.⁷⁶⁵ *The Interim Report of the Child Law Reporting Project*, which looked at 333 child care cases coming before the courts in 2012, expressed particular concern about a small number of cases where children were taken into care because their mothers had been admitted from direct provision hostels

754 European Commission against Racism and Intolerance (2013) *ECRI Report on Ireland (fourth monitoring cycle)*, Strasbourg: Council of Europe, p.23.

755 Ibid.

756 F. McGinnity, E. Quinn, G. Kingston and P. O'Connell (2013) *Annual Monitoring Report on Integration 2012*, Dublin: Economic and Social Research Institute and the Integration Centre.

757 Direct provision is a system of accommodation provided by the State to all people seeking asylum in Ireland. It provides room and board within former hotels, hostels or other large buildings, usually in the form of shared rooms. Each centre is managed by private contractors, after a tendering process but remains subject to oversight and standards put in place by the Reception and Integration Agency. In addition to room and board, adult asylum seekers receive a weekly allowance of €19.10 while a child receives a weekly allowance of €9.60. The accommodation is not compulsory for those seeking asylum but those who do not avail of it, do not receive their weekly allowance.

758 Communication received by the Children's Rights Alliance from the Reception and Integration Agency on 3 February 2014.

759 Department of Children and Youth Affairs, Fifth Report of the Special Rapporteur on Child Protection, Geoffrey Shannon 2012, <http://www.dcy.gov.ie/documents/publications/5RapporteurRepChildProtection.pdf> [accessed 2 December 2012].

760 Emily O'Reilly (2013) 'Dealing with asylum seekers: why have we gone wrong?', *Studies Magazine*, vol.102, no.406, Summer 2013.

761 The Office of the Ombudsman, Appeal Overruled: A failure to provide basic income for a family seeking asylum, June 2013, <http://www.ombudsman.gov.ie/en/publications/investigation-reports/health-service-executive/appeal-overruled-failure-to-provide-basic-income-for-family-seeking-asylum/> [accessed 13 February 2014].

762 Reception and Integration Agency, Latest Centre Inspections, <http://www.ria-inspections.gov.ie/en/RIAIR/Pages/Latest> [accessed 3 February 2014].

763 Irish Refugee Council (2012) *State sanctioned child poverty and exclusion*, Dublin: Irish Refugee Council.

764 Communication received by the Children's Rights Alliance from the Reception and Integration Agency, 3 February 2014.

765 Carl O'Brien, 'Social services alerted over child welfare in asylum centres', *Irish Times*, 15 October 2013.

to psychiatric hospitals. It stated that if it was found that the length of time spent in direct provision may have been a contributing factor to the deterioration of the mother's mental health, this would call for a review of the policy from a children's rights perspective.⁷⁶⁶

In July 2013, a family of six living in direct provision accommodation made an application to the High Court to judicially review the system.⁷⁶⁷ In October 2013, leave was granted to three families in total to challenge the system on the basis that it did not have a legal basis and it violated their family rights under the Constitution and the European Convention on Human Rights.⁷⁶⁸ Two of the families have withdrawn from the case. The judicial review in respect of the third case is scheduled to begin in the High Court at the end of April 2014.⁷⁶⁹

This follows a decision by the Northern Irish High Court in August 2013 which refused to return a Sudanese family, who had been granted refugee status in Northern Ireland, to the Republic of Ireland under the Dublin II Regulation.⁷⁷⁰ In his judgment, Justice Stephens considered such a return would not be in the best interests of the child and argued that the UK Border Agency had failed to consider this properly when seeking the return order. A 2013 report published in the UK on *Considering the Best Interests of a Child Within a Family Seeking Asylum* highlights the legal obligation in British law⁷⁷¹ 'to have regard to the need to 'safeguard and promote the welfare' of children in accordance with the best interests principle (Article 3) of the UN Convention on the Rights of the Child.⁷⁷² Under this provision decision-makers have to provide written reasons and demonstrate that they have considered the best interests of the child in reaching their decision.⁷⁷³ A similar provision should be incorporated into the forthcoming Immigration, Residence and Protection Bill.

The running of the direct provision centres must be subject to independent inspection which includes meetings with residents and relevant staff, along the lines of those carried out by HIQA against a published set of national standards. Given the expertise developed by HIQA in the area of health and children's services, it seems logical to extend their remit to inspect the centres.

