



# International Covenant on Civil and Political Rights

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## HUMAN RIGHTS COMMITTEE

Ninety-third session

### SUMMARY RECORD OF THE 2551st MEETING

Held at the Palais Wilson, Geneva,  
on Monday, 14 July 2008, at 3 p.m.

Chairperson: Mr. RIVAS POSADA

## CONTENTS

### CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (*continued*)

Third periodic report of Ireland (*continued*)

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*The meeting was called to order at 3.15 p.m.*

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 40 OF THE COVENANT (agenda item 6) (*continued*)

Third periodic report of Ireland (CCPR/C/IRL/3; CCPR/C/IRL/Q/3;  
CCPR/C/IRL/Q/3/Add.1)

1. *At the invitation of the Chairperson, the delegation of Ireland took seats at the Committee table.*

2. Mr. GALLAGHER (Ireland), introducing the third periodic report (CCPR/C/IRL/3), said that, as the Attorney General of Ireland, he had an independent constitutional mandate from the Government to advise it on the drafting of legislation. The third periodic report, supplemented by the written replies to the list of issues (CCPR/C/IRL/Q/3/Add.1), described in detail the progress made by Ireland in the protection human rights since the consideration of the second periodic report in 2000. It also testified to the Government's determination to solve the problems identified by the Committee at that time. The current legal framework provided extensive protection of human rights. By means of legislative measures and appropriate policies the Government had established comprehensive and coordinated protection arrangements. However, it was aware that, where such protection was concerned, it was never possible to say that everything had been done; there remained challenges to be taken up.

3. The protection of human rights in Ireland dated back to the creation of the State itself. Ever since its adoption in 1937 the Constitution had contained important provisions on the fundamental rights, and, even though the letter of some of those provisions was today outmoded, the courts interpreted them in the light of the most up-to-date human rights concepts. Accordingly, despite its age the Constitution was an evolving text, and its interpretation over the past 70 years had had a powerful influence on Ireland's tradition of respect for human rights. Although pursuant to article 29, paragraph 6, of the Constitution the international instruments ratified by Ireland were not automatically incorporated into domestic law, many of the provisions of the Covenant found their counterparts in that law. Furthermore, since 2003 the European Convention on Human Rights had enjoyed quasi-constitutional status, and Irish law should therefore be interpreted as far as possible in accordance with that instrument. Any law inconsistent with human rights could be challenged in the High Court or the Supreme Court, and if one of those bodies declared it to be unconstitutional it immediately lost all legal effect. That was an important guarantee, for there was no limit to the circumstances under which the constitutionality of legislation could be challenged. The fact that the lower courts could not consider questions of unconstitutionality was not an obstacle since access to the High Court was automatic. Another important detail of Ireland's Constitution, one which currently received little attention, was that it had a "horizontal effect"; in other words, it could be invoked in disputes between individuals, not just between individuals and the State. In recent years several landmark decisions had thus been handed down in constitutional rights cases concerning only private individuals.

4. Ireland had a large number of dynamic and competent non-governmental organizations (NGOs) which ensured that the Government maintained and developed the tradition of respect for human rights. Human rights protection was also central to the country's foreign policy. Ireland was active in the United Nations,

the European Union and the Council of Europe. It supported the work of the United Nations in the field of human rights both politically and financially, including the work of the Office of the High Commissioner for Human Rights, whose role it regarded as crucial. Ireland also attached high priority to the mandate and work of the Human Rights Committee.

5. As was clear from the third periodic report, the Government had adopted important legislative measures to promote human rights and had also ensured that they were implemented. It had made a concerted effort to review its policies and introduce new ones and to establish independent mechanisms to attend to their implementation. One noteworthy improvement was the creation of the Irish Human Rights Commission in 2001, under the Good Friday Agreement of 1998 and in accordance with the Paris Principles.

6. The Government had re-examined some of its reservations to the Covenant. It was very close to lifting the reservation concerning article 14 as a result of the adoption of the Defence (Amendment) Act 2007, which contained important changes with regard to military discipline and offences. That reservation had been entered out of excessive caution rather than because of incompatibility with the provisions of the Covenant, but in any event the grounds for concern which might once have existed had now been removed. The maintenance of the reservation concerning article 19, to the effect that Ireland reserved the right to award a monopoly to radio or television companies or to impose licensing requirements on radio and television broadcasting, was still being examined. The reservation had been entered because in the early 1990s the country's broadcasting legislation had been limited in scope and the public channels and stations had enjoyed not a monopoly but a dominant position. However, for about 10 years now the award of licences had been governed by fair and transparent regulations, which would be developed further in the broadcasting bill currently before Parliament. Once that bill had been adopted, the licensing regulations would be fully in conformity with the Covenant, and there was no doubt that the reservation to article 19 could be partly or even totally withdrawn. The Committee's advice on the matter was of course welcome. Ireland considered that access to information was essential to the enjoyment of democratic rights and that there was no major impediment to the exercise of those rights in the broadcasting field.

7. On 24 June 2008 the Government had brought forward a civil partnership bill, which would enable homosexuals to register their union and introduce legal protection for cohabiting heterosexual couples. Another step taken in response to the concerns expressed by the Committee was the establishment of a mechanism for investigating complaints against the police. The Ombudsman Commission of the Garda Síochána created in 2005 had considerable resources (101 staff members, including three commissioners) and had been welcomed for its independence, which was fully in conformity with the strictest international standards. Following an in-depth investigation, the Morris Tribunal, a body responsible for dealing with complaints against the police, had published six reports on the conduct of members of the Garda in Donegal in the 1990s. The vigorous action taken in the light of the findings of that independent investigation showed that the Executive was determined systematically to examine and punish any misconduct on the part of the Garda and more generally of any agency of the State.

