

IRELAND

CCPR A/48/40 (1993)

551. The Committee considered the initial report of Ireland (CCPR/C/68/Add.3) at its 1235th, 1236th and 1239th meetings, held on 12, 13 and 14 July 1993 (see CCPR/C/SR.1235, 1236 and 1239). (For the composition of the delegation, see annex XI.)

552. The report was introduced by the representative of the State party who stated that since the publication of the report in the autumn of 1992, Ireland had signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and had ratified the Convention on the Rights of the Child. Following the lifting of its reservation with regard to article 6 of the Covenant, Ireland had recently acceded to the Second Optional Protocol, aiming at the abolition of the death penalty. Legislation was being prepared that would permit ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Transfer of Sentenced Persons.

553. Since the submission of the report there had been a number of developments concerning matters that were considered in the report. With regard to the "Travellers", who were ethnically Irish and, like most citizens of Ireland, Roman Catholic, but whose customs differed from those of the settled population, it was government policy that they should participate in and contribute to decisions affecting their lifestyle. In that regard, a task force which included members of the "Travelling Community" had been set up to advise, at the national and local levels, on matters of housing, health, education and employment. Concerning equality and non-discrimination, priority had been accorded to the improvement of the status of women in the workplace, at home and in public affairs, as well as to the non-discriminatory treatment of minorities and persons with disabilities, in regard to education, employment and access to goods, services and facilities - including accommodation or other premises. Concerning non-citizens, the Programme for Partnership Government included a commitment to ensure that asylum-seekers, refugees and other non-nationals would be treated in accordance with the highest international standards; all aspects of the matter would be reviewed.

554. With regard to article 18 of the Covenant, the question of religious discrimination in education was to be addressed in the current review of equality legislation. The representative pointed out that the Department of Education's Rules for National Schools discriminated neither between schools under the management of religious denominations nor between such schools and multi-denominational schools.

555. There had been a number of developments with regard to abortion-related issues that fell within the purview of articles 6, 12 and 19 of the Covenant, including an amendment to the Constitution to provide that its article 40.3.3, dealing with the right to life of the unborn and of the mother, should not limit freedom to travel between Ireland and another State, or freedom to obtain or make available, in Ireland, subject to such conditions as might be laid down by law, information

relating to services lawfully available in another State. However, the substantive law in relation to abortion remained unchanged. In relation to article 23 of the Covenant, the representative recalled that article 41.3.2 of the Irish Constitution currently prohibited the enactment of legislation providing for the dissolution of marriage. A public debate on that issue had been initiated in 1992 and the matter would be put to a referendum in 1994.

556. With respect to the state of emergency, the armed conflict and generally unsettled situation in Northern Ireland continued taking a heavy toll in lives, personal injury and destruction of property, from which the Republic of Ireland itself was not immune. The security policy of successive Irish Administrations, reflected in the enactment of a number of laws since the adoption of the Offenses against the State Act in 1939, had been to oppose all forms of terrorism, whether perpetrated within the State or elsewhere. Ireland's concerns were not merely to stop the violence in the north from spreading into its own jurisdiction, but also to prevent its territory from being used as a base from which to launch attacks against the population of Northern Ireland.

557. With regard to prison-related issues, the representative pointed out that Ireland had not used imprisonment as a sanction to the same degree as other European countries. Under the Programme for Partnership Government, a review of prison policy had been initiated and would be completed before the end of 1993. The representative assured the Committee that the circumstances surrounding the suicide of any person held in custody were carefully examined in order to prevent further such tragedies. A special committee had formulated some 60 recommendations on the matter, more than half of which had already been implemented.

558. Members of the Committee expressed their appreciation both for the core document (HRI/CORE/1/Add.15) and the initial report which augured well for a constructive dialogue with the State party. With regard to human rights education, members of the Committee wished to know what steps had been taken to educate the general public about their fundamental civil and political rights; whether human rights formed part of the national school curriculum; and whether special courses dealing with the cultural, racial and gender-related aspects of human rights were provided for persons in the legal profession.