“The UN Committee on the Rights of the Child has affirmed that the enjoyment of rights stipulated in the UNCRC is not limited to children who are citizens of a State Party and must therefore, if not explicitly stated otherwise, also be available to all children – including asylum-seeking, refugee and migrant children – irrespective of their nationality, immigration status or statelessness.”

766 C. Coulter (2013) *Child Care Law Reporting Project: Interim Report*, Dublin: Child Care Law Reporting Project.

767 *N.M and others v Minister for Justice and Equality, Minister for Social Protection, Attorney General and Ireland* [2013] 553 JR.

768 Ruadháin. MacCormaic, 'Asylum seeker families allowed to challenge direct provision', *Irish Times*, 21 October 2013.

769 Communication received by the Children's Rights Alliance from the Reception and Integration Agency, 3 February 2014 and R. MacCormaic, 'African family withdraws challenge to direct provision scheme', *Irish Times*, 10 December 2013.

770 *ALJ and A, B and C's Application for Judicial Review* [2013] NIQB 88, para 111

771 Borders, Citizenship and Immigration Act 2009, s.55.

772 United Nations High Commissioner for Refugees Representation to the UK (2013) *Considering the Best Interests of a Child Within a Family Seeking Asylum*, London: UNCHR Representation to the UK, p.6.

773 *Ibid.*, p.8.

Separated Children Seeking Asylum: Separated children seeking asylum - also referred to as unaccompanied minors - are a particularly vulnerable group which merit specific attention and protection as was highlighted in the UN Committee on the Rights of the Child's Concluding Observations to Ireland in 2006.⁷⁷⁴

The number of separated children referred to the HSE's Team for Separated Children Seeking Asylum (TSCSA) has declined from a high of 1,085 in 2001 to 71 in 2012⁷⁷⁵ and in the first eight months of 2013, 48 referrals were made to the HSE.⁷⁷⁶ In 2009, the Ombudsman for Children noted the high number of separated children that had gone missing from State care; 454 children went missing from 2000 to 2008 and of these, only 58 were later found.⁷⁷⁷ While only five children from this cohort were reported missing in 2012, with three of them subsequently found, the Separated Children in Europe Programme notes that '[a]lthough the numbers of children going missing from the care of the Health Service Executive (HSE) has decreased as a result of the decrease in numbers of children arriving and positive protective measures, the percentages of children going missing has stayed largely constant'.⁷⁷⁸

Improvements made to the way in which separated children are treated in the State have been broadly welcomed following the recommendation in the 2009 *Ryan Report Implementation Plan* which called for the closure of separate hostels for these children and for them to be treated equally with other children in the care system.⁷⁷⁹ This has resulted in the placement of separated children in foster care or in supported lodgings under the Child Care Act 1991. A 2013 report published by Barnardos and the HSE concluded that while the change from hostel placements to foster care or supported lodgings was a positive step and could help integration, it is important to ensure that each separated child is given individualised care suitable for their needs and in their best interests.⁷⁸⁰ It also highlighted the importance of maintaining a child's cultural, ethnic or linguistic identity and fulfilling his or her developmental needs in this regard in line with Article 20 of the UNCRC. A one size fits all approach will not work so each child should be consulted on how best to accommodate him or her with proper needs assessments carried out.

Child Victims of Trafficking: Trafficking is usually an issue associated with migrants despite the fact that in 2012, only four of the 23 children identified as victims of trafficking were migrants. The other 19 children were recorded as Irish citizens. All of the 23 child victims were trafficked for the purpose of sexual exploitation. Child victims of trafficking have been assisted and supported by the HSE to date but will now come within the remit of the new Child and Family Agency.

While the State ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2010 it is the only European Union Member State which has not yet ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. During a visit by the UN Special Representative on Violence Against Children in 2012, the Minister for Children and Youth Affairs agreed to consider the ratification of this instrument following the constitutional referendum, the establishment of the Child and Family Agency and the State's report to the UN Committee on the Rights of the Child.⁷⁸¹ Irish law is broadly in compliance with the Second Optional Protocol except for the legal requirement to introduce victims' legislation for children. The Minister for Justice and Equality needs to introduce this legislation as a matter of urgency so Ireland can finally ratify the Protocol.

