

**Совет по правам человека****Сороковая сессия**

25 февраля – 22 марта 2019 года

Пункт 3 повестки дня

**Поощрение и защита всех прав человека,  
гражданских, политических, экономических,  
социальных и культурных прав,  
включая право на развитие****Посещение Ирландии****Доклад Специального докладчика по вопросу о торговле детьми  
и сексуальной эксплуатации детей, включая детскую  
проституцию, детскую порнографию и изготовление прочих  
материалов о сексуальных надругательствах над детьми\* \*\****Резюме*

В настоящем докладе Специальный докладчик рассматривает вопросы, касающиеся торговли детьми и их сексуальной эксплуатации в Ирландии, в свете международных норм и стандартов в области прав человека. На основе информации, собранной до, во время и после ее поездки, Специальный докладчик освещает законодательные инициативы, институциональные рамки и политику в области защиты детей, осуществляемые в целях борьбы с этим явлением и его предупреждения, а также меры по уходу за пострадавшими детьми, их реабилитации и реинтеграции. Специальный докладчик представляет свои рекомендации с целью активизации усилий по устранению этого явления, повышению эффективности защиты детей и минимизации для них рисков стать жертвами торговли, проституции и порнографии.

\* Настоящий доклад был представлен после установленного предельного срока в связи с необходимостью включения в него самой последней информации.

\*\* Резюме доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен.



## **Annex**

### **Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, on her visit to Ireland**

#### **I. Introduction**

##### **A. Programme of the visit**

1. The Special Rapporteur on the sale of children, child prostitution and child pornography, including child prostitution, child pornography and other child sexual abuse material, visited Ireland, at the invitation of the Government, from 14 to 21 May 2018. The objective of the visit was to assess the situation regarding the sale and sexual exploitation of children and to evaluate the national child protection system, with a view to making recommendations to prevent and eradicate all forms of sale and sexual exploitation of children.

2. Over the course of the mission, the Special Rapporteur visited Dublin, Limerick and Galway. She met the Minister and representatives of the Department of Children and Youth Affairs; representatives of the Department of Foreign Affairs and Trade; representatives of the Department of Health; representatives of the Department of Education and Skills; representatives of the Department of Employment Affairs and Social Protection; and representatives of the Department of Justice and Equality. The Special Rapporteur held meetings with officials of the Child and Family Agency, known as Tusla, at the central and local levels; the Office of the Director of Public Prosecutions; and the national police, An Garda Síochána. The Special Rapporteur also met members of independent national institutions, including the Ombudsman for Children; the Adoption Authority of Ireland; the Special Rapporteur on Child Protection; and the Irish Human Rights and Equality Commission. She also met members of parliament (the Oireachtas) and members of the judiciary in Dublin and Limerick.

3. In addition to government officials, the Special Rapporteur held meetings with members of the Internet Service Providers Association of Ireland, the National Board for Safeguarding Children in the Catholic Church in Ireland and civil society organizations involved in research, advocacy and service delivery.

4. The Special Rapporteur visited a residential care centre; a therapy centre; a direct provision centre; and the joint adult and child sexual assault treatment units in Galway. She also observed proceedings of the Chambers of the District Court; the Children Court; and the Central Criminal Court. She further held discussions with adult survivors of historical abuse and young people serving on the Comhairle na nÓg National Executive.

5. The Special Rapporteur expresses her gratitude to the Government of Ireland for facilitating meetings with authorities at the central and local levels and to members of civil society and the Office of the United Nations High Commissioner for Human Rights for their assistance before, during and after her mission. She further thanks the individuals and organizations that she met for their dialogue and readiness to share first-hand experiences and insights.

##### **B. Context**

6. Established as the Irish Free State in 1922, Ireland is today a parliamentary republic that comprises 26 of 32 counties on the North Atlantic island of Ireland. Beginning in the 1960s, three decades of disputes over the political status of the remaining region – which is present-day Northern Ireland, in the United Kingdom of Great Britain and Northern Ireland – together with deep sectarian divides between the Catholic and Protestant populations, precipitated a period of intercommunal and cross-border violence commonly known as “the

Troubles”. A subsequent peace process and the signing in 1998 of the Good Friday agreement by Northern Irish political parties – together with the Governments of Ireland and the United Kingdom – largely ended the violence. In 1973, Ireland joined the European Economic Community, and it entered the eurozone in 1999.

7. Following years of rapid economic growth that spanned the period from the late 1990s to the early 2000s, Ireland faced an economic downturn during which a national banking crisis nearly crippled the Irish financial system. The global recession of 2008, which occurred concurrently with the Irish recession, contributed to rising unemployment and emigration rates. This led the Government to undertake a series of austerity measures, financial restructuring and tax reform. The country is currently in a state of recovery from the economic crisis. Nevertheless, 8.8 per cent of children lived in consistent poverty in 2017, according to statistics from an anti-poverty civil society network.<sup>1</sup>

8. As of 2016, the population of Ireland is estimated to be 4,761,865,<sup>2</sup> with 1,197,000 under the age of 18.<sup>3</sup> Nearly 80 per cent of the population identifies as Roman Catholic, while an increasing percentage of residents affiliate with no religion.<sup>4</sup> Religious minorities include Church of Ireland, Muslim and Orthodox, among others.<sup>5</sup> Ethnically, the vast majority (82.2 per cent) of Irish residents are white Irish, with the largest minorities having other white ethnic origins (9.5 per cent).<sup>6</sup> Smaller subsets of the population identify as black (1.4 per cent), Chinese or other Asian (2.1 per cent) or Irish Travellers (0.7 per cent).<sup>7</sup>

## II. Scope of the sale and exploitation of children

9. Ireland has made progress in recent years to prevent and respond to circumstances constituting the sale or sexual exploitation of children, particularly in the areas of child marriage and of sexual exploitation related to information and communications technology (ICT). However, not enough has been done to ensure information, accountability and redress for those who suffered abuse in the past in institutions and for those who were adopted in a manner that would amount to the sale of children under international law. Moreover, certain children, such as those from minority backgrounds, those with disabilities or those in the care system, have specific vulnerabilities that merit particular attention.

### A. Sale of children

10. Amongst egregious forms of the sale of children, the following forms should be highlighted: illegal adoption, forced labour and international or commercial surrogacy arrangements.

#### 1. Illegal adoption

11. There are historical precedents for illegal and irregular adoption in Ireland that affect the situation today. From the 1920s until the 1990s, so-called mother and baby homes, which were institutions managed by Catholic orders, were established to house pregnant, unmarried women and girls.<sup>8</sup> From the founding of the homes until the early 1950s, the children of these women and girls – who were deemed “illegitimate” and in need of moral guardianship – were

<sup>1</sup> European Anti-Poverty Network Ireland, “Consistent poverty rates”. Available at [www.eapn.ie/poverty/consistent-poverty-rates](http://www.eapn.ie/poverty/consistent-poverty-rates).

<sup>2</sup> Central Statistics Office, *Census 2016 Summary Results: Part 1* (Cork, 2017), “Population change and historical perspective”, p. 8.

<sup>3</sup> United Nations Children’s Fund, *The State of the World’s Children: Children in a Digital World* (New York, 2017), p. 175.

<sup>4</sup> *Census 2016*, “Religion”, p. 72.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Census 2016*, “Ethnicity and Irish Travellers”, p. 60.

