

## **Executive Summary**

The Irish Centre for Human Rights (ICHR) is an academic institution based at the National University of Ireland Galway that specialises in the study and promotion of international human rights law and international humanitarian law.

Due to limitations on the length of this report, the ICHR regrets that it is not able to cover the breadth of the human rights situation in the Republic of Ireland.

## **I. Background and Framework**

In the preparation of this report, the ICHR participated in consultations with Civil Society in Ireland and hosted a consultation in Galway led by the Irish Human Rights Commission.<sup>1</sup>

## **II. Promotion and Protection of Human Rights on the Ground**

Following the same order as the Executive Summary, the background, constitutional and legislative framework and implementation of international human rights obligations is provided for each key human rights issue listed above.

### **A) Economic, Social and Cultural Rights**

The Republic of Ireland ratified the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) in 1989.

According to Article 2(1) of the Covenant, State Parties must take steps, both individually and through international assistance and cooperation, to the maximum of their available resources to progressively achieve the full realisation of the Covenant's provisions by all appropriate means, including the adoption of legislative measures.

The Committee for Economic, Social and Cultural Rights (CESCR) stresses that State parties have immediate obligations to strive towards executing 'deliberate, concrete and targeted' courses of action towards the full realization of the right guaranteed under the Covenant.<sup>2</sup> 'Any deliberately retrogressive measures', leading to the diminution of standards attained, 'would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources'.<sup>3</sup> Considering the indivisibility and interdependence of human rights, any retrogressive patterns on access to the realisation of certain human rights will impact the realization of human rights as a whole on the ground level.<sup>4</sup>

Departing from its commitments as a party to the Covenant, Ireland has implemented a number of

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<sup>1</sup> The ICHR participated in an event on 10 December 2010, organised by the Department of Foreign Affairs, on "Ireland's examination under the Universal Periodic Review (UPR) mechanism of the United Nations Human Rights Council on 6 October 2011", where Director of the ICHR, Professor William Schabas, Chaired a workshop on an international perspective of Universal Periodic Review. The ICHR also hosted a consultation with Civil Society, led by the Irish Human Rights Commission, in Galway on 20 February 2011.

<sup>2</sup> Commission for Economic, Social and Cultural Rights, 'General Comment No. 3', 14 December 1990, UN Doc E/1991/23 annex III, para 2.

<sup>3</sup> *Ibid.*, para. 9.

<sup>4</sup> Magdalena Selpuveda, Special Rapporteur to the UN on Extreme Poverty, Ireland / Crisis: 'Put people at the centre of policy measures,' says UN expert on extreme poverty.

retrogressive economic policies, including the introduction of a universal social charge,<sup>5</sup> cuts in social welfare payments<sup>6</sup> and the reduction of the minimum wage,<sup>7</sup> which will adversely affect the most vulnerable and marginalised sectors of society.

The ICHR recommends that Ireland:

- adopt a human rights-based approach to formulating and applying policy to ensure government policies meet Ireland's human rights obligations and protect against retrogression;
- implement alternative taxation measures that protect those who are most vulnerable from inequitable taxation;
- replace the universal social charge with a targeted social charge for those who can afford it; and,
- raise corporation tax on a temporary basis to offset the burden on low-income households and local businesses in dealing with the financial crisis.

Although the Republic of Ireland has not signed the Optional Protocol to the ICESCR, allowing for individuals to file a complaint, it is a State Party to the Revised European Social Charter and has accepted its collective complaint procedure. Economic, social and cultural rights can be invoked only on the regional, but not on the national level. This is contrary to accepted principles of international law according to which an individual shall be able to address a national court before addressing an international entity.

According to the CESCR State Parties must ensure that 'appropriate means of redress, or remedies, [are] available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place'.<sup>8</sup> The Constitution of Ireland labels most economic, social and cultural rights as 'principles of social policy' and excludes cognition by any Court, as confirmed by the Supreme Court in *Sinnott v Minister for Education* (201) 2 IR 545 and *T.D. v Minister for Education* (2001) 4 IR 259.