559. With respect to article 2 of the Covenant, members of the Committee wished to know what was the criterion for the inclusion of the Covenant in domestic legislation and whether the provisions of the Covenant could be directly invoked before the courts. Noting that there were a number of areas of incompatibility between the Irish Constitution and the Covenant, members of the Committee asked whether there was any mechanism for assessing the scope and application of such conflicting provisions. With regard to issues of discrimination, members of the Committee wished to know what distinctions were made between Irish citizens by birth and those who had acquired Irish citizenship by naturalization; and what was the meaning of the term "social function" as used in article 40.1 of the Constitution and whether it resulted in discriminatory treatment. Members also asked for further clarification regarding the rights of aliens in Ireland and particularly their right to own property.

560. Concerning the equality of men and women, as provided for under article 3 of the Covenant, members of the Committee wished to know whether the Executive was bound to implement the recommendations of the Council for the Status of Women; what steps had been taken to follow up

the recommendations of the Committee on the Elimination of Discrimination against Women; and when would the differences between men's and women's earnings in industry be entirely eliminated.

561. With reference to article 4 of the Covenant, members of the Committee asked what the relationship was between the Offences against the State Act of 1939 and the Emergency Powers Act of 1976; whether there was still a need for special criminal courts, more than 20 years after their introduction; what rights protected by the Covenant could be derogated from under the emergency legislation; why the Government had not notified the Secretary-General of the United Nations of the state of emergency presently in force, as required under article 4 of the Covenant; what procedures would have to be followed in order to bring to an end the present state of emergency; what special issues dealt with by the special criminal courts could not be effectively dealt with by ordinary courts; whether the extraordinary powers provided for under section 2 of the Emergency Powers Act were in conformity with article 4 of the Covenant; and whether persons detained under the Act were accorded the same safeguards as other detainees with regard to charging and early trial.

562. In connection with article 7 of the Covenant, members wished to know whether there had been any allegations of ill-treatment or the use of torture by law enforcement officials, whether there had been an investigation of such allegations, and if so, whether any charges had been lodged as a result and whether any convictions had ensued. Members of the Committee also asked if corporal punishment was permitted in educational institutions.

563. With respect to article 9 of the Covenant, members of the Committee asked whether the length of detention without charge for persons arrested under the Emergency Powers Act was still five days; and in which cases members of the Garda Síochána were entitled to initiate searches without a warrant. Members also requested clarification regarding the reports on alleged practices by the police to coerce citizens into participating in their inquiries.

564. Concerning article 10 of the Covenant, members of the Committee asked whether the Standard Minimum Rules for the Treatment of Prisoners were applied in Ireland; whether there were any plans to improve the current treatment and detention of the mentally ill under Irish law; whether prisoners had access to an ombudsman or a parliamentary committee; what mechanisms existed for the independent monitoring of the prison system as a whole; whether any steps were envisaged to increase the number of psychologists working in the prisons from its present level which was one for every 700 or 800 prisoners. Members also requested further information on complaint procedures available to prisoners; and clarification regarding efforts by prison authorities to segregate juvenile detainees from adults "as far as practicable".

565. With reference to article 11 of the Covenant, members of the Committee sought clarification as to the definition of "culpable neglect" which was one of the grounds for imprisonment of debtors in Ireland.

566. Concerning article 14 of the Covenant, members of the Committee asked how easy it was for Irish citizens to bring legal proceedings and be provided with legal aid if necessary; whether any steps were being considered to reform the present restrictive system for providing legal aid; and under what "extraordinary circumstances", as referred to in paragraph 62 of the report, an unconvicted person could be punished.

567. In regard to article 17 of the Covenant, members of the Committee asked what remedies existed for citizens whose telephone conversations had been arbitrarily intercepted by the police.

568. With respect to article 18 of the Covenant, members of the Committee wished to know how the free profession and practice of religion as provided for in article 44.2 of the Constitution could be guaranteed in view of the provisions of article 44.1; and how important religious education was in the national school curriculum.

569. In regard to article 19 of the Covenant, members of the Committee wished to know at what stage in the publication of a book the Censorship of Publications Board was entitled to examine the manuscript; whether the Board stated the grounds for its decisions; and whether any provision was made for review of the Board's decisions by a court.

570. Concerning article 22 of the Covenant, members of the Committee wished to know the criteria for regarding a political party as legal and what were the requirements for the registration of political parties. Members also wished to know how many illegal parties there were in Ireland and the reasons for their having been declared illegal.

