

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

HUMAN RIGHTS COMMITTEE 93RD SESSION IRELAND, 3RD REPORT 14-15 JULY 2008

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Key facts¹

Date of Ratification	Reservations	Party to Protocols (OP)	Optional	Additional ratified core treaties
8 December 1989	articles 10 (2), 14, 19 (2), 20 (1)	Yes, both		CERD, CEDAW, CRC, ICESCR, CPPCG, CAT

¹ The information in these two tables is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

Type of report	Date submitted	Report submitted on time	NGO / NHRI consultation/input	List of issues provided / Written replies to issues rec'd	Last appearance before Committee
3rd	4 September 2007	No	Yes	2 May 2008 24 June 2008	1998

Information submitted to the Committee

State report

Ireland submitted its 3rd periodic report under the *International Covenant on Civil and Political Rights* (the Covenant)² on 4 September 2007.³ The report outlines the legislative, judicial, administrative, and other measures that have been adopted in Ireland to effectively comply with the provisions of the Covenant. The issues which Ireland grants the most attention in its report are minorities, namely the Irish traveller communities, and children's rights. For the latter, the focus is on the National Children's Strategy, 'Our Children – Their Lives',⁴ which Ireland published in 2000 and outlines a ten-year plan to improve the quality of life of children. In relation to Article 2 of the Covenant, Ireland describes the establishment of its National Human Rights Commission in July 2001. The mission of the National Human Rights Commission is to ensure that Irish law and practice is in line with the highest international standards. A lot of detail is also given on the operation of prisons in Ireland, specifically the conditions of prisoners and the separation of juveniles and adults. The newly established independent Garda Síochána Ombudsman Commission (GSOC) deals with complaints against the police force. One of the purposes of the 2005 *Garda Síochána Act*⁵ is to reinforce the human rights dimension in Ireland. The majority of the report focuses on legislative measures that Ireland has taken in order to harmonise domestic law with the Covenant.

List of issues

The Human Rights Committee (the Committee) submitted its list of issues to the State on 15 May 2008.⁶ Ireland submitted written replies to the list on 24 June 2008.⁷ In its list of issues, the Committee expressed interest in the compatibility of domestic law with the Covenant in relation to counter-terrorism measures and the *Immigration, Residence and Protection Bill* of 2007 concerning immigrants. The Committee requested more information in relation to measures protecting victims of domestic violence, the referendum on abortion, and the newly established GSOC.⁸ In addition, the Committee also requested information regarding the legal provisions in place for the protection of victims of trafficking, and overcrowding in prisons. The Committee also requested information on the 2003 recommendations by the Irish High Level Group on Travellers' Issues.⁹

² The *International Covenant on Civil and Political Rights* is available at www.unhcr.ch/html/menu3/b/a_ccpr.htm

³ CCPR/C/IRL/3, 4 September 2007, available at www2.ohchr.org/english/bodies/hrc/hrcs93.htm.

⁴ Available at www.dailanog.ie/media.

⁵ Available at www.irishstatutebook.ie.

⁶ CCPR/C/IRL/Q/3, 15 May 2008, available at www2.ohchr.org/english/bodies/hrc/hrcs93.htm.

⁷ CCPR/C/IRL/Q/3/Add.1, 24 June 2008, available at www2.ohchr.org/english/bodies/hrc/hrcs93.htm.

⁸ Information on the Garda Síochána Ombudsman Commission (GSOC) is at www.gardaombudsman.ie.

⁹ Available at www.justice.ie.

NGO reports

A total of eight reports were submitted to the Committee by non-governmental organisations (NGOs). The list of issues prepared by the Committee reflects many of the concerns raised by NGOs.

Trafficking of human beings was mentioned by several NGOs.¹⁰ These NGOs recommended improvements in relation to victims of trafficking, immigrants, and the status of parents of children with Irish citizenship. Conditions of detention and detention of migrants and asylum seekers were also mentioned by these NGOs.

The right to abortion was an issue raised by the Irish Family Planning Association (IFPA). IFPA believes abortion to be an intimate aspect of private life, and recommends that the Government develop greater access to abortion services for all women. It also proposed that the State offer voters the opportunity to remove from the Constitution the 1983 amendment which effectively bans abortion.