In order to overcome these challenges, the ICHR recommends that Ireland sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; and, draft a Bill of Rights and holding a referendum. If passed, the Bill will ensure economic, social and cultural rights are fully justiciable in domestic courts.

## B) Non-Discrimination in the Taxi Industry

On 10 December 2010, Deputy Director of the Irish Centre for Human Rights, Dr Vinodh Jaichand, released a report on recent allegations of racism in the Galway taxi industry.<sup>9</sup>

The report's methodology includes 'surveys with a set of questions for the Galway City Initiatives, observations at two taxi ranks, questionnaires to white Irish taxi drivers (41), questionnaires to African taxi drivers (34), questionnaires to the general public (297) and questionnaires for taxi management (6).'<sup>10</sup> The remaining data was gathered through desk research.

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<sup>5</sup> The introduction of a universal social charge (USC) results in a substantial decrease in pay for low-income earners which is disproportionate to households with higher gross income in real terms. For example a couple earning €250,000 who previously paid 11% of their income on the combined income and health levy have had this reduced to 7% (or €75 a week) whereas an unemployed couple with two children receiving supplementary welfare allowance expect a weekly income decrease of €22.

<sup>6</sup> The budget for local authority disability, for example, has been zeroed.

<sup>7</sup> Minimum wage has been cut by 12% from €8.65 to €7.65. Prior to cuts, a 39-hour working week on minimum wage provided €337. According to the Vincentian Partnership, in 2009, a family of two parents and two children with one person working needed an income of €578 per week in order to meet a minimum essential standard of living. The reduction of the minimum wage has seen this weekly income fall to just €298.

<sup>8</sup> Committee on Economic, Social and Cultural Rights, 'General Comment No. 9', 3 December 1998, UN Doc E/C.12/1998/24.

<sup>9</sup> Dr Vinodh Jaichand, 'Riding Along with Racism: Research on the Galway Taxi Industry: Employment Opportunities, Patterns of Public Use and User Perceptions,' Irish Centre for Human Rights, 10 December 2010.

<sup>10</sup> *Ibid*, pp. 6.

A small but vocal group of Galway taxi drivers call for protectionism in the industry based on a false differentiation between qualifications of African and Irish taxi drivers and an appeal to support Irish taxi drivers instead, which results in ‘discrimination on the basis of nationality and race.’<sup>11</sup> According to the report, news coverage of ‘politicians’ opinions in Galway have been instrumental in forming opinions on the taxi industry even though the evidence base was never adequately tested.<sup>12</sup> Although 89% of Galway residents reported having ‘no fears about taking a taxi in Galway’,<sup>13</sup> 49% indicated that they ‘had been informed through hearsay and indirect experience not to use a taxi driven by Africans.’<sup>14</sup>

The ICHR recommends that Ireland:

- require ‘all taxi drivers to attend trainings on racism;’<sup>15</sup>
- ‘facilitate agreement on the proposed Code of Conduct to regulate [the taxi] industry;’<sup>16</sup>
- ensure ‘the Commission on Taxi Regulation take[s] heed of the complaints of all taxi drivers with a view to ameliorating the situation;’<sup>17</sup>
- acknowledge ‘the presence of racism in the city and pledge to eradicate it through targeted and realisable actions which are evaluated and made available as public documents;’<sup>18</sup>
- withdraw from contractual service arrangements with taxi companies alleged to employ discriminatory policies ‘until satisfied that their employment practices and policy do not discriminate against potential drivers on the basis of race;’<sup>19</sup> and,
- Ensure ‘that the local newspapers and periodicals review their reporting styles with a view to eliminating gratuitous references to race or nationality and stereotyping, and to amending their guidelines accordingly.’<sup>20</sup>

The report reveals ‘the apparent inability of the Gardai to be effective in ensuring some semblance of law and order in the industry...By its failure to enact clear laws, the Government makes the duties of the Gardai difficult to fulfil which opens them to accusations of collusion with racism.’<sup>21</sup>

The ICHR recommends that Ireland ensure ‘the Gardai to take positive steps to rebuild the confidence of taxi drivers in their commitment to law and order.’<sup>22</sup>

In 2009, the Republic of Ireland closed the National Consultative Committee on Racism and Interculturalism, which was responsible for implementing a national ‘anti-racism action plan’. A 43% cutback in the Equal Authority budget (reduction from €5,897,000 in 2009 to €3,333,000) contributes to a 2-3 year delay in processing complaints under the *Equal Status Act*.<sup>23</sup> The Republic of Ireland also reduced funding for the Irish Human Rights Commission by 37.5% since 2008.

