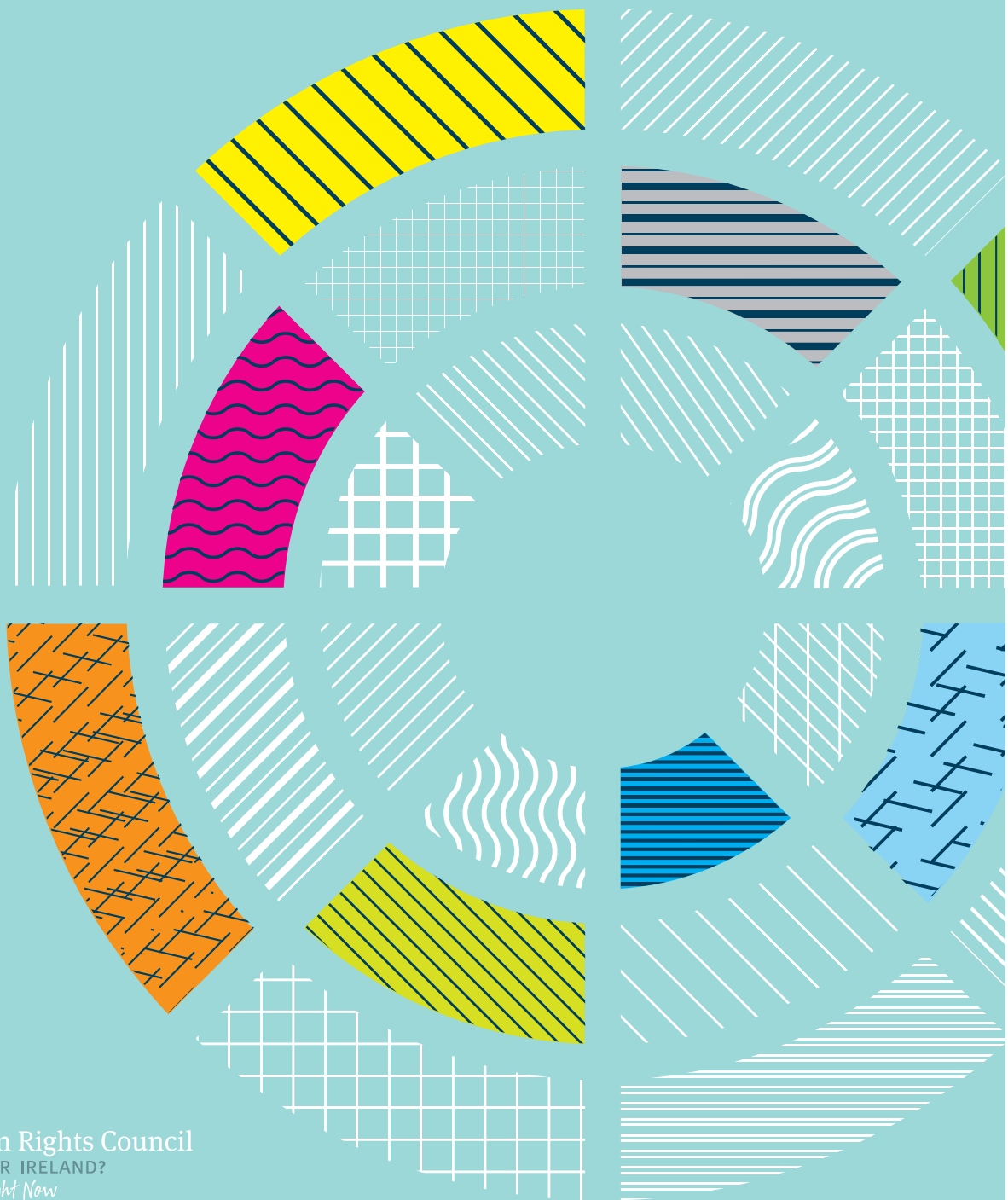




Irish Council for
Civil Liberties

Civil Society Report to the Fourth Periodic Examination of Ireland under the International Covenant on Civil and Political Rights

JUNE 2014



UN Human Rights Council
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Report Structure

This report is divided into a number of sections drawing together all of the relevant information in relation to Ireland's Fourth Periodic Examination under the International Covenant on Civil and Political Rights (ICCPR). The report is a compendium of documents that have been produced by the UN Human Rights Committee, the State party and civil society organisations in relation to the List of Issues and Ireland's forthcoming appearance before the 111th Session of the Human Rights Committee on 14-15 July 2014 in Geneva, Switzerland. It also includes the 'Concluding Observations' produced by the UN Human Rights Committee in 2008, after Ireland's last appearance before it.

Introduction

Background / information on the role of Irish civil society organisations in the treaty monitoring process for Ireland's Fourth Periodic Examination under ICCPR.

Summary and Key Recommendations

A summary of developments and issues of concern arising since Ireland's last reporting period under ICCPR. Key recommendations for reform.

Civil Society Response to the Replies of Ireland to the List of Issues

Updated information and recommendations in response to the State's replies to the list of issues. *June 2014*

Replies of Ireland to the List of Issues

Replies of Ireland to the List of Issues. *February 2014*

List of Issues on Ireland

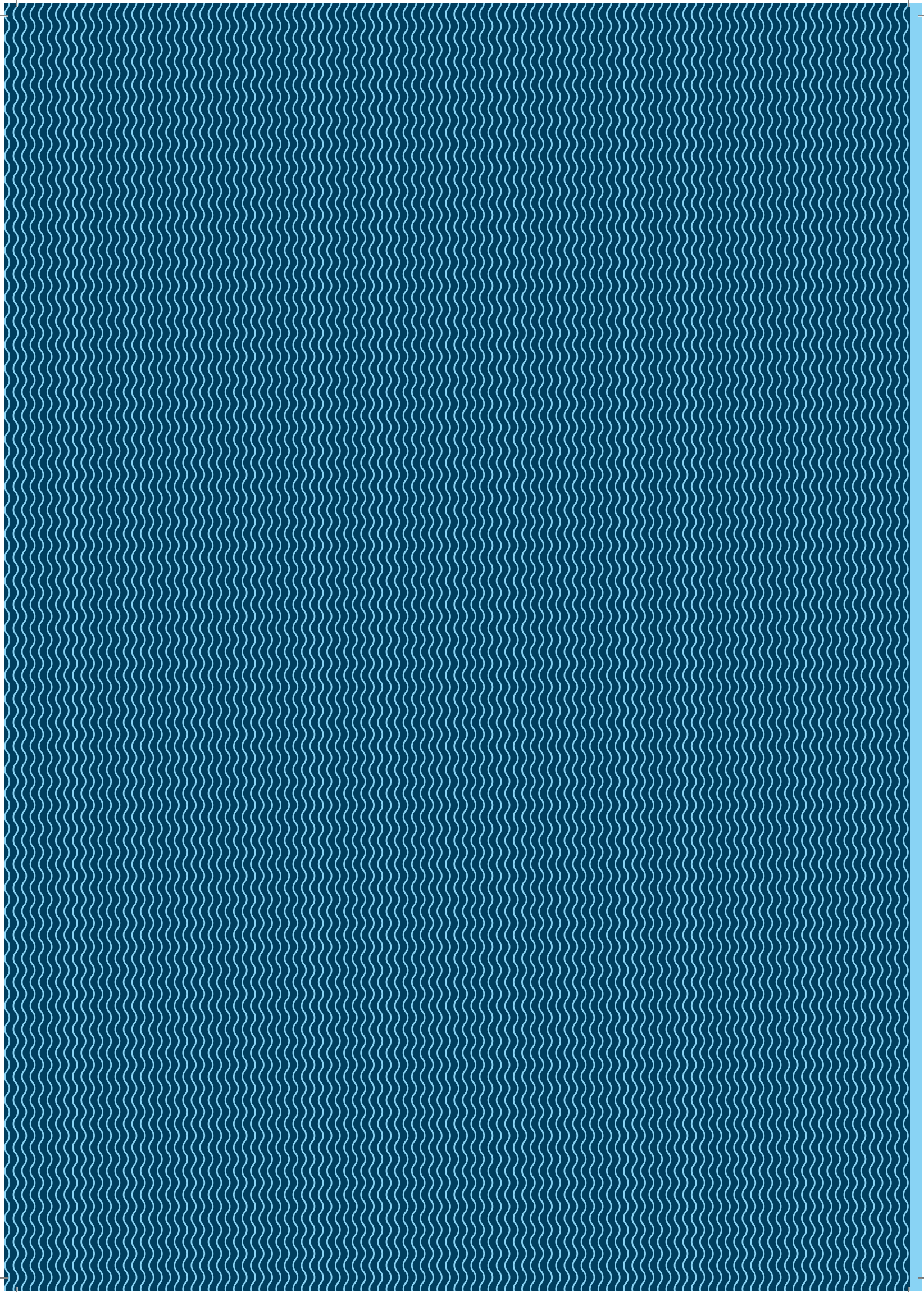
List of issues of the Human Rights Committee. *November 2013*

Civil Society Shadow Report

Civil society shadow report including recommendations on Ireland's current human rights record compiled by the Joint Civil Society Coalition in response to Ireland's Fourth Periodic Report under ICCPR. Submitted in advance of the list of issues. *June 2014*

Concluding Observations of the Human Rights Committee on Ireland

Civil society shadow report including recommendations on Ireland's current human rights record compiled by the Joint Civil Society Coalition in response to Ireland's Fourth Periodic Report under ICCPR. Submitted in advance of the list of issues. *July 2008*



Section 1

Introduction

Background

On 25 July 2012, the Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR) was submitted to the UN Human Rights Committee. The Report was submitted on time and ahead of Ireland's next periodic examination under ICCPR, scheduled to take place on 14 and 15 July 2014 at the headquarters of the Committee, in Geneva, Switzerland. It is the responsibility of the Committee to monitor Ireland's compliance with the Covenant, which was signed by Ireland on 1 October 1973 and ratified on 8 December 1989.

All of the views expressed in this report do not necessarily reflect the policies and positions of each organisation.



As part of the ongoing treaty monitoring process, information from civil society organisations (CSOs), national human rights institutions (NHRIs) and other relevant stakeholders can be submitted to the Committee to assist Committee Members to properly evaluate the extent to which a state party is meeting its human rights obligations under the Covenant. Information is provided to the Committee in the form of individual submissions, shadow reports and formal briefings with Committee members prior to the drawing up of the list of issues and prior to a State party's next appearance before the Committee at which issues arising from a State party's periodic report will be discussed. Following the oral hearings, the Committee publishes its concluding observations and recommendations on the State party's compliance with the Covenant.

Joint Civil Society Steering Group

This report was compiled by the Irish Council for Civil Liberties (ICCL) in collaboration with 11 civil society organisations and stakeholders which formed the Joint Civil Society Steering Group on ICCPR.

The Steering Group comprises the following organisations:

- Age Action Ireland
- Educate Together
- Free Legal Advice Centres (FLAC)
- Gay and Lesbian Equality Network (GLEN)
- Immigrant Council of Ireland (ICI)
- Inclusion Ireland
- Irish Centre for Human Rights (ICHR)(NUI Galway)
- Irish Council for Civil Liberties (ICCL) (Coordinator)
- Irish Family Planning Association (IFPA)
- Irish Traveller Movement (ITM)
- Survivors of Symphysiotomy (SoS)
- Trans-gender Equality Network Ireland (TENI)

List of Issues

Following an open call for submissions from civil society organisation throughout Ireland, the Joint Civil Society Shadow Report on the List of Issues for the Fourth Periodic Examination of Ireland under the International Covenant on Civil and Political Rights, was submitted in September 2013 in advance of the 109th Session of the Human Rights Committee (14 October – 1 November 2013) in Geneva (see Section 6). The report was submitted to assist the Committee in compiling the list of issues on Ireland. The list of issues provides the framework for discussions between the State party and the Committee during Ireland's scheduled appearance before the Committee during the Committee's 111th Session (7 – 25 July, 2014).

Briefing with Human Rights Committee Members

During the 109th Session of the Committee and prior to the compilation of the agreed list of issues for Ireland, a representative from the Joint Civil Society Steering Group participated in a briefing session for Committee Members, organised by the Centre for Civil and Political Rights in Geneva, to highlight some of the key concerns of Irish civil society organisations in relation to Ireland's human rights record under ICCPR. The issues raised in the briefing session covered a variety of concerns and a significant number of these were reflected in the final list of issues document published by the Committee (see Section 5).

Ireland's Replies to the List of Issues

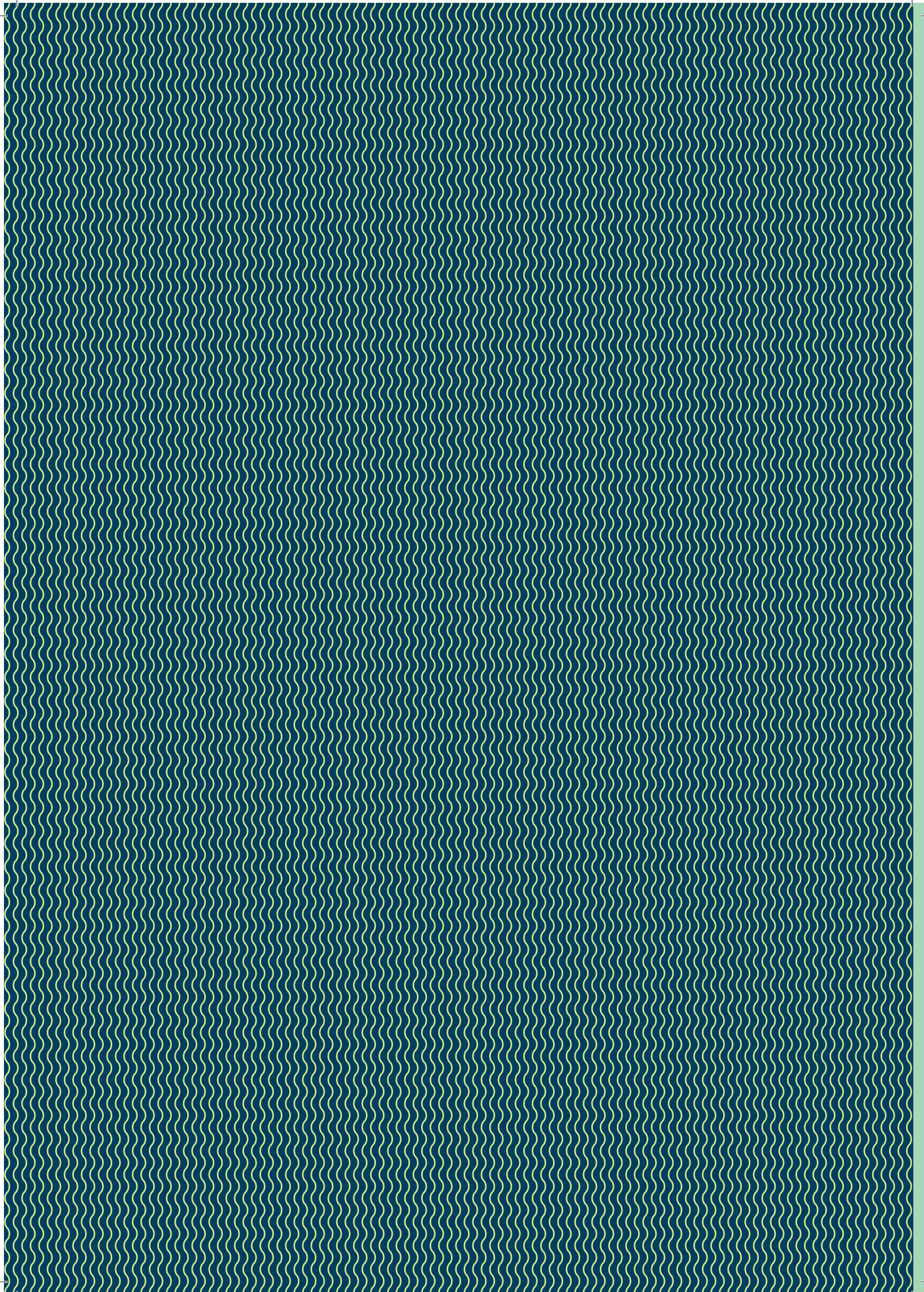
On 27 February 2014, the Government of Ireland produced a detailed list of replies to the list of issues document published by the Committee (see Section 4). The Government also held a briefing session regarding the ICCPR process on 13 June 2014.

Ireland's Replies to the List of Issues – Civil Society Response

On 11 February 2013 a national consultation event was held by the Irish Council for Civil Liberties (ICCL) to bring together representatives from civil society organisations and other stakeholders to discuss Ireland's human rights record in relation to the Fourth Periodic Examination of Ireland under ICCPR and the mid-term review of Ireland under the Universal Periodic Review scheduled for 2014. In June 2014, the Coalition compiled a detailed response to the State's replies to the list of issues which was submitted in advance of the oral hearings (see Section 3).

On 14 – 15 July 2014, representatives from Irish civil society organisations, including Steering group members, will join with representatives from international civil society organisations, campaigners and persons with first hand experience of the State's past failure to ensure the rights outlined in the Covenant are upheld to the fullest extent possible, to formally brief Committee members ahead of the oral hearings for Ireland's Fourth Periodic Examination under ICCPR.





Section 2

Summary and Key Recommendations

Summary

Since Ireland's Third Examination under ICCPR by the Human Rights Committee in 2008, there have been some significant legislative and policy reforms in relation to civil and political rights in Ireland.

Positive measures undertaken include the long overdue enactment of the Protection of Life during Pregnancy Act 2013; the enactment of the Criminal Justice (Female Genital Mutilation) Act 2012; the formal State apology and subsequent establishment of a scheme of redress for the women detained in Magdalene Laundries; the outcome of the referendum on the rights of children, certain reforms of the Irish penal system including tangible efforts to end inhuman and degrading practices regarding in-cell sanitation; the enactment of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010; the recent commitment by Government to reform the law on child and family relationships including in relation to adoption, surrogacy and assisted human reproduction including in relation to same-sex couples; the establishment of the Convention on the Constitution which has recommended Constitutional reform including in relation to blasphemy, the role of women and equality for same sex couples.

Notwithstanding these developments, it is regrettable that there has been little or no movement on a number of areas of concern including, *inter alia*, broadening Ireland's restrictive laws on abortion to meet its obligations under the Covenant; the lack of progress on the enactment of the proposed Immigration, Residence and Protection Bill; lack of progress on the recognition of Travellers as an ethnic group; lack of meaningful progress on strengthening the independence of Ireland's Garda Síochána (Police) Ombudsman Commission; and an effective remedy for women who are survivors of wrongful and cruel surgical procedures during childbirth.

In addition, certain recommendations by the Committee in its Concluding Observations on Ireland's Third Periodic Report, have yet to be implemented including completing the reform of State's human rights and equality infrastructure, the merger of the State's employment rights bodies, the introduction of legislation to allow for gender recognition for trans-gender persons, the enactment of the Assisted Decision Making (Capacity) Bill 2013 and ratification of the International Convention of the Rights of Persons with a Disability (ICPRD).



Key Recommendations

The Committee is invited to consider key recommendations arising from the following report to facilitate the effective protection of human rights for vulnerable people and in particular the need for:

Effective national mechanisms for the implementation/enforcement of international human rights standards including:

- a fully independent and adequately resourced National Human Rights Institution;
- ratification of OPCAT and the introduction of a National Preventative Mechanism to monitor places of detention;
- an effective and independent prison complaints mechanism ;
- ratification of the ICPRD and the creation of an effective monitoring mechanism;

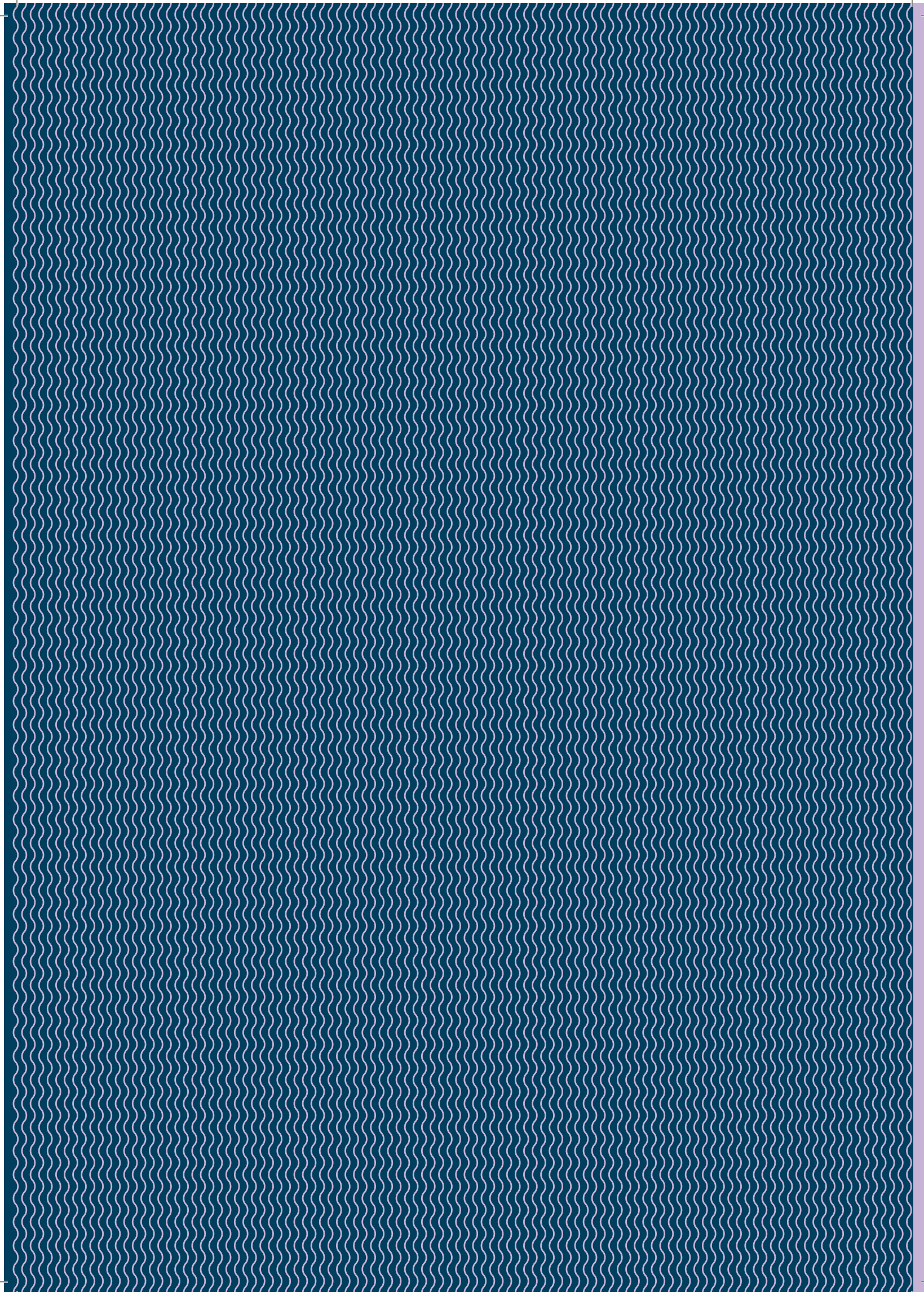
More effective, comprehensive and independent mechanisms for truth finding and redress for the victims of agents motivated by “religious ethos” including:

- victims of the Magdalene Laundry system;
- survivors of involuntary and unnecessary surgical procedures (symphysiotomy and pubiotomy) during childbirth conducted mainly in private hospitals’;
- victims of mistreatment and neglect in so-called ‘mother and baby’ residential care and adoption facilities;
- persons discriminated against under employment law on the grounds that their status (civil status, family status, sexual orientation or gender) contravenes the religious ethos of their employer.

Empowerment of women and minority groups whose rights are not respected in Irish society including in relation to:

- women’s reproductive rights;
- recognition of Traveller ethnicity;
- the rights of migrants, asylum seekers and victims of human trafficking;
- the experience of discrimination by minority groups including in relation to ethnicity, religion, ageing and disability;





Section 3 **Civil Society Response to the** **Replies of Ireland to the List of Issues**

13 June 2014

Constitutional and legal framework within which the Covenant is implemented

(Arts. 2)

1. The Covenant in the domestic legal order

In its reply to the List of Issues¹, Ireland has indicated that no additional measures to ensure the Covenant is given full effect in the domestic legal order have been taken beyond those specified in the Ireland's fourth periodic report under ICCPR.²

Update:

A previous commitment by Ireland³ to furnish the Committee with a comparative overview of legislation giving effect to provisions of the Covenant in a tabular form has, to date, not been produced. Given the breadth of domestic legislative provisions needed under Ireland's dualist legal system to give effect to the Covenant, the Committee is urged to ask Ireland to produce the table at its earliest convenience in order to provide greater clarity on the degree to which the Covenant has been incorporated into Irish law.

2. Reservations to article 10, paragraph 2 and article 20, paragraph 1

Ireland has failed to indicate what steps it will take to ensure any remaining impediments to withdrawing its reservation to article 10 are overcome, including steps to ensure prisoners on remand are housed in purpose built accommodation. Ireland has indicated that it has no plans to withdraw its reservation to art 20, paragraph 1, despite a recommendation by the Committee to do so.

Update:

The Committee is urged to request Ireland to provide a concrete commitment to withdraw its remaining reservations to the Covenant and to indicate the likely timeframe for achieving same.



3 (a) Irish Human Rights and Equality Commission

In its reply, Ireland has indicated that legislation establishing the Irish Human Rights and Equality Commission will ensure full compliance with the Paris Principles; the selection of Chief Commissioner and members of the commission will, in future, be made by the independent Public Appointments Service (PAS); funding for IHREC will be reasonably sufficient to meet its mandate the Commission will be accountable to the Oireachtas (Parliament) in relation to the preparation and submission of its Annual Report.

Update:

On 21 March 2014, the Minister for Justice and Equality published the Irish Human Rights and Equality Commission Bill 2014⁴ to merge the Equality Authority and the Human Rights Commission into a single body with provisions governing, inter alia, each of the issues set out above. It should be noted that the Irish Human Rights and Equality Commission Bill passed all stages in the Dáil (lower house of Parliament) on 4 June 2014 and it is expected to be enacted shortly. The legislation is welcome; however, some aspects may require further amendment if the new body is to meet fully its mandate to promote and protect human rights in accordance with international standards and norms governing national human rights institutions (NHRIs). The following issues are of particular concern:

Paris Principles

The wide definition of human rights contained in section 2 of the Bill is to be welcomed.⁵ However, provisions contained in the Bill relating to proposed powers of enforcement are governed by a second, narrower definition of human rights.⁶ This second definition defines human rights as only those rights “which have been given force of law in the state”. The Committee is urged to recommend that a uniform definition of human rights be employed in the legislative framework of the proposed new NHRI, including in relation to enforcement powers based on the rights, liberties and freedoms conferred on the individual under the Constitution and any agreement treaty or convention to which the State is a party.

Funding

In its current form, the Bill subjects the funding of IHREC to substantial potential Ministerial influence and departmental control.⁷ While it is possible that control may not be exercised in practice or only minimally exercised, sufficient safeguards are required to ensure protection against improper influence and/or preclude altogether the possibility of control. A similar provision to that provided in Section 26 of the proposed legislation is found in the UK’s Equality Act 2006⁸, which stipulates that the Equality and Human Rights Commission should have such funds “as appear to the Secretary of State reasonably sufficient for the purpose of enabling [it] to perform its functions” which reflects the principle of composition and guarantees of independence and pluralism set out in the Paris Principles. That provision has not prevented substantial cuts to the funding of the EHRC over the past three years but did at least require the production of a review to ensure that the Commission could carry out its core functions.⁹

Effective protection for human rights

Significant budgetary cuts coupled with the State’s embargo on new public sector employees have had an evident impact on the provision of legal support for persons who wish to pursue redress under equality legislation. Since 2008, the number of cases supported by the Equality Authority’s legal section, both in relation to cases of discrimination in employment under the Employment Equality Acts 1998 – 2011 and discrimination in the provision of goods and services under the Equal Status Acts 2000 – 2011 has declined. In 2012 because of non-replacement of staff on leave, those who retired or resigned, just one qualified legal practitioner was in place.¹⁰



Table 1
Equality Authority Case Work 2000 – 2012

Year	Equal Status Act (New Files)	Employment Equality Act (New Files)	Intoxicating Liquor Act (New Files)	Total All Files	Total New Files	Total Closed Files
2000	14 (14)*	202 (105)	–	216	119	85
2001	675 (661)	405 (300)	–	1080	961	394
2002	795 (n/a)	489 (n/a)	–	1284	n/a	501
2003	792 (n/a)	561 (n/a)	–	1353	n/a	709
2004	509 (n/a)	370 (n/a)	10 (10)	889	n/a	450
2005	358 (108)	359 (142)	37 (25)	754	275	300
2006	366 (149)	404 (178)	83 (61)	853	388	381
2007	328 (80)	360 (107)	49 (17)	737	204	232
2008	301 (81)	374 (110)	61 (43)	736	234	68
2009	329 (100)	287 (73)	69 (40)	685	213	465
2010	143 (35)	150 (52)	39 (29)	332	116	199
2011	120 (67)	132 (64)	37 (25)	289	156	134
2012	92 (13)	81 (12)	23 (16)	196	41	91

* The Equal Status Act came into force on 25/10/00; the 14 cases listed for 2000 therefore relate to the first 9 weeks of the Act's operation. It should be noted, however, that the Equality Authority's definition of "files" has changed during this period. Previously used to refer to open complaints, this term is now apparently used to refer to active potential cases. Consequently these figures may not be directly comparable from year to year.

The Committee is urged to ask the state how it plans to ensure adequate funding and resources are provided and maintained to enable the new body to function effectively as a national human rights institution.



3 (b) Workplace Relations Commission

In its reply Ireland has indicated that complaints brought before the new workplace relations structure, in relation to employment equality legislation and legislation governing discrimination in the provision of goods and services would be dealt with as effectively as they were under the Equality Tribunal.

Update:

At the time of writing, legislation governing the merger of the five employment rights bodies and the establishment into the proposed two-tier workplace relations structure, the Workplace Relations Commission (first instance) and Labour Court (appellate body) remains unpublished. The impact of the cuts to the State's equality and human rights infrastructure since 2008 has included a marked decline in the number of cases taken before the Tribunal under the Equal Status Act. This is evident in the number of cases supported by the Equality Authority and the number of referrals/outcomes coming before the Equality Tribunal. There is concern that without adequate funding and resources to support complainants to take cases under the Equal Status Acts, including measures to improve public awareness of their right and the mechanism to pursue redress, the number of cases will, in all likelihood, continue to decline. The Committee is urged to ask the State party to explain the significant drop in cases taken to the Equality Tribunal from 2008 (123) to 2012 (45) under the Equal Status Acts and what action it intends to take to ensure members of the public are sufficiently informed of their rights under the legislation.

3 (c) National Action Plan against Racism 2005 – 2008

Ireland has indicated that since 2005 there has been “substantial penetration of anti-racist policies programmes and activities and awareness raising initiatives” in Ireland.

Update:

Detail on the type and degree of penetration of such initiatives are not provided in the State's replies to the list of issues. Previous research, conducted within the reporting period, suggests that minority groups in Ireland continue to experience marginalisation, victimisation and discrimination on a significant level.

For example, in its 2009 research report European Union Minorities and Discrimination Survey, the EU Agency for Fundamental Rights (FRA) found that 54 per cent of Sub Saharan African respondents and 26 per cent of Central and Eastern European respondents interviewed in Ireland reportedly suffered discrimination at least once in the previous 12 month period in any of the nine domains tested in the research. This figure exceeded the aggregate average for Sub Saharan Africans across EU Member States which stood at 41 per cent and for Central and Eastern European respondents which stood at 23 per cent.

Similarly, in its 2012 survey of experience of discrimination by LGBT people in the EU¹¹ the FRA found that 47 per cent of LGBT respondents in Ireland felt discriminated against or harassed in the last 12 months on the grounds of sexual orientation and that 26 per cent had experienced a violent physical or verbal assault.

Ireland currently has no provisions in criminal law to provide for aggravated offences in relation to racism, anti-Semitism, xenophobia, homophobia, hostility based on religion or hostility based on disability. The Committee is urged to ask Ireland how it monitors and records incidents of hate crime including in relation to LGBT hate crime and how it plans to ensure that hatred or hostility will be taken into account as an aggravating factor in criminal cases where this can be demonstrated.



4 (a) Types of complaints filed with the Garda Síochána (Police Ombudsman Commission (GSOC))

See Section 4 – Replies of Ireland to the List of Issues, Annex A

4 (b) Current backlog of cases before GSOC

In its reply, Ireland has indicated that there is currently no backlog of cases awaiting an admissibility decision. However, no information is provided on the length of time for an allegation to be investigated or any information in relation to the final outcome of complaints.

4 (c) Measures taken to ensure cooperation by the Gardaí (police) and an investigation by GSOC

Notice of new protocols on sharing of information between An Garda Síochána and GSOC, signed on 23 September 2013, is provided in the Replies of Ireland to the List of Issues.

Update:

The protocols arose following complaints from GSOC that members of an An Garda Síochána (police) were slow to cooperate with requests for evidence and that reasons were being sought why certain requests were being made before information was provided.¹² No unsupervised access to the police criminal incident database and information system, PULSE, is provided under the memorandum of understanding.¹³ However, on 14 May 2014, GSOC confirmed to the Joint Oireachtas Committee on Justice that it does now have direct and unsupervised access to PULSE on its own premises.¹⁴ This is a positive development that should be reflected in further revision of the protocols.



4 (d) Practice of investigative referrals and the duty to conduct independent investigations

Ireland has indicated that it is standard international practice for police forces to investigate complaints which do not involve a criminal offence and that, at the request of complainants, GSOC may supervise such complaints.

Update:

Recent developments in relation to GSOC have raised concerns regarding the ability of GSOC to function effectively as an independent police ombudsman, the nature and quality of its relations with the Department of Justice, including at Ministerial level, and the nature and quality of its relationship with An Garda Síochána, including at the level of Garda Commissioner (chief of police).¹⁵ Following the recent emergence of a report, commissioned by GSOC in 2013, which revealed its concerns at potential surveillance of its premises by An Garda Síochána, the public perception of the agency and its effectiveness has been affected. While an independent review of the circumstances surrounding the potential surveillance of GSOC has been established, it has not been established under the provisions of the Commission of Inquiry Act 2004 and appears to fall short of a full independent inquiry, including with the power to compel witness, which would be required to restore public confidence in the independence and effectiveness of the Ombudsman.¹⁶

Separately, and following further damaging revelations into practices within An Garda Síochána regarding the road traffic offence penalty points allocation system, the treatment of internal whistleblowers and the role of the confidential recipient (first point of contact within the force for receiving information on alleged wrongdoing by officers from serving members of the force), the Oireachtas (Parliamentary) Committee on Justice, Defense and Equality announced that it would undertake a review of the effectiveness of the legislation relating to oversight of An Garda Síochána.¹⁷ In its submission and oral presentation to the Joint Oireachtas Committee which took place on 14 May 2014, the Irish Council for Civil Liberties recommended that:¹⁸

- Provision be made within existing legislation (Garda Act 2005) for all complaints against members of An Garda Síochána – from whatever source – independently to be investigated by the Garda Síochána Ombudsman Commission (GSOC);
- legislation be amended to empower GSOC to examine practices, policies or procedures on its own initiative, without requiring prior Ministerial approval;
- provision be made within legislation to include the Garda Commissioner within the investigative mandate of GSOC;
- A new and fully independent Garda Authority¹⁹ be created to ensure civic oversight of policing and consequent legislative amendments be made to the provisions in the requisite legislation governing the legal relationship between the Garda Commissioner and the Minister for Justice;
- the current functions of the Garda Inspectorate be reallocated to GSOC, the new Garda Authority and the Garda Síochána Professional Standards Unit;

5. Activities of private business leading to violations of the Covenant outside the territory of the State party

See Section 4 – Replies of Ireland to the List of Issues



Non-discrimination, right to an effective remedy and equal rights of men and women, including political participation

(Art. 2, para. 1, 3, 16 and 26)

6(a) Steps taken to amend article 41.2 of the Constitution in line with the Committees previous recommendation.

See Section 4 – Replies of Ireland to the List of Issues.

6(b) Information on the General Scheme of the Electoral (Amendment) (Political Funding) Bill 2011

See Section 4 – Replies of Ireland to the List of Issues.

Update:

The recent local elections saw a marked increase in the number of women candidates put forward by most of the main political parties. This is a positive development, however, concern remains that the number of women candidates in the two largest political parties did not meet the targets which, under the Electoral (Amendment)(Political Funding) Act 2012, must be reached by all parties the next General Election in order to qualify for full State funding.²⁰

6(c) Increasing the representation of women

See Section 4 – Replies of Ireland to the List of Issues.

7. Progress in adopting the Assisted Decision Making (Capacity) Bill

Ireland has yet to ratify the International Covenant of the Rights of Persons with a Disability (ICRPD). In its reply to the List of issues, Ireland has indicated that consideration of the Bill (published on 17 July 2013) began in December 2013.

Update:

The publication of the Assisted Decision-Making (Capacity) Bill 2013 is a welcome development which, following enactment should provide an improved legal framework for supporting people to exercise their legal capacity and thus remove the final obstacle to ratification of the ICRPD. The Committee should consider recommending that the Government produce a detailed timetable for ratification of the ICRPD and provide details of any remaining administrative and legislative impediments to ratification not covered under the Assisted Decision Making (Capacity) Bill 2013. The Government should also publish the Work Programme of the High-Level Interdepartmental Committee on the ICRPD and the independent assessment of the remaining requirements for ratification undertaken by the National Disability Authority. In addition, the Government should produce details of when it intends to commence in full the legislative components of the National Disability Strategy 2004 and details on progress in reviewing Ireland's existing mental health legislation.²¹



Domestic, sexual and gender based violence

(Arts. 3, 7, 23, 24 and 26)

8(a) Systematic data collection procedure concerning cases of domestic and sexual violence

See Section 4 – Replies of Ireland to the List of Issues.

8(b) Complaints, prosecutions and sentences in relation to violence against women

See Section 4 – Replies of Ireland to the List of Issues.

8(c) Non-citizens who experience domestic and sexual violence where their status is linked to their partner under the Habitual Residence Condition

In its reply Ireland refers to the Irish Naturalisation and Immigration Service Guidelines for Victims of Domestic Violence.

Update:

The state party's reply does not address the issue of non-citizens who experience domestic and sexual violence in cases where their status is linked to their partner under the "habitual residence condition". Significant barriers remain for migrant victims of domestic violence when accessing social protection. The current guidelines do not deal with the issues of satisfying the habitual residence condition.²² This constitutes a significant gap in ensuring the protection and support of victims of domestic violence in escaping and moving on from abusive relationships.

Clear guidelines for the Department of Social Protection are required to indicate how the "habitual residence condition" will be considered for victims of domestic violence who are dependent on their spouses in terms of immigration status, habitual residence and, in most cases, financially dependent. Lack of clarity on this issue can lead to an inconsistent approach by staff making decisions on social welfare applications from Department of Social Protection on victims of domestic violence. Provisions to ensure timely access to safe emergency housing and essential services, including state financial aid, to meet the needs of victims of domestic and sexual violence who have pending applications for permission to remain in Ireland on an independent basis is urgently required.

Furthermore, there must be an entitlement to retain permission to remain in situations where a family break-up was caused by physical or mental violence, at least where the non-citizen family member has been resident in Ireland for a defined period of time or where this is necessary for humanitarian reasons. The current Guidelines for Victims of Domestic Violence merely provide a guide to the Minister in her exercise of ministerial discretion pursuant to Section 4(1) and 4(7) of the Immigration Act 2004.



9(a) Establishment of an independent investigation into abuse perpetrated in the Magdalene Laundries.

According to its reply to the List of Issues, Ireland does not propose to establish a specific Magdalene inquiry or investigation. Ireland has stated that the findings of the Report of the Inter-Departmental Committee to establish the facts of State involvement in the Magdalene Laundries found no factual evidence to support torture or ill-treatment of a criminal nature, no evidence of systematic unlawful detention and no evidence of women kept for long periods against their will.

Update:

Information including testimony from survivors and staff regarding instances of maltreatment and abuse was received by the Inter-Departmental Committee prior to publishing its report but not included in the final report. The findings of the report have formed the basis of the redress scheme arising from the Magdalene Commission Report by Mr Justice Quirke. The scheme does not include individualized compensation for the impact of human rights violations as recommended by the Irish Human Rights Commission nor does it take account of information relating to the aforementioned testimony from survivors of abuse excluded from the McAleese report.²³ In a letter to the Permanent Representative of Ireland to the United Nations at Geneva, the Vice Chair of the UN Committee against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, Ms Felice Gaer indicated that the report “lacked many elements of a prompt, independent and thorough investigation as recommended by [UNCAT].”²⁴

The Committee should consider recommending that the Government put in place an individualised assessment scheme for Magdalene survivors and establish a specific and independent inquiry into the Magdalene Laundries with all necessary powers.

9(b) Redress scheme – Independent monitoring and appeal

Ireland has not provided details of whether and how the redress scheme will be monitored independently.

Update:

It should be noted that, under the terms of the redress scheme known as the Magdalene Restorative justice Scheme, qualifying survivors are required to waive “any right of action against the State or any public or statutory body or agency arising out of her admission to and work in the institution or institutions concerned”.²⁵ In its Follow-up Report on State Involvement with Magdalene Laundries, the Irish Human Rights Commission noted that, subject to individual circumstances, survivors may have claims against the State for breach of their constitutional rights.²⁶

Additional Information – Women subjected to Symphysiotomy and Pubiotomy (Arts 2, 7 and 17)

The practices and policies of the medical profession and the corresponding role of the health services, including executive oversight, hospital governance and the role of the Department of Health have been the subject of widespread criticism following disclosures that, throughout a 60-year period, from the mid-1940s onwards, a significant number of women had been subjected to surgical procedures known as symphysiotomy and pubiotomy before, during and after childbirth. The issue has been highlighted by the campaign group, Survivors of Symphysiotomy, which works on behalf of some 300 survivors of an estimated 1500 women who underwent these operations in Irish maternity hospitals (from 1941 to as recently as 2005), often leading to lifelong, deleterious side effects.



Symphysiotomy and pubiotomy involve sundering the pelvis at either the symphysis joint (symphysiotomy) or the pubic bone (pubiotomy) to enable vaginal birth in obstructed labour. These surgeries reportedly occurred particularly in Catholic teaching hospitals, mainly from the 1940s to the 1980s, when Caesarean section was the established treatment for difficult births.²⁷ These operations often led to life-altering side effects, ranging from chronic pain and incontinence to significant disability and mental suffering. Patient consent was reportedly never sought. Many women were unaware that they had been subjected to such procedures and only made the discovery decades later, through the media.

The Minister for Health, Dr James Reilly TD, recently announced his intention to institute a redress scheme for survivors of symphysiotomy, following his receipt of a report by Judge Yvonne Murphy exploring options for redress. The Government is reportedly willing to contribute to an ex-gratia scheme, which may be similar in structure to that agreed for former residents of Magdalene Laundries. However, concern has been expressed that such a redress scheme could be based on the findings²⁸ made by Prof Oonagh Walsh on the practice of symphysiotomy, which campaigners argue ignore or minimise many of the most controversial aspects of the practice, including that: it was undertaken as part of a planned experiment in obstetrics in Ireland; religious ideology was a factor in the employment of these procedures by certain senior obstetricians; symphysiotomy and pubiotomy were done in preference to a far safer norm, Caesarean section; these invasive operations were often done for teaching purposes in the absence of clinical necessity in front of large numbers of mostly male students; and, in many cases, the operations were performed without women's consent and/or in the absence of adequate information as to the known risks, including possible after-effects.



Case Study:

*Survivor of Symphysiotomy, Rosemary**

My pelvis was broken in 1973 on my fifth child.

My daughter was big and in a breech position — feet first. They brought me in to the Lourdes [Our Lady of Lourdes Hospital, Drogheda] at 40 weeks, they said the baby was in an ‘unstable lie’. There was no emergency. I was left in the ward for ten days, then they brought me down to theatre for a Caesarean section. But Dr O’Brien refused to do it, and said I could deliver normally, so he turned the baby, and I was wheeled back up to the ward. They put me on a drip, and gave me injections. This went on for 24 hours. Then they tried to get the baby out with a vacuum, a machine like a Hoover, but it didn’t work.

Then Dr O’Brien broke my pelvis in front of a crowd, medical students I took them to be. It was very embarrassing, to be lying there with your legs trussed up in front of so many young men.

The doctor said nothing to me about what he was going to do, just went ahead and did it, in the labour ward. No one spoke to me, no one asked me for my permission. They gave me chloroform, it didn’t work. Today, 41 years later, I still have nightmares about a red hot poker going through the bottom of my stomach.

And afterwards, the baby was still inside, I couldn’t believe it. You’ve had a small procedure, the nurse said, now you’ll have to do the hard work. The pushing was desperate, I’ll never forget it, it seemed to go on for hours. With every push, it felt like my pelvis was breaking in two.

