



**International covenant
on civil and
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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 2552nd MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 15 July 2008, at 10 a.m.

Chairperson: Mr. RIVAS POSADA

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Ireland (continued) (CCPR/C/IRL/3; CCPR/C/IRL/Q/3 and Add.1)

1. At the invitation of the Chairperson, the members of the Irish delegation resumed their places at the Committee table.
2. Mr. SHEARER, referring to the State party's view that existing legislation and common law were sufficient in themselves to give effect to the provisions of the Covenant and the European Convention on Human Rights, asked why in that case an amendment to the Constitution had been passed in 2002 to give effect to the Rome Statute of the International Criminal Court.
3. He noted with satisfaction that the Mental Health Act, 2001 had been enacted one year after the Committee had recommended in its concluding observations on Ireland's second periodic report (A/55/40) that there should be a prompt review of detention on mental health grounds. He further noted that an Office for Disability and Mental Health had been established in 2008. In that connection, he asked whether Ireland planned to become a party to the United Nations Convention on the Rights of Persons with Disabilities.
4. Referring to the revised Immigration, Residence and Protection Bill, 2008, he expressed concern about the section of the Bill concerning the rights of foreigners who were unlawfully present in Ireland. While section 53 imposed an absolute prohibition on refoulement in cases where the deportee would be placed at risk, there appeared to be two categories of unlawful alien: persons who entered Ireland and claimed refugee status but whose application was rejected, and persons who entered clandestinely and were arrested. In the former case, a person facing deportation had 15 days to make final representations to the Minister for Justice, Equality and Law Reform, but in the latter case deportation could be undertaken peremptorily without any opportunity to make representations. He submitted that some frightened or ill-advised immigrants in that category might have a legitimate claim to protection against refoulement and should be allowed to make representations, as currently allowed under section 3 of the Immigration Act, 1999. His question raised issues under articles 9 and 13 of the Covenant.
5. The recently established Protection Review Tribunal appeared to improve the system formerly administered by the Refugee Appeals Tribunal. He was still concerned, however, about the large proportion of part-time members of the new Tribunal and the power of the Minister for Justice, Equality and Law Reform to appoint members without any consultation or screening process. He enquired about the security of tenure of members, including those appointed on a part-time basis, and asked whether their qualifications were vetted by an independent panel.
6. He noted that an amendment to article 9 (2) of the Constitution had the effect of replacing the jus solis entitlement to Irish citizenship by jus sanguinis. He asked to what extent the family situation of foreigners whose children had been born and brought up in Ireland was taken into account in decisions on residence or deportation.

7. He noted that the backlog of applications for legal aid had been reduced by the increase in funding for the Civil Legal Aid Scheme to an average of three months and that aid was granted in about 90 per cent of cases involving family law. He asked whether any legal aid was available to asylum-seekers or persons facing deportation. Were there other non-governmental sources of legal aid and did NGOs have a right of appearance before courts or tribunals?

8. The All-Party Oireachtas Committee on the Constitution had expressed the majority view that judges should be given a choice between taking a religious and a non-religious oath of office. However, as a referendum would be required to amend the relevant provision of the Constitution, no immediate change was contemplated. As 23 proposed amendments of the Constitution had so far been successful and only 4 unsuccessful, he wondered why no such amendment had been proposed. He asked whether there was any evidence of a potential judge having declined to take office on the ground of his or her conscientious objection to the religious oath.

9. Mr. LALLAH said that the State party's written and oral replies to question 7 of the list of issues (CCPR/C/IRL/Q/3) concerning counter-terrorism legislation and extraordinary renditions had raised more questions than they had answered. The Committee had been informed that the primary purpose of the introduction of terrorism legislation was to give effect to international instruments and Security Council resolution 1373 (2001). However, terrorism as such had not been defined in the legislation, and yet a special character was attributed to offences committed in the context of "terrorist or terrorist-linked" activities. He asked the delegation to provide concrete examples of how terrorism offences were dealt with in terms of, for instance, access to lawyers and length of detention. The derogation from the general law under the Offences Against the State Acts, 1939-1998 which extended the period of detention in custody from 48 to 72 hours was permissible under article 4 of the Covenant only in times of emergency. Under other circumstances it breached article 9 and possibly 14 of the Covenant. He urged the State party to study the Committee's general comment No. 29 on article 4 to ascertain whether its derogations from ordinary law under counter-terrorist legislation were consistent with its obligations under the Covenant.