571. With respect to article 23 of the Covenant, members of the Committee requested further information on the rate of marital breakdown in Ireland and the consequences of the Constitution's ban on divorce. Members also wished to know whether persons living in extramarital relationships were guaranteed adequate financial and personal protection; and whether the legal definition of the family extended to the single parent.

572. Concerning article 27 of the Covenant, members of the Committee asked to what extent the minimum number of pupils required for a school to receive State funding discriminated against minority religions.

573. Responding to the questions and comments made by members of the Committee, the representative of the State party stated that the Covenant could not itself be invoked in an Irish court. A litigant could, however, invoke the implementing measure that had been enacted in the domestic legislation. In the case of many conventions and treaties, that measure was a statute enacted by Parliament in terms identical to that of the international instrument. Where the Covenant was concerned, however, that was not the case. The Government of Ireland was of the view that the essential obligation deriving from the Covenant was to give effect to the rights contained therein, but that it was not essential to do so by using the precise terminology of the Covenant in every case. The Government believed that it did indeed give effect to those rights by means of pre-existing constitutional guarantees, through laws that pre-existed the ratification but had been in compliance with the Covenant, or in a few cases, by means of legislative provisions that had been enacted with a view to giving explicit effect to specific provisions of the Covenant. The representative declared that the Covenant was, like the Irish Constitution, a living document, and that, in acceding to it, the Government had undertaken a continuing obligation to examine and improve domestic legislation in the light of its provisions.

574. In regard to powers provided for under the Emergency Powers Act, there was presently only the power to bring section 2 of the Act into force by means of a government order. Such an order

was not currently in force and, therefore, neither was section 2. In connection with reviewing the need for maintaining the state of emergency, the Supreme Court had expressly reserved that question for future consideration. It was Ireland's view that the current state of emergency did not involve a breach of its obligations under the Covenant so that no derogation under article 4 was required.

575. With respect to the Special Criminal Court, the representative stressed that the Court was needed to ensure the fundamental rights of citizens and protect democracy and the rule of law from the ongoing campaign related to the problem of Northern Ireland. The Special Criminal Court differed from other ordinary courts in only two respects: that there was no jury and that instead of one judge there were three judges. Otherwise, the same rules of evidence applied and the decisions of the Court were subject to review by the Court of Criminal Appeal.

576. With regard to the reference to "social function" which qualified the general statement of equality before the law in article 40.1 of the Constitution, the intention behind that sentence was to underline that equality meant not only that like cases be treated alike, but that cases which were unlike should be treated differently. The intention was to limit the circumstances in which legislation might validly make such distinctions to those where there were "differences of capacity, physical and moral, and of social function". The representative cited a number of court decisions in which such distinctions had been made. The Government was also preparing comprehensive anti-discrimination legislation which would explicitly cover the categories of sex, marital status and parental status. Whether there was a need for constitutional amendments, as recommended by the Second Commission on the Status of Women, would have to be determined.

577. On prison matters, including the availability of segregated facilities for women and youthful offenders, the representative reiterated that prison policy was under review. In regard to psychological services available to all prisoners, the number of psychologists was being doubled. With respect to the question of imprisonment for debt, no person was imprisoned in Ireland simply for inability to pay money due. During the judicial procedures concerning the enforcement of debt, the capacity to pay had to be established before a court could order payment. Consequently, imprisonment could result only from failure to obey a court order and not from inability to pay the debt.

578. The representative stated that legal aid was available in serious criminal cases, namely, those in which there was a risk of imprisonment. In 1993, resources available for legal aid had been increased to £3.2 million from £2.6 million in 1992. The number of law centres had been increased from 12 to 16.

579. In response to questions concerning the situation of the family, the representative stated that figures for 1991 indicated that one in six births in Ireland took place outside marriage. While there was no divorce in Ireland, a significant number of persons were living in non-marital relationships. In 1986 and 1991 the number of broken marriages was estimated at 37,000 and 47,000 respectively. The actual number was probably higher since many broken marriages do not result in separation and, as well, divorces and remarriages outside Ireland were not included in the survey. In a related concern, the Irish Government supported adoption of the declaration on violence against women and the definitions and measures outlined in it. A number of steps had been taken by the Government to strengthen existing law and policy in this regard.

