

**Further submission on the
Examination of Ireland's Third
Periodic Report in relation to
the List of Issues**

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IHRC

IRISH HUMAN RIGHTS COMMISSION
AN COIMISIÚN UM CHEARTA DUINE

Table of Contents

1. Introduction	3
2. Mandate of the IHRC	3
3. Constitutional and legal framework within which the Covenant and the Optional Protocol are implemented (Article 2)	4
4. Non discrimination and equal rights of men and women (Articles 2, 3 & 26)	6
5. Derogation (Article 4)	7
6. Prohibition of torture and cruel, inhuman or degrading treatment, and prohibition of slavery, security of the person and the right not to be subjected to arbitrary detention, and treatment of detainees (Articles 7, 8, 9 & 10)	9
7. Expulsion of aliens and right to a fair trial (Articles 13 & 14)	14
8. Rights of minorities (Articles 26 & 27)	18
9. Dissemination of information relating to the Covenant and the Optional Protocol (Article 2)	19

1. Introduction

1. The Irish Human Rights Commission (IHRC) is Ireland's National Human Rights Institution, set up by the Irish Government under the Human Rights Commission Acts 2000 and 2001.¹ The IHRC has a statutory remit under the Human Rights Commission Act 2000 to ensure that the human rights of all people in the State are fully realised and protected in the law and policy of the State. The IHRC seeks to ensure that Irish law and policy set the standards of best international practice. Its functions include keeping under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights, and making such recommendations to the Government as it deems appropriate in relation to the measures which the IHRC considers should be taken to strengthen, protect and uphold human rights in the State.
2. Since its establishment, the IHRC has prioritised interaction with the international treaty monitoring bodies as an important part of its work. The IHRC places great importance on the work of the Human Rights Committee and is committed to being of assistance to the Committee in the forthcoming examination of Ireland's compliance with its obligations under the International Covenant on Civil and Political Rights (ICCPR), which will be the first examination of Ireland that the Human Rights Committee has carried out since the establishment of the IHRC.
3. Further to the IHRC's March 2008 Submission to the Human Rights Committee (hereinafter IHRC Submission), the IHRC has prepared this additional document focusing on some of the issues raised in the *Committee's List of Issues To be Taken up in Connection with the Consideration of the Third Periodic Report of Ireland*, published on 2 May 2008.²

2. Mandate of the IHRC

4. In July 2003, the IHRC recommended that the best way to ensure the effectiveness and independence of the IHRC would be to have no formal link between the IHRC and the Department of Justice, Equality and Law Reform. The IHRC is of the view that in so far as the IHRC is to be made accountable to another organ of State it should be accountable to the Oireachtas (Irish Parliament).

¹ For detailed information on the work of the IHRC, see www.ihrc.ie.

² Hereinafter, *Human Rights Committee List of Issues*, UN Doc. CCPR/C/IRE/Q/3 (2 May 2008). The Committee's List of Issues concerns are indicated in boxes throughout this document.

3. Constitutional and Legal Framework within which the Covenant and the Optional Protocol are Implemented (Article 2)

a. Incorporation

Please indicate whether the State party intends to incorporate the Covenant into its domestic legislation.³

5. The ICCPR has yet to be incorporated into Irish law.⁴ In the view of the IHRC, the Government should take effective and immediate steps to incorporate the provisions of the ICCPR into domestic law. This would safeguard the rights protected under the ICCPR in Irish law and would provide an avenue of domestic recourse for the IHRC to enforce the rights protected under the Covenant in the Irish courts.⁵

b. Reservations

Please indicate whether new factors have emerged since the submission of the third periodic report that would enable Ireland to envisage a withdrawal of its reservations to article 10 paragraph 2, article 14 and article 20, paragraph 1.⁶

Article 10(2)

6. The Irish reservation to Article 10(2) states that separation between prisoners on remand and those with convictions and separation of juveniles from adult prisoners will be achieved “progressively” and “as far as practically possible.”⁷ The IHRC has noted the positive developments by the Government in building new prisons, including the opening of the remand prison of Cloverhill.⁸ However, the IHRC has expressed concerns at overcrowding within prisons and regards physical conditions in many of the State’s prisons as “wholly inadequate”.⁹ The Prison Rules regulate the orderly management of prisons including the conditions which prisoners may expect while in prison.¹⁰ The Rules state that remand prisoners are only to be separated from

³ *Human Rights Committee List of Issues*, para. 1.

⁴ Concluding Observations of the Human Rights Committee on Ireland’s First Periodic Report CCPR/C/79/Add.21 (1993), at para. 18; Concluding Observations of the Human Rights Committee on Ireland’s Second Periodic Report, A/55/40 (2000), para. 11.

⁵ *IHRC Submission to the Human Rights Committee on the Examination of Ireland’s Third Periodic Report*, March 2008 (*IHRC Submission*).

⁶ *Human Rights Committee List of Issues*, para. 2.

⁷ The Irish reservation states that “Ireland accepts the principles referred to in paragraph 2 of article 10 and implements them as far as practically possible. It reserves the right to regard full implementation of these principles as objectives to be achieved progressively.”

⁸ *IHRC Submission* at p. 18, para. 50.

⁹ *IHRC Submission* at pp. 18-19, para. 50-54.