<sup>7</sup> *Ibid.*

<sup>8</sup> Department of Children and Youth Affairs, “Report of the Inter-Departmental Group on Mother and Baby Homes”, July 2014, p. 6.

placed with other families in informal boarding arrangements or in foster care.<sup>9</sup> Following the passage in 1952 of the Adoption Act, the institutions facilitated the large-scale adoption of the children, including to foreigners, particularly from the United States of America. It has been regularly reported that adoption was conducted against the wishes of the natural mothers, or through the deception of those mothers in order to obtain their consent. Birth records were also falsified.<sup>10</sup>

12. Ireland experienced a significant decrease in intercountry adoption following its ratification in 2010 of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption and the entry into force of its Adoption Act, which specifies that Ireland will only register adoption from other States parties to the Convention or from States with which Ireland has a specific bilateral agreement. The restriction of adoption in this case is positive, as it reduces the risk of prospective adoptive parents in Ireland, where there is a relatively high demand for adoption,<sup>11</sup> adopting through agencies in countries without safeguards for children. The potential for adoption to become a vehicle for the sale or trafficking of children is thus limited (see A/HRC/34/55, paras. 43–52). Another positive step has been the reduction of the number of agencies licensed to facilitate intercountry adoption in Ireland. Government officials indicate there is only one such agency, which, in principle, reduces the risk of illicit intercountry adoption (*ibid.*, para. 76).

13. Some concerns remain, however. In particular, the fact that social notions persist about adoption being an entitlement for childless adults, rather than a child protection measure, could lead to irregular practices that are harmful to children. This is already manifest in the pressure put on lawmakers to develop new avenues for intercountry adoption or to diverge from strict compliance with the Hague Convention. The Special Rapporteur has also learned that travel and certification documents used for children adopted internationally lack specificity and can easily be falsified.

14. As regards historical adoption from institutions, the Commission of Investigation into Mother and Baby Homes is expected to address the issue when it produces its report announced for 2020. However, the Special Rapporteur is concerned that the limited scope of the Commission's work – as with that of other commissions examining abuses in institutions before it – will mean that its investigation is not broad enough to uncover the full scale of illegal adoption, which still affects Irish citizens today. Having identified institutions whose operations mean that they are classified as mother and baby homes, the Commission may investigate instances of adoption at fewer than 20 locations only,<sup>12</sup> whereas illicit adoption was alleged to have been undertaken in hundreds of formal and informal settings, including in State maternity hospitals, through adoption agencies and between private individuals.<sup>13</sup> The potential scale of the issue is demonstrated by the fact that, a few weeks after the Special Rapporteur's visit, Tusla discovered 126 cases of falsified birth documents from a single religious adoption society, entailing an obligation to notify the affected adults.<sup>14</sup>

15. The Special Rapporteur met with individuals who had approached religious orders and the courts to request identity and background records as well as information on possible siblings, but who had been systematically denied such information. Meanwhile, those affected are advancing in age, so the need for a comprehensive national examination of forced and illegal adoption is urgent. Failure to provide information, redress and justice for these human rights abuses perpetuates the harm inflicted on the victims.

<sup>9</sup> *Ibid.*, pp. 6–9 and 15.

<sup>10</sup> *Ibid.*, pp. 15–16.

<sup>11</sup> Ireland had the second highest per capita adoption rate in the world in 2008 (Nigel Cantwell, "Adoption and children: a human rights perspective", Council of Europe Commissioner for Human Rights issue paper, 28 April 2011, p. 9).

<sup>12</sup> Department of Children and Youth Affairs, "Report of the Inter-Departmental Group", pp. 11–12.

<sup>13</sup> See Adoption Rights Alliance Ireland, follow-up submission to the Committee on the Elimination of Discrimination against Women, January 2017 (available at [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRL/INT\\_CEDAW\\_NGO\\_IRL\\_26308\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRL/INT_CEDAW_NGO_IRL_26308_E.pdf)), paras. 3.6–3.9.

<sup>14</sup> Department of Children and Youth Affairs, "Incorrect registrations of birth: new evidence in St Patrick Guild records", press release, 29 May 2018.

## 2. Forced labour

16. Evidence is available that girls who were transferred to the Magdalene laundries were made to work against their will and with little to no compensation, in arrangements that could amount to the sale of children. Similar to the mother and baby homes, the Magdalene laundries were institutions operating until the mid-1990s that housed girls and young women considered to be at risk socially or, as time went on, in danger morally.<sup>15</sup> Conditions in the laundries were harsh, including restriction of movement, isolation from outside communities and humiliating treatment.<sup>16</sup> Girls and young women in the laundries undertook gruelling labour in the form of industrial laundering and the manufacture of clothes and religious adornments,<sup>17</sup> with reported punishments – such as the withholding of food – for refusal to work.<sup>18</sup> Payments were nominal.<sup>19</sup> Given that these arrangements sometimes involved the transfer of children for economic benefit,<sup>20</sup> they could amount to the sale of children under international law.<sup>21</sup>

17. Some former residents of mother and baby homes recounted to the Special Rapporteur that they were also forced to do domestic and other labour, but for foster families, and that they also missed educational opportunities after being placed with these families as children. Such situations present similar concerns.

18. In July 2011, Ireland established a committee to examine the level of State involvement with the Magdalene laundries, whose report showed that the State played a role in the placement of women and girls in the laundries and that it held competitive contracts with the laundries.<sup>22</sup> The Government later established an ex gratia fund for the benefit of women who had been admitted to and worked in the Magdalene laundries.<sup>23</sup> These developments notwithstanding, the Special Rapporteur agrees with the assessment by the Irish Human Rights and Equality Commission that proper redress cannot be provided without an independent account of what took place in the Magdalene laundries and of the human rights implications of these events.<sup>24</sup>

19. The State asserts that it has no evidence of systemic human rights violations in the laundries and that the Government has no liability for them; as such, it has no plans to conduct an investigation or to compel religious orders to provide information on laundries' operations other than for individual criminal or civil actions (see, for example, CAT/C/IRL/2, paras. 240–256, and CEDAW/C/IRL/6-7, paras. 40–46). The Special Rapporteur is concerned that Ireland maintains this position, given that it is based on the summary results of an inquiry that was limited in scope and gathered information primarily through voluntary contributions. It also runs contrary to the recommendations of the Irish Human Rights and Equality

<sup>15</sup> Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries (known as the “McAleese report”), February 2013, chap. 3. See also the report of the Commission to Inquire into Child Abuse (known as the “Ryan report”), May 2009, vol. III, chap. 18, para. 18.14; and *Reformatory and Industrial School Systems Report, 1970*, para. 6.18.

<sup>16</sup> McAleese report, chap. 19, paras. 35, 37–38 and 42–43.

<sup>17</sup> Survivors described it as the “hardest work ever” and “very hard work” (*ibid.*, chap. 19, paras. 35 and 39).

<sup>18</sup> *Ibid.*, chap. 19, paras. 35 and 38.

<sup>19</sup> *Ibid.*, chap. 12, para. 184 (referring to legislation prohibiting any payment other than “the coin of the realm” to employees); chap. 15, paras. 88–107 (referring to a salary of less than the minimum income threshold for insurable employment of six pounds per week); chap. 19, para. 39 (referring to wage payment of “a pound a month”); and chap. 20, para. 33 (stating that no wages were paid to the women and girls).

<sup>20</sup> *Ibid.*, chap. 11, para. 22, and chap. 13, paras. 24 and 50 (indicating the cost-effectiveness of keeping disadvantaged girls and women in laundries as opposed to in health and social institutions).

<sup>21</sup> See the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, art. 2.

<sup>22</sup> McAleese report, chap. 2, para. 1; chap. 8, paras. 16–27; and chap. 14.

