

**Note on Concluding Comments of the UN Human Rights Committee on Ireland under the International Covenant on Civil and Political Rights, 24 July 2008**

1. A comparison between the Concluding Comments of the UN Human Rights Committee (UNHRC) in 2000 and those issued today show that a number of comments are carried through from the previous examination highlighting some major areas of concern to the Committee that have not been addressed by Ireland in the past eight years.
  
2. These areas are:
  - Incorporation of the ICCPR into national law;
  - Remedies for domestic violence;
  - Inequality between men and women, removal of article 41.2 of the Constitution;
  - Permitted derogations;
  - Access to abortion;
  - Conditions of detention;
  - Detention of asylum seekers (though different aspects of this issue are addressed, in 2000 the focus is on grounds of detention and the right of access to judicial review of detention decisions and also the place of residence of refugees. In 2008, the UNHRC highlights the periods of detention of asylum seekers and the detention of minors, and the placement for detention of asylum seekers in ordinary prisons;
  - Retention of the Special Criminal Court;
  - Religious oaths for judges.
  
3. Comparison of wording of the 2008 concluding comments and the shadow report recommendations:

<b>Wording of Committee’s recommendation</b>	<b>Wording of Shadow Report recommendation</b>
5. 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.	From the Introduction, para. 4: Ireland has failed to withdraw any of its four remaining reservations to the ICCPR since its second periodic review in 2000 and we urge the State to adopt measures to enable it to withdraw these reservations.
6. The State party should ensure that all rights protected under the	Article 2: The ICCPR should be given full effect in Irish law.

<p>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.</p>	
<p>7. The State party should strengthen the independence and the capacity of the Irish Human Rights Commission to fulfill its mandate fully and 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).</p>	<p>Article 2: Funding and support for the IHRC should be increased substantially and the Government should consider making the Commission directly accountable to the Irish Parliament.</p>
<p>8. 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.</p>	<p>Article 23: Same-sex couples should not be discriminated against in relation to their intimate relationships. The right to marry should be extended and no difference in treatment should exist between opposite-sex and same-sex couples.</p> <p>Article 26: The Government should introduce legislation to recognise the change of gender for transgendered persons.</p>
<p>9. 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.</p>	<p>Article 2: The State as a matter of urgency should review and enhance remedies protecting against domestic violence as well as increasing supports.</p>
<p>10. The State party should reinforce</p>	<p>Article 3: The Irish Government should</p>

<p>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.</p>	<p>organise a referendum to amend the Constitution to include the gender-neutral form of Article 41.2 which also recognises the life of carers in the home. This should also include an explicit provision guaranteeing that women and men be treated equally.</p> <p>The National Women's Strategy should be reviewed and updated with a specific time-frame and targets for achievements.</p>
<p>11. 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.</p>	<p>Article 7: The Government should set up an independent inquiry into the illegal transfer of detainees through Irish airports and the Gardaí should set up an investigations mechanism to regular monitor and perform spot checks on CIA planes and CIA chartered flights.</p>
<p>12. 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 derogations during a state of emergency.</p>	<p>Article 4: Given that a state of emergency does not exist in Ireland, the Special Criminal Court should no longer be in operation.</p>

<p>13. 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).</p>	<p>Article 6: The State should provide a legislative framework for the provision of safe and legal abortions in Ireland.</p>
<p>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.</p>	<p>Article 9: The Government should make available the resources necessary to enable the Garda Síochána Ombudsman Commission (GSOC) to independently investigate all complaints about members of the Garda. As an immediate measure, the resources required to enable the GSOC independently to investigate all complaints involving possible criminal conduct by Garda members must be made available. There should be no dilution of the GSOC's current statutory powers.</p> <p>Persons arrested by the Gardaí should have a formal legal right to have a lawyer present during questioning.</p> <p>Article 14: The Government should introduce Regulations to provide for a new form of Garda caution which would clearly inform people of their right to silence and the possible consequences of remaining silent.</p> <p>Relevant guidelines should be developed for judges on the proper instruction of juries against drawing improper inferences from silence.</p>
<p>15. 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 United Nations Standard Minimum Rules for the Treatment</p>	<p>Article 10: The current poor physical conditions in many of our prisons must be addressed as a matter of urgency. In particular, the Government should make a firm commitment to provide in-cell sanitation to all prisoners by a fixed date.</p>

