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Committee on the Elimination of Racial Discrimination**Seventy-eighth session**

14 February – 11 March 2011

**Consideration of reports submitted by States parties under
article 9 of the convention****Concluding observations of the Committee on the Elimination of Racial
Discrimination****Ireland**

1. The Committee considered the third and fourth periodic reports of Ireland, submitted in one document (CERD/C/IRL/3-4), at its 2063rd and 2064th meetings (CERD/C/SR.2063 and 2064), held on 22 and 23 February 2011. At its 2089th meeting (CERD/C/SR 2089), held on 9 March 2011, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by the State party that was supplemented by frank and sincere oral responses provided by its delegation. The Committee commends the State party for its punctuality and consistency in the submission of periodic reports since it became a party to the Convention, and the quality of the reports. The Committee expresses its appreciation for the large delegation that presented the State party report notwithstanding the current political situation and economic crisis that have confronted the State party. The Committee values the opportunity thus afforded to continue its constructive dialogue with the State party.

3. The Committee notes with appreciation the input to its proceedings by the National Human Rights Institution in Ireland, namely, the Irish Human Rights Commission (IHRC) and various non-governmental organizations (NGOs).

B. Positive aspects

4. The Committee notes with appreciation the establishment of the new Office of the Minister for Integration which has special responsibility for integration policy at the Department of Community, Rural and Gaeltacht Affairs, the Department of Education and Skills, and the Department of Justice, Equality and Law Reform.

5. The Committee also welcomes the establishment of a Ministerial Council on Migrant Integration with the mandate to advise the Minister for Integration, Equality and Human Rights on issues faced by migrants in the State party. The Committee also commends the State party for the establishment of the Irish Naturalisation and Immigration Service in 2005, which provides a 'one stop shop' in matters of asylum, immigration, citizenship and visas.
6. The Committee also commends the State party for ratifying the United Nations Convention on Transnational Organised Crime, 2000 and the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, 2000.
7. The Committee welcomes the development of the National Strategy on Domestic, Sexual and Gender-Based Violence for a five year period from 2010 to 2014.
8. The Committee also welcomes the establishment of the independent police complaints authority, the *Garda Síochána* (Police) Ombudsman Commission under the *Garda Síochána* (Police) Act of 2005, which replaced the *Garda Síochána* (Police) Complaints Board.
9. The Committee also notes with appreciation the establishment of the Office of the Press Ombudsman and the Press Council of Ireland which provide a new system of independent regulation for the print media.
10. The Committee notes the actions taken by the State party on the on follow-up to the Durban Review Conference including the National Action Plan against Racism and related initiatives.

C. Concerns and recommendations

11. 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)

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.

12. 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)

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.

13. While noting the efforts made so far by the State party to understand the issues affecting Travellers through the Survey of Traveller Education Provision in Irish Schools (STEP) and the All-Ireland Traveller Health Study, the Committee regrets that efforts made to improve the welfare of Travellers have not substantially improved their situation. The Committee notes with regret the poor outcomes in the fields of health, education, housing, employment for Travellers as compared to the general population. (article 5(e))

The Committee recommends to the State party to strengthen its efforts to implement the policy advice offered by the National Traveller Monitoring and Advisory Committee. The State party should ensure that concrete measures are undertaken to improve the livelihoods of the Traveller community by focusing on improving students' enrolment and retention in schools, employment, access to healthcare, housing and transient sites.

14. The Committee recalls its previous concluding observations (CERD/C/IRL/CO/2) and General Recommendation 32 (2009) on the scope and meaning of special measures in the ICERD, and regrets that the State party has not adopted a programme on affirmative action to improve the representation of the Traveller community in political institutions nor taken adequate measures to encourage the Traveller community to participate in the conduct of public affairs. (article 5(c))

The Committee reiterates its previous concluding observations (CERD/C/IRL/CO/2) and draws the attention of the State party to General Recommendation 32 (2009) on the scope and meaning of special measures in the ICERD, and recommends to the State party to adopt affirmative action programmes that seek to improve the representation of Travellers in political institutions, particularly at the level of *Dáil Eireann* (Lower House of Parliament) and/or *Seanad Eireann* (Upper House of Parliament). The State party should further adopt measures aimed at encouraging the Traveller community to participate in the conduct of public affairs.

15. 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)

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.

16. 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)

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.

