

Consideration of reports submitted by States parties under article 19 of the Convention

ADVANCED UNEDITED VERSION

Concluding observations of the Committee against Torture

Ireland

1. The Committee against Torture considered the initial report of Ireland (CAT/C/IRL/1), at its 1002nd and 1005th meetings (CAT/C/SR.1002 and 1005), held on 23 and 24 May 2011. At its 1016th meeting (CAT/C/SR.1016), held on 1 June 2011, it adopted the following concluding observations.

A Introduction

2. The Committee welcomes the submission of the initial report by the State party but regrets that it was submitted after a delay of eight years, which has prevented the Committee from monitoring the implementation of the Convention in the State party. The Committee also notes that the State party report generally followed the guidelines but that it lacked specific information on the implementation of the Convention.

3. The Committee notes with appreciation that a high-level delegation from the State party met with the Committee during its forty-sixth session, and also notes with appreciation the opportunity to engage in a constructive dialogue covering many areas under the Convention. The Committee also commends the State party for the detailed written replies that it provided during the consideration of the State party report.

B Positive aspects

4. The Committee welcomes the ratification by the State party of the following international and regional instruments:

- (a) International Covenant on Civil and Political Rights of 1966 on 8 December 1989;
- (b) International Convention on the Elimination of All Forms of Racial Discrimination of 1965 on 29 December 2000;
- (c) International Convention on the Rights of the Child of 1989 on 28 September 1992;
- (d) International Convention on the Elimination of All Forms of Discrimination against Women of 1979 on 23 December 1985;
- (e) The United Nations Convention on Transnational Organised Crime of 2000 on 17 June 2010;
- (f) The Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children of 2000 on 17 June 2010;

- (g) The Second Optional Protocol to the International Covenant of Civil and Political Rights (Abolition of the death penalty) of 1989 on 18 June 1993; and
 - (h) The Council of Europe Convention on Action against Trafficking in Human Beings of 2005 on 13 July 2010.
5. The Committee welcomes the enactment of the following legislation:
 - (a) The Criminal Law (Human Trafficking) Act of 2008; and
 - (b) The International Criminal Court Act of 2006;
 6. The Committee also welcomes the development of a National Action Plan to Prevent and Combat Trafficking of Human Beings, 2009-2012.
 7. The Committee also welcomes the development of the National Strategy on Domestic, Sexual and Gender-Based Violence 2010 to 2014.

C Principal subjects of concern and recommendations

Reduction of financial resources for human rights institutions

8. While welcoming the commitment by the State party to provide resources to human rights institutions, the Committee expresses concern at information received over the disproportionate budget cuts to various human rights institutions mandated to promote and monitor human rights such as the Irish Human Rights Commission (IHRC) in comparison to other public institutions. Furthermore, while noting the decision to move the IHRC from the Department of Community, Equality and Gaeltacht Affairs to the Department of Justice, the Committee regrets that the IHRC does not have direct accountability to Parliament and lacks financial autonomy. (article 2)

The Committee recommends that the State party should ensure that the current budget cuts to human rights institutions particularly the Irish Human Rights Commission do not result in the crippling of its activities and render its mandate ineffective. In this regard, the State party is encouraged to strengthen its efforts in ensuring that human rights institutions continue to effectively discharge their mandates. Furthermore, the Committee recommends that the State party should strengthen the independence of the IHRC by, inter alia, ensuring its direct accountability to Parliament and financial autonomy in line with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights adopted by General Assembly resolution 48/134 (Paris Principles).

Rendition flights

9. The Committee is concerned at the various reports of the State party's alleged cooperation in a "rendition programme", where "rendition flights" use the State party's airports and airspace. The Committee is also concerned at the inadequate response by the State party to investigate these allegations. (article 3)

The State party should provide further information on specific measures taken to investigate allegations of the State party's involvement in "rendition programmes" and the use of the State party's airports and airspace by flights involved in "extraordinary rendition". The State party should provide clarification on such measures and the outcome of the investigations, and take steps to ensure that such cases are prevented.

