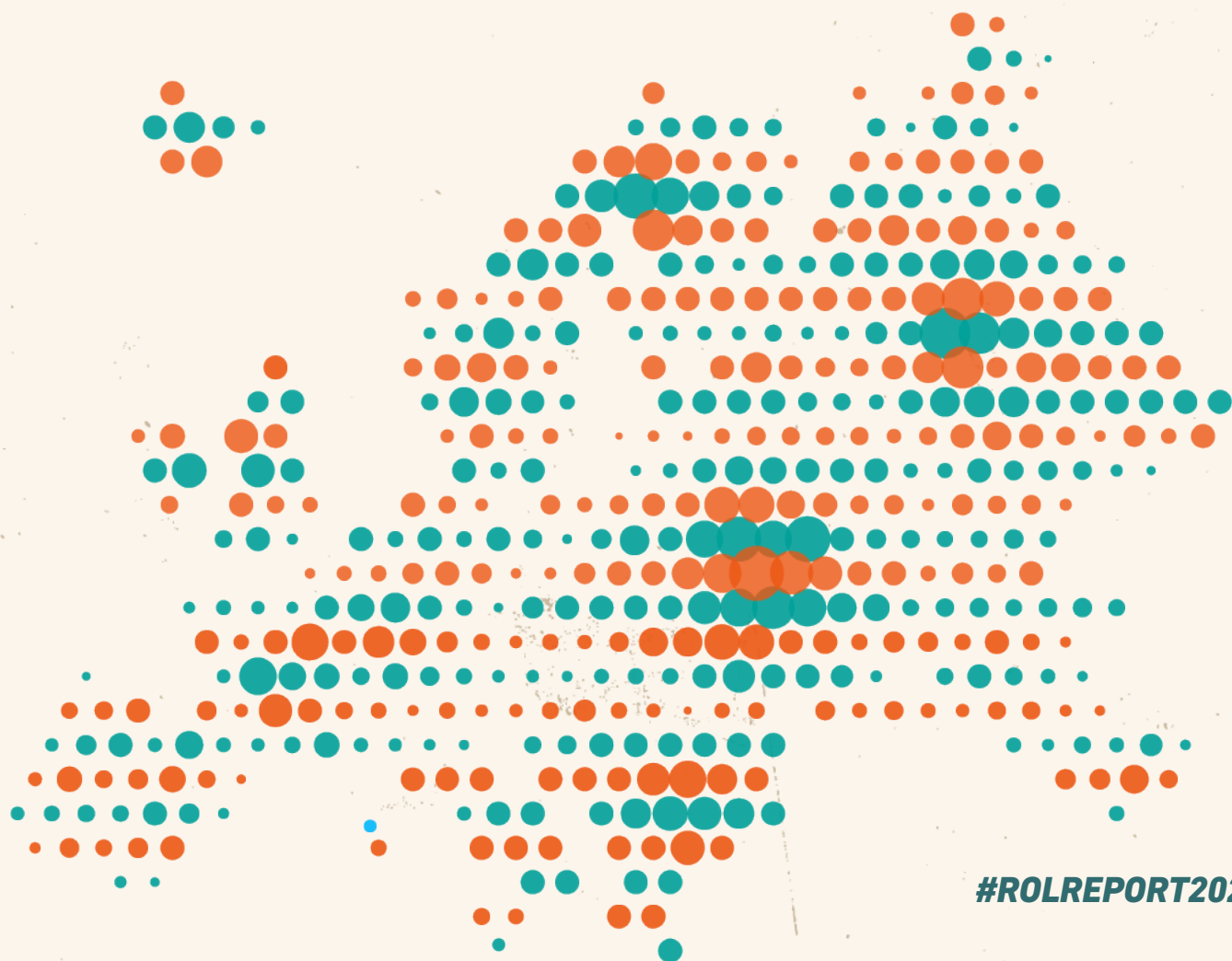


LIBERTIES

RULE OF LAW REPORT

2023

IRELAND



#ROLREPORT2023

IRELAND

About the authors

The Irish Council for Civil Liberties



The Irish Council for Civil Liberties (ICCL) is Ireland's oldest independent human rights body. It has been at the forefront of every major rights advancement in Irish society for over 40 years. ICCL helped legalise homosexuality, divorce, and contraception. ICCL drove police reform, defending suspects' rights during dark times. In recent years, ICCL led successful campaigns for marriage equality and reproductive rights.

Trinity College Dublin School of Law



Founded in 1740, Trinity School of Law is one of the leading law schools in Europe, consistently ranked as one of the top 100 law schools in the world. The school is a community of staff, students, and alumni, dedicated to the pursuit of legal knowledge and critical engagement with the legal challenges that confront modern communities.

Irish Congress of Trade Unions



The Irish Congress of Trade Unions (ICTU) is a single trade union federation for the island of Ireland, with some 44 affiliated trade unions operating and organised in both political jurisdictions and across all areas of the economy. As such, ICTU is the largest civil society body on the island, representing and campaigning on behalf of some 750,000 working people in both the private and public sectors, north and south of the border. It works to achieve economic progress, social cohesion, and justice by upholding the values of solidarity, fairness, and equality across the island of Ireland.

The Immigrant Council of Ireland



The Immigrant Council of Ireland is an NGO-independent law centre, founded in 2001, working with and for migrants and their families in Ireland. The Immigrant Council of Ireland provides frontline information, support and specialised legal services, prioritising vulnerable communities to include victims of gender-based violence, victims of trafficking, refugees/stateless persons, and migrant children.

Inclusion Ireland



Established in 1961, Inclusion Ireland is a national, rights-based advocacy organisation that works to promote the rights of people with an intellectual disability. The vision of Inclusion Ireland is that of people with an intellectual disability living and participating in the community with equal rights. Inclusion Ireland's work is underpinned by the values of dignity, inclusion, social justice, democracy, and autonomy. Inclusion Ireland uses the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) to guide our work.

Intersex Ireland



Intersex Ireland is the only organisation led by intersex people that offers support and advocacy for intersex people in Ireland.

Mercy Law Resource Centre



Mercy Law Resource Centre (MLRC) is an independent law centre, registered charity, and company limited by guarantee which provides free legal advice and representation to

people who are homeless or at risk of becoming homeless in the areas of social housing and related social welfare law. The Centre also seeks to advocate change in laws, policies, and attitudes which unduly and adversely impact its client group.

Community Law and Mediation



Community Law & Mediation is an independent community law centre and charity working since 1975 in communities impacted by social exclusion, disadvantage, and inequality, through the provision of free legal, mediation, and community education services. In 2021, it expanded its services to focus on environmental justice, and established the Centre for Environmental Justice which provides free legal advice, training, and advocates for a rights-based approach to policy and law reform in the area of environmental justice.

Justice for Shane



Justice for Shane was founded following the unlawful killing of Shane O'Farrell in 2011. The errors and failings leading to the death of Shane are such that they undermine public confidence in government and the administration of justice to an extent that it is imperative that public confidence be restored. This must be done in a manner that the whole public can be assured that the full facts can be established,

the failings addressed, appropriate action is taken, people are held to account, and to ensure that lessons are learned so that similar failings don't happen again.

Irish Penal Reform Trust



Established in 1994, the Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation in campaigning for rights within the penal system and the progressive reform of Irish penal policy. IPRT publishes a wide range of policy positions and research documents; it campaigns vigorously across a wide range of penal policy issues; and we have established IPRT as the leading independent voice in public debate on the Irish penal system.

Age Action Ireland



Age Action is Ireland's leading advocacy organisation for older people and ageing. As well as informing and influencing policy, we provide practical programmes to support older people to age in place and to combat digital exclusion through its Care and Repair, Getting Started, and Information Service.

Outhouse



Outhouse is a community and resource centre for LGBT+ people, their families, and friends.

Outhouse's vision is of a vibrant and safe space for LGBT people, groups & organisations that is inclusive of the diversity within our communities. Outhouse's mission is to provide a safe space which facilitates & encourages the growth of services and supports to the LGBT communities. In all of our work, Outhouse is guided by principles of community, equality & partnership.

The National Union of Journalists



For more than 100 years, the NUJ has fought for journalists and journalism. Today, the union is one of the largest independent journalists' unions in the world. NUJ members work across the media, from newspapers, broadcasting and book publishing to magazines, websites, mobile devices, social media and PR agencies. Its members work across a diverse range of jobs – anything from reporting, writing, photography and editing to design, videography, communications and presenting.

The Irish Network Against Racism



The Irish Network Against Racism (INAR) is a civil society network of anti-racism and minority rights organisations that monitors trends in racism and related forms of discrimination in Ireland, as well as government legislation, policy, and statutory agency practices in those areas.

Irish Traveller Movement



Established in 1991, The Irish Traveller Movement (ITM) is the national advocacy and membership platform which brings together Travellers and representative organisations to develop collective solutions on issues faced by the community to achieve greater equality for Travellers. ITM represents Traveller interests in national governmental, international, and human rights settings. ITM challenges racism - individual, cultural and structural - which Travellers face and promotes integration and equality.

FLAC-Free Legal Advice Centres



Free Legal Advice Centres-FLAC is a human rights organisation which exists to promote equal access to justice for all. FLAC's vision is a society where everyone can access fair and accountable mechanisms to vindicate their rights.

Mental Health Reform



Mental Health Reform is Ireland's leading national coalition on mental health. Mental Health Reform's vision is of an Ireland where

everyone can access the support they need in their community to achieve their best possible mental health. Mental Health Reform drives the progressive reform of mental health services and supports through coordination and policy development, research and innovation, accountability, and collective advocacy. Together with our 80 member organisations, and thousands of individual supporters, Mental Health Reform provides a unified voice to the government, its agencies, the Oireachtas, and the general public on mental health issues.

Pavee Point



Pavee Point Traveller and Roma Centre is a national non-governmental organisation working towards the attainment of human rights for Irish Travellers and Roma since 1985. The aim of Pavee Point is to contribute to improvement in the quality of life and living circumstances of Irish Travellers and Roma by working for social justice, solidarity and human rights.

Note:

While each of these organisations are experts in their areas of concern, not one of the organisations possesses the expertise sufficient to complete this submission in isolation. This submission represents a compilation of a wide array of material and expertise from the aforementioned organisations, coordinated by the Irish Council for Civil Liberties.

Key concerns

There has been progression in a number of areas within the justice system since 2021. These include moves to reform the legal aid system and the commencement of outstanding sections of the Judicial Council Act. Progress has also been made in the area of reform of judicial appointments, but funding for the courts system and the number of judges per capita remains very low. The continued use of the Special Criminal Court remains a serious concern notwithstanding an ongoing review of the Offences Against the State Act.

Work is ongoing to address the two recommendations as contained in the report on the justice system (judicial appointments and legal costs). However, progress is slow and a number of issues have been identified with respect to government action on both issues; this is outlined below.

There is no evidence of widespread corruption in Ireland, and the country currently sits at 13th in the 2021 Corruption Perception Index.¹ Despite this ranking, individual high-profile cases have highlighted the inadequacy of Ireland's ethics legislation and serve to create the perception that elected officials are exploiting their roles for monetary gain and failing to properly declare their assets.

While 2022 has seen some piecemeal progress in areas such as lobbying regulation, a

long-promised comprehensive review of ethics legislation has yet to materialise. Political scandals in the summer of 2022 involving asset declarations and conflicts of interest have further emphasised the ineffectiveness of the laws in this area and the urgent need for reform. Progress has been far too slow on developing a new public ethics regime despite the urgent need for reform in this area and calls from CSOs, the European Commission, and GRECO. This was exposed by the political scandal surrounding the asset declarations of public officials in the summer of 2022.

The continued rushing of legislation at the end of parliamentary terms has resulted in extremely problematic behaviour. The government has added amendments and sections to legislation in which little to no time is allocated for scrutiny as debates are guillotined and legislative stages are merged. As a result, members of parliament are voting to enact legislation which has not been examined. There is an increasing concern that these practices are being used to suppress debate and pass problematic and unpopular legislation without scrutiny.

The National Union of Journalists has expressed concern at the overarching powers proposed for the Media Commission, which will replace the existing Broadcasting Authority of Ireland and its inadequate resourcing.² The expert group tasked with progressing this transition has been established, but as of January 2023,

1 <https://www.transparency.org/en/cpi/2021/index/irl>

2 <https://www.nuj.org.uk/resource/nuj-urges-rethink-on-giant-media-commission-watchdog.html>

it is unknown when it is expected to make recommendations to the government.³

The government has refused to engage with civil society on the issue of funding restrictions for advocacy which they deem to be “political” and insists that the issue can only be examined as part of a wider review of financing for political parties and political donations. Furthermore, advice from the Charities Regulator has narrowed the ability of organisations to engage in political advocacy and retain their charitable status. ICCL is concerned that this will undermine any benefit to the proposal to add the “advancement of human rights” to the list of valid charitable purposes as it will be inoperable. This approach will further serve to confuse the issue, given that civil society funding should not be classed as political.

The compensation scheme announced for survivors of mother and baby homes has been widely condemned as inadequate and does not meet the needs of survivors. Plans to end direct provision as a system of accommodating those seeking asylum by 2024 have been shelved by the government.

The Irish Traveller movement notes a number of ongoing issues related to the lack of progression and implementation of actions committed to in the National Traveller and Roma Inclusion Strategy 2017-2021.⁴ Concerns remain with respect to the inadequate collation

of data on Traveller experiences/outcomes and ineffective funding. They also note persistent and ongoing discrimination against Travellers, including in the national police force, remaining a day-to-day occurrence in 2021.⁵

State of play

- ↑ Justice system
- Anti-corruption framework
- ↑ Media environment and freedom of expression and of information
- ↓ Checks and balances
- ↓ Enabling framework for civil society
- ↓ Systemic human rights issues

Legend (versus 2022)

- ↓ Regression
- No progress
- ↑ Progress

Justice system ↑

Key recommendations

- Complete a comprehensive review of the legal aid system, which should include, inter alia, provision for an enhanced civil legal aid system, and a

³ <https://www.independent.ie/irish-news/news/taoiseach-says-universal-levy-would-be-more-sustainable-than-tv-licence-42178156.html>

⁴ <https://www.gov.ie/en/publication/c83a7d-national-traveller-and-roma-inclusion-strategy-2017-2021>

⁵ <https://itmtrav.ie/wp-content/uploads/2021/03/Irish-Traveller-Movement-Submission-UPR-National-Report.pdf>

large-scale study of unmet legal needs in Ireland.

- Complete the review of the Offences Against the State Act, abolish the Special Criminal Court and ensure that all courts comply with constitutional and international fair trial standards.
- Increase overall levels of investment and systems of appointment in the Irish courts/justice system to ensure that the system is accessible, accommodative, time efficient, and meets international best practice standards.

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

The Judicial Appointments Commission Bill 2022 was published in March 2022⁶ and is still making its way through parliament. The revised bill differs from the original draft⁷ in a number of key aspects.

The discretion of the government in the appointment of judges will be significantly curtailed. Judges can now only be appointed from a shortlist of three drawn up by the Judicial Appointments Commission (or five

names for two vacancies, and seven names for three), and only after an interview process.

The draft bill proposed a separate process for the appointment of the Chief Justice, President of the Court of Appeal, and President of the High Court – a process which would have had heavy government involvement. Following submissions by ICCL and others, this proposal has now been dropped and these positions will be filled in the same way as ordinary judges. This is a highly significant improvement and means there will be one fair and merit-based process for all appointments.

The revised bill now proposes that the Judicial Appointments Commission must address the objective that the membership of the judiciary should reflect the diversity of the population as a whole. To achieve real diversity and representativeness in the Irish judiciary, steps must also be taken to address diversity at senior levels in the legal professions.

A provision has been inserted in the bill for all candidates to undergo judicial training or continuous professional development. This is very welcome and ICCL believes that such training must include substantial training in relation to international law, human rights law, and equality, in line with the 2019 Judicial Council Act. Despite these improvements, outstanding issues remain.

6 <https://www.oireachtas.ie/en/bills/bill/2022/42/>

7 <https://data.oireachtas.ie/ie/oireachtas/bill/2022/42/eng/initiated/b4222d.pdf>

It had been recommended that the list of names sent to the Minister should be ranked in order of preference by the Judicial Appointments Commission with reasons given by the government as to if or where there is a divergence from the recommendation by the Commission. This recommendation has not been accepted. This is regrettable as rankings and reasons for divergence would have led to greater transparency in the process. It is not clear if the government received advice from the Attorney General on this point.

On which judges should sit on the Judicial Appointments Commission, the bill proposes that the Chief Justice (as chair) and the President of the Court of Appeal will always sit on the Commission (or President of another court depending on what vacancy has arisen) and two members of the Judicial Council. It was recommended that judges sitting on the Commission should be elected by their peers, as per international standards. An election process would help guard against a small number of senior judges having a disproportionate influence in the process.

