

## IRELAND

### CESCR E/2000/22 (1999)

123. The Committee considered the initial report of Ireland on the rights covered by articles 1 to 15 of the Covenant (E/1990/5/Add.34) at its 14th to 16th meetings, held on 4 and 5 May 1999, and adopted, at its 25th and 26th meetings, held on 12 May 1999, the following concluding observations.

#### A. Introduction

124. The Committee welcomes the submission of the initial report by the State party, which is in general conformity with the guidelines established by the Committee. It appreciates the written replies to the list of issues submitted by the State party. The Committee also notes with satisfaction the presence of a large delegation, comprised of experts from various ministries, which answered most of the questions put to it during the frank and constructive dialogue.

#### B. Positive aspects

125. The Committee welcomes the determination of Ireland to implement the Good Friday Agreement of 1998 to settle peacefully the future status of Northern Ireland.

126. The Committee notes with satisfaction that the State party intends to increase its contribution to international development cooperation from 0.29 per cent of its GNP to 0.45 per cent by the year 2002.

127. The Committee also welcomes the adoption of the Employment Equality Act of 1998 and the Equal Status Bill of 1998 which aim at removing several aspects of discrimination relating to, *inter alia*, gender, marital status, family status, sexual orientation, religion, age, disability, race, colour, nationality, national or ethnic origin and membership of the traveller community.

128. The Committee notes with satisfaction the adoption of the Refugee Act of 1996, the Educational Act of 1998 and the National Anti-Poverty Strategy Plan for the period 1997-2007 and related mechanisms such as the poverty-proofing of policy proposals. In addition, it welcomes the establishment of the Task Force on Violence against Women in 1996 and the Task Force on Alcohol, the assessment by the Department of Health and Children of the needs of mentally handicapped persons for the period 1997-2001, and the establishment of the Domestic Violence and Sexual Assault Unit in 1993. It also welcomes the creation of the National Disability Authority and the Disability Support Service; and notes that a rights-based disability bill is currently being considered by Parliament.

129. The Committee welcomes the proactive approach of the State party to the problem of reducing unemployment, which has led to a considerable drop in the unemployment rate from 11 to 6

per cent.

C. Factors and difficulties impeding the implementation of the Covenant

130. The Committee notes that, following the signing of the Good Friday Agreement, there are no further major factors and difficulties impeding the implementation of the Covenant.

D. Principal subjects of concern

131. The Committee regrets that the Covenant has not been fully incorporated or reflected in domestic legislation and is rarely, if ever, invoked before the courts.

132. The Committee notes with regret that the International Convention on the Elimination of All Forms of Racial Discrimination has not yet been ratified by Ireland because the legislative process for this purpose has not yet been completed.

133. The Committee notes with regret that article 40.1 of the Constitution contains provisions which appear to be inconsistent with the principle of non-discrimination as set out in articles 2 and 3 of the Covenant.

134. The Committee regrets that while the State party's National Anti-Poverty Strategy addresses issues relating to, *inter alia*, educational disadvantage and rural poverty, the Strategy does not adopt a human rights framework consistent with the provisions of the Covenant.

135. The Committee is also concerned in this regard about the persistence of poverty among disadvantaged and vulnerable groups, notably the disabled, the traveller community, children, elderly women and single women with children. Moreover, the Committee notes with concern that social welfare payments are not above the income poverty line and that child-care benefits are not sufficient to cover the cost of bringing up a child.

136. The Committee notes with regret that there is as yet no appropriate legislation dealing with the rights of the mentally handicapped and especially with regard to their detention in psychiatric clinics.

137. The Committee also regrets that there is as yet no specific legislation to deal with the rights of the physically disabled, although the delegation asserted that the State party is committed to redressing this situation through existing administrative policies and measures.

138. The Committee is concerned at the high rate of illiteracy at various levels of society, especially among adults, youth, poor children, children of the traveller community and those in rural areas.

139. The Committee notes with concern that the increase in tobacco use is the single most important contributing factor to the disease burden facing Ireland and that the State party's responses have been inadequate to deal with this problem. The Committee is also concerned about the alcohol-related problems in Ireland which have not yet been addressed by the National Alcohol Policy of the

State party.