¹⁰ Statutory Instrument 252 of 2007, Prison Rules 2007.

convicted prisoners so far as is practicable and subject to the maintenance of good order and safe and secure custody.¹¹

7. The IHRC has expressed its concern that in Irish prisons juveniles are separated from adults only "so far as is practicable and subject to the maintenance of good order and safe and secure custody."¹² In addition, the IHRC is concerned that there is no commitment to ensuring that the best interests of children who are detained within young offender institutions is the primary consideration in assessing the needs of these children.¹³
8. To ensure the protection of human rights to the degree required by international law, the IHRC considers that it is necessary for the Government to withdraw this reservation, and to place in statute the requirement that all remand prisoners should be separated from convicted prisoners. The IHRC regards as regrettable the continuing detention of children alongside adult prisoners.¹⁴

Article 14

9. The IHRC has previously emphasised that members of the armed forces are entitled to the same human rights protections as other citizens.¹⁵ The IHRC welcomed the general thrust of the Defence (Amendment) Act 2007 as being progressive and as an important step towards the protection of human rights within the field of military justice.¹⁶ The Irish Government has committed itself to considering the withdrawal of its reservation under Article 14 upon the coming into force of proposed legislative amendments.¹⁷ The Defence (Amendment) Act 2007 was signed into law on 21 April 2007. In light of the introduction of the Defence (Amendment) Act 2007, and the development of human rights principles applicable to military personnel¹⁸ the IHRC considers that no insurmountable obstacles remain which justify the continuation of Ireland's reservation under Article 14 of the Covenant.

¹¹ Department of Justice, Equality and Law Reform, Prison Rules 2007, section 74. The Prison Rules came into force on 1 October 2007, section 1(2) of the Prison Rules 2007.

¹² *IHRC Submission* at p. 21, para. 60.

¹³ *Ibid.*

¹⁴ IHRC, *Submission to the UN Committee on the Rights of the Child*, (May 2006), p. 20 (hereinafter "CRC Submission").

¹⁵ IHRC, *Observations on the Defence (Amendment) Bill 2007* (February 2007), p. 2 (hereinafter "Defence submission").

¹⁶ *Defence Submission*, p. 2.

¹⁷ Department of Foreign Affairs *Third Report by Ireland on the Measures Adopted to Give Effect to the Provisions of the Covenant*, p. 95, paras. 334-337 (hereinafter "Irish Submission").

¹⁸ See the *Defence Submission* for cases relating to human rights and military law.

Article 20(1)

10. The Irish reservation to Article 20(1)¹⁹ is based on a concern for the protection of freedom of speech and freedom to express opinions. Ireland has a similar type of reservation to Article 4 of the Convention on the Elimination of Racial Discrimination (CERD).²⁰ In relation to the CERD reservation, the IHRC considers it to be superfluous and an overestimation of the difficulties in protecting freedom of expression while preventing hate speech and incitement to hatred.²¹ Ireland's reservation to Article 20(1) of the ICCPR may reflect, in part, similar thinking in relation to the protection of freedom of speech and freedom to express opinions. While freedom of expression is an important right, there may nevertheless be certain "duties and responsibilities...formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society..."²² so as to prevent certain actions, which would include dissemination of propaganda for war. The IHRC therefore considers that the reservation by Ireland should be withdrawn.

4. Non Discrimination and Equal Rights of Men and Women (Articles 2, 3 & 26)

a. Article 41.2 of the Irish Constitution

*Please indicate whether there has been any progress regarding a change to Article 41.2 of the Constitution since the submission of the Committee's previous concluding observations.*²³

11. The IHRC Submission highlighted the strides which have been made in relation to women's rights within Ireland.²⁴ However, the IHRC remains concerned at the low level of priority being given to amending the Constitution to ensure that Article 41.2 of the Constitution is gender neutral. As of yet,

¹⁹ "Ireland accepts the principle in paragraph 1 of Article 20 and implements it as far as it is practicable. Having regard to the difficulties in formulating a specific offence capable of adjudication at a national level in such a form as to reflect the general principles of law recognised by the community of nations as well as the right to freedom of expression, Ireland reserves the right to postpone consideration of the possibility of introducing some legislative addition to, or variation of, existing law until such time as it may consider that such is necessary for the attainment of the objective of paragraph 1 of article 20."

²⁰ "Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the measures specifically described in sub-paragraphs (a), (b) and (c) shall be undertaken with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of the Convention. Ireland considers that through such measures, the right to freedom of opinion and expression and the right to peaceful assembly and association may not be jeopardised. These rights are laid down in Articles 19 and 20 of the Universal Declaration of Human Rights; they were reaffirmed by the General Assembly of the United Nations when it adopted Articles 19 and 21 of the International Covenant on Civil and Political Rights and are referred to in Article 5 (d)(viii) and (ix) of the present Convention."

²¹ IHRC Submission of the Irish Human Rights Commission to the UN Committee on the Elimination of Racial Discrimination (March, 2005), pp. 29-32 (hereinafter "CERD Submission").

²² Article 10(2) European Convention on Human Rights and Fundamental Freedoms.

²³ Human Rights Committee List of Issues, para. 5.

²⁴ IHRC Submission at pp. 68-73.

there is no specified time-frame for the amendment of Article 41.2 of the Constitution.

b. Gender and sexuality

*Please indicate whether the State party intends to introduce legislation aimed at the recognition of same-sex partnerships or other non-married relationships, as well as a legal mechanism permitting transgender persons to change their gender.*²⁵

Rights of unmarried and same-sex couples

12. As was stated in the IHRC Submission,²⁶ the IHRC remains concerned at the lack of legislation concerning the rights of *de facto* couples including same sex couples. The *Scheme of the Civil Partnership Bill* was published in June 2008. The IHRC is currently reviewing the provisions of the Bill with a view to analysing its compliance with international human rights standards.²⁷