8. Ireland had also made progress in improving prison conditions. Reform of the legislation and of the prisons themselves had been undertaken to that end. Ambitious renovation and replacement programmes were being carried out, and others were planned, in order to bring the prisons into conformity with the international standards. Prison overcrowding had been considerably reduced over the past 12 years, and 1,200 additional places had been provided. Moreover, 75 per cent of prisoners now had in-cell sanitation facilities. However, not all offences should be punished by imprisonment: the courts had full discretion to decide on the penalty to be imposed and were aware that the punishment must fit not only the nature of the crime but also its perpetrator, with all the relevant factors taken into consideration. In fact, in a large proportion of cases the courts of first instance handed down non-custodial sentences. The Prisons Act 2007 had introduced new Prisons Rules based on the provisions of the European Prison Rules and had established the independent post of Inspector of Prisons.

9. Considerable progress had also been made in promoting gender equality. In addition to the implementation of a large number of legislative measures, various plans and mechanisms had been introduced to prevent any gender-based discrimination, including the National Women's Strategy 2007-2016, which was based on the national plans adopted earlier. The Government had allocated a sizeable budget of 58 million euros over seven years to fund positive action to advance the role of women in all areas of society. Ireland's legislation and the supervisory arrangements which supported it now constituted an extensive infrastructure equipped with all the necessary means for ensuring gender equality in accordance with the European and other international standards. The Government was also committed to tackling violence in the family. Aside from the comprehensive legal framework which had long been in place, it was endeavouring to make the people more aware of what was an unacceptable phenomenon. Furthermore, the forthcoming civil partnership act envisaged extending to same-sex couples the guarantees introduced in the Family Violence Act 1996 and strengthening the guarantees which already existed for unmarried heterosexual couples. A long road had thus been travelled in order to provide the necessary protection; but in addition to introducing the clearly comprehensive legislative measures it was also necessary to make the existence of the guarantees known. That was why the Government had established in June 2007 the National Office for the Prevention of Domestic, Sexual and Gender-Based Violence, known as "Cosc", the Gaelic word for "prevent". The function of Cosc was to collaborate with the Government and NGOs in coordinating "whole of Government" action. Its major priority was to produce a national strategy to combat domestic, sexual and gender-based violence, with the support of all the stakeholders. It was also going to map the services for the protection of women against violence and ensure that they were comprehensive.

10. Attention must also be drawn to Ireland's continuing efforts to improve Travellers' rights. The Constitution and the social equality and labour legislation strictly prohibited discrimination against the Traveller community. There again, however, legislative measures were not sufficient in themselves, and the Government was therefore seeking to ensure that such measures were translated into social practice. It was constantly trying to improve, at the local and national levels, the coordination of the measures designed to solve the problems encountered by Travellers. The social partnership agreement "Towards 2016" provided for

collaboration between the Government and the social partners to promote the social and economic integration of Travellers, and various policies and projects had been carried out in conjunction with representatives of the Traveller community and the other stakeholders. The Government's approach was based on listening. That did not mean that the Government acceded to any request made by Travellers or NGOs, but it listened to what they had to say and then took decisions which genuinely responded to the concerns expressed.

11. One of the most prominent developments in Irish society since the consideration of the second periodic report had been the massive increase in immigration. The arrival of over 300,000 migrants since 1995 had led to a sizeable increase in the country's population, in which more than 180 nationalities were now represented. The migrants and the diversity which they brought with them were welcome, and the Government attached great importance to their integration. The immigration bill currently before Parliament had been drafted on the basis of a large number of contributions from various sources, and a Minister of State with special responsibility for integration had been appointed in 2007. Assisted by the Integration Service, the Minister of State was responsible for producing, promoting and coordinating a common integration policy across a range of governmental departments, agencies and services. A major injection of funds had been provided for the implementation of that important mandate. Trafficking in persons, which could be immigration-linked, had been a criminal offence since the adoption in June 2008 of the new Criminal Law (Human Trafficking) Act. The Act provided a comprehensive response to the problem of trafficking and gave effect to Ireland's international obligations in that area. In addition, an anti-human-trafficking unit had been created in February 2008 in the Ministry of Justice, Equality and Law Reform to carry out a national strategy to combat trafficking.

12. The rule of law was an essential foundation of a democratic society; it implied not only adequate legislation but also concrete action to give effect to the legal rules through a dynamic implementation mechanism to which the State authorities must accord all due importance. Ireland's legal system offered considerable possibilities for reinforcing the rule of law – as clearly demonstrated by the case law of the courts, which had interpreted very liberally the main principles of the Constitution of 1937, in particular the ones set out in the core articles 40 to 44. Moreover, the courts had constantly affirmed that the Constitution was a living text whose provisions they interpreted by reference to other sources of law, including the abundant jurisprudence of the European Court of Human Rights and the European Court of Justice as well as the provisions of international law, in particular the provisions of the Covenant. Ireland's dualist system could of course be improved, but it did allow private individuals to turn to the courts when they considered that their rights had been violated; important human rights issues had thus been regularly submitted to examination by the Judiciary. Under the Irish system solicitors and barristers could not refuse to defend a person wishing to assert rights embodied in the Constitution or in the international instruments to which Ireland was a party. Persons of modest means could usually apply to a small legal practice which, if it lacked the necessary capability, could offer the case to a barrister specializing in the area in question. Study of the big constitutional cases showed clearly that some of the most important principles of the Constitution had been established as a result of actions brought by ordinary individuals asserting their rights in the courts.