774 UN Committee on the Rights of the Child (2005), General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin, CRC/GC/2005/6.

775 M. Ní Raghallaigh (2013) *Foster Care and Supported Lodgings for Separated Asylum Seeking Young People in Ireland*, Dublin: Barnardos and the Health Service Executive.

776 Separated Children in Europe Programme, Newsletter No. 40 – Fall 2013, <http://www.scepnetwork.org/images/12/261.pdf> [accessed 2 January 2014].

777 Ombudsman for Children (2009), *Separated Children Living in Ireland: A Report by the Ombudsman for Children's Office*, Dublin: Ombudsman for Children's Office, p.42.

778 Separated Children in Europe Programme, Newsletter No. 40 – Fall 2013, <http://www.scepnetwork.org/images/12/261.pdf> [accessed 2 January 2014], p.26.

779 Department of Health and Children (2009) *Ryan Report Implementation Plan*, Dublin: Stationery Office.

780 M. Ní Raghallaigh (2013) *Foster Care and Supported Lodgings for Separated Asylum Seeking Young People in Ireland*, Dublin: Barnardos, and the Health Service Executive, p. 88.

781 Department of Children and Youth Affairs (2013), *Ireland's Consolidated Third and Fourth Report to the UN Committee on the Rights of the Child*, Dublin: Department of Children and Youth Affairs, p. 31.

The Group of Experts on Action against Trafficking in Human Beings (GRETA),⁷⁸² the European body which monitors the implementation of the European Convention on Action against Trafficking in Human Beings, published its report on Ireland in September 2013 and issued recommendations in October 2013. The Group welcomed the improvements made by the Government in dealing with child victims of trafficking including the development of a guide to services available to these children.⁷⁸³ However, it also recommended that the authorities should set up a dedicated identification mechanism for suspected child victims of trafficking to ensure that their specific needs and best interests are taken into account.⁷⁸⁴ A collective complaint made to the European Committee on Social Rights in January 2013 by the Federation of Catholic Family Associations in Europe (FAFCE) alleges that Ireland has not provided sufficient protection for child victims of trafficking.⁷⁸⁵ The Government has responded setting out various measures it has put in place including the instigation of Operation Snow, under which immigration officers in 2011 and 2012 have referred about 100 children and young people to the HSE for further investigation as being potential child trafficking victims but in the majority of cases the child was coming to join a family member.⁷⁸⁶ The complaint was deemed admissible but it has not yet come before the Committee.

Roma Children: It is estimated that there are between 3,000 and 5,000 Roma living in Ireland but exact figures are not available.⁷⁸⁷ The UN Committee on the Rights of the Child in its Concluding Observations on Ireland in 2006, called on the Government to prevent the marginalisation and social exclusion of Roma children. However, little has been done to specifically target Roma children.

While the Government has put in place the *National Traveller Roma Integration Strategy*⁷⁸⁸ as part of the EU Framework for National Roma Integration Strategies up to 2020, a 2013 assessment by the European Commission was critical of Ireland's strategy as it found that of 22 criteria, the State had met just four of them.⁷⁸⁹ Civil society organisations continue to raise concerns about the lack of action to integrate and support Roma families and children, in particular highlighting problems in accessing social protection and services.⁷⁹⁰ The Minister for Justice, Equality has since expressed his dissatisfaction at the lack of progress made and has asked his department to 'consider the existing mechanisms for consultation, implementation, monitoring and review of the National Strategy'.⁷⁹¹ In December 2013, the EU Council adopted a *Recommendation on effective Roma integration measures in the Member States*⁷⁹² providing guidance on how to take concrete measures to improve Roma integration building on the existing EU framework of national strategies. It also calls on States to take steps to improve access to education, employment, healthcare and housing with a particular focus on 'protecting Roma children and women and addressing poverty'.⁷⁹³

782 Council of Europe, About GRETA – the Group of Experts on Action against Trafficking in Human Beings, http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Monitoring/GRETA_en.asp [accessed 22 January 2014].

783 Department of Justice and Equality, Services for Victims of Child Trafficking, [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/9C331687B4D5714A80257A800030D36E/\\$file/Services%20for%20Victims%20of%20Child%20Trafficking.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/9C331687B4D5714A80257A800030D36E/$file/Services%20for%20Victims%20of%20Child%20Trafficking.pdf) [accessed 2 January 2014].