Refugees and international protection

10. While taking note that asylum applications falling under the Dublin II Regulation are subject to appeal before the Refugee Appeals Tribunal in the State party, the Committee is

concerned that the lodging of an appeal does not have suspensive effect on the impugned decisions. The Committee is also concerned that while the Immigration and Residence Protection Bill 2008 contains a prohibition on non-refoulement, the bill does not set out the procedure to be followed. Furthermore, the Committee takes note of reports indicating the increased drop in positive determinations for refugee status. (articles 3 and 14)

The Committee recommends that the State party should pursue efforts aimed at strengthening the protection of persons in need of international protection. In this regard, the State party should consider amending the draft Immigration, Residence and Protection bill in order to bring it into line with the requirements of the Convention in particular with regard to the rights of migrants to judicial review over administrative actions as also recommended by the Committee on the Elimination of Racial Discrimination (CERD/C/IRL/CO/3-4 paragraph 15). The Committee also recommends that the State party should consider amending its legislation so that the lodging of an appeal before the Refugee Appeals Tribunal has suspensive effect on the impugned decision. Furthermore, the Committee recommends that the State party should investigate the increased drop in positive determinations for refugee status to ensure that applications are processed following due process.

Prison conditions

11. The Committee notes the State party's efforts to alleviate overcrowding in prisons through, inter alia, the construction of new accommodation in existing prison facilities and the upgrading of some of these facilities and the adoption of alternative non-custodial measures to reduce the number of individuals who are being sent to prison, such as the adoption of the Fines Act of 2010. The Committee, however, remains deeply concerned at reports that overcrowding remains a serious problem. (articles 11 and 16)

The Committee recommends that the State party:

a) **Adopt specific timeframes for the construction of new prison facilities which comply with international standards. In this regard, the Committee requests the State party to inform it of any decisions taken with regard to the Thornton Hall prison project;**

b) **Adopt a policy focusing on the development of alternative, non-custodial sanctions including the enactment of the bill amending the Criminal Justice (Community Service) Act 1983, which provides that Judges will be required to consider community service as an alternative to custody in all cases where a custodial sentence of 12 months or less is appropriate; and**

c) **Expedite the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Degrading Treatment or Punishment, 2002 and the establishment of a National Preventive Mechanism.**

12. While noting the efforts by the State party to provide all cells with in-cell sanitation, the Committee is deeply concerned at the continuing practice of 'slopping out' in some of the prisons in the State party, which amounts to inhuman and degrading treatment. (articles 11 and 16)

The Committee recommends that the State party should strengthen its efforts to eliminate, without delay, the practice of 'slopping out', starting with instances where prisoners have to share cells. The Committee further recommends that until such a time as all cells possess in-cell sanitation, concerted action should be taken by the State party to ensure that all prisoners are allowed to be released from their cells to use toilet facilities at all times.

13. The Committee notes the clarification provided by the State party on the use of special observation cells. The Committee also notes with interest that, following a

recommendation by the Inspector of Prisons, the Prison Service is in the process of designating safety observation cells for medical reasons only, which will be covered by an amendment to the prison rules. (articles 11 and 16)

The Committee recommends that the State party should ensure that it follows the guidance given by the Inspector of Prisons in his report dated 7 April 2011 that appropriate use should be made of safety observation cells and close observation cells.

14. The Committee is concerned at reports that deficiencies have been identified in the standard of healthcare provided in a number of prisons in the State party. (articles 11 and 16)

The Committee recommends that the State party should improve health care in all prisons taking into account the guidance provided by the Inspector of Prisons as stated in his report dated 18 April 2011.

Inter-prisoner violence

15. The Committee notes the measures taken by the State party to address inter-prisoner violence. However, it remains concerned at the continued high rates of incidents in some of the prisons and at reports of allegations by prisoners from the Traveller community in Cork prison that they are consistently subjected to acts of intimidation by other prisoners. (articles 11 and 16)

The Committee recommends that the State party should intensify its efforts to tackle inter-prisoner violence through, inter alia:

(a) **Addressing the factors contributing to inter-prisoner violence such as the availability of drugs, the existence of feuding gangs, lack of purposeful activities, lack of space and poor material conditions;**

(b) **The provision of sufficient members of staff who also receive training on the management of inter-prisoner violence;**

(c) **Addressing the issue of intimidation of the Traveller community and investigating all allegations of such intimidation.**

The Committee also recommends that the State party provides statistical data so as to enable the Committee to evaluate the effectiveness of the State party's measures to tackle inter-prisoner violence.

Separation of remand prisoners

16. The Committee notes the efforts of the State party to keep sentenced and remand prisoners in separate accommodation areas in so far as possible. However, the Committee is concerned that there is no separation of persons on remand from sentenced prisoners. (articles 11 and 16)

The Committee recommends that the State party should take urgent measures to house remand prisoners separately from sentenced prisoners.