10. The Government claimed to be strongly opposed to the practice of extraordinary rendition. Yet the Committee had received information regarding the alleged use of Irish airspace and Shannon Airport by the United States Central Intelligence Agency (CIA) for renditions, for instance in order to transport Mr. Khaled al-Maqtari to Afghanistan. The State party claimed to rely on diplomatic assurances, but if Ireland was genuinely neutral it could play a more proactive role, for instance by instructing officials to search aircraft operated by the CIA. It was not too late to undertake a serious inquiry into the issue.

11. The State party's reply to question 8 of the list of issues concerning the enactment of constitutional or other legislative measures designed to restrict derogations from the Covenant to those permissible under article 4 merely reiterated that Ireland had no derogation under that article. What the Committee wished to know was whether it had enacted legislation to preclude derogations from non-derogable articles.

12. Turning to question 9, he expressed disappointment at the fact that no action had been taken to protect women in circumstances where their lives were in jeopardy. The written reply

merely described measures taken to prevent what were termed “crisis pregnancies”. Could rape victims, for example, have an abortion in Ireland or must they still travel to a neighbouring country for that service? Did the Government contemplate any legislation that would provide not only Irishwomen but also immigrant women in dire circumstances with some assurances that they would be able to terminate an unwanted pregnancy that threatened their lives?

13. He understood that the Special Criminal Court had been set up to deal with troubles stemming from the situation in Northern Ireland, but times had changed and he wondered whether there was any possibility of accused persons being given equal access to justice instead of giving discretionary authority to the Director of Public Prosecutions to send them to different types of court.

14. The Roman Catholic Church assumed responsibility for some 98 per cent of primary schooling in Ireland, despite the fact that there was now a large and growing population of members of other religious denominations and non-believers. It was intolerable for children of primary-school age to be forced to convert to a different religion in order to obtain admission to a school. The time had come for the State to intervene and provide secular options for parents. Such a move would require a major investment, but Ireland was no longer a poor country.

15. Mr. IWASAWA noted that the maximum detention period for asylum applicants had been increased by the Immigration Act, 2003 from 10 to 21 days. The State party’s report emphasized that 21 days was the outer limit, which implied that the actual period of detention ordered by district court judges was normally shorter. He enquired about the average period of detention. According to the written and oral replies, the 21-day maximum was necessitated by resource and funding considerations. He found it unacceptable that restrictions on the personal liberty of immigration detainees were justified by such considerations.

16. The delegation had confirmed that many immigrant detainees were held in prisons and police stations. He wished to know how many and what proportion of the total were held under those conditions. The Committee had been informed that Clover Hill prison for male immigrants and the Dóchas centre for females were overcrowded. It was further alleged that detainees were locked in cells for more than 17 hours a day and that significant restrictions were placed on their contacts with the outside world. He invited the delegation to comment on those allegations. He also asked whether immigrant detainees were informed in writing, in a language they understood, of their right to challenge their detention and the validity of the decision to deport them.

17. Article 11 of the Covenant prohibited imprisonment on the sole ground of inability to fulfil a contractual obligation. The delegation claimed that no one was imprisoned for civil debt. He understood, however, that refusal to fulfil a contractual obligation could amount to civil contempt of court, for which imprisonment could be imposed. According to the written and oral replies, only 8 persons were currently in custody for non-payment of debt, but according to the Irish Prison Service almost 1,000 persons had been imprisoned for offences relating to debt between January 2002 and September 2006, and 94 people had been recommitted for debt. He asked the delegation to explain the discrepancy in the statistics. The Law Reform Commission had concluded in 2004 that the case for abolition of imprisonment had not been established. What line of reasoning had led to that conclusion? According to the State party’s second report

submitted in 1999 (CCPR/C/IRL/98/2), legislative proposals to end imprisonment where practicable for civil debt and inability to pay fines were being prepared in the Department of Justice, Equality and Law Reform. He asked the delegation to explain the delay in introducing such legislation.