784 Group of Experts on Action against Trafficking in Human Beings (GRETA) (2013) *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: First Evaluation Round*. Strasbourg: Council of Europe, p.44.

785 European Committee of Social Rights (2013), *Federation of Catholic Family Associations in Europe (FAFCE) v. Ireland Complaint No 89/2013*, http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC89CaseDoc1_en.pdf [accessed 13 February 2014].

786 Ibid.

787 Official sources estimate 3000 in the National Roma Integration Strategy but civil society organisations such as Pavee Point believe the number is closer to 5000.

788 Department of Justice and Equality, Ireland's National Traveller / Roma Integration Strategy, <http://www.justice.ie/ga/JELR/Ireland%E2%80%99s%20National%20Traveller%20Roma%20Integration%20Strategy%202011.pdf/Files/Ireland%E2%80%99s%20National%20Traveller%20Roma%20Integration%20Strategy%202011.pdf> [accessed 8 January 2014].

789 European Commission (2013), *The European Union and Roma – Country Factsheet: Ireland*, Brussels: European Commission, http://ec.europa.eu/justice/discrimination/files/roma_country_factsheets_2013/ireland_en.pdf [accessed 13 February 2014].

790 HSE and Pavee Point (2012) *Roma Communities in Ireland and Child Protection Considerations – summary, Dublin: HSE; and Pavee Point and Nasc (2013) In From the Margins – Roma in Ireland: Addressing the Structural Discrimination of the Roma Community in Ireland*, Cork: Nasc.

791 Alan Shatter TD, Minister for Justice, Equality and Defence, Parliamentary Questions: Written Answers [39783/13] Dáil Debate, 25 September 2013.

792 Council of the European Union, *Council recommendation on effective Roma integration measures in the member states*, 9-10 December, Brussels: Council of the EU.

793 European Commission (2013), 'First ever EU legal instrument for Roma inclusion adopted' (press release) 9 December 2013. Brussels: European Commission,

The HSE National Social Inclusion Unit facilitates the position of a Roma Outreach worker which aims to link families into health services⁷⁹⁴ but this role is not a permanent position and its funding is not secure.⁷⁹⁵ A series of seminars were co-hosted by the HSE and Pavee Point on issues faced by this cohort,⁷⁹⁶ but to date only one of these reports has been published⁷⁹⁷ and it is not clear that any of the findings or recommendations have been implemented. A further two reports on maternal health and education will be published on International Roma day in April 2014.⁷⁹⁸

In October 2013, international media outlets reported an alleged case of child abduction in which Greek authorities suspected that a young girl had been kidnapped by adults of Roma origin solely on the basis of her appearance as she had blonde hair and blue eyes.⁷⁹⁹ While the child was found not to have been the child of the couple in question, DNA testing proved that she was in fact of Roma origin. Following these reports, two young children from two different Roma families living in Ireland were taken into the protective care of the Gardaí. The Gardaí received reports from members of the public that both children were potential abductees as they, having a blonde hair and blue eyes, did not resemble their parents.⁸⁰⁰ The children were immediately removed from their parents care but were returned in both instances.⁸⁰¹

Minister for Justice Alan Shatter TD stated that due to the 'concerns' in both these cases,⁸⁰² he was extending the remit of the Ombudsman for Children, Emily Logan, to investigate the two cases.⁸⁰³ The Ombudsman for Children's report is due to be published in 2014. Reports carried out by the HSE and the Garda Síochána, have been sent to the Minister for Justice and Equality but have not yet been made public.⁸⁰⁴

794 Department of Children and Youth Affairs (2013) *Ireland's Third and Fourth Consolidated State Report to the Committee on the Rights of the Child*, Dublin: Department of Children and Youth Affairs, p. 31.

795 Communication received by the Children's Rights Alliance from Pavee Point, 8 January 2014. Pavee Point is the organisation which has received funding for this position but has stated that the title is Roma Community Worker and that the position has been underfunded.

796 Department of Children and Youth Affairs (2013) *Ireland's Third and Fourth Consolidated State Report to the Committee on the Rights of the Child* Dublin: Department of Children and Youth Affairs, p. 31.