13. The interaction between the Government, NGOs, the Human Rights Committee and other international bodies had been an additional very important factor in consolidating the rule of law in recent years. The cooperation in that field had enabled the Irish authorities to obtain a clearer idea of the issues which still called for action on their part, in both legislative and practical terms. For example, although Ireland had not incorporated the Covenant into its domestic legislation, the rights contained therein enjoyed broad and effective protection under the arrangements described earlier. The Irish authorities would continue to work to improve things still further, for it would be a mistake to think that all the difficulties had been overcome; yet they wished to ensure that assessments of the application of the Covenant took into account not just the legislation but also the concrete measures giving effect to the protection of human rights.

14. The CHAIRPERSON thanked the head of the Irish delegation for his introductory remarks and invited the delegation to respond to points 1-22 in the list of issues (CCPR/C/IRL/Q/3). Contrary to usual practice, the responses would not be taken in two parts since the head of the delegation could not be present during the continuation of the consideration of the periodic report; he would thus be able to address the largest possible number of issues at the present meeting.

15. Mr. GALLAGHER (Ireland) said, with regard to the incorporation of the Covenant into domestic law, that the Irish authorities ensured that all aspects of the basic rights set out in the Covenant were reflected in domestic legislation and in the interpretation of the Constitution. The incorporation of an international instrument must be compatible with the Constitution: that was an absolute criterion. The Covenant had in fact been cited by the courts in several cases, including cases involving application of the refugee legislation.

16. With respect to the reservations entered to various articles of the Covenant, chiefly the one concerning article 14, under which Ireland reserved the right to deal with minor infringements of military law by a summary procedure in conformity with the applicable procedural rules, the Defence (Amendment) Act 2007 had led to considerable improvement in military discipline. The Act provided for the establishment of an independent military prosecution authority, comparable to the civilian office of public prosecutor. In addition, an administrator of the military courts had been appointed, to take charge of the management and monitoring of the work of the courts. The Act also provided for the appointment of an independent military judicial authority, composed of one or more irremovable judges, to advise the military courts on points of law. In the case of the most serious military offences, the military prosecution service must approve the discontinuation of proceedings or recourse to a summary procedure, and when the accused was committed to a military court the case file must be transmitted to him or her for defence purposes. The right of appeal was guaranteed in all cases. Attention should also be drawn to the adoption of other measures, such as suspension of custodial sentences, adjustment of tariffs, and the constitution of a new Court-Martial Rules Committee.

17. The profound changes which had taken place in radio and television broadcasting fully justified the withdrawal of the reservation to article 19, paragraph 2, of the Covenant, on which a decision was in fact to be taken by the Government within the next few days. The implementation of the European directive "Television without Frontiers" of 3 October 1989 had given the population

of Ireland access a multitude of radio and television programmes broadcast by the legitimate stations and channels of other States members of the European Union, which could also broadcast in Ireland without controls of any sort. The application of the directive had also provided unrestricted access to the information broadcast by those stations and channels. The radio and television licensing system should be improved still further by a new act, the draft text of which was currently being considered by Parliament. The system was designed to solve the difficulties connected with the shortage of frequency bands, which the digitalization of television signals had largely overcome. The frequency bands which radio and television broadcasters could use were determined by an independent authority, and the Irish Television and Radio Broadcasting Commission now awarded contracts on the basis of objective criteria designed not to impose restrictions on the broadcasting of information but to address the need, amongst other things, to encourage cultural diversity. The provisions of the forthcoming act marked a truly major advance and should improve access to information still further. It provided *inter alia* that, with a view to ensuring the proper development of radio and television services and the provision of a vast range of services to cater to the interests of all members of society, the competent authority should require the body responsible for the regulation of communications to draw up a plan for awarding frequency bands for sound broadcasting. The new broadcasting authority would have to make sure that the procedures for awarding frequencies addressed the need to reflect social diversity. A contracts committee would then be created with a mandate to advise the broadcasting authority on contractual matters. As a whole, the arrangements were designed to give all interest groups access to broadcasting and encourage the provision of and access to a greater volume of information. The delegation would transmit a copy of the new broadcasting bill to the Committee, if it wished. The Committee would thus be able to verify that the licensing provisions contained therein were in no respect incompatible with article 19, paragraph 2, of the Covenant; in fact, they guaranteed the rights protected by article 19.

18. The Government had set up a high-level group to address the need to ensure the diversity of the ownership of the media and was currently considering the group's report. In general terms, the intervention of the State in radio and television broadcasting had declined considerably in recent years, owing *inter alia* to the implementation of the European directive "Television without Frontiers". In the light of all the factors which he had mentioned, the Government was seriously considering withdrawing the reservation to article 19, paragraph 2, of the Covenant.

19. Ireland was continuing to make progress with the comprehensive application of the principles set out in article 10, paragraph 2, of the Covenant. However, the daily average number of charged persons held in pre-trial detention was still very large (about 65 per cent). Currently, and pending the completion of the new prison construction programme, the widespread overcrowding and the fact that many charged persons preferred to be placed in pre-trial detention in an establishment located close to their home still constituted obstacles to the complete separation of charged persons and convicts. Major improvements had nevertheless been made in recent years in that regard. The authorities had initiated a vast programme designed to bring the country's detention facilities into conformity with the most progressive international standards. For example, the construction of a new prison providing 1,200 additional places in the north of County Dublin should be completed in 2011 or 2012. The accent in that establishment would be on the education, vocational

training and reinsertion of prisoners. Another modern facility in Munster would provide 440 additional places. As of 4 July 2008, 449 charged persons were being held awaiting trial in a building at Castlerea prison or in Cloverhill prison, Dublin, and a further 243 were being held in other detention centres. The number of persons in pre-trial detention totalled 3,605. New prison regulations had been adopted which provided important safeguards of detainees' rights, including access to counsel at any time regarded as reasonable by the prison governor.

