



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

IRELAND

1. The Human Rights Committee considered the third periodic report of Ireland (CCPR/C/IRL/3) at its 2551st and 2552nd meetings, held on 14 and 15 July 2008 (CCPR/C/SR.2551 and 2552). At its 2563rd and 2564th meetings, held on 22 and 23 July 2008 (CCPR/C/SR.2563 and 2564), it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission, albeit with some delay, of the State party's detailed and informative third periodic report. The Committee appreciates the written replies provided in advance by the State party, as well as the answers of the delegation to the Committee's oral questions.

B. Positive aspects

3. The Committee welcomes the legislative and other measures that have been taken to improve the protection and promotion of human rights recognized under the Covenant since the examination of the second periodic report, including the establishment of the Irish Human Rights Commission in 2000; the adoption of the Mental Health Act in 2001; the incorporation into domestic law of the

European Convention on Human Rights in 2003; and the establishment of the *Garda Síochaná* Ombudsman Commission in 2007.

4. The Committee further notes the progress made in combating domestic violence, including the increased budgetary allocation for measures taken in this regard, the establishment of an Equality Authority and an Equality Tribunal, and the National Office for the Prevention of Domestic, Sexual and Gender-based Violence.

C. Principal subjects of concern and recommendations

5. The Committee notes the State party's intention to withdraw its reservations to article 10, paragraph 2 and article 14 of the Covenant, but regrets that the State party intends to maintain its reservations to article 19, paragraph 2 and article 20, paragraph 1.

The Committee urges the State party to implement its intention to withdraw its reservations to article 10, paragraph 2 and article 14 of the Covenant. The State party should also review its reservations to article 19, paragraph 2, and article 20, paragraph 1 of the Covenant, with a view to withdrawing them in whole or in part.

6. The Committee notes that, unlike the European Convention on Human Rights, the Covenant is not directly applicable in the State party. In this regard, it reiterates that a number of Covenant rights go beyond the scope of the provisions of the European Convention on Human Rights. (art. 2)

The State party should ensure that all rights protected under the Covenant are given full effect in domestic law. The State party should provide the Committee with a detailed account of how each Covenant right is protected by legislative or constitutional provisions.

7. While welcoming the establishment of the Irish Human Rights Commission, the Committee regrets the limited resources of the Commission as well as its administrative link to a Government department. (art. 2)

The State party should strengthen the independence and the capacity of the Irish Human Rights Commission to fulfil its mandate effectively in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134), by endowing it with adequate and sufficient resources and linking it to the *Oireachtas* (Parliament).

8. The Committee, while noting with satisfaction the State party's intention to adopt legislation on a civil partnership bill, expresses its concern that no provisions regarding taxation and social welfare are proposed at present. It is furthermore concerned that the State party has not recognized a

change of gender by transgender persons by permitting birth certificates to be issued for these persons. (arts. 2, 16, 17, 23, and 26)

The State party should ensure that its legislation is not discriminatory of non-traditional forms of partnership, including taxation and welfare benefits. The State party should also recognize the right of transgender persons to a change of gender by permitting the issuance of new birth certificates.

9. The Committee, while noting the considerable efforts made by the State party in combating domestic violence, is still concerned about the continuing impunity due to high withdrawal rates of complaints and few convictions. It also regrets the lack of gender-based statistics with regard to complaints, prosecutions, and sentences in matters of violence against women. (arts. 3, 7, 23, 26)

The State party should continue to strengthen its policies and laws against domestic violence and prepare adequate statistics, including sex, age and family relationship of victims and perpetrators. Furthermore, it should increase the provision of services to victims, including rehabilitation.

10. The Committee is concerned that, despite considerable progress achieved in respect of equality in recent years, inequalities between women and men continue to persist in many areas of life. While noting the broad judicial interpretation of article 41.2 of the Constitution by the Irish courts, it remains concerned that the State party does not intend to initiate a change of article 41.2 of the Constitution, as the language of this article perpetuates traditional attitudes toward the restricted role of women in public life, in society and in the family. (arts. 3, 25, and 26)

The State party should reinforce the effectiveness of its measures to ensure equality between women and men in all spheres, including by increased funding for the institutions established to promote and protect gender equality. The State party should take steps to initiate a change of article 41.2 of the Constitution with a view to including a gender-neutral wording in the article. The State party should ensure that the National Women's Strategy is regularly updated and evaluated against specific targets.