Transgendered persons

13. As was highlighted in the IHRC Submission,²⁸ Ireland appears to be in breach of the European Convention on Human Rights and Fundamental Freedoms (ECHR) in its failure to provide an effective mechanism for transgendered persons to have their new gender identity legally recognised. In the case of *Lydia Foy v An t-Ard Chlaraitheoir, Ireland and the Attorney General*²⁹ Judge McKechnie found that Irish law, which did not allow transsexuals to change their birth certificate to reflect their acquired gender, breached Article 8 (right to respect for private life) of the ECHR. Judge McKechnie granted a declaration that Irish law was incompatible with the ECHR. However, the Irish Government has now appealed this decision to the Supreme Court.³⁰ It is of note that the European Court of Human Rights has stated that failure to recognise the acquired gender of an individual is contrary to the right to respect for private life under Article 8 of the European Convention on Human Rights and the right to marry under Article 12 of the Convention.³¹

5. Derogation (Article 4)

*Please provide information on the enactment of any constitutional or other legislative measures designed to restrict derogations only to those permissible under Article 4 of the Covenant.*³²

²⁵ Human Rights Committee List of Issues, para. 6.

²⁶ IHRC Submission at pp. 74-75.

²⁷ IHRC Submission at p. 75.

²⁸ IHRC Submission at pp. 75-76.

²⁹ [2007] IEHC 470.

³⁰ Irish Times "State to appeal judgment in Foy case to the Supreme Court" (1 April 2008).

³¹ *Goodwin v United Kingdom*, Judgment of 11 July 2002, (2002) 35 EHRR 18; *I. v The United Kingdom*, Judgment of 11 July 2002, (2002) 2 FLR 518.

³² Human Rights Committee List of Issues, para. 8.

14. Article 38.3.1 of the Irish Constitution allows special courts to be established where ordinary courts are deemed to be inadequate to secure the effective administration of justice and the preservation of public peace and order. The Irish Supreme Court has stated that any attempt by the Government to interfere with the judicial independence of the courts established under Article 38.3.1 would be an attempt to frustrate the constitutional rights of an accused. Any attempt to do so would be “prevented and corrected by the Courts established under the Constitution.”³³
15. The Special Criminal Court³⁴ continues to operate within Ireland.³⁵ The reasons advanced for the continued existence of the Special Criminal Court include the continuing paramilitary threat,³⁶ the threat of organised crime³⁷ and the prevention of jury intimidation which may take place within the ordinary courts.³⁸ Key recommendations of the Committee to Review the Offences Against the State Acts 1939-1998 (“Hederman Committee”) included the retention of the Special Criminal Court for paramilitary and organised crime cases, however with a number of safeguards, including the positive affirmation of the existence of the Special Criminal Court every three years by the Houses of the Oireachtas (Irish Parliament and Senate). In addition, the Hederman Committee recommended that the decision of the Director of Public Prosecutions be subject to positive review.³⁹ A minority of the Committee, including the chair, Mr. Justice Hederman, held the view that the Special Criminal Court should be dispensed with.⁴⁰ While noting the growth of organised crime, the minority felt that social conditions were not so perilous as to warrant dispensing with the jury trial.⁴¹ In the IHRC Submission concerns were expressed in relation to the fact that the Special Criminal Court remains in existence.⁴²

³³ *Eccles v Ireland* [1985] IR 545 at 549, per Finlay CJ.

³⁴ The Special Criminal Court is a non-jury court, presided over by three judges and has jurisdiction over scheduled and non-scheduled offences. The Director of Public Prosecutions may direct whether a person should or should not be sent forward for trial within the Special Criminal Court. The legal basis within Irish law for the Court is Part V of the Offences Against the State Act 1939-1998. Under Part V the Government can declare that “the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order.” The Special Criminal Court has operated between 1939 and 1946, 1961-1962 and from May 1972 to date.

³⁵ *IHRC Submission* at pp. 13-16.

³⁶ *Irish Submission* at p. 101, para. 369.

³⁷ *Irish Submission* at para. 370.

³⁸ *Irish Submission* at paras. 369-370.

³⁹ For a summary of the main recommendations of the Hederman Committee and for discussion of the minority view which called for the abolition of the Special Criminal Court, see *supra* *IHRC Submission* at pp. 13-16.

⁴⁰ *Report of the Committee to Review the Offences Against the State Acts 1939-1998* (2002), pp. 243-244.

⁴¹ *Ibid.*

⁴² *IHRC Submission* at p. 16.

6. Prohibition of Torture and Cruel, Inhuman or Degrading Treatment, and Prohibition of Slavery, Security of the Person and the Right not to be Subjected to Arbitrary Detention, and Treatment of Detainees (Articles 7, 8, 9 & 10)

a. Independence of An Garda Síochána Ombudsman Commission

*Please provide further information on the newly established Garda Síochána Ombudsman Commission, in particular on the steps taken to guarantee its independence.*⁴³

16. The Garda Síochána Ombudsman Commission (GSOC) was established in May 2007. GSOC primarily carries out investigations through an individual complaints mechanism. Section 67(4) of the Garda Síochána Act 2005 provides that “[s]ubject to this Act, the Ombudsman Commission shall be independent in the performance of its functions”. Under the Garda Síochána Act 2005, the Minister may request either on his own initiative or following a recommendation by GSOC that a practice, policy or procedure be examined for the purpose of preventing complaints arising or to reduce the incidence of such complaints.⁴⁴ The IHRC is of the view that GSOC should have the power to launch such a review on its own initiative.⁴⁵
17. Section 99 of the Garda Síochána Act 2005 provides that a station may be searched by a GSOC designated officer where the officer has reasonable suspicion that an offence has been committed. However, Subsection 99(3) provides that certain stations to be designated by the Minister under Section 126 of the 2005 Act, which contain information, documents or things relating to the security of the State, may only be searched to the extent specified by the Minister. Notification must be given to the Garda Commissioner and the Minister in respect of any proposed GSOC authorisation to search such a station. The IHRC is of the view that the objective of protecting national security can be achieved without creating this category of designated stations. It is also significant that investigators from international bodies such as the CPT Committee have the power to enter any Garda station on demand. Therefore to restrict the powers of the GSOC in this way would seem anomalous.
18. GSOC has recently suggested a number of changes to their mode of operations. Some of these changes include, *inter alia*, the expansion of the grounds upon which GSOC can request the Garda Síochána to investigate complaints,⁴⁶ powers to conduct preliminary enquiries,⁴⁷ the ability of GSOC

⁴³ Human Rights Committee List of Issues, para. 10.