The baby was very poorly when she was born, very limp. There was no heartbeat for four minutes. It was touch and go for 24 hours, they put her into an incubator. I didn’t see her for a week.

The only bit of me I could move after the operation was my toes. I couldn’t go to the toilet, I was in bed with a catheter. They put a binder on my hips. Five days after the operation, the nurse and the physio forced me to walk. I fainted with the pain. But they kept going, getting me to walk with a chair, and I kept on fainting, but they took no notice.

I was nursed in the same ward as women who had had their babies naturally, women who could walk. I should have been put in traction, the way you would if you broke your pelvis in a car crash. But they didn’t want the pelvis to heal up, that’s why they made us walk on it, so the pelvis would stay open, for more babies. I should have been given a Caesarean section, but they wanted us to have nine or ten children, and you couldn’t do that if you had a Caesarean—you could only have three sections, at most, in the Lourdes. But all talk of birth control was banned in that hospital. The Pill was in, in 1973, but they didn’t want to know.

They sent me home after ten days, even wrote in my notes that I was in a ‘satisfactory’ condition, but I couldn’t walk. I got no advice, no painkillers. There was no follow up, no one from the hospital ever came near me. The family doctor didn’t want to know, either. I got no help from anyone medical, ever. I had four children at home under the age of eight to look after, including two year old twins. I found it very difficult to nurse the baby or change her for the first year. I could hardly move with the pain.

The operation ruined my life. I couldn’t do anything other mothers did, taking their children to matches, playing tennis or kicking a ball. I felt I wasn’t a good enough mother. I got depressed, that lasted for seven years. I got a total breakdown after the operation, physical and mental. They put me on anti-depressants, I still depend on them to this day. I couldn’t sleep at night—I had restless legs—so they put me on sleeping tablets. That was 20 years ago, I’m addicted to them now. And I’m still on tablets for my nerves. My husband lost out, too. Our married life was never the same, sex was too painful and I was terrified I might get pregnant again. I felt guilty.

I felt 70 when I was 30. Symphysiotomy left us old before our time.

My walking difficulties never improved. I walk very slowly today, with a stick, find the stairs almost impossible, and have to be very careful not to hurt myself getting into a car. Vacuuming is out of the question, I could never push anything heavy since the operation. I can still hear my pelvis bones rubbing together to this day. I know it’s unstable, because I’m prone to falls. Last year, I



had a bad fall and broke my shoulder. I have chronic pain since the operation, especially on the right side, in my leg. And my pubic bone is very painful to this day, if my grandchildren ran into me there, I'd be in agony. I have arthritis in my lower lumbar region, my back feels as if it's breaking if I stand for an hour, or if I sit for too long, and the pain has travelled up into my neck and across my shoulders. This all started three years ago, so it's getting worse. I used to get injections into my back for the pain, but I had to stop them, they were too severe. The operation left me incontinent as well. I had a bladder repair in 2004, after getting rings put in, but it didn't work. I've had loads of urinary tract operations since that operation as well. They never went.

I left hospital not knowing my pelvis had been cut. I didn't find out for 30 years. They said nothing to me about the operation, only that they had to do it to save the baby's life. I still didn't know what it was. It shouldn't have been allowed to happen. I know now these operations were written up in the Lourdes reports and those reports were sent to the Department of Health, that's what the nuns said. They blamed the doctors, but they owned the hospital. They'd been at them for 30 years by the time I was operated on in 1973. No one ever shouted stop.

We heard it on the local radio, that's how it came out. I joined SoS back in 2002, when it started. Some are worse off than me. We have members who had it done as young as 15, 17 or 18 years of age. Some of those who were done wide awake, like me, remember seeing the doctor coming with a hacksaw, like a wood saw, a half circle with a handle and a straight blade. The ones who screamed were held down, their arms pinned by nurses, their legs in stirrups. There was no escape.

We looked for an independent inquiry back then, but we never got one. No one in the government ever wanted to know, they tried to fob us off. The Department of Health went to the doctors' union, asking them to investigate themselves. The union stood over these operations, said they were acceptable, and the Department left it at that. No one ever said, "this has to be investigated".

Instead of an inquiry, we got a whitewash report, a draft report that said symphysiotomy was safer than Caesarean section. But no one had walking difficulties after Caesarean. After all this time, the authorities still refuse to admit the truth. It's very aggravating. Trying to pretend these operations were done in an emergency, when we all know they were planned. You can see it in the hospital notes. I know now they were experimenting on us, that we were guinea pigs for the nuns' clinics out in Africa. They were training staff as well, that's why there was such a big crowd at my operation.

Now the Government is planning to offer us some scheme or other, a hand out for pain and suffering, not restitution for abuse. The scheme the Minister has decided on is a no fault scheme, not based on any wrongdoing. We might be in our 70s and 80s, but we want the truth. Someone has to say, these operations should never have been done. Symphysiotomy was banned in Paris in 1798, but they did in the Lourdes until 1987. You wouldn't do it to a cow. They left me go twelve days over my due date even though they knew I was carrying a big baby. Why didn't they induce me? She was 9 lbs 14 oz when she was born and I'm just 5'0". Why didn't they do a Caesarean section?

** Only names and identifying details have been changed, to preserve anonymity.*

The Committee is urged to conclude that the very limited response by Ireland to women who have undergone symphysiotomy and pubiotomy means that the state party has failed to provide an effective remedy to survivors of symphysiotomy and pubiotomy by failing to initiate a prompt, independent and impartial inquiry and by failing to provide them with fair and adequate restitution for the damage they sustained as a result of these wrongful operations. The Committee is asked to call on the state party to rectify these failings. The Committee is also urged to state that these women's right to privacy was violated and the introduction of any ex-gratia scheme to compensate them without an accompanying admission of liability would fail to meet the test for an effective remedy.



10. Ryan Implementation Plan

Ireland notes that the fourth and final progress report of the Ryan Implementation Plan has yet to be published by the Department of Children and Youth Affairs and this is now overdue. The State also commits to devising a mechanism to replace the Ryan Monitoring Mechanism.

Update:

As the Children's Rights Alliance, an independent member of the Monitoring Group, has recently noted, it is vital that clear steps are outlined to provide for any outstanding commitments to be addressed and that the learning from the Monitoring Group is mainstreamed into the work of the Department of Children and Youth Affairs and the new Child and Family Agency.

On 14 April 2014, the Minister for Children and Youth Affairs published the Children First Bill 2014. The Bill is intended to put elements of the Children First: National Guidance for the Protection and Welfare of Children (2011)²⁹ on a statutory footing and includes provision for mandatory reporting of child abuse.³⁰ This is a welcome development.

Additional Information – Mother and baby residential care homes

Since the Government responded to the List of Issues significant public concern has arisen in relation to the operation of a former mother and baby home (and potentially other homes) run by The Sisters of Bon Secours, a religious congregation of the Catholic Church, in Tuam, County Galway as well as similar homes run by The Sacred Heart Sisters. Concern has also been expressed regarding the Protestant-run Bethany Home.³¹ There are indications that infant mortality in at least some of the homes far outstripped the national average, and allegations that hundreds of babies have been buried in mass graves.³² The Minister for Justice has recently directed An Garda Síochána to investigate claims in relation to a mass grave at the Tuam mother and baby home site. The Catholic Archbishop of Dublin and the Minister for Education and Skills have backed calls for a full and independent inquiry led by a senior judicial figure.³³ The Committee is invited to request Ireland to provide details of how it plans to investigate any allegations of mistreatment, neglect or criminal activity at mother and baby care facilities run by religious orders and, in line with previous recommendations made by the Committee against

Torture to Ireland in 2011³⁴, and by the Committee on the Rights of the Child to the Holy See in 2014³⁵ in relation to Ireland, how it plans to ensure that persons who are identified as committing an offence will be prosecuted and punished with penalties commensurate with the gravity of the offences committed, and to ensure all victims obtain redress and have an enforceable right to compensation.

Derogations

(Art. 4)

11. Information on measures to ensure that Ireland's domestic legal provisions are consistent with art. 4 of the Covenant

See Section 4 – Replies of Ireland to the List of Issues.



Right to life

(Arts. 6, 7 and 17)

12(a) How the protection of Life during Pregnancy Act complies with arts. 6 and 7

Ireland has indicated that the Protection of Life during Pregnancy Act during Pregnancy Act 2013 regulates access to lawful termination of pregnancy in accordance with Irish Constitutional jurisprudence.

Update:

Legislation governing women's reproductive rights remains significantly short of meeting international human rights standards.³⁶ For example, the Irish legal framework continues to place an absolute prohibition on abortion where the health, as opposed to the life, of the woman is at risk. The procedure under existing legislation to determine whether or not a woman is suicidal (permissible grounds for a termination under the legislation) is lengthy and requires pregnant women to undergo multiple medical and psychiatric assessments.³⁷

12(b) Measures to clarify what a real and substantial risk to a pregnant woman's life means and the provision of clinical clarity

Ireland has indicated that a Guidance Document is being prepared to assist professionals in identifying referral pathways and other relevant operational matters. In addition, Ireland has indicated that the production of clinical guidelines is a matter for the professional bodies of the relevant medical disciplines.

Update:

Guidance to assist health professionals in exercising their legal duty under the law has not yet been produced, leading to a significant delay in implementing the Act. The continued lack of guidance has effectively prevented the operation in practice of the new abortion law, which came into force on 1 January 2014. This continued delay in the production of guidance necessary for the full implementation of the law is the subject of a recent submission by the ICCL to the Council of Europe Committee of Ministers, which is supervising the execution of judgments of the European Court of Human Rights.³⁸

12(c) Measures to broaden access to abortion

Ireland has indicated that there are no proposals to broaden access to abortion by reforming Art 40.3.3 of the Constitution.

Update:

No additional provision has been made to access a termination in cases of rape or incest where a woman's life is not considered to be at risk.³⁹ In addition, no provision is made to access a lawful termination in cases of fatal foetal abnormality. The Committee is invited to remind the Irish Government in clear and unequivocal terms of its obligations to bring abortion law into conformity with the requirements of the Covenant.



13(a) The Number of prisoners accommodated in each of the prisons in the State

Ireland has provided an overview of the number of persons in custody as on 9 January 2014 (see Replies to List of Issues Annex I, Table 3). The figures include bed capacity of each facility and the current level occupancy.

Update:

More recent figures released by the new Minister for Justice Ms Frances Fitzgerald TD⁴⁰ indicate that the majority of the State's prisons are operating in excess of, or close to, capacity. In addition, a significant number of persons in custody are accommodated in multiple cell occupancy arrangements which, in many cases, are unsuitable given the size of the cell accommodation provided. See Table 3.

13(b) Remaining prison cells without in-cell sanitation

Update:

The Government's commitment to end the practice of 'slopping out' through significant capital investment in construction and refurbishment of prisons is welcome. While the recent ending of the practice of slopping out at Mountjoy Prison in Dublin in May 2014 is an important milestone⁴¹, at the time of writing, a significant number of prison cells remain without in-cell sanitation. This means that many prisoners will continue to be accommodated in cells that do not conform to international standards on the prevention of inhuman or degrading treatment or punishment of persons in custody. It was reported that on 1 April 2014, the number of prisoners slopping out in the prison system has reduced from 1,003 at the end of 2010 to the current level of 334 (on 1 April 2014), a reduction of 67%. Of the 334 currently slopping out, 226 prisoners are accommodated in Cork Prison with 46 and 59 prisoners accommodated in Limerick and Portlaoise Prisons respectively.

13(c) The mortality rate in prison and number of victims of inter-prisoner violence

See Section 4 – Replies of Ireland to the List of Issues.

Additional Information: Report on the Death of Gary Douch, 1 August 2006

The Report of the Commission of Investigation into the Death of Gary Douch was published on 1 May 2014, exactly 7 years and 9 months after Mr Douche's death in Mountjoy Prison on 1 August 2006.⁴² The Report found that the Irish State failed in its duty to provide safe custody to 21-year old prisoner Gary Douch, who was the "victim of a brutal assault by Stephen Egan, one of the other prisoners in the holding cell".⁴³ The stark findings of the Report in relation to the conditions in Mountjoy prison, including overcrowding and the treatment of prisoners with psychiatric illness, further demonstrates the need for Ireland to ratify the Optional Protocol to the Convention against Torture (OPCAT) and establish a National Preventative Mechanism without delay.

The Committee is invited to ask the State to provide a detailed timeframe outlining when Ireland plans to ratify the Optional Protocol to the Convention against Torture (OPCAT). The very protracted time taken to produce the Douch report also suggests that there has been a failure, on the part of the State, to discharge its procedural obligation to carry out an effective investigation into this death in custody.



Table 3
Prison Occupancy 1 April 2014

Prison	Number in Custody Apr 2014	Bed % of Capacity Per IOP*	No. of IOP Bed Capacity	No. of persons in single cell	No. of persons in double cell	No. of persons in triple cell	No. of persons in 4+ cell
Arbour Hill	144	131	110	92	40	12	0
Cloverhill	443	414	107	52	58	309	24
Cork	234	173	135	58	176	0	0
Castlerea	357	300	119	127	182	48	0
Limerick (M&F)	264	209	126	89	172	3	0
Loughan	129	140	92	81	48	0	0
Midlands	850	777	109	343	472	3	32
Mountjoy (M)	587	540	109	543	26	18	0
Mountjoy (F)	134	105	128	59	64	6	5
Portlaoise	251	291	86	180	62	9	0
St. Patrick's Institution**	6	6	Closing in 2014	6	0	0	0
Shelton Abbey	110	115	96	36	12	6	56
Training Unit	93	96	97	93	0	0	0
Wheatfield	501	642	78	285	216	0	0
Total	4103	3932	104	2044	1528	414	117

* Inspector of Prisons

**St Patrick's Institution will close in 2014 with remaining persons transferred to other facilities



13(d) Timeline for ending the use of St Patrick's Institution for the detention of minors

Ireland has indicated that all remaining prisoners at St Patrick's Institution were to be transferred to Wheatfield Prison by 10 February 2014.

Update:

It is understood that the remaining young persons in custody in St Patrick's institution prior to its impending closure are 17 year-old males on remand. Appropriate temporary measures for 17 year-old males on remand must be put in place to allow them to be removed from St. Patrick's Institution during this transitional phase. This will allow the State to remove its reservation to Article 10 (2) (b) ICCPR on the separation of children on remand from adults in prison.

In addition, the transfer of young persons in custody to Wheatfield Prison, an adult facility, must be a temporary and short-term measure. Adult prisons are not suitable accommodation for detention of young people.

14. Statistical Data on Number of Complaints of torture and ill treatment filed against prison officers. Introduction of an effective complaints system

Ireland has provided details of the introduction on a phased basis of a prisoner complaints model within the Irish Prison Service.

Update:

A lack of effective complaints and monitoring mechanisms remains problematic in the prison service. There remains an urgent need to provide for an independent, fully-functioning and comprehensive prisoner complaints mechanism.

Additional Information: There is a growing population of older prisoners, with reported increases in this group from 199 persons in custody aged over 65 years in 2007 to 335 in 2012. As people get older they are more likely to be at risk of co-morbidity and multi-morbidity with its associated risk of disability and mental health problems which are no different for someone who is living in the community or in prison. However, a person's ability to have these needs addressed in timely and accessible way may be hampered in a prison environment.

15. Progress on ensuring separation of sentenced and remand prisoners, and of detained immigrants and criminals

See Section 4 – Replies of Ireland to the List of Issues.



16. The right of criminal suspects to contact counsel before and during police interrogation

In its Replies to the List of Issues Ireland has provided detailed information on the rights of criminal suspects to be informed of their right to contact counsel which is contained in a number of separate provisions in statute.

Update:

Developments in the law in relation to the rights of criminal suspects to contact counsel prior to and to have counsel present during questioning by police are to be welcomed.

In the recent cases of *People (DPP) v. Gormley* and *People (DPP) v. White*⁴⁴, the Supreme Court declared that “the entitlement not to self-incriminate incorporates an entitlement to legal advice in advance of mandatory questioning of a suspect in custody” and that “the right to a trial in due course of law encompasses a right to have early access to a lawyer after arrest and the right not to be interrogated without having had an opportunity to obtain such advice”. This means that suspects, who could previously be questioned once they had been informed of their right to access legal advice and, when requested, a solicitor had been contacted, should not be questioned until they have had an opportunity to consult with counsel.

The decision by the Supreme Court in the above cases was followed by a direction by the Director of Public Prosecutions to An Garda Síochána (Police) issued on 7 May 2014 signalling a major policy shift in relation to the right of access to a lawyer for suspects in police custody. The direction stipulates that where a request is made by a suspect who is detained in a Garda station to have a solicitor present for interview, the request should be met. The direction was followed by a circular from the Department of Justice and Equality to the Law Society, the professional body which represents solicitors, outlining what it sees as the role and function of lawyers at Garda stations. It said that solicitors could participate during questioning by seeking clarification, challenging improper questions, advising clients not to reply to a particular question or requesting suspension of the interview if they wish to give a client further legal advice in private. The decision by the DPP to permit suspects in criminal cases to access legal advice during questioning means that the way is clear for the State to ‘opt-in’ to the relevant EU law that governs this area.⁴⁵

However, Ireland continues to allow inferences to be drawn from silence of a suspect or accused person as described in the Replies to the List of Issues

17. Corporal punishment of children

The Government has indicated it has no current plans to legislate for a complete ban on corporal punishment.

Update:

Corporal punishment by parents and other family members is not prohibited by law in Ireland and is provided for under the common law defense of ‘reasonable chastisement’ within the family and in care settings. Corporal punishment is a form of violence and ill-treatment from which all children have a right to be protected and its use should be prohibited in all settings.

Other national and international voices have called on Ireland to reform its law on corporal punishment. In its 2006 Concluding Observations on Ireland, the UN Committee on the Rights of the Child⁴⁶ recommended a legislative ban on corporal punishment within the family. During Ireland’s UN Universal Periodic Review (UPR) process in 2011, the Irish Government partially accepted a recommendation put forward to prohibit corporal punishment by stating that the matter is under continuous review but that such a change would require very careful consideration.⁴⁷ The former Council of Europe Commissioner for Human Rights, Thomas Hammarberg, following a visit to Ireland in 2011, called on the State to “unconditionally ban corporal punishment”. In 2011, the banning of physical punishment of children was also recommended in the Fifth Report of the Rapporteur on Child Protection.⁴⁸ In 2010, the Office of the Minister for Children and Youth Affairs published a study Parenting Styles and Discipline: Parent’s and Children’s Perspectives in 2010⁴⁹ and the Department has indicated that the issue is currently under review.

18. Extraordinary rendition

See Section 4 – Replies of Ireland to the List of Issues.



19(a) Statistics on so-called voluntary patients detained under section 23 or section 24 of the Mental Health Act 2001

Ireland has indicated that a significant decline (14%) in the number of voluntary admissions took place in the reporting period under sections 23 and 24 of the Mental Health Act 2001. See Annex 1 Table 8 in the Replies to the List of Issues.

Update:

The Irish Human Rights Commission has previously recommended that the current legal definition of “voluntary patient” as provided in the Mental Health Act 2001 should be amended to include only those persons who have the capacity to make such a decision and who have genuinely consented to their admission to a psychiatric institution and continue to consent to same.⁵⁰ Currently, Section 2 of the Mental Health Act 2001 defines a voluntary Patient as a “person receiving care and treatment in an approved centre who is not the subject of an admission order or a renewal order.” Ambiguity in the law in relation to a patient’s capacity to consent means that a person may effectively be detained in violation of their right to liberty.

Under the common law doctrine of necessity a person in need of care in Ireland may be admitted and detained in residential care settings. At present, there is no automatic review of a decision to confine an older person to a nursing home or hospital where this is deemed necessary under either the Lunacy Regulations (Ireland) Act 1871 or the Powers of Attorney Act 1996. This is in contrast with the mechanisms designed to protect the rights of those confined in hospitals under the Mental Health Act 2001. There is further concern that the introduction of the proposed Assisted Decision Making (Capacity) Bill 2013, which has yet to be enacted, will not, in its current form, provide sufficient safeguards in this area, including in relation to vulnerable older people.⁵¹

19(b) Rules governing use of physical restraint

Ireland has indicated that the inspector of Mental Health Services assesses compliance with the Rules and Code of Practice on the Use of Physical Restraint in Approved Centres.

Update:

In its Annual Report 2012, the Mental Health Commission noted that compliance of approved centres with the Rules Governing the Use of Seclusion has increased from 13% in 2011 to 29% in 2012. In addition, the Inspector has reported that compliance with the Rules and Code of Practice on the Use of Physical Restraint in Approved Centres has fallen dramatically in the same period from 76% in 2011 to 57% in 2012.⁵² These figures do not provide confidence that seclusion and / or restraint are being used in an appropriate manner and the Committee may wish to question the Irish Government further about this.

19(c) Electro Convulsive Therapy (ECT)

See Section 4 – Replies of Ireland to the List of Issues.



Non-Elimination of Slavery and Servitude

(Arts. 2, 8 and 24)

20(a) Data collection on Victims of Trafficking

In its Replies to the List of Issues, Ireland has indicated new data collection measures undertaken by the Anti-Human Trafficking Unit (AHTU) of the Department of Justice and Equality to collect data on trafficking.

Update:

Regarding child victims of trafficking, there is a need for standardised, clear statistical data including on HSE referrals for children. The Committee is invited to request a detailed timeline of when Ireland intends to ratify the Optional Protocol on Sale of Children, Child Prostitution and Child Pornography, which Ireland has signed.

20(b) Extent of sale or trafficking of persons for any purposes

See Section 4 – Replies of Ireland to the List of Issues.

20(c) Victims of trafficking who have sought asylum

In its replies to the list of Issues Ireland indicates that an alleged victim of trafficking who applies for asylum under the provisions of the Refugee Act has equivalent residency rights and access to the same support services as a person in a recovery and reflection period under the Administrative Immigration Arrangements.

Update:

The Immigrant Council of Ireland (ICI) has drawn attention to the difficulties faced by victims of trafficking who have sought asylum when compared to other victims of trafficking.⁵³ The ICI has noted that the State's response ignores the reality that upon conclusion of the recovery and reflection period, a victim of trafficking who is

not in the asylum process will be granted a temporary residence permit and "stamp 4" permit enabling access to certain basic services such as private rented accommodation, social supports, training and employment. However, a person who is a victim of trafficking and exercises their right to apply for asylum, will not be granted a 'recovery and reflection period' and will be accommodated in "Direct Provision" (providing accommodation and full board, plus a spending allowance of €19.10 per week). As they are not entitled to a temporary residence permit, even where they cooperate with the investigation and/or prosecution of the offences committed against them, persons seeking asylum are not entitled to access certain social welfare entitlements including child benefit payments, one parent family allowance and carer's allowance.

ICI also referred to the experience of some victims of trafficking seeking asylum not being automatically granted a temporary residence permit following rejection of their asylum application but receiving prompt notification of intention to deport pursuant to section 3 of the Immigration Act 1999, despite the State's assertion in its reply that such victims are entitled to remain temporarily under the Administrative Immigration Arrangements. It is submitted that treatment of asylum seeking victims of trafficking in this manner breaches a number of international Covenants including Article 14 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organised Crime which states that nothing in the protocol shall affect the rights, obligations and responsibilities of states and individuals under international law.⁵⁴ Similarly, Article 14(5) of the Council of Europe Convention on Action Against Trafficking in Human Beings⁵⁵ requires that the granting of a temporary residence permit to a victim of trafficking shall be without prejudice to the right to seek and enjoy asylum.



Imprisonment for failure to fulfil and contractual obligation

(Art. 11)

20(d) Access to and provision of legal services for victims of trafficking

Ireland has indicated that legal assistance and advice is available to potential and suspected victims of trafficking from the Legal Aid Board upon referral from An Garda Síochána (police).

Update:

In its submission to the recent Seanad⁵⁶ Public Consultation Committee hearings on Ireland's obligations under ICCPR, the Immigrant Council of Ireland addressed the State's reply, indicating that the Refugee Legal Service of the Legal Aid Board only provides services on certain matters to persons previously identified by the Garda National Immigration Bureau as potential victims of human trafficking under the Criminal Law (Human Trafficking) Act 2008. As a result, potential victims must present to the police and provide at least basic details of their identity and situation before they are eligible for State funded assistance. Acknowledging that the services provided to victims of trafficking may meet the requirements of the UN Protocol, the Council argues that they nonetheless fall short of the requirement of Article 15(2) of the Council of Europe Convention.

21. Imprisonment for non payment of court ordered fines or civil debt.

The state has provided detailed information on the number of persons imprisoned for non payment of court ordered fines and civil debt.

Update:

The Free Legal Advice Centres has noted that despite the State's reference to the Enforcement of Court Orders (Amendment) Act 2009 with its safeguards as outlined in the State's reply to the list of issues, 84 people have been committed to prison between 2010 and 2013 related to debt matters.⁵⁷ The Committee is invited to ask to what extent in these cases the court decided that the judgment debtor willfully refused or culpably neglected to meet the terms of an Installment Order made by a District Court to discharge a judgment debt. The Committee could also seek clarification on how these cases were adjudicated including details of how many debtors had legal representation, how it was established by the judgment creditor to the satisfaction of the court that a debtor was guilty of willful refusal or culpable neglect beyond a reasonable doubt and how many of these committals were appealed.

20(e) Applicability of anti trafficking legislation to EU residents or nationals

See Replies to the List of Issues



Refugees and Asylum Seekers

(Art. 13)

22(a) Delay in processing asylum claims

Ireland has noted that following the re-introduction of the Immigration, Residence and Protection Bill, expected in 2014, a reorganisation of the protection application processing framework will institute a single application procedure.

Update:

To date, the State has yet to re-introduce proposed legislation governing immigration residence and protection for migrants in Ireland. In its submission to the Human Rights Committee in advance of the List of Issues the Irish Centre for Human Rights⁵⁸ noted that despite recent improvements, the number of persons granted refugee status in Ireland remains below the EU average.

In addition, Ireland remains the only country in the EU to maintain a bifurcated protection procedure. As a result, applicants cannot apply for subsidiary protection until they have received a negative result in their refugee application. Significant delays also remain in the processing of claims for both asylum and subsidiary protection with many applicants continuing to spend lengthy periods in receipt of Direct Provision.

22(b) Independent appeals body for immigration related decisions

In its Replies to the List of Issues Ireland has indicated that the planned Immigration, Residence and Protection Bill will include a statutory appeals system.

Update:

As noted, the long awaited Immigration, Residence and Protection legislation has not been re-published, 8 years after it was first introduced. The Immigrant Council of Ireland has reiterated its view that the establishment of an independent appeals mechanism for immigration related decisions that do not fall under the remit of the refugee appeals tribunal is the only way to ensure access to fair procedures and effective remedies for migrants and their families, including as noted above, for victims of trafficking.⁵⁹ Additional Information: Situation of Stateless Persons

Additional Information: Situation of Stateless Persons

Ireland has signed up to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness but has so far failed to introduce a 'statelessness determination procedure' at national level.

22(c) Free legal representation for asylum seekers

See Section 4 – Replies of Ireland to the List of Issues.

22(d) Independent complaints or monitoring mechanism

Ireland has indicated that a working complaints mechanism was introduced in the revised House Rules and Procedures (which apply to all centres for which the Reception and Integration Agency is responsible) following their adoption in 2010. However, Ireland also notes that the system of direct provision exists within its own circumstances (privately run enterprises) and that the existing complaints procedure complies with guidelines from the Office of the Ombudsman on internal complaints systems.

Update:

As highlighted in the Civil Society Submission on the List of Issues, the Office of the Ombudsman has previously expressed concern that the treatment of asylum seekers including the system of direct provision may entail breaches of Ireland's obligations under the constitution and international human rights law.⁵⁹ In addition, the Office of the Ombudsman and the Office of the Ombudsman for Children is precluded by law from investigating the actions of persons in the administration of the law in relation to, inter alia, asylum.⁶⁰

22(e) Detention policy and alternative forms of accommodation

See Section 4 – Replies of Ireland to the List of Issues.



Right to fair trial and independence of the judiciary (Art. 14)

23. The legal definition and number of terrorist acts committed in the State and the operation of the Special Criminal Court

See Section 4 – Replies of Ireland to the List of Issues.

Right to be recognised as a person before the law (Art. 16)

24. Gender recognition

Ireland has indicated that, following the publication of the report of the hearings before the Joint Oireachtas Committee and Education and Social Protection the General Scheme of the Gender Recognition Bill will be referred to the Office of the Parliamentary Counsel which will draft the full Bill.

Update:

At the time of writing the final text of the proposed Gender Recognition Bill has not been published. In its submission to the recent Seanad Public Consultation Committee hearings on Ireland's obligations under ICCPR⁶¹, the Trans-gender Equality Network of Ireland, a leading NGO in the field of Trans-gender rights, indicated a number of shortcomings in the proposed legislation which should be resolved prior to the publication of the full bill which, at the time of writing, has yet to be published but expected in 2014. These include the establishment of an age limit of 18 years before legal recognition would be granted which, in the view of TENI would leave many younger trans-gender people in a state of legal limbo in relation to their own gender status. The decision by the Joint Committee on Education and Social Protection to recommend the age be lowered to 16 is therefore welcome.

The second issue relates to the provision which stipulates that legal recognition of gender remains contingent on the dissolution of an existing marriage or civil partnership. Given the conditions which must be in place to achieve dissolution of marriage or civil partnership under Irish law (including relationship breakdown), maintaining this provision would mean that, for some trans-gender persons, the recognition of one fundamental right is conditional on accepting the breach of another.



Freedom of Religion

(Art. 25)

25. Religious oaths by Judges

See Section 4 – Replies of Ireland to the List of Issues.

26. Rights of children of minority religions and non-faith in the education system

In its replies to the list of issues, Ireland has indicated that it is Government policy to provide a sufficiently diverse system catering for pupils of all religions and none as guaranteed by Section 6 (a) of the Education Act 1998. The State has also provided an update on the Education (Admissions to Schools) Bill, the Forum on Patronage and Pluralism and the mechanism for handling complaints.

Update:

The Department of Education's policy on the divestment of the patronage of primary schools is to be welcomed. However, concern has been raised that the process of divestment continues to be slow. The Committee should recommend that the State provide details of how it intends to accelerate the divestment of schools and how it plans to ensure that the divestment programme will ensure sufficient diversity of choice in educational catchment areas. The Committee should ask the State when it intends to move the process beyond the current focus on primary schools and begin the divestment of post primary schools.

The Government has yet to amend the Education Act 1998, as recommended by the Committee, to ensure the rights of minority and non-faith children are protected. In a report to the Department of Education in 2011⁶² the Irish Human Rights Commission recommended that the Education Act (in particular Section 15) be amended to provide for modifications to the integrated curriculum to address the fact that a religious dimension permeates the whole work of a school.

The White Paper on Patronage and Pluralism in Primary Education has yet to be published and no time frame is offered in Ireland's Replies to the List of Issues. The Committee should ask the State to provide a timeframe for the publication of the White Paper and for the enactment of the Education (Admission to Schools) Bill, the final text of which has also yet to be published.

Government should also prioritise the completion of the programme on Education about Religion and Beliefs (ERB) and Ethics as recommended in the Report from the Forum on Patronage and Pluralism⁶³ to ensure that children can access education in a manner that reflects their cultural, ethnic, linguistic and religious beliefs.

Section 28 of the Education Act 1998 provides that the Minister for Education Skills can establish a procedure in relation to complaints.⁶⁴ To date, no formal procedure or complaint mechanism has been established.

Additional Information: Section 37(1) Employment Equality Act 1998 and discrimination against LGBT persons

In April 2014, the Irish Human Rights and Equality Commission (Designate) submitted a report on the review undertaken by the Equality Authority into the operation of Section 37(1) of the Employment Equality Acts 1998 – 2011.⁶⁵ The Commission recommended reform of Section 37(1) which permits certain medical and educational institutions with a "religious ethos" to make hiring and firing decisions based on whether the employees or prospective employees may be considered as "undermining" the religious ethos of the institution, including in relation to grounds other than religion (e.g. civil status, sexual orientation). The Commission proposed that such discrimination only be permissible where "adherence to a particular religious belief is a genuine, legitimate and justified occupational requirement" of an institution.

The Commission further recommended that discrimination should not be permissible where it constitutes discrimination on any other ground protected by the Employment Equality Acts including sexual orientation, gender, civil, and family status. It is expected that the Oireachtas (Parliament) will consider the proposed options recommended in the Commission's report as it debates a Bill to amend Section 37 of the Employment Equality Acts. The Committee should ask the State how it intends to protect potential employees from discrimination under the operation of the Act and to provide a timeline for the repeal and/or reform of Section 37(1).



Freedom of Opinion and Expression

(Art. 19)

27. Constitutional clause on blasphemy

Ireland has indicated that, following receipt of the report from the Convention on the Constitution, including its recommendation to remove the constitutional offence of the clause on blasphemy, it will provide a formal response within four months as to whether the recommendations should be given effect.

Update:

The report from the Convention on the Constitution was received on 27 January 2014. At the time of writing, no formal response has been issued following the Government's own self imposed deadline to respond of 27 May 2014.

Rights of Persons Belonging to Minorities

(Arts. 2, 23, 24, 26, 27)

28. Traveller Ethnicity and support for nomadic or semi-nomadic way of life

In its Replies to the List of Issues, Ireland has indicated that official recognition of Travellers as an ethnic group is contingent upon an assessment by the Department of Justice and Equality, following consultations with other Government Departments, of the full implications arising from granting ethnic status to Travellers and that the outcome of that assessment will frame any proposals on the matter. Ireland also indicates that all domestic legislative protections afforded to ethnic minorities in EU directives apply to Travellers as a protected group. The State has also indicated that adequate financial assistance is provided to local authorities for Traveller accommodation.

Update:

The current position of Ireland remains that Travellers are not recognised as a separate minority ethnic group to the majority population. In April 2014, the Joint Committee on Justice, Equality and Defense, a cross party parliamentary committee, published the Report on the Recognition of Traveller Ethnicity⁶⁶ which was compiled following extensive consultation with stakeholders. In its report, the Committee recommends that Government take immediate steps to recognise Travellers as an ethnic group by way of a statement by the Taoiseach (Prime Minister) or Minister for Justice and Equality on the floor of Dáil Eireann (lower house of parliament), that subsequent to this statement the Government write to the relevant international bodies, including treaty monitoring bodies, confirming the State's recognition of Travellers as an ethnic group and that dialogue commence between the State and representatives of the Traveller community on any legislative amendments required to build on this initiative.

No legislative remedy regarding the provision of specific accommodation requirements of Traveller families has been initiated by the State since the Human Rights Committee last recommended this course of action in its concluding observations 2008. Traveller accommodation and related issues is now the subject of a Collective Complaint to the European Social Committee.



Concern has been expressed by Traveller representative groups that a failure of local authorities to meet targets in accommodation plans, a reported under spend of capital Traveller accommodation budgets and the unprecedented cuts to these budgets, have worsened Travellers' living conditions with many families living in unauthorised accommodation, over-crowded conditions, and sharing with other families on official halting sites. The Irish Traveller Movement estimates that 819 Traveller family units are required to meet existing demand with the current allocation for capital investment in Traveller accommodation standing at €3 million (2014), reduced from an estimated €70 million per annum (being the allocated budget from 2000 – 2009).

29. Rights of Roma communities to full enjoyment of protections of the Covenant

Ireland has indicated that Roma communities in Ireland are drawn principally from EU Member States and as such enjoy the rights attributed to person from their country of origin living in Ireland including in relation to rights guaranteed under the Constitution.

Update:

Two recent separate but related incidents involving the children of Roma families have drawn attention to ongoing issues of mistrust, ethnic profiling and the potential for racism that often characterises relationships between the State and Roma communities living in Ireland. In October 2013, a seven-year-old girl in Dublin and a two-year-old boy in Athlone were removed from their families by Gardaí (police) and placed into HSE care following suggestions they were not the parents' biological children.

DNA tests later confirmed that both children had been wrongly removed by the police from their birth parents. The incidents arose in October 2013 following international media coverage of suspicions surrounding the parentage of a Bulgarian Roma girl known as 'Maria' by a Roma family living in Greece.

The incidents were the subject of internal inquiries in An Garda Síochána and within the Health Services Executive. Recently, a Special Inquiry report undertaken by the Ombudsman for Children Ms Emily Logan, under powers conferred on her office under Section 42 of the Garda Síochána Act 2005 was submitted to the Minister for Justice and Equality.⁶⁷ Media speculation has suggested that Ms Logan raised concerns in relation to ethnic profiling by members of An Garda Síochána.⁶⁸ However, at the time of writing, the Department of Justice and Equality has yet to publish the findings of the report.

30. Criminal Legislation prohibiting hate speech

Ireland has not indicated any immediate plans to revise the current law on prohibition of hate speech, namely the Prohibition on Incitement to Hatred Act 1989.

Update:

A key recommendation from the report to review the operation of the criminal law in combating racism and xenophobia which was commissioned under National Action Plan against Racism 2005-2008, was reform of the Prohibition on incitement to Hatred Act 1989 and the introduction of sentence enhancement provisions which would require courts to treat a hostile motivation as an aggravating factor in sentencing.⁶⁹ The recommendation is echoed in the concluding observations of the UN Committee on Elimination of All Forms of Racial Discrimination on Ireland's Third and Fourth Periodic Report under CERD which recommended that racist motivation be consistently taken into account as an aggravating factor in sentencing practice for criminal offences.⁷⁰ The Committee is invited to ask the State Party if it will consider the introduction of legislative provisions to ensure that hate speech/other forms of hate crime are taken into account as an aggravating factor, where appropriate, at sentencing in line with the recommendations of CERD.



Endnotes

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- 2 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), July 2012, CCPR/C/IRL/4, paras 16-19
- 3 Ibid
- 4 Irish Human Rights and Equality Commission Bill 2014, <http://www.oireachtas.ie/documents/bills28/bills/2014/2014/b2014d.pdf>
- 5 Ibid, Section 2 “human rights”, other than in Part 3, means— (a) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution, (b) the rights, liberties or freedoms conferred on, or guaranteed to, persons by any agreement, treaty or convention to which the State is a party, and (c) without prejudice to the generality of paragraphs (a) and (b), the rights, liberties and freedoms that may reasonably be inferred as being—(i) inherent in persons as human beings, and (ii) necessary to enable each person to live with dignity and participate in the economic, social or cultural life in the State;
- 6 Ibid, Section 29 “human rights” means—(a) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution, (b) the rights, liberties or freedoms conferred on, or guaranteed to, persons by any agreement, treaty or convention to which the State is a party and which has been given the force of law in the State or by a provision of any such agreement, treaty or convention which has been given such force, and (c) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Convention provisions within the meaning of the European Convention on Human Rights Act 2003;
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- 14 “[W]e were given access to PULSE by the former Minister, Deputy Shatter. We have now got the hardware in our office and we will have unfettered access to PULSE for the purpose of our inquiries.” Testimony of Mr Simon O’Brien, Chairman of GSOC before the Joint Oireachtas Committee on Justice, Defence and Equality hearings on Garda Oversight, 14 May 2014. Available at: <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/JUJ2014051400012?opendocument>
- 15 Independent inquiry into GSOC spying allegations needed now says rights watchdog, available at: <http://www.iccl.ie/news/2014/02/16/independent-inquiry-into-gsoc-spying-allegations-needed-now-says-rights-watchdog.html>
- 16 Retired High Court Judge John Cooke Appointed to GSOC Inquiry, available at: <http://www.merriestreet.ie/index.php/2014/02/retired-high-court-judge-john-cooke-appointed-to-gsoc-inquiry/>
- 17 Committee on Justice, Defence and Equality invite submissions on the effectiveness of the legislation relating to oversight of An Garda Síochána, available at: http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/jde-committee/submissionsreviewofgardasiochanaact2005/
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- 21 Mental Health Act 2001, available at <http://www.irishstatutebook.ie/2001/en/act/pub/0025/print.html>
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- 27 Submission of Survivors of Symphysiotomy to United Nations Human Rights Committee, 2014, Available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRL/INT_CCPR_NGO_IRL_16763_E.pdf
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- 30 Section 3 of the guidelines outline Basis for reporting concerns and Standard Reporting Procedure
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- 33 RTE News, 9 June 2014, 'Quinn supports call for full inquiry into mother-and-baby homes.' Available at: <http://www.rte.ie/news/2014/0609/622480-mother-and-baby/> (Accessed 9 June 2014)
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- 35 UN Committee on the Rights of the Child (CRC), Concluding Observations on the Second Periodic Report of the Holy See, 31 January 2014, CRC/C/VAT/CO/2, para. 38
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- 38 ICCL Submission to the Council of Europe, Committee of Ministers under Rule 9., 5 June, 2014, available at: http://www.iccl.ie/attachments/download/308/ICCL_Submission_under_Rule_9.2_ABC_v_Ireland_June_2014.pdf
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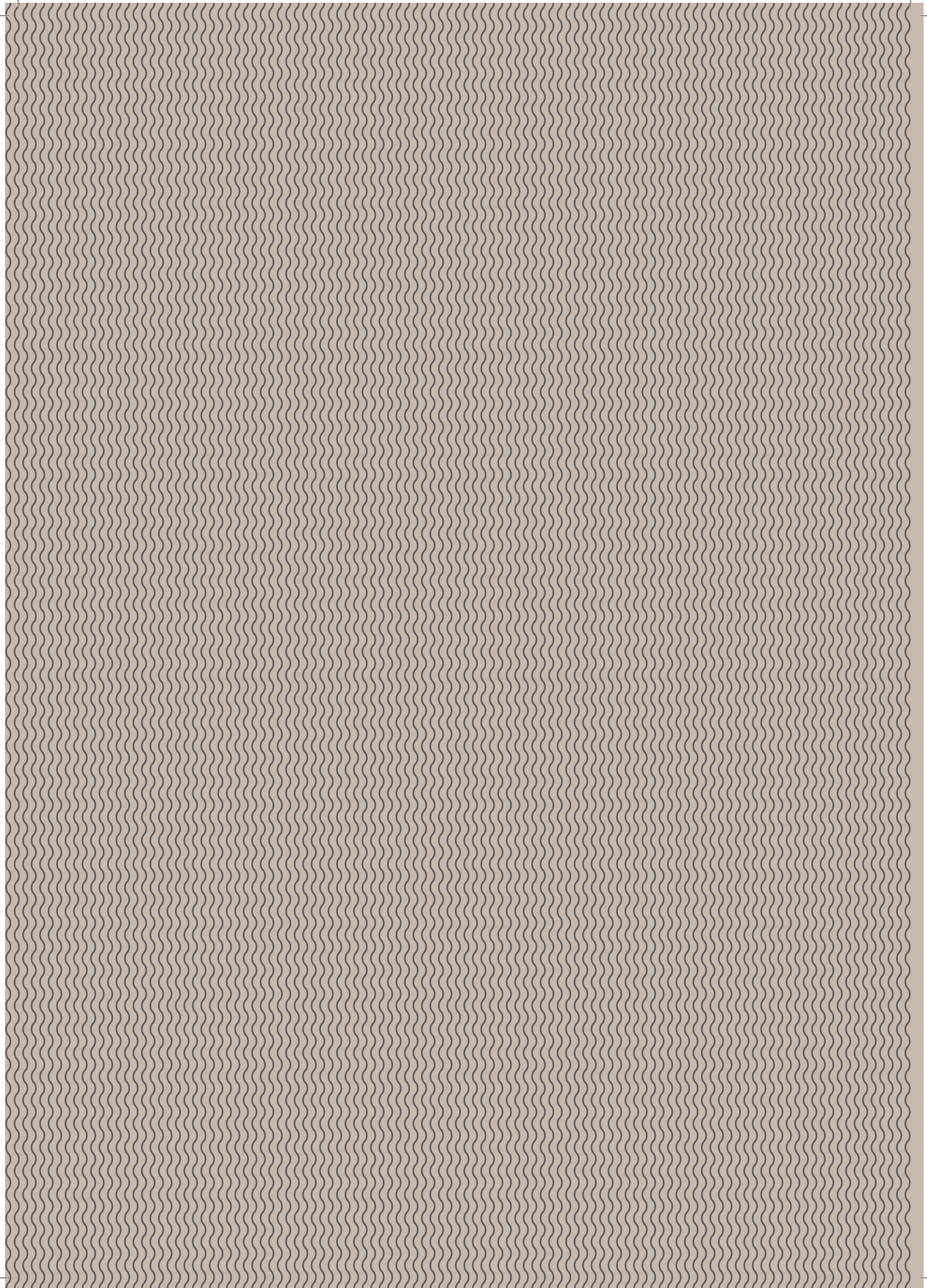


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Section 4 **Replies of Ireland to the List of Issues**

February 2014



United Nations
**International Covenant on
Civil and Political Rights**

CCPR/C/IRL/Q/4/Add.1

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7–25 July 2014

Item 5 of the provisional agenda

**Consideration of reports submitted by States parties
under article 40 of the Covenant**

**List of issues in relation to the fourth periodic report of
Ireland**

Addendum

Replies of Ireland to the list of issues*

[Date received: 27 February 2014]

* The present document is being issued without formal editing.
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CCPR/C/IRL/Q/4/Add.1

Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. **Given that the Covenant is not directly applicable in the State party, please provide information on measures taken to ensure that all of the Covenant provisions are fully given effect in its domestic legal order, including any progress achieved in the “tabulation of relevant provisions to clarify the situation”, which the State party undertook to implement during the consideration of its third periodic report in 2008**

1. Article 29.3 of the Constitution states that “Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other States”. These principles include international human rights law insofar as it forms part of customary international law. Ireland has a dualist system under which international agreements to which Ireland becomes a party do not become part of domestic law unless so determined by the Oireachtas (Parliament) through legislation. Ireland’s fourth periodic report, submitted on 25 July 2012, outlines the measures adopted to give effect to the Covenant.
2. **Taking note of the withdrawal of the State party’s reservations to articles 14 and 19, paragraph 2 of the Covenant, please clarify whether the State party will also review its reservations to article 10, paragraph 2 and article 20, paragraph 1 with a view to withdrawing them. If not, please indicate why, identifying the remaining obstacles**

2. All reservations made by Ireland under international treaties are kept under review, with a view to their withdrawal where possible.

