



Houses of the  
Oireachtas  
Tithe an  
Oireachtais

## **SEANAD ÉIREANN**

### **COISTE COMHAIRLIÚCHÁIN POIBLÍ AN tSEANAID**

**Tuarascáil maidir le Comhlíonadh an  
Chúnaint Idirnáisiúnta ar Chearta Sibhialta  
agus Polaitiúla ag Éirinn**

**fara**

**Tráchtanna agus Moltaí chuig  
Coiste na Náisiún Aontaithe um Chearta an Duine  
agus chuig Rialtas na hÉireann**

**Meitheamh 2014**

### **SEANAD PUBLIC CONSULTATION COMMITTEE**

**Report on Ireland's Compliance with the  
International Covenant on Civil and Political Rights**

**with**

**Observations and Recommendations to the  
United Nations Human Rights Committee and to  
the Irish Government**

**June 2014**



# **SEANAD PUBLIC CONSULTATION COMMITTEE**

## **Report on**

### **IRELAND'S COMPLIANCE WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

#### **with**

#### **Observations and Recommendations to the United Nations Human Rights Committee and to the Irish Government**

1. The Seanad Public Consultation Committee (SPCC) has facilitated a dialogue with Ireland's national human rights institution and with civil society on the key priorities and challenges facing Ireland in complying with its obligations under the International Covenant on Civil and Political Rights (ICCPR), in advance of the UN Human Rights Committee's examination of Ireland on its Fourth Periodic Report. At its meeting of 27<sup>th</sup> May 2014, the SPCC adopted the following observations and recommendations.

#### **A. Introduction**

2. Ireland's houses of parliament, the Houses of the Oireachtas, are bicameral. The upper house is called Seanad Éireann or more simply, the Seanad. The Seanad is elected via expert panels and thus has the capacity to explore macro issues with both breadth and analytical depth. Though its primary and traditional role is the revising of legislation sent from the lower house, it is increasingly a source of legislation in its own right. It is this more proactive spirit that informs the work of the Seanad Public Consultation Committee and the observations and recommendations contained herein.

3.1 The Seanad Public Consultation Committee, upon the recommendation of its Independent Senators (Taoiseach's nominees), was established by the 24<sup>th</sup> Seanad as part of reform procedures to open access to Seanad Éireann and its work. The SPCC considers areas related to its legislative powers by inviting submissions from the public.

3.2 The Seanad Public Consultation Committee has explored a range of broad socio-economic issues since its formation in 2011, including the idea of social entrepreneurship, prevention of cancer through lifestyle changes and more recently civil and political rights. Central to all of its work is the participation of wider society in its deliberations. This participation takes a form that is unhurried by the sometimes frenetic nature of law-making and can instead give voice to more diverse viewpoints.

3.3 Parliamentary democracy is ultimately about citizens and their individual and social rights. It is about self-determination as a concept that goes far beyond the simple albeit crucial right to vote in general elections. Through its work to date the Seanad Public Consultation Committee has sought to give real meaning to this sentiment by bringing citizens into the parliamentary process in a way that allows for considered exploration of ways in which parliament can advance the quality of our democracy and society.

4. Seanad Éireann is partaking in the UN Treaty Body system as part of its ongoing work to participate in parliamentary oversight of Ireland's constitutional, European and international human rights obligations. The Committee has previously reviewed the Rights of Older People and recommended that Ireland advance the case for drafting a new UN Treaty on the Rights of Older People (2012). The Committee is also aware of the initiative taken by the UN High Commissioner for Human Rights to strengthen the treaty system and the contribution of Dublin I (2009) and II (2011) meetings towards this process. The Committee hopes that the involvement of Irish parliamentarians in reviewing the implementation of treaty obligations will provide a model of good practice for others.

#### 5. Consultation Process

5.1 In line with the Committee's mandate and previous practice as outlined above, the Committee issued an open call on 24<sup>th</sup> February 2014 for written submissions from interested groups or individuals on Ireland's performance in complying with its obligations under the ICCPR and specifically on the *priorities* and *challenges* facing Ireland in complying with these obligations. This open call was advertised nationally through the print media and on the Irish Parliament's website. In response to its call, the SPCC received 24 written submissions from individual members of the public and 11 organisations with experience and expertise in the field, all of which are accessible on the Irish Parliament's website.