<sup>23</sup> Magdalen Commission report: report of Mr. Justice John Quirke on the establishment of an ex gratia scheme and related matters for the benefit of those women who were admitted to and worked in the Magdalen laundries, May 2013, para. 1.01.

<sup>24</sup> Irish Human Rights and Equality Commission, *IHRC Follow-Up Report on State Involvement with Magdalen Laundries* (Dublin, 2013), p. 4.

Commission<sup>25</sup> and of the treaty bodies (CAT/C/IRL/CO/2, paras. 25–26; CEDAW/C/IRL/CO/6-7, paras. 14–15; and CCPR/C/IRL/CO/4, para. 10). The Government’s suggestion that survivors of abuses have recourse to litigation and criminal complaints fails to acknowledge the obstacles presented in this regard, including difficulty in obtaining justice for historical cases and the apparent precondition that survivors agree to take no legal action against the State in order to benefit from the ex gratia scheme.

### 3. International and commercial surrogacy arrangements

20. Information on the prevalence of surrogacy arrangements, both domestic and international, is not systematically gathered in Ireland. A 2014 Supreme Court case, which ruled that a surrogate should be designated as the mother of twin babies for the purposes of civil registration,<sup>26</sup> is likely to have discouraged domestic surrogacy arrangements. However, the Government is aware of citizens making such arrangements in the country and abroad. The decrease in legal avenues for intercountry adoption may increase the popularity of international surrogacy as an alternative. Thus, regulation of surrogacy arrangements in accordance with human rights standards will be important to ensure that these agreements do not amount to the sale of children under international human rights law (see A/HRC/37/60).

## B. Sexual abuse and exploitation of children

21. The Special Rapporteur is concerned about the absence of regularly gathered, comprehensive data on the scope and different forms of sexual abuse and exploitation of children in Ireland, a reality that all stakeholders acknowledged during the visit. At present, the Central Statistics Office relies on data received from An Garda Síochána on sexual offence cases,<sup>27</sup> and the format of the Garda crime database makes it difficult to isolate sexual offences committed against children.<sup>28</sup> Similarly, as regards data collection at the court level, cases are classified according to the type of crime, with no differentiation as to the age group of the victim.<sup>29</sup> Tusla, which is the statutory body for child welfare and protection services, also collects data on reports of sexual abuse, although not broken down by type of abuse. Thus this data alone cannot clarify the number of cases of sexual abuse and exploitation of children that make it to court and their outcomes. Further, stakeholders express doubts as to whether the data that do exist reflect the reality. It is hoped that the upcoming national review of childcare and recovery services, and the scoping study that is currently under way on data related to sexual abuse and sexual violence, will consider these concerns.

22. A 2017 study conducted by the Garda Inspectorate, which analysed entries in the police crime database from 2012 to 2014, found that 5,872, or 66 per cent, of all sexual offences committed in Ireland during that period involved children. Most of the perpetrators were people known to the victim or their family, with only 14 per cent of the crimes perpetrated by strangers.<sup>30</sup> A 2015 survey of victims seeking services from rape crisis centres for offences such as rape, sexual assault and other sexual abuse found that 62 per cent of victims seeking those services had experienced the abuse as children. Seven per cent were victimized during both childhood and adulthood, and 31 per cent as adults only.<sup>31</sup> Thus, it is probable that the lack of regular, disaggregated reporting on sexual offences against children obscures the scope of the problem.

<sup>25</sup> Ibid., pp. 126–127.

<sup>26</sup> Supreme Court, *M.R. and D.R. (suing by their father and next friend O.R.) & ors v. An t-Ard-Chláraitheoir & ors*, Case No. 263/2013, Judgment, 7 November 2014.

<sup>27</sup> Garda Inspectorate, *Responding to Child Sexual Abuse: A Follow Up Review from the Garda Inspectorate* (Dublin, 2017), p. 125.

<sup>28</sup> Ibid., p. 123.

<sup>29</sup> By definition, some offences, such as “defilement of a child”, involve child victims only, while others may involve adult or child victims. See, for example, Office of the Director of Public Prosecutions, *Annual Report 2017* (Dublin, 2018), pp. 24–30.

<sup>30</sup> Garda Inspectorate, *Responding to Child Sexual Abuse*, p. 18.

<sup>31</sup> Rape Crisis Network Ireland, *RCNI Rape Crisis Statistics and Annual Report 2015* (Dublin, 2016), p. 13.

23. The majority of cases reported to the Garda (59 per cent) relate to “historical” incidents, defined as incidents that occurred more than a year before being reported. This is understood to indicate a level of underreporting at the time of the incident.<sup>32</sup> In the same subset of cases, less than 13 per cent of cases were referred for prosecution, of which 32 per cent were prosecuted.<sup>33</sup> The Garda report does not reflect conviction rates, but the Special Rapporteur has learned that conviction rates for such cases are usually low. Even in cases that have already reached the childcare courts, accusations of child sexual abuse may not lead to conviction. In a study monitoring complex childcare cases, allegations of sexual abuse were present in 8 of the 10 cases observed, but none was followed by a successful criminal prosecution.<sup>34</sup>

24. There are a number of issues impeding the successful prosecution of child sexual abuse, including challenges that the police face with the gathering of evidence, unclear testimony about incidents and difficulty proving the specific legal elements of the crimes. Delays in investigations and court proceedings may mean victims are obliged to testify well after the incident. This can lead to inconsistencies and difficulties in obtaining corroborating evidence. Depending on the length of time between the incident and prosecution, the accused may challenge the constitutionality of certain evidence presented or their right to face their accuser.

## 1. Child sexual abuse material

25. The Special Rapporteur welcomes the efforts of the Government, the private sector and civil society to address the issue of child sexual abuse material, including the growing threat of ICT-related abuse. Hotline.ie, a national service enabling Internet users to report the presence of suspected child sexual abuse material on the web, concluded that 524 of the 5,789 reports that it had received in 2017 had constituted child sexual abuse under Irish law.<sup>35</sup>

26. Irish police also receive referrals of suspected child sexual abuse material from the United States-based National Center for Missing and Exploited Children. Analysis of data by the Garda Inspectorate shows that of the 2,184 referrals received by the Garda from January 2014 to June 2016, over 80 per cent came from the Centre.<sup>36</sup> A total of 540 of the 2,184 referrals received during that period had been sent for further investigation as possible child sexual abuse material, of which 435 cases had been examined so far.<sup>37</sup>

27. The data produced by Hotline.ie demonstrates how the transnational nature of ICT-related abuse renders it a complex problem to tackle. While Hotline.ie has seen decreasing incidents of child sexual abuse material hosted on Irish sites,<sup>38</sup> there was an increase in reported material hosted on foreign websites. In fact, the 524 confirmed cases of child sexual abuse material represented an increase of 44 per cent in the amount of such material identified in 2016.<sup>39</sup> In addition, Hotline.ie found in 2017 that the images depicted more severe levels of abuse than those found before.<sup>40</sup>

28. Hotline.ie plays a liaison role in the fight against child sexual abuse material online. A service overseen by the Department of Justice and Equality and jointly funded by the Internet Service Providers Association of Ireland and the European Union, it relies on the public to report images and videos suspected to be child sexual abuse material. After its analysis, Hotline.ie sends notices of likely child sexual abuse material to the Garda and the relevant Internet service provider or host so that the company can remove the image while

<sup>32</sup> Garda Inspectorate, *Responding to Child Sexual Abuse*, pp. 128–129.

<sup>33</sup> *Ibid.*, p. 22.