Detention of refugees and asylum seekers

17. The Committee is concerned at the placement of persons detained for immigration-related reasons in ordinary prison facilities together with convicted and remand prisoners. (articles 11 and 16)

The Committee recommends that the State party should take measures to ensure that all persons detained for immigration-related reasons are held in facilities that are appropriate to their status.

Complaint and investigation mechanisms

18. The Committee notes the information provided by the State party with regard to the investigation of complaints by prisoners against prison staff which occurred in the following prisons: Portlaoise on 30 June 2009, Mountjoy on 15 June 2009 and 12 January 2010, Cork 16 December 2009, and Midlands on 7 June 2009. The Committee notes with concern that in all these cases there have been no independent and effective investigations into the allegations of ill-treatment by prison staff. The Inspector of Prison in his report of 10 September 2010 entitled "Guidance on best practice for dealing with prisoners' complaints" concluded that there is no independent complaints and investigation body to investigate prisoners' complaints; that present procedures followed do not accord with best practice; and he recommended the establishment of an independent mechanism to receive and investigate complaints against prison staff. (articles 2, 12, 13 and 16)

The Committee recommends that the State party should:

(a) **Establish an independent and effective complaint and investigation mechanism to facilitate the submission of complaints by victims of torture and ill-treatment by prison staff and ensure that in practice complainants are protected against any intimidation or reprisals as a consequence of the complaints;**

(b) **Institute prompt, impartial and thorough investigations into all allegations of torture or ill-treatment by prison staff;**

(c) **Ensure that all officials that are allegedly involved in any violation of Convention are suspended from their duties during the conduct of the investigations; and**

(d) **Provide the Committee with information on the number of complaints made concerning allegations of torture and ill-treatment by prison staff, the number of investigations carried out, the number of prosecutions and convictions as well as the redress awarded to victims.**

19. The Committee welcomes the establishment of the Garda Síochána Ombudsman Commission (GSOC) in 2005 whose members cannot be serving members or former members of the Police Force (Garda Síochána). The GSOC is empowered to investigate complaints of torture and ill-treatment against members of the Police Force (Garda Síochána). However, the Committee regrets that the GSOC can also refer complaints to the Police (Garda) Commissioner, who can proceed with the investigations independently or under the supervision of the GSOC, except complaints concerning the death of or serious harm to a person in police custody. The Committee is also concerned at the information that the GSOC has submitted proposals for the amendment of the Garda Síochána Act 2005 in a number of areas including the power to allow the GSOC to refer back investigations to the Police Force (Garda Síochána), thereby allowing the police to investigate itself. (articles 2, 12, 13 and 16)

The Committee recommends that the State party should ensure by law that all allegations of torture and ill-treatment by the police are directly investigated by the Garda Síochána Ombudsman Commission and that sufficient funds are allocated to the Commission so as to enable it to carry out its duties promptly and impartially and to deal with the backlog of complaints and investigations which has accumulated. The Committee also requests the State party to provide it with statistical data on (a) the number of complaints of torture and ill-treatment filed against prison officers, the number of investigations instituted, and the number of prosecutions and convictions imposed; and (b) the number of cases that have been referred to the Police Force (Garda Síochána).

Follow-up to the Ryan report

20. The Committee notes the efforts made by the State party concerning the plan it had adopted in 2009 in order to implement the recommendations of the Report of the Commission to Inquire into Child Abuse since 1936 (CICA), known as the Ryan Report. However, the Committee is concerned that, according to the Statement by the Ombudsman for Children in March 2011, significant commitments under the plan have yet to be implemented. The Committee is also gravely concerned that despite the findings of the Ryan Report that ‘physical and emotional abuse and neglect were features of the institutions and that sexual abuse occurred in many of them, particularly boys’ institutions’, there has been no follow up by the State party. The Committee is also concerned that despite the extensive evidence gathered by the Commission, the State party has forwarded only eleven cases to prosecution out of which 8 were rejected. (articles 12, 13,14 and 16)

The Committee recommends that the State party should:

(a) **Indicate how it proposes to implement all the recommendations of the Commission to Inquire into Child Abuse (CICA) and indicate the timeframe for achieving them;**

(b) **Institute prompt, independent and thorough investigations into all cases of abuse as found by the report, and if appropriate, prosecute and punish perpetrators;**

(c) **Ensure that all victims of abuse obtain redress and have an enforceable right to compensation including the means for as full rehabilitation as possible.**