20. The Government also wished to ensure that young people aged under 18 left the prison environment as quickly as possible. To that end it had approved in March 2008 the establishment of a national school for detained minors to take in boys in the 16-18 age group. The school would provide teaching combined with detention, which would take into account the need to ensure that juvenile offenders were protected and reintegrated in society. The authorities were also committed to allocating the remarkable sum of 43 million euros for the establishment of detention centres designed specifically for minors.

21. The reservation concerning article, 20, paragraph 1, of the Covenant had not been withdrawn, but the authorities considered that Ireland's domestic legislation was in conformity with the fundamental provisions in question. Ireland had a long tradition of neutrality, which had indeed had a powerful influence on, inter alia, the recent decision on adoption of the Lisbon Treaty; the Constitution prohibited, for example, Irish participation in European defence forces. The country's policy of neutrality was regularly reaffirmed by the authorities of the State, which abstained from any propaganda for war. Overseas service by members of Ireland's armed forces was subject to approval both by the Government and by the Dáil Éireann and could be performed only as part of a force authorized by the United Nations.

22. In order to ensure the general application of article 20 Ireland had legislation criminalizing any incitement to hatred based on considerations of nationality or race or any other consideration, and prosecutions had already taken place in that context. The Legislature had tried to address the need to protect the freedom of expression established in the Covenant while still complying with the fundamental prohibition contained in article 20. While there was no specific law prohibiting propaganda for war, Irish legislation nevertheless provided the necessary substantive guarantees.

23. The provision of funding for victim support services - one of the steps taken to fill the gaps in the protection of women against domestic violence - had increased significantly over the past decade. For example, the credits allocated by the Health Service Executive to the victim support facilities had increased from 16 million euros in 2006 to 20.5 million euros in 2008. The financing provided by the Ministry of Justice, Equality and Law Reform for awareness-raising measures and the action programme for perpetrators of violence had increased from 350,000 to almost 3 million euros between 2000 and 2008. Most of that financing would moreover be used to combat violence against women in the home. The family support programme, which was broader in scope, offered further opportunities for helping victims of domestic violence.

24. The National Office for the Prevention of Domestic, Sexual and Gender-Based Violence, which had been established in June 2007, played a very important role in terms of education and prevention. It worked with the authorities, NGOs and other institutions to provide coordinated services for victims of such violence. It had many functions: raising awareness of the magnitude and impact of violence and



providing information on the assistance available to victims locally; production of service-provision standards and strategies and, where necessary, facilitating their implementation; establishing training programmes on the treatment of this kind of violence in accordance with the best international practice; formulating positive measures for dealing with perpetrators of domestic violence; adopting guidance and support measures for the National Steering Committee on Violence against Women and its subsidiary bodies; implementing the recommendations of the Task Force on Violence against Women; creating arrangements for research into violence against women and representing Ireland at international meetings, in particular in Europe; and formulating proposals for amending the relevant policies and legislation. The priorities set for the National Office for 2008 were to devise a common approach for the departmental services concerned with regard to developing the national strategy for preventing domestic, sexual and gender-based violence, to encourage new focuses for policy development in that field, to formulate a new approach to research and communication, and to study ways of using the best international practice. In addition to those functions, the National Office was also responsible for finding solutions to the most pressing current problems. There was no doubt that violence against women in the home was a terrible experience for the victims and a very serious violation of their basic rights: the authorities of the State were taking determined action to combat such violence, and the delegation was at the Committee's disposal to provide further details of the measures taken.

25. The question of the possible amendment of article 41, paragraph 2, of the Constitution offered an interesting example of the way in which the courts had interpreted provisions regarded as discriminatory by the Committee so as to eliminate any element of discrimination. In two recent cases the Supreme Court had confirmed that the provisions of article 41, paragraph 2, should now be interpreted by the courts as applying without distinction to both men and women. Those provisions were designed to accord recognition of the value to society of the work done, by either women or men, for the benefit of the home, family and children. In fact, that position was derived from article 45 of the Constitution, on the basic principles of social policy, which the courts could not take cognizance of but which expressed the exceptionally ambitious goals to which Ireland had aspired as long ago as 1937. Those principles embodied the commitment of the State to ensure that Irish citizens, both male and female, were not forced by economic necessity to work in circumstances which caused them to neglect their family duties. Formal amendment of article 41, paragraph 2, would require a referendum, and organizing a referendum was a difficult undertaking. However, the Committee could rest assured that it was absolutely impossible to interpret the Constitution in such a way as to discriminate on the ground of sex or on any other ground, all the more so since article 1 of the Constitution proclaimed the equality of all before the law. The courts had often had occasion to give a very broad interpretation to article 1 and they ensured in general terms that the principle of gender equality was duly respected. Thus, although the text of the Constitution had not been amended, safeguards against gender-based discrimination did exist, and the requirements stated in the Committee's previous concluding observations were respected. In any event, legal provisions were only one element of gender equality, and what was actually done in practice should be recognized as well. The Committee had also requested further information on the National Women's Strategy. A new strategy had been adopted in 2007 and would be applied until 2016. It took account of the recommendations contained in the 2002 National Plan for Women and met the commitments entered

into under agreements with the social partners. The Strategy had 20 core objectives and envisaged more than 200 measures to deliver equality of opportunities in the social and economic fields, guarantee women's social protection, and turn them into active citizens enjoying absolute equality of rights. Funding of almost 60 million euros had been allocated for implementation of the National Women's Strategy under the National Development Plan 2007-2013. That funding was additional to the 68 million euros allocated for positive action under the same National Plan. The implementation of the Strategy was being supervised by the Ministry of Justice, Equality and Law Reform in collaboration with an interdepartmental committee which met twice a year. That committee would also report to an intersectoral supervisory committee composed of representatives of the principal institutions of the State and the social partners; it would be presided over by the Minister responsible for questions of equality, disability and mental health. The Government was coordinating the work of the services and institutions concerned, and real progress had already been made.