Finally, it was recommended that members of the judiciary should make up at least half of the sitting members of the Commission, in line with the European Charter on the Statute of Judges. While this bill proposes that

members of the judiciary would make up half of the voting members of the Commission, we regret the retention of the Attorney General on the Commission as this could be perceived as having undue governmental involvement in the Commission's work and skews the balance away from 50% judicial membership.⁸

Independence and powers of the body tasked with safeguarding the independence of the judiciary

A Judicial Council was formally established on December 17th, 2019.⁹ It is made up of the entire Irish judiciary. The Council Published its second annual report in September 2022.¹⁰

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

On February 4th, 2022, the Judicial Council adopted guidelines in relation to judicial conduct and ethics and published draft procedures in relation to making and investigating judicial complaints.¹¹ On the basis of this, on October 3rd, 2022, the Minister for Justice commenced the remaining sections of the Judicial Council Act (2019) with statutory instrument 489/2022.¹² Procedures are now in place to facilitate complaints about alleged

8 <https://www.iccl.ie/police-justice-reform/iccl-analysis-of-judicial-appointments-Bill/>

9 <https://judicialcouncil.ie/about-the-judicial-council/>

10 <https://judicialcouncil.ie/news/the-judicial-council-annual-report-2021/>

11 <https://judicialcouncil.ie/news/judicial-council-meeting-4th-february-2022/>

12 <https://www.irishstatutebook.ie/eli/2022/si/489/made/en/pdf>

judicial misconduct. Any complaints about the conduct of a judge that is alleged to constitute judicial misconduct will be addressed under the new procedures.¹³

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

In November 2022 it was confirmed in parliament¹⁴ and in a letter from the Judicial Council that there are no powers to investigate the behaviour of a former judge¹⁵ who allegedly engaged in inappropriate contact with a number of women, including one who had appeared in front of him in a family law matter. In a letter to the Irish Independent newspaper, the Judicial Council outlined that as the judge had ceased his work prior to the commencement of their investigative powers, they were unable to act on the matter.¹⁶

Other

In February 2021, the Minister for Justice announced a review of the Offences Against the State Act and the role of the Special Criminal Court in the Irish Judicial System.¹⁷ The act has to be renewed in parliament each year to confirm that sufficient conditions are presented through the threat of organised crime and terrorism to warrant the act and the court's existence.¹⁸ ICCL has called for the immediate abolition of the Special Criminal Court. ICCL's submission¹⁹ to the review group highlights six areas of particular concern:

- the absence of a jury;
- the dual role of judges as both judge and jury;
- the extensive powers of the public prosecutor (DPP);
- claims of privilege by Gardaí;
- and the acceptance of beliefs and inferences as evidence.

13 https://merriestreet.ie/en/news-room/releases/minister_mcentee_commences_act_to_facilitate_complaints_about_alleged_judicial_misconduct_for_the_first_time.174922.shortcut.html

14 <https://www.oireachtas.ie/en/debates/debate/dail/2022-11-23/13/?highlight%5B0%5D=paul&highlight%5B1%5D=murphy&highlight%5B2%5D=judges&highlight%5B3%5D=kerry&highlight%5B4%5D=-judge&highlight%5B5%5D=judge#s14>

15 <https://www.oireachtas.ie/en/debates/debate/dail/2021-07-14/8/?highlight%5B0%5D=paul&highlight%5B1%5D=murphy&highlight%5B2%5D=kerry&highlight%5B3%5D=judge&highlight%5B4%5D=judges#s9>

16 <https://www.independent.ie/irish-news/courts/retired-judge-james-oconnor-will-not-be-investigated-over-claims-made-in-dail-that-he-preyed-on-vulnerable-woman-42168728.html>

17 <https://www.gov.ie/en/press-release/51927-minister-mcentee-appoints-independent-review-group-to-examine-the-offences-against-the-state-acts/>

18 <https://www.oireachtas.ie/en/debates/debate/dail/2022-06-29/12/>

19 <https://www.iccl.ie/2021/the-special-criminal-court-must-be-abolished/>

The right to a trial by a jury of one's peers is a constitutional right in Ireland. ICCL believes there is little evidence to suggest that jury intimidation is widespread, but if so, this is an issue that should be addressed by measures such as anonymous juries and through legislation at every level of the court system. It is inappropriate and out of line with the practices and protections of an adversarial, common-law jurisdiction for judges to act as both judge and juror at the Special Criminal Court. The DPP's power to decide which cases go to the court is far too broad and immensely difficult to challenge. The DPP should be required to provide the reasons they are sending a case to the court, and those reasons should be open to challenge. At the court, Gardaí can claim privilege and refuse to give important documents to the defence. Gardaí may also present their belief that someone is guilty without having to show any other evidence. Negative inferences may be drawn from a suspect's silence. These practices are clearly contrary to fair trial rights and should end immediately. ICCL's favoured course of action is the abolition of the court, with the consideration of alternative means of ensuring the safety of juries and witnesses. Pending the abolition of the court, ICCL also proposes immediate reforms in how the

court currently operates. It is expected that the review should be completed in early 2023.

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

The current civil legal aid system in Ireland is very restrictive and requires that applicants have a disposable income of less than €18,000 per year. There are limited exceptions to these strict means requirements, such as cases which involve child protection.²⁰ This system has been criticised for being prohibitive and a barrier to access to justice by a number of bodies such as IHREC,²¹ UNCERD,²² CEDAW,²³ the FRA,²⁴ Public Interest Law Alliance (PILA), and Free Legal Advice Centres (FLAC), as well as being subject to criticism by Chief Justice Frank Clarke.²⁵

In June 2022, the Minister for Justice established a group to oversee the first review of the civil legal aid scheme in 40 years.²⁶ The review group is being led by former Chief Justice Frank Clarke and it is expected that the review will take 12 months. In November 2022, a stakeholder consultation on reform

20 <https://www.legalaidboard.ie/en/our-services/legal-aid-services/how-do-i-apply-for-civil-legal-aid/>

21 <https://www.ihrec.ie/access-to-justice-concerns-as-80-believe-poorer-people-get-worse-legal-outcomes/>

22 https://upr-info.org/sites/default/files/documents/2021-10/flac_upr39_irl_e_main.pdf

23 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CEDAW/C/IRL/CO/6-7&Lang=en

24 https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-legal-aid-in-return_en.pdf

25 <https://www.lawlibrary.ie/access-to-justice-conference-friday-1st-october-2021/>

26 <https://www.gov.ie/ga/preasraitis/68fab-minister-announces-review-of-civil-legal-aid-scheme/>

of the scheme was launched and will remain open until February 3rd, 2023.²⁷

It is also of note that following a government announcement of a review of equality law in June 2021,²⁸ FLAC²⁹ and other organisations³⁰ have called for legal aid to be made available to victims of discrimination and for other civil legal purposes. In their submission, Inclusion Ireland³¹ also noted the barriers which result in the persistent under-reporting of discrimination against people with intellectual disabilities. The current absence of access to legal aid and dedicated legal services to support victims of discrimination to make complaints has been pointed out. Groups such as people with disabilities, migrants, racial minorities, Travellers, and others have highlighted the complexity of the procedure, the lack of reasonable accommodation to support people to access justice and the limited outcomes that often dissuade people from making complaints. The Irish Network Against Racism (INAR) have also noted their concern that the review of equality laws is being carried out without comprehensive consultation with the public, particularly ethnic minority communities who experience

racial discrimination on a daily basis. The scheme should also be amended to ensure legal aid is available in eviction cases and other housing and accommodation-related matters.

As is noted in Mental Health Reform's submission³² on the review of the Equality Acts, under the current regimes there are exhaustive, emotional, and psychological burdens experienced by anyone with disabilities who takes a case under the Equality Acts. Issues around the burden of proof, accessing the relevant information, and legal forms all create barriers for people with disabilities. Without representation, the person making the complaint must deal with navigating these complex issues alone, all while sitting across from the employer/service provider whom they have taken their case against. Often employers and businesses may have the financial means to pay for private legal representation for Workplace Relations Commission (WRC) cases when the person making the complaint may not, creating stark inequality in many of these cases.³³ In Mental Health Reform's consultation with people with mental health difficulties,³⁴ it was reported that the WRC website was

27 <https://www.gov.ie/en/consultation/a7aa6-stakeholder-consultation-on-the-review-of-the-civil-legal-aid-scheme/>

28 <https://www.gov.ie/en/press-release/24864-minister-ogorman-announces-review-of-the-equality-acts/>

29 <https://www.flac.ie/news/latestnews/2021/06/22/announced-review-of-equality-law-timely-and-necess/>

30 <https://www.flac.ie/news/latestnews/2021/07/29/43-ngos-and-advocates-join-flacs-call-on-justice-m/>

31 Inclusion Ireland 2021 "Submission on the Review of the Equality Acts"

32 <https://www.mentalhealthreform.ie/wp-content/uploads/2022/11/Final-submission-08.12.21-MHR-submission-on-the-review-of-equality-acts-1.pdf>

33 FLAC, (2021). [*FLAC Guide: The Review of the Equality Acts, Making a Submission to the Review & the Key Issues Under Review*](#).

34 <https://www.mentalhealthreform.ie/wp-content/uploads/2021/04/MHR2021SubmissiononUNCRPDDraftStateReportConsultation.pdf>

inaccessible and that forms are not available in braille or in easy-to-read formats. INAR also notes that the lack of information and clarity on the functionality of the WRC is also a barrier to accessing justice for victims of discrimination. As evidenced by INAR's work, people from an ethnic minority background who are aware of the existence of the WRC understand it as a dispute resolution mechanism for employment discrimination only. There is a need to provide adequate information on the role of the WRC to ensure that victims of discrimination are able to access justice.

Long waiting times, overly bureaucratic processes, and at times high legal costs continue to pose barriers for those going through family court proceedings. In November 2022, the government published a Family Justice Strategy and a Family Court Bill which provides for the establishment of a dedicated Family Court and seeks to address the challenges and barriers that the existing courts system poses for families who are already dealing with a heavy burden of stress.³⁵ At the time of writing the bill has completed its first stage in the Seanad Éireann.³⁶ Inclusion Ireland's submission for the review of the Equality Acts in 2021 highlighted that a recurring theme was the complex process to report discrimination, lack

of guidance, advocacy, and legal expertise. Many expressed despair when feeling they must accept the discrimination they experience: "Sometimes having a child with complex disabilities means accepting discrimination".

The issue of costs in Ireland remains a particularly significant concern for the European Commission, with the 2019 Environmental Implementation Review Report for Ireland³⁷ noting:

"Extremely high litigation costs — which can leave litigants owing hundreds of thousands of euros — present a greater barrier to environmental litigation than legal standing. [...] However, Ireland has yet to create a system that ensures that environmental litigants are not exposed to unreasonable costs."

IPRT notes that accessibility is a particular concern for people in prison who wish to challenge conditions in prison, or other issues that arise (which would not be covered by criminal legal aid). IPRT has previously published on issues around prison litigation.³⁸

Mental Health Reform also note the barriers in access to justice for those experiencing discrimination due to their mental health

35 <https://www.gov.ie/en/press-release/06977-minister-mcentee-receives-government-approval-to-publish-family-court-bill-and-first-national-family-justice-strategy/>

36 <https://www.oireachtas.ie/en/bills/bill/2022/113/>

37 https://ec.europa.eu/environment/eir/pdf/report_ie_en.pdf

38 <https://www.iprt.ie/iprt-publications/prison-litigation-network-national-report-on-ireland/>

difficulty.³⁹ It is important to note that people with disabilities are already at an increased risk of poverty. This is outlined in the Cost of Disability in Ireland report, where those with mental health difficulties ('to a great extent') report the highest level of deprivation.⁴⁰ It should be concerning that disability costs are not incorporated into the means test for the Civil Legal Aid Scheme.⁴¹ It is hoped that this anomaly will be rectified in the upcoming review of this scheme.

Resources of the judiciary (human/financial/material)

In 2020, the European Commission for the Efficiency of Justice noted that Ireland spent just 0.1% of GDP on its judicial system in 2018, which is the lowest of the 46 jurisdictions. The report also showed Ireland has one of the lowest number of judges, with 3.3 judges per 100,000 people compared to

an average of 21.⁴² In its 2021 Rule of Law Report, the European Commission again criticised Ireland for having the lowest number of judges per inhabitant in the EU, stating that this 'could also affect the efficiency of the Irish justice system'.⁴³ In September 2021, the government announced the nomination of five new High Court judges.⁴⁴ The Judicial Panel Working Group, which was established in 2021 with the purpose of advising on the number and type of judges needed, was due to complete its report in October 2022, but this has been delayed.⁴⁵

The overall budget allocation to the Department of Justice for 2023 is €3.3bn, an increase of 5% from 2022.⁴⁶ A total of €176.5 million was allocated to the courts service in the 2023 budget, which is more than the previous €164 million of the previous 2022 budget, including capital funding of €67 million for 2023.

39 <https://www.mentalhealthreform.ie/wp-content/uploads/2021/04/MHR2021SubmissiononUNCRPDDraftStateReportConsultation.pdf>

40 <https://www.gov.ie/en/publication/1d84e-the-cost-of-disability-in-ireland-research-report/>

41 <https://www.legalaidthboard.ie/en/our-services/differences-between-criminal-and-civil-legal-aid/#whatislegalaidth>

42 <https://rm.coe.int/evaluation-report-part-2-english/16809fc059>

43 European Commission (2021), Rule of Law report. Country Chapter for Ireland (Brussels, 20.7.2021, SWD(2021) 715 final) available at: https://ec.europa.eu/info/sites/default/files/2021_rlr_country_chapter_ireland_en.pdf

44 <https://www.lawsociety.ie/gazette/top-stories/2021/09-september/five-new-high-court-judges-nominated>

45 <https://www.oireachtas.ie/en/debates/debate/dail/2022-05-24/14/?highlight%5B0%5D=judicial&highlight%5B1%5D=working&highlight%5B2%5D=working&highlight%5B3%5D=group&highlight%5B4%5D=work&highlight%5B5%5D=group&highlight%5B6%5D=2022&highlight%5B7%5D=october#s17>

46 https://merriestreet.ie/en/news-room/news/stronger_safer_communities_prioritised_in_justice_budget_2023.174883.shortcut.html

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

There is no formalised training provided to judges when they are appointed to the bench. Historically, the education of members of the judiciary has been carried out by the Association of Judges of Ireland Committee for Judicial Studies. Due to a lack of funding, this Committee organised only one annual training day for the judges of each court and an additional judicial conference day which all judges attend once a year. Judges are also selected to attend conferences and international training events relevant to their area of work.⁴⁷ To ensure justice for all, training of justice professionals on racism, discrimination, and bias is key. INAR has long advocated for the training of justice professionals to ensure that they are fully equipped to deal with a diverse and multicultural Ireland.

The Judicial Studies Committee has been incorporated into the Judicial Council on foot of the Judicial Council Act 2019.⁴⁸

The justice system is not reflective of the diversity that exists in Ireland, which has been highlighted by communities as a barrier to accessing justice. INAR has been advocating for inclusion and diversity in the justice system to ensure that justice is meaningful. Judges play a key role in access to justice for migrants.

In judicial review of detention, removal proceedings, asylum proceedings, family reunification cases, access to effective remedy, judges' practical understanding of the standards and principles on fundamental rights and recent case-law, and of their own role and responsibilities in the protection of these rights, are indispensable. There must be effective and coherent application of EU law on fundamental rights by training judges and other legal practitioners in the target countries; the knowledge of judges, lawyers, prosecutors and other relevant legal practitioners on EU and international law on the fundamental rights of migrants must be increased and networks between national trainers, judges, lawyers, prosecutors and other relevant legal practitioners within the state must be strengthened. Pavee Point emphasised the need for anti-racism training as per Section 42 of IHREC Act (2014)⁴⁹ in line with the forthcoming National Action Plan Against Racism.

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

In February 2021, the Courts Service launched their 2021-2023 strategic plan.⁵⁰ A key element of this plan was to progress the courts' modernisation programme. This programme

47 See <https://aji.ie/supports/judicial-education/>

48 <https://judicialcouncil.ie/judicial-studies-committee/>

49 <https://www.irishstatutebook.ie/eli/2014/act/25/enacted/en/html>

50 <https://www.courts.ie/news/courts-service-strategic-plan-2021---2023-published>

was awarded €2.5 million towards its work in the Department of Justice budget for 2023.⁵¹

The pandemic expedited the use of technology in the courts, with the Civil Law and Criminal Law (Miscellaneous Provisions) Act in 2020, making provision for the use of video links. In civil matters, the judiciary facilitated hearings and motions online via Pexip,⁵² with the exception of jury trials and non-urgent personal injury matters. In criminal matters, accused persons can be arraigned over video link and, if in custody, can attend any hearings and applications via Pexip. Requirements for the same were issued by President of the High Court Mary Irvine in March 2022.⁵³ The number of courtrooms equipped with this technology has increased from 59 in 2019 to 104 in 2021.⁵⁴ This 2020 Act also provides for the use of an audio link only in the definition of electronic communication in s31(6), for hearings by designated bodies.

High Court Practice Direction 98 (2020) allows for bail applications and appeals to be conducted via video link. Despite the lack of other pandemic-era arrangements persisting in the courts, the majority of High Court bail applications are still conducted via video link in Cloverhill Court House. This is despite

the fact that the majority of applicants are on remand in the adjacent Cloverhill Prison.⁵⁵ ICCL is concerned that this over-reliance on technology interferes with applicants' right to participate in these hearings on their liberty.

While IPRT broadly supports the increased use of video links and recognises the benefits that this can bring to prisoners and the overall efficiency of the system, IPRT acknowledges that video links will not always be appropriate in criminal proceedings and where a person is in prison. Caution must be exercised to address the potential impacts of video links on equal access to justice for children and for vulnerable adults, including people with disabilities or cognitive impairments.

