

**Information on Ireland's follow-up to recommendations contained in the  
Concluding Observations of the United Nations Committee on the Elimination of  
Racial Discrimination (UNCERD) following examination of Ireland's Combined  
3rd and 4<sup>th</sup> Periodic Report by UNCERD**

**Paragraph 11 of the Concluding Observations**

The Committee notes with regret that the economic recession that has confronted the State party threatens to reverse the achievements that have been made in the State party's efforts to combat racial discrimination at all levels. The Committee expresses grave concern over the disproportionate budget cuts to various human rights institutions mandated to promote and monitor human rights such as the Irish Human Rights Commission, the Equality Authority and the National Consultative Committee on Racism and Interculturalism (article 2)

**Recommendation**

**The Committee, recalling its General Recommendation 33 (2009) on the Follow-Up to the Durban Review Conference, reiterates that responses to financial and economic crises should not lead to a situation which would potentially give rise to racism, racial discrimination, xenophobia and related intolerance against foreigners, immigrants and persons belonging to minorities. The Committee, therefore, recommends that the State party should ensure that, notwithstanding the current economic recession, enhanced efforts are made to protect individuals from racial discrimination. In light of this, the Committee recommends that budget cuts for human rights bodies should not result in the stifling of their activities to effectively monitor the protection of human rights and particularly racial discrimination. The State party should ensure that the functions of the bodies that have been closed are fully transferred and subsumed by the existing or new institutions.**

**Response**

Ireland does not accept that the current economic circumstances have led to a reversal in the achievements that have been made in our efforts to combat racial discrimination.

While substantial cuts took place in previous years in the funding allocations to the Equality Authority and the Human Rights Commission, these budgets have been largely protected in the 2012 budget round notwithstanding the very severe expenditure reductions that are taking place this year across the Irish public sector. The Government has announced proposals to amalgamate the Equality Authority and Human Rights Commission. This merger will lead to a strengthening of Ireland's infrastructure to protect both equality and human rights, with an enhanced role and functions in that regard.

**Paragraph 12 of the Concluding Observations**

The Committee recalls its previous concluding observations (CERD/C/IRL/CO/2) and General Recommendation 8 (1990) on the principle of self-identification, and expresses concern at the State party's persistent refusal to recognise Travellers as an ethnic group notwithstanding that they satisfy the internationally recognised criteria. (articles 1 and 5)

### **Recommendation**

**The Committee reiterates the recommendation made in its previous concluding observations and General Recommendation 8 (1990) on the principle of self identification that the State party should pay particular attention to self identification as a critical factor in the identification and conceptualisation of a people as an ethnic minority group. In this regard, the Committee recommends that the State party should continue to engage with the Traveller community and work concretely towards recognising Travellers as an ethnic group.**

### **Response**

In October 2011, during the course of the examination by a working group of the UN Human Rights Council of Ireland's report to that Council, prepared under the Universal Periodic Review procedures of the Council, the Minister for Justice and Equality was asked, among many other matters, about the position of Irish Travellers in Irish society. One delegation specifically recommended that Ireland should recognise Irish Travellers as an ethnic minority while other interventions were of a more general nature. The Minister replied that serious consideration was being given to granting such recognition. This consideration is ongoing.

The matter was also discussed at a seminar on the Third State Report for the Council of Europe Framework Convention on National Minorities on 11 November 2010. A number of individuals from the Irish Traveller community voiced their opinions both for and against declaring Irish Travellers to be a distinct ethnic group. While there was much disagreement among those present, it was agreed that a national discussion amongst Irish Travellers must be instigated in order to make a final determination on the issue.

The question has been the subject of extensive discussion at meetings of the National Traveller Monitoring and Advisory Committee. Discussions with the five national Traveller organisations have shown that there is a divergence of opinion among Irish Travellers in relation to the question of ethnicity.

It is important that this debate takes place in the Irish Traveller community and full consideration be given to the implications and consequences of any such recognition.

### **Paragraph 15 of the Concluding Observations**

The Committee regrets that due to the current political situation in the State party, efforts to enact and review legislation such as the Immigration and Residence Protection Bill 2010, Criminal Justice (Female Genital Mutilation) Bill 2011 and the Prohibition of Incitement to Hatred Act 1989 have stalled. (article 2, 4, 5 and 6)

## **Recommendation**

The Committee recommends that the State party's should pursue efforts aimed at strengthening the protection of all people from racial discrimination by improving the existing draft pieces of legislation and passing them into law. The Committee further recommends that the State party should improve the Immigration and Residence Protection Bill 2010 to provide for (a) the right of migrants to judicial review against administrative actions and prescribe reasonable periods within which to do so, and (b) the right of migrant women in abusive relationships to legal protection by providing them with separate residence permits.

## **Response**

### ***Immigration Residence and Protection Bill***

The Minister has decided to republish the Immigration, Residence and Protection Bill. In this context, the judicial review provisions currently contained in it are among a number of provisions being examined by the Minister.

It is important to note that the current legal framework in Ireland provides no impediment whatsoever to granting separate residence permits to women in abusive relationships. A number of permissions have already been granted in these circumstances. They are currently looked at sympathetically and on a case by case basis. That approach will continue. Therefore, the need for legislation does not arise. Even if legislation were required in this area, it would be addressed through secondary legislation (i.e. Ministerial Regulations) rather than the Immigration, Residence and Protection Bill itself. The immigration authorities will, however, look at whether more needs to be done to publicise the availability of the existing options.