26. The Government had approved the chapter heads of a bill recognizing same-sex partnerships which was currently being drafted by the Office of the Attorney General. It would accord to such partnerships progressive guarantees similar in many respects to the guarantees enjoyed by heterosexual married couples, in particular with regard to property rights and protection against violence. There were some differences which had been widely criticised, but in general terms the bill was the outcome of a detailed study which had taken account of the various views on the issue. It should also be kept in mind that the future act would have to be compatible with the provisions of the Constitution protecting marriage, an institution which, according to the Constitution, was a union between a man and a woman. It was nevertheless the case that the bill represented an enormous step forward and it should dispel all the Committee's concerns. The delegation stood ready to give the Committee any further details on the subject.

27. Turning to the compatibility of the measures to combat terrorism with the guarantees provided by the Covenant (issue No. 7), he said that the Government had adopted the Criminal Justice (Terrorist Offences) Act of 2005 to give effect to the various international anti-terrorism instruments and to adapt to the new international environment following the September 2001 attacks. The Act did not define terrorism as such; it addressed the various offences which terrorism might cover and invested them with a specific status when committed in the context of terrorist activities or activities connected with terrorism, notions which the Act defined clearly. In terrorism cases the Offences against the State Acts 1939-1998 authorized a number of derogations from the provisions of general law. The idea that the two Acts could be applied in contexts other than the fight against terrorism and have legal effects beyond what was necessary understandably gave rise to concern. The Government was very much aware of those issues but it also had to deal with a genuine threat of terrorism; it regarded the measures contained in the Acts as proportionate to the seriousness of the threat.

28. Generally speaking, the legal safeguards provided by the Constitution applied to cases of terrorism. For example, when handing down its rulings the Special Criminal Court verified that due process had been followed, that confessions had not been obtained by coercion, and that the law had been properly applied. Furthermore, the merest doubt as to whether a suspect's constitutional rights had been respected or about the way in which his or her confession had been obtained

was sufficient to render the confession inadmissible. The case law of the Special Criminal Court confirmed that it systematically verified due process and respect for suspects' rights.

29. The power of the Director of Public Prosecutions to decide to refer a case to the Special Criminal Court because it did not fall within the jurisdiction of the ordinary courts seemed to be a source of concern for the Committee. The Hederman Committee had been established in 1999 to study that issue among others. Its final report, drawn up in 2002, was being examined by the Government. The problems raised were complicated and not susceptible of simple solutions. However, the delegation wished to reaffirm that Ireland applied a very extensive system of protection in the context of the special criminal procedures and that the retention of the Special Criminal Court was justified by the persistence of the circumstances which had led to its establishment, a situation which had been confirmed by the competent bodies.

30. The Government had publicly and repeatedly declared its total opposition to extraordinary rendition. That position had been stated clearly by the Director of the Political Division of the Ministry for Foreign Affairs in a letter dated 13 November 2007 and then reiterated by the Foreign Minister himself. The letter had been appended to the report on the question produced by Ireland's Human Rights Commission, in which the Commission had confirmed that there was no evidence to support the theory that renditions had been carried out from Ireland. However, the Government had expressed the view that the Commission's final report had not given due emphasis to the rigour with which the Government handled the matter of diplomatic assurances. The Government determined scrupulously the scope and content of such assurances, verified their reliability, and made sure that they were based on the facts. The assurances received from the United States of America, in addition to emanating from the highest level of Government and being confirmed by the President himself and by the Secretary of State, fully satisfied the necessary criteria.

31. The Irish police investigated any allegation of the use of Irish airports for unlawful purposes and submitted the case file to the Director of Public Prosecutions, who determined what measures were to be taken in the light of the particular circumstances of each case. Inspections had been carried out on board three civil aircraft suspected of being used for extraordinary rendition. The suspicions had proved unfounded in all three cases, so that no action had been necessary. No other suspicious activity had been reported since that time. Members of the Garda Síochána received special training in the question of rendition in order to enable them to investigate that kind of case more effectively. The Government considered that it had fully discharged both its national and its international obligations in that regard. It should also be remembered that under the Convention on International Civil Aviation (Chicago Convention) civil aircraft could not land in Irish territory unless they satisfied certain conditions, ones which Ireland had proposed strengthening by amending the Convention.

32. Since submitting its second periodic report Ireland had not adopted any measures to restrict derogations only to those permissible under article 4 of the Covenant (issue No. 8). It had not used the right of derogation and continued to apply a ban on any kind of discrimination on the grounds listed in article 4, paragraph 1.