The ICHR recommends that the Republic of Ireland:

- reopen the National Consultative Committee on Racism and Interculturalism to implement a national anti-racism action plan;

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<sup>11</sup>*Ibid.*

<sup>12</sup>*Ibid.*

<sup>13</sup>*Ibid.*

<sup>14</sup>*Ibid.*

<sup>15</sup>*Ibid.*, pp. 57.

<sup>16</sup>*Ibid.*

<sup>17</sup>*Ibid.*

<sup>18</sup>*Ibid.*

<sup>19</sup>*Ibid.*

<sup>20</sup>*Ibid.*

<sup>21</sup>*Ibid.*, pp. 6-7.

<sup>22</sup>*Ibid.*, pp. 57.

<sup>23</sup>*Ibid.*, pp. 7; Equality Authority Press Release ‘Budget 2009 May Render Equality Authority Unable to Carry Out the Full Range of its Core Functions,’ 11 November 2008.

- restore funding to the Equal Authority budget to eliminate delays in processing complaints under the *Equal Status Act* and amend ‘ the Equal Status Act to include the right of interested parties to engage in legal proceedings to assist victims of discrimination and remove the limits on compensation for victims of discrimination,’<sup>24</sup> and,
- implement ‘the public procurement directives (2004/17/EC and 2004/18/EC) into law to combat racism as set asides, positive action hiring, and diversity from both gender and ethnic perspectives to reflect the demographics of the new Ireland.’<sup>25</sup>

### C) Equality

The ICHR recommends that the Republic of Ireland hold a referendum to amend Article 40.1 of the Constitution of Ireland<sup>26</sup> to guarantee equality to all persons and prohibit all forms of discrimination. The ICHR further recommends that the Republic of Ireland amend the language used in the Constitution of Ireland and other domestic legislation to ensure it is gender sensitive and conducive to fostering substantive equality between men and women. To create public awareness of these changes, Ireland should concurrently launch a public campaign to raise awareness about gender equality.<sup>27</sup>

### D) The Need to Repeal the Offences Against the State Act and Close the Special Criminal Court

Under the *Offences Against the State Act*, cases that the Director of Public Prosecutions deems to fall beyond the capacity of an ordinary court (which includes most organized crime offences) proceed before the Special Criminal Court. A panel of one high court judge, one circuit court judge and one district court judge reaches its verdicts by majority vote without allowing for the option of a jury.

The *Offences Against the State Act* and the Special Criminal Court are emergency provisions, which are ‘not justified under the present circumstances’, and are thus incongruent with the Government of Ireland’s obligations under Article 4 of the ICCPR.

The UNHRC ‘expressed special concern’ about the *Offences Against the State Act* and the Special Criminal Court following Ireland’s periodic report in 1993. In response, the Government of Ireland declared that it would end the state of emergency by February 1995 (nearly a year after the Provisional IRA ended ‘campaigns of violence’) and reviewed the basis for a Special Criminal Court. Ireland opted to retain the Special Criminal Court without revealing the rationale behind this decision.<sup>28</sup>

In its second periodic report in 2000, Ireland distinguishes the Act and the Special Criminal Court from emergency measures, which it links exclusively to the 1976 *Declaration of Emergency and the Emergency Powers Act*.<sup>29</sup> Following receipt of the report, the UNHRC called for the closure of the Special Criminal Court and again expressed concern over the continued use of the *Offences Against the State Act*.<sup>30</sup>

In *Kavanagh v. Ireland*, the UNHRC ruled that Ireland violated guarantees of equality before the

<sup>24</sup>Dr Vinodh Jaichand, ‘Riding Along with Racism: Research on the Galway Taxi Industry: Employment Opportunities, Patterns of Public Use and User Perceptions,’ Irish Centre for Human Rights, 10 December 2010, pp. 57.