Education was an issue raised by Queen's University Belfast, which submitted information on religious primary schools and the lack of choice in educational facilities. The majority of Irish schools are religious, therefore denying choice of education received.

At the opening meeting of the 93rd session, NGOs were invited to publicly address the Committee. At this occasion, the National Human Rights Commission of Ireland brought up issues concerning immigration law, and the *Enquiry Act* of 2005 and its compatibility with Article 6 of the Convention.

Themes and Issues

The delegation of Ireland was led by Mr Paul Gallagher, Attorney General. Mr Gallagher was accompanied by Ambassador Daithi O'Ceallaigh, Permanent Representative of Ireland to the United Nations (UN) in Geneva. The delegation was composed of representatives of various units of the Department of Justice, Equality and Law Reform and the Department of Foreign Affairs, as well as representatives of the Permanent Mission in Geneva.

Mr Paul Gallagher presented the State's 3rd periodic report to the Human Rights Committee (the Committee). Mr Gallagher presented the entirety of Ireland's responses to the list of issues, primarily repeating information contained in the written responses. Mr Gallagher presented the background of Ireland's legal history to explain the difficulty it faces in fully implementing the Covenant into domestic law. He also highlighted the positive development that Ireland will very soon remove its reservation to Article 14 of the Covenant, through the 2007 *Defence Amendment Act*,¹¹ which makes substantial amendments to military discipline and offences. Additionally, he expressed his hope that Ireland would withdraw its reservation to Article 19, the monopoly on broadcasting services. According to the delegation, the areas in which progress has been made since 2000 are same-sex partnerships, prison conditions, gender equality and gender related violence, the traveller community, and immigration.

Ireland has not incorporated the Covenant directly into domestic law. Mr Gallagher explained that as the Irish Constitution operates on a dualist system, international treaties are not automatically enforceable. As a result, it is difficult to evaluate whether Ireland fully incorporates all the articles of the Covenant into domestic law and the citizens of Ireland are unable to directly claim their rights under the Covenant in Irish courts due to this indirect implementation. Nevertheless, Ireland submitted that in its view, the Covenant is fully

¹⁰ Immigrant Council of Ireland and Irish Refugee Council (IRC).

¹¹ The *Defence Amendment Act* is available at <http://www.oireachtas.ie..>

implemented in the form of correlating Irish laws. Mr Gallagher stated that the Irish Constitution is a ‘living’ document; hence, the judiciary interprets the law in accordance with this, therefore controversial articles such as Article 41(2)¹² in practice do not discriminate against women. He used this as justification for the refusal to remove this Article. To clarify the status of the Covenant in domestic law, the Committee suggested that Ireland draw up a comprehensive list linking the articles of the Covenant with corresponding articles in Irish law.

In its dialogue with Ireland, the Committee highlighted that there have been encouraging developments with the establishment of the National Human Rights Commission in 2001. However, Mr Rafael Rivas Posada, the country rapporteur, noted that the Irish delegation focused its presentation primarily on legislative measures, but failed to describe the practical consequences of such legislation. Moreover, there was a noticeable lack of statistical data to complement its replies.

Statutory bodies

Ireland has established two bodies which help enforce the rights enshrined in the Covenant. The first of these is the Garda Ombudsman Complaints Commission, an independent Commission that addresses complaints against the police. This complaints procedure is headed by a High Court Judge. The delegation informed the Committee of the types of complaints that are being made against the police. Almost half of the cases submitted to the Garda Ombudsman Complaints Commission concern abuse of authority. The second newly established statutory body is the National Human Rights Commission, which aims to ensure that Irish law and practice are in line with the highest international standards through measuring these against the standards set out in the Constitution and in international human rights agreements to which Ireland is a party. Another positive development aside from the establishment of these two bodies is the incorporation of the Council of Europe *Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR)¹³ into Irish law.

