



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE

**REPLIES TO THE LIST OF ISSUES (CCPR/C/IRL/Q/3)  
TO BETAKEN UP IN CONNECTION WITH THE CONSIDERATION  
OF THE THIRD PERIODIC REPORT OF THE GOVERNMENT OF IRELAND  
(CCPR/C/IRL/Q/3)\***

[23 June 2008]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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

**Issue 1**

1. As the Committee will be aware, Ireland has a dualist legal system and consequently international agreements to which Ireland becomes a party are not automatically incorporated into domestic law. By virtue of Article 29.6 of the Constitution of Ireland, the text of an international agreement can only be expressly incorporated into the domestic law of the State as determined by the Legislature. Where a measure to implement an international agreement would require a change to the Constitution this in turn requires a referendum to be put to the electorate. With every international agreement consideration must be given to the position under domestic law and whether the obligations of the State under the agreement are already provided for under the domestic legal framework. Where national law does not cover the requirements of the international agreement the necessary means to secure compliance must be considered.
2. Many of the fundamental human rights contained within the Covenant are already part of the domestic law of Ireland by virtue of provisions in the Constitution of Ireland, including those areas of human rights law which have been developed by the Irish Supreme Court and High Court through the doctrine of unenumerated personal rights under Article 40.3 of the Constitution. Certain rights are also protected by legislation and the common law. Ireland, in conformity with its obligations to the Covenant, has chosen to implement its obligations under the Covenant using these mechanisms rather than by direct incorporation.
3. As the protections in the Covenant are effectively part of Irish law by means other than incorporation, as described above, the Covenant itself is rarely called on by persons seeking to vindicate their rights before the Courts. However, litigants may raise the Covenant in proceedings and there are a number of instances of this, but the Courts require parties to establish their rights by reference to the applicable provisions in domestic law. By way of illustration, in *Greendale Developments Ltd (in liquidation) v McQuaid* [2000] 2 IR 514 and in *Bula Ltd v Tara Mines (no 6)* [2000] 4IR 412, reference was made in the proceedings to Article 14.1 of the Covenant, but it was the Constitution, and in particular Article 40.3 of the Constitution, which was relied on by the Court in those cases.
4. In cases before the High Court involving reviews of applications for refugee status, there are a number of instances where the Covenant is referred to, as it features in the consideration at earlier stages of the process. Please see examples from written determinations of the High Court which cite the Covenant at Annex A.

## **Issue 2**

### **Article 10 paragraph 2**

5. As set out in its Third Periodic Report, Ireland continues to make progress towards full implementation of the principles in Article 10(2), with a high percentage of the daily average of unconvicted prisoners accommodated at a designated remand facility. For the present and pending the completion of the current extensive building programme, the continuing pressure on prison accommodation as a whole, considerations of redundancy, and the preference for proximity to home on the part of many unconvicted prisoners prevents the provision of fully separate arrangements throughout the system.
6. Nevertheless, the intention remains that each committal prison would have a separate area for unconvicted prisoners and, as can be seen from the material provided in the Third Periodic Report, and in the response to Issue 11 below, substantial investment is being made in extending and improving prison accommodation facilities into the future.
7. Ireland's reservation to Article 10.2 will be kept under review in the light of the expansion of prison spaces.

### **Article 14**

8. Ireland reserved the right under Article 14 of the Covenant "to have minor offences against military law dealt with summarily in accordance with current procedures, which, may not, in all respects, conform to the requirements of Article 14 of the Covenant".
9. The Defence (Amendment) Act 2007 was designed to ensure that the conduct of military trials is fully compatible with Article 14 of the Covenant. The provisions of the Act stipulate that a commanding officer is no longer able to award a custodial punishment for any offence under military law that may be dealt with summarily by him or her (described in the Act as disciplinary and not criminal offences). An accused person has an absolute right to elect for Court-Martial and to appeal any determination by a commanding or authorised officer to a Court-Martial. The Court-Martial system has been amended to remove any doubt as to its independence or impartiality. Prior to the "commencement" of the remaining provisions of the Defence (Amendment) Act 2007, which will make those provisions operational, it is necessary to put the following in place by way of secondary legislation (ie Ministerial Order):
  - new Courts-Martial Rules
  - revised Rules of Procedure for Courts-Martial
  - revised Courts-Martial Legal Aid Regulations
  - amendments to six existing Defence Force Regulations to reflect the provisions of the Act
10. Work on all of these is at an advanced stage and it is expected that this will be completed in the very near future, so allowing the Act to be fully commenced. Once

the Act is commenced, Ireland will then be in a position to withdraw its reservation under Article 14. Every effort will be made to have the necessary steps taken so that the reservation can be removed before the examination of the Report on 14 and 15 July.

### **Article 19 paragraph 2**

11. The question of the maintenance of this reservation is under active consideration in the context of the new Broadcasting Bill currently before the Oireachtas and it is hoped to withdraw the reservation at least in part when the Bill is enacted.

### **Article 20 paragraph 1**

12. Ireland has no plans to withdraw the reservation to Article 20 paragraph 1 at this time.

### **Issue 3**

13. Where developments with regard to the recommendations contained in the Committee's previous concluding observations relate to an issue raised by the Committee in the current list of issues, this information is included under the specific issue. Information on developments regarding other recommendations is attached as Annex B.

### **Non-Discrimination and Equal Rights of Women and Men (Articles 2, 3, 26).**

### **Issue 4**

14. Cosc, the National Office for the Prevention of Domestic, Sexual and Gender-based Violence, was established in June 2007 as an executive office of the Department of Justice, Equality and Law Reform with a cross-government mandate. Cosc's key responsibility is to ensure the delivery of a well co-ordinated "whole of Government" response to domestic, sexual and gender-based violence and it carries out this responsibility by facilitating action for the protection of victims as well as the prevention of these crimes and the provision of services for those affected.
15. To that end, early priorities for Cosc include the implementation of a Priority Research Programme which will lay a foundation for effective strategies to address domestic, sexual and gender-based violence. In particular, the programme includes a mapping project in relation to services provided by both State and non-State organisations to those affected by domestic, sexual and gender-based violence. This initiative will help to identify gaps in the provision of services for the protection of women from violence and should form a solid basis for the actions needed to address those gaps.
16. In recent years considerable resources have been devoted to public education at both national and local level. This work is a major priority for Cosc and its Priority Research Programme includes a project which entails conducting a general population attitudinal survey on domestic abuse. The survey should provide the basis for the

effective implementation of public awareness raising activities provided for in Cosc's Communications Plan for 2008 and 2009. Preparatory work on the survey is well advanced and it is expected to complete the survey by September 2008.

17. The Health Service Executive (HSE) currently funds 16 Rape Crisis Centres, 20 Refuges and 25 Support Services all providing services to victims of domestic or sexual violence. In 2007, €4.5 million was allocated from the Department of Health and Children to HSE for Violence against Women services.
18. Additional funding of €1.5 million was allocated to the implementation of the recommendations of the Review of Sexual Assault Treatment Service. The HSE is currently implementing these recommendations which include standardisation of existing units and provision of additional units where appropriate.
19. For recent years there are no available figures on crimes of domestic and sexual violence based specifically on gender. One of the priorities for Cosc under its research programme is to examine data collection systems and procedures to address data deficits in this area.

#### **Issue 5**

20. The recommendations of the All-Party Oireachtas Committee on the Constitution in relation to the role of women will be considered in the context of any general proposals to implement those recommendations.
21. Arising from the recommendations of the National Plan for Women (2002) and a commitment in Ireland's social partnership agreements, a National Women's Strategy has been developed and was launched by the Taoiseach (Prime Minister) on 18 April 2007.
22. The National Women's Strategy addresses the issues that remain to be addressed on the road to full equality between women and men in Ireland, over the period 2007 to 2016. The Strategy, which contains 20 key objectives and over 200 actions, aims to:
  - Equalise socio-economic opportunity for women
  - Ensure their well-being
  - Engage women as equal and active citizens.
23. A funding package of €58.64 million has been set aside in the National Development Plan 2007 – 2013 to implement the Strategy. This funding is in addition to the €68 million set aside for positive actions under the Equality for Women Measure, which is also in the National Development Plan.
24. Implementation of the Strategy is being overseen by the Department of Justice, Equality and Law Reform in collaboration with an Inter-Departmental Committee which meets twice yearly. This Committee will also report to a cross-sectoral monitoring committee, which will also include key State Agencies and the Social

Partners, under the chairmanship of the Minister of State with responsibility for Equality, Disability and Mental Health.