Concluding observations by individual members

580. Members of the Committee expressed their appreciation for the high quality of the report and the comprehensive additional information supplied by the representative in his introductory statement. Members welcomed the fact that the report had been published in an easily readable format and made available to the general public, thereby arousing increased interest among non-governmental organizations in Ireland and elsewhere. Members also welcomed the recent adherence of Ireland to the Second Optional Protocol, aiming at the abolition of the death penalty and the withdrawal of its reservation concerning article 6 of the Covenant. They expressed their appreciation for the importance attached by the State party to education in human rights and its willingness to involve non-governmental organizations in the preparation of its report.

581. Members noted that, while the representative's response to queries concerning the legal status of the Covenant within Ireland's constitutional and legal framework had proved enlightening in some respects, a number of difficulties remained to be resolved. In particular, members expressed concern that article 29 of the Irish Constitution precluded Irish courts from giving effect to duly ratified international agreements such as the Covenant.

582. Members of the Committee noted that the Irish legal system had certain particular features which had resulted in unusually wide discretion being granted to the police, for example, in connection with arrest, detention and the use of firearms. At the same time, the Emergency Powers Act had authorized a number of actions which could be held to derogate from various articles of the Covenant. Members noted that a more thorough examination of the legislation governing the state of emergency in the country would undoubtedly prove useful and that further improvements were required.

583. Members expressed their continuing doubt as to the effect of article 28.3.3 of the Irish Constitution (concerning public safety in time of national emergency) on the exercise of human rights. While the assurance had been given that those rights were not infringed, it seemed that the article could lend itself to different interpretations. A clear enumeration of the rights which might under no circumstances be suspended would be reassuring.

584. Members of the Committee welcomed the establishment of the Department of Equality and Law Reform and other recent developments with a view to eliminating existing discrimination. None the less, the improvement of the relevant legislation currently under review as well as the implementation of a programme on the basis of recommendations issued by the Second Commission on the Status of Women were essential.

585. Members of the Committee welcomed the priority accorded by the Irish Government to the updating of domestic legislation, relating, inter alia, to the criminal justice system, the family and the treatment of refugees and asylum-seekers, so as to bring it into line with the provisions of the Covenant. In this connection, current restrictions on trade union activities and the power of workers to negotiate with employers also required further consideration with a view to some improvement. Many members also expressed concern regarding excessively restrictive legislation on abortion as well as the related issues of the situation of the family and the right to divorce.

586. Members expressed their appreciation that a review of the prison system was under way. That was particularly important as far as women and young offenders were concerned and it was hoped that the Standard Minimum Rules for the Treatment of Prisoners would be invoked in that connection. Concern was expressed at the existence of imprisonment for debt. Greater emphasis should be placed on administrative measures to ensure payment.

587. With respect to articles 18 and 19 of the Covenant, members expressed concern that blasphemy could be construed as a threat to public order and deemed a punishable offence. Members also expressed concern that censorship might on occasions be applied in an excessive manner, as for example in the seizure of personal property at Customs posts.

588. Members noted that there was room for improvement in the implementation of article 25 of the Covenant relating to the political rights of citizens, especially where members of the civil service were concerned. In this connection, ways should be devised to ensure that all members of the "Travelling Community" enjoy the right to be placed on the electoral roll.

589. Members pointed out that legal guarantees, whether national or international, were important and that, because of its dualist legal system, Ireland would continue to be beset by potential incompatibility in certain areas between its own Constitution and laws and the provisions of the Covenant. Therefore, the State party must have the potential to resolve such incompatibility, perhaps by enacting a bill of rights that would contain the provisions of the Covenant.

590. Members emphasized that, when enacting new legislation, it was essential to ensure that it was in conformity with the Covenant. The Criminal Justice (Public Order) Bill, for example, which was currently before Parliament, included provisions which might not be found to be compatible with the provisions of article 21 of the Covenant on the right of peaceful assembly.

591. The representative of the State party said that the dialogue established with the Committee had been frank and extremely comprehensive. He confirmed the delegation's intention to give serious consideration to the Committee's observations, which had been most constructive.

592. The Chairman of the Committee expressed his appreciation to the Irish delegation for its replies to the many questions raised by the Committee. He stressed the particular importance to the Committee of maintaining a constructive dialogue with States parties. In this connection, the Committee would welcome news of any developments, prior to the submission of Ireland's next report, concerning the review of legislation, including draft bills before Parliament, in areas of concern to the Committee.