⁴⁴ *Ibid.*

⁴⁵ IHRC Submission

at pp. 17-18, paras 46-47.

⁴⁶ Garda Síochána Ombudsman Commission, *Two Year Report: 2008* (May 2008), Appendix 2.

⁴⁷ *Ibid.*, Appendix 3.

to publish reports⁴⁸ and various other amendments.⁴⁹ In addition, in its 2 year Report published in May 2008 GSOC has raised concerns about its operational ability due to a lack of resources.⁵⁰ GSOC has a back-log of cases and has stated that it has insufficient staff to ensure the adequate discharge of its functions.⁵¹

b. Number and nature of complaints

*Please provide detailed information on the number and nature of complaints against members of the Garda Síochána that have so far been dealt with by the Commission and their outcome.*⁵²

19. Since coming into operation on 9 May 2007, GSOC has received 2905 complaints with 746 of these found to be inadmissible. 1090 complaints were deemed admissible, while 1069 complaints are pending.⁵³

c. Audio-video recording

*Please indicate whether audio-video recording is now mandatory for all interrogations at Garda stations.*⁵⁴

20. Section 27 of the Criminal Justice Act 1984 empowered the Minister for Justice to make regulations governing the electronic recording of Garda interviews. In 1997, some thirteen years after the introduction of the 1984 Act, the then Minister for Justice adopted regulations which permitted video and audio recordings of interviews for certain offences.⁵⁵ Under the Regulations there is no obligation to have recordings where a Garda Station does not have access to audio or visual recording equipment, the equipment is in use and the interview has to take place, or for practical reasons the use of electronic recordings is not possible.⁵⁶ Therefore audio-video recording is not mandatory for all interrogations at Garda stations. Under the *Criminal Justice*

⁴⁸ *Ibid.*, Appendix 7.

⁴⁹ These include suggested amendments in relation to GSOC's exercise of its investigatory power functions such as winding up an investigation and the ability to provide guidance on the meaning of aspects of its investigatory powers.

⁵⁰ Garda Síochána Ombudsman Commission, *Two Year Report* (May 2008), p. 12.

⁵¹ *Ibid.*

⁵² *Human Rights Committee List of Issues*, para. 10.

⁵³ GSOC Case Throughput to 30 April 2008 (as accessed 30 June 2008).

⁵⁴ *Human Rights Committee List of Issues*, para. 10.

⁵⁵ Criminal Justice Act, 1984 (Electronic Recording of Interviews) Regulations, 1997. These Regulations only apply to arrests for offences which carry a term of imprisonment of 5 years or more (section 4 of the Criminal Justice Act 1984), where a person is suspected of committing a scheduled offence under the Offences Against the State Act, 1939 (as amended), where a person is arrested for drug trafficking under section 2 or section 4(3) of the Criminal Justice (Drug Trafficking) Act, 1996.

⁵⁶ Regulation 4(3) of the Criminal Justice Act, 1984 (Electronic Recording of Interviews) Regulations, 1997.

Act 2007, audio and/or visual recordings must be used where a person is warned that inferences may be taken from the exercise of the right to silence⁵⁷ for certain offences.⁵⁸

d. Lawyers in police interviews

*Does the State party intend to modify its practice of not permitting lawyers to be present during police interviews?*⁵⁹

21. Currently, those being interviewed by the Gardaí have limited access to legal advice. The IHRC believes that having a legal representative present during questioning is needed to prevent miscarriages of justice and to ensure the accused understands and appreciates the nature of the questions asked and any consequences from responding.⁶⁰ The IHRC is concerned about the potential consequences that sections 28, 29 and 30 of the Criminal Justice Act 2007 may have on the trial of an accused. In light of these concerns, the IHRC considers that at a minimum, the drawing of inferences from a failure to answer questions should be conditional upon the accused having actually consulted with his or her solicitor and the solicitor having been present during the questioning that gave rise to the supposed failure to answer questions.⁶¹

e. Prison conditions

*Please indicate whether the 2006 Prisons Bill has been enacted and if so, please provide further information on how it improves the conditions of detention. In light of the fact that the construction of new detention facilities has yet to be completed, how does the State party address the most serious problems of the present regime, in particular the overcrowding and “slopping out procedure?”.*⁶²

22. The Prisons Act 2007 is partially in force.⁶³ The IHRC has noted the positive achievements of the Government in building new prisons, including the

⁵⁷ Section 28(6) of the *Criminal Justice Act 2007*. The accused may waive the right to having the interview recorded.

⁵⁸ See *IHRC Submission* at pp. 25-26.

⁵⁹ *Human Rights Committee List of Issues*, para. 10.

⁶⁰ *IHRC Submission* at pp. 25-27.

⁶¹ *IHRC Submission* at p. 27.

⁶² *Human Rights Committee List of Issues*, para. 11.

