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# **ADVANCE UNEDITED VERSION**

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## **Human Rights Committee**

### **Concluding observations on the fourth periodic report of Ireland**

1. The Committee considered the fourth periodic report submitted by Ireland (CCPR/C/IRL/4) at its 3078th and 3079th meetings (CCPR/C/SR.3078 and CCPR/C/SR.3079), held on 14 and 15 July 2014. At its 3091st meeting (CCPR/C/SR.3091), held on 23 July 2014, it adopted the following concluding observations.

#### **A. Introduction**

2. The Committee welcomes the submission of the fourth periodic report of Ireland and the information presented therein. It expresses appreciation for the opportunity to engage in a constructive dialogue with the State party's high level delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/IRL/Q/4/Add.1) to the list of issues (CCPR/C/IRL/Q/4) which were supplemented by the oral responses provided by the delegation and for the supplementary information provided to it in writing.

#### **B. Positive aspects**

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

- (a) The withdrawal of reservations to article 14 and article 19, paragraph 2;
- (b) The adoption of the Criminal Justice (Female Genital Mutilation) Act in April 2012;
- (c) The adoption of the Civil Law (Miscellaneous Provisions) Act in August 2011 amending the Domestic Violence Act of 1996; and
- (d) The adoption of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act in July 2010.

4. The Committee welcomes the ratification by the State party of the United Nations Convention on Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention, in June 2010.

## C. Principal matters of concern and recommendations

### Applicability of the Covenant in domestic courts

5. While welcoming the commencement of the work by the Law Reform Commission concerning the domestic implementation of the State party's international obligations, the Committee reiterates its previous concern that the Covenant is still not directly applicable in the State party, and that the State party continues to maintain its reservations to article 10, paragraph 1 and article 20, paragraph 1 of the Covenant. It also regrets that the State party has not undertaken the tabulation of relevant provisions of its domestic legislation as pledged during the consideration of its previous report in 2008 (art. 2).

**The State party should undertake a comprehensive review of its legislation vis-à-vis the provisions of the Covenant and take effective measures to ensure that the rights protected under the Covenant are given full effect in its domestic order. It should also review its reservations to article 10, paragraph 1 and article 20, paragraph 1 of the Covenant, with a view to withdrawing them.**

### National Human Rights Institution

6. While welcoming the adoption of the Irish Human Rights and Equality Commission (IHREC) Act in July 2014 and the steps taken by the State party to ensure its compliance with the Paris Principles, the Committee expresses concern at the lack of a unified definition of human rights in the Act, so as to ensure that the State party's international and domestic human rights obligations, including the Covenant, fall within the remit of the IHREC across its range of functions (art. 2).

**The State party should ensure that the IHREC Act is in full conformity with the Paris Principles (General Assembly resolution 48/134, annex) and consider applying a unified definition of human rights in the IHREC Act, which includes the State party's international and domestic human rights obligations in the enforcement functions and powers of the IHREC. It should also ensure that there is a stable and sufficient budget over which the IHREC has autonomous control in order to discharge its functions independently and effectively.**

### Gender equality

7. While welcoming the Constitutional Convention's recommendation of February 2013, the State party's commitment to hold a referendum on the matter and the establishment of a task force, the Committee regrets the slow pace of progress in modifying the language of article 41.2 of the Constitution on the role of women in the home. It also expresses concern that, despite the adoption of the Electoral (Amendment) Political Funding Act 2012 which encourages political parties to establish a quota for female candidates, women continue to be underrepresented in both public and private sectors, particularly in decision-making positions. Additionally, the Committee is concerned that the new Heads of a Gender Recognition Bill approved by the Cabinet in June 2014 retains the requirement for married transgender persons to dissolve the existing marriage or civil partnership to have their preferred gender formally recognized (arts. 2, 3, 23 and 26).

**The State party should take concrete steps to implement the recommendations issued by the Constitutional Convention to facilitate the amendment of article 41.2 of the Constitution to render it gender neutral, and further encourage greater participation of women in both public and private sectors, including by providing stable and sufficient funding for institutions established to promote and protect gender equality. It should also ensure that transgender persons and representatives of transgender organizations are effectively consulted in the finalization of the Gender Recognition**

**Bill so as to ensure that their rights are fully guaranteed, including the right to legal recognition of gender without the requirement of dissolution of marriage or civil partnership.**

#### **Violence against women**

8. While noting the measures taken by the State party to enhance the protection of women from perpetrators of violence, the Committee is concerned that domestic and sexual violence against women remains a serious problem in the State party. It also expresses concern at the lack of a comprehensive data collection system on violence against women, and at the existence of administrative and financial obstacles for marginalized women to access essential support services, particularly women whose immigration status is dependent on her spouse or partner or who do not meet the Habitual Residence Condition (arts. 3, 7, 23 and 26).