5.2 To gain as deep an understanding of the various issues raised in the written submissions, the Committee decided to invite a number of contributors to public hearings which took place in the Seanad Chamber on 6<sup>th</sup> May 2014. Guided by the List of Issues adopted by the Human Rights Committee in relation to Ireland's fourth periodic report (U.N. Doc. CCPR/C/IRL/Q/4), the SPCC requested invitees to focus their oral submissions on particular issues on which the Seanad might be best placed to progress its own work in the future and to assist the Human Rights Committee in its review of Ireland's fourth periodic report.

### **B. Positive Outcomes of the Committee's Process**

6. The SPCC welcomes a number of positive outcomes resulting from its engagement as lawmakers with Ireland's national human rights institution and with civil society through the consultation process.

7. The Committee notes that its public hearings held on 6<sup>th</sup> May 2014 were webcast, and as such were immediately accessible to the wider Irish (and international) public, thereby contributing to awareness raising of Ireland's human rights obligations under the ICCPR.

8. The Committee welcomes the powerful public testimony and self-advocacy of those whose human rights are directly impacted, including transgender people, people with disabilities and Travellers. The voices of the people in the Irish Parliament assisted the Committee in its analysis of Ireland's compliance with its human rights obligations under the ICCPR.

9. The Committee acknowledges the contribution that this process has made to lawmakers by increasing their understanding of the importance of bringing a human rights analysis to law and policy on a wide range of issues.

10. The Committee appreciates that its consultation process provided a platform for the State's national human rights institution and for civil society not only to inform Parliament but also to engage with each other on Ireland's compliance with the ICCPR.

11. The Committee is satisfied that its facilitation of this process will assist Seanad Éireann in its on-going work of lawmaking and parliamentary oversight of the State's compliance with its international human rights obligations, and in this regard the Committee will make particular reference below to the rolling out of an effective national implementation mechanism of UN treaty body recommendations to further such compliance.

### **C. Principal Observations and Recommendations**

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

(a) *A national human rights infrastructure.*

The Committee welcomes the publication of the Irish Human Rights and Equality Commission Bill 2014, draft legislation to merge the Irish Human Rights Commission and the Equality Authority. The Committee further notes that Parliaments and National Human Rights Institutions must work together to properly uphold the rule of law and human rights and equality standards.

**The Committee urges the swift enactment of this legislation and encourages the State to ensure that the new Commission will maintain its "A" status under the UN Paris Principles through appropriate resourcing and statutory independence.**

(b) *A national implementation mechanism for oversight of international human rights obligations.*

The SPCC is concerned that recommendations of UN treaty bodies and the UN Human Rights Council often have not given rise to sufficient change in law, practice and policy within Ireland.

**The Committee urges the State to consider the establishment of a national implementation mechanism and to make certain that the mechanism is inclusive of rights holders. The Committee notes that Seanad Éireann could have a specific role in this regard.**

13. Non-discrimination and right to an effective remedy (arts. 2, para. 1, 3, 16 and 26).

(a) *Assisted Decision Making (Capacity) Bill 2013.*

The Committee notes that the Assisted Decision Making (Capacity) Bill will introduce important reforms to Ireland's legal capacity laws and provide for the first time in Irish legislation decision-making assistance agreements, which will enable people to avail of support in exercising their legal capacity.

**The Committee urges the State to progress this legislation as quickly as possible, and to ensure that all aspects of the law are compliant with Ireland's obligations under the ICCPR and the UN Convention on the Rights of Persons with Disabilities. The Committee further notes that once the Bill becomes law it is critical that people with disabilities and their families are provided with accessible information about the law.**

(b) *Right to an effective remedy: Survivors of Symphysiotomy.*

The Committee heard testimony about the situation of women in Ireland subjected to symphysiotomy, whose right to an effective remedy has yet to be vindicated.

**The Committee requests the UN Human Rights Committee to raise this issue in its forthcoming constructive dialogue with the Irish Government.**

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

The Committee is deeply concerned about the particularly precarious situation of migrant women and their children in situations of domestic violence in terms of their legal and physical protection. It also notes in this context the exceptionally vulnerable position of asylum-seeking, victims of sex trafficking for the purposes of sexual exploitation who are forced to live in mixed accommodation in the State's system of direct provision (see further paras. 16 & 17).