⁶³ The following provisions of the Prisons Act 2007 are currently in force, Part 1 (general provisions), Part 3 (prison discipline), Part 4 (development and construction of prisons), Part 5 (placing the Inspectorate of Prisons on a statutory footing), select provisions of Part 6 (including *inter alia* provisions relating to the ability of the Minister to make regulations in relation to the good governance of prisons; the prohibition and creation of an offence of possession or use of mobile phones by prisoners; disapplying of minimum wage to certain non-commercial activities; leave of absence provisions and other minor amendments). Part 2 of the 2007 Act relating to prisoner escort services is not yet in force. A number of provisions within Part 6 of the 2007 Act must also be brought into force.

opening of the remand prison, Cloverhill.⁶⁴ The IHRC notes that “slopping out” remains in existence within a number of prisons within the State including the main accommodation blocks in Cork Prison, Mountjoy Prison and the A and B wings of Limerick Prison.⁶⁵ The IHRC reiterates its view that future prison building programmes cannot relieve the State of its responsibilities of ensuring minimum human rights standards in Irish prisons and places of detention within the intervening period.⁶⁶

23. In the IHRC Submission, the IHRC noted that the current level of treatment programmes within Irish prisons is very poor.⁶⁷ This is particularly evident from the high rates of recidivism in Ireland.⁶⁸ The IHRC Submission noted the lack of availability of psychologists within four Irish prison institutions⁶⁹ and the lack of places on treatment programmes for sex offenders.⁷⁰ The regime developed within Wheatfield prison, where the vast majority of the prison population are involved in meaningful work, training and education courses, should be replicated in all prisons in Ireland as a matter of urgency.⁷¹

f. Trafficking victims

*Please provide further information on other measures and programmes carried out by the State party to assist the victims of human trafficking. Please specify the legal provisions regarding the protection of victims of trafficking.*⁷²

24. The IHRC has expressed its concern at the lack of accurate data in relation to the extent of human trafficking in Ireland.⁷³ There have been some positive developments in the area of Trafficking. The IHRC has welcomed the Government's initiative in setting up a new Anti-Human Trafficking Unit in the Department of Justice, Equality and Law Reform.⁷⁴ In addition, the Government is in the process of developing a national action plan on Trafficking to which the IHRC has made submissions.⁷⁵ The Criminal Law (Human Trafficking) Act 2008⁷⁶ focuses on the criminalisation of trafficking, which is welcome.⁷⁷

These include *inter alia*: section 33 (certain applications within a Court to be heard by video link) and section 34 (application of section 33 to children within remand centres and other places of detention).

⁶⁴ IHRC Submission at p. 18, para. 50.

⁶⁵ IHRC Submission at p. 19, para. 51.

⁶⁶ IHRC Submission at p. 19, para. 53.

⁶⁷ IHRC Submission at p. 20, para. 55.

⁶⁸ *Ibid.*

⁶⁹ IHRC Submission at p. 20 at para. 56.

⁷⁰ IHRC Submission at p. 20 at para. 58.

⁷¹ IHRC Submission at pp. 20-21, paras. 55-58.

⁷² Human Rights Committee List of Issues, para. 12.

⁷³ IHRC Submission at pp. 38. See also IHRC, *Observations on the Scheme of the Criminal Justice (Trafficking in Person and Sexual Offences Bill) 2007*, May 2007 at p.2.

⁷⁴ IHRC Submission at p. 41.

⁷⁵ *Ibid.*

⁷⁶ This Act was signed into law by the Minister for Justice, Equality and Law Reform, Mr. Dermot Ahern T.D., and came into force on 7 June 2007.

⁷⁷ IHRC Submission at p. 39, para. 108.

25. However, the IHRC considers that the current provisions in Irish law for the protection of victims of trafficking are inadequate. The provisions of the Immigration, Residence and Protection Bill 2008 do not provide a comprehensive response to the needs of victims of trafficking. In particular the IHRC considers that the 2008 Bill should be amended to address issues such as healthcare provision, economic assistance and housing, information and legal advice, child-specific issues and voluntary return schemes that ensure a victim is not re-victimised.⁷⁸
26. The IHRC is of the view that the six month temporary residence permit which is provided for under the Immigration, Residence and Protection Bill 2008⁷⁹ should not be conditional on agreement to co-operate in criminal prosecution of the alleged traffickers. In addition, the supports offered to the victim should reflect international best practice.⁸⁰
27. On 9 June 2008, the Irish Government set out the “administrative arrangements” for protecting victims of trafficking.⁸¹ These arrangements generally reflect the protections outlined within the Immigration, Residence and Protection Bill. However, unlike the proposals within the 2008 Bill, these protections apply to all foreign nationals, including those from the European Economic Area (EEA).⁸² The “administrative arrangements” also make specific reference to the best interests of the child in granting or revoking the temporary residence permission.⁸³ The IHRC considers that these two additional protections within the “administrative arrangements” should be incorporated into the main legislative protections for victims of trafficking. In addition, the IHRC has called for child-specific protections to be introduced and implemented.⁸⁴ The IHRC has previously noted with concern the particularly vulnerable nature of child asylum seekers and unaccompanied and separated children in Ireland.⁸⁵

g. Detention facilities for asylum seekers

⁷⁸ *IHRC Submission* at pp. 38-41.

⁷⁹ Section 124 of the Immigration, Residence and Protection Bill 2008.