797 HSE and Pavee Point (2012) *Roma Communities in Ireland and Child Protection Considerations – summary*, Dublin: HSE and Pavee Point.

798 Communication received by the Children's Rights Alliance from Pavee Point on 31 January 2014.

799 BBC news online, 'Maria: Greek Roma couple charged with abduction', 21 October 2013, <http://www.bbc.co.uk/news/world-europe-24605954> [accessed 13 February 2014].

800 Department of Justice and Equality, 'Statement on child protection cases – Shatter 23 October 2014' [press release], <http://www.merrionstreet.ie/index.php/2013/10/statement-on-child-protection-cases-shatter/> [accessed 20 January 2014].

801 Carl O'Brien 'Facebook post and hysteria led to Roma children's removal', *Irish Times*, 26 October 2013.

802 Minister for Justice and Equality Alan Shatter TD, Parliamentary Questions, Seanad Debate, 23 October 2013.

803 Ombudsman for Children's Office, 'Statement by the Ombudsman for Children on agreement reached with Minister for Justice to investigate cases of children taken into State Care' [press release], 25 October 2013 <http://www.oco.ie/whats-new/media/press-releases/statement-by-the-ombudsman-for-children.html> [accessed 20 January 2014].

804 Department of Justice and Equality, 'Statement by the Minister for Justice, Equality and Defence, Mr. Alan Shatter, T.D. on the cases of the removal of two Roma children' [press release], 8 November 2013 <http://www.merrionstreet.ie/index.php/2013/11/statement-by-the-minister-for-justice-equality-and-defence-mr-alan-shatter-t-d-on-the-cases-of-the-removal-of-two-roma-children/> [accessed 20 January 2014].

Immediate Actions for 2014

Ensure that the Immigration, Residence and Protection (IRP) Bill is proofed against the UN Convention on the Rights of the Child

This was an immediate action of *Report Cards 2012* and *2013* and remains unaddressed. The IRP Bill will establish the legal framework relating to migrant children including separated children and those seeking asylum in Ireland. It is imperative that the Bill complies with best practice, as set out by the UN Committee on the Rights of the Child. A specific legal provision should be included in the Bill requiring decision-makers to set out in writing how the best interests of the child has been considered in their final determination on that child's immigration status or any other immigration-related decision which will have a negative impact on that child.

Specify commitments to migrant children in the forthcoming National Children and Young People's Policy Framework and associated implementation strategies

This was an immediate action of Report Cards 2012 and 2013 and remains unaddressed. There is no document outlining Government commitments on migrant children. The forthcoming National Children's and Young People's Policy Framework provides an opportunity to make ambitious commitments to protect and support the rights of migrant children, in particular those from particularly vulnerable groups, with associated actions, timeframes and accountability structures.

Address the ongoing concerns in relation to child protection and welfare for children living in direct provision system

Inter-departmental co-operation and transparency is needed on this issue. The Minister for Children and Youth Affairs should work with the Minister for Justice and Equality to review and update the existing child protection safeguards in the centres. The remit of HIQA should be extended to inspect the direct provision accommodation centres.

Ensure that the material and developmental needs of children in direct provision are adequately met to ensure that their living environment and conditions do not have a detrimental impact on their nutritional needs, educational performance or their overall health and well-being

To ensure that children in direct provision do not suffer from food poverty and maintain an adequate standard of living (Article 27), the direct provision allowance should be increased to an acceptable level and an assessment carried out of living conditions to determine whether the decisions made by management in centres are taken in the best interests of the child (Article 3).

Ensure that each separated child has an individualised care plan following consultation with the child and a thorough needs assessment

Separated children must be accommodated in the most appropriate setting for each individual child. The views and wishes of the child should be taken into account to ensure that he or she is afforded the care most suited to his or her needs. The child's ethnic, cultural, linguistic and religious background should also be taken into consideration.

Ratify the Second Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography

The Government must ratify the Second Optional Protocol as a matter of urgency to ensure greater protection of children, in particular for victims of trafficking.

6.3 Inequalities in Family Life

Grade D+

Government Commitment	Progress
We will modernise and reform outdated elements of family law.	Some
We will enact legislation to consolidate and reform the law on adoption.	Delayed
We will amend the Civil Partnership and Certain Rights and Obligations of Cohabiting Couples Act 2010 to address any anomalies or omissions, including those relating to children.	Some

What's happening?

