



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### 111th session

#### Summary record of the 3078th meeting

Held at the Palais Wilson, Geneva, on Monday, 14 July 2014, at 3 p.m.

*Chairperson:* Sir Nigel Rodley

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*Fourth periodic report of Ireland*

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*The meeting was called to order at 3 p.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant**  
(continued)

*Fourth periodic report of Ireland (CCPR/C/IRL/4; CCPR/C/IRL/Q/4;  
CCPR/C/IRL/Q/4/Add.1 and HRI/CORE/IRL/2014)*

1. *At the invitation of the Chairperson, the members of the delegation of Ireland took places at the Committee table.*
2. **Ms. O'Brien** (Ireland) said that her country was proud to be a member of the Human Rights Council, actively participating in the universal periodic review process and having played an instrumental role in the United Nations treaty body strengthening process, notably by hosting the meeting which had resulted in the Dublin Statement of 2009.
3. **Ms. Fitzgerald** (Ireland) said that civil society consultations had been held in February and May 2012 and in June 2014 with a view to drafting the fourth periodic report and preparing for the present meeting. The Government was in the process of devising a series of measures to reform the functioning of the Garda Síochána Ombudsman Commission and to establish a Garda Síochána monitoring authority. The Irish Human Rights and Equality Commission bill was in the process of being enacted, following the adoption of several amendments designed to strengthen its financial and functional independence. The new body should be officially established in the autumn of 2014, in accordance with the Paris Principles.
4. The Gender Recognition bill, due for adoption by the end of the year, had been amended so that children aged 16 or 17 years as well as adults could, under certain conditions apply for gender recognition. The constitutional and legislative framework governing the right to abortion sought to strike a balance between the right to life of the unborn child and the rights of the mother, which reflected the nuances in national public opinion. The Protection of Life during Pregnancy Act of 2013 provided for abortion in cases of real and substantial risk to the life of the mother which could only be avoided by a termination of the pregnancy. Its provisions were in keeping with article 40.3.3 of the Constitution and the judgements of the Supreme Court and the European Court of Human Rights. A guidance document would shortly be published in order to assist health professionals with the implementation of the Act and to clarify the procedures set forth therein. The Government had established an ex gratia reparations scheme for survivors of symphysiotomy, in an effort to spare them the stress of legal proceedings. Victims would, however, continue to receive a range of social and medical benefits from the State. As for combating discrimination, a bill designed to strike a better balance between freedom of religion and the right to non-discrimination, particularly for the lesbian, gay, bisexual and transgender (LGBT) community, was to be adopted by the end of 2014, in direct response to the criticisms of article 37 of the Employment Equality Act of 1998 which allowed religious institutions to discriminate during the recruitment process. As planned, the Equality Tribunal and other bodies responsible for employment issues would soon merge into one agency, the Workplace Relations Service, which would subsequently take charge of complaints under the Equal Status Acts. That structural reform would not affect the exercise of the rights contained in the Acts. The Government had also decided to prepare a national plan for the implementation of the United Nations Guiding Principles on Business and Human Rights (A/HRC/17/31). As for gender equality, a task force had been established within the Department of Justice and Equality for the purpose of proposing amendments to article 41.2 of the Constitution regarding the role of women in the home. The task force was expected to report back to the Government by 31 October 2014 and a referendum would be held shortly thereafter. Legislative measures had been taken in 2010 and 2011 in order to ensure that children and their parents who were victims of domestic

violence received equal protection, whether the spouses were of the same or opposite sex, married or unmarried, or whether in a registered civil partnership or not. Guidelines concerning foreign victims of domestic violence whose immigration status was linked to that of their partner had also been published. In regard to the case of the Magdalen Laundries, the Government had accepted the findings of the McAleese report and the Taoiseac (Prime Minister) had apologized before Dáil Éireann (Lower House of Parliament) in February 2013. An ex gratia reparations scheme had been established and the Office of the Ombudsman would be responsible for handling appeals, in line with the recommendation of Mr. Justice John Quirke.