The Inspector of Prisons in Ireland (OiP) has identified concerns in recent Covid-19 thematic inspection reports on Cloverhill Prison. OiP notes that "remote court hearings may result in increased unfairness/access to justice issues for prisoners". In particular, prisoners "reported to the Inspection Team that it is difficult to engage with the court proceedings through the video link, with prisoners explaining, "you can't mount a defence from here," "the conversation is just happening in front of me," and "it feels like no one is standing in court for me."

51 <https://www.irishlegal.com/articles/courts-to-receive-eur13m-funding-boost>

52 <https://www.pexip.com/>

53 <https://www.courts.ie/content/requirement-regarding-attendance-remote-hearings>

54 https://www.courts.ie/acc/alfresco/24bce47c-3cc6-4e86-b647-04cdc64c2445/Courts_Service_Annual_Report_2021.pdf#view=fitH

55 <https://www.oip.ie/wp-content/uploads/2021/08/Cloverhill-Prison-COVID19-Thematic-Inspection-Report-2021.pdf>

OiP also noted that research on video-link access to courts has shown that these experiences diminish prisoners' opportunities for engagement with and expressive participation in legal procedures, and they also note that the ECtHR has emphasised the importance of effective participation in remote court proceedings in order to meet the fair trial requirements of ECHR Article 6. OiP accordingly recommended that video link court access not be used as a long-term substitute for a prisoner's right to attend court. In line with Article 6 of the European Convention on Human Rights, all measures must be taken to ensure that a prisoner can effectively participate in remote court hearings.

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

It is essential that the Courts Service develops its website to improve access to persons with disabilities. FLAC recognises that technology may be developed for the Courts Service to allow for work online, so it is imperative that people with visual or motor impairments are not excluded from these.⁵⁶ It has also been noted by Age Action Ireland that it remains critically important that courts and tribunals

maintain and enhance clearly sign-posted and effective offline pathways for access. According to Age Action Ireland, it is estimated that 65% of older persons are digitally excluded, either due to not using the internet or because they have "below basic" skills.⁵⁷ As such, in order to prevent exclusion, enhanced offline access to justice is going to remain important for years to come.

The Programme for a Partnership Government under the heading "Courts and Law Reform"⁵⁸ contains a commitment to the commissioning of an annual study on court efficiency and sitting times, benchmarked against international standards in order to provide accurate measurements for improving access to justice. Comprehensive data is required in relation to lay litigants and persons in receipt of legal aid, persons facing repossession of their family homes or evictions in order to be able to devise accurate and effective measures for improving access to justice.

Other: translation and interpretation

The Courts Service regularly facilitates interpretation services. The provision of the interpretation service is outsourced to private operators, however, anecdotal evidence suggests that the quality of interpretation provided can be patchy. There is a clear need

56 Rei-Anderson, Cody and Reynolds, Graham J. and Wood, Jayde and Wood, Natasha, Access to Justice Online: Are Canadian Court Websites Accessible to Users with Visual Impairments? *Alberta Law Review*, Vol. 55, No. 3, 2018. Available at SSRN: <https://ssrn.com/abstract=3143971>

57 https://www.ageaction.ie/sites/default/files/digital_inclusion_and_an_ageing_population.pdf

58 https://www.merrionstreet.ie/merrionstreet/en/imagelibrary/programme_for_partnership_government.pdf

for standards and regulations in this area in order to ensure that those who do not have sufficient fluency in English can still access justice. IPRT is concerned about reports that certain judges routinely deny in-court interpretation for foreign nationals who have been residents in Ireland for some time. There is an expectation that their English should be of a standard that understands complex legal language easily. In May 2022, comments by a District Court judge were heavily criticised by INAR where she said she was “sick” of defendants requesting interpretation.⁵⁹ This issue of interpretation was raised in IPRT’s recently published report, “Sometimes I’m Missing the Words”: The Rights, Needs and Experiences of Foreign National Prisoners and Minority Ethnic Groups’.⁶⁰ This report highlighted the lack of interpretation facilities within prison, with prisoners and staff forced to rely on other prisoners who can translate, which in turn raises Art.8 concerns.

In 2017, FLAC welcomed the enactment of the Irish Sign Language Act, which made Irish Sign Language an official language of the state and placed an obligation on courts to take the reasonable steps to allow persons competent in Irish Sign Language to be heard in ISL. This includes a duty for public services to provide free interpretation services when accessing statutory services. FLAC also welcomed the

provisions in the National Disability Inclusion Strategy from 2017 to 2021, which included plans to increase the number of sign language interpreters, a registration scheme and quality assurance measures, and professional training for sign language interpreters. These are progressive measures, but it should also be acknowledged that the presence of an interpreter can change the dynamic of legal interactions and court proceedings. It is further noted that there is a lack of awareness among many in the justice system about both deaf people and their language, and the nature of interpreted interaction, and the fact that interpretation services can sometimes create additional barriers for a deaf person to overcome. As such, it is essential that the courts provide effective ISL interpretation or other appropriate mechanisms to accommodate deaf people where necessary.

Free Legal Advice Centres-FLAC notes that the National Disability Authority are engaging with An Garda Síochána and with the Courts Service in relation to developing proposals to improve the response of both organisations in interacting with people with disabilities in accessing the justice system,⁶¹ however data concerning specific progress in this regard is currently unavailable. As well as access to public buildings, the legislation requires access to information, and sectoral plans for

59 <https://www.independent.ie/irish-news/judge-sick-of-defendants-seeking-court-translators-no-need-when-they-go-buy-hooch-41681448.html>

60 <https://www.iprt.ie/iprt-publications/sometimes-im-missing-the-words-the-rights-needs-and-experiences-of-foreign-national-and-minority-ethnic-groups/>

61 National Disability Inclusion Strategy 2017-21 DE

government departments requiring that access for people with disabilities becomes an integral part of service planning and provision. FLAC acknowledges that the Courts Service has appointed a Disability Liaison Officer and disabled access and facilities are included in all court building and refurbishment projects, however this work is ongoing and there is no easily accessible information online that indicates which buildings are accessible or not.⁶² One of the aims of the review should be to ensure that people with a disability can participate fully in the justice system and that disability issues are not considered in isolation, but integrated in all areas of access to justice. Pavee Point has noted that the integration of the values and principles of anti-racism into translation services alongside literacy training and sensitivity is essential.

Fairness and efficiency of the justice system

Length of proceedings

In April 2020, the European Court of Human Rights (ECtHR) delivered its decision in the case of *Keaney v Ireland*. In that case, the applicant claimed that the delay of over 11 years between the date of initiation of proceedings and the date of judgment of final

appeal in the Supreme Court was excessive. The court found that this delay was excessive and a violation of Article 6 of the ECHR. The Court further found that there was no effective remedy for delay of this nature in the Irish courts. The Court noted that Ireland has persistently not met its obligations in this regard and that lengthy delays in litigation were systemic. Although the concurring opinion of Judge O'Leary noted that some progress had been made with the introduction of case management and the expansion of the Court of Appeal, Judge O'Leary was still of the view that Ireland is not doing enough to meet its obligations under Article 6.⁶³ The *Keaney* case was one of many to come before the ECtHR on the length of proceedings in Ireland and *Keaney* was chosen by the Court as a lead case on the issue.

It remains to be seen whether the state's implementation of the *Keaney v Ireland* judgment will be effective and whether this case will lead to systemic reform in terms of length of proceedings.

Delays in court proceedings is an issue that has particularly impacted those in prison. This was a point made by the Inspector of Prisons in its COVID-19 Thematic Inspection Report of Cloverhill in 2021,⁶⁴ where it was noted

62 Report of the Commission on the Status of People With Disabilities

63 See <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-6686084-8895563&filename=Judgment%20Keaney%20v.%20Ireland%20-%20Irish%20law%20does%20not%20provide%20an%20effective%20remedy%20for%20complaints%20about%20excessive%20length%20of%20proceedings.pdf>

64 <https://www.oip.ie/wp-content/uploads/2021/08/Cloverhill-Prison-COVID19-Thematic-Inspection-Report-2021.pdf>

that the Inspection Team was “informed of situations where prisoners had experienced extended periods of time awaiting court dates that had been pushed back. One prisoner stated his trial date was now set for 2022 due to COVID-19-related delays. The Inspection Team spoke with men who had been on remand for up to and including two years. Long remand times for prisoners as a result of COVID-19 have implications both from a human rights perspective for prisoners and for prison management”. Issues with case management, availability of court facilities, and impacts on waiting times should overall be addressed.

Respect for fair trial standards including in the context of pre-trial detention

The average number of people being held in pre-trial detention in Ireland is growing annually, with 584 people held in 2017, 677 in 2018, and 707 in 2019.⁶⁵ This trend looks set to continue and not improve.⁶⁶ In 2021 the number of persons held on remand grew significantly from 615 in January 2021 to 867 in November. The average number held on remand in 2021

was 712 and while this decrease (-3.5%) on the 2020 figure reflects the reduced committals, it is higher than the 2019 figure. There was evidence of a longer duration of remand on average. The proportion of remand prisoners in custody for a period of one year or more increased from 5% of all remand prisoners in March 2020 to 12.7% of all remand prisoners in December 2021.

The Director General of the Irish Prison Service has suggested that a recent feature of remand prisoners is the increasing seriousness of the criminal charges they face,⁶⁷ however there is limited data available to interrogate this. A general lack of data on the use of pre-trial detention makes it difficult to understand what is driving the increase. Ireland does not currently detain the remand prison population separately from the sentenced prison population (and has accordingly maintained its reservation to Article 10.2 of the ICCPR, which demands such separation).⁶⁸ Overcrowding in Irish prisons is cited as a barrier to the separation of remand and sentenced prisoners. The state has one dedicated remand facility,

65 Irish Prison Service, Annual Report 2019, at p.2, available at: https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-2019-Web.pdf

66 See Irish Prison Service, Monthly Information Notes for Year 2020, available at: <https://www.irishprisons.ie/information-centre/statistics-information/monthly-information-note/>. See also IPRT, Progress in the Penal System (PIPS): Assessing progress during a pandemic (2020), at p.224, available at: https://www.iprt.ie/site/assets/files/6845/progress_in_the_penal_system_2020.pdf

67 Irish Prison Service, Annual Report 2019, at p.2, available at: https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-2019-Web.pdf

68 Law Reform Commission Discussion Paper, Domestic Implementation of International Obligations, at p.145, available at: https://www.lawreform.ie/_fileupload/Reports/LRC%20124%202020%20-%20Domestic%20Implementation%20of%20International%20Obligations.pdf

Cloverhill Prison, with a maximum capacity of 431 persons.⁶⁹

There are three recent trends of concern regarding pre-trial detention. Firstly, there has been a 37% increase in the number of women remanded in custody between 2013 and 2019.⁷⁰ Analysis suggests that, in 2016-2019, 26.6% of women on remand had a charge in the category of 'theft and related offences' as their most serious offence. This figure contrasts with only 13% for men.

Secondly, figures available indicate that people are increasingly being remanded into custody for less serious offences. For example, between 2016 and 2019, there was a 56% increase in the number of committals on remand for 'Public Order and Social Codes Offences'.⁷¹

Finally, in 2019, 7.8% (697) of all people committed to prison declared that they were of 'no fixed abode'.⁷²

In its November 2020 report on Ireland, the Committee on the Prevention of Torture (CPT) further noted its concern that there were rising numbers of homeless people with mental illness in prison. The CPT observed that many of these people could be granted bail by the courts but, because of their homeless status and the fact that they were therefore excluded from HSE (Health Service Executive) community mental health services, they were left instead to languish in prison.⁷³

Regarding alternatives to pre-trial detention in Ireland, the main alternatives are for a person to be released on bail, with or without conditions.⁷⁴ A Bail Supervision Scheme (BSS) is in place in certain parts of Ireland for children, which aims to reduce the number of children remanded into custody through provision of specific support. This, in turn, may assist them when granted bail by the courts.⁷⁵ There is no such scheme available for adults, although there is an indication that consideration may

69 See Irish Prison Service, Cloverhill Prison – Operational Capacity, available at: <https://www.irishprisons.ie/prison/cloverhill-prison/>

70 Data not publically available.

71 Conor Gallagher, "Growing number of people in pre-trial custody for minor offences", The Irish Times, 25 November 2020, available at: <https://www.irishtimes.com/news/crime-and-law/growing-number-of-people-in-pre-trial-custody-for-minor-offences-1.4418052>

72 Irish Prison Service, Annual Report 2019, at p.31, available at: https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-2019-Web.pdf

73 Council of Europe, Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 4 October 2019, November 2020, at p.47, available at: <https://rm.coe.int/1680a078cf>.

74 IPRT, Position Paper 11: Bail and Remand, November 2015, at pp.5-7, available at: https://www.iprt.ie/site/assets/files/6363/iprt_position_paper_11_on_bail_and_remand_sml.pdf

75 The BSS is run by Extern, a leading social justice charity in Ireland. More information on the scheme is available here: <https://www.extern.org/bail-supervision-scheme-ireland>

be given to extending the BSS to young adults aged 18-24.⁷⁶

Quality and accessibility of court decisions

Appellants and their representatives should be given access to any previous decisions which may be relevant to their case in quasi-judicial tribunals. Anonymized searchable databases should be established in quasi-judicial tribunals and made available to the public. This was recommended⁷⁷ by the UN Special Rapporteur on Extreme Poverty and Human Rights regarding the Social Welfare Appeals Office following her visit to Ireland in January 2011, yet the suggestion still remains unimplemented.

Corruption of the judiciary

GRECO has criticised Ireland's judicial election process as being overly politicised. However, the Judicial Appointments Commission Bill (2022) is intended to address these concerns.⁷⁸ This bill is currently being considered by parliament,⁷⁹ and its shortcomings have been outlined previously in this submission.

Other

FLAC contributed to the recent Review of the Administration of Justice and welcome a number of its recommendations. However, they have sought consultation in relation to the implementation of its recommendations. Civil society was not strongly represented on the review group. FLAC was especially dismayed to hear from the Minister that legislation is planned in relation to judicial review, as FLAC has particular concerns about those recommendations being implemented. The proposed overdue reform of rules and procedures is very much welcomed by FLAC, but there are some concerns that review recommendations. If implemented, the proposal will put too much onus on an unrepresented litigant to identify, with clarity, their claim. It is vital that these reforms are equality-, human rights- and poverty-proofed as is required by Section 42 of the IHREC Act.

The Public Sector Duty (PSD) was introduced pursuant to section 42 of the Irish Human Rights and Equality Act 2014. It provides an important legislative mechanism for mainstreaming racial and ethnic equality and protecting the human rights of ethnic minorities. In fulfilling their duties under the 2014

76 See Department of Justice, Youth Justice Strategy 2021-2027, at p.23, available at: http://www.justice.ie/en/JELR/Youth_Justice_Strategy_2021-2027.pdf/Files/Youth_Justice_Strategy_2021-2027.pdf

77 <https://www.dfa.ie/media/dfa/alldfawebstimedia/newspress/publications/2011-unhcr-independent-report-mission-to-ireland.pdf>

78 <https://www.oireachtas.ie/en/press-centre/press-releases/20210614-justice-committee-resumes-pre-legislative-scrutiny-of-the-general-scheme-of-the-judicial-appointments-commission-Bill-2020/>

79 <https://www.oireachtas.ie/en/Bills/Bill/2022/42/>

legislation, public bodies, including those involved in the administration of the criminal justice system, must consider the human rights and equality impact of their policies, services, budgets, procedures and practices. The PSD requires public bodies to take a proactive approach to tackling institutional discrimination and promote the mainstreaming of an equality perspective in all their functions. The commitment of the Department of Justice and Equality to upholding and vindicating human and individual rights as a core element of its criminal justice sectoral strategy is welcomed as a means of the department meeting its obligations pursuant to the PSD.

Protective costs orders

Part 11 of the Legal Services Regulation Act 2015, Legal Costs in Civil Proceedings, sets out when a court may order someone involved in proceedings to pay the costs of a case, including the costs of another party. Section 169 provides that a party who is entirely successful in civil proceedings is entitled to an award of costs against the unsuccessful party. However, a court may choose not to make this order in certain instances which are outlined in the same section. These do not include cases which seek to clarify the law in the public interest. In the experience of FLAC, the costs incurred by litigants in vindicating their rights is one of the biggest barriers to accessing justice. Not only do applicants incur their own legal fees, they also run the risk of incurring those of their opponent. Public interest litigation is inherently unpredictable, as the case is often being litigated because the law is not clear and needs clarification. In the Irish legal

system, such cases are almost always brought by an individual who is personally concerned with the outcome.

Such cases are usually against the state, because ultimately it is the responsibility of the state to protect, defend, and promote the rights of its people. As is the nature of such examinations of the law, the public interest litigant is bringing a benefit to the public but, in facing the significant resources of the state, bears a personal risk over and above that normally borne by someone who goes before the courts. FLAC would like to see the exceptions to the rule that costs ‘follow the event’ expanded to include Protective Costs Orders (PCO) for litigants taking cases that are in the public interest. This would provide certainty as to costs at the outset of litigation. Such an order could provide that there will be no order as to costs, that the plaintiff’s liability for costs will be capped at a certain amount, or that the defendant will pay costs, even if the plaintiff is unsuccessful. In practice, while the Irish courts have occasionally departed from the usual costs rules in public interest cases, they have not developed specific rules for public interest litigation comparable to other common law jurisdictions. FLAC is concerned that the availability of PCOs is not specifically recognized in legislation. FLAC recommends that the courts should be specifically authorised to take into account the public interest nature of a case and that rules on costs be extended to expressly include the granting of Protective Costs Orders in public interest law cases.