<sup>34</sup> Carol Coulter, *An Examination of Lengthy, Contested and Complex Child Protection Cases in the District Court* (Dublin, Child Care Law Reporting Project, 2018), p. 75.

<sup>35</sup> Hotline.ie, “Annual report 2017: working towards eliminating child sexual abuse online”, p. 16.

<sup>36</sup> Garda Inspectorate, *Responding to Child Sexual Abuse*, p. 218.

<sup>37</sup> *Ibid.*, p. 217.

<sup>38</sup> In 2017, for the first time in eight years, no child sexual abuse material was detected as being hosted in Ireland (Hotline.ie, “Annual report 2017”, p. 20).

<sup>39</sup> Hotline.ie, “Annual report 2017”, p. 17.

<sup>40</sup> Hotline.ie, “79% child sexual abuse imagery found to feature children aged 0 to 12”, press release, 4 October 2018.

preserving evidence for the police to investigate. Internationally hosted materials are reported to counterparts in relevant national jurisdictions.

29. Both law enforcement and Hotline.ie analysts point to structural limitations on their work. For example, current Irish legislation does not criminalize the posing of children in sexually suggestive positions, known as child erotica. Often such images are present in the same places as child sexual abuse material and involve the same children. In many cases, law enforcement can better identify the children in these images. In addition, as part of their efforts to evade detection, perpetrators of the abuse are moving child sexual abuse material further into the dark web, requiring more time and discernment to detect.

## 2. Institutional settings

30. Government inquiries over the past 20 years have looked into historical abuses committed against children by clergy and also in education and care institutions, including institutions operated by the Catholic Church. In particular, an inquiry commissioned in 2003 researched the response to allegations of child sexual abuse by priests in the diocese of Ferns.<sup>41</sup> A 2010 report examined the handling of child sexual abuse allegations in the diocese of Cloyne,<sup>42</sup> and a 2009 report covered the same subject matter as regards the archdiocese of Dublin.<sup>43</sup> The reports generally found that religious and government authorities did not deal with allegations of child sexual abuse expeditiously, including by failing to remove accused priests from ministry and not reporting allegations to the Garda and other authorities.

31. In 2009, the Commission to Inquire into Child Abuse published a report that addressed abuses committed against children in reformatory and industrial schools run by religious orders. The report found that molestation and rape were endemic in facilities for boys whereas girls endured physical abuse and humiliation. When confronted with evidence of child sex abuse, religious authorities generally responded by transferring offenders to another location where they were often free to abuse again.<sup>44</sup> The Special Rapporteur is concerned by the lack of reports of criminal prosecutions following these investigations and calls on the Government to ensure accountability for these abuses and to guarantee support to the victims.

32. In terms of data on institutional abuse, an analysis of the cases recorded by the Garda in 2014 noted very few reported cases of clerical or institutional abuses. There were only three such cases in the Garda database for the period analysed, out of a sample of 170 child sexual abuse reports.<sup>45</sup> However, this deviates from the hundreds of cases recorded by the National Board for Safeguarding Children in the Catholic Church in Ireland, which recorded 265 allegations against priests and religious orders from April 2014 to May 2015. The Board has seen a steady decrease in the number of allegations each year, with 72 allegations reported to it from April 2016 to May 2017.<sup>46</sup> Nevertheless, it is possible that Garda policy not to record third-party reports results in underreporting of clerical cases by the police.<sup>47</sup>

## 3. Trafficking

33. The Special Rapporteur welcomes the Government's recent decision to begin separating data on the trafficking of children from data related to prosecutable offences under section 3 (2) of the Child Trafficking and Pornography Act 1998.<sup>48</sup> Past official figures on child trafficking included all offences that could be charged under the Act, including child pornography and child prostitution offences not generally deemed trafficking, making it difficult to visualize the specific scope of child trafficking as it is defined under international law. Newly assessing the more specific data, a 2018 government report lists 20 reported cases

<sup>41</sup> Department of Health and Children, *The Ferns Report: Presented to the Minister for Health and Children* (Dublin, Stationery Office, 2005).

<sup>42</sup> Report by the Commission of Investigation into the Catholic Diocese of Cloyne, December 2010.

<sup>43</sup> Report by the Commission of Investigation into the Catholic Archdiocese of Dublin, July 2009.

<sup>44</sup> Ryan report, vol. IV, chap. 6, paras. 6.09–6.30.

<sup>45</sup> Garda Inspectorate, *Responding to Child Sexual Abuse*, pp. 18 and 129.

<sup>46</sup> National Board for Safeguarding Children in the Catholic Church in Ireland, "Annual report 2016" (2017), p. 10.

<sup>47</sup> See para. 74 below.

<sup>48</sup> As amended by the Criminal Law (Human Trafficking) Act 2008.

of trafficking of children (out of a total of 283 trafficking cases) in Ireland from 2013 to 2017. Isolated data for 2017 shows three reports of child trafficking that year, with victims originating from Ireland, Europe and Africa. Trafficking for the purpose of labour exploitation, sexual exploitation and forced criminality constituted one case each. Prosecutions in relation to the 2017 child trafficking cases were not initiated in that year.<sup>49</sup>

### C. Root causes and risk factors

34. The Special Rapporteur has identified, among a number of root causes and risk factors, a culture of silence around issues of childhood sexual abuse and exploitation. Lack of knowledge or reticence about the fact that abuses occur against children means that systems are not in place to prevent or quickly respond to violations when they happen. In addition, distrust between institutions, or between institutions and the public, can prevent information-sharing in a timely fashion. The resulting deficit sends a message that consequences are unlikely to follow the abuse of children. The Special Rapporteur observes that assumptions that the issue of institutional and clerical abuse has been resolved deters reporting and prevents full accountability. The jurisdiction of commissions of inquiry that have touched on these issues has been too limited and redress provided so far is unsatisfactory. Further, the societal impulse to defer to the wishes of adults can cause the best interests of the child to be overlooked.

35. Certain groups of children, including children belonging to minority communities, children in social care and children with disabilities, have specific vulnerabilities related to abuse and exploitation because they live in riskier settings or have fewer protective structures around them. Poverty and overcrowded living conditions, which are circumstances that affect Irish Traveller children, for example, may account for higher reports of abuse among this community.<sup>50</sup> Children in care depend largely on the child protection system to identify harmful situations; however, assessment delays or lengthy legal proceedings may mean children are not quickly removed from risky environments. Similar concerns exist for children with disabilities, whom children's advocates have identified as being at a heightened risk in residential settings, specialized education and foster care.

36. Children whose families are seeking asylum are housed in mostly multifamily commercial facilities contracted by the State to provide no-cost accommodation for asylum seekers. Families in this system, known as "direct provision", often share dining and common spaces with others in arrangements that can last from a few months to several years.<sup>51</sup> This presents risks for children if they are sharing spaces with adults or older children unsupervised, particularly as half the residents of direct provision centres are adults who arrived in Ireland alone.<sup>52</sup> Because direct provision residences are intended to be temporary in nature, the national monitoring agency for health and social services does not have the authority to conduct inspections of them. This means that a layer of supervision is missing that would help identify risks for children. State efforts to develop uniform standards for direct provision are to be welcomed and should be fast-tracked.

37. As in many countries, the accessibility of the Internet and children's increased activity on social media pose new risks in terms of abuse and exploitation. Citing civil society figures, a 2018 parliamentary study reported that the percentage of children in Ireland ages 8 to 13 years who spent two to four hours on the Internet daily increased from 17 per cent in 2016 to 24 per cent in 2017. Nearly half of children aged 9 to 16 years accessed the Internet in their own bedrooms, often an unsupervised environment, on a daily basis.<sup>53</sup> Moreover, the growing

<sup>49</sup> See, for example, Department of Justice and Equality, "Trafficking in human beings in Ireland: annual report 2016", pp. 5, 12, 15 and 23.