Comments of the Committee

593. At its 1259th meeting (forty-eighth session) held on 28 July 1993, the Committee adopted the following comments.

Introduction

594. The Committee expresses its satisfaction at the high quality of the report submitted by the State

party, which was detailed, informative and generally well composed, and for the constructive dialogue engaged through a high-ranking delegation. The Committee appreciates, in particular, the fact that the report was published in Ireland by the Department of Foreign Affairs and made available to the public. The willingness of the State party to involve non-governmental organizations in the debate surrounding the reporting process and the openness displayed towards their critical observations were also noted with appreciation. The Committee regards those efforts as a valuable step forward in raising public awareness of the Covenant and stimulating a constructive discussion on the implementation of the human rights enshrined therein.

595. The Committee expresses its appreciation for the Attorney General's detailed introductory statement and the responses and clarifications he gave in reply to members' questions, which contributed to a constructive dialogue between the Committee and the State party.

Positive aspects

596. The Committee welcomes the adherence of Ireland to the Optional Protocol, the withdrawal of its reservation regarding the death penalty and its subsequent adherence to the Second Optional Protocol, aiming at the abolition of the death penalty, as well as the announcement that legislative preparations are under way in Ireland with a view to acceding to other major human rights instruments.

597. The Committee also notes with satisfaction the State party's efforts to review existing legislation and policy in a number of key areas covered by the Covenant. In particular, the Committee welcomes the establishment of the post of Minister for Equality and Law Reform to coordinate institutional, administrative and legal reform aimed at combatting discrimination; the review of mental health legislation by the Department of Health, with a view to updating existing laws; the review of prison policy presently being carried out under the Programme for a Partnership Government; the examination of religious education; and the creation, under the Ministry of Equality and Law Reform, of a Task Force that also includes members of the "Travelling Community" to advise on the special needs of that community.

598. With respect to the issue of gender equality, the Committee welcomes the recommendations of the Second Commission on the Status of Women aimed at eliminating direct and indirect discrimination based on sex, including, in particular, the proposed deletion of article 41.2.2 of the Constitution.

599. The Committee also notes the efforts undertaken by the State party in the area of human rights education in schools and universities.

Factors and difficulties impeding the application of the Covenant

600. The Committee recognizes that the State party has encountered problems stemming from terrorist acts related to the situation outside of its borders but, at the same time, notes with satisfaction that the rule of law has been firmly established in Ireland and that the institutions of government and public order are not under serious threat.

601. The Committee notes that not all the provisions of the Covenant have yet been fully incorporated into domestic law. It wishes, none the less, to emphasize that the international legal obligations in the Covenant have been undertaken by the State party. Accordingly, it must ensure that domestic law is amended, interpreted and applied in accordance with the obligations under the Covenant.

Principal subjects of concern

602. The Committee expresses its concern over the status of the Covenant in the domestic legal order and the lack of clarity concerning the resolution of possible conflicts between the Covenant and domestic legislation. The Committee wishes to underline that, in accordance with article 2 of the Covenant, States parties are required to give effect to all of its provisions and provide an effective remedy for any person whose rights and freedoms, as recognized in the Covenant, have been violated.

603. The Committee expresses special concern over the continuation of the state of emergency declared with the adoption of the Emergency Powers Act in 1976. The Committee notes with concern that the Emergency Powers Act, particularly section 2 thereof, provides excessive powers to law enforcement officials. The Committee also expresses its concern with respect to the Special Court established under the Offences Against the State Act of 1939. It does not consider that the continued existence of that Court is justified in the present circumstances. The measures referred to above are of a character that normally require notification under article 4 of the Covenant. The Committee notes, however, that the State party has failed to inform other States parties of any state of emergency through the Secretary-General of the United Nations, as required under article 4, paragraph 3, of the Covenant.

604. The Committee expresses its concern over the wide discretionary powers generally accorded to law enforcement officials, particularly in view of the increased number of complaints of abuse. It is also not clear that police officials are adequately familiarized with international human rights standards, including the rights and guarantees contained in the Covenant.