18. Ms. MATOC, referring to article 2 of the Covenant, said that more information was needed on the laws on sexual harassment. She enquired about Ireland's position on the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity. More information was needed on cases of death in custody and on the conditions of detention of persons who had violated immigration laws. She requested details of the domestic legislation on corporal punishment of children. It would also be useful to have further details of the legislation on trafficking in persons, including children, as well as on the demand in Ireland for trafficking in women. Lastly, more information was needed on the status of asylum-seekers.

19. Mr. AMOR enquired whether or not a person could be imprisoned merely on the ground of inability to fulfil a contractual obligation. The report stated that, as at 23 May 2008, eight persons had been in custody in Ireland for non-payment of debt; other sources stated that there were almost 1,000 such persons in custody. He wished to know which figure was accurate. It was unclear whether serving a sentence for non-payment of debt meant that the debt would thereby be extinguished. Information was needed on the number of requests for legal assistance in civil cases and the number of requests granted in recent years.

20. Noting the efforts made by the Government in the area of freedom of religion or belief, he requested a breakdown of the religious communities in Ireland and the number and nature of religious conversions which took place. It would be useful to have information on any new places of worship which had been constructed for non-Catholics, especially in the light of the recent influxes of immigrants. Clarification was needed on the reference in the report to the right of schools under the law to maintain their own distinctive "characteristic spirit". He failed to understand what precisely was meant by such a spirit and the extent to which the State could restrain that spirit if, for example, intolerance or discrimination was encouraged. He asked the delegation to respond to his concern that schools could invoke that provision in the law for sectarian purposes or to exclude certain children.

21. Ms. CHANET, noting with regret that the absence of the Attorney General at the current meeting made it more difficult for the Committee to enter into a genuine dialogue with the delegation, said that she wished to emphasize the following positive aspects: the withdrawal of the reservation to article 14; the establishment of a national Human Rights Commission; steps to guarantee the rights of homosexual couples; the establishment of the post of Inspector of Prisons; the complaints mechanisms to protect against police abuse; and introduction of audio-visual recording of interviews of detained persons.

22. In other areas, however, little progress had been made in addressing the recommendations contained in the Committee's previous concluding observations. One such area was the incorporation of the Covenant into domestic legislation. The Human Rights Commission seemed to have limited power to take action in the courts to protect Covenant rights. The Government

had not followed the Committee's recommendation to end the jurisdiction of the Special Criminal Court and had, contrary to article 14, established another such court. Under the Criminal Justice Act, 2006, the maximum period of pretrial detention - seven days - was not in keeping with article 9.

23. The Committee had also recommended that the Constitution should be amended to bring it into line with article 4. The Attorney General had assured the Committee that the courts interpreted the extremely outdated provision of the Constitution, article 41 (2), in a neutral manner. She failed to understand, however, how a provision which classified women as housewives could be interpreted neutrally. No progress had been made on the Committee's recommendation that the State party should take steps to make sure that women were not compelled to continue pregnancies where those were incompatible with obligations arising under article 6. Women who were compelled to have illegal abortions put their lives at risk. Those who could afford to travel abroad for such operations were also subjected to unacceptable conditions.

24. Insofar as Ireland had made no reservation to article 14, which entitled persons not to be compelled to testify against themselves or to confess guilt, she failed to understand how it could introduce legal provisions which limited the right to remain silent. Clarification was needed on the conditions and criteria under which an accused person's silence could be considered as evidence.

25. Ms. MAJODINA, noting the importance of a national human rights mechanism from the executive branch, enquired about the role of the Minister for Justice, Equality and Law Reform in funding the Irish Human Rights Commission. Further details were needed on the appointment process of the members of the Commission. The funding and appointment functions should be carried out by an independent parliamentary body. The Commission should also report to Parliament in order to preserve its independence. Under the Paris Principles, institutions such as the Commission were encouraged to take steps to harmonize national legislation with international human rights instruments. She enquired whether government departments gave enough support to the Commission to enable it to carry out that important function. According to one report, the Commission had submitted recommendations on only one of 41 bills before Parliament in 2005.