**The State party should take further legislative as well as policy measures to ensure that all women, particularly women from vulnerable and marginalized groups, have equal access to protection against perpetrators of violence. It should also establish a systematic data collection system to inform current and future policies and priorities, and provide, in its next periodic report, disaggregated statistics on complaints, prosecutions and sentences regarding violence against women.**

#### **Abortion**

9. The Committee reiterates its previous concern regarding the highly restrictive circumstances under which women can lawfully have an abortion in the State party owing to article 40.3.3 of the Constitution and its strict interpretation by the State party. In particular, it is concerned at: (i) the criminalization of abortion under section 22 of the Protection of Life During Pregnancy Act, including in cases of rape, incest, fatal foetal abnormality and serious risks to the health of the mother, which may lead to up to 14 years of imprisonment, except in cases that constitutes a “real and substantive risk” to the life of a pregnant women; (ii) the lack of legal and procedural clarity concerning what constitutes “real and substantive risk” to the life, as opposed to the health, of the pregnant women; (iii) the requirement of an excessive degree of scrutiny by medical professionals for pregnant and suicidal women leading to further mental distress; (iv) the discriminatory impact of the Protection of Life During Pregnancy Act on women who are unable to travel abroad to seek abortions; (v) the strict restrictions on the channels via which information on crisis pregnancy options may be provided to women and the imposition of criminal sanctions on healthcare providers who refer women to abortion services outside the State party under the Regulation of Information (Services outside the state for the Termination of Pregnancies) Act of 1995; and (vi) the severe mental suffering caused by the denial of abortion services to women seeking abortions due to rape, incest, fatal foetal abnormality or serious risks to health (arts. 2, 3, 6, 7, 17, 19 and 26).

#### **The State party should:**

**(a) Revise its legislation on abortion, including its Constitution, to provide for additional exceptions in cases of rape, incest, serious risks to the health of the mother, or fatal foetal abnormality;**

**(b) Swiftly adopt the Guidance Document to clarify what constitutes a “real and substantive risk” to the life of the pregnant woman; and**

**(c) Consider making more information on crisis pregnancy options available through a variety of channels, and ensure that healthcare providers who provide information on safe abortion services abroad are not subject to criminal sanctions.**

### **Institutional abuse of women and children**

10. The Committee expresses concern at the lack of prompt, independent, thorough and effective investigations into all allegations of abuse, mistreatment or neglect of women and children in the Magdalene Laundries, children's institutions, and mother and baby homes. It regrets the failure to identify all perpetrators of the violations that occurred, the low number of prosecutions, and the failure to provide full and effective remedies to victims (arts. 2, 6, and 7)

**The State party should conduct prompt, independent and thorough investigation into all allegations of abuse in Magdalene Laundries, children's institutions and mother and baby homes, prosecute and punish the perpetrators with penalties commensurate with the gravity of the offence, and ensure that all victims obtain an effective remedy, including appropriate compensation, restitution, rehabilitation and measures of satisfaction.**

### **Symphysiotomy**

11. The Committee expresses concern that symphysiotomy, childbirth operations which sever one of the main pelvic joints and unhinges the pelvis, was introduced into clinical practice and performed on approximately 1,500 girls and women in public and private hospitals between 1944 and 1987 without their free and informed consent. While noting the publication of a report by Professor Walsh in 2012, the review of the findings of the report by Judge Murphy and the planned establishment of the an *ex-gratia* scheme for the survivors of symphysiotomy, the Committee expresses concern at the State party's failure to: (i) initiate a prompt, and comprehensive independent investigation into the practice of symphysiotomy; (ii) identify, prosecute and punish, where still possible, the perpetrators for performing symphysiotomy without patient consent; and (iii) provide effective remedies to survivors of symphysiotomy for the damage sustained as a result of these operations (arts. 2 and 7).