605. The Committee emphasizes that access to legal assistance is an essential right under the Covenant and notes that, under the current restrictive system, a proper legal defence could not be ensured for many persons.

606. The Committee emphasizes that the segregation of juvenile offenders is required under the Covenant as well as compliance with strict standards for male and female offenders. The Committee expresses its concern over the use of imprisonment in cases of wilful refusal to obey a court order for payment of money.

607. With respect to freedom of expression and the right of access to information, the Committee notes with concern that the exercise of those rights is unduly restricted under present laws concerning censorship, blasphemy and information on abortion. The prohibition of interviews with certain groups outside the borders by the broadcast media infringes upon the freedom to receive and impart information under article 19, paragraph 2, of the Covenant. The Constitutional requirement that the President and judges must take a religious oath excludes some people from holding those

offices.

608. While welcoming the extension of the definition of the family, the Committee notes that existing laws do not provide for divorce. In that connection, the Committee notes that the continued non-recognition of divorce serves only to exacerbate problems associated with the de facto termination of marriage.

609. The Committee notes with concern the existence of discriminatory distinctions between citizens by birth and those who are naturalized and the discriminatory treatment in some respects of non-nationals, including refugees and asylum-seekers. The Committee also notes that civil servants are unduly restricted with respect to their right to participate in public affairs and the right to strike.

Suggestions and recommendations

610. The Committee recommends that the State party take effective steps to incorporate all the provisions of the Covenant into law and ensure that they are accorded a status superior to that of domestic legislation. Notwithstanding that the Covenant cannot be directly invoked in the courts, the need to comply with international obligations should be taken fully into account by the judiciary. The Committee also recommends that a comprehensive review of existing legislation and practices should be undertaken with a view to ensuring their compatibility with the Covenant. In particular, guarantees against discrimination should be clearly set out and conformity with the Covenant should be ensured. Draft legislation, especially in the area of criminal justice and public security, should also be reviewed to ensure compatibility with the Covenant before its adoption.

611. The Committee strongly recommends that the State party critically examine the need for the existing state of emergency and see that the provisions of article 4 of the Covenant are being strictly observed. The need for the Emergency Powers Act and the Special Criminal Court should also be examined and all practices in that regard should conform to the obligations of the State party under the Covenant.

612. The wide discretionary powers afforded to the police should be reviewed in the light of the Covenant and of the State party's dialogue with the Committee. The Committee emphasizes the importance of the issuance of rules and guidelines and the ensuring of strict adherence by law enforcement officials to rules and guidelines, particularly with respect to powers of search, arrest and detention and the use of firearms. The Committee suggests that adherence to those rules and guidelines should be closely monitored.

613. The Committee recommends that the State party take the necessary measures to ensure the enjoyment of the freedom of expression as set out in article 19 of the Covenant. In this regard, the Committee suggests that steps should be taken to repeal strict laws on censorship and ensure judicial review of decisions taken by the Censorship of Publications Board.

614. The Committee recommends that the State party undertake further measures aimed at achieving equality of the sexes, particularly with regard to women in law enforcement, the legal profession and the judiciary. While welcoming measures recently taken to strengthen legislation

with regard to violence against women, the Committee considers that the relevant laws and protections should also extend to cohabiting couples.

615. The Committee suggests that the State party undertake additional affirmative action aimed at improving the situation of the "Travelling Community" and, in particular, facilitating and enhancing the participation of "Travellers" in public affairs, including the electoral process.

616. The Committee emphasizes that training in human rights should be systematically provided to law enforcement officials. Police should be well-acquainted with relevant international norms and standard rules including, inter alia, the provisions of the Covenant. Further measures should also be taken to ensure that the provisions of the Covenant are made widely known, particularly within the legal profession and among members of the judiciary. In general, efforts in the area of human rights education in schools and universities should be increased.

422. The Committee examined the second periodic report of Ireland (CCPR/C/IRL/98/2) at its 1846th, 1847th and 1848th meetings (CCPR/C/SR.1846-1848), held on 13, 14 and 15 July 2000, respectively. At its 1858th meeting, on 21 July 2000, the Committee adopted the following concluding observations.