Potential restrictions on access to judicial review

The Planning and Development Bill (2022)⁸⁰ contains concerning plans to restrict access to judicial review in planning matters, rowing back on the significant progress Ireland has made to standing and cost rules in recent years as a result of its adoption of the Aarhus Convention.

The bill stipulates that applicants for judicial review will have to demonstrate a “sufficient interest”, with NGOs, residents’ groups or other similar bodies expected to be incorporated as a company, have protection of the environment as part of its corporate constitution, have at least 10 members and to have passed a resolution authorising the bringing of proceedings. Residents groups can still take proceedings but if they do not comply with these rules, they will have to sue individually or collectively under their own names. A new costs protection mechanism will also be introduced, but the amounts covered have not yet been established in the bill.⁸¹

Time limits on judicial review proceedings

Mercy Law Resource Centre (MLRC) notes that many of their clients seek to challenge the decision of a public body, often a local authority through the use of the judicial review procedure. In most instances an

application for leave for judicial review must be made within three months from the date on when the grounds for the application first arose. MLRC frequently advises clients on the possibility of challenging a decision by way of judicial review; we have brought several challenges by way of this procedure. MLRC has seen the obstacles that the three-month time limit presents for individuals who are dealing with the impact of homelessness or acute housing difficulties. If, for example, a person presented to the local authority as homeless, seeking emergency accommodation and was refused, they may have a decision that can be challenged. However, difficulties arise when that person must also deal with the struggle and chaos of finding somewhere to sleep for the night. Identifying a decision that may be legally challengeable will not typically be at the forefront of their considerations.

A further difficulty arises when a person presents as homeless to the local authority on a number of occasions and is continually refused emergency accommodation. It brings up the question of whether the first refusal or the latest refusal can be challenged. The formal judicial review procedure makes no allowances for these difficulties that an applicant may face and does not marry easily with the statutory provisions in relation to the homeless assessment. A further example of the challenges the three-month time-limit presents is when an individual has had a decision made in

80 <https://www.gov.ie/en/publication/c6f60-draft-planning-and-development-bill-2022/>

81 <https://www.irishtimes.com/ireland/housing-planning/2023/01/26/government-publishes-contentious-legislation-to-reform-planning-process/>

relation to their housing matters and spends considerable time seeking to resolve it through advocacy and engagement of local councillors. Oftentimes, by the point at which they access the services of MLRC, the window for any potential challenge will have passed and it will be difficult to make out ‘good and sufficient reason’ why the time limit should be extended.

Absence of an alternative forum for resolution of housing disputes

As part of the UN Special Rapporteur on adequate housing’s report on access to justice for the right to housing, the Irish government was given a questionnaire and an opportunity to respond. The Irish government was asked if it was “aware of examples in your country of community-based initiatives to provide hearings and remedies for the right to housing outside formal court or tribunal process”. Ireland’s response was that they “were not aware of any such initiatives”.⁸²

MLRC frequently engages with local authorities on housing matters and pursues informal appeals against refusals of housing entitlements through those authorities. MLRC notes that there is wide variation in how such appeals are processed, and that there is a general lack of transparency and a formalised process to be followed should an applicant wish to appeal a negative decision. MLRC notes that clients who are refused a service or an entitlement are frequently not informed that they have any

right of appeal, a right that arises by virtue of the right to fair procedures. Our experience is that appeals can be lengthy to determine and there is in some instances a failure to apply independent mechanisms for such appeals. We note that the new evictions procedure provided for in Part 2 of the Housing (Miscellaneous Provisions) Act 2014,⁸³ which provides for an internal appeals procedure with respect of tenancy warnings, commenced on April 13th, 2015.

MLRC would welcome the development of less formal and community-based initiatives designed to protect the right to housing. A more cost-effective mechanism of resolving disputes with local authorities with respect to housing matters may be through a tribunal or appeals office. This may make a remedy more accessible and formalised and reduce the inconsistencies and related unfairness of the current procedures.

Multi-party actions

A further barrier for litigants whose cases advance the public interest is the absence of multi-party actions. Multi-party actions (MPAs) can be an important vehicle for enhancing access to legally enforceable remedies, particularly for vulnerable groups. By taking proceedings as a group, litigants have greater combined resources that may enable them to deal with the challenges of legal action collectively and allow them to gain strength

82 <https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/Justice/Ireland.pdf>

83 <https://www.irishstatutebook.ie/eli/2014/act/21/enacted/en/html>

in numbers. MPAs equally allow groups to pursue litigation where the individual compensation might be nominal e.g. restoration of a small social welfare benefit or refund of the cost of goods or services purchased.

MPAs are also seen to increase the efficiency of the courts and to reduce the costs of legal proceedings for all parties by enabling common issues to be dealt with in one action. Ireland currently has no formal rules for MPAs, save for procedures around representative actions and test cases. As these procedures are not specifically designed to operate as class actions, their use is not as common or popular as class actions in jurisdictions that have dedicated procedures. Both representative actions and test cases are subject to certain limitations that deter their use. The Law Reform Commission produced a report in 2005 on multi-party litigation which concluded that ad hoc arrangements have been used to deal with multi-party litigation and that a more structured approach should be available based on principles of procedural fairness, efficiency and access to justice. The Superior Court Rules Committee has the power of making and changing the rules of the superior courts but has not as yet implemented the Law Reform Commission (LRC) proposal. FLAC recommends that the LRC recommendations on multi-party actions be given due consideration with a view to the introduction of a new litigation procedure to provide for class actions.

FLAC further recommends examination of the following issues which may increase access to justice for disadvantaged groups and individuals:

- developing the laws on standing to allow NGOS bringing actions on behalf of their members;
- allowing a greater use of the amicus curiae application;
- increasing the discretion of a judge to award costs to an unsuccessful litigant;
- modifying the doctrine of mootness so that courts can deal with issues which may be moot for the immediate parties, but which may continue to affect many others;
- devising more effective methods of extending the benefits of judicial decisions to those who are not directly party to the litigation;
- examining the rules of funding of litigation.

Systemic Failures in the criminal judicial system

In 2011, Shane O'Farrell was killed in a hit-and-run incident in Monaghan. The individual responsible for his death had broken numerous bail conditions and should not have been free

at the time of the killing.⁸⁴ There is extensive evidence of a failure within the criminal justice system in this case. The current deputy prime minister said that the case “reveals shocking malpractice and dysfunction in the criminal justice system.”⁸⁵

In 2018 and 2019, both houses of the Irish parliament,^{86,87} voted to hold a public inquiry into the circumstances surrounding Mr. O’Farrell’s death; this, however, has not been progressed by the government. In its place, the government commissioned retired district court Judge Gerard Haughton to carry out a scoping exercise, conducting a preliminary review to ascertain whether there were any circumstances surrounding the death of Mr O’Farrell which required further inquiry beyond those already carried out. The Haughton Report was received by the Minister for Justice and the O’Farrell family in 2022. The family have raised concerns about the report and at present it remains unpublished. The board of the Courts Service has been warned about potential reputational damage from the impending publication of the report.⁸⁸ The family of Mr. O’Farrell continues to demand that the full Garda Síochána Ombudsman Commission (GSOC) public interest report into the killing is provided to them and that the parliamentary decision to hold a full public enquiry is

respected in order to vindicate their rights under Article 2 of the ECHR.

Anti-corruption framework –

Key recommendations

- Publish and enact comprehensive updated public ethics legislation as soon as possible.
- Conduct a public consultation on national measures required to address SLAPP litigation and associated NDAs and implement stringent dissuasive penalties with respect to those pursuing SLAPPs as a measure to deter the public and organisations from exercising their rights to access to justice and public participation, as well as access to information rights.
- Instruct local authorities to fully enforce part 15 of the Local Government Act 2001 with regard to asset disclosure of county and city councillors.

84 <http://www.justiceforshane.ie/>

85 <https://www.oireachtas.ie/en/debates/debate/dail/2017-05-03/2/?highlight%5B0%5D=richard&highlight%5B1%5D=bruton>

86 <https://www.oireachtas.ie/en/debates/debate/dail/2018-06-14/21/>

87 <https://www.oireachtas.ie/en/debates/debate/seanad/2019-02-13/10/>

88 <https://www.oireachtas.ie/en/debates/debate/seanad/2019-02-13/10/>

Levels of corruption

In 2022, government minister Robert Troy resigned when it was uncovered that he had failed to properly account for a number of properties in which he had a financial interest.⁸⁹ It was also suggested that his sale of a house to a local municipality in his constituency had not been properly accounted for.⁹⁰ The municipality later claimed that the records had been “lost”.⁹¹ The case exposed the weakness of not only the asset declaration regime, but also the absence of consequences for improper or erroneous declaration findings, as omissions can simply be “corrected” without penalisation.⁹² The Standards in Public Office Commission (SIPO) stated that “without investigation” it could not determine if the Minister had broken public ethics guidelines.⁹³ The government announced that the sale of properties to a public body by an elected representative would be included in the ongoing review of ethics legislation.⁹⁴

In January 2023, Damien English, the Minister of State at the Department of Enterprise, Trade and Employment, resigned his ministerial position but not his seat in parliament.⁹⁵ This resignation occurred after it emerged that he had provided incorrect information to local authorities in respect of a planning application in 2008.⁹⁶ He failed to declare his ownership of this property in his annual returns for a decade.⁹⁷

Framework to prevent corruption

Integrity framework including incompatibility rules (e.g.: revolving doors)

In 2021, the government announced a review of Ireland’s existing statutory framework for Ethics in Public Life.⁹⁸ The Review of Ethics Legislation will seek to respond to outstanding recommendations of the Moriarty and Mahon tribunals. The government has also stated that the review will take account of more recent developments including:

89 <https://www.irishtimes.com/politics/2022/08/22/robert-troy-property-controversy-a-timeline/>

90 <https://www.ontheditch.com/council-paid-troy-more/>

91 <https://www.ontheditch.com/robert-troys-annual-asset-declarations/>

92 <https://www.irishexaminer.com/opinion/commentanalysis/arid-40943237.html>

93 <https://www.irishexaminer.com/news/politics/arid-40952780.html>

94 <https://www.irishtimes.com/politics/2022/08/17/tanaiste-has-total-confidence-in-robert-troy-amid-questions-over-property-interests/>

95 <https://www.rte.ie/news/ireland/2023/0112/1346222-english-resignation/>

96 <https://www.ontheditch.com/damien-english-planning-permission/>

97 <https://www.ontheditch.com/damien-english/>

98 <https://www.gov.ie/en/press-release/aec32-minister-mcgrath-launches-public-consultation-on-review-of-ethics-legislation/>

- the ‘Hamilton Report’ recommendations on preventing economic crime and corruption;
- the Council of Europe’s Group of States against Corruption (GRECO) recommendations on reform of Ireland’s statutory framework for ethics;
- the Standards in Public office Commission’s experience of administering the current framework.

The Hamilton Report’s⁹⁹ recommendations on the establishment of an Advisory Council against Economic Crime and Corruption has recommended the inclusion of a worker representative. An Irish Congress of Trade Unions (ICTU) representative was appointed as one of the civil society representatives in May 2022.

According to NGOs, the absence of an updated legal/ethical framework for public officials following the lapse of the Public Sector Standards Bill 2015 has made it extremely difficult to hold public officials to account for their actions. This includes actions taken by public officials to put in place contracts (Service Level Agreements) with NGOs, which prohibit the use of funding for any activity that involves criticism of government policy, effectively limiting the scope, and nature of NGO advocacy work. It also includes threats, either implicit or explicit, that receipt of statutory funding will

be contingent on not expressing critical views on government policy.

Despite the urgency in the need for reform in this area, there have been no further publicly announced developments since the initial consultation closed in January 2022. It is reported that the government will seek to publish the findings of the consultation and a draft Bill in Q1 of 2023.¹⁰⁰

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

The Lobbying Register, which was established consequent to the Regulation of Lobbying Act in 2015, does not allow for searches against Designated Public Officials (DPOs) – which impedes the practical ability to determine the lobbying focus on key officials. The system also does not capture the internal effect of lobbying more junior members of staff who may have been targeted by lobbying to DPOs. A number of key bodies and agencies are also excluded from the lobbying register – e.g. An Bord Pleanála and The Environmental Protection Agency (EPA).

The Regulation of Lobbying (Amendment) Bill 2022, which is currently before parliament, enhances certain aspects of the principal act by increasing the type of groups which

99 <https://assets.gov.ie/99833/2f596019-69f3-444a-b2c6-2f65c26cdc7f.pdf>

100 <https://www.oireachtas.ie/en/debates/question/2022-11-09/41>

are subject to its provisions and improves the operation and enforcement of section 22 of the principal Act, which deals with restrictions on post-term employment as a lobbyist.¹⁰¹

Political donations are governed by the 1997 Electoral Act¹⁰² and the 2001 Electoral (Amendment) Act and public financing of parties is regulated by the Oireachtas (Ministerial and Parliamentary Activities) (Amendment) Act 014.¹⁰³ Records of both are published by the Standards in Public Office Commission (SIPO) alongside individual asset declarations for elected representatives.¹⁰⁴ The records of asset declaration, as required for county and city councillors, under the Local Government Act 2001¹⁰⁵ remain patchy and are the responsibility for each individual county or city council.

Rules on preventing conflict of interests in the public sector

The government has voted to delay or have not progressed a number of opposition-tabled bills on conflict of interest which have received parliamentary approval, including the Regulation of Lobbying (Amendment) Bill 2020¹⁰⁶ and the Regulation of Lobbying (Post-Term Employment as Lobbyist) Bill 2020.¹⁰⁷ These bills remain within the parliamentary process and have not become law. The Regulation of Lobbying (Amendment) Bill 2022, which is currently before parliament, enhances certain aspects of the principal lobbying regulation act expanding the scope of groups which are subject to its provisions and improves the operation and enforcement of section 22 of the principal act, which deals with restrictions on post-term employment as a lobbyist.¹⁰⁸

In 2022, the national planning authority, An Bord Pleanála (APB), was embroiled in a serious controversy¹⁰⁹ with respect to undeclared conflicts of interest on a number of planning

101 <https://www.oireachtas.ie/en/Bills/Bill/2022/85/?tab=Bill-text>

102 <https://www.sipo.ie/acts-and-codes/guidelines/donations/Guidelines-for-political-parties-on-donations-and-prohibited-donations.pdf>

103 <https://www.sipo.ie/reports-and-publications/state-financing/>

104 <https://www.sipo.ie/reports-and-publications/annual-disclosures/>

105 <https://www.irishstatutebook.ie/eli/2015/si/29/made/en/print>

106 <https://www.oireachtas.ie/en/Bills/Bill/2020/62/>

107 <https://www.oireachtas.ie/en/bills/bill/2020/49/?highlight%5B0%5D=regulation&highlight%5B1%5D=lobbying&highlight%5B2%5D=post&highlight%5B3%5D=term&highlight%5B4%5D=employment&highlight%5B5%5D=lobbyist&highlight%5B6%5D=bill&highlight%5B7%5D=2020>

108 <https://www.oireachtas.ie/en/Bills/Bill/2022/85/?tab=Bill-text>

109 <https://www.ontheditch.com/abp-deputy-chairperson-voted-build-to-rent-application-brothers-firm/>

decisions¹¹⁰ and other matters. The controversy resulted in the deputy chairperson of ABP resigning his position.¹¹¹ As a response to the controversy, the Minister for Housing commissioned a senior council to compile a report on the allegations of misconduct.¹¹² The report was submitted to the Minister for Housing in July.¹¹³ Based on the findings, a file was sent to the Director of Public Prosecutions, who recommended that charges be filed against the former deputy chairperson.¹¹⁴ In December 2022, the Minister for Housing was criticised by the opposition for using the excuse of “needing to rebuild public trust” in APB to rush through a number of controversial changes to the appointments system to the board. The minister was accused of leaving the board open to charges of politicisation and further conflict of interest accusations around Ministerial appointments have been revised.¹¹⁵

Measures in place to ensure whistleblower protection and encourage reporting of corruption

The government has completed, behind schedule, the transposition of EU directive 2019/1937 on protected disclosures with the passage of the Protected Disclosures (Amendment) Act 2022,¹¹⁶ which establishes the Office of the Protected Disclosures Commissioner and expands protections for whistleblowers. The EU opened infringement proceedings against Ireland in 2022 for not transposing the directive within the agreed timetable (INFER(2022)0098).¹¹⁷ These proceedings are currently open. The government chose to derogate from the directive in a number of areas which would have served to strengthen protections for whistleblowers, e.g. limiting the requirements to establish internal whistleblowing channels to companies with more than 49 employees. ICCL and others called on the government to reverse this

110 <https://www.irishexaminer.com/news/arid-40975796.html>

111 <https://www.irishtimes.com/ireland/housing-planning/2022/07/08/paul-hyde-resigns-from-an-bord-pleanala-following-allegations-of-conflict-of-interest/>

112 <https://www.gov.ie/en/press-release/d34de-statement-from-the-department-of-housing-local-government-and-heritage/>

113 <https://www.irishexaminer.com/news/arid-40928732.html>

114 <https://www.irishexaminer.com/news/arid-40979903.html>

115 <https://extra.ie/2022/12/15/news/housing-minister-denies-power-grab>

116 <https://www.oireachtas.ie/en/Bills/Bill/2022/17/>

117 https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?typeOfSearch=true&active_only=1&noncom=1&r_dossier=&decision_date_from=&decision_date_to=&EM=IE&title=&submit=Search&lang_code=en

decision and further strengthen whistleblower protections.¹¹⁸

Investigation and prosecution of corruption

Effectiveness of investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds

The ineffectiveness of the asset disclosure regime for elected officials has been highlighted by the Robert Troy and Damien English cases as outlined above. In addition to this, asset declaration record-keeping by local authority politicians, which is required by part 15 of the Local Government Act 2001 is patchy with many records missing, incomplete and difficult to assess.¹¹⁹

Media environment and freedom of expression and of information

Key recommendations

- Publish and enact legislation re-forming defamation laws and related NDA restrictions as a matter of urgency.
- Progress the review of the Freedom of Information system to ensure a regime that is transparent, user-friendly and accessible.
- Ensure that in any action designed to counter hate speech, whether by the Media Commission, the Electoral Commission or forthcoming incitement-to-hatred legislation, fully respects the right to freedom of expression.