### **Issue 6**

25. The Government has committed, in the Agreed Programme for Government, to legislating for civil partnerships as early as possible in the lifetime of the Government. The Heads of a Civil Partnership Bill, which will provide a registration mechanism for same-sex couples who choose to register their relationship and for the consequences of registration, has been drafted and is expected to go to Government on 24 June 2008 for approval to draft the Bill. In addition to providing for civil partnership registration for same-sex couples, the Heads of Bill establish a 'Redress scheme' for long term cohabitants and provide for legal recognition of agreements between cohabitants regulating their financial affairs. The redress scheme is intended to give protection to a vulnerable party at the end of a long-term opposite-sex or same-sex relationship.
26. The Government are aware of the need to look at changing the law on birth registration to allow a trans-gendered person to obtain a birth certificate in their new gender and this is under consideration. This matter is complex and requires careful examination both of the rights of trans-gendered persons and others, such as family members, who might be affected by such a change. Detailed consideration of the matter will be required when litigation currently before the Supreme Court is adjudicated upon.

### **Counter Terrorism Measures and Respect of Covenant Guarantees**

### **Issue 7**

27. The primary purpose of the introduction of the Criminal Justice (Terrorist Offences) Act 2005 was to give effect in Irish law to the various international instruments aimed at counteracting terrorism, particularly in the changed circumstances which characterise the international environment since September 2001.
28. Ireland's legislation has not adopted the approach of defining terrorism *per se*. In keeping with the approach adopted over the years in Irish law the criminalisation of terrorism has focused on the various offences involved and Irish legislation attributes a special character to these offences where they are carried out in the context of terrorist or terrorist-linked activity. The definitions of "terrorist activity" and "terrorist-linked activity" and the offences for the purposes of these definitions are clearly set out in the Criminal Justice (Terrorist Offences) Act 2005. The offences which are set out in the Act are offences under Irish law.
29. The Offences Against the State Acts 1939-1998 derogate from the general law in providing for the possibility of detention in custody for a period of up to 72 hours prior to being charged in connection with the commission of certain offences. Judicial intervention in such a case is required after the first 48 hours detention. Section 30 of the 1939 Act, as amended by the 1998 Act, applies to offences under the Offences

against the State Acts 1939 to 1998 and scheduled offences, and includes offences involving firearms, explosives, or membership of an unlawful organisation.

30. The Government is completely opposed to the practice of so-called extraordinary renditions. The Government has made it clear that any person with credible information that Irish airports have been used for any alleged unlawful purpose should immediately report their concerns to the Garda Síochána (National Police Service), which would have responsibility for investigating such matters. On the basis of such reporting or any other information, where the Garda Síochána reasonably suspects that an offence is being committed, statutory powers of entry and arrest are available, subject to international law.
31. Where complaints of alleged unlawful activity concerning the use of Irish airports have been made to the Garda Síochána, investigations have ensued and, where appropriate, files have been submitted to the Director of Public Prosecutions. In all these cases, no further action was found to be warranted, owing to a lack of any evidence of any unlawful activity.
32. In this context, it is considered that all reasonable, appropriate and sufficient measures have been and are being taken to ensure that Irish airports are not being used for any unlawful activity.
33. The assurances the Government has received from the US authorities are specific that prisoners have not been transferred through Irish territory, nor would they be, without our permission. These assurances have been confirmed at the highest level. The assurances are of a clear and categorical nature, relating to facts and circumstances within the full control of the US Government and are the result of inter-agency consultation. The Government are completely satisfied that it is entitled in international law to rely on the assurances repeatedly given by the US Government.
34. The matter of the establishment of a parliamentary inquiry into extraordinary renditions has been extensively debated in the Houses of the Oireachtas, where both Houses have passed motions supporting the Government's policy in this area. Indeed the Senate, Seanad Éireann, has on three separate occasions voted not to institute a specific inquiry. No evidence has ever been produced, nor any concrete allegation made, at any point that any person has ever been subject to extraordinary rendition through Ireland.

#### **Derogation (Article 4)**

#### **Issue 8**

35. Ireland does not have any derogation under Article 4. Any derogation that might in the future be made would be formulated in accordance with Ireland's obligations under the Covenant.

**Right to Life (Article 6)**

**Issue 9**

36. Following the 2002 Referendum, and on the recommendation of the All-Party Oireachtas Committee on the Constitution, the Government established the Crisis Pregnancy Agency (CPA) as part of a strategy to combat crisis pregnancies. The mandate of the Agency is to achieve a reduction in the number of crisis pregnancies by the provision of education, advice and contraceptive services; to achieve a reduction in the number of women with crisis pregnancies who opt for abortion by offering services and supports which make other options more attractive; and the provision of counselling and medical services and other health services after crisis pregnancy.
37. The Agency's first Strategy was published in November 2003 and covered the period 2004 – 2006. In brief, the Strategy highlighted the actions necessary to prevent crisis pregnancies, to support those with crisis pregnancies and to provide counselling and medical services to women after a crisis pregnancy. On 19 November 2007 the Agency published a second strategy, setting out its objectives for the period 2007 – 2011.
38. Since its establishment the Agency has worked very effectively, focusing on all aspects of crisis pregnancy and ensuring the development of high-quality services and supports.
39. The Agency works to achieve its objectives principally through its communications programmes, its research programme and its funding programme. It also works to contribute to and inform policy development and service delivery by Government Departments and other State and non-governmental organisations. The total amount of revenue funding made available to the Agency for 2008 is €8.959 million.
40. Counselling services provided by the Agency, which are free to women experiencing a crisis pregnancy. Information on safe and reputable abortion services in other jurisdictions is available from a number of counselling services, for those who opt for abortion following non directive counselling.
41. Figures produced by the Agency in June 2008 show that the number of Irish women seeking abortions abroad has fallen for the sixth successive year. The Agency attributes this to the wider availability of non-directive pregnancy counselling, greater use of contraception and improved relationships and sexuality education in schools and in the home.

**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)**

**Issue 10**

42. The Commission is statutorily independent in the exercise of its functions. Furthermore neither a member nor a former member of the Garda Síochána can be a member of the Commission. A similar prohibition exists in the case of current members of the Oireachtas. The Commission is chaired by a High Court judge and its members are of high calibre.
43. The Commission is well resourced with almost 100 staff. This is five times the staffing complement of its predecessor the Garda Síochána Complaints Board. Included in that staffing complement is an independent investigative capacity with considerable professional expertise.
44. The Ombudsman Commission is empowered directly to investigate all complaints, and must directly investigate complaints concerning the death of, or serious harm to, a person in Garda custody. Designated officers of the Ombudsman Commission have Garda powers of investigation for that purpose. The Ombudsman Commission can also refer complaints to the Garda Commissioner for investigation, with or without supervision. It also has the power to investigate of its own motion, without a complaint having to be made, and where it is desirable in the public interest, any matter that appears to it to indicate that a member of the Garda Síochána may have committed an offence, or behaved in a manner that would justify disciplinary proceedings. The Minister may also request the Ombudsman to investigate any such case, where he considers it desirable in the public interest to do so.
45. In the first year of operation (from 9 May 2007), a total of 2,905 complaints were made by members of the public. Of these, 746 were deemed inadmissible. 294 referrals were made by the Garda Commissioner relating to incidents where the Commissioner was of the view that the conduct of a garda might have resulted in the death of or serious harm to a person. Of these referrals, 6 related to deaths in or following Garda custody or following Garda contact, and 11 related to deaths arising from road traffic incidents.
46. The Ombudsman Commission acknowledges that a backlog of complaints and investigations has accumulated and cites a number of factors as having contributed to this, mainly staffing vacancies and lack of appropriate IT systems. However, additional investigators have taken up posts since January 2008 and a fully developed case management has recently been introduced.
47. The Garda Síochána Ombudsman Commission opened its doors on 9 May, 2007. As a consequence it is not possible to compare its 2007 figures with directly comparable 2006 figures. However, in general, the number of complaints being received by the new body exceeds the number which were received in 2006 under the old complaints regime, which was operated by the Garda Síochána Complaints Board. However, it is

generally recognised that the public had lost confidence in the old regime and this was one of the reasons for the establishment of the new regime.