26. With respect to the lack of immigration detention facilities, she would like to know whether there were facilities other than prisons, as the latter were not suitable places for administrative detention. Information was needed on any plans to construct proper facilities as part of the ongoing prison reform. She also enquired whether there were any safeguards to ensure that unaccompanied minors seeking asylum were not detained and to protect children from human trafficking, for example, those accompanied by adults who were not relatives. It would be useful to know whether steps had been taken to grant temporary residence permits in accordance with the best interests of the child.

27. Ms. WEDGWOOD, noting that the Attorney General had argued that the Government would comply with the provisions of the Covenant regardless of whether it had incorporated them in its national legislation, said that the delegation should nevertheless consider the symbolic effect of having it stand alongside the European Convention on Human Rights,

especially as several attempts to incorporate provisions had been voted down in Parliament and in referendums. Incorporating the Covenant into domestic legislation would ease the task of judges and make it easier to teach it in schools.

28. She noted with concern the situation of the Traveller community. It was odd that they were not considered an ethnic minority when they themselves considered themselves to be such. She asked what had been done to provide substantial social assistance to the community, including childcare and education, in order to integrate it into society. On the issue of imprisonment for non-payment of debt, she failed to understand why courts could not simply seize the assets of the person in question in civil proceedings. Referring to article 2 of the Constitution, she said that the reference to blood descent seemed unwelcoming in an age of globalization and wondered whether the Government considered the shift towards jus sanguinis from jus soli, which Ireland had observed for centuries as a welcoming gesture of inclusiveness, to be in keeping with Irish ideals. In the light of the Yogyakarta Principles, she enquired whether any consideration had been given to the adoption of children in civil partnerships.

29. She wished to know how the provisions of the Irish Constitution on neutrality and participation in overseas operations were compatible with the duty to protect under international human rights law, in the event of a potential genocide, and what the Government would consider Ireland's responsibility to be in such a case. The provisions on derogations under the Constitution were not consistent with those of article 4 of the Covenant. She would appreciate the delegation's comments on that issue.

30. While she welcomed the information that the terms "she" and "he" were interchangeable in respect of the role of parents in the home, she noted article 40 of the Constitution on the State's due regard for differences in physical and moral capacity and social function, and wondered how "she" and "he" could be considered interchangeable in that regard. She asked whether parents and children were ever separated in cases of deportation. In response to the information provided by the delegation on the increase in funds for childcare services and juvenile detention centres, she wondered how clearly those funds were earmarked for rehabilitation or prevention of offences, rather than detention, and whether the funds were a reactive measure, or whether they were to be used to anticipate and prevent problems.

31. Sir Nigel RODLEY said that while Ireland's signature of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was a positive step, measures must now be taken to ratify the Optional Protocol and establish the relevant national preventive mechanism, which would include an independent inspection mechanism and a complaints mechanism. He asked what plans the Government had in that regard. He wished to know what measures were being taken to address inter-prisoner violence, which the European Committee for the Prevention of Torture had noted as a problem in Irish prisons. The Committee had been informed that there were no open prisons for women, that there was a plan to construct a new detention facility for women to replace the Dóchas centre, and that there were no proper facilities for prisoners in need of mental health care. He would welcome the delegation's comments on those questions.

32. Turning to the question of trafficking in persons, he wished to know why a legal distinction was made between women trafficked for sexual exploitation who were under the age of 17 and those who were over 17. He asked what measures were in place to protect unaccompanied

children arriving in the State party. The Committee was concerned that there was no apparent protection for victims of trafficking who were afraid to cooperate with the Gardaí in order to secure the prosecution of those who might be involved in trafficking. He would be grateful for further information on how the State party was protecting those victims.

33. Mr. BHAGWATI requested information on the availability of legal remedies for poor and deprived sections of the community, including refugees, immigrants, women, children and trafficked persons in order to enable them to exercise their rights. Lack of awareness, assertiveness and availability of machinery could impede enjoyment of human rights. He wished to know what steps had been taken to raise public awareness of human rights, and, in particular, whether school curricula had been adapted to educate young people about their fundamental rights and create a general awareness of human rights issues. He asked what measures were being taken to assist those people unable to assert their rights owing to lack of funds, capacity and will. Would the Government permit NGOs or other public-spirited individuals to take action in court, or bring issues before the Government, in order to remedy injustices done to the poor and vulnerable sectors of society?