11. While noting the State party's assurance that its counter-terrorism measures are in compliance with international law, the Committee regrets that Irish legislation does not contain a definition of terrorism and no information has been provided on the extent, if any, to which limitations have been made to Covenant rights, especially with regard to articles 9 and 14. It is also concerned about allegations that Irish airports have been used as transit points for so called rendition flights of persons to countries where they risk being subjected to torture or ill-treatment. The Committee notes the State party's reliance on official assurances. (arts. 7, 9, 14)

The State party should introduce a definition of "terrorist acts" in its domestic legislation, limited to offences which can justifiably be equated with terrorism and its serious consequences. It should also carefully monitor how and how often terrorist acts have been investigated and prosecuted, including with regard to the length of pre-trial detention and access to a lawyer. Furthermore, the State party should exercise the

utmost care in relying on official assurances. The State party should establish a regime for the control of suspicious flights and ensure that all allegations of so-called renditions are publicly investigated.

12. The Committee is concerned that article 28.3 of the Constitution of the State party is not consistent with article 4 of the Covenant and that derogations may be made to the rights identified as non-derogable under the Covenant with the exception of the death penalty (art. 4).

The State party should ensure that its provisions concerning states of emergency are compatible with article 4 of the Covenant. In this regard, the Committee draws the attention of the State party to its general comment No. 29 (2001) on Article 4: Derogations during a state of emergency.

13. The Committee reiterates its concern regarding the highly restrictive circumstances under which women can lawfully have an abortion in the State party. While noting the establishment of the Crisis Pregnancy Agency, the Committee regrets that the progress in this regard is slow. (arts. 2, 3, 6, 26)

The State party should bring its abortion laws into line with the Covenant. It should take measures to help women avoid unwanted pregnancies so that they do not have to resort to illegal or unsafe abortions that could put their lives at risk (article 6) or to abortions abroad (articles 26 and 6).

14. The Committee regrets the backlog of cases before the *Garda Síochána* Ombudsman Commission and the ensuing reassignment of the investigation of a number of complaints involving the potentially criminal conduct of *Gardai* to the *Garda* Commissioner. It is also concerned that access to counsel during interrogation at *Garda* stations is not prescribed by law and that the right of an accused person to remain silent is restricted under the Criminal Justice Act 2007. (arts. 7, 9, 10, 14)

The State party should take immediate measures to ensure the effective functioning of the *Garda Síochána* Ombudsman Commission. The State party should also give full effect to the rights of criminal suspects to contact counsel before, and to have counsel present during, interrogation. The State party should furthermore amend its legislation to ensure that inferences from the failure to answer questions by an accused person may not be drawn, at least where the accused has not had prior consultations with counsel. It should also provide more detailed information to the Committee regarding the types of complaints filed with the Ombudsman Commission.

15. While noting the measures taken by the State party to improve the conditions of detention, in particular the current and planned construction of new facilities, the Committee remains concerned about increased incarceration. It is particularly concerned about the persistence of adverse conditions in a number of prisons in the State party, such as overcrowding, insufficient personal

hygiene conditions, non-segregation of remand prisoners, a shortage of mental health care for detainees, and the high level of inter-prisoner violence. (art. 10)

The State party should increase its efforts to improve the conditions of all persons deprived of liberty before trial and after conviction, fulfilling all requirements outlined in the Standard Minimum Rules for the Treatment of Prisoners. In particular, the overcrowding and the “slopping-out” of human waste should be addressed as priority issues. In addition, the State party should detain remand prisoners in separate facilities and promote alternatives to imprisonment. Detailed statistical data showing progress since the adoption of the present recommendation, including on concrete promotion and implementation of alternative measures to detention, should be submitted to the Committee in the State party’s next periodic report.