48. The requirement to conduct audio-visual recording of interviews is set-out in Criminal Justice Act 1984 (Electronic Recording of Interviews) Regulations 1997. The Regulations specify that interviews of detained persons under the appropriate legislation must be electronically recorded with any exceptions only as provided for in the Regulations. The Garda Síochána has indicated that interviews are electronically recorded in approximately 98% of cases and the reason why the balance are not recorded is accounted for by the interviewee objecting to the recording taking place or the equipment being already in use/ the room is not available.
49. In Irish law judges have no role in the investigation of complaints of ill-treatment in Garda custody. This is a matter for the appropriate statutory body, as set out in paragraphs 158 to 160 in the Third Periodic Report.
50. As regards cases before the courts, where a police officer is charged with an offence arising from alleged ill-treatment, it is a matter for the presiding judge and, where appropriate, the jury to consider the evidence. The Courts are, subject only to the Constitution and the law, completely independent in the exercise of their judicial functions.
51. There are no plans to modify current statutory provisions governing access by a person in police custody to his or her lawyer.
52. The Garda Síochána is under a statutory obligation to notify a detained person of his or her entitlement to consult a lawyer, and to notify the lawyer, at the request of the detained person of his or her detention (section 5 of the Criminal Justice Act 1984). Regulation 11 of the Criminal Justice (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 provides that an arrested person shall have reasonable access to a lawyer of his or her choice and be able to communicate with him privately. Such consultations may take place in the sight of but out of hearing of a member of the Garda Síochána.
53. Garda interviews with detained persons are required by statute to be recorded by electronic means subject to certain limited exceptions (Criminal Justice Act 1984 (Electronic recording of interviews) Regulations 1997). The audio-visual recording of interviews together with the detained person's entitlement to reasonable access to his or her lawyer safeguard the interests of the detained person.

#### **Issue 11**

54. The Prisons Bill 2006 was enacted on 31 March 2007.
55. The Prisons Act 2007 provides a legislative basis for the drafting of new prison rules and in that context the Prison Rules 2007 came into affect on 1 October 2007. The Prison Rules provide a modern regulatory framework for the governance of our prisons and reflect the provisions of the European Prison Rules and modern best practice in the

area. They constitute the first major revision of prison regulation in this State since 1947.

56. The Act also provides for the construction of major prison projects and one such project for the construction of a new prison in North County Dublin is currently progressing through the required legislative phases with a view to construction commencing later this year and being completed in 2011/12 approximately.
57. In the last 12 years the Government and the Irish Prison Service have provided in the region of 1,200 additional prison spaces.
58. The Irish Prison Service is committed to providing safe and secure custody to all offenders committed to its care and regularly approves transfers out of affected prisons to other locations in order to prevent unacceptable occupancy levels. The Irish Prison Service has no control over the number of people committed to prison and must take everyone committed by the Courts. The total number of prisoners in custody on 9 May 2008 was 3,542 compared with a bed capacity of 3,597. This represents an occupancy level of 98%. The prison system is, of course, subject to peaks and troughs and numbers can be particularly high when the courts are at their busiest.
59. Approximately 75% of prisoners in custody now have 24-hour access to in-cell sanitation, thanks to substantial investment in the prison estate in recent years. The state recognises the necessity to further modernise and expand the prison estate and that is why the Government has embarked on an ambitious prison-building programme, which will result in the replacement of nearly 40% of the entire prison estate and the ending of 'slopping out'. In this context, the following developments have taken place or are planned in the near future:
  - Work has been completed on the provision of a new purpose-built 44-bed accommodation unit in Shelton Abbey.
  - The provision of a new 60-bed accommodation block has been completed in Loughan House.
  - The new C Block in Portlaoise Prison will provide 138 spaces. It is expected that these cells will be available in 2008.
  - The new remand wing in Castlerea Prison will provide an extra 64 spaces. It is expected that this additional capacity will be available in mid 2008.
  - A new wing under construction in Wheatfield Prison will increase capacity by 144 spaces. It is expected that these spaces will be available in 2009.
60. In the longer term the Irish Prison Service is constructing major new prison complexes in North County Dublin and Munster, anticipated to provide 1400 and 440 additional spaces, respectively. The new facilities will offer significant improvements in the areas of work-training, education and medical services as well as providing in-cell sanitation facilities in predominantly single cell accommodation.

61. In Ireland there are a number of alternative sanctions to detention. A list is contained in Annex C.

**Issue 12**

62. Aside from legislative developments, other strategies have been put in place to assist the process of dealing with this reprehensible form of criminal activity.
63. The Anti-Human Trafficking Unit has recently been established in the Department of Justice, Equality and Law Reform. The Unit will work to ensure that the State response to trafficking in human beings is coordinated, comprehensive and holistic. A key element of this strategy will be the development of a National Action Plan to Prevent and Tackle Trafficking in Human Beings to be approved by the High Level Group for submission to the Minister. The Plan will have a strong focus on preventing trafficking becoming a major issue in Ireland. It is being developed under four main headings: Protection of Victims, Child Trafficking, Prevention and awareness raising and Prosecution of Traffickers. The objective is to have the plan drafted and ready for submission to the Minister by the end of 2008 with a view to publication when approved by the Minister and Government as soon as possible thereafter.
64. An Interdepartmental High Level Group has been established to recommend the most appropriate and effective responses to trafficking in human beings to the Minister. The Group comprises of representatives from various Government Departments. The group had its first meeting in March 2008 and it was agreed that the best way to proceed would be to engage with NGOs and representatives of the High Level Group in the manner of roundtable discussions, to be held on a quarterly basis initially. The first roundtable discussion was held on 14 May, 2008. In addition, 5 interdisciplinary Working Groups are being established to progress matters and, in turn, report to the High Level Group. They will deal with: Child Trafficking, Labour Exploitation Issues, Development of a National Referral Mechanism, Awareness Raising and Training and Sexual Exploitation issues.
65. All of these developments will ensure that the State will have the necessary mechanisms in place to deal with victims of human trafficking if and when they are encountered.
66. Section 10 of the Criminal Law (Human Trafficking) Act 2008 gives the judge the power to exclude persons from court proceedings, other than officers of the Court and persons directly concerned in the proceedings, to prevent publicity in circumstances where publicity surrounding a case might place the alleged victims of trafficking and their families at risk. Section 11 guarantees the anonymity of alleged victims unless waived by the judge. Section 12 amends section 12 of the Criminal Evidence Act 1992 to make it possible, for instance, for an alleged victim to give evidence through a live video link from either within the State or abroad.

67. Section 124 of the Immigration, Residence and Protection Bill 2008 provides for a period of recovery and reflection of 45 days in the State for alleged victims of trafficking and also, in circumstances where the person trafficked wishes to assist the Garda in any investigation or prosecution in relation to the alleged trafficking, a further six months period of residence, renewable, to enable him or her to do so.
68. An administrative framework will be introduced to provide for a period of recovery and reflection in Ireland prior to the enactment of the provisions of the Immigration, Residency and Protection Bill.

### **Issue 13**

69. Resources allocated to the Gardaí and the Courts have increased substantially in recent years, in line with an increase of approximately 50% across the Justice and Equality sector generally since 2003.
70. Notwithstanding the increase in funding, however, and bearing in mind the many demands on these services, the Irish authorities remain satisfied that the maximum period provided for is necessitated by practical resource and operational considerations.
71. Ireland currently does not have any specifically dedicated facilities for detaining such persons. Persons held on immigration related matters (whether asylum seekers or others) are, as far as practicable, detained in institutions away from convicted prisoners where the regime is not of a high security nature. Restrictions are kept to a minimum, consistent with order and control. Our prisons are governed by the statutory obligations laid down in the provisions of the Prison Rules 2007 which reflect the European Prison Rules and modern best practice internationally.