Media and telecommunications authorities and bodies

Independence, enforcement powers and adequacy of resources of media and telecommunication authorities and bodies

118 https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/reports/2021/2021-12-16_report-of-the-joint-committee-on-the-pre-legislative-scrutiny-of-the-general-scheme-of-the-protected-disclosures-amendment-Bill-2021_en.pdf

119 <https://www.oireachtas.ie/en/debates/question/2022-12-06/212/?highlight%5B0%5D=r%C3%83%C2%B3is%C3%83%C2%ADn>

The Future of Media Commission was established by the government in 2020 to examine the future of the media in Ireland, including Ireland's public service broadcasters, commercial broadcasters, print, and online media platforms.¹²⁰ The Commission's final report was published in July 2022¹²¹ and contains over 50 recommendations on the structure and financing of media in Ireland. The report recommends moving away from the "television licence fee" model of funding public broadcasting to one of direct exchequer funding. However, the government rejected the recommendation to abolish the licence fee model and recommended direct funding. An expert group was subsequently established and charged with introducing reforms which excluded the recommendation of direct funding, the only one of five to be rejected.¹²²

Other

As previously mentioned, the Future of Media Commission report recommended the establishment of a new body, The Media Commission.¹²³ This commission will be the regulatory body for online media, the licensing

authority for radio and television, the training and development agency and the grant aiding body for a number of current and new schemes. The National Union of Journalists has called for greater transparency and direct involvement of industry voices, including trade unions and civil society, in determining the criteria for grants it is proposed that the commission will administer.¹²⁴

Pluralism and concentration

Levels of market concentration

There is a high level of concentration of ownership in the print media sector, notably in the regional press sector,¹²⁵ with Mediahuis and Formpress being the two largest players in the regional/local market.¹²⁶

Rules governing and safeguarding the pluralistic media market, and their application (including regulating mergers, acquisitions and other ownership changes)

The Competition and Consumer Protection Commission (CPCC) has approved

120 <https://futureofmediacommission.ie/#>

121 <https://www.gov.ie/en/publication/ccae8-report-of-the-future-of-media-commission/>

122 <https://dublinfreelance.org/updates/nuj-slams-govt-decision-to-reject-broadcasting-reforms/>

123 <https://www.gov.ie/en/publication/ccae8-report-of-the-future-of-media-commission/>

124 https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_tourism_culture_arts_sport_and_media/submissions/2022/2022-11-24_opening-statement-seamus-dooley-irish-secretary-national-union-of-journalists-nuj_en.pdf

125 <https://mural.maynoothuniversity.ie/15086/1/Kerr%20The%20Media%20in%20Ireland%20V4.pdf>

126 <http://www.mediaownership.ie/list.php?media=newspaper&market=local>

acquisitions of regional newspaper titles¹²⁷ by a dominant player and has adopted a narrow view of the market. The NUJ has expressed concern at these acquisitions¹²⁸ and has noted that its online presence renders the focus on geographical markets outdated.

Transparency of media ownership

The transparent allocation of state advertising (including any rules regulating the matter)

Greater clarity is needed on the decision-making process which informs which media outlets receive state/public advertising and the criteria used to allocate the same. The use of commercial brokers to place advertisements on behalf of the state and state agencies is a concern. One agency is owned and controlled by a company which itself owns a significant number of regional newspaper titles. In 2022, the NUJ unsuccessfully requested a review of the measures put in place by CPCC, and aimed to avoid potential conflicts of interest or the perspective of conflicts of interests.¹²⁹

Public service media

Independence of public service media from governmental interference

There is no evidence of direct government interference. In Autumn 2022, the parliamentary committee on broadcasting invited¹³⁰ RTÉ and Virgin Media to discuss editorial matters. Both organisations declined to appear before the committee. The failure to provide adequate funding and to reform the licence collection system has had an impact on the main public service broadcaster RTÉ. As of January 2023, the government has not provided information on long term proposals for funding of public service broadcasting. The NUJ has viewed this action as an impediment to securing the future viability of public service broadcasting.

Independence of public service media from economic interference

The failure to provide adequate funding and to reform the licence collection system has had an impact on the main public service broadcaster RTÉ.¹³¹ As of January 2023, the government has not provided information on long term proposals for funding of public service broadcasting.

127 <https://www.ccpc.ie/business/ccpc-requires-commitments-to-secure-approval-for-acquisition-of-the-mid-land-tribune/>

128 <https://www.nuj.org.uk/resource/nuj-expresses-concern-over-proposed-sale-of-mayo-news.html>

129 https://www.oireachtas.ie/en/debates/debate/joint_committee_on_tourism_culture_arts_sport_and_media/2022-11-24/speech/82/

130 <https://www.irishexaminer.com/news/politics/arid-40982258.html>

131 <https://www.thejournal.ie/licence-fee-rte-utterly-broken-dee-forbes-oireachtas-committee-5659707-Jan2022/>

Editorial standards (including diversity and non-discrimination)

In June 2022, the popular national phone-in discussion radio programme LiveLine on the state broadcaster RTÉ Radio 1 held a number of days of discussion on the issues of gender identity and transgender people in Irish society. The programmes resulted in a large degree of public commentary, with over 1,000 complaints being made to RTÉ.¹³² The controversy around the programmes centred on the fact that degrading offensive tropes and language were used about transgender people, which went unchallenged by the host of the programme over a number of days. As noted by the Trans Equality Together Coalition, it is suspected that calls to the programme originated from and were coordinated by anti-trans organisations.¹³³ RTÉ's use of the logo of one such organisation in its promotion of the programme was also cited as a serious issue. The controversy resulted in Dublin Pride ending their media partnership with RTÉ.¹³⁴ In a statement, Dublin Pride stated, "We believe that fundamental human rights should not be debated, and we believe that every one of us, especially state-sponsored organisations, have a duty and a responsibility to protect and safeguard the most vulnerable and marginalised members of our society."

At a parliamentary hearing in September 2022,¹³⁵ RTÉ denied any that editorial, diversity, inclusion, or other standards had been breached. While intersex is rarely mentioned, this negatively affects intersex people too as while intersex and transgender are not the same thing, many intersex people are assigned a sex that is incongruent with their gender identity, often followed by irreversible genital surgery and hormonal interventions, essentially creating a transgender person. Many intersex people display physical attributes typically associated with a sex other than the one they were assigned at birth. Thus, the current anti-trans media climate contributes to creating an environment that is also hostile to intersex people.

Other

In December 2022 RTÉ reported a media gender pay gap of 13.03pc. This is reduced to 6.79pc when overtime roles (male dominated) are excluded.¹³⁶

132 <https://www.irishexaminer.com/news/arid-40897364.html>

133 <https://www.irishtimes.com/opinion/letters/2022/06/17/trans-equality-together-responds-to-liveline/>

134 <https://gcn.ie/dublin-pride-interview-rte-partnership/>

135 <https://www.irishtimes.com/ireland/2022/09/24/rte-received-nine-formal-complaints-about-liveline-shows-on-transgender-issues/>

136 https://about.rte.ie/wp-content/uploads/2022/12/RTE-Gender-Pay-Gap-Report_19122022.pdf

Online media

Competence and powers of bodies or authorities supervising the online ecosystem

As noted previously, the Media Commission will have a vast workload, and as of January 2023 it is the view of the NUJ that it does not have the resources to carry out its extensive functions, despite being allocated €7.5m in Budget 2023 to cover establishment and operational expenses.¹³⁷

Safety and protection of journalists and other media activists

Frequency of verbal and physical attacks

There has been an increase in online abuse, notably of women journalists.¹³⁸ There have been verbal attacks on photographers and camera crews, notably outside courts, from far-right groups.¹³⁹

Rules and practices guaranteeing journalist's independence and safety

While the overall situation regarding media in Ireland remains positive, the 2022 RSF Press Freedom Index specifically cited Ireland's

defamation laws as contributing negatively to the country's rankings in the index.¹⁴⁰ A review of Ireland's defamation laws has been ongoing since 2016. A 2019 report on the review of the 2009 Defamation Act was finally published in March 2022,¹⁴¹ and made a number of recommendations for reform. These include:

- An end to juries in defamation cases
- Easier access to justice for those who feel their reputation is unfairly attacked
- Clearer protection for responsible public interest journalism
- Reducing legal costs and delays
- Measures to encourage prompt correction and apology, where mistakes are made, and new measures to combat abuse
- Making it easier to grant orders directing online service providers to disclose the identity of an anonymous poster of defamatory material

While the long-awaited publication of the review is welcome, as of January 2023 no legislation to amend the law as it currently stands has been published. Serious concerns have also

137 https://about.rte.ie/wp-content/uploads/2022/12/RTE-Gender-Pay-Gap-Report_19122022.pdf

138 <https://www.irishtimes.com/news/crime-and-law/courts/circuit-court/man-who-harassed-six-female-writers-and-journalists-online-is-jailed-1.4083166>

139 <https://extra.ie/2022/10/16/news/gardai-monitoring-rte-campus-as-right-wing-protesters-harass-workers>

140 <https://rsf.org/en/index?year=2022>

141 <https://www.irishexaminer.com/news/arid-40819581.htmla>

been raised by a number of legal experts on the proposals to end the use of juries in defamation cases who have stated that it would undermine the principles of Ireland's common law legal.¹⁴²

It has also been highlighted that the promised reforms in this area will not prevent the use of NDAs (non-disclosure agreements) to silence individuals who have been subject to SLAPPs. This matter was raised under parliamentary privilege in October 2022, where an organisation and individual alleged to have engaged in this behaviour were named by a TD.¹⁴³

In November 2022 at a meeting of the Oireachtas committee for European Affairs European Commissioner for Justice Didier Reynders highlighted the need for a review of Ireland's defamation laws is urgent given the chilling effect the law as it stands has on journalists.¹⁴⁴

There has been a notable increase in anecdotal reports of the SLAPP litigation being pursued in environmental cases and against media organisations.¹⁴⁵

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists and media activists

The NUJ and media organisations met with the Assistant Garda Commissioner and her team¹⁴⁶ in 2022 and secured support for the establishment of an inter-departmental and agency committee to monitor journalist safety, threats, and to promote awareness of abuse and the need for safety for journalism.

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

There has been a public debate in the last year regarding the use, or threat of use, of defamation lawsuits by politicians to inhibit reporting and against other elected officials.¹⁴⁷ The prospect of large damages being awarded against a defendant and high court costs are cited as reasons why individuals and organisations are unwilling to pursue the matter in court. It has also been noted by the NUJ that the high cost of defamation cases leads to out-of-court settlements and a reluctance on the part of media organisations to defend actions.

142 <https://www.irishexaminer.com/news/arid-40819581.html>

143 <https://www.thejournal.ie/neasa-hourigan-dail-slapps-5903822-Oct2022/>

144 https://www.oireachtas.ie/en/debates/debate/joint_committee_on_european_union_affairs/2022-11-24/2/

145 <https://www.irishtimes.com/politics/2022/10/22/the-big-chill-the-silencing-effect-of-sinn-fein-legal-threats-against-politicians/>

146 <https://www.nuj.org.uk/resource/irish-govt-urged-to-act-on-online-abuse-of-journalists.html>

147 <https://www.irishtimes.com/politics/2022/10/22/the-big-chill-the-silencing-effect-of-sinn-fein-legal-threats-against-politicians/>

Confidentiality and protection of journalistic sources (including whistleblower protection)

The General Scheme of the Garda Síochána (Powers) Bill¹⁴⁸ provides for a general search warrant provision, as recommended by the Law Reform Commission (LRC). However, Head 15(6) of the draft bill is not in line with the LRC's recommendation that urgent applications should be made to the High Court, not the District Court. It is questionable whether such an application would be appropriate at the District Court level. Clarification on why LRC's recommendation was departed from in this instance is needed. In addition, the provisions under Head 15 failed to take into account a recent High Court case concerning a journalist who refused to give the police the password to his phone, and the comments made by Mr Justice Garrett Simmons, who warned:

“The interpretation of the legislative provisions governing search warrants contended for by both parties has the consequence that there is, arguably, no statutory procedure prescribed under domestic law whereby the right to protection of journalistic sources is attended with

legal procedural safeguards commensurate with the importance of the principle at stake. This might well represent a breach of the European Convention on Human Rights. A District Court judge who has to consider an application for a search warrant, under this Head, should have to consider additional legal procedural safeguards in respect of journalists and publishers who have a constitutional right to protect their sources but who may find themselves subjected to a search.”¹⁴⁹

This ruling was reversed by the Court of Appeal in *Corcoran & Oncor Ventures Ltd v Commissioner of An Garda Síochána* in April 2022.¹⁵⁰

Access to information and public documents

Following on from a political controversy in the summer of 2021 related to the proposed appointment of a former government Minister to a UN Special Envoy role,¹⁵¹ the government announced a review of the 2014 Freedom of Information Act.¹⁵² The review, which is being led by the Department of Public Expenditure and Reform, remains ongoing as of January 2023.¹⁵³

148 <https://www.gov.ie/en/press-release/6ed9f-garda-powers-to-be-modernised-and-updated-under-new-Bill-from-minister-humphreys/>

149 <https://www.irishexaminer.com/news/courtandcrime/arid-40200825.html>

150 <https://www.bailii.org/ie/cases/IECA/2022/2022IECA98.html>

151 [TheJournal.ie; September 6th 2021 "Zapponegate: Ex-Minister texted Coveney to say thanks for 'incredible opportunity' in March"](#)

152 [Freedom of Information Act \(2014\)](#)

153 <https://www.oireachtas.ie/en/debates/question/2022-11-15/112/>

Freedom of expression and of information

Abuse of criminalisation of speech

The Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022 was published in October 2022.¹⁵⁴ The bill seeks to introduce hate crime legislation in the Irish system and review the provisions of the Incitement to Hatred Act (1989).¹⁵⁵ While the need for reform has been raised by multiple stakeholders,¹⁵⁶ there is a need to ensure that legislation seeking to criminalise any form of speech respects the right to freedom of expression. The proposed definition of hatred in this legislation has changed from the draft bill which was published in 2021.¹⁵⁷ While the new definition is in line with a reference to hatred in the preamble to the Council Framework Decision 2008/913/JHA of 28 November 2008 (Framework Decision),¹⁵⁸ it is not considered to be a definition as such within that decision. The Framework Decision is drafted in a broad way so that it can be applied in a context-specific manner in different states.

It has been recommended that this provision be replaced with the definition of hatred provided by the Council of Europe Commission against Racism and Intolerance (ECRI) and endorsed by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. It is worded as follows:

“Hatred’ shall mean a state of mind characterised as intense and irrational emotions of opprobrium, enmity and detestation towards the target group.”¹⁵⁹

Civil society has also called on the government to ensure that the new bill is only one pillar of a suite of measures necessary to combat hate speech. Other forms of hate speech which might cause deep offence, for example, but do not reach a criminal threshold should be combated by other means, including education, monitoring, alternative remedies, and an enabling environment for powerful counter-speech.

A further example of the “abuse of criminalisation of speech” is the reliance on anti-social

154 <https://www.oireachtas.ie/en/Bills/Bill/2022/105/>

155 <https://www.irishstatutebook.ie/eli/1989/act/19/enacted/en/print>

156 See e.g. ECRI, Fifth report on Ireland (adopted on 2 April 2019 / published on 4 June 2019), para 34 -35.

157 <https://www.gov.ie/en/press-release/48cb5-tough-sentences-for-hate-crimes-under-new-Bill-from-minister-mcentee/?referrer=http://www.justice.ie/en/JELR/Pages/PR21000084>

158 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008F0913>

159 ECRI, ECRI General Policy Recommendation No. 15 on Combating Hate Speech, adopted on 8 December 2015, referencing Principle 12.1 of the Camden Principles on Freedom of Expression and Equality. Available at: www.article19.org/data/files/medialibrary/1214/Camden-Principles-ENGLISH-web.pdf and <https://rm.coe.int/ecri-generalpolicy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

behaviour orders (ASBOs) pursuant to section 115 of the Criminal Justice Act, 2006. In *Tallon v Director of Public Prosecution* (2022)¹⁶⁰ the court struck down an ASBO as disproportionately infringing freedom of expression. The case concerned a Christian preacher in Wexford town who had been subjected to a ban after allegedly expressing homophobic, racist and anti-abortion views in the town for hours through a loudspeaker. An initial order handed down at Wexford District Court was deemed to be “too broad” and “infringed on freedom of expression”.¹⁶¹

Censorship and self-censorship, including online

The Online Safety and Media Regulation (OSMR) Act was signed into law on December 10th, 2022.¹⁶² The act is a substantial overhaul of the regulation of online expression. It transposes the amended Audiovisual Media Services Directive [Directive (EU) 2018/1808] into Irish law; dissolves the Broadcasting Authority of Ireland; and establishes a Media Commission which will regulate audiovisual media services, sound media services, and designated online services. The act provides for the Media Commission to create online safety codes and to issue guidance materials and advisory notices in relation to harmful online

content and age-inappropriate online content. It provides for the commission to audit user complaint mechanisms operated by designated online services; to direct a designated online service to take specified actions, including to remove or restore individual pieces of content; to conduct investigations and inquiries; to issue compliance notices; to issue warning notices if a service does not provide a satisfactory justification in relation to any alleged non-compliance; and, where the Commission deems necessary, to apply to seek sanctions.