5. A bill designed to ensure, to the greatest extent possible, that no person was committed to prison for non-payment of fines or debts should be enacted in 2014. It notably provided for the use of attachment of earnings or community service orders. As for asylum, the Government remained committed to establishing a single application procedure in the area of international protection so as to simplify considerably the current system and reduce the length of time spent in “direct provision” centres. Since March 2014, the Department of Justice and Equality had been conducting an interdepartmental review of the national migrant integration strategy, which should be completed by 2015. In the particular case of the Roma community, the Government had accepted the findings of the report of the Ombudsman for Children concerning the case of two Roma children taken from their families and would take the necessary follow-up measures. The report made no mention of institutionalized ethnic profiling within the Irish police.

6. **The Chairperson** invited those members of the Committee who wished to do so to put questions to the delegation.

7. **Mr. Shany** welcomed the dialogue between the Government and civil society. Noting that, unlike the European Convention on Human Rights, the Covenant had not been incorporated in Irish domestic law and that its implementation fell outside the mandate of the new Human Rights and Equality Commission, he wished to know how consistent the current legislative framework was with article 2 of the Covenant and whether steps had been taken to implement the Committee’s recommendations contained in paragraph 6 of its previous concluding observations (CCPR/C/IRL/CO/3). He would also like the delegation to provide examples of cases in which the provisions of the Covenant had been invoked and had actually made a difference to the judgements handed down. He questioned the adequacy of the budget allocated to the new Human Rights and Equality Commission and the fact that it had been determined by the Department of Justice and Equality, which seemed to negate the principle of financial independence. Would the new institution responsible for both equality and employment issues be able to handle cases relating to equality issues without undue delay, and did its personnel have the necessary expertise in international human rights law? Given that the State party no longer had an independent body to combat racism and poverty, it would be interesting to know which institutions would henceforth be responsible for such matters, the extent of their independence and whether the Government had considered adopting a national action plan against racism. He also wished to know whether the Irish corporations’ overseas conduct which could result in violations of the Covenant were monitored to ensure compliance with the terms of export licences, whether civil society could submit information to the authorities on the matter and whether oversight mechanisms also monitored the provision of services outside the State party’s territory. He asked the delegation to provide details of the proposed practical implementation of the United Nations Guiding Principles on Business and Human Rights and to comment on whether allegations of the complicity of Irish construction companies involved in preparations for the 2022 World Cup in Qatar in alleged human rights violations were being investigated.

8. Concerning the Protection of Life during Pregnancy Act of 2013, the delegation could perhaps provide further information on measures taken to evaluate the danger to the mother, particularly in regard to the numerous examinations required to establish a risk of suicide, and provide further clarification of the concept of “real and substantial risk”. He also wished to know whether there had been any prosecutions under article 22 of the Act. He could see no impediment to clearer policy guidance for public prosecutors in that regard. He asked the delegation to comment on allegations that the Act created inequality between women who had the means to travel abroad to undergo an abortion and those who did not. Lastly, he wished to know what measures the Government intended to take on behalf of women who had undergone symphysiotomy and whether there were plans to open an inquiry into the practice.

9. **Ms. Chanet**, noting with satisfaction the State party’s withdrawal of some of its reservations to the Covenant, urged the Government to take the necessary steps to ensure that minors were separated from adults and accused persons were segregated from convicted persons in places of detention, so that it would be in a position to also withdraw its reservation to article 10, paragraph 2. Recalling that the interpretation of article 20, paragraph 1, prohibiting propaganda for war, proposed in the Committee’s general comment No. 34, was not rigid, there was nothing to stop the State party from withdrawing its reservation to that provision of the Covenant. Although it had not disputed the findings of the report of the McAleese Committee, which had been responsible for establishing the facts of State involvement in the case of the Magdalen Laundries, the Government had not accepted liability for the ill-treatment inflicted on the women who had worked in such institutions over the decades but had merely offered a public apology and established a scheme of payments and benefits on an *ex gratia* basis. The delegation might explain why the Government had refused to conduct an inquiry into the acts committed in those institutions. In regard to the new Fines (Payment and Recovery) bill due for adoption in 2014, it would be interesting to know why the bill, instead of completely prohibiting imprisonment for non-payment of debts pursuant to article 11 of the Covenant, merely sought to ensure, to “the greatest extent possible”, that persons unable to pay their debts were not sent to prison. In the absence of a clear definition of terrorist acts in Irish legislation, it would be useful to know what acts had been the subject of the nine convictions mentioned in the State party’s written replies to the list of issues, whether “subversive prisoners in the custody of the State” could be likened to terrorists, and whether the jurisdiction of the Special Criminal Court, responsible for prosecuting terrorism cases, was more concerned with acts of organized crime than terrorism.