16. While the Committee takes note of the positive measures adopted concerning trafficking in human beings, such as the establishment of an Anti-Human Trafficking Unit and the provision of training to border guards, immigration officers, and trainees in these fields, the Committee is concerned about the lack of recognition of the rights and interests of trafficking victims. It is particularly concerned about lesser protection for victims not willing to cooperate with authorities under the criminal law (human trafficking) bill 2007. (arts. 3, 8, 24, 26)

The State party should continue to reinforce its measures to combat trafficking of human beings, in particular by reducing the demand for trafficking. It should also ensure the protection and rehabilitation of victims of trafficking. Moreover, the State party should ensure that permission to remain in the State party is not dependent on the cooperation of victims in the prosecution of alleged traffickers. The State party is also invited to consider ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

17. The Committee is concerned about increased detention periods for asylum-seekers under the Immigration Act 2003. The Committee also notes with concern that an immigration officer’s assessment that a person is not under 18 years of age could lead to the detention of that person and that such assessments are not verified by social services. Moreover, it is concerned about the placement of persons detained for immigration-related reasons in ordinary prison facilities together with convicted and remand prisoners and about their subjection to prison rules. (arts. 10, 13).

The State party should review its detention policy with regard to asylum-seekers and give priority to alternative forms of accommodation. The State party should take immediate and effective measures to ensure that all persons detained for immigration-related reasons are held in facilities specifically designed for this purpose. The State party should also ensure that the principle of the best interests of the child is given due consideration in all decisions concerning unaccompanied and separated children and that social services, such as the Health Service Executive, are involved in the age assessment of asylum-seekers by immigration officials.

18. The Committee is concerned that the State party does not intend to amend the laws which may in effect permit imprisonment for failure to fulfil a contractual obligation (art. 11).

The State party should ensure that its laws are not used to imprison a person for the inability to fulfill a contractual obligation (art. 11).

19. The Committee welcomes the proposal in the immigration, residence and protection bill of 2008 to introduce a single procedure for determining all of a person's protection related claims, but it is concerned about some provisions, including the possibility of summary removal and the absence of formal legal protection as required by article 13 of the Covenant. The Committee is furthermore concerned about the alleged lack of independence of the proposed substitute for the Refugee Appeals Tribunal (the Protection Review Tribunal) due to the appointment procedures of its part-time members. (arts. 9, 13, 14)

The State party should amend the immigration, residence and protection bill 2008 to outlaw summary removal which is incompatible with the Covenant and ensure that asylum-seekers have full access to early and free legal representation so that their rights under the Covenant receive full protection. It should also introduce an independent appeals procedure to review all immigration-related decisions. Engaging in such a procedure, as well as resorting to judicial review of adverse decisions, should have a suspensive effect in respect of such decisions. Furthermore, the State party should ensure that the Minister for Justice, Equality and Law Reform is not charged with the appointment of members of the new Protection Review Tribunal.

20. The Committee reiterates its concerns about the continuing operation of the Special Criminal Court and the establishment of additional special courts. (arts. 4, 9, 14, 26)

The State party should carefully monitor, on an ongoing basis, whether the exigencies of the situation in Ireland continue to justify the continuation of a Special Criminal Court with a view to abolishing it. In particular, it should ensure that, for each case that is certified by the Director of Public Prosecutions for Ireland as requiring a non-jury trial, objective and reasonable grounds are provided and that there is a right to challenge these grounds.

21. The Committee continues to be concerned that judges are required to take a religious oath. (art. 18)

The State party should amend the constitutional provision requiring a religious oath from judges to allow for a choice of a non-religious declaration.

22. The Committee notes with concern that the vast majority of Ireland's primary schools are privately run denominational schools that have adopted a religious integrated curriculum thus

depriving many parents and children who so wish to have access to secular primary education. (arts. 2, 18, 24, 26).

The State party should increase its efforts to ensure that non-denominational primary education is widely available in all regions of the State party, in view of the increasingly diverse and multi-ethnic composition of the population of the State party.

23. The Committee is concerned that the State party does not intend to recognize the Traveller community as an ethnic minority. It is furthermore concerned that members of the Traveller community were not represented in the High Level Group on Traveller issues. The Committee is also concerned about the criminalization of trespassing on land in the 2002 Housing Act which disproportionately affects Travellers (art. 26, 27).

The State party should take steps to recognize Travellers as an ethnic minority group. The State party should also ensure that in public policy initiatives concerning Travellers, representatives from the Traveller community should always be included. It should also amend its legislation to meet the specific accommodation requirements of Traveller families.

24. The State party should publicize widely the text of its third periodic report, the written answers it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations.

25. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 11, 15, and 22 above.

26. The Committee requests the State party to provide in its fourth periodic report, due to be submitted by 31 July 2012, information on the remaining recommendations made and on the Covenant as a whole. The Committee also requests that the process of compiling the next report again involve civil society and non-governmental organizations operating in the State party.