There is troubling vagueness in respect of the definition of harmful content, which gives rise to freedom of expression and censorship concerns. It is difficult to see how the act will be enforced without service providers unjustifiably removing innocuous material. ICCL has serious concerns that this act will lead to disproportionate restrictions on the right to freedom of expression; the unjustified removal of material, self-censorship, prior restraint; and companies using more strenuous filtering measures, use of algorithms, and AI. The act also provides no safeguards for literary, artistic, political, scientific or academic discourse, and fair and accurate reporting; and does not differentiate between age groups, i.e., children versus adults. The act also provides that the Media Commission will be able to expand the

160 <https://www.bailii.org/ie/cases/IEHC/2022/2022IEHC322.html>

161 <https://www.independent.ie/regional/wexford/news/bullring-preacher-returns-to-wexfords-main-street-after-high-court-ruling-finds-in-his-favour-41816318.html>

162 <https://www.gov.ie/en/press-release/120ff-president-higgins-signs-crucial-online-safety-and-media-legislation-into-law/#:~:text=%E2%80%9CThe%20Online%20Safety%20and%20Media,importance%20to%20protecting%20children%20online>

definition of harmful online content, thereby compounding the problem as it would permit the extension of censorship by the executive.

In addition, the vastly wide-ranging list of services which could potentially be subjected to regulation under the OSMR Act will, on the face of it, see the expressions of members of the public subjected to codes in a way usually designed for licensed bodies in Ireland. These measures will extend to essentially all human interactions online with no adequate procedural safeguards for individuals whose speech may be censored as per the Constitution, the European Convention of Human Rights, and/or the Charter of Fundamental Rights.¹⁶³

In October 2022, ICCL and Digital Rights Ireland wrote to the parliamentary committee dealing with the then bill to urge them to halt the passage of the legislation given the scale of problematic issues it presents. Instead of passing the OSMR legislation, the letter argued that Irish legislators should:

1. transpose the Audiovisual Media Services Directive;
2. focus on enforcing the Digital Services Act and tackle algorithmic amplification;
3. pass the pending hate crime and prohibition of incitement to hatred legislation.¹⁶⁴

These suggestions were not accepted by legislators.

Restrictions on access to information

There are certain categories of information that are not published routinely by government departments, meaning that civil society, journalists, and researchers must attempt to access this via Freedom of Information (FOI) legislation. For example, the Department of Social Protection (DSP) continually refuses to routinely publish their circulars. Once the FOI is submitted, departmental practice is that DSP staff will contact the applicant and state that they may provide the FOI response outside of the scope of the FOI structure if the official request is withdrawn. This speeds up the process but is clearly unnecessary and an obvious demonstration of making accessing information more difficult for the applicant, even where they are entitled to receive this information under the legislation, while simultaneously making it easier for staff to not have to draft an FOI schedule. It is common practice for departments to provide large documents in a manner that makes them more difficult to analyse, often with photocopies of printed computer files or large tracts of scanned documents which cannot be searched. The costs of accessing information held by departments is not only routinely excessively high, but there is no clarity as to how the rates are set. As noted previously, a review of the regime is ongoing but is behind schedule. It is

163 <https://www.iccl.ie/wp-content/uploads/2022/09/OSMR.pdf>

164 Unpublished Letter

expected that legislation will be published in 2023 but no clear timeline has emerged.¹⁶⁵

Restrictions on access to information is a significant issue across the criminal justice system. Many of the data gaps are highlighted in IPRT's 2021 "Progress in the Penal System" report¹⁶⁶ which focused on 'The Need for Transparency' as its core theme. Key issues include the need for civil society to rely on information requests and parliamentary questions to obtain sometimes basic information, such as how many prisoners were recorded to have children; numbers on waiting lists for transfer to the Central Mental Hospital or for mental health and addiction treatment in prison.

Legislation and practices on fighting disinformation

In January 2021, the government published the general scheme of the Electoral Reform Bill (2020).¹⁶⁷ The draft bill went through an extensive period of pre-legislative scrutiny ending in July 2021. A key component of this

legislation is the establishment of an Electoral Commission, an institution which Ireland is unusual in a comparative sense for not having. As part of the pre-legislative scrutiny process, a number of academics and members of civil society called on the government to equip the to-be-established commission with powers to address and counter dis/misinformation.¹⁶⁸ While the subsequent committee report recommended that; "the proposed Bill provides for the maintenance of electoral integrity and the protection against election interference as an explicit function of the Electoral Commission".¹⁶⁹ The revised bill contained no reference to mis/disinformation until an entirely new section was added as an amendment by the Minister late in the legislative process.¹⁷⁰ This last-minute addition means that civil society groups were unable to assess the provisions, very little time was given in parliament for the examination of the measures¹⁷¹ and they remain subject to infringement procedures by the European Commission.¹⁷² This has meant that while the act has been passed by the houses of parliament, the sections which attempt

165 <https://www.oireachtas.ie/en/debates/question/2022-11-15/112/>

166 <https://www.iprt.ie/latest-news/progress-in-the-penal-system-the-need-for-transparency-2021/>

167 [The General Scheme of the Electoral Reform Bill \(2020\)](#)

168 [Joint Committee on Housing, Local Government and Heritage debate - Tuesday, 2 Feb 2021](#)

169 https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_housing_local_government_and_heritage/reports/2021/2021-08-19_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-electoral-reform-bill-2020_en.pdf

170 <https://www.irishexaminer.com/news/politics/arid-40922930.htm>

171 <https://www.irishexaminer.com/opinion/commentanalysis/arid-40907792.html>

172 <https://www.gov.ie/en/press-release/44555-statement-on-the-electoral-reform-Bill/>

to combat mis/disinformation and regulate political advertising remain unenacted.¹⁷³

The unenacted provisions mean the Electoral Commission will have explicit powers in respect of its monitoring and investigatory functions, including a power to issue during an electoral period:

- a take-down notice;
- a correction notice;
- a labelling order;
- an access-blocking order;
- a notice requiring any operator or host of any online platform to publish a statement informing all affected end-users of the manipulative or inauthentic behaviour or the use of an undisclosed bot.

Complementary to its enforcement powers, the Electoral Commission may publish codes of conduct in consultation with an Advisory Board and a Stakeholder Council, which may apply to online platforms, candidates, political parties, third parties and/or media outlets. It is highlighted that such codes of conduct would apply during an election or referendum campaign period only.

Separately, online platforms will be required to report possible disinformation, misinformation, or manipulative/inauthentic behaviour in the online sphere to the Electoral Commission in the lead up to an electoral or referendum period. They will also be required to put in place a notification mechanism for users to report possible disinformation relating to online electoral information and misinformation relating to online electoral process information.¹⁷⁴

In submissions to the European Commission on the infringement process, ICCL and Technology Ireland¹⁷⁵ set out in detail the impact that these provisions would have on the free expression of political opinion. This is because the regulations apply not only to “electoral process information”, i.e. information regarding the holding/running of the electoral event, but also “online electoral information” which includes “any online content relating to:

1. a candidate in an election;
2. a political party that has candidates standing in an election;
3. issues that are of relevance to an election;
4. or issues that are of relevance to a referendum.

173 <https://www.gov.ie/en/press-release/72b26-proposals-to-enhance-and-protect-the-integrity-of-elections-published/>

174 <https://data.oireachtas.ie/ie/oireachtas/Bill/2022/37/seanad/6/amendment/creamList/eng/b37b22-cl.pdf>

175 <https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2022&num=376>

Head 144 of the bill stipulates that any content which constitutes “disinformation” with respect to the above topics can be removed or otherwise restricted.

“Disinformation” is defined in the bill as:

“any false or misleading online electoral information that—

- (a) may cause public harm, and
- (b) by reason of the nature and character of its content, context or any other relevant circumstance gives rise to the inference that it was created or disseminated in order to deceive;”

In this sense then, the power of the Commission to limit the freedom of expression of individuals is based on the Commission’s own interpretation of what is:

1. Misleading
2. Of a nature which “may” cause public harm
3. Deceitful in nature

It is the contention of ICCL that granting the Electoral Commission such wide-ranging powers creates the potential not only for a chilling effect on the free expression of opinion, but it also may create scenarios where statements, utterances or other online publications

incorrectly classified as “misinformation” are effectively excluded from the electoral discourse. In January 2023, documents released to ICCL under FOI from the European Commission show that the government and relevant EU authorities continue to engage in dialogue on this matter. The Commission has expressed dissatisfaction with the approach to the application of EU law that the Irish government has taken with regard to the mis/disinformation provisions as contained in the Electoral Act.¹⁷⁶

Checks and balances

Key recommendations

- Immediately end the practice of rushing legislation at the end of parliamentary terms and ensure that democratic rights are respected.
- Ensure that the to be established Office of the Inspector of Places of Detention and the Electoral Commission are independent of executive interference in the governance and operation.
- Implement the government’s plan to address the recommendations in the Report of the Review Group on the Reform of the Civil Justice System as a matter of urgency.

176 Unpublished FOI Documents January 2023.

Process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

The transparency of the legislative process with regards to the passage of new or renewal of COVID-19 pandemic restrictions set a worrying precedent in Ireland. During the pandemic, organisations consistently raised the issue of the lack of public consultation, insufficient parliamentary oversight, and poor communication of laws and regulations regarding the pandemic. These concerns were highlighted by ICCL in a landmark June 2021 report; “Human Rights in a Pandemic.”¹⁷⁷ ICCL is concerned that these poor practices have become entrenched in the legislative process.

In July 2022, ICCL led a coalition of 23 organisations in writing to the parliamentary committee responsible for setting weekly business and the leaders of all political parties to

express our dissatisfaction with the abuse of the legislative process by the government.¹⁷⁸

Insufficient time has repeatedly been allocated for the discussion of complex legislation, large volumes of technical additions to bills which require detailed scrutiny, are added as amendments with little to no time allocated for examination, debates are routinely curtailed or guillotined and important legislative stages are curtailed or merged to expedite the process.¹⁷⁹

The Business Committee responded to the letter in November 2022, but with no substantive plans to address the concerns raised.¹⁸⁰

The government engaged in this practice in December 2022 with the amalgamation of key stages of a number of complex bills, including the Planning and Development and Foreshore (Amendment) Bill 2022.¹⁸¹ These issues were highlighted by the speaker of parliament (Ceann Comhairle) in a media interview in January 2023.¹⁸²

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

177 <https://www.iccl.ie/wp-content/uploads/2021/06/Human-Rights-in-a-Pandemic.pdf>

178 <https://www.irishexaminer.com/news/politics/arid-40919231.html>

179 <https://www.iccl.ie/wp-content/uploads/2022/07/Open-Letter-on-Parliamentary-Procedures-July-15th-2022.pdf>

180 <https://twitter.com/ICCLtweet/status/1542810635376918528>

181 <https://www.oireachtas.ie/en/Bills/Bill/2022/115/>

182 <https://www.independent.ie/irish-news/politics/government-has-some-neck-to-bring-back-the-guillotine-says-ceann-comhairle-42255523.html>

Under parliamentary standing orders, a Minister can make a request to have a bill bypass the pre-legislative scrutiny process when legislation needs to be passed quickly.¹⁸³ Concerns have been raised that this process has been abused in order to curtail proper examination of legislation which is deemed to be of critical importance.

Recent plans have been brought forward by the Minister for Housing to “fast track” changes to planning laws which would curtail the right to judicial intervention in planning processes under the guise of addressing the ongoing housing crisis. The responsible Minister has asked that a number of key legislative steps be taken in a very short timeframe to hasten the passage of the bill.¹⁸⁴ Opposition parties have expressed their dissatisfaction with the Minister’s actions.¹⁸⁵

Regime for constitutional review of laws

In July 2021, President Higgins wrote to the Oireachtas to raise concerns about the volume

of complex legislation he has been asked to consider in short periods of time, given his constitutional role to review and sign legislation within a short, specified period.¹⁸⁶ A government statement was issued,¹⁸⁷ in response, however, there has been little transparency on actions taken or measures implemented. The issue continues with high levels of complex legislation being passed by parliament in the weeks leading up to summer and winter recesses a particular concern.¹⁸⁸ The President expressed concern at this practice again in December 2022.¹⁸⁹

Independent authorities

The recently published draft Inspection of Places of Detention Bill (2022)¹⁹⁰ sets out proposals for the establishment of an office of the Inspector of Places of Detention and will allow Ireland to ratify the Optional Protocol to the Convention against Torture (OPCAT) as the office will act as the National Preventative Mechanism (NPM). While the independence of the NPM is accepted in principle in the Bill,

183 https://data.oireachtas.ie/ie/oireachtas/parliamentaryBusiness/standingOrders/dail/2021/2021-01-27_consolidated-dail-eireann-standing-orders-january-2021_en.pdf

184 https://www.irishexaminer.com/news/politics/arid-41018042.html?utm_source=dlvr.it&utm_medium=twitter

185 https://www.irishexaminer.com/news/politics/arid-41019713.html?utm_source=dlvr.it&utm_medium=twitter

186 <https://www.rte.ie/news/2021/0729/1238070-higgins-letter-oireachtas/>

187 <https://www.oireachtas.ie/en/press-centre/press-releases/20210730-statement-following-meeting-of-dail-business-committee-and-seanad-committee-on-parliamentary-privileges-and-oversight-to-discuss-letter-received-from-president-higgins/>

188 <https://www.irishexaminer.com/opinion/commentanalysis/arid-40907792.html>

189 <https://twitter.com/gavreilly/status/1601660842339991552>

190 <https://www.gov.ie/ga/preasraitis/470b9-minister-for-justice-publishes-general-scheme-of-the-inspection-of-places-of-detention-Bill/>

ICCL¹⁹¹ and IPRT¹⁹² remain concerned that sufficient details are not provided. Head 18(4) provides that an NPM ‘shall be independent in the performance of its functions under this Part of the Act’. ICCL contends that the legislation needs to be clearer in the definition of the NPM’s powers and its functions, its roles and responsibilities and its independence both financially and functionally. It is vital that this legislation specifies the NPM’s mandate and powers in a way that guarantees that the NPM has structural independence from all branches of state, above all from the executive branch.

While ICCL has welcomed the plans to appoint two additional data protection commissioners to the Data Protection Commission, ICCL reiterates the call for an independent audit of the work of the DPC to be carried out as a matter of urgency to ensure that the commission retains the technical capacity to carry out its crucial Europe-wide functions.¹⁹³

The Electoral Commission (An Coimisiún Toghcháin) is in the process of being established, with a total budget of €7.5m allocated for 2023.¹⁹⁴ As set out in the Electoral Reform Act, this new body will have responsibility

for the registration of political parties, which is work currently being carried out by Referendum Commissions, Constituency Commissions and Local Electoral Area Boundary Committees. In addition, it will have responsibility for the regulation of online political advertising during electoral periods, oversight of the electoral register, and public information, research and advisory roles in relation to electoral matters. In December 2022, the government announced the appointment of four members of the Commission.¹⁹⁵

Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (including their publication and the availability and publicity of data concerning administrative decisions)

In May 2022, the Minister for Justice published an implementation plan to address the recommendations contained in the report of the Review Group on the reform of the civil justice system. These reforms are planned to take place on a phased basis up until 2024.¹⁹⁶

191 <https://www.iccl.ie/wp-content/uploads/2022/08/220805-IOPD-Bill-ICCL-submission-to-Justice-Committee-FINAL.pdf>

192 <https://www.iprt.ie/iprt-submissions/iprt-submission-to-the-joint-committee-on-justice-on-the-general-scheme-of-the-inspection-of-places-of-detention-Bill-2022/>

193 <https://www.iccl.ie/2022/iccl-seeks-independent-review-of-data-protection-commission/>

194 <https://www.oireachtas.ie/en/debates/debate/dail/2022-09-28/speech/272/>

195 <https://www.gov.ie/en/press-release/76c85-government-approves-nomination-of-ordinary-members-to-an-co-imisiun-toghchain-electoral-commission/>

196 <https://www.gov.ie/en/press-release/937eb-minister-mcentee-publishes-implementation-plan-on-civil-justice-efficiencies-and-reform-measures/>

Some of the key actions for implementation under the plan include:

- the replacement of multiple court documents with a single document to commence legal proceedings;
- simplification of the language and terminology in Rules of Court;
- promotion of video conferencing for the taking of expert and other evidence;
- an online information hub to provide dedicated legal and practical information for those considering bringing proceedings without professional representation;
- standardisation of arrangements for naming and vetting of suitability of next friend or guardian ad litem to act on behalf of a child in litigation;
- updated Courts Service Customer Charters to provide more specific measurements for performance and service levels;
- legislation to provide for the introduction of a more efficient and more cost effective regime for discovery and to automatically discontinue cases not progressed in 30 months.