⁸⁰ The IHRC has recommended the following protections be contained within the Immigration, Residence and Protection Bill 2008: (a) provision for the health care, including the sexual and psychological health of the victim; (b) material assistance for victims, including financial support and housing; (c) victims to have access to legal and other supports to consider options for remaining in the State; (d) provision of free legal advice to victims in particular so they may be able to pursue a civil claim against the perpetrators; (e) child sensitive supports and (f) provision for voluntary return schemes, however return should not take place where the safety of the victim is in doubt, including the possibility of being re-trafficked, *supra*. *IHRC Submission* at p. 40, para. 111.

⁸¹ Department of Justice, Equality and Law Reform, Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking June 9 2008.

⁸² *Ibid.*, point 4.

⁸³ Point 14 of the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking.

⁸⁴ IHRC, *Observations on the Immigration, Residence and Protection Bill 2008* (March 2008), p. 72. See also pp. 103-106 (hereinafter “Immigration Submission”).

⁸⁵ *IHRC Submission* at pp. 64-65.

Please provide further information on how the detention facilities for asylum seekers fully comply with the provisions of the Covenant.⁸⁶

28. The current detention regime for asylum seekers is outlined in the Refugee Act 1996 as amended by the Immigration Act 1999, Illegal Immigrants (Trafficking) Act 2000 and the Immigration Act 2003. Detention must be confirmed by a District Court judge at regular intervals⁸⁷ and less stringent requirements short of detention can be imposed.⁸⁸ Under the Immigration, Residence and Protection Bill 2008 those subject to detention will be required to have their claims processed as soon as practicable.⁸⁹

29. Asylum seekers who are detained in Ireland are held within remand blocks of prisons; however, this is not always the case. Cloverhill Prison, where many persons are detained in relation to suspected immigration offences, is continuously overcrowded.⁹⁰ The former Inspector of Prisons, Mr. Justice Kinlen pointed to the practice of detaining non-nationals prior to deportation in “grossly overcrowded” conditions.⁹¹ In a 2005 Report, the Inspector of Prisons stated that there were incidents of racism in Cloverhill Prison.⁹² This finding was strenuously denied by the Governor of Cloverhill.⁹³ In addition, Mr. Justice Kinlen stated that the practice of detaining would be immigrants within institutions like Cloverhill (and the Dóchas Centre) should come to an end.⁹⁴ The European Committee for the Prevention of Torture, and Inhuman or Degrading Treatment or Punishment (CPT) has also highlighted the poor conditions within Irish prisons and the unsuitability of prisons for those detained in relation to immigration offences.⁹⁵ It is noteworthy that the European Court of Human Rights has stated that when detained, asylum seekers should have access to recreation, religious observance, medical care and legal assistance.⁹⁶ The IHRC considers that detention of asylum seekers is to be avoided and should always be a measure of last resort.⁹⁷

7. Expulsion of Aliens and Right to a Fair Trial (Articles 13 & 14)

a. Arrest, detention and removal of those unlawfully in the State

⁸⁶ *Human Rights Committee List of Issues*, para. 13.

⁸⁷ Section 9(9) of the 1996 Act (as amended). Section 71(3)-(4) of the 2008 Bill.

⁸⁸ Section 9(10)(b)(ii) of the 1996 Act (as amended). Section 71(4)(b) of the 2008 Bill.

⁸⁹ Section 72 of the 2008 Bill.

⁹⁰ Inspector of Prisons and Places of Detention, *Cloverhill Prison Inspection 22-29 November 2005*, p. 55.

⁹¹ *Ibid.* pp. 40-41.

⁹² *Ibid.* pp. 112-114.

⁹³ *Ibid.*

⁹⁴ *Ibid.* pp. 109-111.

⁹⁵ Council of Europe, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee on Prevention of Torture, and Inhuman or Degrading Treatment or Punishment 2006* (October 2007), para. 86.

⁹⁶ *Saadi v United Kingdom*, Application No. 13229/03, Judgment of 29 January 2008 at para. 74.

⁹⁷ *IHRC Submission* at p. 63, para. 170.

Please explain the compatibility of the Immigration, Residence and Protection Bill of 2007⁹⁸ with the Covenant, in particular the power of the State party to arrest, detain and remove any person who is unlawfully on the State territory without advance notice and without the possibility to make representations within 14 days.⁹⁹

30. The IHRC has expressed its concern with the arrest, detention and removal provisions of the Immigration, Residence and Protection Bill 2008.¹⁰⁰ The provisions within the 2008 Bill may lead to an increased risk of refoulement. The IHRC is of the opinion that the removal provisions within the 2008 Bill raise serious questions of compliance with the Constitution and the ECHR.¹⁰¹ The IHRC believes that the current procedures for the removal of non-Irish nationals whereby there is a 15 day notification of removal and the individual may make written representations to the Minister for Justice, Equality and Law Reform should be retained.¹⁰² In addition, the IHRC reiterates other concerns with the *Immigration, Residence and Protection Bill* on issues such as the limitations on judicial review¹⁰³ and the need for adequate protection of unaccompanied asylum-seeking children.¹⁰⁴

⁹⁸ The Immigration, Residence and Protection Bill 2007 was introduced before Seanad Éireann (Irish Senate) on 25 April 2007. With the calling of a general election, the 2007 Bill lapsed. On 29 January 2008, the then Minister for Justice, Equality and Law Reform, Mr. Brian Lenihan T.D. introduced the Immigration, Residence and Protection Bill 2008. The powers of arrest and detention under both the 2007 Bill and the 2008 Bill are essentially the same.

⁹⁹ *Human Rights Committee List of Issues*, para. 15.

¹⁰⁰ *Immigration Submission* at pp. 82-86.

¹⁰¹ *Immigration Submission* at p. 85. The IHRC believes that the right to life, bodily integrity, freedom from torture, inhuman and degrading treatment and the right to respect for private and family life may be impaired if the current provisions are retained.