1. Introduction

423. The Committee appreciated the high quality of the report of Ireland, which was comprehensive, responded to the concluding observations made by the Committee after the examination of the initial report and generally conformed with the Committee's guidelines for the preparation of States parties reports. The Committee also appreciated the additional oral and written information provided by the State party delegation during the examination of the report; this information was highly instructive and enhanced the dialogue between the Committee and the delegation. Furthermore, the Committee welcomed the publication and wide dissemination of the report by the Government and its willingness to involve non-governmental organizations in the process.

424. Recalling its earlier comments, the Committee notes with satisfaction that the problems of terrorism have diminished and that, despite the problems experienced, the State party has maintained its democratic institutions and respect for the rule of law.

2. Positive aspects

425. The Committee notes with appreciation the increased use of the Covenant by the courts as an aid to the interpretation of common law and constitutional rights, and the withdrawal of several reservations made upon ratification of the Covenant.

426. The Committee welcomes the fact that the recently enacted Human Rights Commission Act provides for the establishment of a Human Rights Commission.

427. The Committee welcomes the establishment in 1997 of the Standing Interdepartmental Committee on Human Rights, which is mandated to consider all aspects of Ireland's international human rights obligations, including the preparation of reports due under human rights treaties, as well as the Joint Department of Foreign Affairs/Non-Governmental Organizations Standing Committee on Human Rights. It further welcomes the operation of the Constitution Review Group, which is reviewing the 1937 Constitution with a view to proposing reforms necessary to bring it in line, inter alia, with international human rights standards.

428. The Committee expresses satisfaction that the state of emergency declared in 1976 was ended in 1995 and that the Emergency Powers Act of 1976 has now lapsed.

429. The Committee welcomes the Child Trafficking and Pornography Act 1998 and the Sexual Offenders (Jurisdiction) Act 1996, which allows prosecution in respect of offences committed outside Ireland. It also notes with satisfaction the abolition of corporal punishment in public and private schools.

430. The Committee notes with satisfaction the enactment of the Family Law (Divorce) Bill 1996, the Freedom of Information Act of 1997, and the Civil Legal Aid Act of 1995 by which legal services are provided to persons of modest means at little or no cost through legal centres based throughout the country.

431. The Committee welcomes the initiatives being undertaken in the area of human rights education, including education for primary and secondary students, members of the police (Garda) and the legal profession.

3. Principal subjects of concern and recommendations

432. The Committee expresses continuing concern that not all Covenant rights are guaranteed in the domestic law of the State party. The consequent lack of domestic recourse will limit the power of the proposed Human Rights Commission to take action in the courts to enforce those rights not covered.

433. The State party should ensure that all Covenant rights and freedoms are guaranteed and that effective remedies are available to any person whose rights or freedoms are violated, in accordance with article 2 of the Covenant.

434. While it welcomes the existence of a mechanism to investigate complaints made against the police force, namely the Garda Complaints Board, the Committee regrets that the Board is not fully independent, in that investigations of complaints against the Garda are often entrusted to members of the Garda without consultation with the Board. It emphasizes that the availability of recourse to the courts to address allegedly unlawful conduct by the police does not displace the need for independent and transparent investigation of allegations of abuse.

435. The Committee recommends that, in the context of its current review of the Garda Complaints Act of 1986, the State party take steps to ensure that the Garda Complaints Board is not dependent on the Garda for the conduct of investigations. Consideration should be given to the establishment of a police ombudsman. In the case of death resulting from action by members of the Garda, the State party should ensure that allegations are investigated by an independent and public process.

436. The law establishing the Special Criminal Court does not specify clearly the cases which are to be assigned to that Court but leaves it to the broadly defined discretion of the Director of Public Prosecutions (DPP). The Committee is also concerned at the continuing operation of the Offences Against the State Act, that the periods of detention without charge under the Act have been increased, that persons may be arrested on suspicion of being about to commit an offence, and that the majority of persons arrested are never charged with an offence. It is concerned that, in circumstances covered by the Act, failure to respond to questions may constitute evidence supporting the offence of belonging to a prohibited organization. The application of the Act raises problems of compatibility with articles 9 and 14, paragraph 3 (g), of the Covenant. The Committee regrets that legal assistance and advice may not be available until a person has been charged.

437. Steps should be taken to end the jurisdiction of the Special Criminal Court and to ensure that

all criminal procedures are brought into compliance with articles 9 and 14 of the Covenant.