3. In relation to article 10, paragraph 2, as set out in our fourth report and elaborated upon further in this document,¹ significant efforts are made to house remand prisoners in purpose built accommodation. Ireland remains committed to implementation of the principles set down in article 10, paragraph 2 but it is not possible at this stage to withdraw the reservation to article 10, paragraph 2. The position will be kept under review.

4. In relation to article 20, paragraph 1, Ireland has no plans to withdraw the reservation at this time. Please see below for further information with regard to the prohibition of hate speech.²
3. **Please provide updated information concerning:**
 - (a) **The merger of the Irish Human Rights Commission and the Equality Authority into a new Irish Human Rights and Equality Commission (IHREC), including details of how the new IHREC will be in compliance with the Principles relating to the status of national institutions (the Paris Principles), in particular with regard to financial autonomy, independent and transparent procedures for the recruitment and election of the Chief Commissioner and the members, and direct accountability to Parliament;**
 - (b) **The proposed merger of the Labour Court, Labour Relations Commission, Employee Appeals Tribunal, National Employment Rights Authority and Equality Tribunal into one agency. In particular, please clarify how complaints and appeals in relation to the Equal Status Acts 2000 2011 will be dealt with by the new agency; and**

¹ See below, questions 13 (d) and 15.

² See below, question 30.



CCPR/C/IRL/Q/4/Add.1

(c) The measures adopted to ensure the effective transfer of the mandates and responsibilities of the National Consultative Committee on Racism and Interculturalism and the Combat Poverty Agency into new or existing bodies, given their abolishment in 2008 and 2009 respectively. Please also indicate any plans to adopt a successor to the National Action Plan Against Racism 2005–2008

Reply to question 3 (a)

5.The new Irish Human Rights and Equality Commission will be fully compliant with the Paris Principles and the intention is that the IHREC will be recognised (as the Human Rights Commission currently is) by the UN as Ireland's National Human Rights Institution (NHRI).

Appointment of Chief Commissioner and Members of Commission

6.The draft legislation establishing the new Commission provides that members of the Commission, including the Chief Commissioner, will be appointed by the President of Ireland, on the advice of the Government following the passing of a resolution by each House of the Oireachtas.

Selection of Chief Commissioners and Members of Commission

7.In April 2013, an Independent Selection Panel selected 14 persons to serve as Commissioners. They were appointed by the Government as members-designate of the new Commission. No Chief Commissioner has yet been appointed. The persons to be appointed to the Commission in future will be selected by the Public Appointments Service (PAS) following a Paris Principles-compliant selection process to be undertaken by the PAS. The PAS has existed in its different forms since the foundation of the Irish State to ensure integrity and impartiality in the appointment of civil servants and other public servants and is independent in the discharge of its functions. In the future, ordinary Commissioners will be selected by the PAS. To underpin the independence of this selection process, the Government shall accept the persons recommended for appointment, save in exceptional circumstances and for stated and substantial reasons.

8.The new Commission will be able to establish Advisory Committees. Such committees will allow for the Commission to establish and maintain contact and cooperation with relevant agencies and with NGOs and other civil society interests.

9.The Commission has commenced work on a three-year Strategy Statement. The Commission will be directly accountable to the Oireachtas in relation to its Strategy Statement.

10.The proposed legislation also outlines how funding will be made available to the Commission by the Oireachtas and contains a commitment that such funding will be reasonably sufficient to allow the Commission fulfil its mandate. An additional €2 million has been provided in the 2014 allocation to support the recruitment of the additional staff approved and to meet necessary programme costs. There is also a commitment to review the staffing needs of the new organisation when these additional staff members are in place.

11.Each year the Commission will prepare an Annual Report on its activities and this will be laid before each House of the Oireachtas. Again, the Commission will be directly accountable to the Oireachtas in relation to its Annual Report.

Reply to question 3 (b)

12.In July 2011, the Minister for Jobs, Enterprise and Innovation announced proposals for a fundamental reform of the workplace relations system. The overall objectives are to promote harmonious and productive employment relationships and to encourage early



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resolution of disputes, the vindication of employees' rights, and minimisation of the costs involved for all parties – employers, employees and Government – in terms of money, time and workplace productivity.

13.To this end, it is proposed to establish a two-tier Workplace Relations structure which will involve two statutorily independent bodies replacing the current five. There will be a new single body of first instance to be called the Workplace Relations Commission (WRC) and a separate appeals body, which will effectively be an expanded Labour Court.

14.A significant amount of work has been completed on the preparation of the Workplace Relations Bill. Enactment of the Bill will necessitate amendments to 22 primary acts, 12 specified parts or sections of acts, and 71 statutory instruments. The Government is committed to the publication and enactment of the legislation at an early stage with a view to having the proposed new Workplace Relations structures in place during 2014.

15.The Minister for Justice and Equality has provided absolute assurances on the public record to persons with potential claims under both employment equality legislation and equal status legislation that they will, on the merger of the Equality Tribunal into the new Workplace Relations Service, continue to be able to pursue formal complaints before the new body and that these complaints will be dealt with as effectively as by the Equality Tribunal. Complainants will be able to have complaints under the Equal Status Acts heard at first instance before an adjudicator of the Workplace Relations Commission with (as of now) the opportunity of appeal to the Circuit Court. There will be no change to rights under the Equal Status Acts as a result of the structural reforms.

Reply to question 3 (c)

16.The National Consultative Committee on Racism and Interculturalism (NCCRI) was established in January 1998 as an independent expert body focussing on the combating of racism and promoting interculturalism. It was considered that a consultative body was necessary, given the population changes which had taken place in the previous decade. The NCCRI and its staff contributed to the preparation and implementation of the National Action Plan Against Racism, which ran from 2005 up to the end of 2008. Government funding to the NCCRI ceased at the end of 2008. Some of the functions of the NCCRI were absorbed into the Office for the Promotion of Migrant Integration in the Department of Justice and Equality which focuses on antiracism as a key aspect of integration, diversity management and broader national social policy. The Office works with all the relevant sectors to further progress the integration and diversity management agenda.

National Action Plan Against Racism 20052008

17.Ireland was one of the first states in the EU and, indeed, in the world to develop a National Action Plan Against Racism. The National Action Plan Against Racism 20052008 was designed to provide strategic direction towards developing a more intercultural and inclusive society in Ireland and was largely integration driven. Support was provided towards the development of a number of national and local strategies promoting greater integration in our workplaces, in An Garda Síochána (Police), the health service, in our education system, in the arts and sports sectors and within our local authorities.

18.Many of the initiatives which were instigated through the National Action Plan against Racism 2005 – 2008 continue to be developed and progressed through the support and work of the Office for the Promotion of Migrant Integration. For example, an Arts and Culture Strategy and an Intercultural Education Strategy were launched in September 2010. The National Action Plan against Racism 20052008 was very ambitious and wide ranging in its scope. Since 2005, there has been a substantial penetration of anti-racist policies, programmes and activities and awareness raising initiatives. The focus is now on the



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continued implementation of the sectoral strategies which flowed from the Plan. As such, it is not intended to focus on developing a second National Action Plan against Racism.

4. Please provide further information on:

(a) The types of complaints filed with the Garda Síochána Ombudsman Commission (GSOC) and their outcomes during the reporting period, including details of non-fatal offences;

(b) The current backlog of cases before the GSOC and the exact nature of these cases;

(c) What measures the State party is taking to ensure cooperation of the Gardai with the investigations undertaken by the GSOC; and

(d) Cases in which the GSOC referred complaints to the Garda Commissioner for investigation. How does the State party reconcile this practice of investigative referrals with the duty to conduct independent investigations of complaints?

Reply to question 4 (a)

19. The number of complaints received by the Garda Síochána Ombudsman Commission (GSOC) in the years 2008–2012 can be seen in table 1, annex A. The breakdown of the types of allegations made in these complaints can be seen in table 2, annex A.

20. Approximately 31% of the allegations in 2012 resulted in a criminal investigations which were conducted pursuant to section 98 of the Garda Síochána Act, 2005.

21. In 2012, a total of 19 cases concerning matters which were investigated by the Ombudsman Commission came before the courts for determination. These cases involved 17 Gardai, one Probationer Garda and four civilians. The following decision issued in 12 trials involving 14 accused persons as follows:

- Four Gardai were acquitted;
- Four Gardai were convicted of various charges;
- Three civilians were convicted of knowingly providing false and misleading information contrary to section 110 of the Garda Síochána Act 2005;
- The Probation of Offenders Act 1907 was applied against one Probationer Garda in relation to a public order offence; and
- One trial involving two Gardai did not complete as a witness was unable to complete his evidence.

22. A total of 33 files were referred to the Director of Public Prosecutions (DPP) in 2012, of which 12 related to investigations conducted following the receipt of referrals from the Garda Commissioner in accordance with section 102 of the Garda Síochána Act 2005 (“death or serious harm”). The DPP initiated eight prosecutions relating to six Gardai and three civilians in that year.

23. Examples of category of complaints to the Garda Síochána Ombudsman Commission can be found in annex B.

Reply to question 4 (b)

24. GSOC makes every effort to ensure that all cases are concluded within a satisfactory timeframe. Inevitably some cases take longer than others to investigate. While there was a



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backlog of cases awaiting an admissibility decision in the early stages of GSOC's operation, that backlog no longer exists.

Reply to question 4 (c)

25. Section 108 of the 2005 Act provides for protocols on, among other matters, the sharing with each other of information (including evidence of offences) obtained by either the Ombudsman Commission or the Garda Commissioner. Updated agreed protocols between the two bodies were signed by both organisations on 23 September 2013 and are available on the websites of the Ombudsman Commission and An Garda Síochána. The revised protocols cover time limits for the provision of information in investigations and also access to PULSE (the primary IT operational system for An Garda Síochána for managing incidents from its initial capture through to final outcome). The Minister for Justice and Equality has also established a committee chaired by a senior official in the Department, with senior representatives from the Ombudsman Commission and the Garda Síochána, to act as a forum where the operation of the new protocols are kept under review.

Reply to question 4 (d)

26. It is standard international practice for police forces to investigate complaints which do not involve criminal offences and the model of police oversight follows this standard to some extent. GSOC may supervise investigations which are referred to An Garda Síochána for investigation. GSOC, at the request of the complainant, can also review the outcome of those cases in which unsupervised investigations have been carried out by An Garda Síochána. Where allegations involve a criminal offence, these matters are investigated directly by the Ombudsman Commission.

5. Please provide information on how the Government addresses concerns regarding the activities of private businesses based in the State party that may lead to violations of the Covenant outside the territory of the State party

27. The Department of Jobs, Enterprise and Innovation is responsible for issuing licenses for exports of Dual Use items outside the EU, and the export of certain military products both within and outside of the EU, in accordance with EU-wide export control regulations. The Department is also responsible for implementing EU trade related sanctions and embargoes. Ireland fully subscribes to its international obligations in this regard.

28. The security, regional stability and human rights concerns which underpin export controls are of paramount importance to the Department of Jobs, Enterprise and Innovation and the Department takes its responsibilities in this regard very seriously. With all applications for export licences, the licensing process centres on ensuring that the ultimate use of a licensed export conforms to national and international law; that the goods are destined for the country and end-user stated on the licence application and that the stated end-user will use the goods for a legitimate purpose. Prior to issuing any export licence for goods intended for a country where there is civil or military unrest or human rights concerns, the Department of Jobs, Enterprise and Innovation consults with the Department of Foreign Affairs and Trade. It is important that the export of sensitive technology is properly controlled and the licensing procedures take into account Irish foreign policy considerations, the EU Common Position on Military Exports, international sanctions policies, as well as obligations stemming from Ireland's membership of the international export control regimes.

29. Ireland is considering how best to implement the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework". The Guiding Principles cover a range of issues which span the policy responsibilities of a number of Government Departments and agencies. Consideration is



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being given as to how best to formulate Ireland's national plan for their implementation, including through learning from other countries that have undertaken similar processes.

Non-discrimination, right to an effective remedy and equal rights of men and women, including political participation (arts. 2, para. 1, 3, 16 and 26)

6. Please provide updated information on:

(a) Steps taken or envisaged to amend article 41.2 of the Constitution in line with the Committee's previous recommendation (CCPR/C/IRL/CO/3, para.10), as well as the recommendation outlined in the second report of the Convention on the Constitution, including a timeframe to hold a referendum;

(b) The General Scheme of the Electoral (Amendment) (Political Funding) Bill 2011 which aims at increasing the representation of women in politics; and

(c) Measures taken to increase the representation of women in decision-making positions, and to meet the 40% target in all State board positions as outlined in the Programme for a National Government 2011 – 2016

Reply to question 6 (a)

30. In formulating its second report, the Convention on the Constitution was tasked to deal with two specific issues in relation to gender equality matters. The first issue was the language on "women in the home" within the Irish Constitution. This language had been examined critically on a number of occasions over the past 20 years, including by the Second Commission on the Status of Women (1992), the Constitution Review Group (1996), the All-Party Oireachtas Committee on the Constitution (2006), and the United Nations Committee on the Elimination of Discrimination Against Women.

31. While the Convention on the Constitution did not offer an alternative text in its Report, a majority of its members favoured changing the clause to make it "gender-neutral" and made the further recommendation to include "other carers in the home" and "to include carers beyond the home". A majority of participants at the Convention also recommended that the State should offer a "reasonable level of support" to ensure that [mothers] "shall not be obliged by economic necessity to engage in labour."

32. The Government accepts the first recommendation of the Report in relation to the need to amend the language in Article 41.2 of the Constitution on the role of women in the home. The Government is mindful that a number of wordings have been proposed previously in this regard and has committed to examine these proposals and other options with a view to finding the most appropriate wording to present in a forthcoming Referendum. Full account will be taken of the comments of the Convention including those in relation to carers.

33. The inclusion of a reference by the Convention to the issue of "carers" is the reason why it is not possible to offer a more specific timeframe for a Referendum to take on board the overarching Recommendation at this time. Extensive consultations will be necessary, including with Government colleagues and their officials, in relation to these new elements and to the appropriate choice of language for incorporation into the Constitution.

34. The Minister for Justice and Equality has established a task force in his Department of Justice and Equality to look at these issues, collaborating with other Departments and the Office of the Attorney General as necessary, with a view to completing the task and reporting back to Government by 31 October 2014 and to preparing for a constitutional referendum at the earliest opportunity after that.

Reply to question 6 (b)



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35. The Electoral (Amendment) (Political Funding) Act 2012 links State funding of political parties to the achievement of a gender balance in candidate selection at general elections to Dáil Éireann (lower house of the Oireachtas). In order to receive full State funding, a qualified political party will have to have at least 30% women candidates and at least 30% men candidates at the next general election. Seven years from the next general election, this will rise to 40%. Half of every payment to a qualified political party is to be made contingent on meeting the new requirements. Parties that do not comply will lose half of their State funding for the lifetime of the Oireachtas.

Reply to question 6 (c)

36. An all-Party conference aimed at raising awareness on women and politics was hosted by the Minister of State in charge of Equality, Ms. Kathleen Lynch T.D., on 20 January 2012. The event attracted over 300 participants and brought about a greater awareness of the issue and the challenges for political parties and the public. The Conference heard from the political and administrative leaders of all the main political Parties, including the Taoiseach (Prime Minister) and Tánaiste (Deputy Prime Minister) and representatives of the opposition. It also heard the experiences of a number of serving politicians and words of experience and guidance from a number of international experts.

37. Ireland is supportive in principle of the proposal for an EU Directive on improving the gender balance on the boards of Stock Exchange listed companies. The Directive, when adopted and transposed into Irish law, should raise significantly the number of women on the boards of Irish listed companies.

38. A working group chaired by Minister of State Kathleen Lynch T.D. in the context of the National Women's Strategy has been specifically addressing the advancement of women in leadership roles, including in politics, management, on boards, and in the diplomatic and judicial systems. Its report, along with recommendations for action, will be presented to Government in the near future.

39. A wide ranging positive action programme has started this year on "women and leadership" which is being supported over a two year period by the European Social Fund PROGRESS initiative.

40. The Programme for Government 2011–2016 aims for all State boards to have at least 40 per cent of each gender. Departments are also required to report annually on the steps that they and their agencies are taking to achieve the 40% target, which currently stands at approximately 34%.

41. The Government recently appointed two new women judges to the Supreme Court, bringing the number of women judges serving on the bench of the Court to three (including the Chief Justice) out of a total complement of nine Justices. Three of the top legal and judicial office holders – Chief Justice, Attorney General, and Chief State Solicitor – are now women.

7. Please inform the Committee of the progress in adopting the Assisted Decision Making (Capacity Bill)

42. The Assisted Decision-Making (Capacity) Bill 2013 was published on 17 July 2013 and provides a series of options to support people who have difficulties in terms of decision-making capacity to exercise autonomy in decision-making to the greatest extent possible, in line with the principles contained in UN Convention on the Rights of Persons with Disabilities. Consideration of the Bill by the Oireachtas began in December 2013.



Domestic, sexual and gender-based violence (arts. 3, 7, 23, 24 and 26)**8. Please provide updated information on:**

(a) Steps taken to establish a systematic data collection procedure concerning cases of domestic and sexual violence;

(b) Complaints, prosecutions and sentences in relation to violence against women, including in relation to Traveller women, migrant women, asylum-seeking and refugee women and women with disabilities, during the reporting period; and

(c) Measures taken to ensure that women in dating relationships and unmarried cohabitants have equal access with regard to barring orders against perpetrators of violence, and that non-citizens whose status is linked to that of their partner under the Habitual Residence Condition are able to flee from situations of domestic violence to access the necessary welfare and support services and to obtain separate residence permits

Reply to question 8 (a)

43. Cosc, the National Office for the Prevention of Domestic, Sexual and Gender-based Violence, identified, as part of the work to create the first National Strategy on Domestic, Sexual and Gender-based Violence 2010 - 2014, a number of areas where data collection could be improved in the areas of domestic and sexual violence. Cosc is working with the relevant state agencies and departments in the sector through the data committee established under Action 19 of the strategy to ensure that suitable data systems are in place to collect the appropriate data to inform current and future policies and priorities.

Reply to question 8 (b)

44. In relation to sexual violence, in 2012, 83 rape cases were received by the Central Criminal Court, 488 sexual offences by the Circuit Court, and 2,199 by the District Court. These figures are not disaggregated by age or gender of the victim.

45. Domestic violence is not classified as a separate criminal offence under the law in Ireland. Incidences of domestic violence are recorded by An Garda Síochána under the offence type which occurred, e.g., assault, but the circumstances of the offence are noted in these cases.

46. In 2012, the District Court made 1,165 Barring orders, 520 Interim Barring orders, 2,255 Safety orders, and 3,849 Protection orders in relation to domestic violence. These statistics include any cases involving Traveller women, migrant women, asylum-seeking and refugee women, as well as women with disabilities.

Reply to question 8 (c)

47. The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 extended the application of domestic violence orders to civil partners, as defined by the Act.

48. The Civil Law (Miscellaneous Provisions) Act 2011 introduces important amendments to the Domestic Violence Acts 1996 and 2002 to extend the powers of the court to order protection of persons in cases of domestic violence.

49. The 2011 Act amends the Domestic Violence Act 1996 so that:

(i) A parent may now apply for a safety order against the other parent of their child, even where the parents do not live together and may never have lived together. This ensures that the full protection of the law is available where access to a child is an occasion of intimidation or even violence between disputing parents;



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(ii) The protections of the Act are available on the same basis to unmarried opposite-sex couples and same-sex couples who have not registered a civil partnership; and

(iii) Couples who are not married or are not in a registered civil partnership are no longer required to have lived together for a particular minimum period of time before one of them can obtain a safety order against the other.³

50. The Irish Naturalisation and Immigration Service has published Immigration Guidelines for Victims of Domestic Violence, available online. The guidelines apply to any foreign national with an immigration status that is dependent on another individual (Irish, EU or other citizens) and who is a victim of domestic violence. The guidelines detail the application process and requirements for victims who wish to apply for an independent immigration status in Ireland.

European Protection Order

51. During its Presidency of the Council of the European Union in 2013, Ireland successfully negotiated an agreement with the European Parliament on the European Protection Order, a civil law measure which will apply from January 2015 and ensure that victims of domestic violence and other forms of violence, harassment and intimidation can avail of national protections when they travel to other EU Member States.

9. Please clarify:

(a) **When the State party will establish a prompt, thorough and independent investigation into the abuse perpetrated in the Magdalene Laundries as recommended by the Irish Human Rights Commission in its follow-up report on State involvement with Magdalene Laundries; and**

(b) **How the redress scheme proposed by Mr. Justice John Quirke will be monitored by an independent body, and how the appeals process will operate**

Reply to question 9 (a)

52. The Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries – the McAleese Report was published on 5 February 2013. The contents of the report have been fully accepted by the Irish Government as a comprehensive and objective report of the factual position prepared under the supervision of an independent chairperson. On 19 February 2013, on foot of the findings of the report, the Taoiseach made an apology in Dáil Éireann.

53. No factual evidence to support allegations of systematic torture or ill treatment of a criminal nature in these institutions was found. The majority of women did report verbal abuse but not of a nature that would constitute a criminal offence. There is no doubt that the working conditions were harsh and work physically demanding. The laundries were subject to State inspection, in the same way and to the same extent as commercial, non religious operated laundries. The Committee interviewed a number of medical doctors who had attended the women in the Magdalen laundries and who had in some cases reviewed earlier records. They did not recall any indication or evidence of physical maltreatment.

54. The facts uncovered by the Committee did not support the allegations that women were systematically detained unlawfully in these institutions or kept for long periods against their will.

³ Couples as mentioned in (ii) and (iii) above are defined as those who have lived together “in an intimate and committed relationship” prior to the application for the order. The minimum period of living together for a barring order is an aggregate of six months in the nine months immediately prior to the application.



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55.No individuals claiming to be victims of criminal abuse in Magdalen laundries have made any complaints or requests to the Department of Justice and Equality seeking further inquiries or criminal investigations. The group representing the largest number of women who were in Magdalen laundries, Irish Women Survivors Support Network, have stated that:

56.“We hope that time is not wasted calling for more statutory inquiries or demanding yet more bureaucratic statutory processes. In their advanced years, the women have repeatedly told us they have no wish for conflict or confrontation.”

57.While isolated incidents of criminal behaviour cannot be ruled out, in light of facts uncovered by the McAleese Committee and in the absence of any credible evidence of systematic torture or criminal abuse being committed in the Magdalen laundries, the Irish Government does not propose to set up a specific Magdalen inquiry or investigation. It is satisfied that the existing mechanisms for the investigation and, where appropriate, prosecution of criminal offences can address individual complaints of criminal behaviour if any such complaints are made.

Reply to question 9 (b)

58.Following consideration of the Report of Mr Justice John Quirke, the Government decided to provide, on an ex gratia basis, a scheme of payments and benefits for those women who were admitted to and worked in the Magdalen Laundries, St Mary’s Training Centre, Stanhope Street, and House of Mercy Training School, Summerhill, Wexford. The Office of the Ombudsman will provide an independent appeals procedure in line with the seventh recommendation of Mr Justice Quirke.

10. Taking note of the information received that the Monitoring Group for the “Ryan Implementation Plan” – adopted pursuant to the report of the Commission to Inquire into Child Abuse – will reportedly conclude its work in 2013, please provide information on the replacement mechanism to ensure the full implementation of the plan, as well as on the number of criminal prosecutions in child abuse cases

59.Following publication of the report of the Commission to inquire into Child Abuse (“Ryan Report”), An Garda Síochána established a dedicated phone line for persons who wished to provide information relating to criminal behaviour connected with what the report revealed. As of 22 October 2013, 181 calls have been received on the Garda helpline. An Garda Síochána carried out investigations and submitted fifteen investigation files to the DPP. The DPP directed no prosecution in the case of fourteen of them. The DPP directed a prosecution in one case and in January 2013 the individual concerned was sentenced to 2 years imprisonment with 18 months suspended on 14 counts of indecent assault. One additional investigation is nearing completion and will be the subject of submissions to the DPP.

60.Work is ongoing in the Department of Children and Youth Affairs to compile the fourth and final monitoring report on the implementation plan for the Ryan Report. The 99 actions in the implementation plan relate to a range of Departments and agencies. It is hoped to complete the report in the first quarter of 2014. The Government has committed to full implementation of all actions contained in the plan and it is expected that the final report will cover full implementation of all actions in the plan. Accordingly, there will be no requirement for a replacement mechanism in respect of the Ryan Implementation Plan.

61.In relation to the broader issue of ongoing implementation of child protection reforms and improvements on a cross-sectoral basis, consideration will be given, in the context of the fourth and final monitoring report on the Ryan Implementation Plan, to devising a mechanism to replace the Ryan Monitoring Mechanism, to ensure that a focus is kept on child protection issues across Departments and Agencies. This consideration will take place

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in the context of the drafting of legislation to put elements of the “Children First: National Guidance for the Protection and Welfare of Children” (2011) on a statutory footing.

Derogation (art. 4)

11. Please provide further information on measures taken to ensure that its domestic legal provisions, including article 28.3 of the Constitution, are consistent with article 4 of the Covenant, as recommended by the Committee in its previous concluding observations

62. Article 28.3.3 of the Constitution provides that the two Houses of the Oireachtas may resolve that, in time of war (which includes a time when an armed conflict is taking place in which the State is not a participant), armed conflict or armed rebellion, a state of national emergency exists affecting the vital interests of the State.

63. In accordance with that Article, the Houses of the Oireachtas on 1 September 1976 resolved that “arising out of the armed conflict now taking place in Northern Ireland, a national emergency exists affecting the vital interests of the State.” This state of emergency was ended by virtue of resolutions introduced by the Government and passed by both Houses of the Oireachtas on 7 and 16 February 1995. The Secretary General of the United Nations was informed of the termination of the state of emergency, as required under paragraph 3 of Article 4.

64. Ireland does not accept that any actions taken in the context of a national emergency and which derive from Article 28 of the Constitution have been disproportionate to the nature of the threat faced by the State at that time and/or incompatible with the Covenant.

Right to life (arts. 6, 7 and 17)

12. Please provide information on:

(a) **How the Protection of Life During Pregnancy Act 2013 is in compliance with articles 6 and 7 of the Covenant and the Committee’s previous recommendations;**

(b) **Concrete measures that are being taken or envisaged to clarify what a “real and substantial risk” to the pregnant women’s life means in practice, in order to provide legal and clinical clarity for health providers and certainty for women experiencing potentially life-threatening pregnancies;**

(c) **Whether the State party intends to introduce measures to broaden access to abortion to guarantee women’s rights under the Covenant, including when the pregnancy poses a risk to the health of the pregnant woman, where the pregnancy is the result of a crime, such as rape or incest, cases of fatal foetal abnormalities, or when it is established that the foetus will not survive outside the womb; and**

(d) **Circumstances in which the Director of Public Prosecutions may authorize prosecutions, and against whom, under section 22 of the Act**

Reply to question 12 (a)

65. The Protection of Life During Pregnancy Act 2013 regulates access to lawful termination of pregnancy in accordance with the X case⁴ and the judgment of the European Court of Human Rights in the A, B and C v Ireland case. Its purpose is to confer procedural

⁴ Article 40.3.3 of the Constitution, as interpreted by the Supreme Court in Attorney General v X, provides that it is lawful to terminate a pregnancy in Ireland if it is established as a matter of probability that there is a real and substantial risk to the life, as distinct from the health, of the mother, which can only be avoided by a termination of the pregnancy.



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rights on a woman who believes she has a life-threatening condition, so that she can have certainty as to whether she requires this treatment or not.

66.The Act upholds the right to life of the unborn where practicable, and the right to life of a pregnant woman whose life is threatened by her pregnancy, as required by Article 40.3.3. The Act also creates procedures which apply to the lawful termination of pregnancy. The objectives of these procedures are, firstly, to ensure that, where lawful termination of pregnancy is under consideration, the right to life of both the unborn and the mother are respected and afforded protection, in accordance with constitutional requirements, and secondly to ensure that a woman can ascertain by means of a clear process whether she is entitled to medical treatment to which the Act applies.

Reply to question 12 (b)

67.A Guidance Document to assist health professionals in the implementation of the Act is being prepared and is due to be finalised early in 2014. The Guidance will include identifying referral pathways to fulfil the requirement of the Act and other relevant operational matters.

68.The relevant professional bodies continue to be responsible for issuing clinical guidelines to their members in relation to medical conditions that might be relevant to the Act.

69.In addition, the Health Service Executive's National Clinical Care Programme in Obstetrics and Gynaecology was established two years ago, with the overall aim of improving choices in women's healthcare. A key area of work for the Programme is the development and implementation of national clinical guidelines, with the aim of ensuring consistency in clinical practice nationally.

Reply to question 12 (c)

70.There are currently no proposals to amend Article 40.3.3 of the Constitution.

71.The Health Service Executive, through its Crisis Pregnancy Programme, supports the provision of counselling services, medical services and such other health services for the purpose of providing support during and after any type of crisis pregnancy. The Programme is due to meet a group representing women who have received a diagnosis of fatal foetal abnormality in relation to relevant crisis pregnancy counselling and post-abortion counselling options currently available and ways to improve the standard of service nationwide.

Reply to question 12 (d)

72.It will be a matter for the Director of Public Prosecutions to decide whether to proceed with a prosecution and this decision will be based on the facts of each case.

73.Penalties may apply to any person in breach of the Act. While it is recognised that the potential criminalisation of a pregnant woman is a very difficult and sensitive matter, this provision reflects the State's constitutional obligation arising from Article 40.3.3. The sentence to be applied in any particular case is a matter for the Court involved.



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Right to liberty and security of person, prohibition of torture and cruel, inhuman or degrading treatment or punishment, and treatment of persons deprived of their liberty, and fair trial (arts. 7, 9, 10, 14 and 24)

13. Please provide updated information on:

(a) The number of prisoners accommodated in each of the prisons in the State party vis-à-vis the maximum capacity for each prison outlined by the Inspector of Prisons in his report of May 2013;

(b) The number of remaining prisons without in-cell sanitation out of all the prisons in the State party, and the timeframe to abolish the practice of “slopping out”;

(c) The mortality rate in prisons and the number of victims (dead and injured) harmed by inter-prisoner violence; and

(d) Timeline for ending the use of St. Patrick’s Institution for the detention of minors

Reply to question 13 (a)

74. Table 3, annex A, sets out the prisoner population as on 9 January 2014, with reference to the maximum capacity for each prison outlined by the Inspector of Prisons in his report of May 2013. The total prison population as of that date was 3,971.

Reply to question 13 (b)

75. Table 4, annex A, sets out the number of prisoners without in-cell sanitation as of 1 October 2013.

76. A 40-month capital programme is being implemented to eliminate “slopping out” and to improve prison conditions in the older part of the prison estate. The number of remaining prisons without in-cell sanitation out of all the prisons in the state party includes parts of Mountjoy, Cork Prisons, Limerick and Portlaoise. Work is continuing on the modernisation project at Mountjoy prison. Refurbishment of the Mountjoy B and C wings was completed in 2012. Refurbishment of the A wing commenced in early January 2013 and is substantially completed, with the wing ready for occupancy. Commencement works on D Wing are on track to begin in early 2014. On completion of the refurbishment of D wing, all cells in Mountjoy prison will have in cell sanitation facilities. In relation to Cork Prison, the tender process is now complete and a preferred tenderer has been identified. Construction works began in January 2014. The new prison is due to be finished in 2015. This will end slopping out in Cork Prison and effectively throughout the prison estate.

Reply to question 13 (c)

77. Since 2008, there have been 50 deaths in custody, as per table 5, annex A. Of the 50 deaths since 2008, the cause of death has been determined in 31 cases. Of these, 11 have been determined as death by misadventure, nine as death by suicide and five as natural causes. A jury returned a narrative verdict in four cases and an open verdict in two cases. While inquests are pending in the remaining 19 cases, initial indications suggest that four were suicides.

78. Table 6, annex A, sets out prisoner assaults during the period 2011-2013. Please note that full figures for 2013 are currently being compiled. Please note also that these statistics do not reflect the number of assaults which inflicted harm.

Reply to question 13 (d)



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79. The population of the Institution was reduced by 50% in order to facilitate as smooth a transfer as possible of the 17-20 year olds to dedicated Units contained within Wheatfield Place of Detention. This reduction was achieved through a combination of inter-prison transfers, additional numbers of 18-20 year old prisoners being released on the Community Return Scheme and Temporary Releases. As of before Christmas 2013, the Prison Service can confirm that all sentenced 17 year old prisoners have transferred from St. Patrick's to Wheatfield Place of Detention. The remaining prisoners at St Patrick's Institution (other than 17 year old remand prisoners) will finish transferring to Wheatfield Prison by 10 February 2014. The Department of Justice and Equality and the Department of Children and Youth Affairs has established a Joint Working Group to give effect to the smooth transfer of all 17 year olds from the Irish Prison Service to the Irish Youth Justice Service as soon as building works at Oberstown Campus are completed, scheduled for the third quarter of 2014.

80. The over-arching national legislative framework for children detention schools is the Children Act 2001, as amended. The Irish Youth Justice Service, under the aegis of the Minister for Children and Youth Affairs, is responsible for the three Children Detention Schools (CDS) at Oberstown, Lusk, Co. Dublin, which provide detention places to the Courts. The Programme for Government contains a commitment to end the practice of detaining children in adult prison facilities and this will be met when all boys under the age of 18 detained by the courts on criminal charges can be accommodated in an integrated children detention school setting. The practice of detaining 16 year old boys in adult prison facilities has already ended through the provision of some spare capacity in the existing children detention schools and since July 2012, no 16 year old boy has been detained in an adult prison. To enable the transfer of responsibility for 17 year old boys from the Irish Prison Service, building works for the National Children Detention Facility (NCDF) in Oberstown commenced in September 2013. The first new residential units, to be delivered in 4th quarter 2014, will allow for the extension of the child care model of detention to all under 18 year olds remanded or committed by the courts. The project will also deliver associated education, recreation, visiting, medical and other ancillary facilities. It is planned that the project will be fully completed during 2015.

14. Please provide statistical data on the number of complaints of torture and ill-treatment filed against prison officers, the number of investigations instituted, and the number of prosecutions and convictions imposed. Please also clarify what steps have been taken to establish an independent and effective complaints and investigation mechanism to investigate complaints against prison staff, including allegations of ill-treatment, as recommended by the Inspector of Prisons

81. Following a report by the Inspector of Prisons to the Minister for Justice and Equality in March 2012, regarding the introduction of a new complaints model in the Irish Prison Service which meets best practice and our international obligations in this regard, a new complaints model is being introduced in the Irish Prison Service on a phased basis. The model which is being introduced contains four separate categories of complaints and three separate complaints procedures.

82. Category A Complaints are the most serious level of complaints (assault, serious intimidation of prisoners by staff, etc). Investigation of Category A complaints are by external investigator/s on behalf of the Irish Prison Service. A publicly advertised recruitment campaign was carried out by the Irish Prison Service in September 2012 which sought applications from suitably qualified persons with a legal or investigative background. A panel of 22 Independent investigators was established in October 2012. The Category A Complaints procedure was introduced on 1 November 2012. Table 7, annex A, illustrates the Category A complaints since 1 November 2012:

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83. Category B Complaints are mid-range in terms of seriousness (discrimination, verbal abuse of prisoners by staff, inappropriate searches etc) and are investigated by a Chief Officer with recourse to appeal to the prison Governor and a subsequent recourse of appeal to the Director General if a prisoner is unhappy with the outcome of his/her original appeal

84. Category C Complaints are essentially service complaints where a prisoner is unhappy with the level of service in a particular prison (visits, phone calls, etc.) and are investigated by a Prison Officer with the possibility of appeal to a Chief Officer if the prisoner is unhappy with the outcome or resolution of his/her complaint.

85. Category D Complaints relate to complaints against professionals such as dentists, doctors etc. Such complaints will be referred in the first instance to the prisons' medical officer for possible resolution and, if this is not possible, to the relevant professional body responsible for regulating the professional involved.

86. The full complaints model will be introduced during the lifetime of the Irish Prison Service Three Year Strategic Plan (April 2012 – April 2015). The Inspector of Prisons has oversight of all categories of complaints.

15. Please provide information on the progress achieved in ensuring the separation of sentenced and remand prisoners, and of detained immigrants from criminal prisoners

87. Rule 71 of Statutory Instrument 252 of 2007 places a statutory obligation on the Irish Prison Service to accommodate sentenced and remand prisoners separately "in so far as is practicable". There is no statutory obligation to ensure separate accommodation. Every effort is made to achieve this, subject to the numbers of prisoners detained on any given day and the number of separate cells/accommodation units available to us. The Irish prison system has a dedicated remand prison, Cloverhill Prison, and every effort is made to utilize this facility to its maximum in order to meet the conditions of Rule 71.

88. With respect to non-sentenced immigrant prisoners, every effort is also made to detain as many of these prisoners as possible in the above-mentioned remand prison, and to disperse sentenced non-nationals throughout the prison estate in the normal course.

16. Please clarify the legal provisions providing for the right of criminal suspects to contact counsel before interrogation, as well as during interrogation in police detention facilities. Please also provide information on how individuals held in police custody are informed in a timely and consistent fashion of the consequences of remaining silent

89. Section 5 of the Criminal Justice Act 1984 provides that an arrested person who is detained pursuant to section 4 of that Act must be informed without delay that they have the right to consult a solicitor. The obligation to inform or cause to be informed rests with the member in charge of the Garda station. The member in charge is further obliged, at the request of the detainee, to notify the solicitor of the person's detention and of the station where they are being detained as soon as practicable. Section 5 also applies to the other Garda detention powers.⁵ Section 5 is limited to adults. Part 6 of the Children Act 2001 makes similar provision for child suspects.

90. The right to have a lawyer present during questioning is a key feature of the EU Directive on the Right of Access to a Lawyer Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and European arrest

⁵ Section 30 of the Offences Against the State Act 1939, section 2 of the Criminal Justice (Drug Trafficking) Act 1996, section 42 of the Criminal Justice Act 1999, section 50 of the Criminal Justice Act 2007 and sections 16 and 17 of the Criminal Procedure Act 2010.



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warrant proceedings, and on the rights to have a third party informed upon deprivation of liberty and to communicate, while deprived of liberty, with third persons and with consular authorities. The Irish Presidency, on behalf of the EU Council, reached agreement with the European Parliament on a final compromise text of that Directive on 28 May 2013. The Directive is one of a number of legislative measures set out in the EU Roadmap on Procedural Rights which aim to set common minimum standards in the area of procedural rights for suspects across the Union. Ireland did not opt in to the Directive at the outset of negotiations but is considering opting into the measure once it has been adopted. It is expected that the Directive will be in place before the year-end should Ireland opt in. Proposed regulations under the Criminal Justice Act will meet the relevant EU standards in this area.

91. Section 9 of the Criminal Justice Act 2011 requires that the questioning of a detainee must not start until such time as they have had access to legal advice. This requirement is subject to two exceptions: where the detainee waives or is deemed to have waived their right to prior legal advice; or where certain compelling circumstances exist. As was already the law, the detainee has a right to a "consultation in private" whether by telephone or in person. For reasons of security, "consultation in private" includes within sight of, but not within hearing distance of, a member of the Gardaí. The 2011 provisions have yet to be commenced. Their commencement is dependent on the regulations being in place (under section 5B of the 1984 Act inserted by section 9 of the Criminal Justice Act 2011). It is expected that these regulations will be finalised shortly. The new legislation gives statutory backing to current Garda practice in this area.

92. A person must be cautioned in ordinary language as to the possible consequences of his or her failure to answer questions from which inferences can be drawn. At the start of every interview with a suspect in custody, the interviewing Garda is currently required under the Judges' Rules and the Criminal Justice Act 1984 (Electronic Recording of Interviews) Regulations 1997 (S.I. 74 of 1997) to administer the "ordinary caution" by stating, "[y]ou are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence." This is intended to convey the right of the suspect to exercise his or her right to silence during the interview. If, during the interview, the Gardaí wish to invoke provisions allowing for inferences to be drawn at trial from silence at interview, they must – in advance of questioning – tell the suspect in ordinary language what the consequences of his or her failure or refusal to answer questions might be.

93. An Advisory Committee was set up in July 2010 under the Chairmanship of the Hon. Mr. Justice Esmond Smyth to oversee policy on interviews in Garda custody and to consider any changes in the law or practice as required. The Terms of Reference for the Committee are to keep the adequacy of the law, practice and procedure relating to the interviewing of suspects detained in Garda custody under review, taking into account evolving international best practice, and to advise the Minister and the Garda Commissioner on any changes that may be necessary.

17. Please provide updated information on measures taken to prohibit all corporal punishment of children in all settings, as well as any public campaigns undertaken to educate parents and the general public about its harmful effects and to promote positive non-violent forms of discipline as an alternative to corporal punishment

94. Ireland accords a high priority to protecting children in its jurisdiction from violent punishment. Established legislation (i.e., Section 246 of the Children Act 2001) provides clear legal deterrents against assaults, in whatever setting, which cause unnecessary suffering or injury to a child's health or seriously affect his or her wellbeing. Severe



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sentences have been handed down by the Courts to persons convicted of assaults against children.

95. The ongoing development of a strong child protection framework is reflected in a suite of legislation – enacted or in the course of preparation – in the area. Developments include the holding of a referendum to amend the Constitution in relation to children’s rights, legislation covering the reporting of abuse, and the fundamental reform children’s services.

96. Regarding the promotion of positive forms of discipline, family support services, including parenting supports, have been provided by the Health Services Executive (HSE) for many years under the Child Care Act 1991. In addition, the Family Support Agency (FSA) has been providing, through its Family Resource Centre Programme, a range of key services to improve the functioning of the family units. This includes information, advice, support as well as education and training opportunities. The reform of children’s services has involved the establishment, with effect from 1 January 2014, of a dedicated national statutory body – the Child and Family Agency – which has subsumed the family support functions of the HSE and the FSA. The new Agency’s express statutory functions require it to support and encourage the effective functioning of families, including preventative family support services aimed at promoting the welfare of children and services relating to the psychological welfare of children and their families.

97. The matter of legislating for a complete ban on corporal punishment in all settings in Ireland is being kept under review.

98. Ireland’s fourth periodic report referred to the longitudinal research being carried-out under “Growing Up in Ireland”. In 2009, the study’s reported findings included different approaches to discipline by the parents of nine-year-old children. Mothers were asked to describe the frequency with which they used a range of discipline strategies and 57% reported they never used smacking, 32% said that they rarely used it, 11% said that they used it now and again, and almost no mother reported using it regularly or always. Study findings published in September 2013 provided data from primary caregivers of the three-year-old cohort which indicated that, from a list of eight discipline techniques, the one used least was smacking; less than 1% reported using smacking regularly.

18. Please provide further information on specific and concrete steps taken, beyond official assurances, to ensure that aircrafts used for the purpose of extraordinary rendition, whether they carry prisoners on board or not, do not pass through the territory of the State party. What measures are taken to investigate past allegations concerning the use of the State party’s territory for the purpose of extraordinary rendition flights?

99. Ireland is completely opposed to the practice of extraordinary rendition. This was made clear to the US authorities at the highest level following the emergence of reports of such practices, and has been reiterated on numerous occasions since then. It has also been made clear that no consent would be granted by the Irish authorities for the transit of an aircraft for the purposes of extraordinary rendition under any circumstances.

100. An Garda Síochána has full authority to search civil aircraft in any circumstances where they have reasonable grounds for suspecting that illegal activity is taking place, such as extraordinary rendition, and to carry out any necessary investigations. The Government continues to call on anyone with evidence which suggests that any person has transited an Irish airport as part of an extraordinary rendition operation to make this evidence available to An Garda Síochána, so that an investigation can take place. Where complaints have been made to the Gardaí, investigations have ensued and, where appropriate, files have been submitted to the Director of Public Prosecutions. The outcome of a number of complaints was outlined in Ireland’s previous submission under the ICCPR. In all these cases, no

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further action was found to be warranted, due to a lack of any evidence of any unlawful activity in this jurisdiction. In March 2011, a further submission was made by two individuals to An Garda Síochána in relation to allegations of breaches of Irish and international law related to the transit of US military personnel and CIA-associated aircraft. No evidence to this effect was uncovered by the Gardaí following an investigation of the allegations made in connection with this submission.