Magdalene Laundries

21. The Committee is gravely concerned at the failure by the State party to protect girls and women who were involuntarily confined between 1922 and 1996 in the Magdalene Laundries, by failing to regulate their operations and inspect them, where it is alleged that physical, emotional abuses and other ill-treatment were committed amounting to breaches of the Convention. The Committee is also expresses grave concern at the failure by the State party to institute prompt, independent and thorough investigation into the allegations of ill-treatment perpetrated on girls and women in the Magdalene Laundries. (articles 2, 12, 13, 14 and 16)

The Committee recommends that the State party should institute prompt, independent, and thorough investigations into all allegations of torture, and other cruel, inhuman or degrading treatment or punishment that were allegedly committed in the Magdalene Laundries, and, in appropriate cases, prosecute and punish the perpetrators with penalties commensurate with the gravity of the offences committed, and ensure that all victims obtain redress and have an enforceable right to compensation including the means for as full rehabilitation as possible.

Children in detention

22. The Committee takes note of the policy of the State party to detain children in Children Detention Schools under the supervision of the Irish Youth Justice Service. However, the Committee is gravely concerned that 16 and 17 year old males are still detained in St Patrick’s Institution, which is a medium security prison that is custodial rather than a care facility designed for children. The Committee is also concerned that despite its commitment to end the detention of young children in St Patrick’s Institution, the State party has not yet finalized its decision to proceed with the construction of the new National Children Detention Facilities. (articles 2, 11 and 16)

The Committee recommends that the State party should proceed, without any delay, with the construction of the new National Children Detention Facilities at Oberstown. In the meantime, the Committee recommends that the State party should take

appropriate measures to end the detention of children in St Patrick's institution and move them into appropriate facilities.

23. The Committee expresses deep concern that the Ombudsman for Children has no mandate to investigate allegations of acts in violation of the Convention at St Patrick's Institution, leaving children at this institution without access to any mechanism for lodging complaints. (articles 12 and 13)

The Committee recommends that the State party should review its legislation on the establishment of the Ombudsman for Children with a view to conferring on her the power to investigate complaints of torture and ill-treatment of children held at St Patrick's institution.

Corporal punishment

24. While taking note that corporal punishment is prohibited in schools and in the penal system, the Committee is gravely concerned that corporal punishment is lawful in the home under the common law right to use "reasonable and moderate chastisement" in disciplining children and also in certain alternative care settings. (articles 2 and 16)

The Committee recommends that the State party prohibits all corporal punishment of children in all settings and conduct public campaigns to educate parents and the general public about its harmful effects and promote positive non-violent forms of discipline as an alternative to corporal punishment.

Prohibition of female genital mutilation

25. The Committee notes the intention of the State party to restore to the parliament (Seanad) Order paper the Criminal Justice (Female Genital Mutilation) bill which criminalises female genital mutilation (FGM) and provides for related offences some of which confer on courts extra-territorial jurisdiction. However, the Committee regrets the lack of legislation prohibiting FGM even though data based on a 2006 census indicates that about 2, 585 women in the State party have undergone FGM. (articles 2 and 16)

The Committee recommends that the State party should:

(a) Expedite the restoration of the Criminal Justice (Female Genital Mutilation) bill to the new parliament (Seanad);

(b) Implement targeted programmes with a view to sensitise all segments of the population about the extreme harmful effects of FGM; and

(c) Explicitly define under the law that FGM amounts to torture.

Abortion

26. The Committee notes the concern expressed by the European Court for Human Rights (ECtHR) about the absence of an effective and accessible domestic procedure in the State party for establishing whether some pregnancies pose a real and substantial medical risk to the life of the mother [Case of A, B and C v. Ireland], which leads to uncertainty facing women and their medical doctors, who are also at risk of criminal investigation or punishment if their advice or treatment is deemed illegal. The Committee expresses concern at the lack of clarity cited by the ECtHR and the absence of a legal framework through which differences of opinion could be resolved. Noting the risk of criminal prosecution and imprisonment facing both the women concerned and their physicians, the Committee expresses concern that this may raise issues that constitute a breach of the Convention. The Committee appreciates the intention of the State party, as expressed during the dialogue with the Committee, to establish an expert group to address the ECtHR's ruling. The Committee is nonetheless concerned further that despite the already existing case law allowing for

abortion, no legislation is in place and that this leads to serious consequences in individual cases, especially affecting minors, migrant women, and the indigent. (articles 2 and 16)

The Committee urges the State party to clarify the scope of legal abortion through statutory law and provide for adequate procedures to challenge differing medical opinions as well as adequate services for carrying out abortions in the State party, so that its law and practice is in conformity with the Convention.