### **Imprisonment for Failure to fulfil a Contractual Obligation (Article 11)**

### **Issue 14**

72. Ireland does not have legislation providing for criminal sanctions or imprisonment for failure to fulfil a contractual obligation. Imprisonment for non-payment of debt was abolished in Ireland by the Debtors (Ireland) Act 1872. However, refusal to fulfil a contractual obligation or pay a contractual debt may amount to civil contempt of court, for which imprisonment may be imposed.
73. Contract law is a civil matter and the primary remedies available to a complainant, through the Courts, would be enforced performance of the contract or damages. Where a person refuses to obey a court order relating to providing a remedy for contractual default to another person/organisation, imprisonment may be one of a number of remedies ultimately for non-compliance. The imprisonment of such defaulters is very much a last resort. The person will, generally, have been given every opportunity to fulfil the contract or to discharge the debt.

74. The number of persons in custody in Ireland for non-payment of debt on 23 May, 2008 was 8 out of a total prison population of 3,574 which represents 0.22% of the prison population.
75. The Law Reform Commission in its Report on Contempt in 1994 considered that the case for abolition of the sanction (of imprisonment) had not been established in regard to civil contempt. The Commission felt that the powers of the court in this regard were coercive more than punitive. It is an appropriate remedy only where the desired result cannot be achieved by other means and the defendant's active cooperation is a vital ingredient.
76. There are no proposals in the current Government Legislative Programme to reform the law in regard to civil contempt in how it might be applied to default of contractual obligations or failure to pay a civil debt.
77. A person can be committed to prison for civil contempt for failure to comply with an order of the Court to discharge a debt by instalments. Instalment orders involve a statutory procedure to require the examination of a debtor's means by a court which will then consider fixing a periodic instalment to be paid to discharge the debt taking into account the income and outgoings of the person concerned. If the person against whom the order is made fails to meet periodic payments an application may be made for arrest and committal to prison but this requires a further hearing by the judge under Section 18 of the Enforcement of Court Orders Act 1926, as amended by Section 6 of the Enforcement of Court Orders Act 1940. The judge may not order an arrest and imprisonment unless satisfied that the failure to pay was due to wilful refusal or culpable neglect. The judge may treat the hearing for imprisonment as an application to vary the instalment order and instead of ordering imprisonment may adjust the payments under the instalment order to meet the debtors changed circumstances.
78. It should not be presumed that all persons failing to meet their debts do so because of poor financial circumstances. Imprisonment is only used in cases where the Courts are satisfied that a person has the ability to discharge a debt, but has not done so. In many cases, when a person committed for failure to pay a debt or fine is faced with the reality of imprisonment, they do, in fact, make payment.

#### **Expulsion of Aliens and the right to Fair Trial (Articles 13, 14)**

#### **Issue 15**

79. Following the General election in May 2007, the Immigration, Residence and Protection Bill 2007 was not restored to the business of the Irish Parliament. In January 2008 a revised Immigration, Residence and Protection Bill 2008, incorporating much of the substance of the 2007 Bill, was published. That Bill is currently before the Irish Parliament. In this regard, it should be noted that the provisions below may be subject to further amendment arising from the legislative process before Parliament.

80. Section 4 of the Bill states that all foreign nationals present in Ireland must be here lawfully in accordance with a permission given, or deemed to be given, to them. A foreign national may become unlawfully present in circumstances where (a) the permission given to them has expired, has not been renewed, or has been revoked or (b) they entered Ireland in such a way as to avoid the immigration process, thus never acquiring permission to be in Ireland. A foreign national who lawfully enters Ireland will be aware of the expiration date of any entry or residence permission given to him or her, or will otherwise receive notice of any proposed non-renewal or revocation of a permission.
81. In circumstances where a foreign national is lawfully resident in Ireland and it is proposed to interfere with that lawful residence by the non-renewal or revocation of a permission processes are in place which allow the foreign national to make representation. Sections 39 to 45 outline processes for non-renewal, or, as the case may be, revocation of residence permission. These sections also set out the circumstances in which a review of a decision not to renew can be sought or a representation can be made against a proposal to revoke permission. For example, Section 45 provides that in cases where the Minister proposes to revoke residence permission, the person affected has 15 days to make representations as to why this should not be done. It is only after the exhaustion of these processes that a person's presence in Ireland will become unlawful.
82. In accordance with Section 23 persons who apply for protection are allowed entry to Ireland for the purpose of examining their claim. All persons seeking protection will be granted permission to remain for so long as it takes to assess their claim and any appeals that might arise.
83. A person who is unlawfully in Ireland is under an obligation to remove themselves from Ireland. Failure to do so may result in him or her being removed. A person detained for this purpose may only be detained for as long as is necessary for the purpose of effecting removal and cannot be detained for more than 8 weeks. A person so detained would have available to him or her the constitutional remedy of a habeas corpus and also the right to challenge his or her removal by way of judicial review. In all cases it should be noted that Section 53 of the Bill contains an absolute prohibition on Refoulement, no person may be removed from Ireland if doing so would place them in danger.
84. Section 56 introduces an alternative to detention, allowing a foreign national to remain at liberty subject to conditions. Section 58 provides that persons under 18 will not normally be detained for purposes of removal.

### **Issue 16**

85. In January 2003 the Supreme Court ruled in the case of *D.L. and A.O. and others V's the Minister for Justice* [2003] 1 I.R.1, that the foreign national parent of an Irish born child did not have an automatic entitlement to remain in Ireland with the child. At that

time there was significant numbers of applications for residency in Ireland on foot of parentage of an Irish born child.

86. The Houses of the Oireachtas subsequently proposed an amendment to the Constitution which was approved by the people by way of referendum. The amendment inserted a new provision into the Constitution at Article 9.2 which provides as follows:

*"Notwithstanding any other provision of this Constitution, a person born in the island of Ireland, which includes its islands and seas, who does not have, at the time of the birth of that person, at least one parent who is an Irish citizen or entitled to be an Irish citizen is not entitled to Irish citizenship or nationality, unless provided for by law.*

*This section shall not apply to persons born before the date of the enactment of this section."*

87. The effect of this amendment was to qualify Article 2 of the Constitution, which provides for the entitlement to citizenship of every person born in Ireland.
88. The Irish Nationality and Citizenship Act 2004 provides for the necessary amendments to the Irish Nationality and Citizenship Acts 1956 to 2001 so as to give effect to the amendment to the Constitution.
89. In order to address the situation of the parents of a child born on the island of Ireland on or before the 31 December 2004 (when the Act came into force) an administrative arrangement was put in place in early 2005, which processed these applications for residency on a case –by- case basis. Of a total of 17,917 applications, 16,984 were granted permission to reside in Ireland.

### **Issue 17**

90. The need for the retention of the Special Criminal Court arises on two grounds. On the one part, there remains a credible paramilitary threat to public order and peace in Ireland from dissident "republican" organisations. This is confirmed on a consistent basis by the Garda Síochána and has also been confirmed repeatedly in the reports of the International Monitoring Committee established by the Irish and British Governments to monitor and assess paramilitary activity in Northern Ireland.
91. On the second part, the threat posed by organised crime provides further justification for the maintenance of the Special Criminal Court. There have been instances in criminal trials of the threat of intimidation of and interference with juries by criminal gangs and their members.
92. Under the Offences Against the State Act 1939, the Government may establish such additional number of special criminal courts as it thinks fit. It did so in December 2004, although no additional judges have been appointed to date. In circumstances where a threat exists which is directed against the State itself and has the possible effect of undermining the legitimacy of the rule of law, the Government considers it

appropriate that it should have at its disposal a mechanism to deal swiftly with such a threat in a manner that upholds the integrity of the administration of justice. The ability to establish additional special criminal courts is also important in ensuring the right of the individual before the law not to be faced with an unavoidably lengthy delay before coming to trial.

93. It is considered that the present circumstances warrant the retention of the Special Criminal Court. However, its operation is kept under continual review by the Government.

### **Issue 18**

94. Funding for Civil Legal Aid Scheme has been increased substantially in recent years with a view to keeping waiting times to a minimum (funding has increased from €18.388m in 2004 to €26.988m in 2008, an increase of 47%).
95. The scheme applies a means test which takes into account living costs so as to ensure that persons of modest means qualify for assistance under the scheme. A study has been commissioned to analyse actual eligibility levels of the civil legal aid scheme and the indications from this exercise are that a substantial proportion of the population qualifies for civil legal aid.