19. Please provide detailed information on:

(a) The number of so-called voluntary patients who have been detained under section 23 or section 24 of the Mental Health Act 2001 during the reporting period;

(b) How the State party intends to improve conditions in mental health facilities and compliance by mental health institutions with the statutory Code of Practice on the Use of Physical Restraint in Approved Centres and the Rules Governing the Use of Seclusion; and

(c) The use of Electro Convulsive Therapy (ECT) in relation to both voluntary and involuntary patients who are accommodated in approved centres during the reporting period, and on any steps taken to ensure that ECT remains a treatment of last resort and that consent to ECT treatment is explicitly set out in law

Reply to question 19 (a)

101. The total number of voluntary admissions to approved centres per year, 2008-2012 can be found in table 8, annex A.

Reply to question 19 (b)

102. The Mental Health Act 2001 provides for the use of seclusion and mechanical restraint for the purposes of treatment or to prevent the patient from injuring himself or herself or others. In line with section 69(2) of the 2001 Act, the Mental Health Commission published "Rules Governing the Use of Seclusion and Mechanical Means of Bodily Restraint", which regulate the use of seclusion and mechanical restraint in approved centres. The Commission also published a "Code of Practice on the Use of Physical Restraint in Approved Centres", which contains best practice guidance on the use of physical restraint for persons working in approved centres. Updated versions of both the Rules and Code of Practice came into effect in January 2010 following an independent review of their provisions which was carried out in 2008. The Inspector of Mental Health Services assesses compliance with the Rules and Code of Practice as part of the annual inspection process for approved centres.

103. The provisions of the Rules and Code of Practice make clear the Commission's belief that these are not standard interventions but emergency measures which should be used "in rare and exceptional circumstances and only in the best interests of the patient when he or she poses an immediate threat of serious harm to self or others". Provisions within both documents also encourage approved centres to focus on preventative measures that eliminate or minimise the use of restrictive interventions. For instance, Rule 10.2 of the Rules states that "Each approved centre must have a written policy in relation to the use of seclusion. The policy must include a section which [...] details how the approved centre is attempting to reduce the use of seclusion, where applicable". A similar provision is contained in the Code.

104. The Mental Health Commission issued an Addendum to the Rules in March 2011. The effect of the addendum is to require that a patient in seclusion must now be observed for the duration of a seclusion episode i.e. directly by a nurse for the first hour of a seclusion episode and thereafter either directly or through the use of CCTV.



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105. Seclusion is defined by the Mental Health Commission as “the placing or leaving of a person in any room alone, at any time, day or night, with the exit door locked or fastened or held in such a way as to prevent the person from leaving. The Commission defines physical restraint as “the use of physical force (by one or more persons) for the purpose of preventing the free movement of a resident’s body when he or she poses an immediate threat of serious harm to self or others”.

106. Approved Centres are required to return data to the Mental Health Commission on the use of ECT, seclusion, mechanical means of bodily restraint and physical restraint under these Codes of Practice. The Commission reports on this data in its annual activity report.

107. In total, 1,683 seclusion episodes were reported in 2011, which, when compared to 2010, show a decrease of 688 in the number of seclusion episodes recorded. The overall use of restrictive practice used in mental health facilities across the country dropped by almost 12% during 2011. In the four year period from 2008 to 2011, the use of seclusion has steadily declined. Seclusion accounted for 35.5% of all restrictive interventions reported to the Commission in 2011. Fewer than half, 41.7%, of approved centres (32/68) indicated that they used seclusion in 2011 and the remainder (36) reported that they did not use seclusion.

Reply to question 19 (c)

108. Current legislation requires that a patient must consent in writing to the administration of ECT. Where a patient is unable or unwilling to give consent, the treatment may be administered if it has been approved by the consultant psychiatrist responsible for the care and treatment of the patient, and also authorised by another consultant psychiatrist. The Mental Health Commission has published rules regarding the administration of ECT and adherence to these rules is monitored on an annual basis by the Inspector of Mental Health Services. A Review of the Mental Health Act 2001 is expected to conclude shortly. The Review is likely to recommend a change in the law in Ireland with regard to the administration of ECT so that where a patient is capable of giving consent but unwilling to do so, ECT cannot be administered to that patient. This change has been a political commitment for some time. It is likely that the Review will also propose further changes to provide greater protection to patients for whom the administration of ECT is being considered.

Elimination of slavery and servitude (arts. 2, 8, and 24)**20. Please provide information on:**

(a) Steps taken to establish a systematic data collection procedure concerning victims of trafficking and forced labour as well as a case management system to track the delivery of services to such victims across multiple Government agencies;

(b) The extent of sale or trafficking in persons for any purpose or in any form, including abductions of children, as well as related prosecutions and sentences during the reporting period;

(c) How victims of trafficking who have sought asylum can also benefit from the recovery and reflection period or temporary residence permission;

(d) The availability of timely and adequate access to and provision of legal services for victims of trafficking and forced labour; and

(e) The applicability of anti-trafficking legislation to EU residents or nationals



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Reply to question 20 (a)

109. On 1 January 2009, the Anti-Human Trafficking Unit (AHTU) of the Department of Justice and Equality initiated a data collection strategy for the purpose of gathering information on the occurrence of trafficking in human beings in Ireland. Under the strategy, depersonalised information concerning alleged victims of trafficking, is collected in a standardised format from governmental and non-governmental sources and is collated and analysed centrally in the AHTU. This information, which is published on an annual basis, provides up-to-date knowledge on the nature and extent of human trafficking in Ireland and the emergence of any developing trends in this regard.

110. As of January 2014 four annual reports concerning Trafficking in Human Beings in Ireland for the years 2009 to 2012 have been produced. Organisations contributing information to these reports included the Human Trafficking Investigation and Co-ordination Unit, the Irish Naturalisation and Immigration Service (INIS) of the Department of Justice and Equality, several non-governmental organisations including Ruhama, Immigrant Council of Ireland, Migrant Rights Centre Ireland, Stop Sex Trafficking, Cork and Doras Luimní, Limerick, and international organisations such as the International Organisation for Migration. These reports are available online.

Reply to question 20 (b)

111. An overview of human trafficking trends in Ireland, in terms of the demographic characteristics of alleged victims, is provided in table 9, annex A. Please note that as the Criminal Law (Human Trafficking) Act 2008 came into effect on 7 June 2008, there are no recorded figures of human trafficking prior to that date. Between 7 June and 31 December 2008, 36 alleged victims of human trafficking were encountered by An Garda Síochána. No further breakdown of these figures is available. With regard to convictions, please note that those imposed in any calendar year may be the result of prosecutions initiated in previous calendar years.

Reply to question 20 (c)

112. Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking have been in place since June 2008. These are in place pending the enactment of the Immigration, Residence and Protection Bill 2010. These arrangements fulfil the requirements outlined in Article 13 and 14 of the Council of Europe Convention on Action against Trafficking in Human Beings and article 7 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

113. The administrative arrangements apply where a foreign national is identified as a person suspected of being a victim of human trafficking and the Minister for Justice and Equality is required to consider that person's immigration status in the State. The document sets out the administrative arrangements whereby such a person may be granted a period of recovery and reflection in the State and may also in certain circumstances be granted one or more periods of temporary residence in the State.

114. The position in Ireland is that the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking apply only to those who would not otherwise have permission to be in the State. It is important to emphasise that an alleged victim of trafficking who applies for asylum under the Refugee Act 2006 has the equivalent residence rights and access to the same support services as a person in a Recovery and Reflection Period under the Administrative Immigration Arrangements.

115. A suspected victim of trafficking who has had their application for asylum rejected will be entitled to temporary residence permission under the Administrative Immigration Arrangements. In such cases suspected victims are notified of the refusal of their asylum claim and notified of their eligibility for a temporary residence permission.

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Reply to question 20 (d)

116. The Legal Aid Board (LAB) provides legal assistance and advice to potential and suspected victims referred to them by An Garda Síochána, from the initial point of contact with An Garda Síochána, on the options open to them, e.g.:

- Seeking assistance under the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (for Recovery & Reflection Periods and Temporary Residence Permissions);
- Seeking asylum;
- Seeking redress through employment protection legislation;
- Information on regularising their stay in the country;
- On criminal action;
- Compensation – both criminal and civil; and on
- Voluntary return home.

117. These arrangements comply with the provisions in the relevant international instruments. The arrangements facilitate each person in making an informed decision on what is best for them. There is no charge to the victim for this service. There is no waiting list, unless a large number of people are discovered around the same time.

Reply to question 20 (e)

118. The Criminal Law (Human Trafficking) Act 2008, as amended, applies to EU residents or nationals.

Imprisonment for failure to fulfil a contractual obligation (art. 11)

21. **Please provide statistics on the number of individuals who were imprisoned for non-payment of court ordered fines or civil debt during the reporting period. Please clarify what steps are being taken to ensure that no one is imprisoned for failure to pay a civil debt or fine that he or she cannot pay**

119. Table 11, annex A, contains the details of fines and debtors committals from 2007/2013.

120. On 14 July 2009, Ireland introduced amending legislation, the Enforcement of Court Orders (Amendment) Act 2009, which introduced additional safeguards for debtors summoned before the Courts. It ensures that those who simply cannot pay are not at risk of imprisonment. The 2009 Act amended Sections 6, 8 and 9 of the Enforcement of Court Orders Act 1940 to ensure that the court will not imprison the debtor unless it is satisfied that s/he has the means to pay and is wilfully refusing to pay. The Court must also be satisfied that all other steps possible have been taken to recover the debt. It provides the Court with the power to postpone the execution of an imprisonment order until such time as it thinks just, and a clear power to vary the terms of the breached instalment order or to refer the parties for mediation. The Court must also inform a debtor of the risk of imprisonment and of his/her entitlement to apply for legal aid.

121. New legislation expected to be enacted in 2014 provides for a new fines recovery regime that will ensure to the greatest extent possible that persons are not committed to prison for an inability to pay fines. The Fines (Payment and Recovery) Bill 2013 provides for an attachment of earnings order in most cases where a fine defaulter is in employment or in receipt of an occupational pension. Provisions also provide for the making of a recovery order (directing a receiver to recover the fine or assets to the value of the fine) or to a community service order as an alternative to imprisonment for defaulting.



22. Refugees and asylum seekers (art. 13)

Please provide information on measures taken to:

- (a) Reduce the delay in the processing of asylum claims;
- (b) Establish an independent appeals body to review all immigration-related decisions, as recommended by the Committee in its previous concluding observations;
- (c) Ensure that asylum-seekers have full access to early and free legal representation, as recommended by the Committee in its previous concluding observations;
- (d) Establish an independent complaints or monitoring mechanism available to persons living in Direct Provision centres; and
- (e) Review its detention policy with regard to asylum-seekers and give priority to alternative forms of accommodation, as recommended by the Committee in its previous concluding observations

Reply to question 22 (a)

122. The median processing time to a final decision on an asylum application in 2013 was 36 weeks. Some cases can take significantly longer to complete due to, for example, delays arising from medical issues or because of judicial review proceedings. All asylum applications and appeals are processed in accordance with the Refugee Act 1996 and other relevant statutory provisions. High quality and fair decision-making in all cases continues to be a key priority at all stages of the asylum process.

123. Persons who are refused refugee status have the possibility to apply for subsidiary protection status. This is separate to the asylum or refugee status determination process. New Regulations governing the investigation and determination of applications for subsidiary protection in the State were signed into law in 2013. The European Union (Subsidiary Protection) Regulations 2013 came into effect on 14 November 2013.

124. Under the new regulations, responsibility for the processing of applications for subsidiary protection was transferred from the Department of Justice and Equality to the Office of the Refugee Applications Commissioner (ORAC) with appeals dealt with by the Refugee Appeals Tribunal. Both of these offices are statutorily independent in their functions and they have substantial experience in the area of asylum applications investigations and appeals respectively. The aim of the new regulations and the associated processing arrangements is to significantly reduce the number of subsidiary protection applications on hand.

125. Legislative reform in the area of protection remains a key priority. Work on a new Immigration, Residence and Protection Bill is at an advanced stage and is expected to be enacted this year. The Bill will provide, inter alia, for the introduction of a single application procedure for the investigation of all grounds for protection and any other grounds presented by applicants seeking to remain in the State. This re-organisation of the protection application processing framework should substantially simplify and streamline the existing arrangements by removing the current multi-layered and sequential processes and provide applicants with a final decision on their application in a more straightforward and timely fashion.

Reply to question 22 (b)

126. Work on the details of the Immigration, Residence and Protection Bill 2010 is ongoing at the Department pursuant to current Government policy which has committed, under the Programme for National Recovery, to introduce comprehensive reforms of the immigration,



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residency and asylum systems, which will include a statutory appeals system and set out rights and obligations in a transparent way.

Reply to question 22 (c)

127. Free legal assistance is available to all applicants from the outset of their application for asylum and subsidiary protection. All applicants are informed of the availability of legal advice on the day they apply for asylum or subsidiary protection, and of the Refugee Legal Service (RLS). Information on the RLS is also provided when an application for subsidiary protection is made.

128. The RLS is a specialised office established by the Legal Aid Board to provide confidential and independent legal services to persons applying for asylum and subsidiary protection in Ireland. Assistance is available to applicants prior to the submission of their asylum and subsidiary protection questionnaires to the ORAC and prior to attendance at their asylum and subsidiary protection interviews.

Reply to question 22 (d)

129. The Reception and Integration Agency (RIA) of the Department of Justice & Equality is responsible for the operations of the direct provision accommodation system in accordance with Government policy.

130. The issue of an independent complaints mechanism featured greatly in the discussions which led to the revised House Rules and Procedures (which apply in all RIA asylum seeker accommodation centres) which were introduced in 2010. These Rules included a working complaints mechanism for use by asylum seeker residents and staff alike in Direct Provision centres.

131. The Review Group, whose function was to review House Rules and Procedures which had been in place since 2002, had an independent chairman and included representatives from NGOs including the Irish Refugee Council and the Refugee Information Service, the Health Service Executive, the RIA, Centre Management, and An Garda Síochána. This Group met on thirteen occasions and a subgroup also met with residents and local NGOs in four accommodation centres.

132. It was RIA's view that no clear model was cited during these discussions as to what an independent complaints mechanism would look like, or how it could be implemented without undue cost and bureaucracy. The system of direct provision exists within its own circumstances and the RIA is satisfied that the structure of the complaints procedure contained within the revised House Rules is fair and is broadly in line with the guidelines set out by the Office of the Ombudsman for internal complaints systems.

133. As stated in the House Rules, the aim of the RIA complaints procedure is to have issues dealt with quickly and efficiently. The Rules specifically state that "residents should not be afraid to complain when they need to, and that making a complaint will not affect how other official agencies consider their claims to remain in the state (i.e., on asylum, subsidiary protection or general leave to remain grounds)."

134. The revised Rules were laid out in a new question and answer format and more clearly explained the complaints mechanism for use by residents and staff alike. The thrust of the complaints procedure is that issues which arise are best resolved quickly, locally and informally without the need to proceed formally. In the main, this is how issues are resolved. The Rules also provide for a written complaints procedure to be followed in the event that the matter cannot be resolved informally. It also allows for direct referral to RIA in certain circumstances. It is important to note that if a complaint is made in respect of a decision made by a particular RIA official, the appeal is not dealt with by that official.



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135. These revised Rules have been translated into twelve languages and are provided to all asylum seekers on arrival at their accommodation centres. RIA also held information sessions for residents on the new House Rules in 20 centres in 2010 where active participation in the complaints process, where required, was encouraged.

136. The RIA complaints procedures do not cover the asylum process itself in respect of which an independent appeals process already exists. Nor does it cover the issue of transfers within the Direct Provision system. Over and above the House Rules themselves, the interests of asylum seekers are represented through regular “clinics” in centres where residents can speak directly to RIA Headquarters staff without local centre management being present. Further, unannounced inspections take place in centres, by RIA staff and by a contracted independent company, to ensure that centres are adhering to their contractual obligations. Inspections are made three times a year, twice by Department of Justice and Equality staff and once by an independent company. Centre visits are also undertaken in relation to child and family supports which include one-to-one meetings with families. Issues of concern are also brought to the attention of RIA by representatives of statutory or voluntary agencies working with asylum seekers.

Reply to question 22 (e)

137. As indicated previously, there is no policy of systematic detention of asylum seekers in Ireland. The circumstances in which asylum seekers can be detained, other than in relation to criminal matters are set out in Section 9 of the Refugee Act 1996, as amended. Section 9 also makes clear that such provisions do not apply to persons who are under the age of 18 years.

138. Extensive provision is made in Irish law in relation to detained asylum seekers being brought before a judge of the District Court for their detention to be reviewed. Provision is also made for the prioritisation of applications in the case of detained applicants.

139. Irish law also provides that if an unmarried child under the age of 18 years is in the custody of any person who has been detained, an immigration officer or a member of the Garda Síochána must inform the HSE without delay of the detention and of the circumstances relating to the detention.

140. The provisions relating to the treatment of asylum seekers while detained and where they may be detained are set out in the Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000. These Regulations make extensive provision for information to be provided to third parties (e.g., UNHCR, the applicant’s solicitor) regarding the detention of an individual. Provision is also made for visits and communications, treatment of the detained individual and prohibition on ill-treatment whilst in detention, the personal rights and dignity of the individual, and the need to have regard for any special needs they may have. Detainees must also be allowed to have reasonable contact with members of their family group, whether other members of the family group are detained or not.

141. The Regulations also provide that an individual shall not be detained for a continuous period longer than 48 hours in a Garda station, or for any more than two consecutive overnight stays.

Right to fair trial and independence of the judiciary (art. 14)

23. **While noting the responses received from the State party to the Committee’s previous concluding observations on paragraph 11 under its follow-up procedure, as well as information provided in paragraphs 567 to 578 of the State party report, please provide updated information on:**

(a) **Any measures taken to define “terrorist acts” in domestic legislation;**

25



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(b) The number of terrorist acts that have been investigated and prosecuted, including information on the length of pre-trial detention and access to a lawyer in practice; and

(c) The need for continuing the operation of Special Criminal Courts and expanding their jurisdiction, the criteria used by the Director of Public Prosecution to determine whether a case is eligible to be heard before the Special Court, and why these criteria have not been published; and

(d) The compatibility with the Covenant of Part 4 of the Criminal Justice (Amendment) Act 2009 which allows, under certain conditions, for a hearing to take ex parte, if the judge considers that there may be a risk of prejudice

Reply to question 23 (a)

142. The Government does not consider it necessary to define terrorist acts in domestic legislation. Enhanced sentences over and above those normally handed down for unlawful acts are already provided for in legislation where those illegal acts are committed for terrorist purposes. The Government believes that this is an appropriate response to acts carried out with terrorist intentions. The main body of counter-terrorism law in Ireland comprises the Offences Against the State Acts 1939-1998 and the Criminal Justice (Terrorist Offences) Act 2005. These are supported by the general criminal law. The Government has approved drafting of the Criminal Justice (Terrorist Offences) (Amendment) Bill on 6 November 2012. The Bill will provide for the transposition of Council Framework Decision 2008/919/JHA, which amends Council Framework Decision 2002/475/JHA on combating terrorism. The Bill, when enacted, will create three new offences: public provocation to commit a terrorist offence, recruitment for terrorism, and training for terrorism. Enactment is expected before summer 2014.

Reply to question 23 (b) – (d)

143. In 2012, the latest year for which figures are available, the number of people arrested for terrorist motivated offences was 442. There were also nine convictions. As of January 2013 there were 62 subversive prisoners in the custody of the State, 14 of whom are awaiting trial.

144. The provision of the Constitution of Ireland on the right to liberty is Article 40.4.1, which provides that “[n]o citizen shall be deprived of his personal liberty save in accordance with law”. All persons detained have access to legal advice and may challenge the legality of their detention in the Courts at any time. A comprehensive description of legislation governing the detention of persons in Ireland was provided in Ireland’s commentary on article 9 of the Covenant in its fourth periodic report.

145. The Government considers that there remains a substantial threat from terrorist activity, in particular from so-called “dissident” paramilitary groups. In addition, the activities of organised criminal groups have given rise to concerns about intimidation of jurors. Consequently, the Government is convinced that the integrity of the judicial process requires that, in exceptional cases, some trials should take place in the Special Criminal Court. It is the fervent wish of the Government that the time will come when these provisions will no longer be required; however, the Government must have regard to the reality of the current situation.

146. Ireland is satisfied that the legislative measures in place which give rise to this question are compatible with the Covenant, including articles 9 and 14.



Right to be recognized as a person before the law (art. 16)**24. Please provide detailed information on the steps taken to issue birth certificates to transgendered persons and how transgender organizations have been included in such process, including in relation to the Gender Recognition Bill**

147. The Gender Recognition Advisory Group (GRAG) was established in 2010 to advise the Government on the legislation required to give legal recognition to the acquired gender of transgender persons. In July 2011, the Report of the GRAG was published. Since then and building on this Report, the Department of Social Protection has engaged in a significant consultation and research process during the preparation of the legislation. It has sought and considered the views of a range of organisations and individuals who have experience and expertise in this area, including transgender persons and their representative organisations.

148. Following Government approval, the General Scheme of the Gender Recognition Bill was published on 17 July 2013. This legislation will give legal recognition to the acquired gender of transgender persons. Formal legal recognition, through the issuing of a gender recognition certificate by the Department of Social Protection, will mean that the person's acquired gender will be fully recognised by the State for all purposes – including the right to marry or enter a civil partnership in the acquired gender and the right to a new birth certificate. The legislation will allow for applications from people with intersex conditions should they wish to apply.

149. The General Scheme of the Bill, which has been published on the Department's website, was discussed at hearings of the Joint Oireachtas Committee on Education and Social Protection in October 2013. Officials from the Department of Social Protection, representative groups and legal and medical experts participated in the hearings. The Committee's Report was published on 16 January 2014. Following Government consideration of the Report, the General Scheme of the Bill, with any agreed revisions, will be referred to the Office of the Parliamentary Counsel for drafting with a view to the legislation being published later in 2014.

Freedom of religion (art. 18)**25. Taking note of the information provided in paragraph 611 of the State party report, please provide updated information to amend the constitutional provision requiring a religious oath from judges to allow for a choice of a non-religious declaration, as recommended by the Committee in its previous concluding observations (CCPR/C/IRL/CO/3, para. 21)**

150. This issue of the judicial oath has been considered in Ireland by an All-Party Oireachtas Committee on the Constitution in its Fourth Report, "The Courts and the Judiciary" (published 1999), and prior to that by the Review Group on the Constitution. The majority view of the Committee was that a judge should have a choice between a religious and non-religious declaration while the Review Group recommended just one non-secular oath.

151. A constitutional referendum would be required to amend the Constitutional provision in question and this issue has recently been considered by Government. In July 2012, Government approved consideration of an amendment to the constitution so as to provide for an alternative secular judicial declaration upon appointment to the judiciary. Further consideration of this issue will be required.



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26. **Please provide information on steps being taken to ensure that the right of children of minority religions or non-faith are also recognized in the Education Act 1998, and the number of non-denominational primary schools that have been established during the reporting period. Please also clarify whether there is an accessible and independent complaint handling mechanism to resolve disputes between parents and schools**

152. Section 6 (a) of the Education Act 1998 states that one of its objects is to give practical effect to the constitutional rights of all children as they relate to education. In this context, the policy of the Government has been to provide a sufficiently diverse system, catering for pupils of all religions and none.

New primary schools

153. A New Schools Establishment Group was established in 2011 to advise on the patronage of new schools. The Group's criteria place a particular emphasis on parental demand for plurality and diversity of patronage. 20 new primary schools are to be established by 2017. Between the academic years 2007/08 and 2011/12, 46 new primary schools were established, of which 34 were multi-denominational.

Draft General Scheme for an Education (Admissions to Schools) Bill 2013

154. In September 2013, the Minister for Education and Skills published a Draft General Scheme for an Education (Admission to Schools) Bill 2013, as well as Draft Regulations on the Content of Admission Policies and Draft Regulations on Admission Processes, for discussion ahead of enacting legislation. The aim is to improve the admissions process and to ensure that the way schools decide on applications is structured, fair and transparent.

155. From the perspective of the parent, the framework makes clear that, inter alia, the enrolment policy will include a statement setting out the position of the school in relation to its arrangements for upholding the constitutional right of students not to attend religious instruction.

Follow-up to the Forum on Patronage and Pluralism

156. Following on from the Report of the Advisory Group on Patronage and Pluralism in the Primary Sector, a public consultation on inclusivity in primary schools was held in 2013. It is intended that a White Paper will be drafted by the Department of Education and Skills to set out Government policy in this regard.

Complaint handling mechanism

157. The Department's existing procedure for parents who have a complaint against a school is published on its website. The Department has begun work on the development of a Parents' Charter and this will continue in 2014.

Freedom of opinion and expression (art. 19)

27. **Please provide updated information concerning the measures taken or envisaged to remove the offence of blasphemy from article 40.6.1(i) of the Constitution as well as section 36 of the Defamation Act 2009**

158. The Constitution provides at Article 40.6.1(i) that "[t]he publication or utterance of blasphemous, seditious or indecent matter is an offence which shall be punishable in accordance with law." Successive Attorneys General have advised that, unless this provision is amended or removed, the Government must ensure that blasphemy remains a criminal offence, with sanctions laid down by law. The Constitution may only be amended



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by referendum of the people. There have been two major recent developments in this regard.

159. The Government has already repealed the Defamation Act 1961, which formerly provided for a criminal offence of blasphemy, punishable by up to seven years' penal servitude. Section 36 of the new Defamation Act 2009 maintains a criminal offence of blasphemy, in order to respect the constitutional requirement. However, this new offence is much more limited. The possibility of private prosecution is abolished; the definition of blasphemy is more specific and more limited (requiring proof beyond reasonable doubt of grossly abusive or insulting material intended to cause outrage to a substantial number of adherents of a religion); a new defence is provided (where a reasonable person would find genuine literary, artistic, political, scientific or academic value in the contested material); and imprisonment is removed as a potential penalty. The maximum possible sanction is now a fine of €25,000, considered necessary to respect the constitutional status of the offence. Nevertheless, there has been no public prosecution in Ireland for blasphemy since 1855.

160. The Government committed in its current Programme for Government to consider holding a referendum on Article 40.6.1 (i). In November 2013, the Constitutional Convention completed its review, recommending that the constitutional offence of blasphemy be removed. The Convention's formal report has now been formally laid before the Oireachtas. The Government will give careful consideration to the Convention's recommendations and will provide a formal response within 4 months as to whether they should be given effect.

Rights of persons belonging to minorities (arts. 2, 23, 24, 26 and 27)

28. Please clarify what concrete steps have been taken to recognize Travellers as an ethnic minority based on the principle of self-identification. Please indicate concrete measures taken to support their nomadic or semi-nomadic way of life

161. The Department of Justice and Equality is aware of calls on the part of many Travellers, including a number of national Traveller movements, for recognition of Travellers as an ethnic minority, but equally of the fact that this is not a universally shared view. The Department is also aware of calls for the Government to consider granting such status in the context of international conventions to which Ireland is a party. The Minister for Justice and Equality, against that background, has undertaken to give serious consideration to the issue.

162. Travellers have the same civil and political rights as other citizens under the Constitution. Moreover, the key anti-discrimination measures, the Prohibition of Incitement to Hatred Act 1989, the Unfair Dismissals Acts 1977, the Employment Equality Acts, and the Equal Status Acts specifically identify Travellers by name as a group which are protected. The Equality Act 2004, which transposed the EU Racial Equality Directive, applied all the protections of that Directive across all of the nine grounds contained in the legislation, including the membership of the Traveller community ground. All the protections afforded to ethnic minorities in EU directives apply to Travellers because the Irish legislation giving effect to those EU directives explicitly protects Travellers.

163. The commitment made to give the issue of recognising Travellers as an ethnic minority further consideration led to a conference on the subject of "Ethnicity and Travellers: An Exploration" being convened by the National Traveller Monitoring and Advisory Committee with support from the Department of Justice and Equality in September 2012. That conference provided an opportunity for aspects of the issue of ethnicity to be discussed and built on earlier discussions within the framework of National Traveller Monitoring and Advisory Committee on the issue. That Committee brings together the



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national Traveller organisations as well as senior officials from relevant Government Departments. The report of the conference forms part of the ongoing consideration of this issue.

164. The Department of Justice and Equality has been engaging with other Government Departments on the issue, including by identifying the implications arising from the recognition of Travellers as an ethnic group. Those consultations will ensure that the Department of Justice and Equality has a full analysis of all aspects of granting of ethnic status to Travellers in framing any proposals on the matter.

165. With regard to measures taken to support the nomadic or semi-nomadic way of life of Irish Travellers, the Housing (Traveller Accommodation) Act 1998 specifically requires local authorities to have regard to the provision of transient sites when preparing their Traveller Accommodation Programmes. The 1998 Act was designed to put in place a legislative framework to meet the needs of indigenous Irish Travellers.

166. In accordance with the 1998 Act, statutory responsibility for the assessment of the accommodation needs of Travellers and the preparation, adoption and implementation of multi-annual Traveller accommodation programmes, designed to meet the accommodation needs of Travellers, rests with individual housing authorities. The role of the Department of the Environment, Community and Local Government is to ensure that there is an adequate legislative and financial system in place to assist the authorities in providing such accommodation.

167. The “Memorandum on the Preparation Adoption and Implementation of Local Authority Traveller Accommodation Programmes 2014–2018” is intended to provide housing authorities with advice and guidance on the preparation, adoption and implementation of their next Traveller Accommodation Programmes. Under section 10 of the 1998 Act, housing authorities are required to prepare an accommodation programme for a five-year period beginning on a date specified by the Minister, and thereafter in respect of each succeeding 5 years, or each such shorter period as the Minister may direct. Accordingly, the Minister has directed that the next accommodation programme should be for a period of five years. Each relevant housing authority is therefore required to prepare a new five-year programme for the period 1 January 2014 to 31 December 2018.

168. In a Departmental circular issued to Local Authorities in August 2013 regarding the new Traveller Accommodation Programmes, relevant housing authorities were requested to identify the accommodation needs of Traveller families to be met under the new programmes. This must relate to the existing accommodation needs and needs that will arise during the period of the programmes across a range of accommodation options including standard and group housing, permanent residential sites for caravans, and transient sites provided directly by the housing authority or by approved housing bodies or individuals, with or without the assistance of the housing authority.

169. A transient site is a site used by Travellers other than as their normal place of residence. Guidelines issued by the Department envisage that these sites may range from sites with basic accommodation services to sites containing permanent structures with access to washing and cleaning facilities. However, such sites would only be used occasionally during each year.

170. The National Traveller Accommodation Consultative Committee (NTACC) was established on a statutory basis under the Housing (Traveller Accommodation) Act 1998. The purpose of the Committee is to advise the Minister in relation to Traveller accommodation issues generally. NTACC decided to focus on areas where Travellers gather, e.g., the Knock Novena. Matters which are being considered include the provision of simple “pull-in, pull-out” areas with basic services rather than large formal transient sites or the possible use of private caravan parks as a transient accommodation option.



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171. In the latest statistics available, the Annual Count of Traveller Families 2012 showed an increase of 3.9% in the numbers of Traveller families from 9,535 in 2011 to 9,911 in 2012. There was also an increase in the number of Transient Site Halting Bays for Traveller families from 31 in 2011 to 37 in 2012.

29. Given the lack of information provided in the State party report concerning the situation of Roma communities, please clarify specific measures taken to ensure their full enjoyment of Covenant rights, including their right to political participation and the right to be protected against arbitrary interference with their family life

172. The Roma Community in the Irish State is made up principally of persons of Romanian, Hungarian, Polish and Czech Republic origin, all of whom are EU citizens and, as such, in terms of immigration controls, are covered by the provision of the European Communities (Free Movement of Persons) (No. 2) Regulations 2006. Such persons are not required to register their presence in the State. They have the same rights as any other citizen from their country of origin legally resident in this State.

173. There have regularly been voter registration campaigns in recent years focussing on encouraging immigrants to register to vote and to exercise their franchise. Many of these campaigns have been supported by funding from the Office for the Promotion of Migrant Integration of the Department of Justice and Equality. Electoral Register leaflets are available in 17 different languages since 2013. The language versions include, inter alia, Czech, Hungarian, Romanian, Slovak, and Latvian. All EU citizens may vote at European and local elections. Non-EU citizens may vote at local elections.

174. The Constitution guarantees protection of the rights of the family and acknowledges the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.

30. Please explain whether the State party is planning to revise its criminal legislation prohibiting hate speech, with a view to rendering more comprehensive and effective the protection of minority groups

175. The Prohibition of Incitement to Hatred Act 1989 defines hatred as "hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation".

176. The Council of the European Union and the European Commission have been examining member state compliance with Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

177. The Commission will be engaging further with member states in this regard and we will consider any proposals made by the Commission that would enhance the existing protections in the 1989 legislation.



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Annexes

Annex I
TablesTable 1
Number of complaints received by the Garda Síochána Ombudsman Commission, 2008-2012

Year	Complaints				
	2008	2009	2010	2011	2012
No. of complaints	2,681	2,097	2,258	2,275	2,089

Table 2
Types of allegations made in complaints received by the Garda Síochána Ombudsman Commission, 2008-2012

Year	Allegation Types				
	2008	2009	2010	2011	2012
Abuse of Authority	26%	26%	34%	39%	34%
Neglect of Duty	25%	25%	29%	26%	27%
Discourtesy	21%	18%	13%	12%	12%
Non-fatal offences	13%	15%	11%	11%	11%
Other	15%	16%	13%	12%	16%

Table 3
Prisoner population as on 9 January 2014, with reference to the maximum capacity for each prison outlined by the Inspector of Prisons in his report of May 2013

Prison	Number in custody	Bed capacity per IOP	% of IOP bed capacity
Mountjoy (Male)	528	540	98
Mountjoy (Female)	118	105	112
Training Unit	104	96	108
St. Patrick's Institution	69	191	36
Cloverhill	392	414	95
Wheatfield	474	642	74
Midlands	843	777	108
Portlaoise	253	291	87
Cork	218	173	126
Limerick (Male)	214	185	116
Limerick (Female)	29	24	121
Castlerea	356	300	119
Arbour Hill	143	131	109
Loughan House	124	140	89
Shelton Abbey	106	115	92

Table 4
Number of prisoners without in-cell sanitation as of 1 October 2013

Cork	204
Mountjoy	182
Portlaoise	62
Limerick	56



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<i>Cork</i>	204
Total	540

**Table 5
Number of deaths in custody, 20082013**

2008	11 cases
2009	10 cases
2010	11 cases
2011	6 cases
2012	5 cases
2013	7 cases

**Table 6
Prisoner assaults, 20112013**

<i>No. of prisoner on prisoner assaults (Jan.-Mar. 2013)</i>	168
No. of prisoner on staff assaults (Jan.-Mar. 2013)	46
No. of prisoner on prisoner assaults 2012	715
No. of prisoner on staff assaults 2012	107
No. of prisoner on prisoner assaults 2011	1115
No. of prisoner on staff assaults 2011	141

**Table 7
Category A complaints investigated by external investigator/s on behalf of the Irish Prison Service**

<i>No. of Category A complains received</i>	79
No. of Category A complaints upheld	4
No. of Category A complaints not upheld and not appealed	43
No. of Category A complaints currently under investigation	27
No. of Category A complaints currently on appeal	4
No. of Category A complaints appealed and not upheld	1
No. of Category A complaints appealed and upheld	0

**Table 8
Voluntary admissions to approved centres per year under sections 23 and 24 of the Mental Health Act 2001, 20082012**

<i>Year</i>	<i>Voluntary Admissions</i>
2008	18,748
2009	18,171
2010	17,667
2011	16,935
2012	16,032

**Table 9
Overview of human trafficking statistics, 20092012**

<i>Year</i>	<i>Number of alleged victims</i>	<i>Number of Investigations</i>	<i>Number of Convictions</i>
2009	66	68	2
2010	78	69	3
2011	57	53	4
2012	48	37	6



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Table 10
Details of the convictions recorded for the period 2009 to 2012 for human trafficking

<i>Year</i>	<i>Act</i>	<i>Accused</i>	<i>Charges</i>	<i>Sentence</i>
2009	Child Trafficking and Pornography Act 1998 Common law offences	Adult male	Possession of Child Pornography. Soliciting another to commit an offence contrary to Section 3 of the Child Trafficking Act 1998 (Child Trafficking and taking etc. child for sexual exploitation)	6 years imprisonment.
2009/10	Child Trafficking and Pornography Act 1998	Adult male	Incitement to traffic a minor for sexual exploitation and incitement to the possession of child pornography	6 years imprisonment and Post Release Supervision Order for 20 years.
2010	Criminal Law (Human Trafficking) Act 2008	Adult male	Recruitment and trafficking of a minor	3 years imprisonment (suspended). Placed on the Sex Offenders Register for 5 years and entered into a bond to be of good behaviour for a period of 3 years.
2010	Child Trafficking and Pornography Act 1998	Adult male	Sexual exploitation of a child	Eight month imprisonment (suspended).
2010	Child Trafficking and Pornography Act 1998 Criminal Law (Rape) (Amendment) Act 1990	Adult male	Recruitment and trafficking of a minor for sexual exploitation and production of child pornography	10 years imprisonment. Placed on Sex Offenders Register for life. Post Release Supervision Order for 15 years.
2011	Criminal Law (Human Trafficking) Act 2008	Adult male	Recruitment and trafficking of a minor for sexual exploitation	3 years imprisonment
2011	Child Trafficking and Pornography Act 1998	Adult female	Controlling and sexually exploiting a minor for the purposes of prostitution	4 years imprisonment (final two years suspended).
2011	Child Trafficking & Pornography Act 1998	Adult male	Controlling and sexually exploiting of a minor for the purposes of creating child pornography	Fine of €100.
2011	Criminal Law (Sexual Offences) Act 1993	Adult male	Controlling/organising prostitution (female adult victim)	2½ years imprisonment (final fifteen months suspended).
2012	Criminal Law (Rape) (Amendment) Act 1990 Child Trafficking and Pornography Act 1998	Adult female	Sexual assault and sexual exploitation of a minor as well as child pornography	3 years imprisonment



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<i>Year</i>	<i>Act</i>	<i>Accused</i>	<i>Charges</i>	<i>Sentence</i>
2012	Criminal Law (Human Trafficking) Act 2008 Non Fatal Offences against Persons Act 1997 Common law offences	Adult male	Restrict the freedom of a female minor for sexual exploitation, assault and the attempted false imprisonment of a minor	12 years imprisonment
2012	Criminal Law (Human Trafficking) Act 2008	Adult male	Sexual exploitation of a minor	4 years imprisonment
2012	Criminal Law (Sexual Offences) Act 1993 Criminal Law (Human Trafficking) Act 2008	Adult male	Sexual exploitation of a minor	4 years imprisonment to run concurrently on each of the two charges of child pornography. Sentencing outstanding on 2 other charges including 2 under the 2008 Act.
2012	Child Trafficking and Pornography Act 1998	Adult male	Possession of child pornography	2 ½ years imprisonment.
2012	Illegal Immigrants (Trafficking) Act, 2000 Criminal Law (Sexual Offences) Act 1993	Adult Female	Smuggling of a female minor illegal immigrant and controlling/directing prostitution	3 years imprisonment

Table 11
Details of fines and debtors committals from 2007/2013

<i>Year</i>	<i>Fines Committals</i>	<i>Debtors Committals</i>
2007	1,335	201
2008	2,520	255
2009	4,806	162
2010	6,683	5
2011	7,514	35
2012	8,304	22
2013	8,196	21



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Annex II

Examples of category of complaints to the Garda Síochána Ombudsman Commission

Abuse of authority:

- (a) Unauthorised entry to premises, *e.g.*, entering a premises without the owner's permission and without a warrant;
- (b) Unlawful arrest, *e.g.*, person arrested without a warrant;
- (c) Excessive Force, *e.g.*, handcuffs purposely put on too tight;
- (d) Unlawful/unnecessary search, *e.g.*, no grounds/justification for search/strip search;
- (e) Threats, *e.g.*, verbal threats but not threats of assault;
- (f) Unlawful detention, *e.g.*, not allowed to leave a vehicle (any vehicle) or premises;
- (g) Harassment, *e.g.*, all forms of harassment such as continuous road traffic stops, stop and searched and/or surveillance.

Neglect of duty:

- (a) Failure to comply with a court order;
- (b) Failure to comply with the Garda Code;
- (c) Failure to comply with a Garda HQ Directive;
- (d) Failure to comply with the Garda Code of Ethics;
- (e) Failure to adequately investigate alleged criminal behaviour;
- (f) Lack of response (or no response or action taken), *e.g.*, not returning phone calls, letters or emails;
- (g) Negligent actions, *e.g.*, failure to return property, *e.g.*, when a house is raided and a mobile phone is not returned.

Discourtesy:

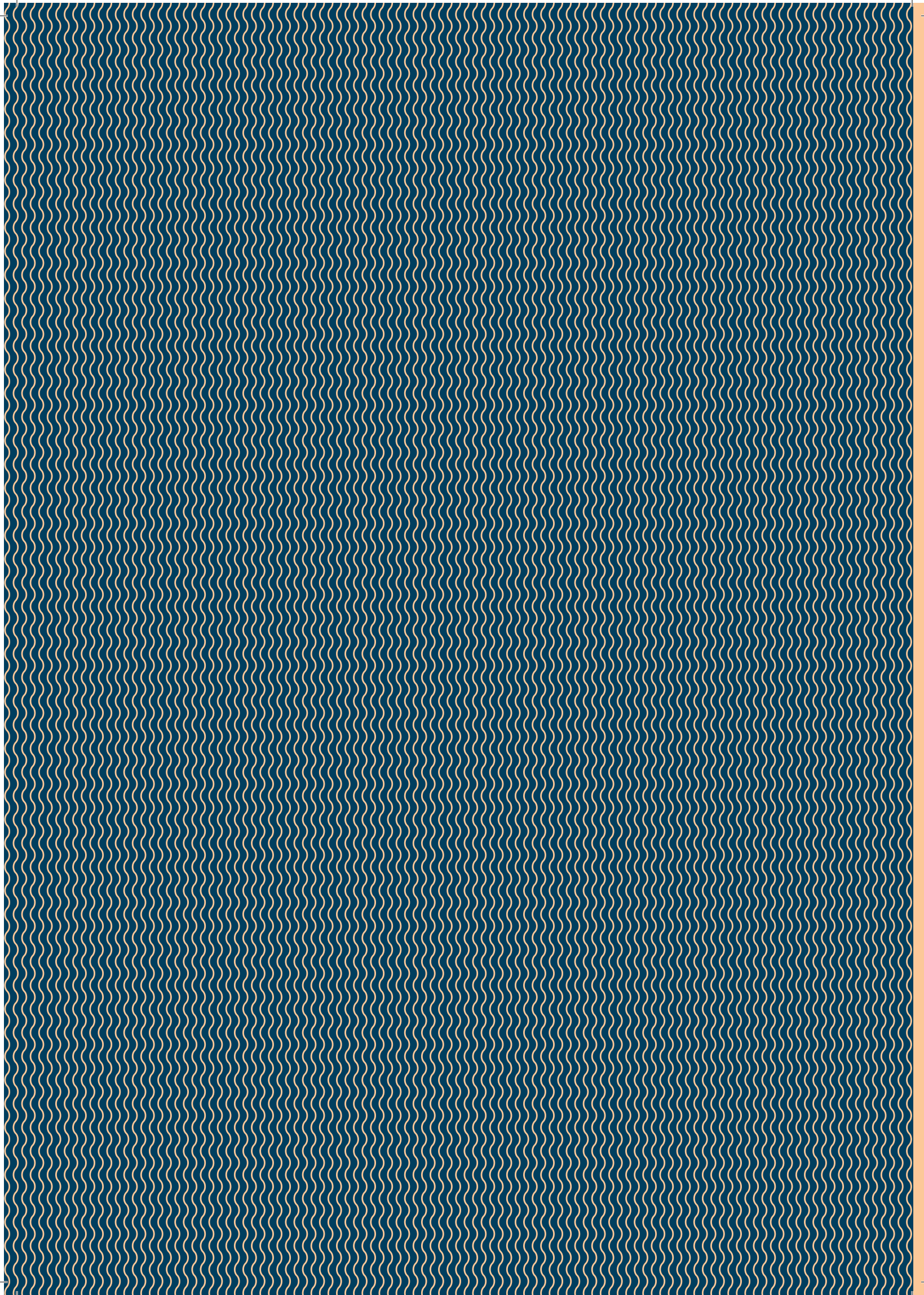
- (a) Discourteous language;
- (b) Discourteous behaviour;
- (c) Discriminatory language/behaviour, *e.g.*, calling someone a name that would be considered as discriminatory. (This is different from discrimination as this is not in relation to a person's motivation for certain actions or non actions.)

Non-fatal offences:

- (a) Section 2 Assault: minor assault (minor injuries or no injuries);
- (b) Section 3 Assault: serious assault causing harm;
- (c) Section 4 Assault: intentionally assaulting someone causing serious harm.⁶

⁶ Serious harm is defined as injury that creates a substantial risk of death/serious disfigurement/substantial loss or impairment of all or some of the body including organs.