140. The Committee deplores the fact that the Merchant Shipping Act of 1894 is still in force, which provides that seafarers absent without permission are punished by being forced to work on board ship. The State party promised to repeal or amend this Act after the International Labour Organization had condemned this practice, but has not done so yet.

141. The Committee notes with regret that the procedures for trade unions to obtain a licence to conduct collective bargaining negotiations are cumbersome.

142. The Committee also notes with regret that despite measures adopted by the State party the traveller community and the disabled are still discriminated against in various respects, such as employment, education and housing.

143. The Committee further notes with regret the relatively high rate of teenage suicide and the long waiting lists for medical services at public hospitals.

#### E. Suggestions and recommendations

144. The Committee recommends that the State party incorporate justiciable economic, social and cultural rights in the proposed amendment to the Constitution.

145. The Committee calls on the State party to consider ratifying the International Convention on the Elimination of All Forms of Racial Discrimination as soon as possible.

146. The Committee recommends that the State party speed up the process of adopting the rights-based Disability Bill and to start implementing it as soon as possible.

147. The Committee calls on the State party to expand the scope of its National Anti-Poverty Strategy, including the poverty-proofing of policy proposals, and to integrate a human rights approach into the Strategy.

148. The Committee requests the State party to provide more data in its second periodic report on the problem of poverty in Ireland and urges the Government to take all remedial measures in order to combat the problem of poverty in Ireland.

149. The Committee urges the State party to speed up the enactment of legislation relating to the human rights of the disabled and of the mentally handicapped, including their detention, and to enact the legislation to combat discrimination affecting the traveller community.

150. The Committee recommends that the State party adequately supervise the quality of education received by students at the primary school level of the formal educational system in order that the educational system be in conformity with articles 13 and 14 of the Covenant.

151. The Committee urges the State party to take the necessary measures to ensure that the

provisions of the Covenant are widely disseminated, particularly among the legal profession and members of the judiciary.

152. The Committee requests the State party to ensure the wide dissemination of its present concluding observations and to inform the Committee of steps taken to implement these recommendations in its next periodic report.

## **CESCR E/2003/22**

115. The Committee considered the second periodic report of Ireland on the implementation of the Covenant (E/1990/6/Add.29) at its 6th and 7th meetings, held on 1 and 2 May 2002, and made public, at its 27th meeting, held on 17 May 2002, the following concluding observations.

### Introduction

116. The Committee welcomes the submission of the second periodic report of the State party, which was prepared in general conformity with the Committee's guidelines. The Committee expresses its particular appreciation for the inclusion by the State party of a separate chapter on follow-up to the Committee's concluding observations, adopted in 1999, on the State party's initial report.<sup>12</sup>

117. The Committee welcomes the constructive dialogue with the delegation, which included a large number of government officials with expertise on subjects relevant to the provisions of the Covenant.

### Positive aspects

118. The Committee notes with appreciation the ratification in November 2000 of the European Social Charter (revised in 1996) and the 1995 Additional Protocol to the Charter, as well as the ratification in December 2000 of the International Convention on the Elimination of All Forms of Racial Discrimination.

119. The Committee notes with appreciation the establishment in October 1999 of the Equality Authority, under the Employment Equality Act (1998), and the entry into force of the Equal Status Act in October 2000.

120. The Committee commends the State party for establishing the Human Rights Commission under the Human Rights Commission Act (2000 and 2001).

121. The Committee also commends the State party for the legislative measures taken to combat domestic violence and to eradicate corporal punishment in schools.

122. The Committee notes with appreciation the continuing decline in the unemployment rate since the consideration of the State party's initial report, i.e. down from 6 per cent in 1999 to 4.3 per cent in 2001, and in particular the considerable decline in the long-term unemployment rate from over 9 per cent in 1996 to 1.2 per cent in 2001.

123. The Committee welcomes the introduction of a minimum wage in April 2000.

124. The Committee also welcomes the State party's revised National Anti-Poverty Strategy as set out in the report entitled "Building an inclusive society" of February 2002.

## Factors and difficulties impeding the implementation of the Covenant

125. The Committee notes the favourable economic conditions prevailing in the State party and observes no insurmountable factors or difficulties preventing the State party from effectively implementing the Covenant.