In her questions to the delegation, Ms Elisabeth Palm pointed out that there are gaps in Irish law due to the indirect incorporation of the Covenant. Ms Palm specifically referred to the provisions on discrimination in the Covenant (Article 26) and the ECHR (Article 14) respectively to demonstrate the discrepancies that exist between the two texts. If Ireland does not implement the Covenant directly into national law, she warned, such discrepancies will persist.

In its concluding observations, the Committee highlighted positive aspects of Ireland’s legislation, including the adoption of the *Mental Health Act* in 2001, the incorporation into domestic law of the ECHR in 2003, and the establishment of the Garda Síochána Ombudsman Commission in 2007. However, the Committee expressed the desire to see a strengthening of the Irish Human Rights Commission so that it can fulfil its mandate fully.¹⁴

Discrimination

Two main points were raised in relation to discrimination, namely discrimination against women and homosexual rights. Due to Ireland’s predominantly Catholic roots, there are often very conservative values which govern the manner in which legislation is worded or enacted. There have been various reforms introduced in this area to empower women and improve their status in Ireland. Firstly, the National Women’s Strategy¹⁵ is aimed at enhancing the role of women in Ireland between 2007 and 2016. There have also been measures implemented to help prevent gender-based violence. For example, a new policy is in place to

¹² The Article reads, ‘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. 2° 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 at home’.

¹³ Available at www.echr.coe.int.

¹⁴ Paragraph 7, CCPR/C/IRL/CO/3, available at www2.ohchr.org/english/bodies/hrc/hrcs93.htm.

¹⁵ Available at www.justice.ie/en/JELR/Pages/PB07000395.

educate people about the unacceptability of gender-based violence. The National Office for the Prevention of Domestic, Sexual and Gender-based Violence (COSC)¹⁶ has also been set up to work with the Government and NGOs to create a well-coordinated response to gender violence. However, despite these advances, the Committee still questioned Ireland's approach towards women. Ms Palm requested statistics on domestic violence, commenting on the low rate of conviction rates in this area. Indicating that although there have been significant legal steps taken to combat domestic violence, in practice this continues to be of major concern.

Ms Palm also pointed out that there has been no change to Article 41(2) of the Constitution, the language of which seemingly discriminates against women and places them in a subservient role in society. She suggested that this Article be changed to make it more gender-neutral. In response to this recommendation, the delegation stated that there are no immediate plans to change the wording of this Article, but indicated that it may be changed in the future. The State evidently recognises that this is an archaic form of family life, but is reluctant to amend the Constitution. It is difficult to achieve gender-equality in society when the Constitution highlights differences between men and women in such an outdated manner. The Committee urged that the Constitution be amended in order to promote equality between men and women in Irish society.

With regard to homosexual civil partnership rights, much progress has been made in Ireland. A bill on same-sex civil partnership is currently proceeding through Parliament. In June 2008, the Government introduced this bill, which will, if passed, give legal recognition to homosexual liaisons. The bill would also give recognition to the relationships of cohabiting heterosexual couples. Ms Palm enquired into the tax issues and benefits that this bill would entail. In reply, the Irish delegation explained that separate legislation following the first bill would cover these issues. With regard to the adoption of children by same-sex couples, the delegation stressed that this is highly controversial and remains unresolved. The delegation emphasised that the same-sex legislation is a 'very dramatic development' for Ireland. Nevertheless, there is still significant progress that remains to be made in this area.

In its concluding observations, the Committee recommended strengthening of polices and laws in relation to domestic violence and improvement of the provision of services to victims including rehabilitation.¹⁷ It furthermore suggested that abortion laws be brought into line with the Covenant. Ireland 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 traveller community

Minority issues were raised in relation to the traveller community in Ireland. The Committee enquired whether the traveller community is considered as an ethnic group which requires protection under Irish law. The delegation acknowledged that travellers often face discrimination and lack opportunities in comparison to the rest of the population. The delegation explained that there are specific legal protections in place for travellers; however, these were not outlined in much detail during the meeting. It also mentioned that the Government provides funding for the 'promotion of specific culture' for children. Provisions dealing specifically with travellers exist in the form of the *Equality Act*;¹⁸ the Government now needs to ensure that the ideals enshrined therein are realised. Furthermore, Ireland needs to focus on social programmes of integration to promote the economic and social inclusion of travellers. Ireland argued that there has been a genuine and serious attempt to deal with traveller issues throughout the country. However, in reality, many prejudices still exist, and they still face social exclusion and discrimination. The social policies need to improve in order to break down these barriers. Ms Zonke Zanele Majodina stressed that much remains to be done to ensure that travellers are fully integrated into mainstream society.