34. Mr. AYLWARD (Ireland), responding to the questions on civil partnership, said that the social benefits that would arise from the new civil partnership legislation would be addressed in separate legislation. Issues of parental responsibility and adoption rights specific to same-sex couples were complex owing to the particular nature of the provisions of the Constitution regarding marriage. The matter remained under discussion. The transgender case that had been raised remained before the courts, and the delegation was therefore unable to comment on it.

35. Addressing the Committee's concerns about the operation of the Special Criminal Court and the perception of the police and Government that there continued to be a credible threat to public order and administration, he said that there was continued activity on the part of dissident and subversive Republican organizations and organized criminal gangs who sought to undermine the criminal justice system through the intimidation of juries. While that threat continued to exist, the State would continue to maintain the Special Criminal Court. He was pleased to note that only a very small number of cases came before that Court, and that a wide range of protections existed for those who were heard by it.

36. The NGO sector in Ireland had been given from 26 October to 29 November 2006 to respond to the State party's report. Time had been limited owing to the Government's desire to submit the report to the Committee in a timely manner. The Government would seek to increase the duration of consultations with NGOs concerning future reports.

37. Steps had been taken to improve independent oversight of the operation of the Irish police. The complaints procedure that had been deemed to be lacking in independence had been replaced by an Ombudsman Commission headed by a High Court judge and two eminent figures from civil society. The Commission had over 100 staff members, an investigation team and considerable police powers. The second annual report of the Commission showed that 47 per cent of complaints against the police related to abuse of authority, 26 per cent to discourtesy, 24 per cent to neglect of duty and 3 per cent to other factors. The Commission had the power to refer cases to the Director of Public Prosecutions, who was an independent office-holder and could mount a prosecution against a police officer. The vast majority of cases

against police officers did not relate to treatment in custody, but rather to interaction between the police and people on the street. The Garda Síochána Act stipulated that the Ombudsman Commission was entitled to be informed of any decision made by the police authorities under the Garda Síochána disciplinary regulations. The Act also stipulated that the Director of Public Prosecutions should notify the Ombudsman Commission of any decisions to prosecute.

38. Turning to the prison building plan, he said that it was not designed to be an expansion of the present prison system, but rather to replace the Mountjoy prison complex, which did not have the same humane conditions as the rest of the prison system. There was an independent prison inspector, who was a former judge. Ireland had signed the Optional Protocol to the Convention against Torture, and was currently considering how to establish the relevant preventative mechanisms. Legislation would be necessary in that regard, and was under consideration. There were currently 15 bodies responsible for various elements of oversight of places of detention, and that system needed to be simplified. On the question of the Convention on the Rights of Persons with Disabilities, a legislative requirement in respect of mental capacity must be addressed before the Convention could be ratified.

39. On the issue of extraordinary rendition, he said that Ireland had received categorical assurances from the United States President and Secretary of State, which had described a factual situation, and the Irish Government remained convinced that the United States Government had complete control over the situation. His Government considered that the detention of any individual by another State on Irish territory would be a clear breach of international law, and the suggestion that any additional assurance was necessary would undermine the principle of State sovereignty. It was understood that the CIA occasionally chartered private aircraft from leasing companies. His Government reserved the right to inspect such aircraft in the event of reasonable suspicion that there were grounds for doing so. Some such inspections had been conducted and nothing untoward had been uncovered. The Government did not believe that Ireland had been used for extraordinary renditions. It was totally opposed to such practices and had raised the issue of a review of the Chicago Convention on International Civil Aviation to address concerns in that regard; it continued to consult with its international partners on the issue. To date, all complaints of unlawful activity in Irish airports had been investigated and the case files submitted to the prosecution service. In all of the cases, no further action had been deemed necessary owing to lack of evidence of unlawful activity.

40. Turning to the question of the Traveller community, he said it was a matter of principle for the Government to consider that community as an integral part of Ireland's indigenous population rather than a separate ethnic group. It acknowledged that Travellers had a unique social identity and that they had suffered and continued to suffer from the risk of discrimination. The community was therefore explicitly protected in legislation. Further information on education for children of minorities in and about their language, religion and culture would be provided to the Committee in writing in due course.