10. **Mr. Iwasawa** invited the delegation to comment on the fact that, out of over 30,000 complaints submitted to the Garda Síochána Ombudsman Commission, only 40 had resulted in prosecutions. He would also like to know the measures taken by the State party to address the lack of police cooperation, which had undermined effective inquiries by the Ombudsman Commission, the substance of the planned changes to the mandate and functioning of the Ombudsman Commission, and the time frame envisaged by the State party for establishing an independent authority to monitor police action. Given the scant number of criminal proceedings connected with child abuse cases, he would like clarification of the criteria used when deciding whether to initiate an inquiry and prosecute such cases. It would also be interesting to know how many persons had been prosecuted following the publication of the report of the Commission to Inquire into Child Abuse (the Ryan report), whether the final progress report on the Ryan Implementation Plan, due in the first quarter of 2014, had been compiled, and what outcomes the State party expected from the plan. In regard to human trafficking, he invited the delegation to comment on claims that the period of recovery and reflection intended for victims was very rarely applied in practice and that it was difficult for asylum-seeking alleged victims of trafficking to obtain

a temporary residence permit, as provided for under the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking.

11. **Mr. Vardzelashvili** asked whether the recent establishment of a task force to draft a proposed amendment to article 41.2 of the Constitution signalled the Government's intention to hold a referendum on the matter, and if so, whether such a referendum would focus solely on article 41.2 or on all of the issues considered by the Convention on the Constitution. It would also be interesting to know the outcome of the first triennial review of the implementation of the National Women's Strategy, due to have taken place at the beginning of 2012, particularly in regard to measures for reducing unemployment among women. The Convention on the Constitution had revealed that 55 per cent of mothers had a job, compared to 75 per cent of fathers, suggesting that more than a simple quota policy would be required in order to reduce gender inequality in terms of access to the labour market. It would therefore be useful to have details of the measures taken under the programme of positive actions for women's development, launched in 2012.

12. **Mr. Rodríguez-Rescia** requested information on the current status of the Assisted Decision Making (Capacity) bill before the Parliament. Although it represented an improvement on the current law regarding the rights of persons with disabilities, the bill nevertheless had some shortcomings in respect of articles 16 and 26 of the Covenant, in that it contained no provisions for the recognition everywhere of persons with disabilities before the law and their right to equal protection of the law. It would be interesting to hear the delegation's comments in that regard. As for public policy on domestic and gender-based violence, it would be useful to know whether there was a systematic process in place for collecting data on that form of violence and, if so, whether it included data disaggregated by the sex, age and ethnic origin of the victims and perpetrators. Statistics on the number of complaints, prosecutions and convictions relating to acts of violence against women, in particular migrant women, asylum seekers, refugees or women with disabilities would also be welcome. He invited the delegation to indicate whether the State party intended to amend the law so as to define domestic violence as a separate offence. Although there was no longer a requirement for unmarried couples to have lived together for a specific period before the partner who was a victim of violence could seek protection, other obstacles could impede access to protection, especially for foreign women whose immigration status was linked to that of their partners, as they must first apply for independent immigration status with the Irish Naturalization and Immigration Services. It would be interesting to know what steps had been taken to support women in those circumstances, such as the provision of free legal assistance so that they could prepare their cases. The State party had argued that article 28.3 of the Constitution was fully consistent with article 4 of the Covenant, however the two fundamental conditions that must be met pursuant to the latter for a state of emergency to be declared, namely that the situation must amount to a public emergency which threatened the life of the nation, and that the State party must have officially proclaimed a state of emergency, were not set forth in article 28.3 of the Constitution. It would therefore be interesting to hear the delegation's comments, specifically bearing in mind the Committee's general comment No. 29.

13. **The Chairperson** suggested briefly suspending the meeting to give the delegation time to prepare its replies to Committee members' questions.

*The meeting was suspended at 4.30 p.m. and resumed at 4.55 p.m.*

14. **Mr. Barrett** (Ireland) said that no follow-up had yet been given to the proposal to provide the Committee with a detailed account of how each Covenant right is protected by legislative or constitutional provisions, but there were plans to do so as soon as possible. The Law Reform Commission had started to consider how to incorporate international obligations into domestic law in 2013. Given the magnitude and complexity of the corpus of such obligations, that task would take time. The dualist legal system in Ireland in no way

impeded the observance and implementation of the rights set forth in the Covenant. Considerable progress had been made in terms of the courts' awareness and consideration of the Covenant obligations, notably owing to the Irish Human Rights Commission, which, by submitting *amicus curiae* briefs and calling judges' attention to the obligations under international instruments, had contributed to the gradual integration of those obligations into judges' practice. Information on the two cases in which the provisions of the Covenant had been cited could be forwarded to the Committee at a later date.

