



**Launch of the
Irish Human Rights and Equality Commission (IHREC) Designate Report
on Ireland's Fourth Periodic Review of its compliance
with the International Covenant on Civil and Political Rights**

**Address by Professor Siobhán Mullally, Member of the IHREC Designate
11 am, Monday 16 June 2014
Jervis House, Dublin 1**

CHECK AGAINST DELIVERY

Good morning ladies and gentlemen. As has been stated, I will speak to you on the overarching issue of what are known as “effective remedies”; the areas of Policing and Prisons; and the issues of Human Trafficking and Violence Against Women.

Effective remedies

It is most unfortunate that little or no action has been taken by the State to incorporate the Covenant and other conventions into Irish law despite numerous recommendations to this effect. This may seem an academic point. After all, does not the Constitution protect our human rights? While it is true that the Constitution affords us some protection, there remain serious gaps in protection. One overarching area is that of effective domestic remedies where our rights are violated.

Why is it that the State has on three recent occasions been found in violation of the European Convention on Human Rights before the Grand Chamber of the European Court of Human Rights? In the cases of *McFarlane, A, B & C* and *O’Keefe*, at issue were constitutional doctrines under which human rights could not be vindicated before the Irish courts. Of the three cases, only the *A, B and C* Judgment has been addressed by the State by way of

amending legislation introduced last year. The much-heralded introduction of the European Convention on Human Rights Act 2003 did not address these problems. People still have to go to Strasbourg. Despite a 2007 Supreme Court ruling under that Act in the Foy case, we still have no transgender legislation.

When we speak of effective remedies we must ask why the State continues to have such difficulty in conducting effective investigations. The Vaccine Trials Inquiry collapsed in 2004 after being struck down by the Courts. The Gary Douche Inquiry was only completed this year under the Commissions of Investigations Act 2004. This is the same Act being employed for the Mother and Baby Homes Inquiry. The Magdalen Mc Aleese Inquiry was non-statutory and although the Taoiseach's apology and promise of an ex gratia compensation system are welcome, they are not the human rights remedies we need. We know that survivors of child abuse, symphysiotomy and other historic abuses have faced legal barriers under the Statute of Limitations Acts in bringing legal claims and this has been upheld under the Constitution.

What are known as "administrative remedies" are not always capable of being enforced. Ombuds bodies, such as the Ombudsman or Ombudsman for Children, are often not capable of ensuring that the full component of "adequate remedies" is met, i.e. compensation, reparation, restitution, rehabilitation, guarantees of non-repetition and/or a public apology following a finding of a human rights violation. The requirement to exhaust internal complaints mechanisms before bringing a complaint to an Ombudsman and the fact that the findings and recommendations of these bodies are not legally binding, also raise questions as to how effective our remedies are.

Ireland's examination in Geneva next month allows us an opportunity to view ourselves from the standpoint of the United Nations and the human rights treaties which the majority of States ascribe to. The wider issue in relation to the State's ability to conduct effective investigations into alleged historic human rights violations and to provide redress where violations have been found can be ventilated then. The only tragedy is that we cannot sort

these issues out at home. Not one of these human rights themes were referred by the Government to the Constitutional Convention for its consideration.

Policing

The IHREC Designate has recommended the establishment of an independent and representative Policing Authority similar to the recommendations in the 1999 Patten Report and we are very pleased to see that the Government has committed to establish such a body. We now urge that any such Authority should have sufficient independence, resources and functional capacity to address deficits in accountability and oversight of An Garda Síochána in a meaningful way. In 1999, looking towards new structures for policing in Northern Ireland, Chris Patten identified certain aspects to accountability in policing, such as democratic accountability, transparency, legal accountability, financial accountability and internal accountability. We would suggest that Ireland, as a party to the European Convention on Human Rights, must ensure that proper accountability structures exist within An Garda Síochána in keeping with our international obligations. This means effective investigations following suspicious deaths, proper planning and oversight to address foreseeable risks of human rights violations, and proper complaints mechanisms following any human rights violations that do occur at the hands of police.

The IHRC welcomed the establishment of GSOC in 2005 and since then has repeatedly called for the strengthening of GSOC to allow it to investigate human rights abuses that may be perpetrated by An Garda Síochána, to ensure accountability in policing in Ireland. Despite assurances from the State that there is currently no backlog of complaints before GSOC, the IHREC Designate considers that the system of dual handling of complaints between GSOC and An Garda Síochána has resulted in delays in the investigation process. Sufficient resources should be afforded to GSOC and its functional independence from the Minister should also be enhanced.

The IHREC Designate has recommended that GSOC should have the power to receive complaints from members of An Garda Síochána and is of the view that protection for whistle-blowers improves and safeguards accountability. We therefore welcome the

Protected Disclosures Bill 2013 which is currently before the Oireachtas, which will provide for the protection of whistle-blowers.