¹⁰² *IHRC Submission* at p. 61, para. 165.

¹⁰³ *IHRC Submission* at pp. 61-62.

¹⁰⁴ *IHRC Submission* at pp. 64-65.

b. Deportation of non-Irish parents of Irish Born Children

Please provide information regarding the Nationality and Citizenship Act 2004 and the Supreme Court ruling, which reportedly makes it possible that the non-Irish parents of an Irish child may not be entitled to reside in Ireland or may even be deported.¹⁰⁵

31. In the Supreme Court cases of *Lobe and Osayende*¹⁰⁶ a majority in that Court held that the right of an Irish born child to the care and company of their non-Irish national parents was not absolute.¹⁰⁷ As a response to this judgment and the removal of the *jus soli* principle, Ireland introduced the Irish Born Child Scheme 2005 (IBC 05 Scheme) for parents of Irish Born Children born before 1 January 2005.¹⁰⁸ In the *Bode* case the Irish Supreme Court, reversing the High Court decision, stated *inter alia* that the IBC 05 Scheme was an exercise of an executive function of the Minister and human rights issues need not be considered.¹⁰⁹ The Minister would have to consider issues surrounding the ECHR and Constitutional rights of the Irish born child if a deportation order against the non-Irish national parents was being considered.¹¹⁰ The Supreme Court stated that in all cases where the deportation of non-Irish national parents of Irish born children is at issue, substantial reasons are needed for the granting of a deportation order.¹¹¹

32. The IHRC appeared as *amicus curiae* (friend of the court) before the Supreme Court in the *Bode* case.¹¹² In its submission to the Supreme Court in *Bode* the IHRC emphasised the centrality of the right to family life and the best interests of the child within international and European human rights law and Irish law. The IHRC welcomes the consideration by the Supreme Court that the Minister for Justice, Equality and Law Reform needs to assess the rights of the Irish born child when the Minister is considering the deportation of non-Irish national parents. However, it would be preferable if the rights of the child and the rights of the family were considered throughout any process which seeks to establish an entitlement to remain within the State, including within the IBC 05 scheme.

¹⁰⁵ Human Rights Committee List of Issues, para. 16.

¹⁰⁶ *Lobe and Osayende v Minister for Justice, Equality and Law Reform et al.* [2003] 1 IR 1.

¹⁰⁷ See generally [2003] 1 IR 1 at p. 20 (per Keane CJ.) and [2003] 1 IR 1 at p. 60 (per Denham J.).

¹⁰⁸ On this date the Nationality and Citizenship Act 2004 came into force. This Act set down the grounds of entitlement to Irish citizenship and particular note is made of the withdrawal of the *jus soli* principle. The IHRC expressed a number of human rights concerns with the Nationality and Citizenship Bill, for a more detailed analysis, See IHRC *Observations on the Proposed Draft Irish Nationality and Citizenship (Amendment) Bill 2004* (August 2004).

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.* This approach has been recently reconfirmed by the Supreme Court cases of *Dimbo v Minister for Justice, Equality and Law Reform* [2008] IESC 26 and *Oguewka v Minister for Justice, Equality and Law Reform* [2008] IESC 25.

¹¹¹ *Ibid.*

¹¹² IHRC, *Outline written submission on behalf of the IHRC in Bode v Minister for Justice, Equality and Law Reform* (01 May 2007), available at www.ihrc.ie.

c. Special Criminal Court

*Please explain under what circumstances the State party could envisage ending the jurisdiction of the Special Criminal Court in light of, inter alia, the Committee's Views regarding Communication no. 819/1998 (Joseph Kavanagh v. Ireland). Please also provide further information as to why the Government considers it necessary to be able to establish additional special courts.*¹¹³

33. The IHRC remains concerned at the failure of the State to implement the safeguards recommended by the Hederman Committee regarding the discretion of the Director of Public Prosecutions to decide whether a person should be sent forward to trial to the Special Criminal Court.¹¹⁴ In its submission the IHRC has expressed concerns in relation to the fact that the Special Criminal Court remains in existence.¹¹⁵

d. Civil Legal Aid Scheme

*Please indicate whether the State party has taken any steps to address the backlog of cases under the Civil Legal Aid Scheme. Please also indicate what measures are being taken by the State party to ensure that those who need civil legal aid will receive it following a test regarding the person's ability to have a fair hearing, without regard to the category of civil law or type of court or tribunal involved.*¹¹⁶

34. As was highlighted in the IHRC Submission, the current system for civil legal aid in Ireland is inadequate.¹¹⁷ The system of civil legal aid in Ireland is very much focused on familial disputes. The IHRC is also concerned with the various exclusions to the right to civil legal aid under the Civil Legal Aid Act 1995.¹¹⁸ In addition, the IHRC considers that the means test must provide a realistic reflection of an individual's capacity to pay for his or her own legal representation. The IHRC welcomes the significant reduction of the waiting time for an applicant to receive a consultation with the Legal Aid Board,¹¹⁹ however the IHRC stresses the continuing need for a properly resourced scheme of civil legal aid.¹²⁰

¹¹³ Human Rights Committee List of Issues, para. 17.

¹¹⁴ IHRC Submission at pp. 13-16.

¹¹⁵ IHRC Submission at p. 16.

¹¹⁶ Human Rights Committee List of Issues, para. 18.

¹¹⁷ IHRC Submission at pp. 29-30.

¹¹⁸ Section 28(9) of the Civil Legal Aid Act 1995 outlines the various restrictions on the enjoyment of civil legal aid within the Irish legal system.