### **Freedom of Religion (Article 18)**

### **Issue 19**

96. This issue was considered by the All-Party Oireachtas Committee on the Constitution in its Fourth Report - *The Courts and the Judiciary* (published 1999). The majority view of the Committee was that a judge should have a choice between a religious and non-religious declaration. The Committee stated that “because the majority of people in Ireland hold religious beliefs, it would not be desirable to delete the references to God from the declaration”. Accordingly, the Committee recommended a choice of declaration. A Referendum would be required to amend the Constitutional provision in question and no such measure has been actively considered to date. Notwithstanding this, the issue remains the subject of review.

### **Rights of Minorities (Articles 26, 27)**

### **Issue 20**

97. The Report of the High Level Group on Traveller Issues was approved by the Government in March 2006. Important recommendations which have been followed through at Departmental level include the publication of the *Report and Recommendations for a Traveller Education Strategy*, in November 2006, and the commencement of work on an All-Ireland Traveller Health Study in 2008.

98. A key aspect of the approach recommended by the High Level Group is developing effective coordination of actions among agencies operating under the 34 County and City Development Boards (CDB), coupled with effective consultation with Travellers and their representatives. Since 2006, Traveller Interagency Groups have been established under each CDB to coordinate the efforts of state agencies and other stakeholders. This approach has:
- Established a dedicated local coordination mechanism
  - Established a focus for developing best practices in service delivery
  - Established a more broad based forum to facilitate engagement with local Traveller representatives (previously accommodation was the primary focus)
  - Highlighted employment as an area where tangible progress can be made by public bodies
  - Shown that all stakeholders can play a significant role in improving outcomes locally.
99. The Department of Justice, Equality and Law Reform is monitoring progress and supporting the dissemination of good practices in implementing the interagency approach. It is clear that, while there are variations in the performance of the various Interagency Groups, this approach can add significant value to social inclusion measures for Travellers and lead to more productive working relationships between all stakeholders.
100. In addition to the High Level Group, which focussed particularly on the effective functioning of state agencies, a National Traveller Monitoring and Advisory Committee (NTMAC) was established in March 2007. This committee replaced the Traveller Monitoring Committee which reported on implementation of the 1995 Task Force Report. The NTMAC provides a broadly based and inclusive forum for dialogue between the relevant social partners, and its establishment followed on a commitment in the national partnership agreement *Towards 2016* to give concentrated attention to achieving greater progress for Travellers. The NTMAC, which includes four national Traveller organisations along with a number of prominent individual Traveller representatives, has a specific remit to advise on policy in relation to the Traveller Community. It is due to make its first advisory report in 2009. This will be an essential input to the ongoing process of improving and refining the effective delivery of supports and services to the Traveller Community.
101. Through the National Action Plan for Social Inclusion 2007-2016 and the Activation Programme for People of Working Age, the disadvantages and discriminations against members of the Traveller community are being addressed in a realistic way in conjunction with input and participation from the Traveller community.

## Health

102. Travellers' poor health status has long been a cause for concern. Significant investment has been made in Traveller Health Services with **€12 million** of development funding being allocated by the Department since 1997 in addition to ongoing funding, of over **€12 million**. Structures have been put in place to ensure the

effective delivery of services. Traveller Health units operate in each HSE area and work in partnership with local traveller organisations while at central policy level the Traveller Health Advisory Committee which comprises representatives of the Department, the HSE, Travellers and representatives of Traveller organisations advise the Minister on policy in relation to Traveller health.

### *All-Ireland Traveller Health Study*

103. Work began on the All-Ireland Traveller Health Study in July 2007. This study will investigate the health needs of all Travellers living on the island, North and South and is jointly funded by the Department of Health and Children and the Department of Health, Social Services and Public Safety (DHSSPS) in Northern Ireland. The Study will cost **€1.395 million** with additional fieldwork costs of **€0.3 million** being covered by the HSE and the DHSSPS. The study is expected to take 3 years to complete. The Study will include a census of the traveller population, examine the health status of Travellers, assess the impact of the health services currently being provided and identify the factors which influence mortality and health status. The Study will take 3 years to complete and will provide a framework for future policy development and practice in relation to Travellers.

### **Accommodation**

104. Ireland has ensured, through legislation, the active participation of Travellers in formulating and implementing policies for the provision of accommodation of Traveller families both at national level and locally in every local authority throughout the country. This participative and co-operative approach is set out in the Housing (Traveller Accommodation) Act of 1998. Under the Act, the National Traveller Accommodation Consultative Committee (NTACC) was established to advise the Minister/Department in relation to Traveller accommodation policy or on any related matter referred to it by the Minister.

105. The national committee is mirrored at local level by the Local Traveller Accommodation Consultative Committee (LTACC) and provides a forum for:

- Advice on the preparation and implementation of traveler accommodation programmes
- Advice on the management and maintenance of traveller accommodation, and
- To provide liaison between Travellers and the local authorities.

106. Traveller representative organisations are valued stakeholders and, and through their enthusiastic participation in national and local fora, have contributed significantly to the development and implementation of Traveller accommodation policy here.

107. Local authorities reported that on 30 November 2007, there were 8,099 Traveller families living in Ireland. This figure included 5,436 families living in accommodation provided by local authorities or with local authority assistance, and 594 families living on unauthorised sites. (Please refer to paragraph 611 of the Third Periodic Report for further information).

108. Further to information provided in paragraph 616 of the Third Periodic Report, it should be noted that €35 million was spent on Traveller-specific accommodation in 2007, and the budget for such accommodation has been increased to €40 million in 2008.

### **Participation in Political and Public Life**

109. Registration as Electors: Irish electoral law enables members of the Traveller Community to be registered as electors, even where they have a nomadic lifestyle.

110. Guidelines for Registration Authorities, issued by the Department of the Environment, Heritage and Local Government, who prepare and maintain the register of electors, recommend that as far as possible, the names of all members of the travelling community who are eligible to vote are included in the Register. While it can sometimes be difficult to ascertain the place of ordinary residence, registration authorities are advised that those members of the travelling community who regularly occupy the same site for considerable periods of the year should be registered and, in this regard should liaise with all other relevant bodies to ensure that as many eligible members of the Traveller Community as possible are included in the Register.

111. Right to stand as candidates: Under electoral law, every Irish citizen and every person ordinarily resident in Ireland, over 18 years, who is not subject to any of the disqualifications specified in law, is eligible for election to a local authority. To be eligible for election to the national parliament, a person must be 21 years of age.

*The selection of candidates to stand for election is a matter for each political party and the question of actively promoting such activity rests with them.*

112. In this regard it is worth noting the report of The Office for Democratic Institutions and Human Rights (ODIHR) which sent an Election Assessment Mission to Ireland to observe the electoral process, in the context of the General Election 2007. The ODIHR met with representatives of traveller organisations who had carried out election information and awareness activities prior to the Election. This included voter education initiatives, to target, in particular, the relatively high number of illiterate voters in their community and to encourage broader participation. Candidate forums were also organised to raise awareness of the issues most important to travellers.

113. ODIHR representatives were informed by the representatives of the Traveller Community that no Travellers ran as candidates in the 2007 General Election and no Travellers had ever been represented in the Dáil (House of Representatives) or in the Seanad. However, a member of the Traveller Community did run in the Seanad elections in 2007 and members of the Traveller Community are more active in local elections in Ireland and the current Mayor of Tuam is a Traveller. Representatives of the Traveller Community reported that they did not have any complaints about specific incidents of racist or intolerant discourse during the election campaign.

## **Education**

114. The Report and Recommendations for a Traveller Education Strategy was launched in 2006 and covers all aspects of Traveller Education from pre-school right through to further and higher education within a lifelong learning context. The Report contains many recommendations across the education spectrum for parents, pre-school, primary, post primary, further education, higher education and other areas.
115. Within the Department of Education and Science an Implementation Group was established to progress / implement recommendations of the Report.

### ***Integration and Inclusion***

116. The core principle of the report is one of inclusion with an emphasis on equality and diversity and the adoption of an intercultural approach. This is in line with the Government's recommendations in the National Action Plan Against Racism (NAPAR) (2005) which recommends that, inter alia, Ireland

- Develop a more inclusive and intercultural school practice and environment through the whole school planning process, admissions policies, codes of behaviour and whole school evaluation
- Accommodate cultural diversity within the curricula
- Enhance access and education service delivery to Travellers
- Strengthen the participation of key stakeholders in the development of an intercultural approach to education.