**The SPCC urges the government to strengthen the legal and physical protection of migrant women from domestic violence by introducing statutory measures for their protection; and to make separate and safe accommodation available to victims of sex trafficking who are at continuing risk of gender based violence.**

15. 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).

(a) *Prisoner separation.*

The SPCC is particularly concerned about aspects of the detention of children in the State, arising from ongoing problems related to prison overcrowding generally. While the SPCC welcomes the positive measures taken in relation to the closing of St. Patrick's Institution and towards a National Children Detention Facility at Oberstown campus, it takes note of the fact that pending completion of the latter facility, some children are still being detained in adult prisons, while the segregation of children on remand and children serving a sentence in accordance with Article 10(2)(a) of the ICCPR at Oberstown is not always implemented in practice.

**The Committee urges the State to prioritise completion of the facility at Oberstown so as to ensure that detention of all juveniles in the State fully complies with Ireland's obligations under the ICCPR.**

(b) *Extraordinary rendition.*

The Committee takes note of continued calls for the establishment of an independent, effective and comprehensive investigation concerning the use of the State party's territory for the purposes of extraordinary rendition. The SPCC further recognises the outstanding need for an oversight mechanism to ensure that Ireland's territory may not be used for any such purpose in the future. Specifically, the Committee notes the potential for a Parliamentary Committee to undertake this role in the future.

**The Committee strongly recommends the Human Rights Committee to pursue this issue with Government in its upcoming review and to suggest specific measures that should be taken to ensure effective oversight of the use of the State's territory and airspace in order to ensure compliance with Ireland's obligations under the ICCPR.**

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

*Human Trafficking.*

The Committee is concerned about the current levels of support for victims of trafficking provided by the State. In particular, it takes note of

concerns raised in the consultation process regarding effective access to legal advice and remedies for victims of trafficking and to the lack of an appeals mechanism to review negative decisions on victim-status. It is particularly concerned that the physical safety of asylum-seeking, victims of trafficking may be compromised by virtue of the absolute requirement for them to live in accommodation provided under the system of direct provision (see paras. 14 and 17) and their disparate protection generally as compared with victims of trafficking who do not claim refugee status.

**The Committee urges the Human Rights Committee to emphasize the need for the State to ensure that all persons who claim to be victims of trafficking are granted comparable and effective protection in conformity with the State's obligations under the ICCPR.**

17. Refugees and asylum seekers (art. 13 and 17)

*The system of direct provision*

The Committee is seriously concerned about the impact which the system of direct provision is having long-term on the physical and moral integrity of asylum seekers and on their right to enjoy private and family life under the ICCPR. The Committee expresses specific concern about the failure of the State to put in place an independent appeals mechanism available to persons currently living in direct provision centres.

**The Committee strongly recommends the Government to consider alternative ways of accommodating asylum seekers in the State and to bring to an end the current system of direct provision in Ireland. Pending completion of this goal, the Committee urges the government to establish an independent complaints mechanism to ensure immediate and transparent oversight of the current living conditions of asylum seekers.**

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

*Gender Recognition.*

The Committee, while noting with satisfaction the State's publication of the General Scheme of a Gender Recognition Bill 2013 [these are Heads of the Bill], expresses its concern that the Bill itself has not yet been published. The SPCC further notes that the Government has been in receipt of a cross-party parliamentary committee report on the Heads of Bill since January 2014, offering substantial proposals to ensure that the legislation adequately protects the human rights of transgender and inter-sex people.

**The Committee urges the State to publish the bill with immediate effect, and to adopt the cross-party parliamentary recommendations, particularly with regard to setting 16 years as the age at which a person is entitled to apply for a Gender Recognition Certificate.**

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

*Traveller Ethnicity.*

The Committee is concerned that Travellers in Irish society suffer high levels of racism and discrimination, including indirect discrimination. While welcoming the State's willingness to give serious consideration to recognise Travellers as an ethnic minority group, the Committee notes that the State continues to assert that Travellers are not such. The Seanad Committee further notes that the Government is in receipt of a cross-party parliamentary committee report on Traveller Ethnicity (April 2014).