33. Following the rejection by referendum in 2002 of the proposal to amend the Constitution and pursuant to the recommendation of the All-Party Oireachtas Committee on the Constitution, the Government had created the Crisis Pregnancy Agency with a view to reducing the number of unwanted pregnancies by providing free counselling services and means of contraception, bringing down the number of women seeking abortions by providing them with psychological support and informing them about other possible options, and supporting women who bore their child with advice and medical care. Since initiating its first strategy in 2004 the Agency had worked to establish quality services and had introduced communication, research and funding programmes. It played a part in formulating the Government's policies and improving the public services, as well as collaborating with NGOs. Its 2008 budget totalled almost 9 million euros. June 2008 statistics showed that the number of women travelling abroad to obtain abortions had continued to decline for the sixth year in succession, a development which the Agency attributed to, inter alia, the provision of more objective counselling and improvements in sex education in the schools and in the family.

34. The independence of the Ombudsman Commission of the Garda Síochána was guaranteed by law. The Commission was headed by a High Court judge and had jurisdiction to investigate all complaints against members of the police; it had an obligation to investigate of its own accord when a suspect died or was seriously injured while in custody. It appointed staff investigators who were authorized to carry out criminal investigations and empowered inter alia to conduct searches and make confiscations in police stations. The Garda Commissioner was required to ensure that the police services cooperated, especially with regard to the communication of evidence.

35. Since 9 May 2007, the date on which its activities had commenced, the Ombudsman Commission had received a total of 2,905 complaints; it had found 746 of them inadmissible and had referred to the competent authorities 294 cases in which it considered that the conduct of a police officer might have caused a person's death or serious injury. The Commission had been slow to deal with complaints and conduct investigations during the period when it had not been fully staffed and its computerized system for processing complaints had not been operational. It had since made up ground and was now working at full speed. It received a larger number of complaints than the Complaints Board which it had replaced, a fact which testified to the public's trust.

36. Most of the questioning sessions conducted by the police were now recorded. It could happen that a technical problem might prevent recording or that the police station in question was not properly equipped, but there were very few such cases. The recordings played an important role in the courts' assessment of the admissibility of confessions, and the absence of a recording could constitute a ground for inadmissibility. The courts, and the Supreme Court in particular, took great care to respect the rights of suspects, and the recordings were only one element of that process. Any genuine or alleged violation of any of a suspect's rights, for example failure to have a lawyer present, could cause the court to disallow a confession. With regard specifically to the right to the assistance of a lawyer, any suspect who requested such assistance must, as far as possible, be provided with the services of a lawyer; a suspect could assert the right to remain silent if the questioning began before counsel arrived. In any event, the law established clearly that the prosecution must prove beyond any reasonable doubt

that the suspect had confessed entirely of his or her own accord and that any statement obtained by coercion or in violation of the suspect's constitutional rights must be declared inadmissible.

37. The 2002 prisons bill had been adopted, giving effect to new prison regulations which considerably improved the protection of prisoners. In addition to those legislative measures, a vast construction programme had been drawn up and was now being carried out.

38. Two bodies had been created to boost the efforts to tackle trafficking in persons: the Anti-Human-Trafficking Unit, which was to submit an action plan to the Ministry of Justice, Equality and Law Reform before the end of 2008; and a high-level interdepartmental group to produce recommendations on the most suitable and effective means of combating trafficking in persons.

39. With regard to the increase of the maximum detention period for asylum applicants (issue No. 13), it should be understood that for some years now Ireland had been experiencing a vast and unprecedented wave of immigration and that the immigration services, despite all their efforts, were overwhelmed by the volume of applications to be dealt with. However, detention was an exceptional measure and used in only a few very specific cases. It must be ordered by a district judge, who fixed the duration of each period of detention up to a maximum of 21 days in total. The ongoing programme of prison construction included the provision of separate accommodation for asylum applicants. Furthermore, a new immigration, residence and protection bill, the subject of detailed consultations between the Ministry of Justice, Equality and Law Reform and the Office of the United Nations High Commissioner for Refugees, which had approved the text, would shortly be submitted to Parliament. It provided for the introduction of a single procedure for consideration of asylum applications; the Government was convinced that the new procedure would rationalize resource use and might perhaps offer an example to other countries.

40. Imprisonment for debt had long been abolished in Ireland. However, a person could be sentenced to imprisonment for intentionally failing to comply with a payment injunction. Only eight persons had to date been imprisoned on that ground. The measure was an exceptional one and could be ordered only if the debtor refused to pay despite having the means to do so. In any event, the court's decision was subject to judicial review and could be annulled by the High Court or some other jurisdiction.

41. The 2007 immigration, residence and protection bill was compatible with the Covenant to the extent that the Covenant applied to persons legally present in a country's territory. The bill accorded to persons legally present in Irish territory rights and guarantees consistent with the ones established by the Covenant. However, persons in irregular situations could be expelled. But an expulsion order issued by the competent ministry or a body under its authority could be subjected to judicial review in order to verify that it had been taken in accordance with the law and that the remedy of *habeas corpus*, when available, had indeed been used.

42. The obligation to ensure respect for the rights of the members of the same family and to take into consideration the length of their residence in the country had been established by the case law of the High Court. Despite the 2003 Supreme Court decision terminating the automatic right of residence of the parents of a child born

in Ireland, any decision on expulsion in that context had to take due account of the particular circumstances of the family concerned and the number of years which it had lived in Irish territory. The amendment of the Constitution and the Nationality and Citizenship Act 2004 had abolished the acquisition of nationality by *jus soli*. In order to cope with the problems caused by that legislative reform, the Government had conducted a mass naturalization campaign, which had reached more than 10,000 children born in Ireland to foreign parents; the Supreme Court had described that policy as generous.