438. The Committee expresses concern that the seven-day period of detention without charge under the Drug Trafficking Act raises issues of compatibility with article 9, paragraph 1. It is also concerned that legal aid is not available to detainees between arrest and charge and does not extend to visits to persons in detention.

439. The State party should ensure that all aspects of detention, including the period of detention and availability of legal aid, are administered in full compliance with article 9 of the Covenant.

440. The Committee recommends that the review of the Constitution should take fully into account the obligations of the State party under article 4 of the Covenant, particularly in regard to permitted derogations.

441. While noting the many advances that have been made in regard to the participation of women in all aspects of political, social and economic life, the Committee is concerned at the continuing inequalities faced by women in Ireland, which are reflected in the under-representation of women in certain occupations and in political life and in the generally lower salaries paid to women as compared with men. The Committee is also concerned that the references to women made in article 41 (para. 2) of the Constitution could perpetuate traditional attitudes toward the role of women. In that provision, the State "recognizes that by her life within the home, woman gives to the State a support without which the common good cannot be achieved. The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home".

442. The Committee urges the State party to intensify its efforts to ensure equality of women in all spheres, particularly in public and political life and in decision-making bodies, in accordance with articles 3 and 26 of the Covenant. It encourages the State party to strengthen its efforts to monitor the situation of women by collecting gender-disaggregated data in these spheres and by "gender-proofing" all draft legislation to ensure neutrality.

443. The Committee is concerned that exemptions under the Employment Equality Act, which allow religious bodies directing hospitals and schools to discriminate in certain circumstances on the ground of religion in employing persons whose functions are not religious, may result in discrimination contrary to article 26 of the Covenant.

444. The Committee is concerned that the circumstances in which women may lawfully obtain an abortion are restricted to when the life of the mother is in danger and do not include, for example, situations where the pregnancy is the result of rape.

445. The State party should ensure that women are not compelled to continue with pregnancies where that is incompatible with obligations arising under the Covenant (art. 7) and General Comment No. 28.

446. While the Committee notes the many improvements in prison conditions, it recommends that further efforts be made to ensure that all prisons and detention centres are brought up to the

minimum standards required to ensure respect for the human dignity of detainees and to avoid overcrowding, in accordance with article 10. The Independent Prison Authority, whose establishment is envisaged in a current bill, should have power and resources to deal with complaints of abuse made by prisoners.

447. In regard to proposed changes to the law regarding asylum-seekers, the State party should ensure that the grounds on which detention may be authorized and the right of access to judicial review of detention decisions are in full conformity with the provisions of article 9 of the Covenant. It should also ensure that requirements relating to the place of residence of refugees do not infringe the rights to liberty of movement protected under article 12.

448. With respect to the Travelling community, the Committee continues to be concerned about the generally lower living standards of members of this community, their low levels of participation in national political and social life and their high levels of maternal and infant mortality.

449. The State party is urged to continue its efforts to take positive action to overcome discrimination and to ensure the equal enjoyment of rights by members of the Travelling community and in particular to improve their access to health, education and welfare services, including accommodation, and their participation in political and public life. The State should also pursue actively programmes to change attitudes and to promote understanding between the Travelling and the settled communities (arts. 26, 27).

450. The Committee recommends that further action be taken to ensure full implementation of the Covenant in these matters:

- (a) Withdrawal of the remaining reservations to the Covenant;
- (b) Reform of constitutional provisions requiring judges to make a declaration with religious references (art. 18);
- (c) Provision for prompt review of detention on mental health grounds, i.e. within a few days (art. 9);
- (d) Repeal or reform of discriminatory aspects of legislation requiring the registration of alien husbands of Irish women citizens, which is not required of alien wives of Irish male citizens (arts. 3, 26);
- (e) Ensuring the full and equal enjoyment of Covenant rights by disabled persons, without discrimination, in accordance with article 26; and
- (f) Improving remedies for victims of domestic violence.

4. Dissemination of information about the Covenant (art. 2)

451. The Committee requests that the third periodic report be submitted by 31 July 2005. That report should be prepared in accordance with the revised guidelines adopted by the Committee and

should give particular attention to the issues raised in the present concluding observations. The Committee requests that these concluding observations and the next periodic report be widely disseminated in the territory of the State party.