Enabling framework for civil society ⬇

Key recommendations

Remove restrictions on funding for CSOs which prevent fundraising for advocacy work.

Instruct the Charities Regulator to revise their advice on political advocacy for charitable organisations.

Regulatory framework

Equal treatment, including by reference to CSOs' focus of activities, type of activities, and geographical location of activities

The 2009 Charities Act does not include the advancement of human rights as a valid charitable purpose for an organisation. Human rights organisations have been compelled to establish and operate at different legal structures to ensure their “non-charitable” human rights work is in full compliance with the law. This modus is inefficient and can be a drain on an organisation’s limited resources. Human rights organisations experience difficulties in accessing funding and reporting to donors, where those funders require charitable status as a precondition for funding. The draft Charities (Amendment) Bill (2022) should resolve this issue by including the “advancement of human

rights” as a valid charitable purpose.¹⁹⁷ This is expected to become law in 2023.

Financing framework, including tax regulations (e.g. tax advantages for organisations with public benefit status, eligibility to receive donations via citizens’ allocation of income tax to charitable causes, eligibility to use public amenities at low or no cost, etc)

The 1997 Electoral Act in Ireland poses a significant, restrictive regulatory burden for civil society. The wording in the Electoral Act to define ‘political purposes’ (which determines what groups, including community groups, are subject to strict spending rules) is so broad and vague that they can be applied to almost every NGO which calls on the local or national government to amend policy or legislation, and which could be found in breach of the Electoral Act if someone were to donate more than €100 to their cause. A wide range of civil society organisations working on issues as diverse as education and environmental rights have been directly impacted.

As a result, NGOs are effectively banned from seeking funding for their work and can potentially be sanctioned, alongside their funders, for engaging in the public policy process. There are examples of organisations being brought to

court by SIPO for accepting funding, threatened with prosecution for accepting donations to engage with the public policy process and being forced to limit or end their operations entirely. Granting and philanthropic organisations have also faced scrutiny as a result of these laws, for example being issued with letters demanding copies of correspondence with a grantee regarding allocated funds. It is worth noting that these restrictions do not apply to commercial interests as they do not rely on donations to fund their advocacy activities. The definition of political purposes should be updated to only restrict donations and fundraising for civil society organisations to that which occurs within designated electoral periods. This would mean that legitimate day-to-day advocacy and public policy work could continue without unfair restrictions while protecting the integrity of the electoral and referenda processes.¹⁹⁸

The human rights issues presented by the Electoral Act and the implementation of the Act by the Standards in Public Office Commission were highlighted by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and the UN Special Rapporteur on the situation of human rights defenders in a communication to Ireland in December 2020.¹⁹⁹ Despite advancing the Electoral Reform Act²⁰⁰ in 2022

197 <https://assets.gov.ie/222446/0c2c7a9d-5cd6-4fb9-99da-28d4d286cb3b.pdf>

198 <https://www.iccl.ie/wp-content/uploads/2021/05/CCSF-and-Sen.-Ruane-Joint-Submission-Electoral-Reform-Bill-2020.pdf>

199 <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25665>

200 <https://www.oireachtas.ie/en/Bills/Bill/2022/37/>

and extensive lobbying by affected NGOs and numerous international organisations, including the UN, the COE, the European Commission and the Fundamental Rights Agency,²⁰¹ the government refused to address these issues. They have instead insisted that the matter must be dealt with by the yet-to-be-established Electoral Commission²⁰² in a wholesale review of political financing which risks further conflating the issues of funding for advocacy and for electoral purposes.

Rules on transparency

Under the provisions of the 2009 Charities Act, organisations registered as charities are required to provide an annual report detailing their activities and finances which is published on the Public Register of Charities.²⁰³

Rules on lobbying

NGOs who engage in lobbying designated public officials must complete a lobbying register three times per year under the provisions of the Regulation of Lobbying Act (2015).²⁰⁴ If an organisation is registered as a lobbyist, they must return a report of “nil” if they have not engaged in lobbying in the previous designated period. Details of all lobbying activities are published on lobbying.ie.²⁰⁵

Rules on political campaigning

The definition of “political purposes” as contained in the 1997 Electoral Act prohibits any person or organisation based in Ireland from accepting sizable or any international donations to assist them in campaigning on or seeking to change public policy. The act also places onerous tracking and reporting requirements to small domestic donations.

According to the wording of the 1997 Electoral Act, these donation restrictions apply to civil society advocacy work at all times, and not just when advocating an election or referendum result. The basic freedom of individuals and organisations in Ireland to raise funds and campaign on issues that affect them are constrained by the Electoral Act in ways that violate their constitutional rights, EU law and their freedom of assembly and association. This situation has a considerable chilling effect on funders who fear that their donations may breach electoral law.

The recently enacted Electoral Reform Act (2022) further enshrines the definition in legislation as it sets out that:

201 <https://www.iccl.ie/wp-content/uploads/2022/08/Coalition-for-Civil-Society-Freedom-Submission-on-the-Electoral-Reform-Bill-2022.pdf>

202 <https://www.oireachtas.ie/en/debates/debate/seanad/2022-07-07/speech/185/>

203 <https://www.charitiesregulator.ie/en/information-for-charities/annual-reporting>

204 <https://www.lobbying.ie/about-us/legislation/regulation-of-lobbying-act/>

205 <https://www.lobbying.ie/app/home/search>

“Political purposes’ shall have the meaning assigned to it by section 22(2)(aa) of the Electoral Act 1997; (Section 4, 117-1).”

A further issue which has recently been drawn to the attention of the Charities Regulator concerns the operationalisation of the designation of human rights as a valid charitable purpose as previously mentioned and a potential obstacle to the same. A document entitled “Guidance on Charities and the Promotion of Political Causes” was published by the Charities Regulator in December 2021. It was noted that the language on the nature of political engagement deemed to be permissible under the Charities Act (2009) has changed somewhat from an earlier guidance document of 2018 issued by the regulator.

In the guidance document issued in February 2018, “Guidance on Charities and the Promotion of Political Causes”, the advice states: “An organisation will be considered to have a political purpose if it [i.a.]– is set up exclusively to promote a political cause such as bringing about a change in the law or policies of the Government or other public bodies.”

This text has evolved in the document issued in December 2021, which states:

“An organisation will be considered to have a political purpose if it [i.a]

Is set up primarily to promote a political cause such as bringing about a change in the law or policies of the Government or other public bodies, whether in Ireland or another country.”

The advice from the regulator has changed in two respects, the first being the substitution of the word “exclusively” in the 2018 guidance for the word “primarily” in the 2021 updated guidance. The second change is the addition of the phrase “whether in Ireland or another country.” This change has the potential to have a serious and negative impact on the ability of organisations to conduct legitimate advocacy work while maintaining, or indeed obtaining, charitable status. This could effectively prevent human rights organisations from registering as charities and nullify the impact of the amendment as proposed in the Charities (Amendment) Bill.

The ability of civil society organisations, including charities, to engage in public discourse and give voice to community concerns on matters of public policy is essential to a vibrant democracy. Civil society advocacy also gives rise to important questions of human rights, including the right to freedom of expression and freedom of association. A shift in eligibility for charitable status for organisations set up with an “exclusive” focus on campaigning to ones which “primarily” focus on campaign work has the potential to impede the important work of some charitable organisations.²⁰⁶ The parliamentary committee

206 <https://www.iccl.ie/wp-content/uploads/2022/07/ICCL-Submission-on-The-General-Scheme-of-the-Charities-Amendment-Bill-2022-.pdf>

responsible for carrying out the pre-legislative scrutiny of the bill recommended that the Charities Regulator revert to the 2018 guidance in their pre-legislative report.²⁰⁷

(Un)safe environment

Access and participation to decision-making processes, including rules and practices on civil dialogue, rules on access to and participation in consultations and decision-making

Several structured and statutory instruments exist to ensure the participation of civil society in the policy formation process. These include Public Participation Networks,²⁰⁸ the annual National Economic Dialogue,²⁰⁹ the Shared Island Dialogues,²¹⁰ the Civic Forum,²¹¹ The Labour Employer Economic Forum,²¹² and Citizen Assemblies.²¹³ At a national level, most of this work is overseen by the Social Dialogue Unit within the Department of an Taoiseach.²¹⁴

Attacks and harassment

Intimidation / negative narratives / smear campaigns / disinformation campaigns

Public representatives continue to engage in ongoing discriminatory and racist discourse against Travellers without consequence. In September 2022, an elected official for one of the current government parties, Fianna Fáil, said that Traveller culture was “not conducive” to living with most settled communities, adding that “history has proven” that it leads to “confrontation and general uneasiness.”²¹⁵ These comments were made in the context of a discussion of plans to house Travellers which the councillor opposed. While the comments were widely condemned, including the then Taoiseach, the councillor has since faced no repercussions or sanctions for his commentary.

207 https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_social_protection_community_and_rural_development_and_the_islands/reports/2022/2022-11-14_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-charities-amendment-bill-2022_en.pdf

208 <https://www.oireachtas.ie/en/debates/debate/seanad/2022-07-07/speech/185/>

209 <https://www.gov.ie/en/publication/cdf2e-national-economic-dialogue-2022/>

210 <https://www.gov.ie/en/publication/3eb3c-shared-island-dialogues/>

211 https://merriestreet.ie/en/news-room/releases/taoiseach_minister_heather_humphreys_and_minister_of_state_joe_obrien_opens_first_national_community_and_voluntary_civic_forum.175271.shortcut.html

212 <https://assets.gov.ie/40567/9711579662a048a8b7f1e39c416b4984.pdf>

213 <https://citizensassembly.ie/en/>

214 <https://whodoeswhat.gov.ie/division/taoiseach/economic-policy-unit/>

215 <https://www.irishexaminer.com/news/arid-40972157.html>

Verbal attacks and harassment by private parties or public entities

In February 2022, ICCL led a coalition of organisations in writing to a number of government Ministers²¹⁶ regarding commentary on an event being held by the National Women's Council of Ireland (NWC) to mark International Women's Day.²¹⁷ The implicit suggestion by some elected representatives that funding for NWC should be dependent on their support for government policy or inclusion of government representatives²¹⁸ at their events was highlighted as disturbing, and served to create a chilling effect on the ability of civil society organisations to work in an effective and independent manner. The suggestion that the government should have an expectation of influencing or directing the work of an independent civil society organisation (especially when a funder) was noted as troubling. This, unfortunately, was not an

isolated incident. In 2021, there were a number of highly inappropriate interventions by public representatives on the role and independence of the national trust for Ireland, An Taisce, with respect to their role in the planning process.²¹⁹ Other organisations, particularly in the areas of drugs and homeless services, have similarly raised concerns²²⁰ that overt or implicit questions have been raised about their ability to access state funding unless they refrained from critical public commentary on government policy or refused to adhere to the same.

Physical attacks on people and property

There has been a concerning growth in the number of incidents of assaults by anti-lockdown, far-right and other demonstrators against activists and elected representatives over the last number of years. These have ranged from intimidatory protests,²²¹ sometimes outside the

216 Unpublished Letter February 24 2022.

217 <https://www.irishtimes.com/news/politics/tensions-grow-over-sinn-fein-s-influence-on-party-political-national-women-s-council-1.4806223>

218 <https://www.breakingnews.ie/ireland/national-womens-council-criticised-for-excluding-women-in-government-from-rally-1259283.html>

219 <https://www.fine Gael.ie/an-taisce-a-leading-threat-to-future-of-rural-ireland/>

220 <https://www.oireachtas.ie/en/debates/debate/seanad/2021-12-15/3/>

221 <https://extra.ie/2020/07/11/news/politics/roderic-ogorman-campaigners>

homes of elected officials,^{222,223} physical²²⁴ and verbal²²⁵ abuse of activists and politicians,²²⁶ and attacks on property,^{227,228} right up to the serious physical assault of a counter demonstrator which resulted in a criminal conviction.²²⁹ In August 2022, the Global Project Against Hatred and Extremism published a report on the growth in far-right activity in Ireland, which noted degrees of cooperation and issue overlap between the groups which were identified.²³⁰

Online civic space

Online campaigning, including rules and practices on illegal content, disinformation, online content moderation and regulation

In early 2022, ICCL and Frontline Defenders produced an unpublished report stemming from a survey on the threats facing CSOs in Ireland. The survey had responses from a wide

variety of organisations working on a broad array of issues, ranging from abortion rights to anti-racism to environmental protection. The scope of topics covered by participants was also reflected in the scale of size and capacity of participants which varied in range from small grassroots organisations funded by member donations to national organisations with large scale funding and many employees. The survey provided a useful “snapshot” of the security threats facing a wide variety of Irish organisations. When asked to specifically outline the security threats which they have faced in the past three years, the most popular responses were: threats (verbal, social media, telephone); digital attacks; and defamation. One respondent made the observation that these issues have taken on an increased importance given the shift to online work since the onset of Covid-19. The vast majority of respondents also noted psychological stress as an outworking of these threats. The majority of respondents

222 <https://www.irishtimes.com/news/ireland/irish-news/who-are-the-protesters-picketing-ministers-homes-1.3796879>

223 <https://www.independent.ie/irish-news/news/gardai-called-to-protest-outside-home-of-tanaiste-leo-varadkar-40866875.html>

224 <https://www.independent.ie/irish-news/politics/minister-anne-rabbitte-and-td-ciaran-cannon-have-bags-of-st-thrown-at-them-while-attending-meeting-42262918.html>

225 <https://www.irishtimes.com/news/crime-and-law/man-arrested-following-arson-attack-on-car-of-sinn-fein-td-1.4072266>

226 <https://www.irishmirror.ie/news/irish-news/politics/roderic-ogorman-steers-clear-social-28835738>

227 <https://www.irishtimes.com/crime-law/2022/09/30/gardai-investigate-after-car-driven-through-gates-at-sinn-fein-tds-home/>

228 <https://www.irishtimes.com/news/crime-and-law/man-arrested-following-arson-attack-on-car-of-sinn-fein-td-1.4072266>

229 <https://www.irishexaminer.com/news/courtandcrime/arid-40724820.html>

230 <https://globalextrémism.org/ireland/>

cited internet/tech issues which have left them vulnerable to attack, or where abuse/threats have come from online platforms. These incidents range from the circulation of images/information about group members on far-right Telegram channels, abuse on social media, right up to DDOS attacks and hacking attempts. The same three issues were identified as most likely as those to be faced in the future also. Other respondents also cited incidents of in-person harassment and intimidation, which included verbal assault, office break in, letter writing, and much more.²³¹

Disregard of human rights obligations and other systemic issues affecting the rule of law framework ⬇

Key recommendations

- Engage with survivors of mother and baby homes and victims of abuse in day-schools to ensure that compensation schemes and schemes designed to address their needs are compliant with human rights standards.
- Urgently finalise the review of the current National Traveller and Roma

Inclusion and Migrant Integration Strategy and the commence the now delayed development of the next iteration of both strategies without delay. These strategies must have robust implementation and monitoring plans with clear targets, indicators, outcomes, timeframes and budget lines with actions being resourced and implemented by all relevant statutory agencies.

- Expedite the development of a new system for accommodating asylum seekers and, in the interim, ratify the Optional Protocol (OPCAT) and amend the Inspection of Places of Detention Bill (which seeks to implement OPCAT) to ensure that direct provision centres and other congregated settings are subject to independent human rights focused inspections.

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

The December 2020 publication of the final report from the Commission of Investigation into Mother and Baby Homes²³² highlighted the widespread human rights violations

²³¹ Unpublished ICCL and Frontline Defenders Security Survey: Winter 2021/2022

²³² <https://www.gov.ie/en/publication/d4b3d-final-report-of-the-commission-of-investigation-into-mother-and-baby-homes/>

committed by the church and state during the 20th century, including forced labour and adoption, neglect, and more. The state failed to protect vulnerable women and children placed in its care throughout the 20th century, and it continues to fail in adequately protecting them now. Survivors of the Mother and Baby Homes continue to face ongoing human rights violations, including their right to identity and access to personal information.

Throughout 2021, the government progressed the General Scheme of a Certain Institutional Burials (Authorised Interventions), which sought to address a number of issues which are raised by the report. This bill completed pre-legislative scrutiny in July 2021²³³ and was enacted in July 2022.²³⁴ Details of a redress scheme for survivors of the homes was published in November 2021,²³⁵ but was met with widespread criticism from survivors.²³⁶ The

scheme was codified in legislation in October 2022, with the publication of the Mother and Baby Institutions Payment Scheme Bill (2022).²³⁷ The bill is currently passing through the Irish Parliament but has been widely criticised by survivors' groups,²³⁸ opposition politicians²³⁹ and NGOs.²⁴⁰

In September 2022, the UN called on the Irish government to address the lack of adequate redress for victims of racial discrimination and systemic racism in Irish childcare institutions between the 1940s and 1990s.²⁴¹ It was noted that the Mother and Baby Institutions Payment Scheme Bill (2022) provided an opportunity to address this matter. As of January 2023, no provision has been made in the bill to compensate the victims of racial discrimination in these institutions.