<sup>25</sup>*Ibid.*

<sup>26</sup>Article 40.1 of the Constitution of Ireland states that ‘the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved. The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.’

<sup>27</sup>CEDAW, ‘Concluding Observations,’ 2005.

<sup>28</sup>UN Human Rights Committee, Concluding Observations of the Human Rights Committee: Ireland 03/08/93. UN Doc. No. CCPR/C/79/Add.21 (03 Aug. 1993) para.8, 11, 19.

<sup>29</sup>UN Human Rights Committee, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Second Periodic Report of States Parties Due in 1996: Addendum – Ireland, para. 109-110 and 205-207. UN Doc. No. CCPR/C/IRL/98/2 (28 Apr. 1999).

<sup>30</sup>UN Human Rights Committee, Concluding Observations of the Human Rights Committee: Ireland 24/07/2000, para.15-16. UN Doc. No. A/55/40 (24 July 2000).

law under Article 26 of the ICCPR<sup>31</sup> and required Ireland to justify its departure from procedures followed in ordinary courts, such as the right to trial by jury.<sup>32</sup>

The ICHR recommends that Ireland repeal the *Offences Against the State Act* and close the Special Criminal Court. The ICHR further recommends that all persons accused of an offence are treated equally and provided with the same safeguards available to other accused persons under international law, including the right to request a trial by jury and have a legal advisor present during questioning.<sup>33</sup>

#### E) Implementation of International Human Rights Obligations into Domestic Legislation

Despite having ratified the *International Covenant on Civil and Political Rights* (ICCPR), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD), the *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (CAT), the *Convention on the Elimination of Discrimination against Women* (CEDAW), and the *Convention on the Rights of the Child* (CRC), the Republic of Ireland has not integrated all of the provisions contained in these treaties into the domestic law of Ireland.

The ICHR recommends that the Attorney General, in conjunction with the Law Reform Commission, undertake a comprehensive review to identify inconsistencies between international and domestic law. Where domestic legislation is inconsistent with obligations under international law, the Republic of Ireland must interpret, amend and apply domestic legislation so as to incorporate relevant international human rights law.<sup>34</sup> The framing of the proposed constitutional changes should take into account all of Ireland's treaty obligations, including the ICCPR, ICESCR, CEDAW, CERD and CRC.

The ICHR also recommends that Ireland withdraw any reservations to the international human rights treaties it has ratified, and that it sign and ratify the *Convention on the Rights of Persons with Disabilities*, the *Convention on the Rights of Migrant Workers and All Members of their Families*, the *Convention for the Protection of all Persons from Enforced Disappearance*, the *Optional Protocol to the Convention Against Torture*, the *Optional Protocol to the International Covenant on Economic Social and Cultural Rights*, and the *Optional Protocol to the Convention on the Rights of the Child*.

### III. Capacity-Building and Technical Assistance

Given the current economic crisis in Ireland, the Government of Ireland's capacity to implement recommendations contained in this report may be limited by financial constraints; Ireland may require technical assistance from the Universal Periodic Review Voluntary Trust Fund.

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<sup>31</sup> Article 26 of the ICCPR requires that 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

<sup>32</sup> *Kavanagh v. Ireland*, UN Committee on Human Rights Communication No. 819/1998 (04 Apr. 2001), Communication No. 1114/2002, UN Doc. No. CCPR/C/76/D/1114/2002/Rev.1 (2002).

<sup>33</sup> IHRC, *ICCPR Submission 2008*, 'Observations on the Criminal Justice (Amendment) Bill 2009,' pp. 23-25.

<sup>34</sup> UNHRC Concluding Observations on Ireland 1993, supra at para.9-10, 18; UNHRC Concluding Observations Ireland 2000, supra at para.6, 11.