We believe that an independent Police Authority should not encroach or undermine the work of GSOC, but should complement and support it. It is particularly important that the new Authority is in a position to monitor and address human rights and equality compliance by An Garda Síochána at every level of its operations.

Prisons

We welcome moves by the State in developing non-custodial sanctions as an alternative to imprisonment. The 2013 Report on Penal Reform carried out by the Joint Oireachtas Committee on Justice, Defence and Equality recommended that the Government adopt a “de-carceration strategy” which would aim to reduce the prison population by one-third within 10 years and we would welcome indication from the State as to its endorsement of such a strategy, if it is central to penal policy and if so, what practical steps are planned in working towards this end.

Overcrowding and “slopping out” continue to be the most pressing issues in relation to our prison population today. These are problems that are ongoing for over 20 years now and the IHRC, in the past, consistently expressed concern in relation to these matters in Irish Prisons. While certain improvements have been made by the State, progress has been slow.

In 2012, it was announced that the death of any prisoner in custody should be the subject of an independent investigation by the Inspector of Prisons and, while this is welcomed by the IHRC, we would urge the State to ensure that the Inspector has the appropriate statutory powers to allow him or her carry out this role effectively.

The level of inter-prisoner violence remains a concern and the detail provided by the State to the Committee, in terms of deaths in custody and assaults, appears to be lacking in parts. The IHREC Designate urges that the standards applied in our Irish prisons adhere to those of

international best practice and that all investigations, whether into assaults or deaths in custody, are robust, independent and transparent.

Also welcomed, subsequent to Ireland's last appearance in front of the Human Rights Committee, is the State's announcement of new facilities for the detention of minors. The IHREC Designate has been concerned about the detention of minors in facilities for adult prisoners for some time now. We are particularly interested in the State's timeline for ending the use of St. Patrick's Institution for the detention of minors, urging that juveniles be separated from adults in all cases, except where it is in the best interests of the child.

While welcoming as an improvement the introduction of a prisoner complaints model and the oversight of the mechanism by the Inspector of Prisons, the IHREC Designate is still concerned that this does not provide a fully independent system for dealing with serious prisoner complaints we continue to recommend that an independent Prisoner Ombudsman must be established to investigate complaints by prisoners, rather than the Irish Prison Service, with limited oversight by an external authority.

Trafficking

The IHREC Designate is pleased that, since the last report, a number of welcome steps have been taken by Ireland in relation to survivors of trafficking and forced labour. This has included legislation, a National Action Plan and the establishment of coordinating structures across a number of State agencies, as well as the ratification of two important international instruments in this area: the Council of Europe Convention on Action against Trafficking in Human Beings and the UN Convention on Transnational Organised Crime together with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

We were concerned, however, at the lack of analysis of the impact on of the measures adopted by the State. We have repeatedly stressed that the issue of trafficking and forced labour needs a human-rights based approach, one that puts trafficked persons at the centre of all efforts to prevent and combat trafficking. This means effective measures which will

protect, assist and provide redress to victims as well as prosecuting traffickers. On a very practical level we are concerned at the negative effect the Habitual Residence Condition has on victims of domestic violence from marginalised and vulnerable groups. It not only limits entitlement to claim certain social assistance payments but also fails to make provision for women who are victims of domestic violence. A victim of domestic violence who cannot meet the Habitual Residence condition may be forced to choose between remaining in a violent situation or facing destitution and homelessness due to her inability to access essential support services. This is unacceptable.

We would encourage the State to introduce a new national anti-human trafficking plan, and appoint an independent national rapporteur. This would go some distance towards the State's obligations under EU law and recommendations set out by the Council of Europe Group of Experts on Action against Trafficking in Human Beings.

Violence Against Women

Domestic, sexual and gender-based violence remains a serious problem in Ireland as in other European states, and we see this reflected in the List of Issues raised by the Human Rights Committee. The IHREC Designate is concerned that although the State has accepted in principle the terms of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, it has not yet signed or ratified the Convention.

Insufficient data continues to be a difficulty when dealing with the issue of sexual harassment. We have recommended that the State closely monitors the incidence of all forms of violence against women, as well as putting in place measures to protect particularly vulnerable groups such as Traveller women, migrant women, asylum-seeking and refugee women and women with disabilities. Women with disabilities may be particularly vulnerable to violence and be subject to a lack of accessible information and there is evidence to suggest that victims of domestic violence from minority and migrant groups particularly struggle in accessing services and supports. We are concerned that the

level of public funding and resources provided to domestic violence services is insufficient and that cuts to services have had a negative impact in this in recent years.

Thank you.