### ***Educational Need versus Traveller Identity***

117. The principle of "individual educational need" rather than "Traveller identity" will be used as the criterion to provide additional resources to all children, including Traveller children. The Report and Recommendations for a Traveller Education Strategy has outlined current provision and has made a number of recommendations. However, the findings of the Inspectorate report "Survey of Traveller Education Provision in Irish Schools" (2006) found that the majority of Traveller children in primary and post-primary school are not achieving at a level equal to their peers in the settled community. In view of this a cautious approach will be adopted on the implementation of some of the recommendations. The Resource Teacher for Travellers provision at primary level will be considered in the context of the review of the general allocation of resources for special needs which will take place in 2008.

### ***Key Features of successful implementation***

118. Integrated provision will be provided where Travellers participate on an equal basis with other service users, but recognising that, in some cases, positive affirmative action may also be needed as a short term measure to enable Travellers to gain the skills and competence to enable them to participate equally in mainstream education, training or employment. A phased transition from segregated provision to integrated

provision will be managed sensitively incorporating best practice and taking account of the needs of students, staff and parents.

### *Next Steps*

119. Education is a vital element in supporting greater Traveller participation and empowerment in our society.
120. The link between education, training and enterprise is perhaps the most vital in helping to increase the range of life choices that are available to Travellers. As noted above, the key to success will be improvements in progression rates for Travellers to the end of Junior Cycle, on to Senior Cycle and from Senior Travelling Training Centres (STTCs) into further studies, training or employment. Progression into Higher Education also needs to improve. Therefore the implementation plan for Traveller education has to be viewed in the overall context of the Government's commitment to improving outcomes for Travellers through sustained interagency cooperation and positive engagement with Travellers and other stakeholders.
121. A lifelong learning approach is needed where young Travellers attend pre-school progressing through primary and post-primary education to the end of senior cycle with ongoing progression to further and or higher education. At the same time adult Travellers need to be encouraged and motivated to return to education and to progress up the National Framework of Qualifications. Through their successful involvement in education adult Travellers will gain the knowledge, skills and confidence to act as mentors to younger members of their community and to become involved not only in their community but also in the mainstream community and economy.
122. In summary, the aim of the Department of Education and Science for Traveller education is to enable Travellers to participate in an equal manner with other service users through integrated educational mainstream provision. In addition, the Department also recognises that for some adults seeking second chance education the need for short term positive affirmative actions to facilitate them in gaining the skills and competences to transfer on and progress into mainstream education, training or employment may be required.

### **Employment**

123. The Traveller Interagency Groups established in 2006, following the Report of the High Level Group, have produced a number of programmes to facilitate Traveller access to employment. The focus has been on providing direct work experience and employment opportunities within public bodies. This had involved outreach programmes to canvass the Traveller Community for job applicants, the development of appropriate training, (supported by FÁS the National Training Authority) and the provision of mentoring support during training and in the workplace. Examples of the successful initiatives to date include,
  - South Dublin County Council provided more than 40 positions (almost 30 are permanent full time positions). Also, summer work experience programmes for

Traveller students can lead to opportunities for more formal work placements on condition that second level education is completed.

- Clare County Council has worked with FÁS and other local agencies to promote Traveller enterprises and employment. This has led to at least 16 full time or part time positions for local Travellers, including five employed by the County Council. In addition, two Travellers are employed as Education Support Workers, based in a secondary school in Ennis to promote increased educational attainment.
- The Department of Justice, Equality and Law Reform has supported initiatives in Dublin City which have led to the registration of 15 companies, 3 sole traders, with further registrations planned. This has supported up to 100 full and part time jobs and relevant training/licence qualifications for Travellers.
- The Department of Finance initiated a Traveller Internship Programme in the Civil Service (2006 -2007) which provided work experience for 23 Travellers in Government Departments and Offices. Some of the participants have gone on to permanent employment or third level education.

124. In 2005, FÁS commenced the development of an initiative to expand employment prospects for Travellers. Four areas (Dublin, Cork, Clare and Galway) were selected and an interagency approach was put in place including a National Monitoring Group on Traveller Issues. Local Steering Groups were also established.

125. The outcome of the pilot resulted in 200 Travellers securing Employment, Training or establishing Enterprises in the four areas. An independent evaluation of the pilot recommended expansion into other regions, and, in 2007 additional funding was sourced to expand into Counties Roscommon, Kerry, Navan and Laois.

126. The focus in future will be to continue the roll out of the initiative countrywide and to mainstream those aspects which were successful in the pilot areas.

127. It should be noted that under the Special Initiative, the FÁS Supported Employment Programme, which was developed for People With Disabilities (PWD) is being expanded to include Travellers in two pilot areas Navan and Kerry. It will be useful to look at the results of these two pilots at the end of this year and how the programme can be adopted for Traveller clients. The range of supports include (a) needs assessment (b) job sourcing (c) in-work supports to ensure sustainability of employment and (d) aftercare and mentoring aimed at supporting career development and independence.

128. The re-established Monitoring Committee (NTMAC) is examining a range of policy issues including employment and training for Travellers. Both employers and unions are represented on the NTMAC as are the Traveller representative organisations and the public service. There is a clear commitment to engage with the issues and come up with workable practical long-term solutions.

129. There is scope for further development of similar initiatives. This will require the continued development of an Interagency Approach, and good working relationships with Traveller representatives. At national level the input of the National Traveller Monitoring and Advisory Committee will be of particular importance.

## **Issue 21**

130. The National Council for Curriculum and Assessment (NCCA) has provided each teacher in primary and post-primary with a copy of Guidelines on Intercultural Education. Opportunities to explore different cultures are promoted throughout these Guidelines. With the arrival of newcomer students the opportunities for teachers and their pupils to welcome and respect difference - be that language, culture or religion - has become a reality. Students can experience globalisation at a local level.

## **Language**

131. The presence of students whose mother tongue is not English has been a major new challenge for schools and for the Department of Education and Science in recent years. In 2007/2008 in the post-primary sector there were almost 21,000 students from 160 other nationalities enrolled. They make up almost 7% of the students population. Almost 10% of the primary population consists of newcomer students. Many of these newcomers do not speak English in the home.

132. Considerable resources have been allocated to the teaching of English to newcomer students. Schools with pupils for whom English is not their first language are entitled to language support. In 2001/2002 there were 262 English language support teachers. In 2007/2008 there are almost 2,000 such teachers in the primary and post-primary schools. The main emphasis has been to ensure that students are enabled to speak English as soon as possible and become integrated into an inclusive education system. Support materials have been made available to assist the mainstream teachers and also the English language support teachers.

133. The students in post primary can present for Leaving Certificate examination, which the students take at approximately 17-18 years, in Arabic, French, German, Hebrew Studies, Italian, Spanish, Japanese and Russian. In addition, there is provision for the so-called "non-curricular languages" in the Leaving Certificate examination. These are the official languages of EU Member States which do not appear as part of the normal school curriculum, but which students may opt to be examined in if they fulfil certain criteria, e.g. be from a member State of the EU and speak the language as a mother tongue. In 2007, these official exams were offered in Latvian, Lithuanian, Romanian, Modern Greek, Finnish, Polish, Estonian, Slovakian, Swedish, Czech, Bulgarian, Hungarian, Portuguese, Danish and Dutch.

134. The Department also funds mother-tongue classes organised by immigrant communities for their children on a limited basis. Immigrant groups can apply to the Department for funding towards the promotion and maintenance of their language and culture. Such support may take place on school premises, by local agreement, outside of school hours (usually at weekends). In addition, some international countries, such as Poland, also provide their young nationals with opportunities to maintain their mother tongue and culture in out of mainstream school settings.

135. The Department of Education and Science supports the promotion of mother tongue language and culture on a limited basis. Immigrant groups can apply to the Department for funding towards the promotion and maintenance of their language and culture. Such support may take place on school premises, by local agreement, outside of school hours (usually at weekends).

