



Irish Centre for Human Rights

Submission to the Seanad Public Consultation Committee Regarding Ireland's Fourth Periodic Report to the United Nations Human Rights Committee

March 2014

(i) Introduction

The Irish Centre for Human Rights at the School of Law, National University of Ireland, is Ireland's principal academic human rights centre. Under its Director Professor Michael O'Flaherty, the Centre undertakes human rights teaching, research, and training, while also seeking to contribute to human rights policy development nationally and internationally.

The following submission has been prepared by Dr. Shane Darcy, a lecturer at the Centre teaching business and human rights, and by Peter Fitzmaurice, an adjunct lecturer specialising in refugee law. For further information, please contact Dr. Shane Darcy: 00.353.91.493947 / shane.darcy@nuigalway.ie

(ii) Any factual information that you have to offer which may assist the Committee in making its observations

The Irish Centre for Human Rights wishes to highlight two principal areas of concern regarding Ireland's compliance with its obligations under the International Covenant on Civil and Political Rights. Submissions have been made to the Human Rights Committee regarding the following two areas of concern:

- treatment of asylum seekers in the refugee and subsidiary protection system
- human rights and business enterprises

Treatment of asylum seekers in the refugee and subsidiary protection system

The treatment of asylum seekers in Ireland raises concerns under the International Covenant on Civil and Political Rights. In particular, we refer to:

- The very **low recognition rate** for those seeking protection and the lack of **transparency** and perceived lack of **fairness** in the Irish protection determination system;
- The use of **prisons** to detain asylum seekers unnecessarily for immigration offences and;
- The direct provision system where applicants seeking protection are forced to reside in **inappropriate living conditions** with serious risks to the security of resident children, the significant effects of the system on **private and family life** and the detrimental consequences of prolonged institutionalisation on their **mental and physical health**.

Human Rights and Business Enterprises

The conduct of certain business enterprises domiciled in Ireland raises concerns under the International Covenant on Civil and Political Rights. The following examples are highlighted in particular:

- The system of **direct provision** for asylum seekers is a Government programme run by private companies that involves inappropriate living conditions that are having serious effects on private and family life, as well as physical and mental health.
- A number of instances of **forced labour** have been documented in Ireland in recent years, giving rise to concerns under Article 8 of the Covenant. The Migrant Rights Centre of Ireland has documented “over 180 cases of slavery in domestic, restaurant, agricultural, construction and entertainment sectors”.ⁱ
- Irish construction companies have been encouraged by the Department of Foreign Affairs and Trade to seek contracts in Qatar in relating to the construction of facilities and infrastructure for World Cup 2022, with one Irish company having worked on the prototype stadium for Qatar.ⁱⁱ Numerous reports have detailed the widespread **ill-treatment of migrant workers** and the use of **forced labour** in the construction industry in Qatar.
- Technology companies based in Ireland were found to have sold technology in Syria that was used by the Syrian government to censor communications relating to mass peaceful protests.ⁱⁱⁱ Such interference in **private communications** and **censorship** raise concerns under Articles 17, 18 and 19 of the Covenant.

(iii) What are the key priorities and challenges facing the State in complying with Ireland’s obligations under the ICCPR?

Treatment of asylum seekers in the refugee and subsidiary protection system

The protection determination process in Ireland remains lengthy, opaque and there is a scant chance of an applicant being recognised as needing protection. There is a very

low recognition rate for those seeking refugee status in Ireland. Up to now, practically no one has been given subsidiary protection. Ireland is the only country in the EU which has a bifurcated protection procedure. Applicants cannot apply for subsidiary protection until they have received a negative decision to their application for refugee status. Concerns have also been expressed at the poor quality of decision-making by the determination bodies. The independence of the determination bodies at first instance, the Office of the Refugee Applications Commissioner and second instance the Refugee Appeals Tribunal from the Department of Justice and Equality has been questioned.