41. Irish State examinations had been held for Latvian, Lithuanian, Romanian, Greek, Finnish, Polish, Estonian, Slovakian, Swedish, Bulgarian, Hungarian, Czech, Portuguese, Danish and Dutch. Mother-tongue classes for children from immigrant groups were government-funded, and those groups could apply for funding for the provision of instruction in their language and culture. Such classes usually took place on school premises.

42. Legal aid was available for asylum-seekers; a legal service for refugees had been established and had received 8.6 million euros in government funding in 2007. Free legal aid centres also existed for asylum-seekers. Immigration decisions were subject to civil appeal. Around 70 per cent of appeals were covered by the legal aid scheme. An extensive criminal legal aid scheme had also been established, and the majority of people appearing before criminal courts on serious charges availed themselves of it.

43. On the question of civil debt, he said that the vast majority of people who faced prison sentences for non-payment of a debt or a fine tended to pay at the last moment before being committed to prison. The courts only deprived of their liberty persons who were capable of paying their debts yet refused to do so. The majority of cases related to family maintenance. Only 0.02 per cent of the prison population were imprisoned for non-payment of debts.

44. His country had increased investment in action to combat domestic violence at various levels and a new national office had been established to focus the attention of policymakers on the issue. More than 60 per cent of applications for protection, safety or interim barring orders were granted, and breach of such orders led to criminal proceedings. Investment in awareness-raising campaigns had increased vastly over the past decade and reached almost 3 million euros in 2008.

45. His Government had been satisfied by its legal advisers that the Immigration, Residence and Protection Bill was compliant with the Covenant and, in particular, with article 13 concerning aliens lawfully in the territory. A person would become unlawful through his or her own conscious actions under the Bill, which set out detailed procedures for the removal of immigrant status. His delegation welcomed the acknowledgement that the proposed Protection Review Tribunal would improve the current situation and the matter remained under discussion. The persons appointed to the tribunal would be under contract with the normal protections, and all those currently involved were legally qualified and experienced.

46. The conditions under which asylum-seekers in breach of immigration laws were held had improved substantially since their transfer to his country's two most modern prisons. The new prison at Thornton would house such prisoners in a specific unit, and public transport arrangements would be made for prisoner family visits. Section 8 of the Refugee Act, 1996 contained extensive and explicit provisions with regard to the process and rights of persons detained in connection with immigration matters. Under the Garda Síochána Act, 2005, the independent Ombudsman Commission was legally obliged to directly investigate all instances of death or serious harm to persons in police custody; such instances were vigorously pursued.

47. Mr. O'TOOLE (Ireland) said that the responses of the Attorney General to his briefing on the Committee's questions would be incorporated in the additional material that his country would transmit to the Committee. He emphasized that the legal rights of persons tried by special criminal courts were identical with those of persons tried by jury. His Government was very conscious of international moves to limit the role of juries in a number of jurisdictions.

48. His country did not imprison individuals for civil debts but did so for civil contempt, or refusal to obey a court order. Persons before the court with insufficient means enjoyed specific protections and orders were not issued under such circumstances; the measure was a means of enforcing payment where there were no assets to seize and when payment was refused.

49. Concerning the deportation of illegal immigrants, he emphasized that any person could seek the protection of the High Court by applying for a judicial review or habeas corpus, and that legal aid was available under those circumstances.

50. Incorporation of the Covenant at the constitutional level presented some difficulties. However, the Covenant had been implemented in effect as the Constitution contained a number of essential protections and had been interpreted by the courts as being in conformity with the Covenant. Moreover, it contained a number of legislative provisions in particular areas on particular rights. His country would tabulate the relevant provisions in order to clarify the situation.

51. It had been suggested that more comprehensive legal protections were available under the Covenant than under the European Convention on Human Rights and that gaps existed. However, the Constitution provided for the equality of all persons before the law and other statutory provisions prohibited discrimination in particular situations, such as employment. All citizens had the right to vote and the Constitution gave citizenship rights to anyone born on the island of Ireland. Participation in political life and the right to stand for election were virtually unrestricted.

52. Since 1995, the Government had been required to represent to the public both sides of any issue put to referendum. Airtime given to political broadcasts in connection with a referendum must also be fairly distributed.

