

Oral Statement of
The Irish Human Rights Commission and Equality Authority (Designate)
(National Human Rights Institution)
to the Human Rights Committee
on the occasion of the examination of Ireland's Fourth Periodic Report under
the International Covenant on Civil and Political Rights
14th July 2014

Introduction

Good afternoon. I deliver this oral statement on behalf of the Irish Human Rights and Equality Commission (Designate), Ireland's National Human Rights Institution. We welcome the opportunity to address the Committee today.

At the outset, we would like to specifically acknowledge the progress made by the Irish Government in relation to Marriage Equality. Since Ireland's third periodic report in 2008, Civil Partnership has been enacted and the Government has committed to holding a referendum to amend the Constitution to allow for civil marriage for all adults. We are also happy that a legislative process is underway towards gender recognition, and that pending legislation on child and family relationships will address the ability of same sex couples to adopt. We welcome progress by the State in developing non-custodial sanctions as an alternative to imprisonment and the State's announcement of new facilities for the detention of minors. We welcome some movement in gender equality and towards a greater gender balance in public life. We were pleased to see the regulation of access to lawful termination of pregnancy by way of the Protection of Life during Pregnancy Act 2013

and pleased that a number of welcome steps have been taken by Ireland in relation to survivors of trafficking and forced labour.

As the Committee will be aware, a merger process is currently underway between the Irish Human Rights Commission and the Equality Authority. We welcome the passage of the Irish Human Rights and Equality Bill through parliament last week. In our Observations on the legislation, we expressed concerns about the narrow definition of human rights in relation to the exercise of our compliance functions. We believe it restricts our ability to use the standards set out in the Convention and other international treaties not yet incorporated into domestic law. We also called for a more secure annual or multiannual budget.

1. The Impact of Austerity

While we acknowledge that the issue of austerity will be further referred to in Ireland's forthcoming examination under the International Covenant on Economic, Social and Cultural Rights, it is important to note generally our concerns that austerity measures have weakened the civil and political rights of the most vulnerable in our society on a number of levels. The impact of public spending cuts has resulted not only in economic and social rights violations, manifest in a current crisis in housing and accommodation for families and individuals, but has also impacted on the effective protection of their civil and political rights. We have also expressed our concern about the cuts to voluntary groups working in the area of rights advocacy.

2. Incorporation of the Covenant and the Provision of Effective Remedies

Incorporation of the Covenant

The State has not incorporated the Covenant into Irish law and continues to have difficulty in conducting effective and timely investigations which meet human rights standards and can lead to redress for victims. We have identified key problems with the Commission of Investigations Act 2004 as including no linkage between a finding of a violation and consequential redress. The State has on three recent occasions been found in violation of the European Convention on Human Rights. In each case, at issue were constitutional doctrines under which human rights could not be vindicated before the Irish courts.

Institutional Abuse

As set out in our report, the scale of institutional abuse of children and women continues to be uncovered. We have produced two reports on the situation of women in Magdalen Laundries. Our recommendation for a prompt, thorough and independent investigation into the alleged abuse in the Magdalen Laundries remains unaddressed and is partly caused by the absence of speedy and timely statutory investigative mechanisms. We have also called for a statutory inquiry into recent revelations concerning Mother and Baby Homes. We strongly recommend that a human rights and equality framework, as well as a clear path to redress, is inherent in the Commission of Investigation which is planned.

Separately, we note that there has been no comprehensive investigation into the practice of symphysiotomy. The lack of response is partly due to an absence of effective statutory investigative mechanisms.

3. Equal Treatment and Minority Rights

Violence Against Women

Domestic, sexual and gender-based violence remains a serious problem in Ireland. 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. We are concerned that financial cutbacks as a result of austerity are having a serious impact on human rights in this area.

Trafficking

We are 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, including legislation, a National Action Plan and the establishment of coordinating structures across a number of State agencies, as part of the ratification of the Council of Europe and UN Conventions dealing with trafficking. We were concerned, however, at the lack of analysis of the impact of the measures adopted by the State. The Council of Europe Group of Experts on Trafficking

has said that a human-rights based approach to trafficking in Ireland should consist of a comprehensive preventive framework, which includes the protection of survivors and the effective investigation and prosecution of traffickers. For this to occur, all survivors of trafficking must be properly identified and empowered through enhancing their rights.