Section 5

List of Issues on Ireland

November 2013



United Nations
**International Covenant on
 Civil and Political Rights**

CCPR/C/IRL/Q/4

Distr.: General
 22 November 2013

Original: English

Human Rights Committee

**List of issues in relation to the fourth periodic report of
 Ireland***

**Constitutional and legal framework within which the Covenant is implemented
 (art. 2)**

1. Given that the Covenant is not directly applicable in the State party, please provide information on measures taken to ensure that all of the Covenant provisions are fully given effect in its domestic legal order, including any progress achieved in the “tabulation of relevant provisions to clarify the situation”, which the State party undertook to implement during the consideration of its third periodic report in 2008.
2. Taking note of the withdrawal of the State party’s reservations to articles 14 and 19(2) of the Covenant, please clarify whether the State party will also review its reservations to article 10, paragraph 2 and article 20, paragraph 1 with a view to withdrawing them. If not, please indicate why, identifying the remaining obstacles.
3. Please provide updated information concerning:
 - (a) The merger of the Irish Human Rights Commission and the Equality Authority into a new Irish Human Rights and Equality Commission (IHREC), including details of how the new IHREC will be in compliance with the Principles relating to the Status of National Institutions (the Paris Principles), in particular with regard to financial autonomy, independent and transparent procedures for the recruitment and election of the Chief Commissioner and the members, and direct accountability to Parliament;
 - (b) The proposed merger of the Labour Court, Labour Relations Commission, Employee Appeals Tribunal, National Employment Rights Authority and Equality Tribunal into one agency. In particular, please clarify how complaints and appeals in relation to the Equal Status Acts 2000–2011 will be dealt with by the new agency; and
 - (c) The measures adopted to ensure the effective transfer of the mandates and responsibilities of the National Consultative Committee on Racism and Interculturalism and the Combat Poverty Agency into new or existing bodies, given their abolishment in 2008 and 2009 respectively. Please also indicate any plans to adopt a successor to the National Action Plan Against Racism 2005–2008.
4. Please provide further information on:
 - (a) The types of complaints filed with the Garda Síochána Ombudsman Commission (GSOC) and their outcomes during the reporting period, including details of non-fatal offences;

* Adopted by the Committee at its 109th session (14 October–1 November 2013).
 GE.13-49050

Please recycle 



CCPR/C/IRL/Q/4

- (b) The current backlog of cases before GSOC and the exact nature of these cases;
 - (c) What measures the State party is taking to ensure cooperation of the Garda with the investigations undertaken by GSOC; and
 - (d) Cases in which GSOC referred complaints to the Garda Commissioner for investigation. How does the State party reconcile this practice of investigative referrals with the duty to conduct independent investigations of complaints?
5. Please provide information on how the Government addresses concerns regarding the activities of private businesses based in the State party that may lead to violations of the Covenant outside the territory of the State party.

Non-discrimination, right to an effective remedy and equal rights of men and women, including political participation (arts. 2 para. 1, 3, 16 and 26)

6. Please provide updated information on:
- (a) Steps taken or envisaged to amend article 41.2 of the Constitution in line with the Committee's previous recommendation (CCPR/C/IRL/CO/3, para. 10), as well as the recommendation outlined in the second report of the Convention on the Constitution, including a timeframe to hold a referendum;
 - (b) The General Scheme of the Electoral (Amendment) (Political Funding) Bill 2011, which aims at increasing the representation of women in politics; and
 - (c) Measures taken to increase the representation of women in decision-making positions, and to meet the 40 per cent target in all State board positions as outlined in the Programme for a National Government 2011–2016.
7. Please inform the Committee of the progress in adopting the Assisted Decision Making (Capacity Bill).

Domestic, sexual and gender-based violence (arts. 3, 7, 23, 24 and 26)

8. Please provide updated information on:
- (a) Steps taken to establish a systematic data collection procedure concerning cases of domestic and sexual violence;
 - (b) Complaints, prosecutions and sentences in relation to violence against women, including in relation to Traveller women, migrant women, asylum-seeking and refugee women and women with disabilities, during the reporting period; and
 - (c) Measures taken to ensure that women in dating relationships and unmarried cohabitants have equal access with regard to barring orders against perpetrators of violence, and that non-citizens whose status is linked to that of their partner under the Habitual Residence Condition are able to flee from situations of domestic violence to access the necessary welfare and support services and to obtain separate residence permits.
9. Please clarify:
- (a) When the State party will establish a prompt, thorough and independent investigation into the abuse perpetrated in the Magdalene Laundries as recommended by the Irish Human Rights Commission in its follow-up report on State involvement with Magdalene Laundries; and
 - (b) How the redress scheme proposed by Mr. Justice John Quirke will be monitored by an independent body, and how the appeals process will operate.
10. Taking note of the information received that the Monitoring Group for the "Ryan Implementation Plan" – adopted pursuant to the report of the Commission to Inquire into Child Abuse – will reportedly conclude its work in 2013, please provide information on the

replacement mechanism to ensure the full implementation of the plan, as well as on the number of criminal prosecutions in child abuse cases.

Derogation (art. 4)

11. Please provide further information on measures taken to ensure that its domestic legal provisions, including article 28.3 of the Constitution, are consistent with article 4 of the Covenant, as recommended by the Committee in its previous concluding observations.

Right to life (arts. 6, 7 and 17)

12. Please provide information on:

(a) How the Protection of Life During Pregnancy Act 2013 is in compliance with articles 6 and 7 of the Covenant and the Committee's previous recommendations;

(b) Concrete measures that are being taken or envisaged to clarify what a "real and substantial risk" to the pregnant women's life means in practice, in order to provide legal and clinical clarity for health providers and certainty for women experiencing potentially life-threatening pregnancies;

(c) Whether the State party intends to introduce measures to broaden access to abortion to guarantee women's rights under the Covenant, including when the pregnancy poses a risk to the health of the pregnant woman, where the pregnancy is the result of a crime, such as rape or incest, cases of fatal foetal abnormalities, or when it is established that the foetus will not survive outside the womb; and

(d) Circumstances in which the Director of Public Prosecutions may authorize prosecutions, and against whom, under section 22 of the Act.

Right to liberty and security of person, prohibition of torture and cruel, inhuman or degrading treatment or punishment, and treatment of persons deprived of their liberty, and fair trial (arts. 7, 9, 10, 14 and 24)

13. Please provide updated information on:

(a) The number of prisoners accommodated in each of the prisons in the State party vis-à-vis the maximum capacity for each prison outlined by the Inspector of Prisons in his report of May 2013;

(b) The number of remaining prisons without in-cell sanitation out of all the prisons in the State party, and the time frame to abolish the practice of "slopping out";

(c) The mortality rate in prisons and the number of victims (dead and injured) harmed by inter-prisoner violence; and

(d) Timeline for ending the use of St. Patrick's Institution for the detention of minors.

14. Please provide statistical data on the number of complaints of torture and ill-treatment filed against prison officers, the number of investigations instituted, and the number of prosecutions and convictions imposed. Please also clarify what steps have been taken to establish an independent and effective complaints and investigation mechanism to investigate complaints against prison staff, including allegations of ill-treatment, as recommended by the Inspector of Prisons.

15. Please provide information on the progress achieved in ensuring the separation of sentenced and remand prisoners, and of detained immigrants from criminal prisoners.

16. Please clarify the legal provisions providing for the right of criminal suspects to contact counsel before interrogation, as well as during interrogation in police detention



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facilities. Please also provide information on how individuals held in police custody are informed in a timely and consistent fashion of the consequences of remaining silent.

17. Please provide updated information on measures taken to prohibit all corporal punishment of children in all settings, as well as any public campaigns undertaken to educate parents and the general public about its harmful effects and to promote positive non-violent forms of discipline as an alternative to corporal punishment.

18. Please provide further information on specific and concrete steps taken, beyond official assurances, to ensure that aircrafts used for the purpose of extraordinary rendition, whether they carry prisoners on board or not, do not pass through the territory of the State party. What measures are taken to investigate past allegations concerning the use of the State party's territory for the purpose of extraordinary rendition flights?

19. Please provide detailed information on:

(a) The number of so-called voluntary patients who have been detained under section 23 or section 24 of the Mental Health Act 2001 during the reporting period;

(b) How the State party intends to improve conditions in mental health facilities and compliance by mental health institutions with the statutory Code of Practice on the Use of Physical Restraint in Approved Centres and the Rules Governing the Use of Seclusion; and

(c) The use of Electro Convulsive Therapy (ECT) in relation to both voluntary and involuntary patients who are accommodated in approved centres during the reporting period, and on any steps taken to ensure that ECT remains a treatment of last resort and that consent to ECT treatment is explicitly set out in law.

Elimination of slavery and servitude (arts. 2, 8 and 24)

20. Please provide information on:

(a) Steps taken to establish a systematic data collection procedure concerning victims of trafficking and forced labour as well as a case management system to track the delivery of services to such victims across multiple Government agencies;

(b) The extent of sale or trafficking in persons for any purpose or in any form, including abductions of children, as well as related prosecutions and sentences during the reporting period;

(c) How victims of trafficking who have sought asylum can also benefit from the recovery and reflection period or temporary residence permission;

(d) The availability of timely and adequate access to and provision of legal services for victims of trafficking and forced labour; and

(e) The applicability of anti-trafficking legislation to EU residents or nationals.

Imprisonment for failure to fulfil a contractual obligation (art. 11)

21. Please provide statistics on the number of individuals who were imprisoned for non-payment of court ordered fines or civil debt during the reporting period. Please clarify what steps are being taken to ensure that no one is imprisoned for failure to pay a civil debt or fine that he or she cannot pay.

Refugees and asylum seekers (art. 13)

22. Please provide information on measures taken to:

(a) Reduce the delay in the processing of asylum claims;

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- (b) Establish an independent appeals body to review all immigration-related decisions, as recommended by the Committee in its previous concluding observations;
- (c) Ensure that asylum-seekers have full access to early and free legal representation, as recommended by the Committee in its previous concluding observations;
- (d) Establish an independent complaints or monitoring mechanism available to persons living in Direct Provision centres; and
- (e) Review its detention policy with regard to asylum-seekers and give priority to alternative forms of accommodation, as recommended by the Committee in its previous concluding observations.

Right to fair trial and independence of the judiciary (art. 14)

23. While noting the responses received from the State party to the Committee's previous concluding observations on paragraph 11 under its follow-up procedure, as well as information provided in paragraphs 567 to 578 of the State party report, please provide updated information on:

- (a) Any measures taken to define "terrorist acts" in domestic legislation;
- (b) The number of terrorist acts that have been investigated and prosecuted, including information on the length of pretrial detention and access to a lawyer in practice;
- (c) The need for continuing the operation of Special Criminal Courts and expanding their jurisdiction, the criteria used by the Director of Public Prosecution to determine whether a case is eligible to be heard before the Special Court, and why these criteria have not been published; and
- (d) The compatibility with the Covenant of Part 4 of the Criminal Justice (Amendment) Act 2009 which allows, under certain conditions, for a hearing to take place *ex parte*, if the judge considers that there may be a risk of prejudice.

Right to be recognized as a person before the law (art. 16)

24. Please provide detailed information on the steps taken to issue birth certificates to transgendered persons and how transgender organizations have been included in such process, including in relation to the Gender Recognition Bill.

Freedom of religion (art. 18)

25. Taking note of the information provided in paragraph 611 of the State party report, please provide updated information to amend the constitutional provision requiring a religious oath from judges to allow for a choice of a non-religious declaration, as recommended by the Committee in its previous concluding observations (CCPR/C/IRL/CO/3, para.21).

26. Please provide information on steps being taken to ensure that the right of children of minority religions or non-faith are also recognized in the Education Act 1998, and the number of non-denominational primary schools that have been established during the reporting period. Please also clarify whether there is an accessible and independent complaint handling mechanism to resolve disputes between parents and schools.

Freedom of opinion and expression (art. 19)

27. Please provide updated information concerning the measures taken or envisaged to remove the offence of blasphemy from article 40.6.1(i) of the Constitution as well as section 36 of the Defamation Act 2009.



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Rights of persons belonging to minorities (arts. 2, 23, 24, 26 and 27)

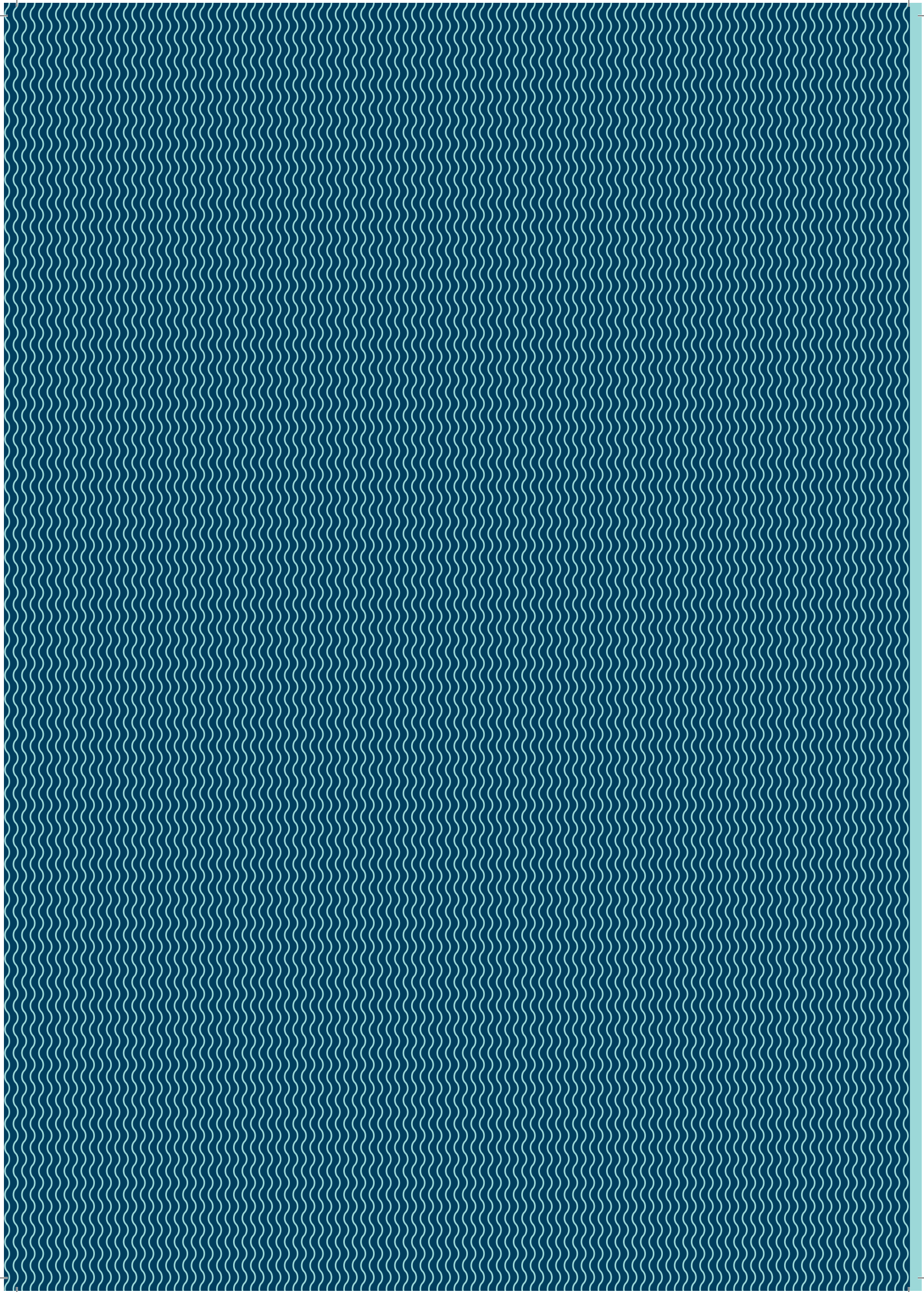
28. Please clarify what concrete steps have been taken to recognize Travellers as an ethnic minority based on the principle of self-identification. Please indicate concrete measures taken to support their nomadic or semi-nomadic way of life.

29. Given the lack of information provided in the State party report concerning the situation of Roma communities, please clarify specific measures taken to ensure their full enjoyment of Covenant rights, including their right to political participation and the right to be protected against arbitrary interference with their family life.

30. Please explain whether the State party is planning to revise its criminal legislation prohibiting hate speech, with a view to rendering more comprehensive and effective the protection of minority groups.

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Section 6

Civil Society Shadow Report

September 2013

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Introduction

The Irish Council for Civil Liberties (ICCL) is Ireland's independent human rights watchdog which monitors, educates and campaigns for the respect and protection of human rights in Ireland. Founded in 1976 by Mary Robinson and others the ICCL has campaigned on a range of human rights issues including, but not limited to, the decriminalization of homosexuality, the introduction of divorce, the establishment of an independent Garda Síochána (Police) Ombudsman Commission, equality for same-sex couples, the rights of victims and women's reproductive rights.



The ICCL welcomes the opportunity to contribute to the compilation of the List of Issues for Ireland's Fourth Periodic Report under the International Covenant on Civil and Political Rights (ICCPR) ahead of the 109th Session of the Human Rights Committee – 14 October to 1 November 2013, Geneva.

This submission was compiled following consultation with civil society organisations in Ireland many of whom made submissions to the ICCL to assist in the compilation of the report. A Steering Group for the reporting project, including Gay and Lesbian Equality Network (GLEN), Trans-gender Equality Network Ireland (TENI), Terminations of Medical Reasons (TFMR), Educate Together, Immigrant Council of Ireland (ICI), Irish Family Planning Association (IFPA), Inclusion Ireland, Free Legal Advice Centres (FLAC) and the Irish Traveller Movement provided peer support, advice and relevant information on the compilation and content of the report.

Following on from Ireland's last engagement with the Human Rights Committee in 2008, the ICCL notes a number of positive developments have taken place in Ireland including the recent adoption of the Protection of Life during Pregnancy Act 2013, the adoption of the Criminal Justice (Female Genital Mutilation) Act 2012, the State apology and subsequent movement towards redress for the women detained in Magdalene Laundries, the outcome of the referendum on the Rights of Children, penal reform measures and the adoption of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

The ICCL also welcomes recent positive developments in relation to proposals to provide for legal recognition of gender for trans-gender persons, new laws on assisted decision making and the commitment to close the children's detention facility, St Patrick's Institution.

However, as detailed in the report the ICCL regrets that there has been little or no movement on a number of areas of concern including, inter alia, broadening Ireland's restrictive laws on abortion to meet its obligations under the Covenant, the enactment of the proposed Immigration, Residence and Protection Bill, measures to end the practice of direct provision for asylum seekers and to eliminate delays in the asylum applications system, progress on the recognition of Travellers as an ethnic group, strengthening the independence of Ireland's policing Ombudsman together with very significant cuts to Ireland's human rights and equality infrastructure during the reporting period.

This submission sets out the gaps where the ICCL considers Ireland not to be in compliance with ICCPR standards. We respectfully request that the Committee consider taking account of the issues raised in the submission when compiling the List of Issues on Ireland ahead of Ireland's next examination under ICCPR in 2014.



1. International Human Rights Law and the Irish Legal Framework

ICCPR: Articles 2 and 3

1.1 Reservations

The withdrawal of the reservation to Article 19, paragraph 2 of the ICCPR by Ireland in 2011 since the conclusion of Ireland's third reporting cycle is to be welcomed.¹ However, Ireland continues to maintain reservations under Article 10 (2) and Article 20(1) of the ICCPR.²

The Committee is urged to request detailed information on the status of Ireland's remaining reservations under ICCPR and to seek clarification concerning the withdrawal of the remaining reservations.



1.2 International Human Rights Framework

32%, while the budget for the Equality Authority was cut by 43%.⁵ These cuts were widely considered to be of a disproportionate nature, subsequently impacting both the operation and efficiency of these bodies contrary to recommendations of the Committee.⁶ In addition, the National Consultative Committee on Racism and Interculturalism (NCCRI), which advised the Government on issues relating to racism and interculturalism, was closed down in 2008 coinciding with the ending of the National Action Plan against Racism (NPAR) which has not been replaced in the interim period.⁷ The Combat Poverty Agency, an independent statutory body, was also closed.⁸ Most but not all of the functions of both bodies were subsumed directly into Government departments.

As set out in the State Report,⁹ the existing Irish Human Rights Commission and the Equality Authority will merge to establish the Irish Human Rights and Equality Commission (IHREC), a single body with a mandate to carry out the functions of both organisations.¹⁰ In May 2012, the General Scheme of the Bill governing the proposed merger was published;¹¹ however, at the time of submission, the final text of the Bill has yet to be published. In April 2013, in advance of the establishment of the new body, a Commission comprising fourteen independently selected Commissioners was appointed to oversee the establishment of the Commission.¹²

There is growing concern at the pace of the establishment of the new combined Irish Human Rights and Equality Commission, the fact that governing legislation to establish the new body has yet to be enacted, the adequacy of resources that will be available to the new body and whether the new body will be established in full compliance with the Paris Principles, including maintaining its A-Status accreditation with the International Coordinating Committee (ICC).

The State Report describes the Government's intention to merge five employment and equality related agencies into a single agency.¹³ This includes the Labour Court, Labour Relations Commission, Employee Appeals Tribunal, National Employment Rights Authority and Equality Tribunal.¹⁴ To date, legislation governing the merger has not yet been published;¹⁵ however, the Department of Jobs, Enterprise and Innovation has publicly indicated that the forum for complaints and appeals in relation to the Equal Status Acts 2000-2011 is still a matter for consideration.¹⁶ Although it is difficult

to ascertain the impact that this merger will have on people taking cases concerning equal treatment in employment and under the Equal Status Acts,¹⁷ it is imperative that an accessible and cost-effective forum for anti-discrimination cases is retained.

Furthermore, it is clear that budget cuts to the Equality Tribunal have already had a significant impact on the decision-making capacity of the body. Between 2008 and 2012, the number of decisions issued by the Equality Tribunal in relation to cases concerning equal treatment in the provision of goods and services fell from an annual rate of 123 to 45. This sharp downturn could also be explained by a low level of awareness of the role and function of the Tribunal as well as a reduction in the willingness of potential complainants to seek redress.

The Committee should ask the State party to provide a detailed account on how the reform of the current State-funded human rights and equality bodies will produce a more coherent and effective institutional framework for the protection and promotion of human rights.

The Committee is urged to ask the State party for details on the current status of the planned reform of Irish Human Rights Commission and the Equality Authority, including a timeframe for the adoption of proposed legislation governing the reform processes, an outline of how the new IHREC will comply with the Paris Principles and how this newly established body will aim to satisfy the conditions for A-Status accreditation from the International Coordinating Committee.

The Committee is urged to ask the State party for detailed information on the adequacy of proposed funding and staffing arrangements, information on whether and how the existing levels of service can be improved and information on how awareness among members of the public of the role and function of these bodies will be raised.

The Committee is urged to ask the State party for details on the proposed merger of the employment and equality related agencies and for information on how cases under the Equal Status legislation will be dealt with in future. The Committee is urged to ask the State party to explain the significant drop in cases taken to the Equality Tribunal from 2008 (123) to 2012 (45) under the Equal Status Acts.



1.3 International Treaty Instruments

As the Committee will be aware and as set out in the State Report, Ireland has signed, but not ratified, five of the main international treaties and covenants, including the UN Convention on the Rights of Persons with Disabilities (CRPD) and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).¹⁸

On foot of its inaugural UPR examination in 2011, nine countries recommended that Ireland ratify the OPCAT.¹⁹ On 6 February 2013, in a written response to a Parliamentary question, the Minister for Justice, Equality and Defense stated that the Government had “approved the drafting of a General Scheme of an Inspection of Places of Detention Bill, which will include provisions to enable ratification of OPCAT”.²⁰ He continued that the “Bill will make provision for the designation of National Preventative Mechanisms”.²¹ However, no timeframe was provided for the introduction of the legislation beyond his statement that “it is expected that the General Scheme will be completed early this year [2013]”.²² Given the significant delay in ratification of the OPCAT, it is submitted that this legislation should be prioritised within the upcoming Government Legislative Programme.

With respect to Ireland’s ratification of the CRPD, Ireland received UPR recommendations regarding ratification of the Convention from fifteen countries.²³ The Government has consistently maintained that Ireland was not in a position to ratify the Convention until the law on assisted decision-making was aligned with the standards of the Convention. On 17 July 2013, the Assisted Decision-Making

(Capacity) Bill 2013 was published and, if enacted, would remove any remaining barrier to Ireland’s ratification of the CRPD. The State Report indicated that once legislation on assisted decision-making is enacted, it is the intention of the State to ratify the Convention ‘as quickly as possible’.²⁴

The Committee is urged to ask the State party when it will produce the General Scheme of an Inspection of Places of Detention Bill. The Committee is urged to ask the State party how it will ensure an inclusive and genuinely participatory consultation process on the Inspection of Places of Detention Bill.

The Committee is urged to ask the State party to provide detailed information on what steps will be taken to incorporate all UN treaties and Covenants (including Optional Protocols) into Irish law, including specific timeframes for ratification and incorporation of these instruments. The Committee should ask the State party when it intends to ratify the Optional Protocol to the UN Convention against Torture, and to establish effective National Preventative Mechanisms (NPM) under the Protocol.





2. Discrimination and Hate Crime

ICCPR: Articles 2 and 27

1.2 Hate Crime in The Criminal Law

In its Concluding Observations on Ireland's Third and Forth Periodic Reports under the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Committee recommended that:

(a) in line with article 4(b) of CERD, legislation be passed to declare illegal and prohibit racist organisations; (b) that racist motivation be consistently taken into account as an aggravating factor in sentencing practice for criminal offences; and (c) that programmes of professional training and development sensitise the judiciary to the racial dimensions of crime.²⁵



Despite the recommendations of the CERD Committee and, more recently, by the European Commission against Racism and Intolerance,²⁶ Irish criminal law does not make express provision for racism as an aggravating circumstance at sentencing, except through the exercise of judicial discretion. Therefore, offences where racism may constitute a motivating factor continue to be dealt with in a generic fashion under the general criminal law.

The State Report notes that the review of Ireland's Incitement to Hatred Act 1989 (the "1989 Act"), published in 2008, specifically recommended against the introduction of racially motivated offences but advocated that racism should be taken into account as an aggravating factor at sentencing.²⁷ While the State party report provides a useful summary of the recommendations of the authors of the review, it does not indicate whether the State party believes there is merit in the introduction of legislative provisions to ensure that aggravating factors are consistently taken into when sentencing.²⁸

The Committee should note that the review of the operation of the 1989 Act found that there was a lack of a clear definition of 'hatred' under Irish law to assist prosecutors or judges. The report also found that, while the Act punishes incitement offences, it is ineffective for specific hate crimes and that judges may consider aggravating factors when sentencing. However, they are not compelled by statute or binding precedent of the Courts to do so.

The Committee is urged to ask the State party to provide details of the number of cases in the reporting period in which a racial or related hate motivation was taken into account as an aggravating factor when sentencing.

The Committee is urged to ask the State Party if it will consider the introduction of legislative provisions to ensure that racism and/or hate crime is taken into account as an aggravating factor, where appropriate, at sentencing in line with the recommendations of CERD.

The Committee is also asked to encourage the development of guidelines to assist the judiciary in relation to sentencing in cases where a racial motivation is clear and unambiguous.



2.2 Data on Hate Crime

In Ireland, racist, xenophobic or related hate crimes are generally prosecuted as generic offenses under a range of existing legislation including the Criminal Justice (Public Order) Act 1994, Non Fatal Offences against the Person Act 1997 and the Criminal Damage Act 1991.

Statistics collected and produced by the Central Statistics Office (CSO) and external agencies such as the EU Fundamental Rights Agency point to a significant level of racially-motivated hate crime in Ireland. However, there is a dearth of official data in relation to hate crime against persons in other categories including persons with a disability and gender (including trans-gender persons).²⁹

The table opposite highlights the number and type of suspected racially motivated crimes recorded by the Garda Síochána (Police) and published by the Office for the Promotion of Migrant Integration for the latest available years. A significant decline in the number of cases reported and recorded by the police is evident since incidents peaked in 2007.

These figures may be contrasted to statistics on the numbers of Sub Saharan African and Central/ Eastern European respondents to an EU Agency for Fundamental Rights (FRA) report on minorities and discrimination in the EU who indicated experiencing high levels of victimisation across five crime types.³⁰ The report found that the 12 Month Victimisation Prevalence Rate in 2008 for Sub-Saharan Africans was 41 percent while for Central and Eastern European respondents it was 28 per cent. When compared with the official figures above this data suggests that racism and related hate offences may be significantly underreported in Ireland.³¹

In addition, data from the Central Statistics Office indicates that only a small number of incidents classified under incitement to hatred are recorded and detected each year.³²

The lack of effective and systematic mechanisms to report/record data in relation to racially motivated incidents / prosecutions undermines efforts to determine the extent to which racist and related hate crime continues to be a problem in Ireland. While the FRA considers Ireland's overall racist incident monitoring mechanism to be 'good', anecdotal evidence from statutory agencies (including the 2007 Garda Síochána Public Attitudes Survey)³³, academic institutions, NGOs and community representative organisations suggest racially motivated crime is likely to be significantly under reported.³⁴

The Committee is urged to ask the State party how it plans to develop more effective reporting and recording mechanisms for the collection and dissemination of disaggregated data on crimes motivated by hate in Ireland.

The Committee is urged to ask the State party if it will consider expanding the grounds of Ireland's existing legislation tackling hate crime to include disability and gender.



Table 1
Reported Racially Motivated Crimes³⁵

Type of Offence	2007	2008	2009	2010	2011	2012
Minor Assault	50	45	30	36	44	24
Assault Causing Harm	17	12	13	7	21	-
Harassment	11	9	-	7	-	-
Criminal Damage (Not Arson)	42	29	22	22	18	16
Robbery from the Person	-	-	-	-	-	-
Public Order Offences	57	42	34	26	40	30
Drunkenness Offences	6	-	-	-	-	-
Offences under PIHA 1989	13	15	10	-	-	11
Menacing Phone Calls	-	5	-	-	-	-
Other Offences	18	15	19	24	19	17
Total	214	172	128	122	142	98



3. Disability

ICCPR: Articles 2, 16 and 25

3.1 Ratification of Convention on the Rights of Persons with Disabilities

Ireland has not yet ratified the UN Convention on the Rights of Persons with a Disability (CRPD) although the Government has committed to ratification following the enactment of the Assisted Decision-Making (Capacity) Bill 2013.³⁶ However, the original incarnation of the Bill was published in 2007; therefore, it is imperative that the Bill is progressed expeditiously through the Oireachtas (Irish Parliament).

The Committee is urged to ask the State party to provide details of when it will ratify the UN Convention on the Rights of Persons with a Disability (CRPD).



3.2 Assisted Decision Making (Capacity) Bill 2013

At present, there is no specific schedule for the enactment of the Assisted Decision Making (Capacity Bill) 2013. Under the Lunacy Regulation (Ireland) Act (1871), which is the current legislation governing capacity matters, a person, who is deemed to lack legal capacity, can be made a ward of court.³⁷ In 2012, the Courts Services reported that 273 adults and minors were taken into wardship, including 106 persons with an intellectual disability.³⁸ Figures from previous Annual Reports of the Courts Services indicate that each year, approximately 100 persons with an intellectual disability are admitted to wardship.³⁹

The impact of being made a ward of court is significant.⁴⁰ As a result, a person is denied the right to vote, to make a will, make medical decisions, travel abroad, marry, or make a decision regarding his or her property.⁴¹ Moreover, wardship can lead to the disproportionate and unjustified curtailment of liberty.

For example, a person admitted to wardship who is involuntarily detained in a psychiatric hospital or approved centre does not have a right to a hearing before a Mental Health Tribunal as provided in the Mental Health Act 2001.⁴² Expressing its concern about this matter in 2011, the UN Committee against Torture (CAT) stated that the definition of a voluntary patient under the Mental Health Act 2001 is not sufficient to protect the right to liberty of a person who might be admitted to an approved mental health centre.⁴³ Similarly, in 2011, the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) questioned the compatibility of Ireland's Mental Health Act 2001 with international human rights standards.⁴⁴

The Committee is urged to ask the State party when it intends to bring the Assisted Decision Making (Capacity Bill) 2013 before the Oireachtas (Irish Parliament) in order to progress its enactment.

3.3 Care of Persons with an Intellectual Disability

The National Strategy for Mental Health services in Ireland - A Vision for Change⁴⁵ - recommends that adults with intellectual disabilities should be cared for, where appropriate, separately from people with a mental illness. However, a report by the Health Research Board Report found that in 2011, 113 people with a 'primary admission diagnosis' of intellectual disability were admitted to a dedicated psychiatric care setting.⁴⁶

The Committee is urged to ask the State party to provide details of the number of persons with a primary diagnosis of intellectual disability who have been accommodated in psychiatric care settings in the reporting period, and how it plans to ensure persons with an intellectual disability who are not diagnosed with a mental illness are accommodated in appropriate care settings.

3.4 Jury Duty

Although this matter is not addressed in the State Report, under current Irish law, deaf persons are excluded from serving on juries in civil and criminal trials. In October 2010, the High Court held that the County Registrar was wrong to exclude a potential juror who had never sought to be excused from service.⁴⁷ Similarly, in November 2010, the High Court ruled that a deaf person could sit on a jury in a criminal trial.⁴⁸

In 2010, the Law Reform Commission recommended that a further study on safeguards for sign language interpreters be conducted.⁴⁹ This study has not materialised and an appropriate legal framework cognisant of the judicial decisions referenced above has not been established.

The Committee is urged to ask the State party whether and, if so, how it plans to take steps to enable deaf persons to serve on juries with appropriate assistance and safeguards.



4. Treatment of Persons in Care of the State

ICCPR: Articles 9, 10 and 16

4.1 Magdalene Laundries

In 2011, the UN Committee against Torture recommended that Ireland institute prompt, independent and thorough investigations into all complaints of torture and other cruel, inhuman or degrading treatment or punishment that were allegedly committed in the Magdalene Laundries and, in appropriate cases, prosecute and punish the perpetrators with penalties commensurate with the gravity of the offences committed, and ensure that all victims obtain redress and have an enforceable right to compensation, including the means for as full rehabilitation as possible.⁵⁰



Following on from this, an inquiry chaired by Senator McAleese was commissioned to establish the facts of State involvement in the Magdalene laundries; however, the inquiry “lacked many elements of a prompt, independent and thorough investigation”.⁵¹

Three significant developments have taken place since the McAleese Inquiry concluded.

1. On 19 February 2013, the Taoiseach (Irish Prime Minister) gave a formal State apology to the Magdalene women, apologising “unreservedly to all those women for the hurt that was done to them, and for any stigma they suffered, as a result of the time they spent in a Magdalene Laundry”.⁵²
2. On 18 June 2013, the Irish Human Rights Commission (IHRC) published its Follow up Report on State Involvement with the Magdalene Laundries.⁵³ The IHRC called for a “comprehensive redress scheme that provides individual compensation, restitution and rehabilitation for the women in accordance with the State’s human rights obligations”.⁵⁴
3. On 26 June 2013, Mr Justice Quirke published The Magdalene Commission Report, concerning a redress scheme for the Magdalene women.⁵⁵ The Quirke redress scheme is based on the McAleese findings which has led to inconsistencies in redress as the McAleese Inquiry did not investigate “allegations of arbitrary detention, forced labour or ill-treatment”, despite receiving information regarding this from several sources. Consequently, the Quirke redress scheme does not provide a remedy to women who suffered physical abuse in the laundries. Additionally, eligibility may prove to be a significant barrier for some women especially as the religious orders maintain control of the records.

The Scheme offers ex gratia payments to women based on the length of their documented service in the laundries. Again this may be problematic due to the inaccuracies or incomplete nature of the records. In this respect, the Quirke scheme does not include individualised assessments of experience and injury suffered, despite the recommendation of the IHRC that a comprehensive redress scheme that “provides individual compensation for the impact of the human rights violations as experienced by women who resided in Magdalene Laundries”. The Quirke Scheme includes recommendations on social supports such as access to a medical card and the State pension. However, as pointed out by the IHRC, there should be provision also for “appropriate rehabilitation interventions including housing; health and welfare; education and; assistance to deal with the psychological effects of the time spent in the Magdalene Laundries”.⁵⁶

The Committee is urged to ask the State party:

1. When will it establish a prompt, thorough and independent investigation into the abuse perpetrated in the Magdalene Laundries?
2. How will the State ensure that the scheme is independently monitored and how will the appeals process operate?
3. What measures will the State take to ensure former Magdalene residents currently living outside of Ireland are appropriately and adequately included, for example:
 - Effective advertising of the Scheme
 - Equivalent medical and other social supports (an Irish medical card is an integral component of the Scheme)



4.2 Detention in Psychiatric Hospitals

Under the Mental Health Act 2001, the definition of a ‘voluntary patient’ includes a person who lacks capacity to make decisions but is compliant with treatment and who is detained in an approved setting.⁵⁷

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has raised concerns regarding the treatment of “voluntary patients” in Irish psychiatric settings and the insufficient safeguards set down in law. On foot of its country visit to Ireland in 2010, the CPT noted that:

[M]any so-called “voluntary” patients were in reality deprived of their liberty; they were accommodated in closed units from which they were not allowed to leave and, in at least certain cases, were returned to the hospital if they left without permission. Further, if staff considered it necessary, these patients could also be subjected to seclusion and could be administered medication for prolonged periods against their wish [...].⁵⁸ Furthermore, voluntary patients who indicate that they wish to leave the treatment facility may be detained against their will for a period of up to 24 hours, if a doctor or staff nurse is of the opinion that they are suffering from a mental disorder.⁵⁹ However, there is no requirement to inform the Mental Health Commission of this change in status.⁶⁰

The Committee is urged to ask the State party to provide detailed statistics on the number of voluntary patients who have been detained under section 23 or section 24 of the Mental Health Act 2001 for the reporting period.

The Committee is urged to ask the State party whether new legislation on assisted decision making (capacity) provides adequate protection (including adherence to the principles of the UN CRPD) for both voluntary and involuntary patients detained in psychiatric institutions.

4.3 Advance Psychiatric Care Directives

An advance directive in the mental health context has been defined as “a legal document which provides a mechanism for individuals to stipulate, in advance, what types of psychiatric treatments they prefer or to appoint a health care agent to make such decisions for them, should they become incapacitated.”⁶¹ These advance directives protect rights to autonomy, dignity and bodily integrity. They allow people to retain control over their healthcare decisions at a time when they lack capacity to make such decisions.

Psychiatric advance directives can be used to record a person’s preferences about his/her mental health care and to refuse certain treatment. They can also be used to appoint proxy decision makers who can make treatment decisions on a person’s behalf in the event that he or she loses capacity to make those decisions. Such directives would be very helpful to underpin the positive role that family members and friends may play in health care decisions.

Currently Irish law does not provide for advance directives, including in relation to mental health treatment. The Law Reform Commission has noted that an advance directive made in the context of a recurring illness history and the use of effective medication during previous psychiatric episodes could improve the person’s adherence to a treatment plan, with its consequent benefits in terms of quality of life and reduced need for hospitalisation.⁶² The Commission also recommended that the legislative framework on advance care directives in relation to mental illness should be subject to review and separate analysis from any proposed legislative framework on advance care directives in general (e.g. in relation to end of life care, pregnant women, children etc).

The Committee is urged to ask the State party whether it intends to introduce provision for advance psychiatric care directives including in legislation on assisted decision making (capacity) and, if so, to provide further information on the operation of such measures.



4.4 Force and Restraint

Seclusion and physical restraint remain in widespread use within the mental health services.⁶³ The use of restraint is a restriction on a person's freedom of movement and, depending on the circumstances, may be a serious infringement of his/her rights to bodily integrity and dignity and may constitute inhuman and degrading treatment. According to figures from the Mental Health Commission (released in 2013), in 2011, there were 1,683 seclusion episodes in psychiatric units in Ireland, a rate of 36.7 per 100,000.⁶⁴ Two psychiatric units for children and adolescents used seclusion in 2011.⁶⁵ In 16% of episodes of seclusion, it lasted between eight and 24 hours and in a further 6.9% of episodes it lasted between 24 and 72 hours. There were 33 episodes of seclusion which exceeded 72 hours, representing 2% of all seclusion episodes.⁶⁶ More than three-quarters of psychiatric units used physical restraint in 2011, with a total of 3,056 episodes of physical restraint and a rate of 66.6 per 100,000 of the population. The number of episodes of physical restraint in child and adolescent units doubled in 2011 compared to 2010 (from 100 to 214). Four episodes of physical restraint lasted for longer than one hour.⁶⁷

Compliance by approved centres with the statutory Code of Practice on the use of Physical Restraint in Approved Centres⁶⁸ and the Rules Governing the Use of Seclusion⁶⁹ is still low. In 2012, only 29% of approved centres were in full compliance with the Rules on Seclusion and 48% were in compliance with the Code of Practice on Physical Restraint in 2012.⁷⁰

The Committee is urged to ask the State party what steps it intends to take to improve compliance among approved centres with statutory codes of practice on force and restraint.

The Committee is also urged to ask the State party how it intends to reduce to a minimum the necessity to use force or restraint in treatment of persons with a mental health condition.

4.5 Consent to treatment – Electroconvulsive Therapy

The Mental Health Act 2001⁷¹ governs consent to treatments including the use of Electroconvulsive Therapy (ECT). The Mental Health Commission figures for 2011 show that a total of 332 programmes of ECT were administered in Ireland, which is a rate of 7.2 programmes per 100,000 population.⁷² More than 80% of recipients were registered as having voluntary status. For 25 programmes of ECT, the treatment proceeded where the individual was either unwilling or unable to give consent. In three such cases, ECT proceeded where both the treating and second opinion psychiatrist thought the recipient was capable but unwilling.⁷³

It is submitted that there is a need for stronger protections than those afforded in current legislation in relation to consent to ECT treatment, in line with the standards of the Convention on the Rights of People with Disabilities. These should include legislative provision that ECT should only be used as a treatment of last resort and never in an emergency. The Committee should also consider whether there is a need to ensure that all prescriptions of ECT should be reviewed by an independent body.

The Committee is urged to ask the State Party to provide detailed information on the use of ECT in relation to both voluntary and involuntary patients accommodated/detained in approved centres for the reporting period.

The Committee is also urged to ask the State party how it will ensure that ECT remains a treatment of last resort and that consent to ECT treatment is set down in law.



5. LGBT Rights

ICCPR: Articles 2, 3, 16, 23, 24 and 26

5.1 Marriage Equality

The State Report highlights the progress made on equality for same-sex couples through the introduction of the civil partnership legislation.⁷⁴ Although these developments are welcome, the current legal framework does not equate to full and equal recognition of same-sex relationships and families under the law, particularly with respect to children.⁷⁵

The State Report indicates that issues relating to same-sex couples parenting children together will be considered in the context of a planned Family Law Bill (although the status of the proposed Bill is unknown).⁷⁶ Under current Irish law, children of same-sex couples cannot establish a joint legal connection to both parents. This means that the child is denied certain rights in respect of the parent's civil partner that he or she would otherwise have in respect of a parent in a marital family including:

- access to financial maintenance from their non-biological parent if the parents' relationship breaks down, (not guaranteed under civil partnership even if that person had taken on responsibility for all financial support);
- the right to claim inheritance from their non-biological parent;
- the right to equality in the context of protections that apply to the shared family home;
- adoption of the child by the biological parent's civil partner.

It should be noted that legislation providing greater protection for children of same-sex couples will fall short of affording such children the opportunity to be part of the only constitutionally recognised type of family in Ireland, i.e.

the family based on marriage.⁷⁷ Reform of the constitutional position may only be achieved through a popular referendum. In April 2013, the Convention on the Constitution recommended that provision be made for a referendum to provide for same-sex marriage and equivalent protections, including "parentage, guardianship and upbringing of children in families headed by same-sex married parents".⁷⁸ The Government has committed to responding to the recommendations of the Constitutional Convention within four months of the publication of its reports and to a full debate in the Oireachtas (Irish Parliament) in each case. In the event that the Government accepts a recommendation that the Constitution be amended, it will include a timeframe for the holding of the referendum.

The Committee is urged to ask the State to provide details of when proposed legislation governing issues of parenting in relation to same-sex couples will be brought before the Oireachtas and to what extent these issues will be addressed.

The Committee is urged to ask the State party if and when it intends to introduce provisions for a referendum to allow for full marriage equality for same-sex couples as recommended by the Convention on the Constitution.



5.2 Discrimination against LGBT Persons in Employment

The Employment Equality Act 1998⁷⁹ provides an exemption that allows for religious orders providing public services such as in schools or hospitals to discriminate against current and prospective employees on the basis of moral ethos. The provision impacts disproportionately on certain groups including LGBT people and single parents who are not part of the constitutionally defined family. The State Report acknowledges the impact of religious-affiliated schools, noting that 96% of primary schools in Ireland are under denominational patronage, with almost 90% under Roman

Catholic patronage.⁸⁰ In May 2013, the Government expressed their support for a Private Members Bill on the issue and their intention to take forward the Bill; however, legislation is not yet forthcoming.⁸¹

The Committee is urged to ask the State party when it will introduce legislation to repeal Section 37 of the Employment Equality Act, which allows for discrimination against LGBT persons on the grounds of religious ethos.