233 <https://www.oireachtas.ie/en/press-centre/press-releases/20210715-joint-committee-on-children-disability-equality-integration-and-youth-publishes-report-on-pre-legislative-scrutiny-of-the-general-scheme-of-a-certain-institutional-burials-authorised-interventions-Bill/>

234 <https://www.oireachtas.ie/en/Bills/Bill/2022/23/>

235 <https://www.gov.ie/en/press-release/ce019-government-approves-proposals-for-mother-and-baby-institutions-payment-scheme-and-publishes-an-action-plan-for-survivors-and-former-residents-of-mother-and-baby-and-county-home-institutions/>

236 <https://www.thejournal.ie/mother-baby-home-redress-protest-leinster-house-5609527-Nov2021/>

237 <https://www.oireachtas.ie/en/Bills/Bill/2022/97/>

238 <https://www.thejournal.ie/mother-and-baby-homes-redress-Bill-5895379-Oct2022/>

239 <https://www.breakingnews.ie/ireland/six-month-requirement-for-mother-and-baby-home-redress-a-sword-of-damocles-1392716.html>

240 <https://www.iccl.ie/wp-content/uploads/2022/10/221026-Mother-and-Baby-Institutions-Payment-Scheme-Bill-ICCL-Briefing.pdf>

241 <https://www.ohchr.org/en/statements/2022/09/ireland-un-experts-call-adequate-redress-systemic-racism-and-racial>

In June 2022, the University of Limerick published a landmark report on the experiences of Irish Travellers in the criminal justice system. The research report, entitled “Irish Travellers’ Access to Justice”,²⁴² documents for the first time Travellers’ perceptions and experiences of the criminal justice process in Ireland – particularly with the judiciary and An Garda Síochána. The report found that one of the key barriers to accessing justice is institutional racism towards Travellers, which is found to be prevalent in the criminal justice system. The research findings reflect a need for radical changes in the way in which criminal justice institutions engage with, perceive, and address Travellers. The research finds that Travellers’ trust in the Irish criminal justice system is extremely low and that fears of wrongful arrest, excessive use of force, wrongful conviction, disproportionately high sentences, and wrongful imprisonment frame the way Travellers engage with and experience the criminal justice system.

The research makes extensive evidence-based recommendations, including:

1. The introduction of an ethnic identifier throughout the criminal process from the point of reporting to the point of sentencing, with a commitment to make the resultant data available to independent researchers and the publication of an annual report on ethnic minorities in the criminal process.
2. The development, publication, funding, and implementation of a criminal justice strategy for the Traveller community, with a remit within and across each branch of the criminal process to address gaps in trust, legitimacy and accountability impacting the Traveller community.
3. The establishment of a robust and effective independent complaints body operating across the criminal legal process and staffed by a dedicated team of investigators with no continuing connection to any of the criminal justice agencies.

The most recent National Traveller and Roma Inclusion Strategy (NTRIS) implementation period ended in 2021. The new Strategy is yet to be launched. The Irish Traveller Movement has called for the prioritisation of the finalisation of the new NTRIS, with a robust implementation and monitoring plan, and a ring-fenced budget, along with a comprehensive review of the last Strategy. NTRIS was the national strategy for Roma and Traveller inclusion and the first national policy framework to explicitly include Roma as a key focus in Ireland. Ireland, as a Member State, is obliged to develop and implement an updated Strategy as part of the European Commission’s post-2020 framework on Traveller and Roma equality, inclusion, and participation. Ireland is the only Member State without an updated Strategy which has recently been noted by the European Commission in its Assessment

242 https://researchrepository.ul.ie/articles/report/Irish_Travellers_Access_to_Justice/20179889

of Reports of Member States National Roma Strategic Frameworks.²⁴³

Another key issue affecting the Traveller community is the ongoing use of legislation to facilitate the eviction of Travellers. Section 19 (c) of Part II A of the Criminal Justice (Public Order) Act, 1994, which is one of the legislative provisions used to facilitate evictions of Traveller families from unofficial or roadside sites, is still used without any form of judicial oversight, monitoring, or intervention. In effect this legislation has prevented nomadism and curtailed a central cultural right of Travellers. The current eviction procedure, which allows for the removal of families within 24 hours, is inhumane and often conducted at times when families cannot access legal services, such as on Friday afternoons. Redress is not possible without access to a dedicated service, and many families would not be familiar with legal services or have finance to seek private legal services.

To date, no remedy to this has been advanced despite the state being found in breach of Article 16 of the European Social Charter in 2016 by the European Committee of Social Rights. They found the state “provides for inadequate safeguards for Travellers threatened with eviction” and “evictions are carried out in practice without the necessary safeguards” – findings which were upheld in

follow-up reports in 2018 and 2020. Repealing this legislation is also a key recommendation of the government-commissioned Traveller Accommodation Expert Review, published in 2019, but no progress has been made to advance this to date.²⁴⁴

Policies and strategies aimed at combating racism and promoting inclusion must be iterative in nature to ensure that there are no policy gaps. INAR notes with great concern that the National Traveller and Roma Inclusion Strategy and the Migrant Integration Strategy are ending without any discussion or consultations on successor strategies. The International Decade for People of African Decade 2014-2024 started halfway in Ireland and is coming to an end in 2024 and the state has failed to deliver in ensuring the recognition, development and justice for people of African descent in Ireland. The lack of implementation by the state of various strategies is concerning.

NAR continues to advocate for the effective implementation of various policies and strategies aimed at combating racism, racial discrimination, xenophobia and other related intolerances. The state must ensure full resourcing of various strategies to ensure that they are fully implemented.

Ireland’s Health Service Executive (HSE) continues to perform normalising surgeries on

243 https://commission.europa.eu/publications/assessment-report-member-states-national-roma-strategic-frameworks-full-package_en

244 https://www.coe.int/en/web/european-social-charter/home/-/asset_publisher/Vugk5b0dLMWq/content/the-decision-on-the-merits-of-the-complaint-errc-v-ireland-became-public

the genitals of intersex children in Ireland²⁴⁵ that have been described by the UN Special Rapporteur as a form of torture.²⁴⁶ Some of these procedures, such as clitoral reduction surgery, are indistinguishable from female genital mutilation, which is illegal in Ireland.²⁴⁷ While intersex and transgender are not the same thing, many intersex people are also transgender, having been assigned the incorrect sex at birth followed by irreversible surgery and hormonal interventions. Recently, in a Europe-wide survey, Ireland was found to have the worst transgender healthcare,²⁴⁸ which might be used as an indicator of intersex healthcare standards in Ireland. In 2021, the Department of Children, Equality, Disability, Integration and Youth published a report highlighting the urgent need for research into the experiences of intersex youth in Ireland and their experiences of healthcare.²⁴⁹

Impunity and/or lack of accountability for human rights violations

IPRT remains concerned by the decision to not publish²⁵⁰ the report of the Inspector

of Prisons into allegations arising from the Dóchas Centre.²⁵¹ IPRT remains unclear as to the details of these allegations, as the reports have not been published. However, it is clear that such reports relate to a vulnerable population (women in prison) and the lack of transparency around the findings of the reports is concerning.

Implementation of decisions by supranational courts, such as the Court of Justice of the EU and the European Court of Human Rights

As addressed above, in April 2020 the European Court of Human Rights (ECtHR), in the case of *Keaney v Ireland*, expressed that the delay in criminal proceedings in this case was excessive and a violation of Article 6 of the ECHR. The Court further found that there was no effective remedy for delay of this nature in the Irish courts. The Court noted that Ireland has persistently not met its obligations in this regard and that lengthy delays in litigation were systemic. The *Keaney* case was one of many to come before the ECtHR on the

245 <https://www.ungeneva.org/en/news-media/meeting-summary/2022/07/dialogue-ireland-experts-human-rights-committee-praise>

246 https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf

247 <https://www.hse.ie/eng/about/who/primarycare/socialinclusion/domestic-violence/female-genital-mutilation-fgm/>

248 <https://tgeu.org/trans-health-map-2022/>

249 <https://www.gov.ie/pdf/?file=https://assets.gov.ie/135654/4d466c48-34d9-403a-b48e-fdcfb7931320.pdf#page=null>

250 <https://www.oireachtas.ie/en/debates/question/2022-09-08/1372/?highlight%5B0%5D=d%C3%83%C2%B3chas>

251 <https://www.irishexaminer.com/news/arid-40848545.html>

length of proceedings in Ireland, and Keaney was chosen by the Court as a lead case on the issue. It remains to be seen as to whether the state's implementation of the *Keaney v Ireland* judgment will be effective, and whether this case will lead to systemic reform in terms of the length of proceedings.

Other systemic issues

IPRT continues to have serious concerns about the Prison (Amendment) Rules 2020 (SI No 250/2020).²⁵² These amendments allow a Governor or the Director General to suspend, restrict, or modify entitlements to physical exercise, recreation, training, and visits. These amendments have no sunset clause and appear to have received very little scrutiny before they were brought into force. They also do not only relate to COVID-19 but to any infectious disease.²⁵³ Most recent indications²⁵⁴ from the Minister suggest that there are no plans to repeal these amendments, despite numerous calls from IPRT for the government to do so.

In addition, there has been a persistent failure to implement a new prison complaints policy²⁵⁵ despite repeated promises to do so, in addition to the Inspector of Prisons' consistent remarks that the current complaints system remains unfit for purpose in their annual reports.²⁵⁶ The impact of such inadequate complaints processes in prison is illustrated in a recent death in custody report from the Inspector²⁵⁷ and such a gap in accountability in a closed environment such as prison raises human rights and transparency concerns regarding the prison system. Issues regarding prison overcrowding and the treatment of prisoners with mental health issues were also raised in the concluding observations of Ireland's 2022 ICCPR review.²⁵⁸

The Assisted Decision-Making (Capacity) Amendment Bill 2022,²⁵⁹ which will amend the Assisted Decision-Making (Capacity) Act 2015, is due to be enacted in early 2023. This is a very welcome piece of legislation that abolishes wardship in Ireland. However, Mental

252 <https://www.irishstatutebook.ie/eli/2020/si/250/made/en/print>

253 https://www.iprt.ie/site/assets/files/7125/iprt_irish_prisons_and_covid-19_-_lessons_learned_from_the_pandemic.pdf

254 <https://www.kildarestreet.com/wrans/?id=2022-11-08a.2440>

255 <https://www.iprt.ie/latest-news/urgent-action-needed-on-reform-of-prison-complaints-system-following-third-successive-year-of-being-classed-as-unfit-for/>

256 <https://www.oip.ie/publications/annual-reports/>

257 <https://www.gov.ie/en/publication/ce0f5-office-of-the-inspector-of-prisons-death-in-custody-investigation-report-ms-x-2019/>

258 <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsieXF-SudRZs%2FX1ZaMqUUOS%2BbcAGuuCi6l4l7uiVhbuLp%2F2lGSD7bncJtztRhGdU%2Buiibeg7sXz%2F-5gGDvOE3%2BT1IgNIx3fUqWN8gmOpFITlqn>

259 <https://www.oireachtas.ie/en/bills/bill/2022/59>

Health Reform remains concerned that while the government extended the right to the provisions of this act to persons involuntarily detained under Section 3(1)(b) of the Mental Health Act 2001,²⁶⁰ those involuntarily detained under Section 3(1)(a) of the Mental Health Act 2001 are the only cohort of people deprived of the rights extended under this new legislation (including legally binding Advance Healthcare Directives). The government has stated its intention to remedy this discriminatory omission in the reform of the Mental Health Act 2001.²⁶¹

Mental Health Reform (MHR) commissioned researchers at the National University of Ireland, Galway (NUIG) to develop an independent, human rights analysis²⁶² of the Draft Heads of Bill to amend the Mental Health Act 2001. The authors highlighted some discrepancies in Part 8, relating to the consent and capacity of 16 and 17-year-olds. There is a lacuna in law between the Mental Health (Amendment) Bill and the Assisted Decision Making (Capacity) Act 2015, where under-18s are not included in the Assisted Decision Making (Capacity) Act 2015 despite this being the referenced legislation in the amendment bill. This issue was repeatedly

highlighted during the pre-legislative scrutiny of both bills, however the government did not take the opportunity to address this gap.

Another concern is that the amending legislation for the 2001 Act (at the time of writing) still includes provisions for children to be admitted to adult inpatient centres (Head 128 – Section 108, p. 286). It also provides for coercive practices including seclusion and restraint. For Ireland’s mental health legislation to be compliant with the UN Convention on the Rights of the Child, these provisions should be deleted or repealed and should be prohibited. The action statement pertaining to the admission of under-18s to adult units in the national mental health policy “Sharing the Vision”²⁶³ is also inadequate in its aspirations:

“In exceptional cases where child and adolescent inpatient beds are not available, adult units providing care to children and adolescents should adhere to the CAMHS inpatient Code of Governance.”

Direct provision

In February 2021, the government announced a plan to end the use of direct provision as a

260 <https://www.irishstatutebook.ie/eli/2001/act/25/section/3/enacted/en/html>

261 <https://data.oireachtas.ie/ie/oireachtas/debateRecord/dail/2022-12-14/debate/mul@/main.pdf>

262 <https://www.mentalhealthreform.ie/wp-content/uploads/2021/11/Legal-analysis-MH-Act-28-October-1.pdf>

263 <https://www.gov.ie/en/publication/2e46f-sharing-the-vision-a-mental-health-policy-for-everyone/>

system for accommodating asylum seekers in Ireland.²⁶⁴ A programme board²⁶⁵ was established to progress the plans to end the system and to furthermore establish a new International Protection Support Service. A three-person independent group was appointed by the responsible Minister in September 2021 to oversee and measure progress.²⁶⁶ It was reported in November 2022 that the plans to end direct provision by 2024 are no longer possible and will be shelved.²⁶⁷ The reason given for this is the increase in the number of individuals seeking asylum and the additional resources which have been required to accommodate Ukrainian refugees since February 2022.²⁶⁸ Direct provision is a stain on Ireland's human rights record. INAR is concerned by the lack of urgency by the State to live up to its commitment to end DP and create a better system that promotes human dignity of asylum seekers and their families.

In December 2021, a regularisation scheme was announced by the Minister for Justice,

which would allow undocumented migrants and asylum seekers who have been in direct provision for at least two years the opportunity to regularise their status.²⁶⁹ This scheme was open for applications between January and July 2022.²⁷⁰

Child and family homelessness

In November 2019, the Oireachtas Joint Committee on Housing, Planning and Local Government published their recommendations as to what action needs to be taken to address what has, according to the committee, “become one of the most pressing issues facing Irish society at present”. The committee noted that living in an emergency accommodation has negative impacts on children and family life. Drawing attention to findings²⁷¹ from the Ombudsman for Children's Office, there are negative effects of emergency accommodation on parenting; individual and family privacy; children's ability to rest, sleep, learn and study; children's health, well-being and development;

264 <https://www.gov.ie/pdf/?file=https://assets.gov.ie/124757/ef0c3059-b117-4bfa-a2df-8213bb6a63db.pdf-f#page=null>

265 <https://www.gov.ie/en/press-release/edef3-minister-ogorman-announces-membership-of-the-programme-board-overseeing-the-end-of-direct-provision-as-set-out-in-the-white-paper/>

266 <https://www.gov.ie/en/press-release/9bec5-minister-ogorman-appoints-independent-group-to-track-progress-on-ending-direct-provision/>

267 <https://www.irishtimes.com/ireland/social-affairs/2022/11/26/plan-to-end-direct-provision-by-2024-no-longer-possible-says-expert/>

268 <https://www.irishtimes.com/politics/2023/01/05/state-facing-many-obstacles-to-delivering-properties-for-refugees-department-warns/>

269 <https://www.justice.ie/en/JELR/Pages/PR21000292>

270 <https://www.irishimmigration.ie/regularisation-of-long-term-undocumented-migrant-scheme/>

271 <https://www.oco.ie/app/uploads/2019/04/No-Place-Like-Home.pdf>

opportunities for play and recreation; freedom of movement; and children's ability to maintain relationships with friends and family. MLRC has urged the government to adopt the recommendations²⁷² of the Joint Committee in full.

Fostering rule of law culture

Efforts by state authorities

The government is receptive to discussions on rule of law issues, but interventions seem to exclusively originate from CSOs or the European Commission. For example, the visits of Vice President of the European Commission for Values and Transparency Věra Jourová²⁷³ and Commissioner for Justice Didier Reynders²⁷⁴ both prompted parliamentary debates on rule of law issues and the reporting cycle. However, understanding of the issues remains weak with parliamentarians based on the committee hearings.

Contribution of civil society and other non-governmental actors

In October 2022, ICCL organised an event²⁷⁵ to launch the 2023 reporting cycle, and on rule of law issues in general. The event was held in

the European Commission Headquarters in Dublin and featured contributions from the now former Minister for State for European Affairs Thomas Byrne TD, Dean of the UCD Sutherland School of Law Professor Laurent Pech, Head of the European Commission representation in Ireland Barbara Nolan and Irish Examiner Political Editor, Daniel McConnell. The event was well attended and ensured a higher level of interest in the reporting cycle for 2023.

272 https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_housing_planning_and_local_government/reports/2019/2019-11-14_report-on-family-and-child-homelessness_en.pdf

273 https://www.oireachtas.ie/en/debates/debate/joint_committee_on_justice/2022-10-11/3/

274 https://www.oireachtas.ie/en/debates/debate/joint_committee_on_european_union_affairs/2022-11-24/

275 <https://www.iccl.ie/wp-content/uploads/2022/10/221019-Rule-of-Law-event.pdf>