Violence against women including domestic violence

27. The Committee welcomes measures taken by the State party to prevent and alleviate gender-based violence, including the adoption of the National Strategy on Domestic Violence 2010-2014. However, the Committee is gravely concerned at reports on the continued high rates of domestic violence against women and at the cuts in funding in 2009 and 2010, for refuge and support services for victims of violence.

The Committee urges the State party to:

(a) Strengthen its efforts to prevent violence against women through, inter alia, the effective implementation of the National Strategy on Domestic Violence including the collection of relevant data;

(b) Enhance its support and funding of refuge and support services provided to victims of domestic violence;

(c) Institute prompt, impartial and thorough investigations into allegations of domestic violence, and where appropriate, prosecutions and convictions.

(d) Amend the Domestic Violence Act of 1996 so as to include clear criteria to grant safety and barring orders and extend eligibility for all parties who are or have been in an intimate relationship regardless of cohabitation in line with internationally recognised best practice, and

(e) Ensure that migrant women with dependent immigration status, who are experiencing domestic violence, should be afforded independent status under legislation.

Treatment of persons with mental disabilities

28. The Committee expresses concern at the fact that the definition of a voluntary patient is not sufficiently drawn to protect the right to liberty of a person who might be admitted to an approved mental health centre. The Committee further regrets the lack of clarity on the reclassification of mentally disabled persons from voluntary to involuntary. (articles 2 and 16)

The Committee recommends that the State party should review its Mental Health Act of 2001 in order to ensure that it complies with international standards. The Committee, therefore, recommends that the State party should report on the specific measures taken to bring its legislation in line with internationally accepted standards in its second periodic report.

Protection of separated and unaccompanied minors

29. While taking note of information provided by the State party regarding the procedure to protect separated and unaccompanied minors under the mandate of the Health Service Executive (HSE), the Committee is deeply concerned that between 2000 and 2010, a total of 509 children went missing and only 58 were accounted for. The Committee further regrets the lack of information from the State party on the measures taken to prevent this phenomenon and to protect these minors from other forms of exploitation. (articles 2 and 16).

The State party should take measures to protect separated and unaccompanied minors. The State party should, in this regard, provide data on specific measures taken to protect the plight of separated and unaccompanied minors.

Training of law enforcement personnel

30. While welcoming the information provided by the State party on the general training programmes for the Police Force (Garda Síochána), the Committee is concerned at the lack of specific training of law enforcement personnel with regard to the prohibition of torture and ill-treatment and medical officers focusing on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) (articles 2, 10 and 16).

The Committee recommends that the State party should:

(a) **Ensure that law enforcement personnel are provided, on a regular and systematic basis, with the necessary training on the provisions of the Convention especially with regard to the prohibition of torture;**

(b) **Ensure that medical personnel and others involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment as well as other professionals involved in documentation and investigation of torture are provided, on a regular and systematic basis, with training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and that the Manual is translated into all appropriate languages. The State party should also ensure that such training is also provided to individuals involved in asylum determination procedures;**

(c) **Develop and implement a methodology to assess the effectiveness and impact of such educational and training programmes on the prevention of torture and ill-treatment and regularly evaluate the training provided to its law enforcement officials;**

(d) **Strengthen its efforts to implement a gender-sensitive approach for the training of those involved in the custody, interrogation or treatment of women subjected to any form of arrest, detention or imprisonment;**

(e) **Strengthen its efforts to ensure training of law enforcement personnel and others on the treatment of vulnerable groups at risk of ill-treatment such as children, migrants, Travellers, Roma and other vulnerable groups; and**

(f) **Strengthen professional training in hospitals, medical and social institutions.**

31. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely, the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990, the International Convention on the Rights of Persons with Disabilities, 2006 and the International Convention for the Protection of All Persons from Enforced Disappearance 2006.

32. The State party is requested to disseminate widely the report submitted to the Committee, summary records and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

33. The Committee requests the State party to provide, within one year, follow-up information in response to the Committee's recommendations contained in paragraphs 8, 20, 21 and 25 of the present document.

34. The Committee invites the State party to present its next treaty-specific report within the limit of 40 pages. The Committee also invites the State party to update its common core

document (HRI/CORE/1/Add.59/Rev.2) in accordance with the requirements of the Common Core Document contained in the Harmonized Guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6), approved by the Inter-Committee meeting of the human rights treaty bodies, and to observe the page limit of 80 pages for the common core document. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

35. The State party is invited to submit its next report, which will be the second periodic, by 3 June 2015.