5.3 Gender Recognition

In 2008, the Committee noted its concern that Ireland had not “recognized a change of gender by transgender persons by permitting birth certificates to be issued for these persons”. It called upon the Irish state to “recognize the right of transgender persons to a change of gender by permitting the issuance of new birth certificates”.⁸²

As reported to the Committee in 2008, the Irish High Court made a Declaration of Incompatibility in the 2007 case *Foy v Registrar General*,⁸³ finding that the absence of any rules permitting the recognition of gender identity in Ireland violated Article 8 of the European Convention on Human Rights, in contravention of the European Convention on Human Rights Act 2003.⁸⁴

In 2010, the Committee of Ministers of the Council of Europe (COE) called upon all Member States to “take appropriate measures to guarantee the full legal recognition of a person’s gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents.”⁸⁵

Following on from the report of the Gender Recognition Advisory Group (GRAG) in July 2011,⁸⁶ the Government published the General Scheme of Gender Recognition Bill in July 2013.⁸⁷ However, certain provisions of the draft legislation do not meet international human rights standards. Specifically, a Gender Recognition Certificate may only be issued to persons who are at least 18 years of age on the date of application and are not in an existing valid marriage or civil partnership (without first obtaining a divorce or dissolution even though their eligibility for same is questionable if the relationship has not broken down).

Furthermore, following on from the General Scheme, no timetable has been forthcoming for the introduction of the Gender Recognition Bill and it is unclear whether it will be a priority in the coming legislative programme. In the meantime, trans people continue to experience severe challenges, including in relation to their safety,⁸⁸ travel⁸⁹ and accessing State services (applications for personal Public Service Numbers needed to access social welfare require the presentation of a birth certificate). In addition, there are particular ramifications also for young trans people, for example in accessing education. For example, one intersex-affected child, whose adoption certificate carried the female gender marker but who identified as male, was unable to access preschool education: the local Boy’s Preschool could not accept him because of his adoption certificate, and the local Girl’s Preschool would not accept him because he clearly identified as a boy.

The Committee is urged to ask the State party when it intends to introduce legislation to provide for full legal recognition of preferred gender.

The Committee is urged to ask the State party if and how it intends to guarantee the rights of married trans persons to legally acquire their preferred gender without recourse to dissolution of marriage.

The Committee is urged to ask the State party to provide details on what measures it has taken, in the absence of a formal procedure for issuing a new birth certificate, to ensure that transgender persons do not experience discrimination in their enjoyment of basic services such as employment, education and social security.



6. Gender Equality

ICCPR: Articles 3, 6, 7, 9, 14, 16, 17, 23, 25, 2

In 2008, the Committee made a number of recommendations regarding the rights of women in Ireland, specifically in relation to the role of women within the Irish Constitution (Article 41.2) and the place of women in Irish public life, the regime in place to combat human trafficking and to support victims; violence against women, severe restrictions on accessing abortion and the effectiveness of the National Women's Strategy (NWS). Some progress has taken place in the intervening years; however, many matters remain as pertinent now as they did in 2008.



6.1 Reform of the Irish Constitution: Article 41.2 (Role of Women)

Article 41.2 of the Constitution states,

In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved. The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

Although presently this clause is largely symbolic it continues to perpetuate “traditional attitudes toward the restricted role of women in public life, in society and in the family”, as noted by the Committee in 2008.⁹⁰

One of the priority tasks of the Convention on the Constitution⁹¹ has been consideration around greater participation of women in public life and the role of women in the home. In February 2013, in its second report to Government, the Convention recommended that the Government replace the ‘women in the home’ clause with a gender neutral clause valuing care work in Irish society. The Convention also recommended a number of other measures, including modifications to the electoral system and changes in political education in schools, which would enhance the participation of women in public life.⁹² However, no political commitment has been made yet regarding the holding of a referendum on the issue.

The Committee is urged to ask the State to indicate when it will hold a referendum on Article 41.2 of the Constitution (The Family), following on from the recommendation of the Convention on the Constitution.

6.2 Participation of Women in Public Life

Ireland ranks low by all international standards for its participation of women in public life. For example, only 15.8% of members of the upper house are women (bringing us to 89th place in the Inter Parliamentary Union tables and 23rd in the EU27).⁹³ The most significant decision-making body in the State is the Cabinet in which 14 of the 16 positions are held by men (not including the Attorney General, a woman, who is an ex officio member). The two most recent appointments (at junior cabinet level) have been men, including the replacement of one woman. At local level 17% of councillors are women.⁹⁴

Poor numbers of women in leadership positions exist across the echelons of Irish society. Although the three most senior legal offices in the country are now occupied by women,⁹⁵ men still hold the overwhelming majority of judicial positions (occupying two-thirds of Supreme and High Court positions).⁹⁶ Ireland’s top 20 publicly listed companies (PLCs) have only 9% female board members.⁹⁷ State boards, despite a 40% target set in 1996, have only 35% women members.⁹⁸

The Programme for government contains a commitment to ensure that 40% of all state board positions are held by women.⁹⁹ However, all but “three out of 14 government departments failed to reach a 40% gender representation target”.¹⁰⁰

It remains to be seen whether the political system will open up to women following on from the enactment of the Electoral (Amendment) (Political Funding) Act 2012, which provides that political parties will lose their public funding if they do not put forward at least 30 per cent female candidates at the next general election (rising to 40 per cent).¹⁰¹

The Committee is urged to ask the State when it expects to achieve the 40% gender representation on State boards target, and what steps it is taking to achieve this.

The Committee is urged to ask the State what concrete steps it is taking to ensure greater participation of women in public life.



6.3 Women's Support Organisations

In 2008, the Committee recommended that Ireland 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”.¹⁰² In sharp contrast, budget cuts over the past few years have disproportionately impacted on the capacity of women's organisations to protect the rights of all women, in particular vulnerable women, through frontline services and advocacy work (see percentage cuts below).

The State Report notes that the National Women's Council of Ireland (NWCI), which represents over 160 organisations, is “recognised by the Government as the body which puts forward women's concerns and perspectives”¹⁰³ as an “informed and constructive contributor to the implementation and review of policy initiatives”.¹⁰⁴ However, the Report also acknowledges the sharp decrease in funding awarded to the Council in 2012 citing it as necessary in order to prioritise national security services (e.g. An Garda Síochána, Courts, Prisons etc). Indeed, over the past two years government funding to the NWCI has been cut by 50%¹⁰⁵ while funding for locally based women's projects has been cut by 35% since 2011.¹⁰⁶ This has significantly reduced the level of services/support that organisations can provide and some organisations have been forced to close.

The Committee is urged to ask the State to re-evaluate the funding support provided to women's organisation and to explain how it will reinforce the effectiveness of measures to achieve gender equality in the absence of research from organisations channelling a collective voice for women.

The Committee is urged to ask the State to ring fence funding to restore an adequate level of service provision and support effective advocacy to women's groups at local, regional and national level.

6.4 Violence Against Women

The baseline prevalence study on sexual violence, Sexual Abuse and Violence in Ireland (SAVI), was published in 2002 and, though it has since acted as a key informant of Irish policy in relation to sexual violence, it is considerably out of date. The State Report acknowledges, that “there are significant data deficits in relation to domestic violence and that they need to be tackled”.¹⁰⁷ The Report sets out the aim of the National Strategy on Domestic, Sexual and Gender-based Violence to improve data collection and also refers to a data Committee dealing with this matter. However, the Report lacks information with respect to a timeframe, projected outcomes and deliverables, or the participation of groups representing women who have been a victim of violence in the data collection process.

In May 2011, the Council of Europe's Committee of Ministers adopted the Council of Europe Convention on preventing and combating violence against women and domestic violence. Out of the 47 states of the Council of Europe, Ireland is one of 18 countries that have not signed the Convention, despite its acceptance of Austria's UPR recommendation when it announced that “Ireland can accept in principle the terms of the Convention.”¹⁰⁸

During the UPR process, the Irish Government further stated that the “detailed provisions of the Convention and the administrative and legislative arrangements that would be necessary to allow signature of the Convention by Ireland are currently being examined.”¹⁰⁹ It is contended that the barrier to signature and ratification identified by the Government is Article 52 of the Convention which provides for emergency barring orders which are not provided for under Irish law. Notwithstanding the need to have such legislation in place in order to ratify the Convention, there is a clear need, in any event, for barring orders to be available outside of traditional Court hours, so that victims of domestic violence do not find themselves without protection for extended periods of time.

With respect to domestic violence support services, the State Report states that “the level of service density has also increased with the effect that activity levels in the domestic violence sector satisfy most of the guidelines set out by the Council of Europe”.¹¹⁰ However, the Report is silent on implementation of the accepted UPR Recommendation and/or when Ireland will ratify the Council of Europe Convention.



At the same time, NGOs providing services to women experiencing domestic and sexual violence are witnessing an unprecedented growth in demand for their services. Rape Crisis Centres have seen a relentless year on year increase in demand for their services, as demonstrated by the snapshot of statistics set out below:

- 2012 saw a 12% increase (since 2010) in survivors and others seeking counselling and support from their specialist services.¹¹¹
- Figures across Ireland in 2011 show that 42,383 helpline calls were answered, and 7,797 individual women and 3,066 individual children received support from domestic violence support services. This represents a 56.6% increase in demand for these support services since 2007, with some services experiencing up to 35% cut to their funding during this period.¹¹²
- In 2011, on 2,537 occasions, services were unable to accommodate women in refuge, and on 2,302 occasions there were unable to accommodate children.¹¹³ This was because the refuge was full or there was no refuge in their area. The Council of Europe recommends that there should be a target by Member States of at least 1 refuge place per 10,000 of population.

Moreover, current Irish law on domestic violence does not recognise the various types and forms of relationships in Ireland today. Despite the extension of eligibility for orders in the Civil Law (Miscellaneous Provisions) Act 2011, the law still does not provide for women in dating relationships despite the fact that research indicates that Safety Orders should be available to all parties who are or have been in an intimate relationship.¹¹⁴ Furthermore, unmarried cohabitants have restricted eligibility with respect to barring orders.¹¹⁵

With respect to sexual or gender-based violence experienced by asylum seekers in Ireland, guidelines on gender based violence and harassment have been prepared for Direct Provision accommodation centres.¹¹⁶ While welcome, the implementation of the policy is wholly dependent on reports being made to a designated member of centre staff (the ‘Reporting Officer’), who is neither independent nor qualified to deal with victims. There is no provision for victims to complain to an independent body, even where their complaint pertains to a member of centre staff.

Under current Irish law, immigrants to Ireland who experience domestic violence face further difficulties regarding their immigration status. Immigrants may apply for an independent permit where domestic violence has been experienced;¹¹⁷ however, information in respect of this is not widely published nor are guidelines available.¹¹⁸ It is important to note that the current discretionary administrative approach, referred to in section 14 of this submission that is taken towards applications to be granted an independent residence permit also has an effect of victims of domestic violence. In addition, the €300 registration fee generally payable by those people who are granted permission to remain in the State poses a significant barrier to applicants even those people who achieve a successful change of status under the current ‘Victims of Domestic Violence Immigration Guidelines’.¹¹⁹

The Committee is urged to ask the State party to provide detailed information, including a timeframe, with respect to the sustained collection of data on sexual and domestic violence.

The Committee is urged to ask the State party when it will sign and ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence.

The Committee is urged to ask the State party whether it will provide Safety Orders for women in dating relationships and whether it will provide the same access (in relation to eligibility requirements) to unmarried cohabitants with respect to barring orders.

The Committee is urged to ask the State party to provide independent complaints mechanism for asylum seekers who experience gender based violence or harassment.

The Committee is urged to ask the State party to review the €300 registration fee payable to people who have been granted leave to remain in the State.



7. Women's Reproductive Rights

ICCPR: Articles 2, 3, 6, 7 and 26

7.1 Laws Governing Access to Abortion in Ireland

*In its Concluding Observations the Committee expressed its ‘concern regarding the highly restrictive circumstances under which women can lawfully have an abortion in [Ireland]’ calling for Ireland to bring its laws in line with the Covenant.¹²⁰ In most cases abortion remains illegal in Ireland.¹²¹ The Protection of Life During Pregnancy Act 2013 (the “2013 Act”) provides for abortion in very limited circumstances and a highly restrictive regime remains in place governing all other aspects of reproductive rights for women.¹²² The 2013 Act was introduced in order to implement the judgment of the European Court of Human Rights in *A, B and C v. Ireland*.¹²³ Although it is extremely limited, the legislation provides long overdue clarity on abortion where a mother’s life is at risk.¹²⁴*



Provision for lawful abortion in Ireland must be framed in the context of Article 40.3.3 of the Constitution which provides for the defence of the right to life of the unborn, as far as practicable, with due regard to the equal right to life of the mother. In the *Attorney General v X* [1992] 1 IR 1 case, the Supreme Court held that abortion is constitutionally permitted only where there is a real and substantial risk to the life of the mother (including by suicide).¹²⁵

As such, the Irish legal framework places an absolute prohibition on abortion where the health of the woman is at risk. The Irish Constitutional position, as articulated in the 2013 Act, obliges doctors to make a distinction between a risk to a pregnant woman's life, in which case abortion is lawful, but not to preserve her health or ensure her quality of life. These provisions will prevent medical practitioners from acting in the best interests of patients in their care.

The legislation falls a long way short of meeting international human rights standards. As noted above, a risk to the health of the woman is not catered for, contrary to recommendations of several UN Committees¹²⁶ and stark criminal sanctions persist for women and their doctors where an abortion is conducted outside the narrow confines of the legislation (see section 7.2).¹²⁷ Furthermore, the procedure to determine whether or not a woman is suicidal (including the appellate procedure) is lengthy and requires pregnant women to undergo multiple assessments.¹²⁸

In addition, the circumstances in which a medical practitioner may exercise a conscientious objection to carrying out an abortion under the legislation to ensure that the practitioner has a duty of care to the patient requires clarity to ensure the expeditious transfer of the care of the woman to another doctor/health professional.¹²⁹

In its recently published observations on the Bill, the Irish Human Rights and Equality Commission (IHREC) raised a number of significant concerns in relation to aspects of the legislation, including:¹³⁰

- The legislation lacks a clear pathway for a woman or girl seeking access to the procedure set out in sections 7 and 9 of the Bill through which a medical certification [for an abortion] is made or refused and should be clarified accordingly;
- The number of examinations that a girl or woman is to be subjected to where she seeks treatment under this legislation, particularly girls and women in vulnerable situations, primarily those at risk of suicide, should be framed so as not to unduly increase her risk of mental anguish or suffering.
- The legislation should specify that where the action or inaction of a person claiming to have a conscientious objection and refusing to carry out or assist in carrying out a lawful procedure knowingly contributes to the death of or significant harm to the woman, that person and/or the institution shall be guilty of a specified offence.

The Committee is urged to ask the State party to describe how the Protection of Life During Pregnancy Act 2013 will adequately protect the lives of pregnant women and how it will ensure that a woman's health and life will not be endangered by the distinction that doctors are required to make regarding a woman's life, as distinct from her health.

The Committee is urged to ask the State party to provide a detailed assessment of how the current legislation on abortion upholds a woman's right to health, privacy, life, freedom from inhuman or degrading treatment and non discrimination as specified under the Covenant.

The Committee is urged to ask the State to provide detailed information on whether and how the concerns raised by the National Human Rights Institution in its legislative observations on the Protection of Life during Pregnancy Bill 2013 will be met either in the enactment or subsequent amendment of the legislation, or by referendum.



7.2 Criminalisation of Abortion

In 2011, the UN Committee against Torture expressed its concern that “the risk of criminal prosecution and imprisonment facing both the women concerned and their physicians, [...] may raise issues that constitute a breach of the Convention”.¹³¹

The Committee should note that undertaking an abortion in Ireland outside the narrow confines of the 2013 Act continues to attract significant criminal sanctions. Under the legislation, pregnant women and/or doctors and health professionals could face a penalty of up to 14 years imprisonment.¹³²

The Committee is urged to ask the State party to review the inclusion of provisions in the legislation which harshly penalizes women and practitioners who carry out an abortion and to describe whether and how such provisions may be repealed.

7.3 Freedom from Cruel, Inhuman and Degrading Treatment

Rape

General Comment 28 recognises that Articles 3 and 7 of the ICCPR may be implicated where women are forced to undergo life-threatening clandestine abortions or are denied access to abortion in the case of rape.¹³³ During the Parliamentary passage of the Act, the Government was adamant that provisions regarding rape could not be included in the legislation as the main purpose of the proposed legal framework was to “restate the general prohibition on abortion in Ireland by regulating access to a lawful termination of pregnancy in accordance with the X case judgment and the judgment of the European Court of Human Rights in the A, B and C v. Ireland case”.¹³⁴ The Minister for Health stated that the purpose of the Bill [now Act] “is not to confer new rights regarding the termination of pregnancy but to clarify existing rights”.¹³⁵

We urge the Committee to ask the State party whether and how it plans to reassess the Constitutional position which prohibits access to a lawful abortion for women and girls in situations of rape.

Terminations for Medical Reasons¹³⁶

Access to lawful abortion is not available to a woman carrying a foetus with a fatal abnormality. The 2013 Act is silent on this matter even though there is no settled position on whether this would be constitutionally permissible. For example, in the case of *D v Ireland*¹³⁷ the Irish Government argued before the European Court of Human Rights that it was possible to interpret the Irish Constitution¹³⁸ as permitting termination of pregnancy in cases of fatal foetal abnormality. The European Court of Human Rights agreed that such an interpretation by the Irish Courts was possible; however, this position that has yet to be tested before the courts.

The Committee should also note that the most recent case law from the European Court of Human Rights on the issue of reproductive rights, in the cases of *RR v Poland*¹³⁹ and *P and S v Poland*,¹⁴⁰ indicates that Council of Europe states are obliged to ensure that women seeking lawful terminations are not exposed to inhuman and degrading treatment contrary to Article 3 of the European Convention on Human Rights. Similarly, as the Committee will be aware, the *K.L. v Peru* case held that the physical and psychological harm arising from forcing a pregnant girl to carry a pregnancy to term despite a diagnosis of anencephaly (a foetal complication incompatible with life) amounted to a violation of Article 7 of the Covenant.¹⁴¹

The Committee is urged to ask the State party to clarify whether it is permissible under Irish law for a pregnant woman with a fatal foetal anomaly to have a termination in Ireland by reference to its arguments in *D v Ireland*, and to provide details of their plans to provide certainty and assistance to women in such situations.



7.4 Right to Travel

Irish law guarantees women the right to travel to access abortion in another state. However, the severe regulation of abortion within Ireland perpetuates the disproportionate impact that faces vulnerable groups of women – minors, undocumented women, migrant women and women living in poverty, as noted by the Council of Europe Human Rights Commissioner.¹⁴² It means that women who seek abortions for reasons other than a risk to their life must travel to other jurisdictions to avail of these services and incur the consequent psychological, financial and health burdens, which could have potentially the cumulative effect of reaching the threshold of cruel, inhuman and degrading treatment.

For many women, the need to raise funds to cover fees for a health service denied within the state and to travel to avail of such a service elsewhere means that they experience significant delay in accessing services. This places some women at risk or in serious hardship including in relation to delays and obstacles should she choose to exercise her right. Delayed access to services and lack of public awareness are strongly associated with subsequent adverse health outcomes and can make the difference between a minor procedure and a more invasive procedure that would involve more risk for a woman whose health is already compromised.¹⁴³

The Committee should ask the State party to outline in detail the measures open to a woman whose pregnancy endangers her health as distinct from her life, and who is unable to travel to another state to access abortion.



8. Extraordinary Rendition

ICCPR: Articles 7, 9 and 14

8.1 Reports of Extraordinary Rendition

The State Report describes the complaints that have been received by An Garda Síochána (Irish police) regarding alleged rendition flights to/from Shannon Airport. It notes that all of the allegations have been investigated by senior police officers and that “two investigations resulted in files being forwarded to the Director of Public Prosecutions”; however, “no prosecutions have been directed by [the DPP] as no evidence was available to support such a prosecution”.¹⁴⁴ Although a positive development, it is submitted that this falls short of the requirement on the State party “establish a regime for the control of suspicious flights and ensure that all allegations of so-called renditions are publicly investigated”, as recommended by the Committee in 2008.



(Deputy Prime minister) and Minister for Foreign Affairs and Trade, Eamonn Gilmore TD, stated that the “Government is completely opposed to the practice of extraordinary rendition” and that the,

*Current Government has made a clear commitment in the programme for Government to enforce the prohibition of the use of Irish airports and related facilities for purposes that are not in line with the dictates of international law. Where overflights are concerned and where prisoners are being transported through Irish airports, there is a requirement to seek our permission. If, at any time, we receive evidence that there is a breach of this requirement, we will have our law enforcement officials take action on it.*¹⁴⁵

In response to a question specifically addressing the question of inspections, the Tánaiste replied that “there is no evidence to suggest that any of these aircraft were carrying prisoners at any time when they transited through Irish airports, including Shannon Airport”.¹⁴⁶ Furthermore, with respect to steps to ensure that such cases are prevented, the Tánaiste stated that the “permission of the Irish Government must be sought and obtained for the transport of prisoners through Irish airports”. He continued that “under no circumstances will we grant permission for the transport of prisoners who are subject to extraordinary rendition”.¹⁴⁷

As reported to the Committee against Torture in 2008,¹⁴⁸ documents brought into the public domain in 2010 revealed that Irish Government Ministers were concerned that rendition flights were landing in Ireland. The materials documented an exchange which took place in 2007 between the previous US Ambassador Foley and previous Irish Minister for Foreign Affairs, Mr. Dermot Ahern TD, where Mr. Ahern appeared to be “quite convinced that at least three flights involving renditions had refuelled at Shannon airport before or after conducting renditions elsewhere.”¹⁴⁹ This conversation is also recorded in a 2013 report by the Open Society Justice Initiative which includes further evidence on Ireland’s involvement in rendition. The report sets out the dates, flight numbers, airline operators and, in some cases, passenger names (known to be victims of rendition detention), obtained from pleadings and official court records in lawsuits against commercial aviation companies in the US.¹⁵⁰

Nevertheless, in contrast to the advice received from the Irish Human Rights Commission (IHRC),¹⁵¹ the State maintains the argument that it is entitled to rely on diplomatic assurances from the United States Government to the effect that Irish airports are not being used to facilitate rendition. The State Report refers to “assurances at the highest level” by the United States that “it would not transport prisoners through Irish airspace without seeking the permission of the Government”.¹⁵² Furthermore, in the Oireachtas (Irish Parliament), the Tánaiste reaffirmed the Government’s satisfaction with diplomatic assurances from the US authorities that prisoners had not been transferred through Irish territory, stating that they “were confirmed at the highest political level. They are of a clear and categorical nature, relating to facts and circumstances within the full control of the United States Government”.¹⁵³ However, in 2008, the Committee recommended that the State party “should exercise the utmost care in relying on official assurances” and it is submitted that the continued reliance on diplomatic assurances from the US government is not sufficient to discharge Ireland’s obligations under the Convention. In addition, the Committee should note that in 2011 the Committee against Torture sought:

Further information on specific measures taken to investigate allegations of the State party’s involvement in rendition programmes and the use of the State party’s airports and airspace by flights involved in “extraordinary rendition” [and provide] clarification on such measures and the outcome of the investigations, and take steps to ensure that such cases are prevented.

The Committee is urged to ask the State to provide details, including the procedural format, of the operational preventative steps (such as unannounced inspections) that Ireland is taking to ensure prisoners who are subject to rendition are not passing through Irish territory.



9. Police Complaints Mechanism

ICCPR: Articles 7, 9, 10 and 14

8.9 Garda Síochána Ombudsman Commission (GSOC)

The Garda Síochána Ombudsman Commission (GSOC) is Ireland's independent police complaints body. In 2011, GSOC received 2,275 complaints and in 2012, this number fell slightly to 2,089.¹⁵⁴

The budget of the Commission in 2011 was €9,242,000 which fell to €8,731,000 (adjusted to €8,381,000) in 2012.¹⁵⁵

In a 2013 Report on Ireland, the UN Special Rapporteur on human rights defenders, expressed concern at the “serious constraints” faced by GSOC, including financial and resource limitations, and the reported limited public awareness of its activities and responsibilities.¹⁵⁶



Previously, GSOC has proposed to increase the “leaseback” procedure of certain complaints for investigation by the Garda Síochána (Irish police). In this respect, the Committee expressed its regret in 2008 regarding “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 Gardaí (police) to the Garda Commissioner”.¹⁵⁷ However, the State Report suggests a referral mechanism for cases only where it is clear that the matter is an “alleged minor infraction, such as discourtesy, and not involving any criminal act on the part of the Garda officer concerned”.¹⁵⁸ Furthermore, in their Five-Year Report 2012¹⁵⁹ and Annual Report 2012,¹⁶⁰ GSOC has suggested that any “leaseback arrangement” would only include a “service complaint” which could be investigated by Gardaí themselves.¹⁶¹ The State Report indicates that GSOC intends to submit a paper to the Minister for Justice, Equality and Defence “including legislative proposals to update the complaints mechanism”; however, details of this are as yet unforthcoming.¹⁶² As the Committee stated in 2008, “immediate measures” are required “to ensure the effective functioning of the Garda Síochána Ombudsman Commission.”¹⁶³ In line with the recommendation of the Committee against Torture in 2011, sufficient funds should be allocated to the Commission “so as to enable it to carry out its duties promptly and impartially and to deal with the backlog of complaints and investigations which has accumulated”.¹⁶⁴

Since its inception in 2007 until January 2013, GSOC received 13,673 complaints of which, 7,718 were deemed admissible, yet only 149 cases were referred to the Office of the Director of Public Prosecutions and prosecutions have been directed in only 41 of these cases.¹⁶⁵ Regarding information on the types of complaints filed with GSOC, the State Report sets out that, “an analysis of cases received shows that about 47% relate to allegations of abuse of authority, 26% relate to discourtesy and about 24% are allegations of neglect of duty”. In its Five-Year Report 2012, GSOC defines four types of allegations as “most prevalent”, including non-fatal offences (which effectively translates as an allegation of assault).¹⁶⁶ In its Annual Report 2012, GSOC notes the top four allegation types are abuse of authority (34%), neglect of duty (27%), and falsehood or prevarication and non-fatal offences (11%). These figures point to an unexplained disparity between the complaints alleged, for example, non-fatal offences, and the extremely low levels of prosecution (averaging at fewer than 7 prosecutions per annum).

Delays continue to be an issue in the discharge of the Commission’s functions (in relation to minor and more serious complaints) and, in May 2013, the Minister for Justice, Equality and Defence, expressed concern that “it took an inordinate amount of time” for an investigation [including in relation to allegations of collusion by members of An Garda Síochána with an individual in the movement and supply of controlled drugs] to be concluded.¹⁶⁷ He further noted that “GSOC attribute the main reason for this long delay to difficulties experienced by the investigation team in obtaining evidence from the Garda Síochána”.¹⁶⁸ This has been confirmed by GSOC at the Oireachtas (Parliamentary) Committee on Public Service Oversight and Petitions, where Commissioners stated,

[M]any of our investigations were open for far too long. We firmly believed that this situation was not satisfactory in giving redress to the people complaining to us, nor to the gardaí [sic] being complained about. The main reason for delays has been the difficulties encountered in the collection of information and evidence. Requests to the Garda Síochána for information necessary to advance investigations were not being completed within a timeframe of 30 days agreed in protocols concluded under the Garda Síochána Act 2005. In one case we waited 542 days for a request to be completed and the vast majority were well over the agreed time limits, often by excessive periods.¹⁶⁹ In the same appearance GSOC pointed to another “very worrying trend in our interactions with the Garda Síochána”, namely that, “when requesting information, we were being asked to state why it was relevant to our inquiry”.¹⁷⁰

The Minister has indicated his intention to convene a meeting between the parties in order to resolve the matter in order to ensure that “where allegations are made against members of An Garda Síochána that the matter is resolved quickly”.¹⁷¹

The Committee is urged to ask the State party to confirm that any legislative proposals to update the GSOC complaints mechanism will not include the “leaseback” to the Gardaí of complaints involving allegations of criminal or potentially criminal conduct by a Garda member.

The Committee is urged to ask the State party for more detailed information (1) regarding the types of complaints filed with GSOC, including in relation to non-fatal offences (which effectively translate as allegations of assault) and (2) on the final outcome of complaints processed by GSOC.



10. Access to Justice

ICCPR: Articles 7, 9, 10 and 14

10.1 Human Rights Training

The State Report makes extensive reference to Garda Human Rights training as part of the professional development of members.¹⁷² It further refers to initiatives at operational level including anti-racism training, LGBT education and the Garda Racial and Intercultural Diversity Office.

However, it is silent on whether training is provided to members on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), as recommended by the UN Committee against Torture to Ireland in 2011.¹⁷³

Despite these ongoing developments (including An Garda Síochána Training and Development Review Group Report), it is unclear the extent to which lessons learnt are being applied in practice as no impact assessment or evaluation framework is available.

The Committee is urged to ask the State party to provide details on the impact and effectiveness of Garda human rights training on operations.

The Committee is urged to ask the State party to confirm that training is provided to all members of An Garda Síochána on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).



10.2 Right of Access to a Lawyer

Ireland continues to allow inferences to be drawn from the silence of a suspect or accused person.¹⁷⁴ This situation persists although the Garda (police) caution still has not been amended in line with the change to the law which took place in 2007.¹⁷⁵

The State Report provides that an “inference may not be drawn unless the person was informed before the failure/refusal occurred that they had the right to consult a solicitor and, other than where they waived that right was afforded an opportunity to so consult”.¹⁷⁶ Although the Report states that these amendments were prompted by recent jurisprudence of the European Court of Human Rights, it fails to explain why the State has yet to fully implement that jurisprudence, which provides that “access to a lawyer should be provided from the first interrogation of the suspect by the police unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right.”¹⁷⁷ These necessary amendments have not taken place despite the Committee’s recommendation in 2008 that Ireland “should also give full effect to the rights of criminal suspects to contact counsel before, and to have counsel present during, interrogation”.¹⁷⁸

The European Court of Human Rights has also held that the systematic denial of legal assistance to accused/suspected persons while in custody amounts to a breach of Article 6(1).¹⁷⁹ People who are held in detention in police custody in Ireland do not have the right to have a legal representative present while being questioned by the Gardaí.¹⁸⁰ Although the Government established a Standing Committee to advise on Garda interviewing of suspects in 2010,¹⁸¹ Ireland has not officially ‘opted into’ the EU Proposal for a Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest,¹⁸² the provisions of which would assist Ireland in addressing concerns regarding access to legal representation.

The Committee is urged to ask the State party to provide information on the current Garda caution and the reasons why this has not been amended to reflect changes in criminal law allowing for inferences from silence, despite the provision of Ministerial Regulations providing for same.

The Committee is urged to ask the State party whether it considers its law is in compliance with the European Court of Human Rights jurisprudence on the right of access to a lawyer (cases of *Salduz et al*) and, if not, how the State party plans to bring about compliance.

The Committee is urged to ask the State party to indicate whether it intends to opt in on the Proposal for a Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest, and re-instate Ireland’s commitment to develop common minimum safeguards in the European Union for suspects and accused persons.



10.3 Right to Silence

In 2008, the Committee recommended that Ireland should “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”.¹⁸³ In fact, the Criminal Justice (Amendment) Act 2009 further chipped away at the right to silence through the extension of inference-drawing provisions to cover certain organised crimes. Inference drawing provisions have now been extended across a range of offences; however, no new form of Garda caution has been given on foot of these amendments (despite the fact that the Criminal Justice Act 2007 makes provision for Executive Regulations in this respect). As a result, people held in Garda custody are not being informed, in a consistent fashion, of the consequence of remaining silent when questioned. This has created difficult working conditions for the Gardaí, exacerbated the risk of confusion and uncertainty by detained persons and impedes their legal representatives from advising them effectively and ultimately, could lead to miscarriages of justice.¹⁸⁴

The Committee is urged to ask the State party to amend Irish law to include appropriate safeguards where inferences are drawn from silence.

10.4 Access to Legal Aid

Despite the State’s assertion that the budget of the Legal Aid Board has remained “relatively stable”,¹⁸⁵ there has been a 10% decrease in the budget of the Board during the two year period from 2008 – 2010, in addition to the allocation of additional responsibility to the Board, for example in relation to the Family Mediation Service.¹⁸⁶ Since 2007, demand for civil legal aid has risen by approximately 97 per cent without any change in the rules under which people can apply. For example, exclusions continue to apply in relation to housing rights, representation before tribunals including the Social Welfare Appeals Office, the Equality Tribunal and the Employment Appeals Tribunal and defamation.

As a result of increased demand, a reduced budget and a recruitment ban in the public service, the pressure on the Legal aid Board is such that in May 2013 there were 5271 people waiting for a first appointment. Furthermore, some 25 of the State’s 31 law centres had a waiting time of five months or more for qualified applicants to meet a lawyer and one centre had a waiting time of 18 months. This is despite the fact that the Legal Aid Board itself designates a period of between two and four months as an acceptable waiting time.¹⁸⁷

The Committee is urged to ask the State how it ensures that all people who are entitled to legal aid can access legal services in a timely manner.

The Committee is urged to ask the State how it fulfils its obligations under Article 14 when certain areas of legal dispute are excluded automatically from the legal aid scheme.



10.5 Victims of Crime with a Disability

Data published by the Central Statistics Office in 2012 reports that sexual offences involving ‘mentally impaired persons’ is now at the rate of one crime per fortnight.¹⁸⁸ However, Irish laws governing sexual offences do not adequately protect people with disabilities who are victims of sexual assault. For example, in 2007, a woman with an intellectual disability was prohibited from giving evidence about her alleged sexual assault by a judge who deemed she did not have the “capacity” to testify in court. The case was dismissed.¹⁸⁹ Furthermore, in 2010, a jury was directed to return a verdict of not guilty in the case of the alleged oral rape of a 23 year old woman with an intellectual disability.¹⁹⁰ Some of the difficulties in trying this case stemmed from the legislation governing the alleged offence: the Criminal Law Rape (Amendment) Act, 1990 does not have regard to any mental impairment a complainant may have.

The Committee is urged to ask the State party when it will introduce amending legislation to provide clarity regarding the capacity to testify of people with intellectual disabilities.

10.6 Special Criminal Court

Although the Committee has made consistent calls for the abolition of the non-jury Special Criminal Court,¹⁹¹ its remit has in fact expanded since 2008 to include additional offences relating to organised crime.¹⁹² Despite the Committee’s finding in the Kavanagh case¹⁹³ that Irish law¹⁹⁴ was in breach of Article 26(1) of the Covenant, the DPP retains her discretion in assigning cases to the Court and is not required to make her reasons public (or demonstrate decision-making based on reasonable and objective criteria as stated by the Committee in Kavanagh).

The Committee is urged to ask the State party the reasons for the retention of a non-jury court and is further urged to ask the State party whether it intends (and how) to comply with the Committee’s 2001 decision in Kavanagh v. Ireland.



11. Right to Life

ICCPR: Articles 6 and 7

11.1 Reform of the Inquest System

*The State has procedural obligations in cases involving deaths or serious injuries in places of detention such as prisons or Garda custody, and places of organised state care. This includes the carrying out of an independent, prompt and effective investigation of incidents.*¹⁹⁵

The Coroner is an independent official with responsibility for the investigation of sudden and unexplained deaths under the Coroner's Act 1962, as amended by the Coroner's (Amendment) Act 2005. The role of the Coroner is to enquire into the circumstances of sudden, unexplained, violent and unnatural deaths. The Coroner establishes the facts of an unexplained death and is not empowered to assign accountability nor to consider civil or criminal liability. However, as submitted to the Committee in 2008, the legislation and framework is out-dated and requires reform. The Coroner's Bill 2007,¹⁹⁶ referred to at paragraph 192 of the State Report provided for the reform of the Coroner's Service; however, it lapsed with the previous Government. In its observations on the Scheme of the Bill, the Irish Human Rights Commission recommended a number of amendments including the establishment of categories of deaths which would be regarded as reportable to the coroner and the disclosure of witness statements to victims' families and legal representatives.¹⁹⁷

The deficiencies in the current inquest system in fulfilling the State obligations under Article 6 of the Convention and Article 2 (Rights to freedom from torture and inhuman or degrading treatment or punishment) European Convention on Human Rights (ECHR) were brought into sharp focus by the death of Mrs. Savita Halappanavar on 28 October following a miscarriage at an Irish hospital.¹⁹⁸

In addition to the inquest, where a unanimous verdict of death by misadventure was pronounced,¹⁹⁹ an investigation into her death was initiated by the Health Service Executive (HSE) and the Health and Information Quality Authority (HIQA). However, as set out above, the Coroner's remit is limited and neither the HSE nor the HIQA investigations were fully independent.²⁰⁰ The Committee should also note that originally, it was envisaged that her death would be investigated by an internal hospital review team only and that this situation has come about mainly due to the persistence of her husband who was unsatisfied with the investigation originally commenced.²⁰¹ However, none of these inquiries is a fully effective independent official investigation in line with the standards of Article 2 ECHR.²⁰²

The Committee is urged to ask the State party when it will introduce legislation to reform the current inquest system.

The Committee is urged to ask the State party whether it will introduce a suitable legal framework in order to satisfy the State's procedural obligation to investigate deaths in State care.



12. Freedom of Thought, Conscience and Religion

ICCPR: Articles 2, 18, 19, 24 and 26

12.1 Religious Oaths

In its Concluding Observations on Ireland's Third Periodic Report, the Committee urged the State party to amend the constitutional provision requiring a religious oath from judges to allow for a choice of a non-religious declaration.²⁰³

The State Report indicates that the Government wishes to follow the 2001 recommendation of the Constitutional Review Group to provide both a religious and non-religious oath as optional.

In this respect, a constitutional referendum would be required in order to amend the Constitution.²⁰⁴ The Committee should note that there are currently no publicly reported plans to hold a referendum to amend the Constitution on this matter. The State Report notes that it is intended that the

issue be referred to the Constitutional Convention for consideration. The Committee should note that the current programme of work of the Convention on the Constitution does not include the issue of judicial oaths.²⁰⁵

The Committee is urged to ask the State party when it plans to hold a constitutional referendum to allow reform of the current system of judicial oaths.



12.2 Law on Blasphemy

Part V of the Defamation Act 2009²⁰⁶ has, for the first time, introduced an offence of blasphemous libel into Irish law which, the then Government stated, was required under the provisions of the Constitution.²⁰⁷ Under Section 36 of the Act, “a person who publishes or utters blasphemous matter shall be guilty of an offence and shall be liable upon conviction on indictment to a fine not exceeding €25,000”.²⁰⁸ To date, there have been no convictions under this provision.

In General Comment No. 34, the Committee has stated that prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in Article 20, paragraph 2, of the Covenant (such as incitement to hatred).²⁰⁹

The State has pledged to put the question of amending the Constitutional clause of blasphemy (Art 40.6.1) to the Convention on the Constitution. The question is scheduled to be debated by the Convention at its forthcoming meeting on 2/3 November 2013.²¹⁰

The Committee is urged to ask the State party whether and, if so, when it will consider repealing section 36 of the Defamation Act 2013 to remove the offence of publication or utterance of blasphemous matter.

The Committee is urged to ask the State party whether, notwithstanding the outcome of the Convention on the Constitution, it will consider proposing an amendment to the Constitution to remove the clause on blasphemy.

12.3 School Patronage

In its Concluding Observations on Ireland’s Third Periodic Report, the Committee recommended that Ireland take steps to ensure that non-denominational education is widely available in the State.²¹¹ This call is echoed in recommendations from other UN treaty bodies. In 2006, the Committee on the Rights of the Child (CRC) urged the government to take,

*“[f]ully into consideration the recommendations made by the Committee on the Elimination of Racial Discrimination (CERD) which encourages the promotion of the establishment of non-denominational or multid denominational schools and to amend the existing legislative framework to eliminate discrimination in school admissions”.*²¹²

In March 2011, CERD recommended that Ireland accelerate its efforts

*“[t]o establish alternative non-denominational or multi-denominational schools and to amend the existing legislation that inhibits students from enrolling into a school because of their faith or belief”.*²¹³

The State Report provides a detailed account of the steps taken by the State to ensure greater diversity in the education system including efforts to divest some primary schools of religious patronage. The Government has tendered for and received applications for new patronage in 23 separate areas. However, the State Report notes that of the 3,169 primary schools in Ireland, over 94 percent remain under religious patronage with 90 percent of those under the patronage of the Roman Catholic Church.²¹⁴ The report also notes that in relation to approximately 1,700 (stand alone) schools in areas where it is considered not feasible to divest patronage, choices for parents and children will be limited to developing school policies promoting greater inclusion of children of other denominational and non denominational beliefs within the denominational environment.²¹⁵ In such cases the choices of parents and children will continue to be severely limited for the foreseeable future and in most cases there will be no choice but to enrol children in denominational education.



12.4 Religious-Controlled Public Services

A the time of submission, the planned White Paper on Patronage and Pluralism in Primary Education highlighted in the State report has yet to be published.

The Committee is urged to ask the State party whether and how it plans to accelerate the divestment of schools at both primary and post primary level of denominational patronage to ensure that children and parents have available choices in the education of their children.

The Committee is urged to ask the State party when it plans to publish the White Paper on Patronage and Pluralism in Primary Education.

The Committee is urged to ask the State party what legislative measures it intends to adopt to ensure that children are never denied enrolment on the basis of religious belief or affiliation

The Protection of Life During Pregnancy Act 2013 provides for the right of conscientious objection for individual health professionals in relation to the carrying out of abortion under the provisions of the Act.²¹⁶ Certain medical institutions are listed under the Schedule of the Act as appropriate institutions in which terminations may be conducted.²¹⁷ While earlier versions of the Protection of Life During Pregnancy Bill explicitly prohibited hospitals from refusing to carry out terminations where they had been designated as appropriate facilities, this clause was removed during its Parliamentary passage and the Act is silent on this issue.

In a recent media report, a board member of one of the hospitals listed in the schedule, the Mater Misericordiae Hospital in Dublin, indicated that it may not be possible to conduct terminations at the hospital under the provisions of the Act as this would go against the ethos of the hospital.²¹⁸ The hospital is one of two privately managed voluntary hospitals (i.e. not under the management of the Health Services Executive) in the Schedule and is also one of the largest hospitals in the country.²¹⁹

The Committee is urged to ask the State to provide clarity in relation to any legal obligations arising from the provisions of the Act for institutions named in the Act and whether and to what extent issues of conscientious objection may be employed to prevent an institution from carrying out termination where a woman is entitled to such a procedure under law.



13. Rights of Travellers

ICCPR: Articles 2, 14, 24, 26, 2

13.1 Recognition of Travellers as an Ethnic Group

In 2008 the Committee recommended that the State party take steps to recognise Travellers as an ethnic group.²²⁰ The State Report indicates that in response to a recommendation by one delegation during Ireland's UPR examination in 2011²²¹ to explicitly recognise Travellers as an ethnic group, the Minister for Justice stated that serious consideration is being given to the proposal which, the Report notes, remains ongoing.²²²



Irish Travellers constitute a distinct group from the population as a whole in terms of race, colour, descent or national or ethnic origin.

In addition to the UPR process, recommendations to acknowledge Travellers as an ethnic group have been made by a number of International Treaty Monitoring bodies including the Committee for the Elimination of Racial Discrimination (CERD)²²³ and the Committee on the Rights of the Child (CRC).²²⁴ In 2011, the Independent Expert on Human Rights and Extreme Poverty, Magdalena Sepúlveda Carmona, added her voice to the call for recognition.²²⁵ Furthermore, the Council of Europe (CoE) Advisory Committee on the Framework Convention on the Protection of National Minorities (ACFCNM) recommended a “finalised conclusion” to the Government’s consideration of recognition.²²⁶ Domestically, calls for recognition of Travellers as an ethnic group have been made by statutory bodies including the Equality Authority²²⁷ the Irish Human Rights Commission (IHRC)²²⁸ and the now defunct National Consultative Commission on Racism and Interculturalism (NCCRI).

The Committee should also note that, Travellers have been recognised as fulfilling the criteria of an ethnic group (as distinct from Irish nationals) in the neighbouring UK jurisdiction,²²⁹ including in Northern Ireland, leading to the disparity that nomadic Travellers living and moving across the border may be legally recognised as a separate and distinct ethnic group in one jurisdiction but not in the other.

The Committee is urged to ask the State party to take immediate steps to recognise Travellers as an ethnic group in line with previous recommendations by UN Treaty bodies and under the UPR. The State party should outline a timeframe when this will be achieved.