## Principal subjects of concern

126. The Committee notes with regret that, despite its previous recommendation in 1999,<sup>12</sup> no steps have been taken to incorporate or reflect the Covenant in domestic legislation, and that the State party could not provide information on case law in which the Covenant and its rights were invoked before the courts.

127. The Committee is concerned that the Human Rights Commission, established by the State party through the Human Rights Commission Act (2000), is not yet operational.

128. The Committee regrets that the Disability Bill does not adopt a human rights-based approach, as recommended in its previous concluding observations. Moreover, the Committee regrets that section 47 of the Disability Bill contains a clause removing the rights of people with disabilities to seek judicial redress if any of the Bill's provisions are not carried out.

129. The Committee is concerned about the persistence of discrimination against persons with physical and mental disabilities, especially in the fields of employment, social security benefits, education and health. The Committee is particularly concerned that people with disabilities, including those working in sheltered workshops, do not have the status of employees and therefore do not qualify for the minimum wage arrangements; if, however, they do benefit from minimum wage arrangements, they are liable to lose their rights to free medical care.

130. The Committee regrets that the State party has not yet undertaken any measures with regard to the Committee's 1999 observation concerning the inconsistency of article 40.1 of the Constitution on equality before the law with the principle of non-discrimination as set out in articles 2 and 3 of the Covenant.

131. The Committee is concerned about the inadequacy of the minimum wage and welfare payment levels set by the State party in relation to its obligations under articles 7, 9 and 11 of the Covenant.

132. The Committee is concerned about the continued impediments imposed by the State party with respect to trade unions obtaining collective bargaining licences and the possible risk of dismissal for members of non-authorized trade unions in the event of strike action, despite the Committee's observation in 1999.<sup>13</sup>

133. The Committee is concerned that the State party, despite the Committee's recommendation in 1999,<sup>14</sup> has still not adopted a human rights-based approach to the revised National Anti-Poverty Strategy.

134. The Committee is concerned that: (a) many new households cannot secure adequate and affordable housing; and (b) some 1,200 families of the traveller community are living in roadside encampments without access to water and adequate sanitary facilities, and are liable to be forcibly evicted.

135. The Committee is concerned that a large number of persons with mental disabilities whose state of health would allow them to live in the community are still accommodated in psychiatric hospitals together with persons suffering from psychiatric illnesses or problems, despite efforts by the State party to transfer them to more appropriate care settings.

136. The Committee notes with regret that a human rights framework encompassing, inter alia, the principles of non-discrimination and equal access to health facilities and services, as outlined in paragraphs 53 and 54 of the Committee's general comment no. 14 (2000) on the right to the highest attainable standard of health (art. 12 of the Covenant), was not embodied in the recently published Health Strategy. The Committee also regrets the State party's failure to introduce a common waiting list for treatment in publicly funded hospital services for publicly and privately insured patients.

#### Suggestions and recommendations

137. Affirming that all economic, social and cultural rights are justiciable, the Committee reiterates the recommendation made in 1999<sup>15</sup> and strongly recommends that the State party incorporate economic, social and cultural rights in the proposed amendment to the Constitution, as well as in other domestic legislation. The Committee points out that, irrespective of the system through which international law is incorporated in the domestic legal order (monism or dualism), following ratification of an international instrument, the State party is under an obligation to comply with it and to give it full effect in the domestic legal order. In this respect, the Committee would like to draw the attention of the State party to its general comment no. 9 (1998) on domestic application of the Covenant.

138. The Committee requests the State party to describe in its next periodic report the initiatives undertaken by the Human Rights Commission to promote economic, social and cultural rights.

139. The Committee strongly recommends that the State party adopt a human rights-based approach in the Disability Bill. In particular, the Committee recommends that the clause in section 47 of the Disability Bill, which purports to deny people with disabilities the right to judicial redress, be removed.

140. The Committee recommends that the State party conduct and complete as soon as possible a thorough review of the sheltered workshops for the disabled and consider adopting measures, legislative or otherwise, allowing people with disabilities to work with full employment status and to retain the right to free medical care.

141. The Committee also recommends that the All-Party Oireachtas Committee urgently consider amending article 40.1 of the Constitution on equality before the law, in the light of the principle of non-discrimination as set out in article 2, paragraph 2, and article 3 of the Covenant.