Direct Provision

We still retain grave concerns about the system of Direct Provision used to provide food and shelter for asylum seekers directly while their claims for refugee status are being processed. Excessive delays in processing asylum applications and their appeals undermine fundamental rights and good administration. A comprehensive reform of the statutory scheme for identifying and protecting asylum seekers at risk of *refoulement* is required, whereby all aspects of an individual's application for asylum and/ or subsidiary protection should be determined together in a single protection procedure. We are particularly concerned at the effects of the current system on children and on families. Conditions are having an enormous impact on the dignity and mental and physical well-being of residents, compounded by the lack of independent complaints procedures.

Persons with Disabilities

We are concerned that Ireland has yet to ratify the Convention on the Rights of Persons with Disabilities although we signed the Convention in 2006. In our report, we point out our serious concern at the interplay between the Assisted Decision-Making (Capacity) Bill 2013, on which we have a number of serious concerns, and the Mental Health Act 2001. We remain concerned that the definition of a voluntary patient under the 2001 Act is not sufficiently precise to protect the right to liberty of all persons, including persons with an intellectual disability, who might be admitted to an approved centre on a so-called “voluntary” basis.

Traveller and Roma Communities

We continue to express concern about the human rights and equality of the Traveller community in Ireland. We repeat our call for the recognition by the State of Traveller ethnicity and to amend legislation which criminalised trespassing on public land which continues to disproportionately impact Travellers. We also express concern in our report at

continuing disadvantage of the Roma community in access to education, employment, healthcare and housing. Effective monitoring of the impact in these areas is underpinned by a lack of data collection and analysis.

Recognition of the Rights of Children of Minority Religions or Non-Faith Background

In respect to religion, the issue of the rights of children and parents to freedom of thought, conscience and religion in the State-funded education system has been the subject of focused debate in Ireland. We have conducted a wide-ranging review of the adequacy and effectiveness of law and practice in this area. Our overarching recommendation was that the State should ensure a diversity of provision of school type within the education system. We further recommend that section 37 of the Employment Equality Acts be amended to protect the rights of access to employment and promotion in the fields of education and health.

4. Criminal Justice

Special Criminal Court

We are concerned that the State has failed to implement the previous recommendations made by the Human Rights Committee on the continued existence of the Special Criminal Court. We are of the view that the concerns expressed by the Committee would be sufficiently addressed if the recommendations of the Hederman Committee, which reported in 2002, were fully implemented. The primary recommendation made at that time was that the Special Criminal Court should automatically lapse unless it is positively affirmed by parliament every three years.

Policing

We recommended the establishment of an independent and representative Policing Authority similar to the recommendations in the 1999 Patten Report. We are very pleased to see that the Government has committed to establish such a body. 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. We believe that an independent Police

Authority should complement the work of the Garda Síochána Ombudsman Commission (GSOC). Additionally, we have repeatedly called for the strengthening of GSOC to allow it to investigate human rights abuses, to ensure accountability in policing in Ireland.

Prisons

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, while certain improvements have been made by the State, progress has been slow. While we note the introduction of a prisoner complaints model, we are still concerned about the independence of such a system and we continue to recommend the establishment of a fully independent Prisoner Ombudsman. We welcome the enhanced powers of the Inspector of Prisons to carry out independent investigations of deaths in custody. While we welcome this, again out we would urge that the Inspector has the appropriate statutory powers to allow him or her carry out this role effectively.

5. The Right to Life

We recommend in our report how a dialogue between the State and the Human Rights Committee is required to resolve discrepancies in the Protection of Life During Pregnancy Bill 2013. These discrepancies occur between the constitutional position and the provisions of the Convention in respect of situations where: (1) a pregnancy poses a risk to the health as opposed to the life of the pregnant woman; (2) the pregnancy is the result of a crime, such as rape or incest; (3) there is an established fatal foetal abnormality or (4) where it has been established that the foetus will not survive outside the womb.

Finally, we refer the Committee to our longer written report.

Thank you.