## **Religion**

136. Education legislation requires that the diversity of educational provision in the State is taken account of, and the right of parents to send their children to a school of their choice is respected.
137. Under Section 30 of the Education Act 1998, no student can be required to attend instruction in any subject which is contrary to the conscience of the parent of the student. The Rules for National Schools also provide, where the parents or guardians so wish, for the withdrawal of pupils from religious instruction.
138. Section 15 of the Education Act 1998 requires boards of management of schools to uphold and be accountable to the Patron for upholding the characteristic spirit of the school including the moral, religious, social, educational and spiritual values which inform the ethos of the school.
139. At primary level, the Department of Education and Science recognises the rights of the different church authorities to design curricula in religious education and to supervise their teaching and implementation. This right is enshrined in the Education Act 1998. Consequently, although religious education is part of the Curriculum for Primary Schools and schools are obliged to allocate 30 minutes per day for religious instruction, the content of the religion programme is determined by the Patron of the school.
140. The Revised Curriculum for Primary Schools espouses the importance of tolerance towards the practice, culture and life-style of a range of religious convictions and states explicitly that the beliefs and sensibilities of every child are to be respected.
141. In second level schools, a programme of religious instruction approved by the Patron may be offered, or alternatively, the school may use the curriculum in Religious Education which has been designed as an examinable subject by the National Council for Curriculum and Assessment. The NCCA syllabuses are concerned with understanding religion as a phenomenon in the world and are designed to be studied by students of all religious faiths and of none. At Junior Cycle, the NCCA syllabus in Religious Education was introduced in September 2000 for first examination in the Junior Certificate in 2003. At Senior Cycle, a new NCCA syllabus in Religious Education at Higher and Ordinary levels was introduced for first examination in 2005.

## **Culture**

142. To assist schools to cater for different cultures and diversity there are a number of resources available to schools. All teachers in primary and post primary were provided

with a copy of the National Council for Curriculum and Assessment's Guidelines on Intercultural Education. There are two versions of the document. One for primary and one for post-primary. This resource provides teachers with guidelines and resources on how to address culture from many aspects and across the curriculum. In December 2007 there was a Toolkit for Diversity in the Primary School launched. This was done in collaboration by Integrate Ireland Language and Training in Dublin and by the Southern Education and Library Board in Armagh, Northern Ireland. It again provides teachers in all 32 counties with opportunities and resources to cater for the diverse cultural needs of the students in their class and in their schools.

143. Children of minorities celebrate about their culture through a range of intercultural events organised at a local and national level which have been organised by members of ethnic-led organisations, local government, partnerships and non-governmental organisations. Funding streams have been made available by a range of governmental bodies, including the Office of the Minister for Integration, to support the organisation, planning and delivery of these activities.

**Dissemination of Information relating to the Covenant and the Optional Protocol**  
**(Article 2)**

**Issue 22**

144. The Government endeavours to make the text of all the international human rights instruments to which it is a party freely available. The text of all the main human rights conventions ratified by Ireland and the national reports submitted to the United Nations on the implementation of these conventions are available on the Department of Foreign Affairs website (<http://www.dfa.ie/uploads/documents/Political%20Division/iccprfinalpdf.pdf>). The Universal Declaration of Human Rights has been printed in both national languages and has been widely distributed.
145. The reports submitted by Ireland under the International Covenant on Civil and Political Rights are coordinated by a designated focal point, the Human Rights Unit of the Department of Foreign Affairs.
146. In the process of drafting of Ireland's human rights reports, all Government Departments are fully involved.
147. The initial drafting process for all of Ireland's human rights reports is coordinated by an inter-departmental committee.
148. The draft reports are circulated on a confidential basis to NGOs and other interested bodies including trade unions, academics, religious representatives and representatives of minority communities. The Irish Human Rights Commission and the Ombudsman for Children's office is also invited to consult on the reports. A full list of

those organisations and individual invited to consult on Ireland's human rights reports is listed in Appendix D.

149. The representatives are invited to submit comments in writing and attend a consultation meeting on the report. This provides an opportunity for NGOs to present or amplify their written submissions. This consultation serves numerous purposes. It is to ensure the report is an accurate reflection of the current status of the relevant human rights obligations; to pinpoint key concerns of the NGO sector and to afford them a meaningful opportunity to present to government officials their ideas on how Ireland could achieve a fuller implementation of the relevant convention and to explore the implementation of the convention in question from an alternative perspective. It also provides an opportunity to brief NGOs and other interested parties on the reporting and examination process itself, so that they may participate fully in the process.
150. Following this consultation process an annex to the report is prepared reflecting concerns raised by NGOs and the report is updated, where required, with information requested by NGOs and other groups. The report is then submitted to the Office of the High Commissioner for Human Rights and published on the website of the Department of Foreign Affairs ([www.dfa.ie](http://www.dfa.ie)).

## Annex A

### Issue 1

#### **High Court Decisions in which direct reference is made to the Covenant**

- *J. H. and Anor -v- Minister for Justice Equality and Law Reform* [2007] IEHC 277  
27/07/2007
- *Moyosola v Refugee Applications Commissioner and Ors* [2005] IEHC 218  
23/06/2005
- *Pasic v Minister for Justice Equality and Law Reform and Anor* [2005] IEHC 45  
23/02/2005
- *\*M (SO) v Refugee Applications Commissioner and others* [2005] IEHC 218
- *\*Dongo v Refugee Applications Commissioner and another* [2004] IEHC 366
- *\*Gritto and others v Minister for Justice, Equality and Law Reform* [2004] IEHC 119
- *\*Muresan v Minister for Justice, Equality and Law Reform and others* [2003] IEHC 655\_02
- *I v Minister for Justice, Equality and Law Reform and Anor* [2007] IEHC 165  
26/09/2007

## **Annex B**

### **Issue 3**

#### **Information on how the Ireland has addressed the recommendations contained in the Committee's previous concluding observations.**

##### **Paragraph 29(a) of the previous Concluding Observations**

1. In paragraph 29(a) of the previous concluding observations, the Committee recommended that Ireland withdraw the remaining reservations to the Covenant.
2. Information on this matter is provided under Issue 2.

##### **Paragraph 29(b) of the previous Concluding Observations**

3. In paragraph 29(b) of the previous concluding observations, the Committee recommended that Ireland reform constitutional provisions requiring judges to make a declaration with religious references (Article 18).
4. Information on this matter is provided under Issue 19.

##### **Paragraph 29(c) of the previous Concluding Observations**

5. In paragraph 29(c) of the previous concluding observations, the Committee recommended that Ireland provide for prompt review of detention on mental health grounds, i.e. within a few days (Article 9).
6. The Mental Health Act 2001 provides a modern framework within which people who have a mental disorder and require treatment or protection can be cared for and treated. It puts in place mechanisms by which the standards, care and treatment in mental health services can be monitored, inspected and regulated.
7. The Act provides for the establishment of Mental Health Tribunals under the auspices of the Mental Health Commission. A Mental Health Tribunal is an independent legal entity and its function is to revoke or affirm admission or renewal orders, thus ensuring the protection of rights of patients.
8. Each Tribunal comprises a legal member, a consultant psychiatrist and a lay person, and they conduct a review of each decision by a consultant psychiatrist to detain a patient on an involuntary basis or to extend the duration of such detention (the latter as a consequence of a renewal order at 3, 6 and 12 month periods). The review of a detention is independent, automatic and must be completed within 21 days of the detention/extension order being signed. The Tribunal arranges for an independent assessment of the detained patient by a consultant psychiatrist; patients have the right to

attend the tribunal hearing and be represented by a legal representative, who is appointed by the Mental Health Commission.

**Paragraph 29(d) of the previous Concluding Observations**

9. In paragraph 29(d) of the previous concluding observations, the Committee recommended that Ireland repeal or reform discriminatory aspects of legislation requiring the registration of alien husbands of Irish women citizens, which is not required of alien wives of Irish male citizens (Articles 3 and 26).
10. In paragraph 119 of Ireland's Third Periodic Report, it was noted that under the Immigration Act 2004, this situation no longer pertains.

**Paragraph 29(e) of the previous Concluding Observations**

11. In paragraph 29(e) of the previous concluding observations, the Committee recommended that Ireland ensure the full and equal enjoyment of Covenant rights by persons with disabilities, without discrimination, in accordance with Article 26.