**The Committee requests the State adopt the recommendations of the cross-party parliamentary report. In this respect, the Committee draws particular attention to the recommendations made in the latter report that the Taoiseach or Minister for Justice and Equality should make a statement to Parliament that the State recognises the ethnicity of the Travelling community and that the State should commence a time-limited dialogue with Traveller representative groups about legislation required to ensure that Travellers human rights are adequately protected.**

20. Freedom of religion (arts 2, 18, 24 & 26)

*Education: patronage and pluralism*

The Committee welcomes the steps taken by government to ensure greater diversity in the Irish primary school system in light of Ireland's constitutional obligations to protect freedom of conscience and religion. While noting that a fundamental restructuring of the education system inevitably takes time, the Committee urges the State to prioritise efforts to ensure that religious freedom is a core element of the State's education system at primary and secondary level. In particular, the SPCC recognises the need for the State to allocate further resources to this issue; to accelerate its current policy for the transfer of school management and to keep its scope under review; and to consider the adoption of further measures to ensure access to non-denominational and multi-denominational education in areas where no such schooling currently exists.

**To this end, the SPCC urges the Human Rights Committee to reinforce concerns which it has previously expressed on this issue to the State in its upcoming review of Ireland's progress in implementing the ICCPR.**

## **D. Conclusion**

21. The main purpose of this document by the Seanad Public Consultation Committee is to provide the United Nations Human Rights Committee with the SPCC's views of Ireland's implementation of its obligations under the International Covenant on Civil and Political Rights. It does so in time to inform the Human Rights Committee's examination of Ireland's fourth periodic report to the Committee under the Covenant this coming July. The value of the SPCC's input into the reporting process under the ICCPR is enhanced by the broad public consultation with key actors in which it has engaged and that underpin its observations and recommendations. This public, purposeful and open-minded process serves to inform this key progress report for Ireland to the UN. The Seanad Public Consultation Committee also submits these observations and recommendations to Government in a spirit of cooperation and remains available for further engagement in due course.

## **E. Acknowledgments**

22. The SPCC wishes to express its appreciation to the following individuals and organisations for their written submissions:

Professor David B. Nash, Oxford Brookes University,  
Atheist Ireland,  
Shannon Watch,  
Age Action,  
Transparen CI,  
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Mr. Alan Green, Durham University,  
Irish Family Planning Association,  
Limerick Regeneration Watch,  
Marriage Equality,  
Ms. Deirdre O'Byrne,  
LGBT Noise.

These submissions can be found at:

[http://www.oireachtas.ie/parliament/oireachtasbusiness/committees\\_list/public-consultation-seanad/submissions/](http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/public-consultation-seanad/submissions/)

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Irish Human Rights Commission – Mr. David Joyce and Dr. Des Hogan,  
Irish Penal Reform Trust – Ms. Deirdre Malone,  
Irish Traveller Movement – Ms. Bridget Quilligan and Ms. Susan Fay,  
Irish Centre for Human Rights – Professor Michael O'Flaherty,  
Amnesty International Ireland – Ms. Fiona Crowley,  
Children's Rights Alliance/Educate Together – Ms. Edel Quinn and  
Mr. Paul Rowe,  
Rehab Group – Ms. Sonya Felton, Mr. Aidan Hogan and Mr. Francis Ducie,

Immigrant Council of Ireland – Ms. Hilka Becker,  
Irish Council for Civil Liberties – Mr. Stephen O’ Hare and  
Ms. Deirdre Duffy,  
Transgender Equality Network Ireland – Mr. Broden Giambrone.

The transcript of the hearings can be found at:

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/PCJ2014050600001?opendocument>

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#### **F. Members of the Seanad Public Consultation Committee**

Senator Denis O’Donovan, Chairman  
Senator Katherine Zappone, Rapporteur of this report  
Senator Paul Bradford  
Senator Paul Coghlan  
Senator Maurice Cummins  
Senator Mark Daly  
Senator Lorraine Higgins  
Senator Ronan Mullen  
Senator Marie Louise O’Donnell  
Senator Susan O’Keefe  
Senator Mary White.



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Senator Denis O’Donovan  
Chairman  
Seanad Public Consultation Committee

10 June, 2014