**The State party should initiate a prompt, independent and thorough investigation into cases of symphysiotomy, prosecute and punish the perpetrators, including medical personnel, and provide an effective remedy to the survivors of symphysiotomy for the damage sustained, including fair and adequate compensation and rehabilitation, on an individualized basis. It should facilitate access to judicial remedies by victims opting for the *ex-gratia* scheme, including allowing a challenge to the sums offered to them under the scheme.**

### **Non-consensual psychiatric treatment, use of electroshock and other restrictive and coercive practices in mental health services**

12. The Committee is concerned at reports of the use of non-consensual psychiatric medication, electroshock and other restrictive and coercive practices in mental health services in the State party. It also regrets the lack of definition of a voluntary patient under the Mental Health Act of 2001, and that persons may be admitted to psychiatric institutions without their genuine consent (arts. 7 and 17).

**The State party should ensure that non-consensual use of psychiatric medication, electroshock, and other restrictive and coercive practices in mental health services, is generally prohibited. Non-consensual psychiatric treatment may only be applied, if at all, in exceptional cases as a measure of last resort where absolutely necessary for the benefit of the person concerned, provided that he or she is unable to give consent, and for the shortest possible time without any long-term impact and under independent review. The State party should promote psychiatric care aimed at preserving the dignity of patients, both adults and minors. It should also amend the definition of voluntary patient under the Mental Health Act, 2001 so that the term only refers to a**

**person who consents to admission and treatment, and bring the Assisted (Decision-Making) Capacity Bill of 2003 in line with international standards on the rights of persons with disabilities.**

#### **Police complaint procedures**

13. The Committee expresses concern at the ability of the Garda Síochána Ombudsman Commission (GSOC) to function independently and effectively, including the requirement of an approval from the Minister of Justice to examine police practices, policies and procedures, and the length of time taken to complete investigations due to lack of cooperation by the police (arts. 7 and 10).

**The State party should proceed with the timely adoption of the General Scheme of the Garda Síochána (Amendment) Bill 2014 to strengthen the independence and effectiveness of the Garda Síochána Ombudsman Commission. It should also ensure that the proposed establishment of the Garda Síochána Authority does not encroach upon or undermine the work of GSOC, but rather complement and support it.**

#### **Corporal punishment**

14. The Committee is concerned at the lack of legal prohibition of corporal punishment in all settings, and that the common law defence of reasonable and moderate chastisement remains part of its domestic legislation (arts.7 and 24).

**The State party should take appropriate steps, including the adoption of suitable legislation, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and conduct public information campaigns to raise awareness about its harmful effects.**

#### **Conditions of detention**

15. While welcoming the measures taken by the State party to improve conditions of detention and to increase the use of community sanctions as an alternative to imprisonment, as well as the progress achieved, the Committee is concerned at the lack of progress in eliminating adverse conditions in a number of prisons in the State party, such as: (i) overcrowding; (ii) lack of in-cell sanitation facilities; (iii) lack of segregation of remand and convicted prisoners, and between detained immigrants and sentenced prisoners; and (iv) the high level of inter-prisoner violence. While noting the introduction of a new complaints model in the Irish Prison Service, the Committee is concerned that it does not provide for a fully independent system for dealing with every serious prisoner complaint (arts. 9 and 10).

**The State party should step up its efforts to improve the living conditions and treatment of detainees and address overcrowding and the practice of “slopping out” as a matter of urgency in line with the Standard Minimum Rules for the Treatment of Prisoners (U.N. Doc. E/5988 (1977)). It should establish a concrete timeline for the achievement of complete separation of remand and sentenced prisoners, juvenile and adult prisoners and detained immigrants and sentenced prisoners. It should also implement the new complaints model for all categories of complaints without further delay and ensure its independent functioning.**

#### **Imprisonment for failure to pay fines**

16. The Committee expresses concern at the number of persons being imprisoned for failure to pay fines in connection with their inability to fulfil contractual obligations despite the adoption of the Enforcement of Court Orders (Amendment) Act 2009 and the Fines (Payment and Recovery) Act 2014 (art. 11).

**The State party should fully implement the Fines (Payment and Recovery) Act 2014 to provide for a community service order as an alternative to imprisonment for failure to pay court ordered fines or civil debt, and ensure that in no case is imprisonment used as a method of enforcing contractual obligations.**

#### **Right to counsel**

17. While welcoming the Supreme Court decision of *People (DPP) v. Gormley* and *People (DPP) v. White* of June 2014, the Committee remains concerned at the absence of detailed regulation in law of the right to obtain counsel prior to and during interrogation (art.14).

**The State party should guarantee, in law and in practice, the right to counsel prior to interrogation, and take concrete steps to facilitate the presence of lawyers during interrogation.**

#### **Counter-terrorism measures**

18. The Committee reiterates its concern at the lack of a definition of terrorism under domestic legislation and the continuing operation of the Special Criminal Court. It expresses further concern at the expansion of the remit of the Special Criminal Court to include organized crime (arts. 14 and 26).