¹⁶ Available at www.cosc.ie.

¹⁷ Paragraph 9, CCPR/C/IRL/CO/3.

¹⁸ Available at www.equality.ie/index.asp?docID=206.

In its concluding observations, the Committee recommended that Ireland take steps to recognise travellers as an ethnic minority group and amend legislation to meet specific accommodation requirements of traveller families.¹⁹

Religion

The three main topics that the Committee focused on in relation to religion were education, the judiciary, and abortion rights. Mr Ivan Shearer expressed his concern about the fact that every judge in Ireland is required to take a religious oath before taking office. He enquired if there have ever been any problems with this, and whether potential judges were discouraged by the religious nature of this oath. In response, the delegation emphasised that no judge has ever declined a post due to conscience. However, it stressed that in the future, this provision may change given the shifting religious landscape in the State.

Mr Ahmed Twafik Lallah asked several questions concerning abortion. First, he addressed the issue of rape-victims and whether they are allowed to have an abortion. Second, he enquired whether the Government is processing any legislation to protect victims of rape. Mr Lallah expressed his disappointment about the ‘lack of serious activity’ by the Government in this area. The delegation provided no further information on the question of abortion, and Mr Posada commented in his closing speech that there remain a number of doubts and concerns with regard to this issue. In particular, he emphasised the political difficulties posed by the strong Catholic beliefs in Ireland.

Mr Lallah also criticised the fact that 98 percent of Irish primary schools are Catholic, which does not reflect the ever-increasing range religions in the State. Mr Lallah emphasised the importance of a secular education as an investment for the future of Ireland to produce a more ‘rounded society’. The Committee²⁰ criticised the fact that many children have to convert to Catholicism to access education, and requested statistics on how many children need to convert to Catholicism. Mr Amor also criticised the dominant Catholicism in Ireland as it leads to discrimination to people of other religions. Mr Abdelfattah Amor inquired into the religious makeup of people living in Ireland. The delegation answered by highlighting Article 42(1) of the Constitution, which lays down ‘the inalienable right and a duty of parents’ with regard to their children’s education. It pointed out that there is a large range of schools of various religious dominations to which parents can send their children. However, no statistics were given on the exact number of schools, and the delegation’s answers to these questions remained vague.

In its concluding observations, the Committee mentioned that Ireland should increase its efforts to ensure that non-denominational primary education is widely available in all regions of Ireland, in view of the increasingly diverse and multi-ethnic composition of the State.

Human trafficking

Human trafficking is becoming of greater concern in Ireland due to its use as a transit country for traffickers reaching the United Kingdom. On the 8 June 2008, Ireland passed the *Anti-Human Trafficking Act* to give effect to European Union (EU) and UN obligations in this area. The Act criminalises the trafficking of humans and identifies three separate offences:

- trafficking in children for the purpose of labour exploitation or the removal of their organs;
- trafficking in children for the purpose of sexual exploitation;
- trafficking in adults for the purposes of sexual or labour exploitation or the removal of organs.

¹⁹ Paragraph 23, CCPR/C/IRL/CO/3.

²⁰ Mr Lallah, Mr Amor.

Several members of the Committee questioned the way in which trafficking is being tackled on the ground. Mr Nigel Rodley inquired about the training of police officials at border controls to recognise trafficked people. Ms Motoc also enquired how border controls deal with children if they are with someone other than their parents when entering Ireland. Other Committee members²¹ asked about the demand of prostitution and domestic servitude in Ireland and whether there are any procedures in place to prevent the demand for trafficked human beings.