43. With respect to the backlog of cases under the Civil Legal Aid Scheme (issue No. 18), the funds allocated for legal aid in civil cases had undergone a sizeable increase, from 18.4 million euros in 2004 to 27 million euros in 2008. Legal aid was governed by criteria relating to the applicant's resources, and the cost of living was also taken into account. An ongoing survey already showed that a large proportion of the population could claim legal aid. The waiting time was over four months in 17 per cent of the districts, between three and four months in 52 per cent of the urban centres and under two months in 31 per cent of them. Considerable progress had thus been made in that area, but the Government would not relax its efforts.

44. The provision of the Constitution requiring judges to make a statement with religious references (issue No. 19) had still not been amended owing to the difficulty of amending the Constitution. However, the All-Party Oireachtas Committee on the Constitution had recommended in its fourth report that judges should be allowed to make a statement without religious references. It should be stressed where the freedom of religion was concerned that although article 44 of the Constitution referred to Christianity and called for respect for religion in paragraph 1, it also guaranteed the freedoms of religion and conscience in the first part of paragraph 2. As early as 1972 the courts had ruled that the application of the provisions on the protection of religion were not limited to Christianity and Judaism. More recently, in 1998, the Supreme Court had unanimously affirmed that the provisions of the first part of paragraph 2 of article 44 should be read in the light of the guarantees of equality contained in article 40, paragraph 1, of the Constitution in order to safeguard the freedom of religion and equality before the law of all citizens, be they Catholics, Jews, Muslims, agnostics or atheists.

45. The measures to be introduced to give effect to the legislation prohibiting discrimination against minorities (issue No. 20) were described in the report. With respect to the action taken to guarantee children from minority groups genuine opportunities of instruction in their mother tongues and the teaching of their languages, religions and cultures, the enrolment of schoolchildren whose mother tongue was not English had been one of the main difficulties confronting the Ministry of Education and Science. During the 2007/08 school year almost 21,000 foreign pupils from 160 nationalities, or 7 per cent of the total enrolment, were attending secondary school. Nearly 10 per cent of the primary enrolment consisted of new pupils, including many who did not speak English at home. Considerable resources had been made available for organizing English courses for them.

46. Turning in conclusion to the steps taken to disseminate information on the Covenant (issue No. 22), he said that the Committee was aware that Ireland did ensure that such information was disseminated, including to NGOs, and that Ireland maintained contacts with NGOs and with the Committee.

47. The CHAIRPERSON thanked the delegation of Ireland for its detailed replies and invited the members of the Committee to make any additional comments.

48. Ms. PALM thanked the State party for its very informative report, in which it described several encouraging new developments since the submission of the preceding report, such as the establishment of the Human Rights Commission, the incorporation of the European Convention on Human Rights into domestic law, and the creation of the Ombudsman Commission of the Garda Síochána. The report contained little information about the concrete effects of the legislative, judicial and administrative measures which had been adopted, but the written and oral replies had gone some way to making good that deficiency by supplying a number of statistics which would help the Committee to assess the application of the Covenant in the State party.

49. Ireland had still not incorporated the Covenant into its domestic law. The Committee had enjoined the State party in its previous recommendations to take concrete action to integrate all the provisions of the Covenant in its domestic legislation and to ensure that they took precedence over that legislation. The Government had not acted on those recommendations, saying that it had elected to give effect to the provisions of the Covenant by other means. However, several provisions were not covered by the European Convention on Human Rights, which had been incorporated into domestic law, or by domestic law itself. For example, article 26 on the prohibition of discrimination, a free-standing article, was not equivalent to article 14 of the European Convention, which referred to the rights set out in other articles. Article 25 of the Covenant contained provisions which were not fully reflected in Ireland's domestic legislation, for it appeared that citizens living outside the country could not vote, or in the relevant articles of the Convention, which were more restrictive. A list indicating for each article of the Covenant the corresponding provisions of domestic law would help the Committee to ascertain whether the rights embodied in the Covenant were indeed covered.

50. In its March 2008 report Ireland's Human Rights Commission had suggested several ways of giving effect, by either direct or indirect incorporation, to the provisions of the Covenant which were not yet reflected in domestic law. It would be interesting to know whether Ireland might consider acting on any of those suggestions. Persons suffering violation of the rights recognized in the Covenant would have no useful remedy until the provisions of the Covenant were incorporated in domestic law. Furthermore, the absence of domestic remedies limited the capacity of the Human Rights Commission to turn to the courts to secure respect for those rights which were not safeguarded by domestic law. The delegation might comment further on the subject.

51. She noted with satisfaction the progress made in combating domestic violence, in particular the allocation of increased resources to activities in that field and the creation of an Equality Authority and an Equality Tribunal. She also noted the establishment, within the Ministry of Justice, Equality and Law Reform, of the National Office for the Prevention of Domestic, Sexual and Gender-Based Violence with a mandate to carry out research and education programmes. Had the Office already obtained results even though it had started operating only in June 2007? She also wished to know whether deadlines had been set for the attainment of its objectives and whether it had an evaluation mechanism, which might for example publish an annual report on the Office's work. Were NGOs involved in that work?

The total lack of any statistics on domestic, sexual and gender-based violence in recent years was surprising. Without basic data it was difficult to combat those types of violence. According to some reports, in comparison with the international norm there seemed to be few prosecutions or convictions and a high number of withdrawn complaints; that might indicate a lack of effectiveness in the justice system. It would be interesting to hear the delegation on that point.