### ***Female Genital Mutilation Bill***

In January 2011, the Government of the day published a Bill to explicitly prohibit Female Genital Mutilation along with related offences - some of which apply to certain extra-territorial jurisdictions. The legislation takes a human rights perspective and stipulates that the right to practice one's cultural traditions and beliefs cannot be used to justify Female Genital Mutilation, which has been internationally recognised as a form of gender-based violence. The Bill, which was initiated in the Seanad (the Senate), was restored to the Seanad Order paper on 1st June 2011 and subsequently passed all stages in the Dáil (House of Representatives) and Seanad. It was signed by the President of Ireland on 2<sup>nd</sup> April, 2012. It is hoped that a commencement order, specifying the date on which the Act shall come into operation will be made before the Dáil summer recess.

### ***Prohibition of Incitement to Hatred Act 1989***

There appears to have been a misunderstanding concerning the status of the review of the Prohibition of Incitement to Hatred Act 1989 at the time referred to by the Committee (February 2011). While draft legislation, such as the Immigration and Residence Protection Bill 2010 and the Criminal Justice (Female Genital Mutilation

Bill 2011, lapsed when the Government changed, the formal review of the 1989 Act had been completed at that time.

The review of the 1989 Act concluded with the publication of *Research into Racism and the Criminal Law*. This research was undertaken by the Centre for Criminal Research Justice, University of Limerick, having been commissioned by the National Consultative Committee on Racism and Interculturalism under the National Action Plan Against Racism 2005 - 2008. The findings of the research were published on the 18th December, 2008.

The authors stated that changes in the criminal law would be insufficient by themselves to address racism and commented that it was clearly established, at both national and international levels, that greater dividends would ensue from more substantial investment in social and education measures.

The authors of the report made only one recommendation regarding the criminal law. The authors weighed the arguments for and against introducing aggravated sentencing provisions and recommended a provision, taking section 11(4) of the Criminal Justice Act 1984 as a guide, that judges must consider racism as an aggravating factor which increases the seriousness of the offence when determining sentence.

The aggravated sentencing provision in the 1984 Act (consecutive sentences) was introduced to deal with a very specific problem, i.e. persons before the courts on criminal charges committing offences - often multiple offences - while on bail. However, the introduction of racially aggravated sentencing would involve a restructuring of penalties for basic criminal offences (assault or criminal damage, for example) to increase sentences and have wider implications for the criminal law.

In Ireland, the legislature enacts criminal laws which usually provide for maximum penalties in the form of a fine or imprisonment, or both. In general, there are no statutory sentencing guidelines. Within our legislative framework, the determination of penalty in any individual case is largely a matter for the trial judge, taking case law, including appealed cases, into account. This allows the courts to take all the circumstances of the offence and all the relevant aggravating and mitigating factors into account. The gravity of the offence, the facts surrounding the commission of the offence, the criminal record of the accused and the impact on the victim are among the critical factors taken into account before a sentence is imposed. The judge must take into account the circumstances of the offence and the offender. Also, the Director of Public Prosecutions, can appeal against the sentence imposed if she believes it to be unduly lenient (Criminal Justice Act 1993).

Moreover, it would be very difficult to justify legislative provision for racially aggravated sentencing without introducing similar provisions to deal with crimes (possibly numerically greater and just as reprehensible) against other vulnerable groups, for example, children and the elderly.

In all the circumstances, there are no plans, at present, for statutory guidelines for the purpose of racially aggravated sentencing.

The report also concluded “that it would be inappropriate to introduce racially aggravated offences into Irish law. In reaching this conclusion, the report examined the operation of racially aggravated offences in neighbouring jurisdictions. It pointed to the difficulty in proving that an offence was committed with a racist motivation and the low rate of convictions in those jurisdictions. It also concluded, having regard to the scope of equality legislation in this jurisdiction, that aggravated offences would have to have a wider ambit than racist offences.

### **Paragraph 16 of the Concluding Observations**

The Committee regrets that since the consideration of its previous report, the State party has made no efforts to incorporate the Convention into the domestic legal order, particularly in light of the fact that the State party has incorporated other international human rights instruments into domestic law. (article 2)

### **Recommendation**

**The Committee reiterates its previous concluding observations (CERD/C/IRL/CO/2) that the State party should incorporate the Convention into its legal system to ensure its application before Irish Courts in order to afford all individuals its full protection.**

### **Response**

Ireland has a dualist system under which international agreements to which Ireland becomes a party do not become part of domestic law unless so determined by the Oireachtas (National Parliament) through legislation. The constitutional scheme in respect of international agreements is that the Government, exercising the executive power, may enter into international agreements, but such agreements must be laid before Dáil Eireann (House of Representatives), and if the agreement involves a charge on public funds, the State is not to be bound by the agreement unless the terms of the agreement have been approved of by Dáil Eireann. (*Crotty v An Taoiseach* [1987] IR at 792). In domestic law, the State is under no obligation to ratify any convention simply because it has been signed. Ireland does not become a party to an agreement nor will it have the status of an agreement until ratification. Once ratified, the international agreement is binding on the State in international law.

As long as the Oireachtas has not determined that the Convention shall be part of the domestic law of the State, Irish Courts cannot give effect to it where it is contrary to domestic law or purports to grant rights or impose obligations in addition to those granted or imposed by domestic law. (See *Re Ó Laighléis* [1960] IR 93 at 124-5.)

It can be emphasised that, as a regularly used alternative to the Oireachtas making an international convention part of the domestic law of the State pursuant to Article 29.6 of the Constitution, the Oireachtas enacts a law or laws which give effect in legislative form to the obligations involved in the agreement. This is what has occurred in relation to UNCERD. Conventions do not generally create an obligation to incorporate the convention into domestic law and Ireland has chosen to fulfil the

international obligations binding on her following accession to conventions through her domestic legislation. Once all of a Convention's obligations have been provided for, there is no specific need to incorporate it into domestic legislation.