**The State party should introduce a definition of “terrorist acts” in its domestic legislation, limited to offences which can justifiably be equated with terrorism and its serious consequences. It should also consider abolishing the Special Criminal Court.**

#### **Asylum-seekers and refugees**

19. The Committee is concerned at the lack of a single application procedure for the consideration of all grounds for international protection, leading to delays in the processing of asylum claims and prolonged accommodation of asylum-seekers in Direct Provision centres which is not conducive to family life. It also regrets the lack of an accessible and independent complaints mechanism in Direct Provision centres (arts.2, 17 and 24).

**The Committee recommends that the State party take appropriate legislative and policy measures to establish a single application procedure with a right of appeal to an independent appeals body without further delay, including the adoption of the 2008 Immigration, Residence and Protection Bill. It should also ensure that the duration of stay in Direct Provision centres is as short as possible and introduce an accessible and independent complaints procedure in Direct Provision centres.**

#### **Trafficking**

20. The Committee is concerned that victims of trafficking who exercise their right to apply for asylum are not granted a “recovery and reflection period” or temporary residence permission and are held in Direct Provision centres. It is also concerned at inadequacies in the legal support provided to victims of trafficking and the absence of legislation protecting their rights (arts. 2 and 8).

**The State party should ensure that effective and appropriate assistance and protection is afforded to potential victims of trafficking, including by adopting without further delay the necessary acts of legislation which are compatible with international legal standards.**

#### **Freedom of religion**

21. The Committee is concerned at the slow pace of progress in amending the Constitutional provisions that oblige individuals wishing to take up senior public office positions such as President, members of the Council of State and members of the judiciary

to take religious oaths. It is also concerned about the slow progress in increasing access to secular education through the establishment of non-denominational schools, divestment of the patronage of schools and the phasing out of integrated religious curricula in schools accommodating minority faith or non-faith children. It expresses further concern that under Section 37(1) of the Employment Equality Acts, religious-owned institutions, including in the fields of education and health, can discriminate against employees or prospective employees to protect the religious ethos of the institution (arts.2, 18, 25 and 27).

**The State party should take concrete steps to amend articles 12, 31 and 34 of the Constitution that require religious oaths to take up senior public office positions, taking into account the Committee's general comment No. 22 (1993) concerning the right not to be compelled to reveal one's thoughts or adherence to a religion or belief in public. It should also introduce legislation to prohibit discrimination in access to schools on the grounds of religion, belief or other status, and ensure that there are diverse school types and curriculum options available throughout the State party to meet the needs of minority faith or non-faith children. It should also amend Section 37(1) of the Employment Equality Acts in a way that bars all forms of discrimination in employment in the fields of education and health.**

### **Blasphemy**

22. While welcoming the repeal of the Defamation Act of 1961, the Committee remains concerned that blasphemy continues to be an offence under article 40.6.1(i) of the Constitution and section 36 of the Defamation Act 2009 (art. 19).

**The State party should consider removing the prohibition of blasphemy from the Constitution as recommended by the Constitutional Convention, and taking into account the Committee's general comment No. 34 (2011) concerning the incompatibility of blasphemy laws with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2 of the Covenant.**

### **Travellers and Roma**

23. The Committee regrets the lack of progress in implementing its previous recommendations to recognize Travellers as an ethnic minority and to amend the Housing Act of 2002. It also expresses concern at the lack of data concerning the Roma community in the State party, and at instances of discriminatory acts against the Roma community, including the forced removal of Roma children from their families into State care on the basis of their appearance (arts. 26 and 27).

**The State party should take concrete steps to recognize Travellers as an ethnic minority group, and amend the Housing Act of 2002 to meet the specific accommodation requirements of Traveller families. In light of the abolishment of the National Action Plan Against Racism, the State party should adopt an effective policy and action plan, developed in consultation with Traveller and Roma communities, to redress situations of inequality.**

24. The State party should widely disseminate the Covenant, the Optional Protocols to the Covenant, the text of its fourth periodic report, the written replies to the list of issues drawn up by the Committee and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The report and the concluding observations should be translated into the other official language of the State party.

25. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 10, 11 and 15 above.

26. The Committee requests the State party to provide in its next periodic report, due for submission on 31 July 2019, specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole. The Committee also requests the State party, when preparing its next periodic report, to broadly consult civil society and non-governmental organizations operating in the country to continue its practice of broadly consulting civil society and non-governmental organizations operating in the country.

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