The Children and Family Relationships Bill is expected to be enacted in 2014. Some remaining anomalies under the Civil Partnership and Certain Rights and Obligations of Cohabiting Couples Act 2010 have been addressed already and others will be addressed in future legislation.

Children and Family Relationships Bill: In November 2013, Minister for Justice and Equality Alan Shatter TD published a briefing note on the Children and Family Relationships Bill 2013.⁸⁰⁵ The Bill aims to update and clarify the law on parental rights and duties in the range of different family forms in Ireland, including step parent families, families headed by members of extended families, cohabiting couple headed families, and lesbian and gay headed families. The Bill also proposes to deal with parenting where children are born by means of assisted human reproduction and surrogacy. The proposed legislation will establish that the best interest of the child is the paramount consideration in decisions on custody, guardianship and access. It is intended to repeal the Guardianship of Infants Act 1964 and extend the class of persons who can apply for guardianship of the child to civil partners and step parents. In certain cases, it is proposed that unmarried fathers will automatically be awarded guardianship of their children, and access applications will be simplified for interested persons who are not parents of the child such as grandparents or step-parents.⁸⁰⁶

Civil Partnership and Cohabiting Couples: Prior to 2011, cohabiting couples in Ireland, whether opposite or same-sex, were not provided with a mechanism for legal recognition. In January 2011, when the Civil Partnership and Certain Rights and Obligations of Cohabiting Couples Act 2010 came into effect, it provided legal recognition through civil partnership for same-sex couples which included a wide range of marriage-like rights and obligations for civil partners. The Act also provided a limited redress scheme for same and opposite sex cohabitants when a relationship ends. The Act did not deal with issues relating to children of civil partners. Some of these anomalies for children of civil partners, relating to taxation, were addressed in legislation in July 2011.⁸⁰⁷ This means that children of civil partners are now treated the same and have the same rights as children of married couples in terms of taxation, capital gains tax relief and inheritance tax relief. The remaining omissions relate to custody, guardianship and access for children of civil partners, these issues are to be addressed in the forthcoming Children and Family Relationships Bill 2014.

⁸⁰⁵ Department of Justice and Equality (2013), Child and Family Relationships Bill Briefing Note (2013), <http://www.justice.ie/en/JELR/Children%20and%20Family%20Relationships%20Bill%202013%20141113.pdf/Files/Children%20and%20Family%20Relationships%20Bill%202013%20141113.pdf> [accessed 16 December 2013].

⁸⁰⁶ Ibid.

⁸⁰⁷ Finance (No 3) Act 2011.

Adoption: In September 2012, the General Scheme of the Adoption (Amendment) Bill 2012 was published.⁸⁰⁸ The Bill will give effect to the provisions of the Constitutional Amendment relating to the voluntary placement for the adoption of any child and the adoption of child in long term foster care irrespective of the marital status of the child's parents. Further, it will consolidate and reform the law on adoption.⁸⁰⁹ The Minister for Children and Youth Affairs Frances Fitzgerald TD has signalled that the legislation will be progressed as soon as the proceedings and processes relating to the Children's Referendum are concluded.⁸¹⁰ A review of the adoption legislation is being considered by the Minister which will inform future operational and legislative considerations regarding the Adoption Act 2010.⁸¹¹

Family Courts: The Courts and Civil Law (Miscellaneous Provisions) Act 2013 was signed into law in July 2013. The Act amends the *in camera rule*⁸¹² and allows the media to report on family law and childcare proceedings according to strict conditions. These reforms are designed to increase transparency in terms of public access to important information on the operation of family and child care proceedings in the courts. The Courts will retain the power to exclude representatives of the media or to restrict reporting in certain circumstances. In deciding to exclude or restrict reporting the Judge under Section 5(c) of the legislation will have regard to both the best interests of the child⁸¹³ and the views of the child where the court deems the child to be capable of giving his or her views.⁸¹⁴ The legislation prohibits the reporting of information likely to identify the parties to the proceedings or any children to whom the proceedings relate. Breaches of the prohibition will constitute a criminal offence and those found guilty of the offence may be liable to a fine up to a maximum limit of €50,000 and or a term of imprisonment up to three years.⁸¹⁵