<sup>50</sup> See, for example, Coulter, *An Examination of Lengthy, Contested and Complex Child Protection Cases*, p. 16: allegations of sexual abuse featured disproportionately in observed childcare proceedings involving Traveller families.

<sup>51</sup> Department of Justice and Equality, Reception and Integration Agency, "Annual report 2016", p. 15.

<sup>52</sup> *Ibid.*, pp. 22 and 24.

<sup>53</sup> Houses of the Oireachtas, Joint Committee on Children and Youth Affairs, "Report on cyber-security for children and young adults", March 2018, pp. 8–9.

trend of children producing sexualized images of themselves online increases the avenues of exploitation through this medium.

### **III. Measures to combat and prevent the sale of children, child prostitution and child pornography**

38. Ireland has taken numerous steps in recent years to strengthen the legal and institutional framework for protecting children from sexual exploitation and abuse. A new amendment recognizes children as rights holders under the Constitution, and a series of initiatives were launched to incorporate the voices of children in policymaking. Legislative changes have closed loopholes or expanded the protective capacity of the State with respect to child and forced marriage, child sexual abuse and the involvement of children in criminal proceedings. At the same time, however, more remains to be done in terms of developing a comprehensive national strategy to prevent and respond to the sale and sexual exploitation of children, as well as to monitor and efficiently distribute resources to pressure points in the child protection system.

#### **A. Legal framework**

39. Ireland has ratified most of the core international human rights treaties, including the Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, which enables the submission of complaints to the Committee on the Rights of the Child. However, the State has yet to ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. It is likewise not a party to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention). In 2010, Ireland ratified the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption.

40. The Special Rapporteur welcomes the 2015 signing into law of the Thirty-First Amendment to the Constitution, which expressly recognizes children as rights holders and has paved the way for further legal and institutional developments to respond to the needs and interests of children. For example, the Children First Act 2015, which entered into force in December 2017, provides that certain classes of professionals who provide services to children or who work closely with them are required to share any information that they have about any sexual abuse of a child, and about non-sexual abuse that threatens a child's health, development or welfare. This complements legislation from 2012, which provides that withholding information about a serious offence against a child, including a sexual offence, is a crime.

41. At the national level, the Criminal Law (Sexual Offences) Act 2017 defines as criminal offences a range of violent and coercive acts against children, such as online grooming, forced touching and acts related to inducing child prostitution. It criminalized not only the possession of child sexual abuse material but also the "access[ing]" (or streaming) of such material, and it outlawed the organization, production and distribution of material depicting simulated children in addition to that in which real children were depicted. The 2017 Act further removed the dual criminality requirement for the exercise of extraterritorial jurisdiction, which in the past had limited the State's ability to prosecute Irish citizens who had committed sexual offences against children abroad.

42. In the week before the Special Rapporteur's visit, Ireland enacted the Domestic Violence Act 2018, which criminalized forced marriage and completely outlawed child marriage for the first time. Before its enactment, children could be married in Ireland with the consent of their parents or a legal guardian, and the offence of forced marriage had not been defined as a crime. The Special Rapporteur welcomes this development and is encouraged by the Government's intention to protect children from parental or other pressure to marry before the age of 18 years.

43. Procedural protections that existed for child victims and witnesses have also been strengthened. Legislation that was in place before the Criminal Law (Sexual Offences) Act 2017 and the Criminal Justice (Victims of Crime) Act 2017 provided that children could give testimony by video link or behind screens that shielded them from seeing the accused in court proceedings related to sexual offences. However, the new legislation also enables these measures to be taken in any other cases in which failure to do so could lead to the revictimization or intimidation of or retaliation against child victims or child witnesses. The Domestic Violence Act 2018 enables similar special measures to protect child witnesses in civil proceedings.

44. In addition, the Criminal Law (Sexual Offences) Act 2017 and the Criminal Justice (Victims of Crime) Act 2017 expand the types of crime for which child witnesses may submit pre-recorded interviews as evidence in lieu of in-person testimony to include all offences that entail a risk of revictimization or intimidation of or retaliation against the child. They put measures in place to prevent children from being personally cross-examined by the accused in sexual offence cases and enable children to be accompanied in court by a close friend, family member or support professional. Importantly, they enable the assessment of children's protection needs before the initiation of court proceedings and outside of the court setting, an innovation that the Special Rapporteur welcomes.

45. The Special Rapporteur notes that the Criminal Evidence Act of 1992 allows for an intermediary to reformulate questions put to child witnesses in sexual offence cases so that they are appropriate to the child's age and mental capacity. However, the Special Rapporteur is concerned that neither this legislation nor the Criminal Justice (Victims of Crime) Act 2017 – which allows the application of these measures in all cases where there is risk of harming the child once again – expressly provides that children may respond through the intermediary as well.

46. The Special Rapporteur encourages Ireland to enact legislation that would regulate surrogacy arrangements in order to protect against demand-driven practices that endanger children's rights. Recently, the State has started drafting a bill that would regulate all areas of assisted reproduction, including by prohibiting commercial surrogacy arrangements in Ireland.<sup>54</sup> The General Scheme of the bill recognizes that the interests of the child should be paramount in any surrogacy arrangement,<sup>55</sup> which the Special Rapporteur welcomes. She also encourages the Government to ensure that safeguards are in place so that the best interests of the child are ensured in practice.

47. The Special Rapporteur encourages Ireland to enact legislation that facilitates more open adoption processes, including by protecting the rights of adoptees to information about their origins and identities. A bill has been proposed that would require all individuals who have information about past adoption to provide that information to the Adoption Authority of Ireland for centralized safekeeping.<sup>56</sup> This is a welcome development given the thousands of cases of falsely registered adoption reported in Ireland, which have left many adopted children and adults without access to their personal, family or health histories. The bill would also enable Tusla to keep a register of preferences of natural parents regarding being contacted, as well as of inquiries made by adopted people or their relatives for information. However, the Special Rapporteur is concerned that those who were adopted as children may be precluded from receiving essential identity information, such as birth certificates, in cases in which (a) the natural parents have indicated a preference not to be contacted, and (b) the adopted person fails to sign a pledge never to contact the natural parents when no preference has been registered by the natural parents.

48. The Special Rapporteur encourages Ireland, in recognizing the right of children to an identity under article 8 of the Convention on the Rights of the Child, to address the rights of children to essential information about their identities as being separate from, and not contingent upon, the desire of any party to be contacted. Adopted children should be entitled to seek this information, in addition to adults who were adopted as children. The Special

<sup>54</sup> Department of Health, *General Scheme of the Assisted Human Reproduction Bill 2017* (Dublin, 2017), p. 91.

<sup>55</sup> *Ibid.*, p. 92.

<sup>56</sup> Adoption (Information and Tracing) Bill 2016.

Rapporteur is further concerned that the bill does not expressly cover individuals who were adopted through an illegal process, individuals who were adopted by families overseas and Irish persons adopted from abroad, especially considering the history of such cases in Ireland.