***Office for Disability and Mental Health***

12. In January 2008, the Government announced the establishment of the Office for Disability and Mental Health to support the Minister for Disability and Mental Health in exercising his responsibilities across four Government Departments: Health and Children; Education and Science; Enterprise, Trade and Employment; and Justice, Equality and Law Reform.
13. The new Office brings together responsibility for a range of different policy areas and State services which directly impact on the lives of people with a disability and people with mental health issues. The Office will aim to bring about improvements in the manner in which services respond to the needs of people with disabilities and mental health issues.
14. Very substantial progress has been made in recent years in the areas of disability and mental health, but much remains to be done. In particular, there is a need to improve co-ordination and communication across different Government Departments and agencies in their delivery of services to this client group. This will be the main focus for the new Office in the coming months.

***National Disability Strategy***

15. The National Disability Strategy supports and reinforces the equal participation in society of people with disabilities and comprises five elements:
  - Disability Act 2005
  - Education for Persons with Special Educational Needs Act 2004;
  - Sectoral Plans published in 2006 by six Government Departments;
  - Citizen's Information Act 2007

- A Multi-Annual Investment Programme for disability support services of €900m for the period 2006-2009.

### *Health Disability Sectoral Plan*

16. The Health Disability Sectoral Plan sets out the actions which the Department of Health and Children, the Health Service Executive and 27 statutory bodies will take to meet their obligations under the Disability Act 2005. It represents a commitment at all levels of the health service to access and equity of service for people with disabilities.
17. The development of the Health Disability Sectoral Plan has provided an important opportunity to ensure that the needs of people with disabilities are considered in all health policy planning and service delivery processes.
18. The Health Sectoral Plan is the first step in a complex process to establish a baseline for access to health services and for service delivery.

### *Part 2 of the Disability Act 2005 – Independent Assessment of Need*

19. Part 2 of the Disability Act 2005 provides people with disabilities with an entitlement to:
  - An independent assessment of health and education needs;
  - A statement of the services (Service Statement) which it is proposed to provide;
  - Pursue a complaint through the Health Service Executive (HSE) complaints process if necessary;
  - Make an appeal to the independent Disability Appeals Officer.
20. Part 2 of the Disability Act 2005 commenced for children aged under 5 years with effect from 1 June 2007. This prioritisation reflects the importance of intervention early in life, which can have a significant impact on the disabling effects of a condition or impairment.
21. The **independent assessment of need** is initially undertaken without regard to cost or capacity constraints. This report will state the nature, if any, of the disability, the health and educational requirements arising, and a statement of the requisite services considered appropriate. It must be stressed that this process is conducted without regard to the cost of or capacity to provide any of the services identified.
22. The next phase of the process involves the preparation of a Service Statement particular to the individual, following the independent assessment of need process. This is prepared by a Liaison Officer (case manager). The Statement details the services to be provided and a timeframe for their delivery. The crucial difference here is that this report must take cognisance of resource availability, as well as eligibility considerations and the practicality of providing service(s).
23. Part 2 of the Act will be commenced in respect of children aged 5-18 in tandem with the implementation of the Education for Persons with Special Educational Needs (EPSEN) Act 2004. The Department of Education and Science has informed the Department that it

is envisaged that all sections of the EPSEN Act will be implemented over a five year timeframe that commenced on 1 October 2005. The National Council for Special Education (NCSE) submitted its Implementation Report to the Minister for Education and Science in October 2006, which sets out its views and recommendations on a plan for the implementation of the EPSEN Act 2004.

24. Part 2 of the Disability Act will be extended to adults as soon as possible but no later than 2011.
25. A Cross Sectoral team comprising of the Department of Health and Children, Department of Education and Science, the HSE and the NCSE, was established and meets on a regular basis and continues to address issues arising in relation to the implementation of both Acts.
26. The Office of the Disability Appeals Officer has been established.
27. Significant work has taken place in the HSE including the creation of Assessment Officer and Liaison Officer (case managers) posts in each Local Health Office areas.
28. A system of complaints is also in place in the HSE to deal with complaints under the Act.
29. At the end of March 2008, 1,836 applications for assessment of need have been received and are being / have been processed by the HSE.

***Funding of Health Services for People with Disabilities***

30. **Multi-Annual Investment Programme 2006 – 2009:** The Government has prioritised investment in services for people with disabilities in recent years. Over €2.5 billion is spent annually by the health services on disability programmes (residential, day care, respite, assessment and rehabilitation services), mental health programmes, domiciliary care and respite care grants and other allowances.
31. While the need to enhance further capacity is a continuing challenge, it is important to acknowledge the very significant existing level of expenditure on health services for people with disabilities.
32. The National Disability Strategy provides for an Investment Programme of €900m capital and revenue funding for the period 2006 to 2009 to build capacity in priority areas of support services for people with disabilities. These include new residential, respite and day services and new community-based mental health facilities. This programme also provided for additional staff for each year of the multi-annual investment programme. These staff will build additional capacity in the system.
33. The multi-annual investment programme also provides for additional funding to enhance education services for people with a disability.
34. Additional funding for the health service in respect of the National Disability Strategy Multi-Annual Investment Programme was as follows

- 2006 – €75m
- 2007 – €75m
- 2008 – €50m

35. This funding has and will provide:

- New residential places, new respite places and new day place for people with an intellectual disability
- New residential places and extra hours of personal assistance/support for people with physical and sensory disabilities.
- Support the implementation of the Disability Act

36. It is also intended to transfer persons with intellectual disability/autism from psychiatric hospitals and other inappropriate placements.

## Annex C

### Issue 11

#### **Alternative Sanctions to Detention:**

1. Fines

A majority of offences are punishable by a fine unless 'fixed by law or unless there is a provision to the contrary'. Consideration of the offender's means and proportionality regarding the gravity of the offence are factors in deciding the amount of the fine.

2. Dismissal and Conditional Discharge

Under the amended Probation of Offenders Act 1907, a court may make two types of order. Firstly, an offender may be dismissed where he/she is charged and the charge is proved, but the nature of the offence or extenuating circumstances deem a dismissal to be the most appropriate response. The second type of order is to discharge the offender conditionally. An offender will enter into a recognisance to be of good behaviour for a period not exceeding three years.

3. Compensation Order

Where a charge is dismissed or conditionally discharged, a court may order an offender to pay damages for injury, compensation for loss and costs of the proceedings in acknowledgement of the harm caused by the offence.

4. Probation Order

When a recognisance contains conditions relating to the supervision of an offender, that order is referred to as a probation order. An offender may be made the subject of a probation order under the Probation of Offenders Act 1907 for a period of up to three years. The order may contain any conditions which the court considers necessary to prevent the repetition of the same offence or the commission of other offences.

*Deferment of Sentence/Adjourned Supervision:* Deferred sentencing/adjourned supervision is a common judicial practice. During the deferment the offender may be required to remain under the supervision of the Probation Service. A court may decide to defer sentencing for a period of time usually not exceeding one year to allow the offender address offending related issues.

5. Supervision Order

Persons convicted of certain offences under the Misuse of Drugs Act 1977 and 1984 may enter a recognisance to be supervised, undergo medical or other treatment or attend a course of education, instruction or training. The order is for a specified period, typically one year. The Drug Treatment Court, which originally operated on a pilot basis in the North inner city of Dublin, has been placed on a permanent footing and extended to the Dublin 7 area. The Court uses a multi-disciplinary approach and involves a range of Government Departments and agencies charged with dealing with various aspects of the problem of drug misuse. There are plans to extend the concept to the rest of the Dublin

Metropolitan District Court area on a phased basis and discussions with other agencies are ongoing in this regard.

6. Community Service Order

The Community Service Order (CSO) was introduced under the Criminal Justice (Community Service) Act 1983. It is intended as an alternative to custody for offenders aged 16 years and over, where in the opinion of the court the offence merits a custodial sentence. An offender is required to perform unpaid work for a specified number of hours – the minimum is 40 hours and the maximum 240 hours.

7. Suspended Sentence

Under the Criminal Justice Act, 2006 (Section 99), a court may suspend wholly or partly a sentence of imprisonment imposed, subject to the person entering into a recognisance. As with the probation order, the court may impose conditions as it considers appropriate. Where the sentence is part suspended, the person may be placed under the supervision of the Probation Service for the purpose of rehabilitation and protection of the public, or to undergo a course of treatment or programme approved by the court.

8. Sex Offender Supervision

Under Part 5 of the Sex Offenders Act, 2001, the court may, on sentencing a sex offender, include in that sentence a period of post release supervision by the Probation Service. Again, the court may impose conditions for securing that supervision.

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