Comment

This year Inequalities in Family Life receives a 'D+' grade in this year's report card, a slight increase from last year's 'D' grade as there has been little actual reform to date with no tangible results to improve the lives of children. The publication of the briefing note on the forthcoming Children and Family Relationships Bill is welcome but we could not carry out further in-depth analysis of the proposed legislation this year as the proposed Heads of Bill were only published in January 2014. We will instead focus on it in Report Card 2015 as the proposed legislation is due to be enacted before the end of 2014. However, the legislative steps taken to address the anomalies relating to maintenance payments for children in the Civil Partnership and Certain Rights and Obligations of Cohabiting Couples Act 2010 is a welcome development and for this reason we have increased the grade.

Family life is a fundamental part of Irish society. Parents and families are central to a child's life. The rights of parents and children are inextricably linked and, in most cases, a child's rights are vindicated by his or her parents. Irrespective of the legal relationship entered into by parents, children should not be discriminated against due to the status of that relationship. The UN Convention on the Rights of the Child provides that a child must not be discriminated against because of their 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.

The UN Convention on the Rights of the Child recognises the central role played by parents in the lives of children. Under the UN Convention every child has the right to be cared for by his or her parents insofar as possible.⁸¹⁶ The term 'parent' is interpreted to mean genetic, birth and psychological parent, the latter referring to a person who is not biologically related to the child but cares for the child for significant periods of their childhood as they are 'intimately bound up in children's identity' and identity rights. They also have the right to contact their parents on a regular basis, to maintain personal relations and not to be separated from their parents against their will, unless it is contrary to the child's best interests or determined by a court.⁸¹⁷ Children have the right to know their parents and to have accurate information about their identity as well as the assistance and protection of the State where the child has

808 Department of Children and Youth Affairs, General Scheme of Adoption Amendment Bill 2012, <http://www.dcy.gov.ie/documents/publications/GeneralSchemeAdoptionBill19thSept12.pdf> [accessed 16 December 2013].

809 Minister for Children Frances Fitzgerald TD, Parliamentary Questions, Written Answers 9 July 2013 [33402/13].

810 Minister for Children Frances Fitzgerald TD, Parliamentary Questions Written Answers, 3 December 2013 [51585/13].

811 Minister for Children Frances Fitzgerald TD, Parliamentary Questions, Written Answers 19 September 2013 [38941/13] [38699/13].

812 The *in camera rule* allowed for a closed court in family law and child care proceedings.

813 Courts and Civil Law (Miscellaneous Provisions) Act 2013 s5(c)(i).

814 *Ibid.*, s5(c)(ii)(II).

815 *Ibid.*, s6(2)(ii).

816 UN Convention on the Rights of the Child, A/RES/44/25 (20 November 1989), Article 7.

817 *Ibid.*, Article 9.

been denied an element of their identity.⁸¹⁸ The UN Convention recognises that both parents have a role in the child's life and focuses on the parental responsibilities involved in raising a child.⁸¹⁹ In 'all actions concerning children', including those that fall outside the direct scope of the Convention, the best interests of the child principle must apply.⁸²⁰

The structure of Irish family life has changed significantly in recent decades with 36.5% of registered births being outside of marriage in the first quarter of 2013.⁸²¹ These include situations where a child is born to a lone, unmarried parent; an unmarried couple who are living at the same address; blended families, for example where the parents who have become separated, divorced or widowed and formed a new relationship, the child lives with one parent and a new partner; a child living with grandparents or other family members; or a child living with their parent and non-biological civil-partnered parent.

The legal ability to formalise the relationship between a child and their *de facto* parent is critical to ensure security, fairness and clarity in the child's life and upbringing. The limitations placed in granting guardianship⁸²² means that, in families with a step-parent or civil partner, only the biological parent can be recognised as the guardian of the child and the other party will always be a stranger to the child in legal terms.⁸²³ This can make routine family practicalities very difficult, as the non-biological parent cannot consent to emergency medical treatment, vaccinations or school forms.