15. **Mr. White** (Ireland) said that, notwithstanding the paragraphs of the Committee's general comment No. 34 mentioned by Ms. Chanet, his country did not foresee withdrawing its reservation to article 20, paragraph 1, at the present time since, although the act of publicly justifying, denying or trivializing genocide, war crimes and crimes against humanity was not a separate offence, any act likely to disturb the peace or pose a risk to public order could be prosecuted as a criminal offence and all forms of incitement to hatred were punishable by the Prohibition of Incitement to Hatred Act.

16. **Mr. Ó Briain** (Ireland) said that the new Irish Human Rights and Equality Commission fully complied with the Paris Principles, both in respect of its mandate, structure and independence and the transparency of its membership selection process. In keeping with the principle of separation of powers, it could not exercise legislative or judicial functions, but its mandate was broad enough for it to be able to ensure compliance with legislation and promote new international human rights standards. As for its annual budget, a proportion of the €2 million accorded to it in 2014 had been granted for the purpose of constructing its new premises and would therefore not be continued. The amount of funds to be allocated to the Commission in 2015 had yet to be decided. The proposed merger of the Labour Court, Labour Relations Commission, Employee Appeals Tribunal, National Employment Rights Authority and Equality Tribunal into one agency was intended to simplify the institutional framework and thus facilitate the complaints procedure. The new institution would retain the expertise of Equality Tribunal personnel, who would be redeployed once the new institution became operational. The mandates of the National Consultative Committee on Racism and Interculturalism and the Combat Poverty Agency had been entrusted to the Office for the Promotion of Migrant Integration and the Department of Social Protection respectively, which conducted their activities within the framework of their own programmes.

17. **Ms. Fitzgerald** (Ireland) said that her Government had launched an ambitious programme of reforms in a concerted effort to restore public confidence in police monitoring measures, which should be completed in the coming months. A bill to extend the powers of the current monitoring body, the Garda Síochána Ombudsman Commission, had recently been drafted and the new oversight body should assume its functions by the end of 2014. New protocols had also been devised in order to strengthen cooperation and exchange of information between the police and the Ombudsman Commission.

18. **Mr. Wrafter** (Ireland) said that, in an attempt to prevent human rights abuses by Irish companies operating abroad, his Government had decided on 24 June 2014 to devise a national plan for the implementation of the United Nations Guiding Principles on Business and Human Rights, which would be prepared by the relevant ministries following consultations with representatives of the Irish Human Rights and Equality Commission, businesses, trade unions, civil society and universities. The Government shared the Committee's concerns regarding the situation facing foreign workers on building sites in Qatar. During a recent visit to the country, the Minister of Trade and Development had voiced his concerns to the Qatari authorities in respect of the working conditions of those workers and the human rights violations committed against them. Several Irish companies were currently operating in Qatar, but the delegation had received no information to

indicate that one or more of them had been involved in violations of workers' rights, as some sources alleged.

19. **Mr. Hickey** (Ireland) said that the task force responsible for drafting a proposed amendment to article 41.2 of the Constitution would submit its report by the end of October 2014, at the latest, following which the Government would hold a referendum on the matter. The results of the review of the National Women's Strategy and the conclusions of the subcommittee responsible for examining the issues surrounding the low representation of women in political life and the public and private sector would be published shortly. The funds received from the European Union PROGRESS Programme had been used to finance training programmes designed to prepare women for senior positions in the public and private sector.

20. **Ms. Fitzgerald** (Ireland) said that her Government intended to increase women's representation in public bodies to 40 per cent. The results of the monitoring scheme for the implementation of the National Women's Strategy had shown that progress made varied widely from one sector to another. Targeted efforts would henceforth be deployed in areas that had failed to record a sufficient increase in women's representation.