## **B. Institutional framework**

49. Ireland has a relatively robust institutional framework related to combating the sale and sexual exploitation of children. The Department of Children and Youth Affairs, among other entities, has overseen policy and service provision concerning children and youth since 2011, when it began to centralize functions carried out by predecessor agencies. Established in 2014, Tusla, the child and family agency, is an independent entity that provides child protection and welfare, alternative care, family support, educational welfare and domestic violence services. The Health Service Executive, from which Tusla emerged and was expanded, is the Irish public health service, and is responsible for providing mental health services such as rehabilitation for child victims.

50. The Ombudsman for Children, who reports to the Oireachtas, is mandated to receive complaints on issues affecting children. In addition to investigating complaints and formulating recommendations to resolve them, the Ombudsman reviews policy and provides public education on such issues. Complementary to this is the work of an independent national expert who serves as Special Rapporteur on Child Protection, advising the Government on national and international law and policy developments affecting children.

51. The Irish Human Rights and Equality Commission has reported on issues related to children's rights, with particular attention to the issue of institutional abuse. Further, in the realm of adoption, the Adoption Authority of Ireland, an independent successor to the Adoption Board of 1953, was created in 2010 to ensure that international and domestic standards are upheld in adoption processes. It has sole authority over the granting of adoption orders.

52. Within the Department of Justice and Equality, the Office for Internet Safety develops strategies for protecting children online and provides oversight over Hotline.ie, the collaborative service enabling Internet users to report suspected child sexual abuse material on the web. The Anti-Human Trafficking Unit, of the Department of Justice and Equality, coordinates the policy response to trafficking under Irish law.

53. Within An Garda Síochána, the Garda National Protective Services Bureau provides guidance on sexual crime and child protection, in addition to working on domestic violence, missing persons and victim support. It leads investigations into related complex cases. A specialist anti-trafficking unit under the Special Crime Operations section combats human trafficking, including the trafficking of children.

## **C. National policies, strategies and programmes**

### **1. Policies on child protection**

54. In addition to legislative reform, Ireland has put in place several policies to respond to sexual violence against children. Tusla is implementing its Child Protection and Welfare Strategy 2017–2022, which addresses inter-agency cooperation, process and standardization, policy and practice, governance, data and performance. The Children First Interdepartmental Implementation Group, comprising representatives of all government departments, Tusla, the Health Service Executive and the police, is tasked with monitoring how public sector actors are implementing the Children First legislation. In tandem with the mandatory Children First reporting requirements, national guidelines were revised and published in 2017 on how to identify and report more general suspicions of child abuse and neglect.<sup>57</sup>

55. Shortly after the Special Rapporteur's visit, the Government finalized a national action plan addressing online safety, under which a national advisory council for online safety

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<sup>57</sup> Department of Children and Youth Affairs, *Children First: National Guidance for the Protection and Welfare of Children* (Dublin, 2017).

would be formed and a nationwide public awareness campaign rolled out targeting children and youth and their parents, guardians and teachers.<sup>58</sup> In 2016, the State also updated its national anti-trafficking policy, which highlights the identification of potential victims, joint interviewing of those victims and consideration of the fact that missing children are at high risk of trafficking as priority strategic areas for combating child trafficking.<sup>59</sup>

56. While the aforementioned policies are timely, the Special Rapporteur is concerned about the fragmented nature of the Government's approach to the issue of sexual violence against children. As it stands, Ireland does not yet have a uniform methodology on how sexual offences against children are defined, and the fact that no single government department has ownership of the issue hinders coordination. Further, there does not appear to be an evaluative component assessing the impact of Government-wide efforts to prevent and respond to child sexual abuse and exploitation.

## 2. Investigation and prosecution

57. Nearly all of the interlocutors who met with the Special Rapporteur mentioned that child sexual abuse and exploitation were likely to be underreported in Ireland. Indeed, a 2015 survey of victims seeking services from rape crisis centres indicated that only 30 per cent of those who had sought services had disclosed the abuse that they had experienced to a formal authority.<sup>60</sup>

58. A protocol is in place that provides that social workers and police can jointly interview child victims of abuse and sexual exploitation to prevent their retraumatization by having to recount their experiences for both evidence gathering and care assessments. The Special Rapporteur welcomes the ongoing review of the protocol, given that joint interviewing does not always happen in practice. For example, in a study of 10 complex childcare cases in district courts, it was observed that, despite child sexual abuse allegations emerging in 8 of the cases, in none of the cases was there a joint interview of the child victims by Gardaí and social workers.<sup>61</sup> It is possible that, in some cases, the different types of information sought by the police and social workers makes joint interviewing less useful. Difficulties also arise with coordinating schedules among a limited number of specialized personnel. The researchers studying complex childcare cases, for example, point out that Ireland has only 16 trained specialist social workers available to join the police for such interviews nationwide.<sup>62</sup>

59. Not only are repeat interviews with children harmful, but they can have negative consequences for accountability. As an example, some interlocutors directed the Special Rapporteur to the case of a child who had been interviewed nearly a dozen times and had begun losing track of her testimony, which, they gathered, had contributed to the case being dropped. In this respect, the Government-proposed "one house" model, which would co-locate specialist police and social services, could help overcome coordination challenges while ensuring that child victims received specialized attention. The Special Rapporteur welcomes the expected opening of the first such centre in 2019 and encourages the State to ensure that this new initiative is well resourced and incorporates on-site therapeutic services for children.

60. There are slowdowns at various points in the investigation and prosecution process that affect case outcomes, such as at the point when police record reported incidents of abuse and interview witnesses; in the time between investigation and referral for prosecution; when cases are awaiting the availability of a judge; and when procedural challenges arise. Moreover, the adversarial nature of the proceedings means that significant weight is placed on victim testimony, which some victims do not wish to give, or which is difficult to sustain under challenging cross-examination. Interviews taken by non-trained personnel can also raise evidentiary concerns. Thus, nearly all stakeholders recognized the need for routine,

<sup>58</sup> Government of Ireland, *Action Plan for Online Safety 2018–2019* (Dublin, 2018).

<sup>59</sup> Department of Justice and Equality, *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland* (Dublin, 2016), pp. 72–79.

<sup>60</sup> Rape Crisis Network Ireland, *RCNI Rape Crisis Statistics and Annual Report 2015*, p. 21.

<sup>61</sup> Coulter, *An Examination of Lengthy, Contested and Complex Child Protection Cases*, pp. 40 and 59–60.

<sup>62</sup> *Ibid.*, p. 60.

specialized training for all professionals handling child sexual abuse and exploitation cases, for reasons related both to child protection and to successful prosecution.

61. In addition to the above issues, the Special Rapporteur is concerned about the fact that the Child and Adolescent Sexual Assault Treatment Unit is the only specialized forensic examination unit for victims of sexual abuse under the age of 14 years, while there are six such centres for older children and adults. Even if child victims over the age of 14 may access other units, this imbalance is worrying given recent analysis by the Garda Inspectorate, which raises the possibility that two thirds of sexual assault victims in Ireland are children,<sup>63</sup> and given indications from the Inspectorate and Hotline.ie that a significant percentage of child sexual abuse reports concern those aged 15 and below.<sup>64</sup>

62. In practical terms, the result of this limitation is that many children will be required to travel for hours for examination and treatment after experiencing abuse. The additional burden on young victims could compound the harm that they experience while also increasing the chance that forensic evidence of crimes against them is compromised. In addition, some victims living far from the specialized unit may be fully deterred from accessing the service. A recent inter-agency report of the activities of all the forensic examination units in Ireland showed that 82 per cent of the cases examined by the Child and Adolescent Sexual Assault Treatment Unit related to incidents that had taken place in Galway and Mayo Counties only; that is, the county in which the unit is located and another one immediately adjacent to it.<sup>65</sup>

### 3. Care, recovery and reintegration

63. In his 2016 annual report, the Ombudsman for Children identified the management of child protection concerns as one of the main categories of complaints received by his Office,<sup>66</sup> and the child protection system is indeed under strain. An important piece of the puzzle is a shortage of social workers available to identify and respond to child protection concerns. Government officials informed the Special Rapporteur that approximately 250 social workers graduated each year, which does not meet the nationwide, multisectoral demand for their services. In addition to recruitment limitations, retention of social workers remains challenging given heavy workloads and the difficulties inherent to their work.