142. The Committee urges the State party to reconsider its methods of fixing the minimum wage and welfare payment levels so as to ensure they conform to the State party's obligations under articles 7, 9 and 11 of the Covenant.

143. The Committee recommends that the State party adequately protect in law and practice trade unions' rights to conduct collective bargaining.

144. Noting that a review of the 1996 Domestic Violence Act was undertaken in 1999, the Committee requests the State party to explain, in its next periodic report, the measures it has introduced in response to the review's recommendations including, but not confined to, the recommendation to develop a domestic violence pilot intervention project.

145. The Committee urges the State party: (a) to ensure that the Combat Poverty Agency is well-resourced and able to fulfil, in an effective manner, its statutory advisory functions; (b) to give proper attention to the research and recommendations of the Agency; and (c) to integrate human rights into the revised National Anti-Poverty Strategy, in accordance with the Committee's Statement on poverty and the International Covenant on Economic, Social and Cultural Rights.<sup>16</sup> In this regard, the Committee reaffirms the State party's obligation to make the Covenant rights enforceable in domestic legislation and confirms that, whether or not the State party takes this step, it still has a legal obligation to integrate economic, social and cultural rights into the National Strategy.

146. The Committee also urges the State party to accelerate its social housing programmes in order to reduce the waiting time for social housing. Moreover, the State party should enhance its efforts: (a) to provide, as early as possible, alternative accommodation for the 1,200 traveller families who are living in roadside encampments without adequate facilities and to respect the Committee's General Comments No. 4 (1991) on the right to adequate housing (art. 11, para. 1, of the Covenant) and No. 7 (1997) on forced evictions; and (b) to meet its target of providing all necessary traveller accommodation by 2004.

147. The Committee requests the State party to provide in its next periodic report up-to-date and accurate information, including statistical data, on measures taken to provide adequate accommodation to traveller families.

148. The Committee reiterates the recommendation it made in 1999 that the State party speed up the process of transferring persons with mental disabilities who are not suffering from serious psychiatric illness and who are still living in psychiatric hospitals, to more appropriate care settings.

149. The Committee recommends that the State party review the recently published National Health Strategy with a view to embracing a human rights framework in that strategy, in line with the principles of non-discrimination and equal access to health facilities and services, as outlined in paragraphs 53 and 54 of the Committee's general comment no. 14 (2000). The Committee furthermore urges the State party to introduce a common waiting list for treatment in publicly funded hospitals for privately and publicly insured patients.

150. The Committee urges the State party to enact legislation that extends the constitutional right



to free primary education to all adults with special educational needs.

151. The Committee encourages the State party, as a member of international organizations, including international financial institutions such as IMF and the World Bank, to do all it can to ensure that the policies and decisions of those organizations are in conformity with the obligations of States parties under the Covenant, in particular the obligations concerning international assistance and cooperation contained in article 2, paragraph 1, and articles 11, 15, 22 and 23.

152. The Committee urges the State party to ensure that its contribution to international development cooperation reaches 0.45 per cent of GNP<sup>17</sup> by the end of 2002 and that this annual figure increase, as quickly as possible, to the United Nations target of 0.7 per cent of GNP.

153. The Committee requests the State party to disseminate the present concluding observations widely at all levels of society, and in particular among State officials and the judiciary, and, in its next periodic report, to inform the Committee on all steps taken to implement them. It also encourages the State party to continue to involve non-governmental organizations and other members of civil society in the preparation of its third periodic report.

154. Finally, the Committee requests the State party to submit its third periodic report by 30 June 2007 and to include in that report detailed information on the steps it has undertaken to implement the Committee's recommendations contained in the present concluding observations.

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<sup>12/</sup> *Official Records of the Economic and Social Council, 2000, Supplement No. 2 (E/2000/22-E/C.12/1999/11 and Corr.1), chap. V, paras. 123-152.*

<sup>13/</sup> *Ibid.*, para. 141.

<sup>14/</sup> *Ibid.*, para. 134.

<sup>15/</sup> *Ibid.*, para. 144.

<sup>16/</sup> *Ibid.*, 2002, *Supplement No. 2 (E/2002/22-E/C.12/2001/17)*, annex VII.

<sup>17/</sup> *Ibid.*, 2000, *Supplement No. 2 (E/2000/22-E/C.12/1999/11 and Corr.1)*, chap. V, para. 149.