<p>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.</p>	
<p>16. 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 Organised Crime 2000.</p>	<p>Article 8: The Criminal Law (Human Trafficking) Bill 2007 should be amended to allow for protection for victims of trafficking who are too afraid or unable to participate in a Garda inquiry.</p>
<p>17. 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</p>	<p>Article 9: Detention for immigration purposes should be used as a last resort and should be subject to judicial oversight.</p> <p>Article 10: A concerted effort is required to address the needs of prisoners from black or ethnic minority backgrounds, including those detained for immigration-related</p>

<p>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.</p>	<p>reasons.</p> <p>Article 8: The Government should set up an independent inquiry, as a matter of urgency, to examine the disappearance of separated children in the care of the HSE and subsequent Garda or other investigations.</p> <p>All separated children should be placed on a proper national register when they enter the country.</p> <p>Separated children should receive equitable treatment in care and should be formally placed with legal guardians where appropriate. Moreover, better monitoring should take place of hostels and residence homes and the Ombudsman for Children should not be excluded from dealing with complaints from asylum seeking and migrant children.</p>
<p>18. The State party should ensure that its laws are not used to imprison a person for the inability to fulfill a contractual obligation (Covenant, article 11).</p>	<p>Article 11: The Government should amend the law of contempt to ensure that it cannot be used to imprison an individual for failing to fulfil a contractual obligation or for inability to pay a civil debt.</p>
<p>19. 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 such a procedure, as well as resorting to judicial review of adverse decisions, should have suspensive effect in respect of such decisions.</p>	<p>Article 13: Provisions to allow for summary removal in the Immigration, Residence and Protection Bill 2008 are incompatible with the State's obligations under the ICCPR and should be removed.</p> <p>Article 10: All persons detained following refusal to land, asylum seekers detained for a number of reasons and persons detained pending deportation should be formally notified of their right to challenge their detention, their right to inform a person of their choice of their detention, the right to have access to a lawyer and the right to have access to medical care.</p> <p>Article 13: The State should introduce an</p>

<p>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.</p>	<p>independent appeals procedure to review all immigration-related decisions.</p> <p>Article 14: All members of the new Protection Review Tribunal should be appointed independently through the Public Service Appointments Commission and not by the Minister for Justice, Equality and Law Reform.</p>
<p>20. 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.</p>	<p>Article 14: There should be clear and transparent guidelines for the Director of Public Prosecutions, with the delegated authority of the Attorney General, to make his decision as to what circumstances he “thinks proper” for a person to be tried before the Special Criminal Court as held by the Human Rights Committee in their view in <i>Kavanagh v. Ireland</i>.</p> <p>Article 26: The continued discretion of the DPP to send accused persons for non-jury trial before the Special Criminal Court is in breach of Article 26 ICCPR and should be addressed.</p>
<p>21. The State party should amend the constitutional provision requiring a religious oath from judges and to allow for a choice of a non-religious declaration.</p>	<p>Article 18: Judges should not be required to take a religious oath before joining the bench.</p>
<p>22. 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.</p>	<p>Article 18: The State must increase its provision for the establishment of non-denominational education at primary and post-primary levels.</p>
<p>23. 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</p>	<p>Article 27: The Government should recognise Travellers as a formal ethnic group.</p> <p>In public policy initiatives concerning Travellers, representatives from the</p>

<p>Traveller Community should always be included. It should also amend its legislation to meet the specific accommodation requirements of Traveller families.</p>	<p>Traveller Community should always be effectively represented.</p>
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