64. Victims of child sexual abuse face lengthy waiting lists before they can receive social services. As a snapshot of what this looks like, figures from Tusla in 2016 showed that there was a total of 25,034 open social work cases, including children in the care of the State. Of these cases, approximately 22 per cent (5,413) were awaiting the allocation of a social worker.<sup>67</sup> It is likely that this backlog restricts access to timely care for recent victims of child sexual abuse, not to mention the care sought by adults reflecting on past harms. It also presents the risk that, due to limited resources, social workers will feel pressure to settle cases quickly, ultimately lowering their standards when considering care placements. The Special Rapporteur has learned that limited resources also mean that there are gaps in the protection system for post-adoption review, for individuals leaving residential care and for children with complex needs.

65. The Special Rapporteur is concerned that there is no national therapeutic service for child victims of abuse, meaning that child victims are not guaranteed counselling that is appropriately specialized and nearby after they experience abuse. In practice, non-governmental organizations are heavily relied upon to provide specialized therapeutic services to child sexual abuse victims. However, they, too, lack the resources necessary to meet the present demand and to ensure that care is continuous. Furthermore, waiting lists are

<sup>63</sup> See para. 23 above.

<sup>64</sup> See Garda Inspectorate, *Responding to Child Sexual Abuse*, p. 18; and Hotline.ie, “Annual report 2017”, p. 3.

<sup>65</sup> Health Service Executive, *National Sexual Assault Treatment Unit (SATU) Annual Key Service Activity Report: 2016* (Dublin, 2017), p. 49.

<sup>66</sup> Ombudsman for Children, *Annual Report 2016* (Dublin, 2017, pp. 23–24 and 28–29).

<sup>67</sup> Department of Children and Youth Affairs, *An Indicator Set for Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020* (Dublin, Government Publications, 2017), pp. 26 and 67.

extensive for the public mental health services provided by the Health Service Executive, which risks leaving abused children in crisis.

66. The limited number of judges available to hear childcare cases means that there are delays in care proceedings that affect the timeliness of decisions on care and recovery services, as well as their evaluation. The capacity of the court system should be reviewed to ensure that it is equipped with the human and financial resources necessary to reduce delays. Court infrastructure should also be enhanced to accommodate personnel supporting child victims and justice sector officials further trained to effectively handle childcare cases.

67. One challenge faced by the child protection system is the necessity to balance the rehabilitation needs of children exhibiting sexually harmful behaviour and the rights of children that they encounter to be protected from harm. Currently, the National Inter-Agency Prevention Programme by Tusla provides services to children and young people who display sexually harmful behaviour. Another initiative in this regard is the Garda Youth Diversion Programme, which seeks to “divert” child offenders from the criminal justice process and into a supervisory scheme overseen by youth liaison officers. The programme has the potential to prevent the criminalization of children who commit minor offences, who may themselves have been victims in the past and for whom rehabilitation needs are to be prioritized. However, the Special Rapporteur cautions that the programme should involve appropriate therapeutic and social support and that offences like rape should nonetheless be routinely prosecuted.

#### **4. Child participation and empowerment**

68. The Special Rapporteur commends the efforts of Ireland to incorporate the perspective of children into policies that affect them. For example, Ireland has outlined its National Strategy on Children and Young People’s Participation in Decision-Making 2015–2020. The Department of Children and Youth Affairs funds and oversees the activities of Comhairle na nÓg, an affiliation of 31 youth councils nationwide, which identifies topics important to young people and works with scholars to conduct research on these topics, sharing the results with policymakers. Constituted of children aged 12 to 18 years, its National Executive comprises representatives elected from each of the councils. A national youth parliament, Dáil na nÓg, is held biennially. In addition to the work of Comhairle na nÓg, the Ombudsman for Children, the Department of Children and Youth Affairs, Tusla and other government bodies have held consultations with young people addressing the issues of children in the care system, school curricula, the criminal justice system and mental health.

69. These achievements notwithstanding, children face obstacles in having their views taken into account, especially on sensitive topics such as sexual violence. At times, young leaders face stereotypes and dismissive attitudes from adults about their agency and desire to effect change. Efforts to convey views on issues such as sexual harassment have not been successful. The Special Rapporteur encourages the Government to empower young people to address debates on any topic that interests them – including issues related to sexual health and safety – and to ensure that their contributions are reflected in policies. The Government should also consider how to overcome social and practical impediments that affect the representation of children from marginalized backgrounds.

#### **5. Prevention**

70. The Special Rapporteur welcomes initiatives by the Government and civil society aimed at preventing the sexual exploitation and abuse of children. In line with its Action Plan for Online Safety 2018–2019, the Government created a central online hub for Internet safety information called “Be Safe Online”. Tusla organizes training for its staff and has supported the training of Gardaí to look for potential trafficking cases. In addition, by aiming to increase school performance and student retention – including for Roma and Traveller students – the Delivering Equality of Opportunity in Schools programme of the Department of Education and Skills has the potential to reduce the vulnerability of socioeconomically disadvantaged students by keeping them in school.

71. Several interlocutors informed the Special Rapporteur that they had noted increases in reports of sexually harmful behaviour and that such behaviour was likely to be a precursor

to peer-to-peer sexual violence. The national Relationship and Sexuality Education programmes, which are required at secondary schools, can play a role in countering incorrect messages about sexuality that are reaching children, while educating them on violence prevention.

72. However, the Special Rapporteur is concerned that individual schools, or even individual teachers, can adjust the content of programmes designed by the Health Service Executive, possibly reducing their effectiveness. In line with the recommendations of the Committee on the Rights of the Child (CRC/C/IRL/CO/3-4, para. 58, and general comment No. 20 on the implementation of the rights of the child during adolescence, para. 61), the Special Rapporteur encourages the Government to guarantee sexual education that is compulsory, comprehensive and grounded in scientific evidence. It should address the diversities of sexual orientation and gender identity and target all children, including those with disabilities. The Special Rapporteur also advises Ireland to review the settings in which sexual education courses are taught, given that some courses are presented in settings in which students do not feel comfortable raising legitimate questions, such as in a course led by a religious teacher or primarily connecting sexuality with religion. She supports the efforts of Tusla, children's rights advocates and Comhairle na nÓg to identify gaps in sexual education related to the concept of consent.

73. The National Board for Safeguarding Children in the Catholic Church in Ireland sets internal guidelines and advises church bodies on how to prevent and respond to sexual abuse in church communities, including through strengthened recruitment policies, communication of behavioural expectations and education on mandatory reporting obligations. Guidelines published by the National Board make reference to international human rights standards, Children First legislation and national reporting procedures.

74. Not being a statutory body, the National Board is not entitled to receive information from the authorities about allegations made against church personnel. Furthermore, Garda policy is not to record incidents and proceed with investigations in the case of victims who are referred by a third party, such as a church, but who are initially unwilling to make a complaint.<sup>68</sup> This would affect many victims of clerical abuse, since most choose not to make statements to police,<sup>69</sup> and could lead to clerical abuses being underrepresented in official reports. Together, these policies create a protection gap in which church communities may not be notified despite an incident of abuse being revealed and clerical offenders benefiting from impunity.