21. **Mr. Ó Briain** (Ireland) said that the overall aim of the Assisted Decision Making (Capacity) bill was to guarantee the right to independent living of persons with disabilities. That area of law was constantly evolving: consultations had been held in spring 2014 in order to refine the bill and align it with the provisions of the Convention on the Rights of Persons with Disabilities and the European Convention on Human Rights. The draft amendments, which provided, in particular, for the inclusion of provisions on access to legal aid and the repeal of the Lunacy Regulations Act of 1871, were in the process of being drafted and the final version of the bill should be adopted before the end of 2014.

22. **Ms. Fitzgerald** (Ireland) said that the National Office for the Prevention of Domestic, Sexual and Gender-based Violence of the Department of Justice and Equality had put data collection at the centre of the National Strategy on Domestic, Sexual and Gender-based Violence. Considerable work remained to be done to evaluate the effectiveness of the services designed to prevent and combat such violence and support victims. As a result of the legislative amendments, persons subjected to violence by their partners could request a restraining order after only six months of cohabitation. Ireland intended to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and, in that context, would devise new legislation to combat domestic violence, taking into account best practices in that area. An independent Garda Síochána inspection body was in the process of preparing a report on police handling of cases of domestic and gender-based violence. Practices had improved significantly in that area, but much work remained to be done. As for the case of the Magdalen Laundries, the Government had accepted the findings of the McAleese report and had implemented the recommendations contained in the report of Mr. Justice John Quirke by establishing an ex gratia reparations scheme, which was currently being implemented. In June 2014, the authorities had received a total of 750 requests for compensation and had made 346 payments totalling €12.4 million. Furthermore, a bill ensuring access to medical services for women who had been placed in such institutions was being developed and should be adopted before the end of 2014. The Government also intended to establish an independent commission of inquiry to investigate the case of the mass grave containing the remains of several hundred children discovered in a mother and baby home and to review the situation in other religious institutions that took in young single mothers. Lastly, the recommendations of the Ryan report were being implemented and the monitoring report on the Ryan Implementation Plan had been compiled by a group composed of representatives of civil society and relevant ministries and should be submitted shortly.

23. **Mr. Ó Briain** (Ireland) reiterated, in regard to questions concerning derogations from article 4 of the Covenant, that article 28.3 of the Constitution did not exempt Ireland from its human rights obligations and that measures previously adopted under that article had been proportionate to the threat faced by the State. No measures taken at those times had led to discrimination based exclusively on race, colour, sex, language, religion or social origin and no derogations had been permitted from articles 6, 7, 8 (paras. 1 and 2), 11, 15, 16 and 18. Ireland had not violated any of the prohibitions enshrined in the Covenant; hence there was no reason to amend the Constitution in force.

24. **Ms. Jackson** (Ireland) said that domestic law had evolved gradually in respect of abortion and that a fair balance had been struck in the Protection of Life during Pregnancy Act of 2013 between the fundamental rights of the unborn child and those of the mother. The Act had been the result of extensive consultations with representatives of public bodies and NGOs and reflected the will of the people.

25. **Mr. O'Sullivan** (Ireland) explained that the paucity of persons benefiting from a period of recovery and reflection had been due to the small percentage of suspected victims of trafficking who required a residence permit. The granting of such a permit was not conditional on the victim's active cooperation with the police: humanitarian or other reasons could also be cited by the authorities in a concerted attempt to ensure that residence permits were granted to all victims of trafficking and domestic violence who needed them.

26. **Ms. Fitzgerald** (Ireland) said that the number of persons detained for non-payment of fines had decreased substantially between 2007 and 2013 and that the Fines (Payment and Recovery) bill due for adoption in 2014 would be examined in the light of the Committee's comments on the issue.

27. **Mr. Hickey** (Ireland) said that, for the reasons outlined in the written replies, his Government had considered it unnecessary to incorporate a definition of terrorism in criminal legislation and that the presence of "dissident" paramilitary groups in the country necessitated the continued existence of the Special Criminal Court. He noted, however, that the Supreme Court had ruled in a recent decision that in the event of the Director of Public Prosecutions entrusting a case to the Special Criminal Court rather than an ordinary court, his or her decision must be substantiated and was subject to appeal. Some offences related to organized crime were considered by the Special Criminal Court, as jurors in those types of cases were sometimes subjected to intimidation.

28. **The Chairperson** thanked the delegation and invited it to resume its replies to the questions raised by the Committee members at the next meeting.

*The meeting rose at 6 p.m.*