53. Article 40 (2) of the Constitution on the special position of women in the home did not stigmatize or impose any obligation upon women. The duties and obligations of spouses were mutual and the value of men's contribution as parents was recognized. The percentage of married women in the workforce was high. There was no need to remove the article at present, although the matter could be put to a referendum at a later date.

54. On the question of amending the Constitution to reflect the Covenant more transparently at the sub-constitutional level, the European Convention on Human Rights Act, 2003 referred to the way in which Irish courts should view the judgements of the European Court in Strasbourg.

55. Article 34 of the Constitution provided that justice should be administered in courts established by domestic law. A specific constitutional amendment would be required to make provision for the jurisdiction of an international court. As to the oath taken by judges, no judge had been unable to take up a post owing to an issue of conscience and none had called for any change to date.

56. Article 42 of the Constitution provided that the primary educator of the child was the family and guaranteed rights to parents over the religious, moral, intellectual and social education of their children. Children could be educated at home, in private schools or in State-funded schools (of which there were a large number) of various religious denominations, all of which were subject to inspection and curricular requirements.

57. His Government had made no derogations under the Covenant and would be required to communicate any such derogation.

58. Ms. WALSH (Ireland) informed the Committee that a substantial number of members of the Garda Síochána (national police force) had already received training with the International Organization for Migration on trafficking, and that all new recruits would receive the same training, which was also planned for a range of private- and public-sector personnel.

59. With respect to the distinction between women over and under the age of 17, the Criminal Law (Human Trafficking) Act, 2008 defined a child as under 18 years of age. The Act criminalized trafficking in adults and children for the purposes of labour or sexual exploitation or the removal of organs, and imposed penalties of up to life imprisonment for the purchase, sale or offer for purchase or sale of any person for any purpose. It also criminalized knowing solicitation from a trafficked person and imposed penalties of up to 5,000 euros and five years' imprisonment. Her country was participating in the current European G6 initiative to raise awareness of trafficking, aimed at the public and law enforcement personnel.

60. An interdisciplinary working group of 15 governmental and non-governmental organizations had recently been established to address child trafficking. Police Operation Snow had enjoyed notable success in October 2007 with the arrest of a person suspected of involvement in trafficking some 200 children. Unaccompanied children entering Ireland were referred to the Health Service Executive. With regard to the question of the protection of persons afraid to cooperate with the police and the best interests of the child, current and anticipated legal provisions addressed the issue of cooperation for prosecutions but also dealt with cooperation in investigations, which included the issue of humanitarian leave to remain.

61. A governmental and non-governmental working group had been set up to consider a national referral mechanism for victim support. A range of related issues was also being discussed.

62. Mr. AYLWARD (Ireland) noted that the number of women in senior positions in the administration was growing; a forthcoming report suggested that their presence was also strong in the middle ranks, although work-life balance issues remained for women with families at the higher levels. The Department of Justice, Equality and Law Reform recognized that the matter needed further attention. Women suffering sexual harassment indeed had recourse; many cases had come before the Equality Tribunal and, in cases where physical assault was involved, the full force of the law was deployed.

63. The CHAIRPERSON highlighted some remaining concerns, which included the need to consider which articles of the Covenant and which rights were covered under domestic legislation and, also, recognition of the rights explicitly enshrined in the Covenant.

64. Gender equality was a fundamental right enshrined in international instruments and must be protected. Although maintaining the wording of article 41 of the Constitution might not directly violate the Covenant, it did suggest that a social, economic and cultural vision remained in which the role of women in society was played down.

65. Although the Committee had been informed that the oaths of judges were voluntary, there was a risk that a system which prevented individuals from taking an oath and holding a high position could impinge upon freedom of thought and religion.

66. Some doubt remained as to whether the State party considered itself bound to uphold the Covenant under a state of emergency. He requested further information on precedents and legal consequences, if any, and measures taken by the authorities.

67. Although the State party had made considerable efforts to expand freedom of conscience and religious freedom, concerns remained that the traditional establishment continued to wield great influence on the politically sensitive issues of abortion and education.

68. The argument that imprisonment for civil debt was effectively non-existent was not entirely convincing and the Committee remained concerned that imprisonment for civil contempt constituted a violation of article 14 (2) (g) of the Covenant.

The meeting rose at 1.05 p.m.