## IV. Conclusions and recommendations

### A. Conclusions

**75. Legislative and institutional measures put in place by Ireland in recent years have the potential to better protect children from sexual abuse and exploitation. However, the impact of these advancements is hindered by the lack of a dedicated and integrated strategy to respond to sexual violence against children. The absence of regularly gathered data means that the full scope of different forms of sexual abuse and exploitation of children is unknown. Gaps remain in the criminal justice system, and there is a need for care and recovery services to be bolstered around the country so that the services available to child victims are timely and continuous. Further, past systemic abuses, such as those committed in institutions and in the area of adoption, are yet to be fully examined, with accountability and redress remaining elusive for victims.**

<sup>68</sup> Garda Inspectorate, *Responding to Child Sexual Abuse*, p. 141.

<sup>69</sup> National Board for Safeguarding Children in the Catholic Church in Ireland, "Annual report 2016", p. 12.

## **B. Recommendations**

76. **In order for Ireland to ensure the effective protection of all children, the Special Rapporteur recommends that the Government adopt the following measures.**

77. **As regards its legal framework, the Special Rapporteur calls on Ireland to:**

(a) **Ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;**

(b) **Ratify the Lanzarote Convention;**

(c) **Enact legislation that would regulate surrogacy arrangements to ensure that the best interests of the child are protected;**

(d) **Enact legislation that would facilitate transparent adoption processes and guarantee adopted people's right to an identity, including access to their birth certificates and health records;**

(e) **Consider legislation that would expand protection for ICT-related abuse and address the connection between the production of child sexual abuse material and child erotica.**

78. **In terms of mapping the scope of the sale and exploitation of children, the Special Rapporteur recommends that Ireland:**

(a) **Develop a methodology for collecting uniform and reliable data on the scale and different forms of sexual abuse and exploitation of children, including data on the outcome of efforts to combat them, thereby furthering efforts to achieve the Sustainable Development Goals, in particular targets 5.3, 8.7 and 16.2;**

(b) **Analyse the vulnerabilities of children belonging to minority, Roma and Traveller communities, children in social care, children with disabilities and children in the direct provision system and devise strategies to reduce factors that may put them at risk of sexual exploitation and abuse;**

(c) **Carry out a comprehensive national examination of forced and illegal adoption, including audits of records in the hands of the State, while ensuring that individuals whose birth records were falsified have access to information and redress;**

(d) **Undertake a full investigation into the human rights violations and abuses connected with the Magdalene laundries and ensure that any transaction leading to the forced labour of children amounting to the sale of children is accounted for and redressed;**

(e) **Promote transparency within the hierarchy of the Church on child abuse issues;**

(f) **Ensure the removal of all obstacles for anyone who has knowledge of or who suspects child abuse to reporting it to the competent authorities irrespective of the source of information or the identity of the offender;**

(g) **Raise awareness of the impropriety of silence and institutional opacity in the face of abusive practices, while providing support for transparency at the highest political level.**

79. **With regard to policies, plans and strategies, the Special Rapporteur recommends that Ireland:**

(a) **Adopt a national strategy to protect children from sexual violence, after evaluating the availability, accessibility and quality of existing programmes, services and mechanisms;**

(b) **Maintain a centralized information system, enabling better analysis of emerging and long-term trends;**

(c) **Develop mechanisms for improved information-sharing between all entities at the national and local levels.**

80. To enhance efforts to detect, investigate and prosecute the sale and sexual exploitation of children, the Special Rapporteur recommends that Ireland:

(a) Create and maintain child-friendly reporting and complaint mechanisms, including free, dedicated helplines managed by qualified professionals, to report abuse and exploitation of children;

(b) Survey and rectify challenges faced by Gardaí and social workers that prevent the joint interviewing of child victims for evidence gathering and care assessments;

(c) Dedicate sufficient technical, human and financial resources in the design of the “one house” model or any co-located specialist response centres established for child victims, while ensuring that therapeutic services for children are incorporated into the model;

(d) Provide routine, specialized training for all professionals handling child sexual abuse and exploitation cases, with instructions on effective investigation and prosecution strategies and on preventing the retraumatization of children during criminal justice proceedings;

(e) Educate judges, prosecutors, lawyers and law enforcement agencies on international child right norms and standards, so that they adopt a child-friendly and gender-sensitive approach when dealing with child victims of sale and exploitation;

(f) Enhance the capacity of the Child and Adolescent Sexual Assault Treatment Unit and scale up specialized forensic examination and treatment services for children so that they are available nationwide;

(g) Revise the Garda policy not to record incidents and proceed with investigations in the case of victims who are referred by a third party, such as a church, but who are initially unwilling to make a complaint;

(h) Prosecute cases of clerical and institutional child sexual abuse.

81. In terms of care, recovery and reintegration, the Special Rapporteur recommends that Ireland:

(a) Strengthen Tusla with sustained technical, human and financial resources so that it can effectively fulfil its role as the primary provider of child protection and child welfare services;

(b) Provide incentives to increase the recruitment and retention of qualified, specialized social workers, ensuring adequate geographic coverage and allocation of the resources necessary for their work, and maintain standards for social workers to ensure the delivery of quality and child rights-compliant services;

(c) Invest human and financial resources into aspects of the childcare system that are under strain, including by recruiting and training additional specialist Gardaí, medical professionals, judges and aftercare providers;

(d) Conduct a needs assessment of the child protection system, including as regards long-term support for adoptees, children with complex needs and care leavers, and, as appropriate, continue to provide accommodation and counselling to facilitate their social reintegration;

(e) Identify resources for a national therapeutic service that guarantees access for child victims of sexual abuse and exploitation to specialized crisis workers and counselling that is timely, continuous and available throughout the country;

(f) Review the court system’s capacity to handle childcare cases effectively and in a timely manner, adapt court infrastructure so that it is fit for purpose and establish a nationwide case-management system to reduce delays and pressure on the judiciary;

(g) Provide routine, specialized training for all professionals in the child protection system and childcare courts, including on international child right norms and standards and on best practices for preventing harm;

(h) Integrate therapeutic and social support input into the Garda Youth Diversion Programme;

(i) Provide medical care and counselling for survivors of institutional abuse.

82. In order to better incorporate the interests of children into efforts to prevent and respond to child sexual exploitation and abuse, the Special Rapporteur encourages Ireland to:

(a) Facilitate child-led initiatives aimed at influencing policy and assist children in gaining knowledge of their rights, and seek out children's perspectives when designing and implementing child protection policies;

(b) Empower children to contribute to sensitive debates related to violence, exploitation, sexual health and safety and ensure that their contributions are given due regard;

(c) Incorporate the views of children from marginalized backgrounds into discussions about policies that affect them, including by addressing practical and societal impediments – such as transportation challenges and social stigma – that can affect their representation;

(d) Carry out public education campaigns targeting all stakeholders – including communities in rural and remote areas – on children's rights, sexual and reproductive health, online safety and other topics related to the prevention of the sale and sexual exploitation of children;

(e) Guarantee access for all children to comprehensive sexual education that is compulsory and based on scientific evidence to dispel incorrect and harmful messages about sexuality received by children online and elsewhere, and advise schools on appropriate settings for sexual education courses, especially with regard to delinking such courses from religion;

(f) Ensure that the diversities of sexual orientation and gender identity and the concept of consent are incorporated into sexual education programmes and target such programmes at all children, including those with disabilities.

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