13.2 Direct and Indirect Discrimination

Direct Discrimination

Travellers continue to suffer high degree of racism and intolerance with many documented incidents of discrimination directed towards Travellers including in access to justice.²³⁰ Cases formerly taken under equality legislation in relation to access to and provision of goods and services in licensed premises were moved from the quasi-judicial Equality Tribunal to the District (lowest) Courts following the enactment of the Intoxicating Liquor Act 2003.²³¹ As the State has noted in its report under the Framework Convention on the Protection of National Minorities, the Equality Authority has previously raised concern about the potential negative impacts of transferring jurisdiction for alleged discrimination on licensed premises from the Equality Tribunal to the District Courts.²³²

Figures provided by the State party in 2011 indicate that a significant number of cases have been referred to the courts on a variety of grounds with those alleging discrimination on the Traveller ground continuing to make up an appreciable number.²³³ Statistics produced by the Courts Services regarding the throughput of cases before the District Court under the provisions of Section 19 of the 2003 Act note that, of the 54 applications lodged alleging discrimination by licensees in 2010, 50 applications were lodged on behalf of Travellers. Of the 54 applications, 49 were eventually struck out, withdrawn or adjourned, leaving five cases finding in favour of the applicant. This represents a nine per cent rate of success for claimants, down from 14.5 percent the previous year (2009).²³⁴

Indirect Discrimination

Irish equality law protects against indirect discrimination, which may occur where an apparently neutral provision puts a person (who is listed in the legislation, including Travellers)²³⁵ at a particular disadvantage compared with other persons.²³⁶ A difference in treatment may be justified if objectively justified by a legitimate aim, and the means of achieving that aim are proportionate and necessary.

In *Stokes v Christian Brothers High School* (2011) case, a Catholic boys-only secondary school successfully appealed a decision by the Equality Tribunal which found that a Traveller student had been unfairly discriminated against under the school's admissions policy.²³⁷ The Tribunal had found that a "parental rule" operated by the school for admissions under which preference was afforded to the sons of past pupils, unfairly discriminated against Travellers who, through historical educational disadvantage, prejudice and social exclusion, would be far less likely to meet the criteria for admission. However, the High Court²³⁸ found that the school did not operate a policy that discriminates 'in particular' against Travellers but rather against any class of person who was not the son of a past pupil.

In its fourth report on Ireland the European Commission on Racism and Intolerance (ECRI) found that a preferential admission policy favouring children whose parents attended the particular school can have indirect discriminatory effects on children of immigrant background, or from other disadvantaged groups like Travellers, whether they share the schools ethos or not.

The Committee is urged to ask the State party how it will ensure that Travellers are not unfairly disadvantaged by direct and indirect discrimination in accessing justice or in access to employment, goods and services.



13.3 Accommodation, Health and Education

In its Concluding Observations on Ireland's Third Periodic Report, the Committee urged the State party to amend the Housing (Miscellaneous Provisions) Act 2002 to meet the specific accommodation requirements of Traveller families.²³⁹ To date, the legislation, which criminalises trespass on public or private land and has a disproportionate effect on nomadic Travellers, has not been amended.

In its Fourth Report on Ireland (ECRI) noted that Travellers continue to face significant challenges in relation to adequate accommodation and that despite recent positive developments, there is still a shortage of Traveller specific accommodation.²⁴⁰ Under the Housing (Traveller Accommodation) Act 1998, local authorities are obliged to prepare and implement Traveller accommodation programmes including assessment of local need and the provision of transient sites.²⁴¹ These obligations were reiterated in the recent National Traveller/Roma Integration Strategy developed by the Department of Justice and Equality.²⁴² ECRI has noted that further efforts are required to involve local authorities in the implementation of the National Traveller / Roma Integration Strategy pertaining to housing to meet the needs of Travellers.²⁴³

Despite the measures described in the State Report,²⁴⁴ continuing challenges are faced by Travellers in relation to health and education outcomes and the impact of recent budgetary cuts. The findings of the All Ireland Traveller Health Study²⁴⁵ published in 2010 highlights a number of disturbing trends in relation to Traveller health including, inter alia, that Travellers have significantly higher levels of infant mortality, significantly shorter life expectancy among both males and females and significantly higher rates of suicide than the general population. Similarly, recent cuts to specific educational supports appear to disproportionately affect Travellers, as highlighted in the report of the Human Rights Council's Independent Expert on Human Rights and Extreme Poverty following her visit to Ireland.²⁴⁶

The Committee is urged to ask the State party how it plans to ensure that legislation governing housing, education, participation in public life, healthcare and employment does have a disproportionately negative impact on Travellers.

The Committee is urged to ask the State party how it will ensure comparative health and educational outcomes for Travellers in line with those enjoyed by the majority population.

The Committee is urged to ask the State how it will ensure that cuts to public services do not disproportionately impact on the rights of Travellers.



14. Prisoner's Rights and Conditions of Detention

ICCPR: Article 10

A lack of effective complaints and monitoring mechanisms, issues of overcrowding, the continued lack of in-cell sanitation in many prisons leading to practices such as 'slopping out' and the use of prisons for immigration detention purposes were among the serious human rights concerns raised during Ireland's first UPR examination in 2011.²⁴⁷

14.1 Prison Numbers and Overcrowding in Irish Prisons

Ireland's prison population has doubled since 1997.²⁴⁸ The most recently available statistics indicate that the current prison population is 4,180 (24 July 2013), or 95% of total available bed capacity.²⁴⁹ In addition, some prisons continue to operate in excess of the specific bed capacity of that facility.²⁵⁰ Despite the largest ever prison-building programme undertaken in Ireland in the last 30 years, overcrowding has worsened.²⁵¹ Since 1997, more than 900 new spaces have been added to the prison system, with planned new prisons in Ireland's two largest cities, Dublin and Cork.²⁵² However new prison spaces have not matched the increase in prisoner numbers,²⁵³ despite the Committee expressing its concern in 2008 regarding "increased incarceration".²⁵⁴

Overcrowding has a direct effect on increasing incidence of inter-prisoner violence. In 2010 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) reported dangerous levels of inter-prisoner violence in Irish prisons, observing that 'stabblings, slashings and assaults with various objects' are an almost daily occurrence.²⁵⁵

The Committee is urged to ask the State Party to outline how it plans to permanently eliminate overcrowding in Irish prisons.

The Committee is also urged to ask the State to provide details on how it will ensure that imprisonment remains a 'last resort' option and whether and to what extent non-custodial options will replace custodial sentences where appropriate.

The Committee is urged to ask the State party to outline how its revised prison-building programme will ensure humane and safe conditions for all prisoners in line with Ireland's obligations under the Covenant.

The Committee is urged to ask the State party how it will reduce the incidence of violence in prisons and ensure effective remedies for prisoners who have been subjected to such incidents.



14.2 Cell Conditions, Sanitation and ‘Slopping-Out’ in Prison

In 2008, the Committee requested that the State prioritise overcrowding and the “slopping-out of human waste”²⁵⁶ as “priority issues.”²⁵⁷ While progress is being made, many prisoners continue to be detained in facilities without in-cell sanitation.²⁵⁸ Significantly, in Limerick, Cork and Mountjoy (Dublin) prisons the practice of ‘slopping-out’ exists in overcrowded cell conditions. In these prisons the practice of slopping out is combined with multi-cell occupancy, long lockdown periods and an impoverished regime, exacerbating the impact on prisoners. While the Minister for Justice has provided assurances that slopping-out as a practice will be eliminated by 2014, in a recent report (2013), the Inspector of Prisons noted that this is not expected to be achieved until mid 2016.²⁵⁹

The CPT also has consistently called for an end to slopping out in Irish prisons²⁶⁰ and in 2011, the UN Committee against Torture recommended that the Irish State “strengthen its efforts to eliminate, without delay, the practice of “slopping-out”, starting with instances where prisoners have to share cells. The Committee further recommended that until such a time as all cells possess in-cell sanitation, concerted action should be taken by the State party to ensure that all prisoners are allowed to be released from their cells to use toilet facilities at all times.”²⁶¹

The Committee is urged to ask the State party how it intends to eliminate the practice of ‘slopping-out’ from all places of detention in Ireland and to provide a detailed timeline when this measure will be achieved.

The Committee is also urged to ask the State how the prison authorities intend to ensure that prisoners who do not have in-cell sanitation, will not be subject to continued inhuman or degrading treatment by being forced to ‘slop out’.

14.3 An Independent Complaints Mechanism for Prisoners

In its 2010 Report, the CPT expressed concerns about the inadequate investigation of complaints regarding allegations of ill-treatment of prisoners by staff, poor recording of alleged incidents, and deficient or no medical examination of prisoners who make complaints.²⁶²

In 2011, the UN Committee against Torture recommended that the State party:

1. Establish an independent and effective complaint and investigation mechanism to facilitate the submission of complaints by victims of torture and ill-treatment by prison staff and ensure that in practice complainants are protected against any intimidation or reprisals as a consequence of the complaints;
2. Institute prompt, impartial and thorough investigations into all allegations of torture or ill-treatment by prison staff;
3. Ensure that all officials who are allegedly involved in any violation of the Convention are suspended from their duties during the conduct of the investigations;
4. Provide the Committee with information on the number of complaints made concerning allegations of torture and ill-treatment by prison staff, the number of investigations carried out and the number of prosecutions and convictions, as well as on the redress awarded to victims.²⁶³



There are currently no available statistics on the number of complaints made by prisoners with regard to allegations of ill-treatment by prison officers. In August 2012 the Minister for Justice and Equality accepted proposals by the Inspector of Prisons for a complaints mechanism whereby serious complaints from prisoners could be investigated by external investigators with an appeal to the Inspector.²⁶⁴ Since the 1 November 2012, some complaints are subject to this independent investigation process, namely Category “A” complaints, alleging serious ill treatment, use of excessive force, racial discrimination, intimidation or threats.²⁶⁵

The deficiencies of the internal complaints systems were highlighted in a 2012 report by the Inspector of Prisons who revealed a completely deficient complaints system operating in the young offenders’ institution. He found that no complaint by a prisoner has been upheld, even where prison management had acknowledged that staff had behaved inappropriately.²⁶⁶

The Committee is urged to ask the State party to clarify when the full complaints system proposed by the Inspector of Prisons will be in place and the type of training that will be provided to staff to deal with complaints.

14.4 Death of Gary Douche

On August 1st 2006, a 21 year old man, Mr Gary Douch, was unlawfully killed in Mountjoy Prison in a holding cell he shared with six others, one of whom was mentally ill. A commission of investigation was established in May 2007, headed by Ms Gráinne McMorrough, Senior Counsel, with its report expected by the end of that year. At the time of writing, the report of the Commission of Investigation into the death of Mr Douch at Mountjoy Prison in 2006 has still not been completed.²⁶⁷

The Committee should ask the State party when the report into the death of prisoner Gary Douche at Mountjoy Prison in 2006 will be published.

14.5 Pre-trial Detention

The State Report indicates that while the majority of accused persons held on remand are confined to purpose built segregated facilities at two prison sites, a significant minority continue to be held in non segregated facilities at three prison sites - Cork, Limerick and Midlands prisons.²⁶⁸ In its Concluding Observations on Ireland’s Third Periodic Report the Committee recommended that remand prisoners be kept in separate detention facilities.

The Committee is urged to ask the State party how it intends to ensure that all persons on remand are held in segregated accommodation.

14.6 Female Prisoners

The number of female prisoners in Irish prisons has increased dramatically in recent years. In 2010, 1,701 women were committed to prison in Ireland. This figure represents over 12% of the persons committed to prison in 2010. Between 2005 and 2010 there was an 87% increase in the number of women committed to prison.²⁶⁹ Strategic Action 3 of the Irish Prison Service Three Year Strategic Plan 2012-2014 contains a commitment to develop a special strategy for women prisoners.²⁷⁰ Appendix 1 of the Strategic Plan states:

As part of its Strategic Plan 2012-2015 the Irish Prison Service, working in partnership with the Probation Service and other stakeholders in the statutory, community and voluntary sectors will seek to develop a strategy for dealing with women offenders. The overall aims of the strategy which will be delivered in conjunction with other stakeholders, including the Probation Service, will be to:

- Identify and divert those at risk of a custodial sentence through greater use of community support and interagency cooperation.
- Seek to ensure that sentences are managed in a way which seeks to address both the offending behaviour and its causes.

The Committee is urged to ask the State party how it will ensure that the imprisonment of women must only be used as a last resort when all other alternatives are deemed unsuitable.

The Committee is also urged to request that the State party provide detailed information on legislative and policy changes it intends to adopt to reduce the rate of women receiving custodial sentences for less-serious and non-violent crimes including through alternative sentencing options.



14.7 Detention of Children

In 2012, the Government committed that by April 2014 all detained people under 18 would be housed in the new National Children's Detention facility (Oberstown campus).²⁷¹

From 1 May 2012,²⁷² existing child detention facilities at Oberstown have also catered for all newly remanded or sentenced 16-year old boys. However, seventeen year-old boys are still detained at St Patrick's Institution, which also houses adults up to 21 years of age with statistics showing the numbers have risen in recent years. Official figures show there were 31 17-year-olds in St Patrick's Institution on 1st of August 2012, compared to 21 on the 1th of July 2011.²⁷³

In July 2013, the Minister for Justice and Equality announced that St Patrick's institution would be closed within six months and that all 17 year old prisoners would be transferred to a designated segregated section of Wheatfield prison in west Dublin while awaiting construction of new detention facility to be completed. This follows on from a report by the Inspector of Prisons in 2012²⁷⁴ which detailed what it termed as the systematic violation of the human rights of children and young people in the prison, including:

- Forced stripping and clothes being cut from boys and young men when being held in Special Cells.
- Inappropriate and excessive use of Special Cells in violation of the Irish Prison Service's own guidelines and rules.
- Excessive and unrecorded use of force by staff against prisoners, in violation of the Irish Prison Service's own guidelines and rules;
- A disproportionate number of under-18s being relocated using control and restraint (C&R) techniques.
- Excessive and unauthorised punishment of prisoners, including denying children family visits or phone calls.
- Undocumented "isolation" of a number of prisoners in solitary confinement for 56 days following an incident at the prison.
- Bullying and intimidation of young and vulnerable inmates by some staff, and indifference to concerns of inmates, including emergency calls for help.
- A completely deficient complaints system where no complaint by a prisoner was upheld, even where prison management had acknowledged that staff had behaved inappropriately.
- At a general level, the Inspector also found serious deficiencies in attendance at school, access to healthcare and the availability of training. He also found many parts of the prison cold and dirty.²⁷⁵

Following an inspection of St Patricks Institution conducted in March 2013, the Inspector of Prisons reported that he found 'very disturbing incidents of non-compliance with best practice and breaches of the fundamental rights of prisoners'.²⁷⁶ Among the recommendations in the report was a recommendation that St Patrick's Institution be closed down. In order to facilitate closure, the Inspector recommended that 18 to 20 year old prisoners should be removed to a 'separate wing(s) of a general prison(s)' for separate recreation and accommodation.²⁷⁷ The Inspector also stated that prison authorities should focus on providing rehabilitation through education, work and training for prisoners and that they could participate in education and work training with the general prison population.

The Committee is urged to ask the State party to provide detailed information on the establishment of the new Oberstown campus, to confirm that the project is on track and to confirm that 17 year olds will be housed there by April 2014.

The Committee is urged to ask the State party to provide details on how it will ensure that 18 to 20 years old prisoners will remain segregated from the greater prison population.

The Committee is urged to ask the State party whether and how it plans to implement the recommendations of the Inspector of Prisons on the closure of St Patrick's Institution.



14.8 Detention of Migrants

Irish law provides for immigration-related detention in a number of circumstances.²⁷⁸ Persons detained for immigration-related reasons are held in ordinary prisons, on occasion, sharing accommodation with persons suspected or convicted of criminal offences.²⁷⁹

Ireland has yet to implement the 2008 recommendation of the Committee that the State should review its detention policies to give “priority to alternative forms of accommodation” and “take immediate and effective measures to ensure that all persons detained for immigration-related reasons are held in facilities specifically designed for this purpose”.²⁸⁰

During Ireland’s First UPR examination in 2011, Brazil recommended that Ireland take the “necessary measures to avoid detention of asylum seekers and to avoid situations which may equate the condition of immigrants to that of felons.”²⁸¹ In accepting this recommendation, Ireland stated that detention is “only used in circumstances where failed asylum seekers seek to evade deportation”.²⁸² The State Report justifies the detention of people for immigration-related reasons in prisons, stating that they “are housed with remand prisoners, reflecting the common status of both groups as being made up of persons not convicted of a criminal offence”.²⁸³

The Committee is urged to ask the State party whether it will provide facilities specifically designed for immigration-related detention, should the exceptional circumstances arise where it is necessary to detain persons for that reason.





15. Immigration and Asylum

ICCPR: Articles 7, 9, 10, 13 and 14

15.1 Immigration, Residence and Protection Bill 2010

The Committee should note that the Immigration, Residence and Protection Bill 2010 (which had its original incarnation in 2006) has, to date, not been enacted. At the time of submission, it is not known whether an amended or replacement bill will be introduced to address the concerns raised in 2008 by the Committee regarding summary removal, access to legal representation, and independent appeals for all immigration related decision.²⁸⁴



15.2 Applications for Asylum

Ireland is the only EU Member State which does not have a single procedure to “examine all of the protection needs of an asylum seeker at the same time”.²⁸⁵

The Committee is urged to ask the State party if it plans to introduce a single procedure for asylum applicants.

15.3 Direct Provision

The State’s statutory Reception and Integration Agency (RIA) operates a system of dispersal and direct provision for people seeking asylum or another form of protection (e.g. victims of human trafficking).²⁸⁶ It is provided on a full-board basis (all meals provided) and is accompanied by a single weekly social transfer payment of €19.10 for an adult and €9.60 for a child, a rate which has remained unchanged since its introduction in 1999. Currently, there are approximately 4,800 people living in direct provision accommodation (down from 5,400 at the end of 2011) in Ireland, approximately 60 per cent of whom have been there for three years or more. Almost a third of the total number of residents are children under the age of 18.²⁸⁷

Applicants are precluded in law from taking up gainful employment and some of the documented effects of the system include institutional poverty and social exclusion. In 2013, the European Commission on Racism and Intolerance (ECRI) noted, “that residents of the direct provision centres have little control over their daily lives (cooking, cleaning, celebrating important events), which in many cases impacts negatively on family life..[.]”^{288 & 289} ECRI recommended that the authorities conduct a systematic review of the policy of direct provision and called for an alternative system that would promote independence and ensure adequate living conditions.²⁹⁰

The Committee is urged to ask the State party to provide more detailed information on the policies and practices which govern the system of direct provision.

The Committee is urged to ask the State party whether and, if so, when it intends to end the system of direct provision for asylum seekers and to adopt alternative reception and integration policies to ensure that asylum seekers, including children, are not unfairly disadvantaged or segregated from the community.



15.4 Independent Complaints Mechanism: Asylum and Protection System

There is a lack of an independent complaints mechanism for residents in direct provision or access to effective remedies for individuals who have been aggrieved. Asylum seekers do not fall within the remit of the Office of the Ombudsman. In response to a recent parliamentary question (PQ) regarding the instituting of an independent complaints mechanism for asylum seekers living in direct provision the minister for Justice and Equality stated that:

*“Section 5 (1) (e) of the Ombudsman Act, 1980 and section 11(1) (e) of the Ombudsman for Children’s Act, 2002 provide that either Ombudsman shall not investigate any action taken by or on behalf of a person in the administration of the law relating to, inter alia, asylum...[T]here are no plans to change those legislative provisions to give either Office the power to investigate asylum related matters..[.]”*²⁹¹

The Ombudsman has recently expressed concern that the treatment of asylum seekers may entail breaches of Ireland’s obligations under the Constitution and international human rights law.²⁹²

The Committee is urged to ask the State party if and, if so, when an independent complaints mechanism will be put in place to deal with issues arising in direct provision.

The Committee is also urged to ask the State party if it will consider granting autonomy to the Office of the Ombudsman and the Office of the Ombudsman for Children to deal with complaints received from asylum seekers and to advocate on their behalf.

The Committee is urged to ask the State party if, until such time as the practice ends, it will consider bringing direct provision centres under the remit of the Health Information and Quality Authority (HIQA) for the purposes of inspection.

15.5 Independent Appeals Mechanism

In its Concluding Observations on Ireland’s Third Periodic Report, the Committee recommended that the State party adopt an independent appeals mechanism for immigration related decisions.²⁹³ The establishment of an independent appeals mechanism to deal with immigration decisions not falling within the remit of the Refugee Appeals Tribunal (RAT) is necessary to ensure access to fair procedures and effective remedies for migrants and their family members seeking to challenge decisions affecting their human rights. The 2011 Programme for Government contained a commitment to “introduce comprehensive reforms of the immigration, residency and asylum systems, which will include a statutory appeals system and set out rights and obligations in a transparent way.”²⁹⁴ Neither the Immigration, Residence and Protection legislation nor a separate piece of legislation introducing such a mechanism is presently on the

Government Legislation Programme for the coming term.²⁹⁵ Currently, people seeking to challenge decisions refusing them permission to remain in the State or permission to enter the State – for example for the purpose of family reunification or the preservation of the family unit – must seek judicial review

of that decision by the High Court. However, as part of judicial review proceedings, the High Court is not in a position to review the merits of a case and cannot deal with questions of fact. Unlike an expert administrative tribunal, the High Court does not have the power to alter or vary an administrative decision and access to the court is severely limited by the 14-day time limit contained in the Illegal Immigrants (Trafficking) Act, 2000²⁹⁶ as well as by the high financial risk applicants are taking as – in case of an unsuccessful outcome of their application – may have to pay the legal costs of the State party.

The Committee is urged to ask the State party to provide details of any proposed independent appeals mechanism, a timeframe for its establishment and how it will ensure the independence of such a mechanism.

The Committee should ask the State party whether and how it intends to ensure that the costs associated with proceedings before the High Court are not a prohibitive barrier for applicants who wish to appeal a negative decision.



15.6 Legal Advice

Ireland's Fourth Periodic Report does not address the Committee's 2008 Concluding Observation that the State party ensure that asylum-seekers have full access to early and free legal representation.²⁹⁷ There is no mention of early legal advice in recent versions of the Immigration, Residence and Protection Bill.²⁹⁸

The Committee is urged to ask the State party to provide a response to the Committee's recommendation regarding full access to early and free legal representation for asylum seekers.



16. Victims of Trafficking

ICCPR: Articles 3, 8, 24 and 26

As set out in the State Report,²⁹⁹ Ireland has ratified the United Nations Convention on Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2010 and the Council of Europe Convention on Action against Trafficking in Human Beings.³⁰⁰

16.1 Applications for Asylum

In 2008, the Committee urged Ireland to ensure the “protection and rehabilitation of victims of trafficking” and to ensure that “permission to remain in the State is not dependent on the cooperation of victims in the prosecution of alleged traffickers”.³⁰¹

The Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (the “Arrangements”)³⁰² came into operation on 7 June 2008 and set out the applicable procedures where a person is identified as a suspected victim of human trafficking. Under the Arrangements, an individual must be formally identified as a victim of trafficking by a high ranking police officer.

The Arrangements provide for a 60 day recovery and reflection period during which there is no obligation on a suspected victim to cooperate with an investigation or prosecution. Furthermore, suspected victims of trafficking may also apply for a (renewable) six month temporary residence permission where it is necessary in order to assist with an investigation or prosecution of a human trafficking offence.

Suspected victims of trafficking who apply for asylum are excluded from the scope of the Arrangements and do not benefit from the recovery and reflection period or temporary residence permission.³⁰³ This has knock-on effects regarding the equal treatment of suspected victims of trafficking. For example, a person who has assisted the Gardaí (police) and has held a Temporary Residence Permit for three years can apply for a change of status and be granted permission to remain in the State on humanitarian grounds.³⁰⁴ However, asylum seeking victims of trafficking will not be able to accumulate this required three year period as they will not be entitled to apply for an initial Temporary Residence Permit until after their application for refugee status has been terminated.³⁰⁵

The Committee is urged to ask the State party how intends to ensure that victims of trafficking who have sought asylum are granted comparable protections in the context of administrative arrangements to those who have not sought asylum.



16.2 Data on Trafficking

The Annual Report of the AHTU also notes that the Unit does not collect specific details on reported victims, and advises against drawing inferences from the available statistics as to the estimated likely number of reported victims of trafficking.³⁰⁶ For example, in addition to statistical data on the number of referrals to Gardai (police), the report also contains data on the number of referrals to non-governmental organisations (NGOs). However, the report notes that many of the referrals listed in both sections may refer to the same victims. The failure of the AHTU to collect information in a way which allows for more accurate estimation of the suspected number victims hampers efforts to determine the full extent of the problem of trafficking.

The Committee is urged to ask the State party to take steps to ensure that statistics collected by relevant agencies provide accurate data on the situation of suspected victims of trafficking in Ireland and related prosecutions on an annual basis.

16.3 Legal Representation of Victims of Trafficking in Ireland

According to the State Report³⁰⁷ legal aid and advice to victims of trafficking is provided by the Legal Aid Board. However, the Committee should note that the Legal Aid Board – through its Refugee Legal Service – only provides, legal services on certain matters to persons identified by the Garda National Immigration Bureau (GNIB) as “potential victims” of human trafficking under the Criminal Law (Human Trafficking) Act 2008.³⁰⁸

This means that a potential victim of trafficking is required to present herself/himself to the Gardai (police) and provide at least basic details of their identity and situation before they are considered eligible for legal assistance. In addition, the services offered to potential victims of human trafficking are currently limited to advice and, in relation to regularisation of a victim’s stay in Ireland, information.

While the legal services currently provided to victims of trafficking appear to meet the minimum requirements of the UN Protocol, it is questionable whether they are in compliance with Article 15(2) of the Council of Europe Convention which provides for the right to free legal assistance and legal aid for victims in relation to compensation and legal redress.³⁰⁹ Moreover, it is likely that the current scheme in Ireland falls short of the services envisaged in the Council of Europe’s explanatory report on Article 12 of the Convention on Action against Trafficking in Human Beings.³¹⁰

The Committee is urged to ask the State party how it will ensure that all victims of trafficking are fully informed of their rights and obligations at the earliest possible opportunity and are able to make an informed choice regarding their immigration status.

The Committee is urged to ask the State party how it will ensure timely and adequate access to, and provision of, legal aid for victims of trafficking.



16.4 Compensation

Currently, the avenues for obtaining compensation or financial redress for victims of trafficking in Ireland are limited. While it is possible for victims to obtain an order from the courts for damages to be paid by the trafficker – post conviction, there is no evidence available for Ireland on the number of awards made. However, evidence from the UK suggests a low percentage of compensation orders are made through the courts.³¹¹

Critically, there is no State funded compensation fund for victims of human trafficking in Ireland at present and Government has indicated in its 'Review of the National Action Plan To Prevent and Combat Trafficking in Human Beings 2009 – 2012' that it is of the view that the:

[E]stablishment of a dedicated compensation fund for victims of human trafficking would be inappropriate given that no such fund exists for any other victims of crime. While there is no doubt that victims of human trafficking constitute an extremely vulnerable group it would be difficult to justify not also having a compensation fund for victims of other crimes such as rape, etc.³¹²

As noted in the State Report, victims of crime may pursue compensation through the Criminal Justice Compensation Tribunal.³¹³ The tribunal considers applications from people who suffer a personal injury or death as a result of crime of violence. Compensation may be awarded on the basis of any vouched out-of-pocket expenses, including loss of earnings, experienced by the victim or, if the victim has died as a result of the incident, by the dependants of the victim. An application must be made to the Tribunal as soon as possible but not later than three months after the incident; however, the tribunal may extend the time limit in circumstances where the applicant can show that the reason for the delay in submitting the application justifies exceptional treatment of the application. The time limits imposed by the legislation may lead to the exclusion from access to compensation of victims who are too traumatized to report their ordeals to the Gardaí (police) in a timely fashion.

The Committee is urged to ask the State party to provide detailed information on the number of awards for damages made under claims in relation to trafficking in the reporting period.

The Committee is urged to ask the State party how it will ensure that victims of trafficking are not unfairly disadvantaged in relation to rules pertaining to compensation.





17. The Rights of the Child

ICCPR: Articles 6, 7 and 24

17.1 Constitutional Recognition of the Rights of the Child

The Children's Rights referendum was passed on 10 November 2012,³¹⁴ resulting in the deletion of Article 42.5³¹⁵ and the insertion of a new Article 42A.³¹⁶ The Thirty-First Amendment of the Constitution (Children) Bill 2012 has yet to be signed into law pending the result of ongoing legal challenges to the validity of the poll.³¹⁷

If written into law, Article 42A will have a positive impact on children's rights including rights in relation to care, adoption and the recognition of the voice of the child in certain circumstances. The provision also dictates that the best interests of the child must be taken to be of paramount consideration in proceedings brought by the State, in relation to the safety and welfare of children, or concerning the adoption, guardianship or custody of, or access to, children.

Notwithstanding the increased recognition of the voice of the child, Article 42A.4.2^o appears to restrict the right of child to have his / her voice heard in proceedings brought by the State party but potentially not in cases where proceedings are brought against the State party and its agencies.³¹⁸

The Committee should also note that a number of areas in relation to child welfare will remain outside of the parameters set out in the amendment, such as education and health.³¹⁹ The Committee is urged to ask the State party how it plans to ensure that the voice of the child is heard in any proceedings taken by or against the State party and its agencies.

The Committee is also urged to ask the State party how it will ensure the rights of children are upheld in legal and administrative scenarios which fall may fall outside the parameters of the amendment, including in health and education.



17.2 Abuse of Children

Recent reports have highlighted previous failures in relation to the care and protection of children in Ireland. Reports on child abuse including The Commission to Report into Child Abuse or “Ryan Report”, 2009. The reports reveal the prevalence of physical, emotional and sexual abuse including clerical sexual abuse which took place in the past. The State Report refers to the work of the Implementation plan, published in 2009, in response to the Commission to Inquire into Child Abuse (Ryan Implementation Plan). The Monitoring Group for the Ryan Implementation Plan is reportedly due to conclude its work in 2013. The Children’s Rights Alliance (a coalition of more than 100 groups campaigning, inter alia, to secure the full implementation of the Convention on the Rights of the Child in Ireland) has recently stated that:

*“it is imperative that a replacement mechanism is found to continue the monitoring and accountability which has been achieved through the publications of the Monitoring Group’s annual reports; that the outstanding commitments and learning from the Implementation Plan are brought into the programme of work of the Department of Children and Youth Affairs and the Child and Family Support Agency; and there is a method to incorporate relevant recommendations from other reports, including the reports of the Special Rapporteur on Child Protection, the National Review Panel for Serious Incidents and Child Deaths, the Health Information and Quality Authority and the Ombudsman for Children.”*³²⁰

The Committee is urged to ask the State party whether a suitable replacement mechanism to the Monitoring Group for the ‘Ryan Report Implementation Plan’ will be established to ensure the plan is fully implemented and to provide a timeframe for full implementation of the plan.

Corporal Punishment

Under the heading ‘Corporal Punishment’, the State Report provides no information on any plans for legislative measures to ban corporal punishment in the home.³²¹ A common law defence of “reasonable and moderate chastisement” exists in relation to the discipline of children within the home.³²²

The Committee should note that in its Concluding observations on Ireland’s Second Periodic Report, the Committee on the Rights of the Child concluded that while the prohibition of corporal punishment within the family remained under review in Ireland and that parental educational programmes had been developed, the Committee was deeply concerned that corporal punishment within the family was still not prohibited by law.³²³

In 2011, while partially accepting two UPR recommendations on the issue,³²⁴ Ireland gave the following response:

This matter is under continuous review. A proposal to either prohibit the defence of reasonable chastisement or to further circumscribe the definitions of what constitutes reasonable chastisement would require careful consideration. Details of any possible future significant developments in this area will be communicated to the UN CRC.

The State report also makes reference to the publication of the guidance note for statutory and non statutory bodies working with children entitled Children First – National Guidance for the Protection and Welfare of Children. The State party has committed to placing the guidance on a statutory footing but despite the publication of the General Scheme of the Bill, it is not known when the legislation will be introduced to the Oireachtas (Irish Parliament).



17.3 Deaths of Children in State Care

The Committee is urged to reiterate the recommendation of the CRC in its 2006 Concluding Observations on Ireland's Second Periodic Report under the Convention on the Rights of the Child to:

1. Explicitly prohibit all forms of corporal punishment in the family;
2. Sensitise and educate parents and the general public about the unacceptability of corporal punishment;
3. Promote positive, non-violent forms of discipline as an alternative to corporal punishment;
4. Take into account the Committee's general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.

The Committee is also urged to ask the State party when legislation will be brought before the Oireachtas to place the Children First guidance on a statutory footing.

The Report of the Independent Child Death Review Group has highlighted gross failings by the State regarding children in State care.³²⁵ The report, which was published in 2012, details the death of 196 children in State care, in receipt of aftercare or known to the Health Services Executive between 2000 and 2010. The report also notes that of this figure, a total of 112 died of non-natural causes. The report raises a number of concerns in relation to deaths in State care including lack of care planning, delays in taking vulnerable children into care, consistency and appointment of social workers, poor record keeping, failure to pursue appropriate services and adequate supervision.³²⁶

The Committee is urged to ask the State party to provide details of the steps it must take to reduce the number of deaths in State care and, where deaths occur from non-natural circumstances, whether provision will be made for effective and independent investigation in line with the rights of persons guaranteed under the Covenant.

17.4 Age of Criminal Responsibility

The general age of criminal responsibility is 12 years age.³²⁷ However, for certain serious offences including murder or manslaughter, rape and aggravated sexual assault the age of criminal responsibility is lowered to 10 years.³²⁸ In its 2006 Concluding Observations on Ireland's Second Periodic Report under the CRC, the Committee on the Rights of the Child expressed disappointment that the section in the Children's Act 2001 allowing for the age of Criminal Responsibility to be raised from 7 years to 12 years with a rebuttable presumption up to 14 years was not brought into force and that provisions of the Criminal Justice Act 2006 subsequently lowered the age to 10 years for serious crimes.³²⁹

The Committee is urged to ask the State party to ensure that the age of criminal responsibility for children is raised for all criminal offences in line with international human rights standards





18. Regulation of Charities

ICCPR: Article 24

18.1 Charities Act 2009

The Charities Act 2009 provides for the regulation and supervision of the charitable sector. The Committee should note that the list of charitable purposes originally included in the Charities Bill 2007 included “advancement of human rights.” However, this phrase was eventually excluded from the final legislation.³³⁰ As a result, the removal of human rights as a charitable purpose may have a disproportionate effect on civil society organisations working in the area of human rights or who may seek to use human rights principles in the advancement of their work.³³¹



In March 2013, a Resolution adopted by the UN Human Rights Council on Protecting Human Rights Defenders,³³² called for national legislation to support the work of those working to advance and protect human rights rather than placing any restrictions on their legitimate activities. Following her country visit to Ireland in November 2012, the UN Special Rapporteur on Human Rights Defenders, Margaret Sekaggya , expressed concern that,

[...] the [Charities] Act fails to recognize the promotion of human rights as “a purpose that is beneficial to the community”, therefore, effectively excluding organizations that work on the protection and promotion of human rights from being able to register as charities.³³³

The Committee is urged to ask the State party whether it plans to amend the Charities Act 2009 to include the “advancement of human rights” as a charitable purpose and, if so, whether this will be achieved during its five-year statutory review of the operation of the current legislation.



Endnotes

- 1 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), (25 July 2012), UN Doc CCPR/C/IRL/4 paras 648-657. Hereinafter referred to as the “State Report”.
- 2 UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, (30 July 2008), UN Doc CCPR/C/IRL/CO/3, para 5.
- 3 The Irish Human Rights Commission is Ireland’s National Human Rights Institution and was established under the Human Rights Commission Acts 2000 and 2001 as a State-funded agency with a role to protect and promote the human rights of everyone in Ireland. See <http://www.ihrc.ie>.
- 4 The Equality Authority was established under the Employment Equality Acts 1998 with a mandate to address discrimination under nine grounds which are covered by the legislation. See <http://www.equality.ie>.
- 5 Irish Human Rights Commission, Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland March 2011, at p 3, footnote 5.
- 6 Concluding Observations of the UN Human Rights Committee, *op cit*, para 7.
- 7 The National Consultative Committee on Racism and Interculturalism (NCCRI), a private limited company, was set up by the Department of Justice, Equality and Law Reform, as it then was, as a partnership body on racism and interculturalism. It ceased operating in December 2008 when its funding was cut. The NCCRI was not replaced. See <http://www.nccri.ie>. Its functions were subsumed into the Office of the Minister for Integration (now the Office of the Promotion of Migrant Integration, under the governance of the Department of Justice and Equality). See <http://www.integration.ie>.
- 8 The Combat Poverty Agency was a state agency that worked for the prevention and elimination of poverty and social exclusion. On 1 July 2009 the Combat Poverty Agency was integrated with the Office for Social Inclusion to form the Social Inclusion Division within the Department of Social and Family Affairs. On 1 May 2010 the Social Inclusion Division became part of the Department of Community, Equality and Gaeltacht Affairs. From 1 May 2011 the division moved to the Department of Social Protection. See <http://www.cpa.ie>.
- 9 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Right (ICCPR), *op cit*, paragraph 16- 23.
- 10 Department of Justice and Equality, Press Release, (9 September 2011), ‘Government to establish a new enhanced Human Rights and Equality Commission – Shatter’, available at <http://www.justice.ie/en/JELR/Pages/PR11000174> (accessed 23/07/2013).
- 11 Heads of the Irish Human Rights and Equality Commission Bill 2013, available at <http://www.justice.ie/en/JELR/20120605HeadsOfIHRECBill.pdf/Files/20120605HeadsOfIHRECBill.pdf> (accessed on 23/07/2013).
- 12 Appointment of Members Designate of the new Irish Human Rights and Equality Commission, (17 April 2013), <http://www.merrionstreet.ie/index.php/2013/04/appointment-of-members-designate-of-new-irish-human-rights-and-equality-commission/> (accessed 30/07/2013). The selection of the new Commission, which was scheduled to begin work in 2012, was delayed following correspondence between the selection panel, which was appointed by the Minister for Justice and Equality, and the Office of the High Commissioner for Human Rights concerning the independence of the process. The new Commission was appointed in 2013 although the position of Chief Commissioner remains vacant.
- 13 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), *op cit*, paragraph 23.
- 14 In September 2011, the Minister for Jobs, Enterprise and Employment proposed a programme of reform of the State’s employment rights and industrial relations structures/procedures. The need for reform in this area is well documented particularly in the Report of the Review Group on the Functions of the Employment Rights Bodies. See Report of the Review Group on the Functions of the Employment Rights Bodies, Volume 2 – Submissions. Available at: <http://www.djei.ie/publications/employment/2005/FinalReportVolume2.doc> (accessed 9/8/2013). The reform is focusing on consolidating existing employment rights legislation and the establishment of a single two-tiered body with one point of entry (point of first instance) and one locus for appeals (appellate body). It is envisaged that the Equality Tribunal will be integrated within this new body to deal with proceedings under the Employment Equality Acts 1998-2008 and the Equal Status Acts 2000-2011.