Ms Marion Walsh, the head of the recently established Anti-Trafficking Unit of the Department of Justice, Equality and Law Reform dealt comprehensively with the issues which were highlighted by the Committee. In relation to training for border control, she explained that a training programme has been developed and that so far this year, 150 police have been trained to look for signs of trafficked human beings. She estimated that another 120 will have been trained by the end of 2008. Another positive development is that all police staff in their final year of the recruitment process will receive obligatory training in recognising victims of human trafficking. Miss Walsh also assured the members of the Committee that health professionals will also be receiving training in recognising victims of trafficking. Ireland is also taking part in the Group of 6 (G6) anti-human trafficking initiative.²² Ireland is involved in the 'Blue Blindfold Campaign',²³ aimed at raising public awareness on issues related to trafficking. Furthermore, Government launched *Operation Snow* in 2007, which is dedicated to investigating the possible trafficking of unaccompanied children into Ireland. Miss Walsh mentioned, but failed to elaborate fully on, the interdisciplinary working group of NGOs and the Government, regarding accommodation, counselling, and legal advice for victims of human trafficking. Although it appears that Ireland is developing relevant legal provisions to assist victims of human trafficking, in practice, there is much room for improvement, especially concerning the rehabilitation of victims. The delegation admitted that trafficking in Ireland is a multi-layer problem; thus, the Government is implementing reforms in the legal, social, and political fields in order to effectively protect the victims of this crime.

In its concluding observations, the Committee noted that Ireland should continue to reinforce its measures to combat trafficking of human beings, particularly by reducing the demand for trafficking.²⁴ Ireland was 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*.²⁵

Detention of asylum seekers

The Committee expressed its concern about the alleged placing of asylum-seekers in prisons while they await trial or deportation. Mr Yuji Iwasawa also expressed his concern about the effect of the new *Immigration Bill* on the rights of foreigners. This Bill identifies two categories of unlawful foreigners, those whose refugee status is rejected, and those who are arrested after having entered Ireland secretly. In the former case, individuals have 15 days to appeal their case, while in the latter, individuals are deported as soon as possible without the right to plead asylum. The Committee was concerned that some of the people in the latter category may be in need of protection and a safe haven in Ireland, as it may be unsafe to send them back to their home country.

Mr Iwasawa also raised the issue of detention of asylum applicants. The new *Immigration Act* increases the period of detention from ten to 21 days. The Committee suggested that this violates international human rights standards.

²¹ Ms Motoc, Ms Wedgwood.

²² Six European countries are involved in this initiative. For more information, see www.justice.ie/en.

²³ Available at www.blueblindfold.org.uk.

²⁴ Paragraph 16, CCPR/C/IRL/CO/3.

²⁵ Available at www.unodc.org/unodc/en/treaties/CTOC/index.html.

The Committee²⁶ asked about the exact number of immigrants in Irish prisons, in particular Clover Hill prison due to the problems of extreme overcrowding. The Committee²⁷ considered prisons as unsuitable for the detention of immigrants and asylum-seekers, and insisted that reform is needed in this area. The delegation recognised the unsatisfactory conditions that asylum-seekers are placed in, but assured that, as far as possible, they are placed in the two most modern facilities. Moreover, the new prison building has a specific unit for asylum-seekers, and thus separates them from the prisoners. The delegation maintained that many changes in the field of immigration are currently being considered by the Parliament, and there is a continuous dialogue in Parliament concerning the treatment of immigrants and asylum-seekers.

In its concluding observations, the Committee included recommendations on the detention of asylum seekers. Ireland should take immediate and effective measures to make sure that all persons detained for immigration-related reasons are held in facilities specifically designed for this purpose.

Prison reform

Many members of the Committee²⁸ expressed concern about the overcrowding of prisons. They also raised the issue of separating un-convicted prisoners from convicted prisoners, as well as separating juvenile prisoners from adult prisoners.

The delegation assured the Committee that plans are in place to improve the conditions of prisons in Ireland. However, these new plans are on refurbishment rather than on expansion. A new mechanism, an independent prison inspector, has also been established. In its replies to the Committee, the delegation noticeably failed to mention anything on the separation of prisoners.