Children of unmarried families and civil partnerships face inequitable treatment when compared with children of married families in a number of respects, particularly when they are living with or parented by the partner of their biological parent. In addition under inheritance legislation a child is treated as a stranger to his or her non-biological parent and has no automatic right to inherit from their non-biological parent thus incurring significant Capital Acquisition Taxes (CAT) although children in a civil partnership are treated the same as children in a marriage for inheritance tax and CAT purposes. Where a relationship breaks down or is dissolved there is no recourse to seek maintenance or support for a child from the non-biological partner, even in a civil partnership. In contrast, if a married parent abandons his or her family, any person, such as another family member or carer, can seek maintenance for the dependent child from that parent.

The Law Reform Commission has recommended that guardianship (parental responsibility) be extended to civil partners and step-parents, though this would not apply to families where the biological parent cohabits with a partner but the relationship is not one of marriage or civil partnership.⁸²⁴ The Law Reform Commission has recommended that automatic joint guardianship of both the mother and father of any child be provided through legislation.⁸²⁵

“Children of unmarried families and civil partnerships face inequitable treatment when compared with children of married families in a number of respects, particularly when they are living with or parented by the partner of their biological parent.”

818 Ibid., Articles 7 and 8.

819 Ibid., Article 18.

820 Ibid., Article 3(1).

821 Central Statistics Office (2013) *Vital Statistics for First Quarter 2013*, Dublin: Central Statistics Office, p. 4.

822 Guardianship is 'the duty to maintain and properly care for a child and the right to make decisions about a child's religious and secular education, health requirements and general welfare.' Geoffrey Shannon, *Family Law Practitioner*, Dublin: Thomson Roundhall, 2003, at I-034.

823 Ombudsman for Children (2010) *Advice of the Ombudsman for Children on the Civil Partnerships Bill 2009*, Dublin: Ombudsman for Children's Office, p. 2.

824 Law Reform Commission (2010) *Report, Legal Aspects of Family Relationships*, Dublin: Law Reform Commission, p. 41.

825 Ibid., p. 18.

The proposed Children and Family Relationship Bill will allow for civil partners, step parents, those co-habiting with the biological or adoptive parent and those acting in loco parentis for a specified period of time to apply for guardianship of a child. It is also proposed that the Bill will provide a mechanism by which, in certain circumstances, an unmarried father of a child will automatically become a guardian. The Bill will also set out how parentage is to be assigned in cases of assisted reproduction and surrogacy. It is also proposed to recognise the role played by the extended family.⁸²⁶ The Bill as outlined in the briefing note would be the most comprehensive amendment to the law on children and family relationships in many years. It provides a unique opportunity to modernise the law in the area and provide legal recognition to the many different and diverse family relationships that exist in modern day Ireland. Given the complexity of modern family structures this Bill needs to be given careful consideration.

The Courts and Civil Law (Miscellaneous Provisions) Act 2013 is a welcome step in the modernisation of family law. The legislation strikes the necessary balance between respecting the rights of the child and his or her family to the protection of their privacy in family law and child care proceedings as provided in Article 16 of the UN Convention on the Rights of the Child, while at the same time ensuring transparency and clarity in the law.

Though the provisions outline that in making a decision to exclude representatives of the media, the judge shall have regard to certain issues such as best interests of the child and the voice of the child,⁸²⁷ the circumstances are vague and open to the discretion of judges. It is unclear whether this decision-making process will be directed by regulation, Court Rules or other published guidelines. The acknowledgement of the role of the voice of the child is welcome as it reflects a core children's right principle outlined in Article 12 of the UN Convention on the Rights of the Child.

826 Department of Justice and Equality, Child and Family Relationships Bill Briefing Note, <http://www.justice.ie/en/JELR/Children%20and%20Family%20Relationships%20Bill%202013%20141113.pdf/Files/Children%20and%20Family%20Relationships%20Bill%202013%20141113.pdf> [16 December 2013].

827 Courts and Civil Law (Miscellaneous Provisions) Act 2013 s5(c)(i).

Immediate Actions for 2014

Modernise the law on children and family relationships

The Children and Family Relationships Bill should be published and passed to reform the law on parentage, guardianship, custody and access. The Bill should ensure that children's rights can be vindicated by the people in their lives that fulfil the parenting role and that the best interests of the child forms the basis for decisions.

Review the adoption legislation and policies

A review should be carried out of the law and policy on adoption as proposed by the Minister for Children and Youth Affairs to ensure that the law in the area is robust and fit for purpose.