- 15 In a recent response to a parliamentary question, the Minister for Justice and Equality noted that legislation had been approved by Government and that administrative responsibility for the Equality Tribunal had transferred to the Department of Jobs, Enterprise and Innovation with effect from 1 January 2013. Written Answer No 398, (Tuesday 5 March 2013), available at: <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2013030500081?opendocument> (accessed 23/7/13).
- 16 Other than those relating to registered clubs and licensed premises which are currently heard in the District Court. See Department of Jobs, Enterprise and Innovation, (July 2012), Legislating for a World-Class Workplace Relations Service – Submission to Oireachtas Committee on Jobs, Enterprise and Innovation. <http://www.workplacerelements.ie/en/media/Legislating%20for%20a%20Worldclass%20Workplace%20Relations%20Service%20July%202012.pdf> (accessed on 23/7/2013).
- 17 The Committee should note that between 2008 and 2012 the number of decisions issued by the Equality Tribunal in relation to cases concerning equal treatment in the provision of goods and services fell from an annual rate of 123 to 45. See <http://www.equalitytribunal.ie/Database-of-Decisions> Accessed on 24 July 2013
- 18 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Right (ICCPR), op cit, paragraph 13.
- 19 Estonia, Brazil, Chile, France, Greece, Slovenia, United Kingdom, Switzerland and Peru.
- 20 Written Answer No 5995/13, (6 February 2013), available at <http://www.kildarestreet.com/wrans/?id=2013-02-06a.110&s=optional+protocol+to+the+convention+against+torture#g111.q> (accessed 30/07/2013).
- 21 Ibid.
- 22 Ibid.
- 23 Indonesia, Chile, Ecuador, Costa Rica, Argentina, Peru, Austria, Canada, Greece, Iran, Iraq, Spain, Algeria, France and Hungary.
- 24 Ireland's Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, para 39.
- 25 Committee on the Elimination of All Forms of Racial Discrimination, Concluding Observations of the Committee on the Elimination of All Forms of Racial Discrimination, (4 April 2011), UN Doc CERD/C/IRL/CO/3-4, para 19.
- 26 European Commission on Racism and Intolerance, ECRI Report on Ireland, December 2012, at p.13 . Available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ireland/IRL-CbC-IV-2013-001-ENG.pdf>. Accessed on 8 Aug 2013
- 27 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit., paras 659-672
- 28 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit, para 659 – 672.
- 29 For example, in relation to disability see: Edwards, Gilligan and Kilcommins, (February 2012), Access to Justice for People with Disabilities as Victims of Crime in Ireland, at page 131, available at [http://www.nda.ie/cntmgmtnew.nsf/0/378104926A5AB35A802579C900409963/\\$File/NDA_Access_to_Justice.pdf](http://www.nda.ie/cntmgmtnew.nsf/0/378104926A5AB35A802579C900409963/$File/NDA_Access_to_Justice.pdf) (accessed on 8/8/2013).
- 30 FRA, 2012, Making Hate Crime Visible in the European Union – Acknowledging Victims Rights, 2012 at page 88, available at http://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf, (accessed 8/8/2013).
- 31 Office for the Promotion of Migrant Integration, See <http://www.integration.ie/website/omi/omiwebv6.nsf/page/statistics-RacistIncidentsstatisticscrime-en> (accessed on 8/8/2013).
- 32 Vehicle crime, Burglary, Theft of Personal Property, Assault or Sexual Harassment
- 33 EU Agency for Fundamental Rights – Minorities and Discrimination Survey (MIDIS), 2009 at p 59. available at http://fra.europa.eu/sites/default/files/fra_uploads/663-FRA-2011_EU_MIDIS_EN.pdf (accessed 8/8/2013).
- 34 Central Statistics Office, Garda Recorded Crime Statistics, 2007-2011 at p 21. Available at http://www.cso.ie/en/media/csoie/releasespublications/documents/crimejustice/2011/gardacrimestats_2011.pdf (accessed 8/8/2013)
- 35 Garda Public Attitudes Survey 2007, Garda Research Unit Research Report No. 12/07at p vii. Available at <http://www.garda.ie/Documents/User/gpasenglish2007.pdf>
- 36 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit, para 38.
- 37 Lunacy Regulation (Ireland) Act (1871), available at <http://www.legislation.gov.uk/ukpga/1871/22/contents/enacted>

- 38 Courts Services, Annual Report 2012, at page 47, available at [nsf/%28WebFiles%29/87BE463114EF96FF80257BA20033953B/\\$FILE Courts%20Service%20Annual%20Report%202012.pdf](http://www.courts.ie/nfs/%28WebFiles%29/87BE463114EF96FF80257BA20033953B/$FILE%20Service%20Annual%20Report%202012.pdf),
- 39 Courts Services Annual Reports available at: <http://www.courts.ie/courts.ie/library3.nsf/pagecurrent/5D12A39F06827AD080256DA60033FE87?opendocument&l=en>
- 40 In assessing this impact, the Supreme Court stated that '[w]hen a person is made a ward of court, the court is vested with jurisdiction over all matters relating to the person and estate of the ward.' *Re A Ward of Court (No.2)* [1996] 2 IR 79.
- 41 The Law Reform Commission has noted that although the Court will have regard to the views of the ward's committee (in effect, guardian) and family members, the Court will make decisions based on the criterion of the 'best interests' of the ward. However, generally no attempt is made to consult the ward in relation to those decisions. Law Reform Commission, (2006) *Vulnerable Adults and the Law*, LRC 2006, page 29, available at: <http://www.inclusionireland.ie/sites/default/files/attach/basic-page/846/capacityandthelaw-lrc.pdf> (accessed 8/8/2013).
- 42 Mental Health Act 2001, available at <http://www.irishstatutebook.ie/2001/en/act/pub/0025/print.html> (accessed 8/8/2013).
- 43 UN Committee against Torture, Concluding Observations of the UN Committee against Torture, (17 June 2011), UN Doc CAT/C/IRL/CO/1, para 5.
- 44 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), (23 July 2010), Report to the Government of Ireland following its visit to Ireland from 25 January to 5 February 2010, available at <http://www.cpt.coe.int/documents/irl/2011-03-inf-eng.pdf> (accessed 8/8/2013).
- 45 Department of Health and Children, (2001), *A Vision for Change*, available at http://www.dohc.ie/publications/vision_for_change.html (accessed 8/8/2013).
- 46 Health Research Board, (2011), Series 18: *Activities of Irish Psychiatric Units and Hospitals 2011*, Table 3.6, p. 83, available at http://www.hrb.ie/uploads/tx_hrbpublications/Activities_of_Irish_Psychiatric_Units_and_Hospitals_2011.pdf (accessed 8/8/2013).
- 47 *Clarke v Galway County Registrar (High Court, Unreported, July 2010)*.
- 48 However, in this case, the person in question did not get to sit on the jury as lawyers for the defendant in the particular case exercised the option to challenge the juror without having to give further reasons. Flac, *Judge Rules Deaf Man can Sit on Jury*, 29 Nov 2010. Available at: <http://www.flac.ie/news/2010/11/29/judge-rules-deaf-man-can-sit-on-jury/> (accessed on 8/8/13)
- 49 Law Reform Commission, (2010), *Jury Service*, at page 138, available at, http://www.lawreform.ie/_fileupload/Reports/r107.pdf. The Commission did not make an express recommendation regarding the facilitation of deaf people on juries expressing concern regarding the presence of interpreters during jury deliberations in criminal trials.
- 50 Committee against Torture, *Concluding Observations of the UN Committee against Torture*, op cit para 21
- 51 Rapporteur for Follow-up on Concluding Observations Committee against Torture, (22 May 2013), available at <http://www2.ohchr.org/english/bodies/cat/docs/followup/IrelandFurtherInfo22May2013.pdf> (accessed 29/07/2013).
- 52 Statement on Magdalene report, (19 February 2013), <http://www.merriestreet.ie/index.php/2013/02/taoiseach-enda-kennys-statement-on-magdalene-report/?cat=11> (accessed 29/07/2013).
- 53 Irish Human Rights Commission, (18 June 2013), *Follow-up Report on State Involvement with Magdalene Laundries*, available at <http://www.ihrc.ie/download/pdf/20130618164449.pdf> (accessed 29/07/2013).
- 54 *Ibid* and see IHRC Press Release, (18 June 2013), *Irish State failed to protect and vindicate the human rights of women in Magdalene laundries – redress scheme must reflect impact of human rights violations experience*, available at <http://www.ihrc.ie/newsevents/press/2013/06/18/irish-state-failed-to-protect-and-vindicate-the-hu/> (accessed 29/07/2013). The IHRC also made a number of recommendations regarding measures needed to ensure similar wrongs are not repeated in the future, including that measures should be implemented which as far as possible guarantee that surviving women who resided in Magdalene Laundries receive restitution and rehabilitation, for example by the provision of lost wages and any pension or social protection benefits arising from carrying out forced or compulsory labour which occurred on an unpaid and unacknowledged basis; and the provision of appropriate rehabilitation interventions including housing; health and welfare; education and; assistance to deal with the psychological effects of the time spent in the Magdalene Laundries. The IHRC further recommended that the State scrutinise "its interactions with non-State actors to ensure that its regulatory and oversight functions are sufficiently robust to prevent human rights breaches arising, and if any such allegations are made, that a competent statutory body be in a position to investigate them thoroughly and effectively and provide redress where merited"

- 55 The Magdalene Commission Report, (May 2013), Report of Mr Justice John Quirke, On the establishment of an ex gratia Scheme and related matters for the benefit of those women who were admitted to and worked in the Magdalene Laundries, available at <http://justice.ie/en/JELR/2.%20THE%20MAGDALEN%20COMMISSION%20REPORT.pdf/Files/2.%20THE%20MAGDALEN%20COMMISSION%20REPORT.pdf> (accessed 29/07/13).
- 56 The Scheme also includes and provision for Magdalene women who remain in the care of religious institutions or the State; however it is unclear who will act as independent advocate for these women.
- 57 Section 2, available at <http://www.irishstatutebook.ie/2001/en/act/pub/0025/print.html> (7/8/2013).
- 58 Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 January to 5 February 2010, p.60. Available at: <http://www.cpt.coe.int/documents/irl/2011-03-inf-eng.pdf>. (accessed 7/8/13)
- 59 Mental Health Act 2001, Op cit, Section 23.
- 60 Amnesty International Ireland (2011) Mental Health Act 2001: A Review: Summary Paper, page13available at http://www.amnesty.ie/sites/default/files/MENTAL_HEALTH_SUMMARY_080711.pdf (accessed 7/8/2013).
- 61 Making the Most of Psychiatric Advance Directives” (2007) 24(6) Harvard Mental Health Letter 1 at p. 1.
- 62 Law Reform Commission, Bioethics: Advanced Care Directives, (LRC 94-2009), at pages.35 - 36. Available at: http://www.lawreform.ie/_fileupload/Reports/rBioethics.pdf (accessed 8/8/2013).
- 63 Mental Health Reform, (June 2012), MHR submission to the [Mental Health Commission] on Seclusion and Restraint Reduction Strategy,. available at: <http://www.mentalhealthreform.ie/mhr-submission-to-the-mhc-on-seclusion-and-restraint-reduction-strategy/> (accessed 7/8/2013).
- 64 Mental Health Commission, (2013) The Use of Seclusion, Mechanical Means of Bodily Restraint and Physical Restraint in Approved Centres: Activities Report 2011, Dublin: Mental Health Commission, page 4, available at <http://www.mhcirl.ie/File/The-use-of-Seclusion-Mechanical-Means-of-Bodily-Restraint-and-Physical-Restraint-in-Approved-Centres-Activities-Report-2011.pdf> (accessed 8/8/2013).
- 65 Ibid. at p.5.
- 66 Ibid. at p.6.
- 67 Ibid.
- 68 Mental Health Commission, (October 2009), Code of Practice on the Use of Physical Restraint in Approved Centres (Issued Pursuant to Section 33(3)(e) of the Mental Health Act 2001),, available at http://www.mhcirl.ie/Mental_Health_Act_2001/Mental_Health_Commission_Codes_of_Practice/Use_of_Physical_Restraint/Revised_-_Code_of_Practice_on_the_Use_of_PhysicalRestraint_in_Approved_Centres.pdf (accessed 7/8/2013).
- 69 Mental Health Commission, (October 2009), Rules Governing the Use of Seclusion and Mechanical Means of Bodily Restraint - Version 2,available at http://www.mhcirl.ie/Mental_Health_Act_2001/Mental_Health_Commission_Rules/Seclusion_and_Mechanical_Restraint/Revised_Rules_Governing_the_Use_of_Seclusion_and_Mechanical_Means_of_Bodily_Restraint.pdf (accessed 7/8/2013).
- 70 Mental Health Commission, Annual Report 2012 including Report of the Inspector of Mental Health Services, Dublin: MHC, pages26-27, available at http://www.mhcirl.ie/File/MHC_2012_Annual_Rpt.pdf (accessed 7/8/2013).
- 71 Op cit, Sections 58 and 59.
- 72 Mental Health Commission (2012) The Administration of Electro-convulsive Therapy in Approved Centres: Activity Report 2011, Dublin: MHC, page5, available at: <http://www.mhcirl.ie/File/The-Administration-of-ECT-in-approved-centres-Activity-Report-2011.pdf>, (accessed 7/8/2013).
- 73 Ibid. page35.
- 74 Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, para 698-702. See Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. Available at: <http://www.irishstatutebook.ie/2010/en/act/pub/0024/print.html> (accessed 8/8/2013).
- 75 To view the differences between civil partnership and full civil marriage, see Irish Council for Civil Liberties (ICCL) and Gay and Lesbian Equality Alliance (GLEN), Know Your Rights, The Rights and Obligations of Civil Partners and Other Same Sex Couples, available at <http://www.iccl.ie/know-your-rights---the-rights-and-obligations-of-civil-partners-and-other-same-sex-couples.html>, (accessed on 6/8/2013).
- 76 Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, para702.
- 77 In the recent case of *McD. v. L*, the Supreme Court ruled that a lesbian couple and their child were not a family under the Constitution. The court acknowledged the loving and caring environment in which the child was

being raised but stated that, for constitutional purposes, a family that is not based on marriage is not recognised under the Constitution (McD. V. L [2007] IESC 81).

- 78 Third Report of the Convention on the Constitution Amending the Constitution to provide for same-sex marriage, (June 2013), page 4, available at <https://www.constitution.ie/AttachmentDownload.ashx?mid=c90ab08b-ece2-e211-a5a0-005056a32ee4> (accessed on 6/8/2013).
- 79 Section 37 Employment Equality Act 1998, available at: <http://www.irishstatutebook.ie/1998/en/act/pub/0021/print.html> as amended by Section 25 of the Equality Act 2004 available at <http://www.irishstatutebook.ie/2004/en/act/pub/0024/print.html> (accessed 9/8/2013).
- 80 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit, para 612.
- 81 See Towards Recovery – Programme for a National Government 2011-2016 at p 43 where it states “people of non-faith or minority religious backgrounds and publically identified LGBT people should not be deterred from training or taking up employment as teachers in the State”. The Minister for Justice, Equality and Defence has indicated his intention to ask the Irish Human Rights and Equality Commission (when formally established) to “examine the issue as a priority” and to make recommendations. He has further stated his commitment to bring “forward Government proposals for any necessary anti-discrimination amendment to this provision”. Written Answers No 21876/13, (8 May 2013), Department of Justice and Equality: Employment Rights Issues.
- 82 United Nations HRC, Concluding Observations for Ireland (CCPR/C/IRE/CO/3), (2008) para 8
- 83 Foy v An t-Ard Chláraitheoir & Ors [2007] IEHC 470.
- 84 Ibid, para 109.
- 85 Committee of Ministers of the Council of Europe, (2010), Recommendation to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, (CM/Rec(2010)5), para 21, available at <https://wcd.coe.int/ViewDoc.jsp?id=1606669> (accessed 6/8/2013).
- 86 Gender Recognition Advisory Group, (2011), Report to Joan Burton TD, Minister for Social Protection, pages 3-4.
- 87 General Scheme of Gender Recognition Bill 2013, available at <http://www.welfare.ie/en/downloads/Gender-Recognition-Bill-2013.pdf> (accessed 6/8/2013).
- 88 In the 2009 report Transphobia in Ireland researchers concluded that the lack of recognition “perpetuates continuing discrimination, exclusion and marginalisation.
- This lack of support impacts negatively on the prevention of discrimination against trans people. McIlroy, (2009), Transphobia in Ireland, page 21, available at <http://www.teni.ie/attachments/36acd63f-883c-457d-bcba-a40eefec1d9.PDF> (accessed 6/8/2013).
- 89 For example, see Section 11(2) Passports Act 2008, available at <http://www.irishstatutebook.ie/2008/en/act/pub/0004/print.html> (accessed 8/8/2013). Section 11(2) states: Where an applicant for a passport referred to in subsection (1) produces to the Minister— (a) evidence (including medical evidence from a registered medical practitioner) to the satisfaction of the Minister to confirm that the applicant has undergone, or is undergoing, treatment or procedures or both to alter the applicant’s sexual characteristics and physical appearance to those of the new sex, and (b) if appropriate, evidence to the satisfaction of the Minister of the use by the applicant of the new name, the Minister may, subject to this Act, issue a passport to the applicant in the new name, if appropriate, and in which the new sex of the applicant is entered.
- 90 Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, para 10.
- 91 Information available at <https://www.constitution.ie> (accessed 8/8/2013).
- 92 The Convention on the Constitution, (May 2013), Second Report of the Convention on the Constitution, available at <https://www.constitution.ie/AttachmentDownload.ashx?mid=268d9308-c9b7-e211-a5a0-005056a32ee4> (accessed 8/8/2013).
- 93 The current Parliament (elected 25 February 2011) is only 15.1 per cent female making Ireland 79th in world rankings for female political representation. Inter-Parliamentary Union, (2011), available at: <http://www.ipu.org/english/home.htm> (accessed 8/8/2013). See also National Women’s Council of Ireland <http://www.nwci.ie/takeaction/spotthewoman.html> (accessed 8/8/2013). The total number of women candidates decreased from 17 per cent in 2007 to 15.1 per cent in 2011. Organisation for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, OSCE/ODIHR Needs Assessment Mission Report, Early parliamentary Elections, 25 February 2011: Ireland, page 10, available at: <http://www.osce.org/odihr/elections/75725> (accessed 8/8/2013). See also the cross-party Report of the Joint Committee on Justice, Defence, Equality and Women’s Rights, (October 2009), Women’s Participation in Politics (second report).
- 94 Buckley and McGing, (2011), How Ireland Voted 2011, Gallagher and Marsh eds., Palgrave Macmillan (2011) page 222.
- 95 Attorney General Máire Whelan SC; Chief Justice Susan Denham and Claire Loftus, Director of Public Prosecutions.

- 96 Structure and composition of the Irish courts is available from the Irish Courts Service at <http://www.courts.ie/Courts.ie/library3.nsf/PageCurrentWebLookUpTopNav/The%20Courts> (accessed 8/8/2013).
- 97 EU Commission Database on Women in Decision-Making, available at http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/business-finance/supervisory-board-board-directors/index_en.htm (accessed 8/8/2013).
- 98 Central Statistics Office, (2012), Women and Men in Ireland 2011, page 35.
- 99 Towards Recovery – Programme for a National Government 2011-2016, page 53, available at http://www.labour.ie/download/pdf/labour_towards_recovery_report.pdf (accessed 8/8/2013).
- 100 Regan, Mary, (6 August 2013), “Coalition Breaks Promise to Women”, Irish Examiner. See also Written Answer No 36790/13, (18 July 2013), Department of Finance: Appointment to State Boards, available at <http://www.kildarestreet.com/wrans/?id=2013-07-18a.534&s=catherine+murphy#g535.q> (accessed 8/8/2013); Written Answer No 36788/13, (18 July 2013), Department of Education and Skills: Appointment to State Boards, available at <http://www.kildarestreet.com/wrans/?id=2013-07-18a.675&s=catherine+murphy#g676.q> (accessed 8/8/2013); Written Answers No 36314/13, (18 July 2013), Department of Public Expenditure and Reform: Appointment to State Boards, available at <http://www.kildarestreet.com/wrans/?id=2013-07-18a.718&s=catherine+murphy#g719.q> (accessed 8/8/2013).
- 101 <http://www.kildarestreet.com/wrans/?id=201307-18a.718&s=catherine+murphy#g719.q> (accessed 8/8/2013).101 Referenced in the State Report as the Electoral (Amendment) (Political Funding) Bill 2011, at para 136, available at <http://www.irishstatutebook.ie/2012/en/act/pub/0036/indexhtml> (accessed 8/8/2013).
- 102 Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, para 10.
- 103 Ibid, para 139.
- 104 Ibid para 140.
- 105 Government Budget 2011 and 2012. See National Women’s Council of Ireland, (October 2012), Pre-Budget Submission 2012, page 28, available at www.nwci.ie (accessed 8/8/2013).
- 106 Ibid.
- 107 Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, para 172.
- 108 Human Rights Council, Report of the Working Group on the Universal Periodic Review – Ireland, 2011 A/HRC/19/9, 107.37.
- 109 Ibid, page 7.
- 110 Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, para 176.
- 111 Rape Crisis Network Ireland, (November 2012), National Rape Crisis Statistics and Annual Report 2011, available at www.rcni.ie (accessed 8/8/2013). Dublin Rape Crisis Centre also report more than 9,000 calls in 2012, a 23% increase in first time callers of which 88% were women. Dublin Rape Crisis Centre, (24 July 2013), Annual Report.
- 112 Safe Ireland Annual Statistics, available at www.safeireland.ie (accessed 8/8/2013). It should also be noted that 190 women have died violently in Ireland since the beginning of 1996. In the 138 cases where perpetrators have been noted, 54% were killed by their partner or ex-partner - see Women’s Aid, Female Homicide Media Watch Statistics 1996-2013
- 113 Safe Ireland Annual Statistics, available at www.safeireland.ie (accessed 8/8/2013).
- 114 Domestic violence does occur in young/dating relationships. 190 women have been murdered in Republic of Ireland since 1996. 39 (21%) of these women were aged between 18 and 25 years. Of the 39 women aged 18-25, 30 cases have been resolved. Of the resolved cases, 16 women were killed by someone with whom they were or had been in an intimate relationship with. See Women’s Aid, Female Homicide Media Watch Statistics 1996-2013.
- 115 Requirements related to the duration of the relationship and a property test requirement whereby the applicant must show an equal or greater legal or beneficial interest in the property can create huge problems for women seeking to obtain a barring order. As the legislation currently stands, children are not taken into account when making considerations regarding property interests.
- 116 For an explanation of the Direct Provisions system see section 14.
- 117 Section 4(7) of the Immigration Act 2004.
- 118 This responsibility would fall to the Irish Naturalisation and Immigration Service (INIS) and the Department of Social Protection/HSE. The information contained on the website is not easily accessible and remains contradictory in that, for example, the section on ‘Spouse of an Irish National/ Civil Partnership with an Irish National’ continues to state that “(T)here are no rights of retention of residence in the event of separation/divorce”, available at <http://www.inis.gov.ie/en/INIS/Pages/WP07000024> (accessed 8/8/2013).
- 119 Available at <http://www.inis.gov.ie/en/INIS/Victims%20Of%20Domestic%20Violence%20-%20Note%20for%20Web.pdf/Files/Victims%20Of%20Domestic%20Violence%20-%20Note%20for%20Web.pdf> (accessed 8/8/2013).

- 120 UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, op cit, para 13
- 121 Article 40.3.3° of the Irish Constitution provides that the right to life of a mother and that of her unborn child have equal status. Article 40.3.3° also guarantees the right to travel to access abortion in another state and the right to information about abortion.
- 122 Protection of Life During Pregnancy Act 2013, available at <http://www.oireachtas.ie/documents/bills28/bills/2013/6613/b66b13d.pdf> (accessed 8/8/2013).
- 123 A, B and C v Ireland, Application No. 25579/05 [2010] ECHR 2032 (16 December 2010). See also the Report of the Expert Group on the Judgment in A, B and C v Ireland, available at http://cdn.thejournal.ie/media/2012/11/judgment_abc.pdf (accessed 8/8/2013).
- 124 Attorney General v X [1992] IESC 1 (5th March, 1992). The case involved a pregnant fourteen year old victim of rape who wished to leave the State to have an abortion. The Supreme Court ruled that abortion is permissible within the State: “if it is established . . . that there is a real and substantial risk to the life, as distinct from the health, of the mother, which can only be avoided by the termination of her pregnancy, such termination is permissible.” 124 This includes a risk to the life of the mother including that arising from the threat of suicide. The Supreme Court rejected the contention that risk to life must be either a virtual certainty or that it must be imminent or immediate.
- 125 Attorney General v. X [1992] 1 IR 1.
- 126 UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, op cit, para 13; UN Committee for the Elimination of Discrimination against Women, (22 July 2005), Concluding Observations of the Committee on the Elimination of Discrimination against Women, UN Doc CEDAW/C/IRL/CO/4-5, para 38 and 39.
- 127 UN Committee against Torture, Concluding Observations of the UN Committee against Torture, op cit, para 26.
- 128 Sections 9-14 Protection of Life During pregnancy Act 2013
- 129 Section 17 Protection of Life during Pregnancy Bill, Op cit.
- 130 Irish Human Rights Commission Observations on the Protection of Life During Pregnancy Bill 2013 http://www.ihrc.ie/download/pdf/ihrc_observations_protection_of_life_in_pregnancy_bill_2013.pdf
- 131 UN Committee against Torture, Concluding Observations of the UN Committee against Torture, op cit, para 26.
- 132 Protection of Life During Pregnancy Bill 2013, section 22.
- 133 General Comment No 28, para 10.
- 134 Seanad Éireann Debate (15 July 2013), Protection of Life During Pregnancy Bill 2013: Second Stage, available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/seanad2013071500022>.
- 135 Ibid.
- 136 In its General Comment 28, the Committee states that information on the availability of safe abortion to women who have become pregnant as a result of rape is required for assessment of compliance with Article 7. HRC Gen Comment No 28: Equality of rights between men and women (Article 3), UN Doc CCPR/C/21/Rev.1/Add.10 (2000).
- 137 Application No. 26499/02, Decision on admissibility of 27 June 2006; (2006) 43 EHRR SE 16
- 138 Article 40.3.3.
- 139 Application No.27617/04, Judgment of 26 May 2011; (2011) 53 EHRR 31.
- 140 Application No. 57375/08, Judgment of 30 October 2012.
- 141 CCPR/C/85/D/1153/2003 (22 November 2005).
- 142 Report by the Commissioner for Human Rights, Mr. Thomas Hammarberg, on his Visit to Ireland, 26 - 30 November 2007, adopted Strasbourg, April 30, 2008, CommDH (2008) and his visit to Ireland, 1- 2 June 2011, adopted Strasbourg, September 30, 2011, CommDH (2011). This point was also raised by the UN Committee against Torture, see UN Committee against Torture, Concluding Observations of the UN Committee against Torture, op cit, para 26.
- 143 See, for example, Special Rapporteur of the Human Rights Council on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, (3 August 2011), Interim Report on the Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc A./66/254, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf?OpenElement>. Accessed on 8 August 2013
- 144 Ireland’s Fourth Periodic Report under ICCPR to the UN Human Rights Committee, Supplementary Information Document, p. 76.
- 145 Dáil Debates, (20 February 2013), available at <http://www.kildarestreet.com/debates/?id=2013-02-20a.226&s=rendition+1999-01-01..2013-07-23#g227.q> [accessed 23/07/2013].
- 146 Ibid.
- 147 Ibid.
- 148 CAT/C/IRL/CO/1, para. 9. Previous reports on the matter include: European Parliament Report RR\382246EN.

- doc (30 January 2007), para. 121-126, available at http://www.europarl.europa.eu/compar/tempcom/tdip/final_report_en.pdf [accessed on 23/07/13]; Council of Europe, Committee on Legal Affairs and Human Rights, (7 June 2006), Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states AS/Jur (2006) 16 Part II, para. 289; Irish Human Rights Commission, Resolution in Relation to Claims of US Aircraft carrying Detainees, (23 December 2005 available at http://www.ihrc.ie/download/pdf/ihrc_rendition_report_final.pdf [accessed 23/07/2013].
- 149 Wikileaks Cable, 07DUBLIN916, TOUR D'HORIZON WITH IRISH FOREIGN MINISTER, Thomas C Foley, US Ambassador, Dublin, December 2007, available at <http://wikileaks.org/cable/2007/12/07DUBLIN916.html>, [accessed 23/07/13].
- 150 Open Justice Society Initiative, (February 2013) Globalizing Torture: CIA Secret Detention and Extraordinary Rendition, p. 86, available at <http://www.osisa.org/sites/default/files/globalizing-torture-20120205.pdf> [accessed 23/07/13].
- 151 Irish Human Rights Commission, (23 December 2005), Resolution in Relation to Claims of US Aircraft carrying Detainees. According to the IHRC, diplomatic assurances are not adequate to discharge Ireland's positive obligations to actively ensure that torture, inhuman or degrading treatment or punishment is not facilitated by the State (under Article 7 and paragraph 9 of Human Rights Committee General Comment 20 concerning prohibition on torture, inhuman and degrading treatment or punishment, 10 March 1992 and Section 4(1) Criminal Justice (United Nations Convention Against Torture) Act 2000 No. 11 of 2000). Having conveyed their concerns to the State in late 2005, on 5 April 2006, the IHRC received a letter from the (former) Minister for Foreign Affairs stating that he rejected their advice regarding the impermissibility of diplomatic assurances in this context and failing to address the Commission's concerns with regard to the State's obligation to investigate allegations of rendition. See Irish Human Rights Commission, Submission to the European Parliament's Temporary Committee on Rendition, 28 November 2006, page. 2, available at http://www.ihrc.ie/_fileupload/banners/Submission-to-European-Temporary-Committee-on-Rendition-of-the-European-Parliament.doc [accessed 23/07/2013].
- 152 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Right (ICCPR), op cit, paragraph 230.
- 153 Dáil Debates, (20 February 2013), op cit.
- 154 Garda Síochána Ombudsman Commission, Annual Report 2012 (presented to the Minister for Justice, Equality and Defence in March 2013). According to the Report, "complaints contained 5,449 allegations of misconduct by Gardaí (police). The most prominent factors relating to situations which gave rise to complaints were Garda Síochána operations involving investigation, arrest and road policing", page 4.
- 155 The 2012 Annual Report of An Garda Síochána reports that 169 members were found in breach of discipline during that year. Members received a combination of monetary sanctions, cautions, warnings and reprimands with some €62,517.30 in monetary penalties imposed. Two members of An Garda Síochána were dismissed and one reserve member was dispensed. It is further reported that 19 members were on suspension with 15 subject to investigations carried out by GSOC. During 2012, over 1,200 files were opened by the complaints section and 75 incidents were referred to the Ombudsman. See "169 gardaí found in breach of discipline last year", (31 July 2013), The Journal. Available at <http://www.thejournal.ie/garda-discipline-1016922-Jul2013/> (accessed 8/8/2013).
- 156 Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, (26 February 2013), Mission to Ireland (19 – 23 November 2012), A/HRC/22/47/Add.3.
- 157 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit, paragraph 16- 23 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit, paragraph 14.
- 158 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), Supplementary Information Document, page 1.
- 159 Garda Síochána Ombudsman Commission, Five-Year Report 2012, in accordance with section 80(4) of the Garda Síochána Act, 2005, available at <http://www.gardaombudsman.ie/docs/publications/Five-yearReport2012.pdf> (accessed 24/07/2013).
- 160 Garda Síochána Ombudsman Commission, Annual Report 2012, op cit.
- 161 This would not be a complaint of either criminal misconduct or of a breach of discipline. It would not necessarily seek to form a complaint of misconduct against any individual member of the gardaí. A "service complaint" would arise where a person is dissatisfied with the standard or level of service provided by the gardaí. Garda Síochána Ombudsman Commission, Five-Year Report 2012, op cit, section 3.3, page 24.

- 162 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), Supplementary Information Document, page 1.
- 163 UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, op cit, para 14.
- 164 Committee against Torture, Concluding Observations of the UN Committee against Torture, op cit, para 19.
- 165 Dáil Debates, (6 March 2013), available at <http://www.kildarestreet.com/debates/?id=2013-03-06a.313&s=garda+siochana+ombudsman+commission#g314.q> (accessed 24/07/2013).
- 166 Garda Síochána Ombudsman Commission, Five-Year Report 2012, in accordance with section 80(4) of the Garda Síochána Act, 2005, section 2(2), page 14.
- 167 <http://www.justice.ie/en/JELR/Pages/PR13000182> (accessed 8/8/2013).
- 168 Ibid.
- 169 Joint Committee on Public Service Oversight and Petitions Debate, (3 July 2013), Garda Síochána Ombudsman Commission Reports: Discussion, available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/committeetakes/NVJ2013070300003?opendocument> (accessed 8/8/2013).
- 170 Ibid.
- 171 <http://www.justice.ie/en/JELR/Pages/PR13000182> (accessed 8/8/2013).
- 172 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), Op cit, p. 13.
- 173 Committee against Torture, Concluding Observations of the UN Committee against Torture, op cit, para 30.
- 174 UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, op cit, para. 14.
- 175 Criminal Justice Act 2007.
- 176 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit, paragraph 323.
- 177 *Salduz v Turkey* (2009) 49 EHRR 421.
- 178 UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, op cit, para 14.
- 179 *Dayanan v Turkey*, App No. 7377/03, 13 October 2009.
- 180 Despite concerns expressed by the HRC in 2008, that “access to counsel during interrogation at Garda stations is not prescribed by law” CCPR/C/IRL/CO/3, para. 14.
- 181 This committee comprises individuals from State agencies and the legal representative bodies whose purpose is to produce recommendations to the Minister for Justice, Equality and Defence; however, no clear timetable has been published with regards to the Committee’s work. See <http://www.inis.gov.ie/en/JELR/Pages/Minister%20Ahern%20establishes%20Advisory%20Committee%20on%20Garda%20Interviewing%20of%20suspects> (accessed 24/07/2013).
- 182 11497/11 DROIPEN 61 COPEN 152 CODEC 1018.
- 183 UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, op cit, para 14.
- 184 Irish Council for Civil Liberties and Irish Penal Reform Trust, (April 2011), Joint Shadow Report to the First Periodic Review of Ireland under the United Nations Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, para 67, page 42, available at www.iccl.ie (accessed 8/8/2013).
- 185 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), Op cit, para 585.
- 186 The Legal Aid Board’s Annual Reports 2008-2010 indicate a reduction in budget from €26.998m in 2008 to €24.225m in 2010. The annual reports are available online at: http://www.legalaidboard.ie/lab/publishing.nsf/Content/Annual_Reports (accessed 8/8/2013).
- 187 Ibid. The time limit was introduced following the judgment in *O’Donohue v Legal Aid Board*, the Minister for Justice Equality and Law Reform, Ireland and the Attorney General [2004] IEHC 413.
- 188 http://www.cso.ie/en/media/csoie/releasespublications/documents/crimejustice/2012/recordedcrime_q22_012.pdf (accessed 8/8/2013). 90 survivors of sexual violence, who attended Rape Crisis Centres between 2008 and 2010, had an intellectual or learning disability. Cf <http://www.rcni.ie/disability-1.aspx> (accessed 8/8/2013).
- 189 <http://www.irishexaminer.com/ireland/icrime/family-want-archaic-law-overhauled-115886.html> (accessed 8/8/2013).
- 190 <http://www.irishexaminer.com/text/ireland/kfmhgbqlcwmh/> (accessed 8/8/2013).
- 191 Concluding Observations of the UN Human Rights Committee: Ireland, 24 July 2000, UN Doc A/55/40, at para 15 and Concluding Observations of the Human Rights Committee: Ireland, 30 July 2008, UN Doc CCPR/C/IRL/CO/3, at para 20. Refer to Communication No 819/1998: Ireland 26 April 2001, *Kavanagh v. Ireland*, UN Doc: CCPR/C/71/D/819/1998.

- 192 Section 8 of the Criminal Justice (Amendment) Act 2009 which deemed that offences under Part 7 of the Criminal Justice Act 2006 (organised crime offences) could be tried without a jury at the Special Criminal Court as the ordinary courts were declared “inadequate to secure the effective administration of justice and the preservation of public peace and order in relation to an offence”.
- 193 Communication No 819/1998: Ireland 26 April 2001, Kavanagh v. Ireland, UN Doc CCPR/C/71/D/819/1998.
- 194 Section 47 of the Offences against the State Act.
- 195 McCann and Ors v. United Kingdom (1996) 21 EHRR 97; Jordan and Ors v. United Kingdom (2001) 37 EHRR 52.
- 196 See <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2007/3307/document1.htm> (last accessed 3 April 2011).
- 197 Irish Human Rights Commission, (19 September 2006), Observations of the IHRC on the General Scheme of the Coroner’s Bill 2005, at p. 20, available at [http://www.ihrc.ie/publications/list/submission-on-scheme-of-coroners-bill/\(last accessed 2 April 2011\)](http://www.ihrc.ie/publications/list/submission-on-scheme-of-coroners-bill/(last%20accessed%202%20April%202011)). The Commission also recommended at p. 16 of its submission that, in the case of deaths which occur in Garda custody or as a result of Garda operations, the Coroner should have the assistance of coroner’s officers who are not members of An Garda Síochána in order to break the institutional connection between those investigating and those being investigated.
- 198 This case resonated throughout the world. See for example, <http://www.bbc.co.uk/news/uk-northern-ireland-20321741> (accessed 8/8/2013).
- 199 Holland, Kitty (19 April 2013), Halappanavar inquest jury returns verdict of death by medical misadventure, <http://www.irishtimes.com/news/health/halappanavar-inquest-jury-returns-verdict-of-death-by-medical-misadventure-1.1366326> (accessed 8/8/2013).
- 200 Health Service Executive (Arulkumaran, Sabaratnam; Cora McCaughan, Cathriona Molloy, Brian Marsh, Geraldine Keohane, James Walker, Mary Horgan), (13 June 2013), Investigation of Incident 50278 from time of patient’s self referral to hospital on the 21st of October 2012 to the patient’s death on the 28th of October, 2012, available at <http://cdn.thejournal.ie/media/2013/06/savita-halappanavar-hse-report.pdf> (accessed 14 June 2013). Health and Information Quality Authority Report is pending. See <http://www.hiqa.ie/press-release/2012-11-23-hiqa-announces-investigation> (accessed 8/8/2013) and <http://www.hiqa.ie/press-release/2012-11-30-investigation-safety-quality-and-standards-services-provided-health-service> (accessed 8/8/2013).
- 201 See Irish Examiner (1 April 2013), Halappanavar husband unhappy with HSE inquiry, available at <http://www.irishexaminer.com/breakingnews/ireland/halappanavar-husband-unhappy-with-hse-inquiry-589855.html> (8/8/2013).
- 202 It has been reported that Mr Halappanavar is taking a claim in negligence to the Irish High Court in relation to the death of his wife. See <http://www.irishtimes.com/news/health/halappanavar-to-sue-hse-for-negligence-over-savita-death-1.1452048> (accessed 8/8/2013).
- 203 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit, para 21.
- 204 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit, para 611.
- 205 Convention on the Constitution, op cit.
- 206 Defamation Act 2009, available at <http://www.irishstatutebook.ie/2009/en/act/pub/0031/index.html> (accessed 8/8/2013).
- 207 Irish Independent newspaper, 30 April 2009, Ahern defends new blasphemy law, available at <http://www.independent.ie/irish-news/ahern-defends-new-blasphemy-law-26532371.html> (accessed 8/8 2013)
- 208 Defamation Act 2009, op cit, section 36.
- 209 UN Human Rights Committee, General Comment No 34, para 48, available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> (accessed 8/8/2013).
- 210 Constitutional Convention – Calendar for 2013. Available at: <https://www.constitution.ie/AttachmentDownload.ashx?mid=873ff73a-11c9-e211-a5a0-005056a32ee4>
- 211 UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, op cit, , para 22
- 212 Concluding Observations of the Committee on the Rights of the Child: Ireland, 29 September 2006, UN Doc CRC/C/IRL/CO/2, page 61.
- 213 Concluding Observations on the Elimination of Racial Discrimination, op cit, page 26.
- 214 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit,, para 612.
- 215 Fourth Periodic Report of Ireland under the International Covenant on Civil and Political Rights (ICCPR), op cit, page 642.
- 216 Protection of Life during Pregnancy Act 2013, Section 17

- 217 Ibid, refer to section 7.
- 218 Irish Times, (7 August 2013), Mater board priest says hospital can't carry out abortions, available at <http://www.irishtimes.com/news/health/mater-board-priest-says-hospital-can-t-carry-out-abortions-1.1486634>, (accessed 7/8/2013).
- 219 See <http://www.mater.ie/about-us/about-mmuh/> (accessed 8/8/2013). The Mater has 600 beds and the population of its local catchment area is approximately 185,000. It has provides specialist and tertiary services across the country.
- 220 UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, op cit para 23
- 221 Human Rights Council, Report of the Working Group on the Universal Periodic Review – Ireland, 2011 A/HRC/19/9
- 222 Ireland's Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, para 795
- 223 UN Committee on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination, CERD/C/IRL/CO/3-4, at para12
- 224 Committee on the Rights of the Child, Concluding Observations: Ireland CRC/C/IRL/CO/2 at para 79
- 225 Human Rights Council, Report of the Independent Expert on Human Rights and Extreme Poverty, Magdalena Sepúlveda Carmona Mission to Ireland 2011 A/HRC/17/34/Add.2, at p 19
- 226 Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on Ireland, 10 October 2012, ACFC/OP/III(2012)006 at p 10.
- 227 Equality Authority, Traveller Ethnicity, 2006, at p 65. Available at: <http://www.equality.ie/en/Publications/Policy-Publications/Traveller-Ethnicity.html>
- 228 Irish Human Rights Commission, Submission on the Recognition of the Traveller Community as an Ethnic Minority in the State, January 2013. Available at: http://www.ihrc.ie/download/pdf/traveller_ethnicity_recognition_january_2012.pdf (accessed 8/8/2013)
- 229 The Independent Newspaper, Irish Travellers gain legal status of ethnic minority, 30 August 2000. Available at: <http://www.independent.co.uk/news/uk/this-britain/irish-travellers-gain-legal-status-of-ethnic-minority-710768.html>. (accessed 8/8/2013)
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- 233 Ibid, at pp 45-46.
- 234 Ibid Note: Data in the report from 2009 indicates that 55 cases were lodged, all alleging discrimination on the Traveller Ground. 44 cases were struck out with three on hand at year's end, with eight cases finding for the applicant (14.5 per cent).
- 235 Section 3(2).
- 236 Section 3 Equal Status Act 2000 as amended by Section 48 Equality Act 2004. Available at: <http://www.irishstatutebook.ie/2004/en/act/pub/0024/print.html#sec48>
- 237 Christian Brothers' High School Clonmel v Stokes (3 Feb 2012), McCarthy J, unreported HC [2011] IECC.
- 238 In upholding the decision of the Circuit court which had overturned the Tribunals decision.
- 239 Op cit, para.23
- 240 European Commission against Racism and Intolerance ECRI Report on Ireland, Fourth Monitoring Cycle, 19 February 2013, CRI(2013)1, at p. 7, Available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ireland/IRL-CbC-IV-2013-001-ENG.pdf> (accessed 8/8/2013)
- 241 Section 10, Housing Traveller Accommodation) Act 1998. Available at: <http://www.irishstatutebook.ie/1998/en/act/pub/0033/print.html>
- 242 Department of Justice and Equality, Ireland's National Traveller/Roma Integration Strategy, p. 11, Available at: http://ec.europa.eu/justice/discrimination/files/roma_ireland_strategy_en.pdf (accessed 8/8/2013)
- 243 European Commission against Racism and Intolerance, ECRI Report on Ireland, Fourth Monitoring Cycle, op cit, p. 22
- 244 Ireland's Fourth Periodic Report under ICCPR to the UN Human Rights Committee, op cit, paras 808-826
- 245 'Our Geels'- All Ireland Traveller Health Study, 2009, available at http://www.dohc.ie/publications/aiths2010/TR1/AITHS2010_TechnicalReport1_LR_All.pdf?direct=1 (accessed on 8/8/2013)

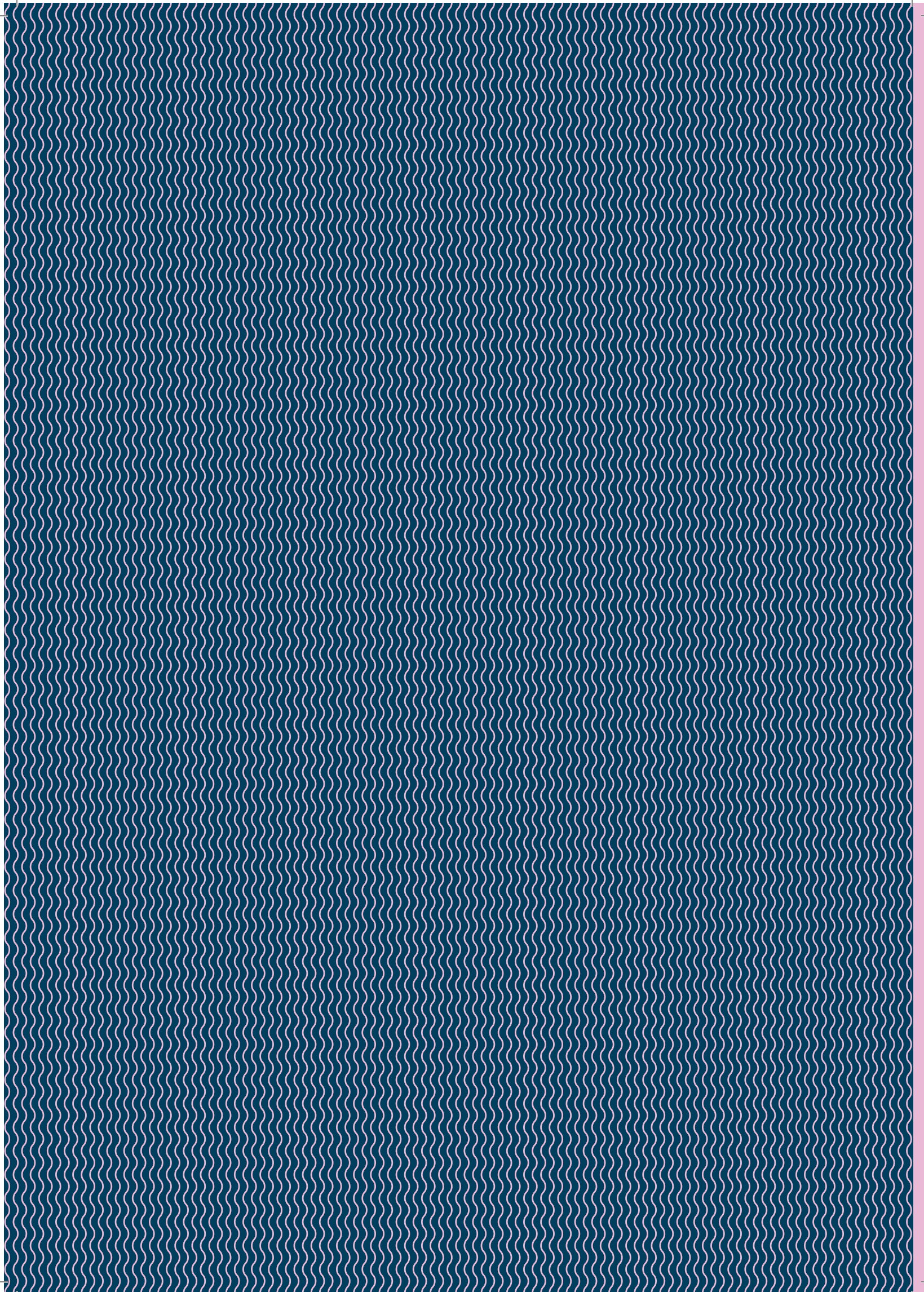
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- 247 Human Rights Council, Report of the Working Group on the Universal Periodic Review – Ireland, 2011 A/HRC/19/9
- 248 Irish Penal Reform Trust, Prison Facts, available at <http://www.iprt.ie/prison-facts-2>. Accessed 26 July 2013
- 249 Irish Prison Service Statistics http://www.irishprisons.ie/images/dailynumbers/24_july_2013.pdf. Accessed 26 July 2013
- 250 Ibid
- 251 Irish Penal Reform Trust, IPRT Briefing on Overcrowding in Irish Prisons available at http://www.iprt.ie/files/IPRT_Briefing_on_Overcrowding_Oct_2011.pdf
- 252 Irish Prison Service Three Year Strategic Plan 2012-2015, available at <http://www.irishprisons.ie/images/pdf/strategicplanfinal.pdf> p.12
- 253 Irish Penal Reform Trust, IPRT Briefing on Overcrowding in Irish Prisons, op cit
- 254 UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, op cit, para 15.
- 255 Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 2010 paragraph 32, p. 21.
- 256 Where no in-cell facilities exist, prisoners urinate and defecate in buckets or portable units in the cell during lock up, which varies but is generally from 7.30pm to 8.00am and mealtimes during the day. A small number of prisoners are under 23-hour lock-up with no in-cell sanitation.
- 257 UN Human Rights Committee, Concluding Observations of the UN Human Rights Committee, op cit,, para 15. See also the report of the Inspector of Prisons: Inspector of Prisons, The Irish Prison Population: An examination of the duties and obligations owed to prisoners, July 2010, p. 20.
- 258 Inspector of Prisons, An Assessment of the Irish Prison System By the Inspector of Prisons Judge Michael Reilly, May 2013 at p.18. Available at: <http://www.justice.ie/en/JELR/An%20Assessment%20of%20the%20Irish%20Prison%20System.pdf/Files/An%20Assessment%20of%20the%20Irish%20Prison%20System.pdf> (accessed 8/8/2013)
- 259 Ibid
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- 314 The referendum was passed by a margin of 58 percent to 42 percent of votes in favour of the proposed amendment to the Constitution.
- 315 Article 42.5(Deleted) “In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.”
- 316 Article 42A(Inserted) – 1. The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights. 2. 1^o In exceptional cases, where the parents, regardless of their marital status, fail in their duty towards their children to such an extent that the safety or welfare of any of their children is likely to be prejudicially

affected, the State as guardian of the common good shall, by proportionate means as provided by law, endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child. 2. 2° Provision shall be made by law for the adoption of any child where the parents have failed for such a period of time as may be prescribed by law in their duty towards the child and where the best interests of the child so require. 3 Provision shall be made by law for the voluntary placement for adoption and the adoption of any child. 4. 1° Provision shall be made by law that in the resolution of all proceedings—(i) brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or (ii) concerning the adoption, guardianship or custody of, or access to, any child, the best interests of the child shall be the paramount consideration. 4. 2° Provision shall be made by law for securing, as far as practicable, that in all proceedings referred to in subsection 1° of this section in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child.

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- 324 UPR recommendation to Ireland, Oct 2011, 107.41. Explicitly prohibit any form of corporal punishment in the family and continue developing awareness-raising campaigns and education for parents and for the public in general (Uruguay); and 107.42. Promote forms of discrimination and non-violent discipline as an alternative to corporal punishment, taking into consideration general comment No. 8 (2006) of the Committee on the Rights of the Child on the protection of children from corporal punishment and other cruel or degrading forms of punishment (Uruguay).
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Section 7 Concluding Observations of the Human Rights Committee on Ireland

July 2008

**UNITED
NATIONS**



**International covenant
on civil and
political rights**

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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

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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 Síochána* 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.



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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



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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



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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.



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