Extraordinary renditions

Mr Lallah broached this subject by mentioning several instances in which the Council of Europe expressed its concern about use of Shannon airport for extraordinary renditions. Mr Lallah voiced his concern about the proceedings of Irish officials, and suggested that Ireland search all aircrafts operated by agencies such as the Central Intelligence Agency (CIA). In response to this suggestion, the delegation stressed that to inspect an aircraft, there must be a reasonable suspicion that it is being used for extraordinary renditions. It insisted that it has received assurances from the Government of the United States that Shannon airport is not being used for this purpose. The delegation insisted that there are ‘no problems’ in relation to extraordinary renditions in Shannon airport and that ‘the situation is under control.’

Imprisonment for outstanding debt payments

The Committee discussed this issue extensively, as this practice directly contradicts Article 11 of the Covenant, which stipulates that no-one should be imprisoned based on refusal to fulfil contractual obligations. Ireland explained that the applicable crime is civil contempt of court rather than outstanding debt payment. The delegation informed the Committee that only eight people are currently imprisoned on the grounds of non-payment of debt. However, Mr O’Toole challenged this assertion with NGO information, which put the number at almost 1000. One can only be imprisoned for contempt of court which is a mode of enforcing payment where there are no assets to seize. He also made it clear that there were only 8 people imprisoned for non-payment of debt whereas 1000 people were convicted of this crime but 992 people paid their debt rather than being imprisoned. Those that are imprisoned are imprisoned for civil contempt of court rather than for the non-payment. This seemed to clearly conclude any discrepancies which arose. However, Mr Posada noted in his concluding remarks that the argument of imprisonment for civil contempt does not explain away the phenomenon entirely.

²⁶ Mr Rodley.

²⁷ Mr Rodley, Mr Iwasawa.

²⁸ Mr Iwasawa, Mr Amor, Ms Chanet, Sir Rodley.

Other issues

Other issues which were touched upon briefly were the continuation of a separate criminal court (as opposed to trial by jury) and legal aid for asylum seekers. Both of these issues were dealt with briefly. The delegation assured that legal aid is available to asylum seekers. It also argued that the legal rights of a person tried by the criminal court in no way differ to those of a person tried by a jury.

Conclusions and next steps

In his concluding remarks, Mr Posada the country rapporteur highlighted the difficulty in assessing the extent to which the rights enshrined in the Covenant are protected under Irish law, given its dualist legal system.. He encouraged the State to submit a comprehensive list linking domestic articles with their corresponding articles in the Covenant. Mr Posada also drew attention to the religious influences in Ireland and suggested that it work toward a more secular educational and judicial system. Mr Posada expressed a number of doubts and concerns in relation to abortion, given the strong influence of Catholicism in the State.

The Human Rights Committee posted the concluding observations regarding Ireland on 22 July 2008.²⁹ The principal areas of concern for the Committee are trafficking in human beings, treatment of asylum seekers, women's rights, and the integration of the traveller community. Furthermore, The Committee urges Ireland to remove the reservations in relation to Article 10(2) and Article 14 of the Covenant.³⁰

There is considerable overlap of issues in Ireland among the treaty bodies. Especially in the areas women's rights, children's rights, asylum seekers and general discrimination based on religion. The Rights of asylum-seeking children were also noted by the Committee on the Rights of the Child (CRC) in its concluding observations³¹ Abortion rights of women in Ireland were also discussed by the Committee on the Elimination of Discrimination against Women (CEDAW) in 2005. CEDAW's recommendation is in line with the Human Rights Committees' recommendation, namely to improve women's choices in relation to abortion and to educate the general public on these issues.³² CEDAW also recommends stricter legislation in relation to human trafficking offences and the development of rehabilitation and recovery for women who have been trafficked.³³

The Committee set 31 July 2012 as the date of submission of Ireland's fourth periodic report. The Committee also requested that civil society be involved again in the preparation of the next report.

²⁹ CCPR/C/IRL/CO/3.

³⁰ Paragraph 5, CCPR/C/IRL/CO/3.

³¹ CRC/C/IRL/CO/2 available at www2.ohchr.org/english/bodies/crc/crcs47.htm.

³² A/60/38 available at www2.ohchr.org/english/bodies/cedaw/cedaws33.htm.

³³ Paragraph 389, A/60/38.

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