With regard to the direct provision system, Ireland is aware that the direct provision system results in vulnerable applicants forced to reside in inappropriate living conditions and has a significant negative impact on large numbers of families and individuals. During the past year in particular, residents of Direct Provision have reported inappropriate living conditions, complaints of malnutrition, serious risks to the security of resident children, including sexual assaults, significant effects of the system on private and family life and detrimental consequences of prolonged institutionalisation on their mental and physical health.

While detention of asylum seekers is not widely used in Ireland, there is no immigration detention facility in the State. Immigration detainees are kept with the rest of the prison population. The Irish Centre for Human Rights is concerned that this results in protection applicants being held unnecessarily and inappropriately in prison.

Human Rights and Business Enterprises

The Irish Centre for Human Rights is concerned that the Irish Government has failed to take any steps advising business enterprises that operate in Ireland of their responsibility to respect human rights.^{iv} The Irish Government has stated that its trade policy in the context of development will be “guided by” the United Nations Guiding Principles on business and human rights, although it has not taken any measures to transform this policy statement into practice.^v No guidance has been provided to business enterprises in this context, and nor has the Government adopted an implementation plan for the United Nations Guiding Principles on business and human rights. The Irish government has indicated that it is considering how to proceed with a national implementation plan, and the Centre would encourage a consultative approach to this process.

(iv) What legislative and policy changes are necessary to respond to the priorities you have identified?

Treatment of asylum seekers in the refugee and subsidiary protection system

The Irish Centre for Human Rights strongly welcomes the establishment of a new Subsidiary Protection Determination Procedure in Ireland from 14 November 2013 by way of Statutory Instrument S.I. No. 426 of 2013 and the decision to identify likely well-founded cases and cases involving children and the elderly to prioritise these claims. The Irish Centre for Human Rights also welcomes the decision of the Refugee Appeals Tribunal of 11 March 2014 to allow access to its database of previous decisions.

Notwithstanding these welcome reforms there should be a single procedure for all claims for international protection.

With regard to the direct provision system, this should be phased out as quickly as possible.

With regard to immigration detention, the power to detain protection applicants should only be used when absolutely necessary and the provisions of general immigration law should not be used for the detention of protection applicants. Protection applicants should not be held unnecessarily and inappropriately in prison.

Human Rights and Business Enterprises

The Irish Centre for Human Rights welcomes the recent adoption of criminal legislation addressed to trafficking and forced labour, which covers offences whether perpetrated by natural or legal persons either in the territory of Ireland or by its nationals. Nonetheless, it is imperative that this legislation be applied effectively and that prosecutions be undertaken in order to deter such conduct, in addition to providing a remedy for victims. The Irish Centre for Human Rights notes the recent observation of the Human Rights Committee in its Concluding Observations for Germany:

The State party is encouraged to set out clearly the expectation that all business enterprises domiciled in its territory and/or its jurisdiction respect human rights standards in accordance with the Covenant throughout their operations. It is also encouraged to take appropriate measures to strengthen the remedies provided to protect people who have been victims of activities of such business enterprises operating abroad.^{vi}

We consider that Ireland should take similar action to ensure business enterprises are aware of their responsibilities and that victims have adequate access to remedies.

ⁱ Zuzanna Muskat Gorska, 'Strong action required to combat slavery in Ireland', *International Trade Union Confederation*, 27 February 2013, see <http://www.ituc-csi.org/strong-action-required-to-combat?lang=en>.

ⁱⁱ Department of Foreign Affairs and Trade, 'Minister Jan O'Sullivan welcomes outcome of Enterprise Ireland Mission to Saudi Arabia and Qatar', 21 October 2011, see <http://www.dfa.ie/home/index.aspx?id=87214>.

ⁱⁱⁱ 'Syrian government using Irish technology to censor messages', *Irish Times*, 16 February 2012.

^{iv} See further Irish Centre for Human Rights, *Business and Human Rights in Ireland: Context, International Standards and Recommendations*, 2012.

^v Irish Aid, *One World, One Future: Ireland's Policy for International Development*, May 2013, p. 21.

^{vi} Human Rights Committee, *Concluding Observations on the sixth periodic report of Germany* (2012), para. 16.