¹¹⁹ According to the Legal Aid Board *Annual Report 2006*, p. 49, waiting times for initial consultation decreased within one LAB centre from 20 months on 31/12/2004 down to 2 months on 31/12/2006. The greatest waiting period at the end of 2006 was 3 months.

¹²⁰ See generally, *O'Donoghue v The Legal Aid Board and Others* [2006] 4 I.R. 204 where the High Court awarded Mrs. O'Donoghue damages for breach of constitutional rights due to the delay suffered in gaining civil legal aid which prevented her accessing the Courts.

8. Rights of Minorities (Articles 26 & 27)

a. Standard of living of Travellers

*Please provide more information on how the recommendations issued by the High Level Group on Traveller's Issues and the related projects have effectively improved the situation of the Traveller community, especially with regard to their low standard of living, as well as their participation in political life. Furthermore, please provide more detailed information on how the State party addresses the issue of low achievements in school by a majority of Traveller children and the low employment level of members of the Traveller community.*¹²¹

35. The IHRC Submission raised concerns in relation to the Government's refusal to recognise Travellers as an ethnic minority.¹²² The IHRC believes that this refusal stems from the Government's failure to appreciate the importance which Travellers attach to their culture and identity.¹²³ In addition, the IHRC has raised concerns that the Housing (Miscellaneous Provisions) Act 2002 constitutes a disproportionate interference with the private and family life of Travellers.¹²⁴

36. The IHRC February 2005 submission to the Committee on the Elimination of Racial Discrimination noted the lack of statistics regarding health issues within the Travelling Community,¹²⁵ the failure to provide Travellers with accommodation and the issue of forced evictions.¹²⁶ In its CERD submission, the IHRC noted the high unemployment rate for Travellers.¹²⁷ According to the 2006 Census, 55% of Travellers between the ages of 15 and 65 are participating within the labour force.¹²⁸ This compares with a general national unemployment rate of around 4.3% for the workforce at large.¹²⁹ The IHRC is concerned that discriminatory practices may be partly responsible for this high level of disengagement from the labour market.¹³⁰ Given the highly disproportionate rate of unemployment among the Traveller Community, the IHRC considers that existing measures in place to respect, protect and promote the right to work of members of the Traveller Community are ineffective.¹³¹

37. According to the Irish Census 2006, of the 13,134 Travellers over the age of 15, just 370 completed secondary education.¹³² This represents 2.8% completion rate of secondary school amongst all Travellers over the age of

¹²¹ *Human Rights Committee List of Issues*, para. 20.

¹²² *IHRC Submission* at pp. 49-52.

¹²³ *IHRC Submission* at pp. 54.

¹²⁴ *CERD Submission* at pp. 52-54.

¹²⁵ *Ibid.* at pp. 49-50.

¹²⁶ *Ibid.* at pp. 50-53. See also, IHRC, *Submission to the UN Committee on the Rights of the Child*, (May 2006), pp. 28-30.

¹²⁷ *Ibid.* at pp. 53-54.

¹²⁸ CSO, *Census 2006, Vol. V Ethnic or Cultural Background (including membership of the Travelling Community)*, p. 42 (hereinafter "*Ethnic or Cultural Background Census*")

¹²⁹ CSO, *Census 2006, Measuring Ireland's Progress 2006*, pp. 34-38 (hereinafter "*Census 2006*").

¹³⁰ *CERD Submission* at pp. 53-54.

¹³¹ *Ibid.* at p. 55.

¹³² *Ethnic or Cultural Background Census* at p. 45.

15. This may be contrasted with the high level of secondary school completion amongst the population as a whole, which ranges from 41.8% for those between the ages of 55-64 to 86.5% for those between the ages of 20-24.¹³³ The high rate of early school-leavers amongst members of the Travelling Community is a failure to respect and protect the rights of Travellers to education.¹³⁴ The IHRC has stated that existing measures are ineffective in achieving equality of access and a comprehensive plan of action should be put in place. The IHRC welcomes the production of a *Traveller Education Strategy* by the Department of Education and Science and notes in particular the vision for Traveller Education in 2010.¹³⁵

9. Dissemination of Information Relating to the Covenant and the Optional Protocol (Article 2)

*Please provide more detailed information on the steps taken to disseminate information on the Covenant and on the submission of the present report, as well as on the involvement of representatives of civil society and of minority groups in the preparatory process.*¹³⁶

38. Notwithstanding its own statutory role, the IHRC notes that it is the primary responsibility of the Irish authorities to disseminate information in relation to the Covenant. The IHRC encourages the State authorities to greatly improve efforts to bring information in relation to international human rights treaties Ireland has ratified into public awareness and debate. The IHRC considers that the Government must also take measures to ensure that law enforcement officers and the civil service in particular are familiarised with international human rights norms and standards, including, *inter alia*, the provisions of the ICCPR.¹³⁷

¹³³ Census 2006 at p. 52.

¹³⁴ CERD Submission at pp. 54-55.

¹³⁵ Department of Education and Science, *Report and Recommendations for a Traveller Education Strategy*. The report's vision for 2010 (at p. 99) includes some of the following goals include *inter alia*: (a) to obtain access to all mainstream provision; (b) to participate as equals, achieve their full potential, and have outcomes similar to those of their settled peers; (c) to gain qualifications, obtain access to mainstream employment, aspire to promotion and participate fully as members of society; (d) to respect and be respected for their culture and identity in an Ireland where diversity, equality and interculturalism are the norm and reciprocally respect other cultures and identities and (e) to contribute to Ireland's social, cultural and economic development.

¹³⁶ Human Rights Committee List of Issues, para. 22.

¹³⁷ IHRC Submission at p.10 paras. 26-27.