52. She noted with regret that article 41, paragraph 2, of the Constitution had not been amended in any way. In its previous concluding observations the Committee had expressed its concern that the manner in which that provision referred to women might perpetuate traditional attitudes to women's role, and that concern remained. Even if, as the delegation had stressed, article 41 was interpreted by the courts without gender distinction, its amendment would have a big impact on the achievement of the general legal equality of men and women. In its present wording the article reflected family circumstances which had virtually ceased to exist and it was inconsistent with the gender-equality reforms introduced by Ireland. The State party should amend article 41, if indeed it could not delete it. The replies had been very vague on that point: it seemed that the intention was to return to it later in the context of general proposals to give effect to the recommendations of the All-Party Oireachtas Committee on the Constitution. The issue was however an urgent one which should be resolved as quickly as possible. The delegation might give further information on the subject.

53. She noted with satisfaction the existence of the bill on civil partnerships between same-sex couples, which also introduced safeguards for unmarried heterosexual couples (issue No. 6). However, the proposals made did not address taxation, social security or parenthood. Were there any plans to amend the bill to take account of those three very important matters? She had been astonished to learn in connection with birth certificates for transsexuals that the Government had appealed against an October 2007 decision of the High Court to the effect that failure to issue a new birth certificate to a person who had changed sex constituted a violation of rights recognized by the European Convention on Human Rights. The Court had also stated that Irish law clashed with the Convention, clearly affirming the jurisprudence of the European Court of Human Rights. Why had the Government appealed against the decision instead of amending the law to bring it into line with the Convention and the Covenant?

54. She would welcome additional details of the dissemination of information on the Covenant. NGOs and all the ministries had contributed to the preparation of the periodic report, but the NGOs had indicated that they had had to submit their comments within a very tight time-frame.

55. Sir Nigel RODLEY said that it was encouraging that Ireland intended to withdraw in the near future its reservation to article 14 of the Covenant. The termination of the public monopoly dispelled the Committee's concern about the reservation to article 19, paragraph 2. The information communicated by the delegation about the licensing system was insufficient for the Committee to make informed judgment on the issue. He did not think that the Committee would have any objection to the introduction of such a system, especially if it was designed to prevent a private monopoly from taking the place of the public monopoly and to ensure diversity of ownership of the media and information sources and if it imposed only such restrictions as were necessary to guarantee conformity with



article 19, paragraph 3, and article 20. It would therefore seem that there was no longer any reason to maintain the reservation to article 19. The Committee's usual position on reservations to article 20, paragraph 1, was that it was preferable for no reservation to be entered; however, it had received no reports of calls for racial hatred in the State party which would indicate a serious need to adopt a law such as the one envisaged in article 20.

56. The creation of the Ombudsman Commission of the Garda Síochána and the introduction of the obligation to make video recordings of the questioning of suspects were good measures which should help to reduce the risk of maltreatment at the hands of members of the forces of law and order. However, according to some reports the Commission, even though it was now fully staffed, was overwhelmed by its workload and was building up a backlog of cases, some of which it referred to the Garda's own complaints service. Of course, the Commission had been operational for only a year, but it would be interesting to hear what the delegation had to say on the point. The far-reaching powers of investigation conferred on the Commission would appear to have equipped it with effective means of action. The Committee needed to know what happened when an investigation by the Commission revealed a violation, for it appeared that the Commission was not empowered to bring cases directly before the courts. The State party had indicated that the Commission then referred the complaint to the competent authorities. He wished to know who those authorities were and what action they took, in particular whether they initiated proceedings or imposed disciplinary measures. The State party had presented some statistics on complaints against members of the Garda Síochána, but it would be useful to know, in the context of the introduction of video recordings, how many of the complaints lodged in the past year related to acts committed during questioning sessions and what those acts were. It would also be useful to know whether the complaints related to acts committed in the 2 or 3 per cent of cases in which video recordings had not been made and whether, according to the data available to the Commission, the fact that sessions were recorded had had an impact on the number of complaints. With regard to access to a lawyer, he understood that suspects could be detained in a police station for up to 40 hours and that they could have the assistance of a lawyer, except during questioning. He wished to know whether in cases of terrorism or drugs trafficking the period of detention, which could be longer in such cases, was continued in the police station and how the right to the assistance of a lawyer operated in those circumstances.

57. The prison construction programme testified to the praiseworthy efforts made by the State party to solve some of the problems of prison overcrowding. However, the construction of new detention facilities would not solve the problem, for increasing numbers of people were being sent to prison. The State party had not indicated the timetable for the implementation of the programme. Details would be welcome. Alternative sentences were indeed available, but he wished to know what policies were being carried out to encourage judges to impose such sentences and not to overload the prison system. Perhaps there was a law compelling the prison system to find accommodation for anyone committed to it by the courts; if so, it might be a good idea to revise the relevant legislation rather than to maintain a system which created conditions which might clash with article 10 and possibly article 7 of the Covenant. The imprisonment rate was certainly low in the State party but it was rising; it would be useful to know whether steps had been taken to reverse

that trend. With respect to the general problem of prison overcrowding, some NGOs had drawn the Committee's attention to the fact that the stated level might not be entirely accurate since an establishment's current accommodation capacity did not always correspond to its original design capacity. However, it did not seem that Ireland's prison system had a general problem of overcrowding. But since some establishments were clearly overcrowded while others were not, it would be useful to know the overcrowding rate by establishment.

58. The legislative and policy measures taken to combat trafficking in persons were welcome. But the delegation might indicate the extent to which border guards and officers of the immigration service which controlled entry to Irish territory were made aware of the fact that not all of the persons crossing the border were necessarily tourists or ordinary workers.

59. The CHAIRPERSON thanked the delegation and the members of the Committee and invited them to continue the consideration of the third periodic report at the following meeting.

*The meeting rose at 6.05 p.m.*