17. The Committee recalls its previous concluding observations (CERD/C/IRL/CO/2) and notes that the State party made a reservation/interpretative declaration on article 4 of the Convention. The Committee notes that the State party has not provided compelling reasons for maintaining the reservation/interpretative declaration. (article 2)

Recalling its previous concluding observations (CERD/C/IRL/CO/2) and General Recommendation 15 (1993), the Committee reiterates its recommendation to the State party that it should reconsider its position, and encourages it to withdraw the reservation/interpretative declaration made to article 4 of the Convention.

18. The Committee is concerned at the lack of legislation proscribing racial profiling by the *Garda Síochána* (Police) and other law enforcement personnel. The Committee also notes with regret reports that many non-Irish people are subjected to police stops, and are required to produce identity cards, which practice has the potential to perpetuate racist incidents and the profiling of individuals on the basis of their race and colour (articles 2, 3 and 6)

The Committee recommends that the State party adopts legislation that prohibits any form of racial profiling, a practice which has the danger of promoting racial prejudice and stereotypes against certain racial groups in the State party. Furthermore, the State party should strengthen its efforts to promote the humane treatment of migrants and people of non-Irish origin by the *Garda Síochána* (Police) and other law enforcement personnel in accordance with international human rights law. The Committee further recommends that the State party should establish appropriate mechanisms to encourage the reporting of racist incidents and crimes.

19. While noting the efforts taken by the State party to combat racial discrimination and related intolerance, including commissioned research undertaken by the Centre for Criminal Justice at the University of Limerick, the Committee remains concerned that the legislative framework in the State party does not cover all the elements of article 4 of the Convention, and that racist motivation is not consistently taken into account by judges in sentencing for crime. (article 2 and 4)

Recalling General Recommendation 31 (2005), the Committee recommends that (a) in line with article 4(b) of the Convention, legislation be passed to declare illegal and prohibit racist organisations; (b) that racist motivation be consistently taken into account as an aggravating factor in sentencing practice for criminal offences; and (c) that programmes of professional training and development sensitise the judiciary to the racial dimensions of crime.

20. The Committee is concerned at the negative impact that the policy of 'direct provision' has had on the welfare of asylum seekers who, due to the inordinate delay in the processing of their applications, and the final outcomes of their appeals and reviews, as well as poor living conditions, can suffer health and psychological problems that in certain cases lead to serious mental illness. The Committee is further concerned at the failure by the State party to provide for an independent appeals tribunal considering that the remit of the Office of the Ombudsman does not extend to asylum and immigration matters (article 2, 5 and 6)

The Committee encourages the State party to take all necessary steps with a view to expediting the processing of asylum applications so that asylum seekers do not spend unreasonable periods of time in asylum centres which might have negative

consequences on their health and general welfare. The State party should take all necessary measures to improve the living conditions of asylum seekers by providing them with adequate food, medical care and other social amenities including also a review of the direct provision system.

21. The Committee is concerned at reports of racial discrimination towards people of African origin. The Committee regrets the lack of disaggregated statistical data on these reports in the State party report (article 2 and 5)

The Committee recommends that the State party should ensure that any persons involved in such acts are investigated and prosecuted, and if found guilty on such incidents, punished with appropriate penalties. The Committee further recommends that the State party should compile disaggregated statistical data on these incidents of racial discrimination against persons of African origin.

22. While noting the various efforts that have been made by the State party through the Health Service Executive (HSE) to protect the rights of separated and un-accompanied children seeking asylum, the Committee regrets that legislation on this area does not provide adequate protection as required by the standards set by the Office of the United Nations High Commissioner for Refugees (UNHCR). In this context, the Committee notes with concern the lapsing of the Immigration, Residence and Protection Bill 2010, which presented the opportunity to amend the Child Care Act 1991 in order to outline the legal obligations of the HSE towards these children.(article 2 and 5)

The Committee recommends to the State party to enact legislation that adequately protects the rights and welfare of separated and unaccompanied children seeking asylum in line with the standards set by international law. The Committee, therefore, invites the State party to adopt immediate measures to ensure that a guardian *ad litem* or advisor be appointed for all separated and unaccompanied children irrespective of whether they have made a protection application or not.

23. The Committee notes with concern the reported prevalence of instances of ‘knife stabbing’, with people from sub-Saharan Africa representing a disproportionate number of the victims. The Committee regrets the lack of disaggregated statistical data on these reports. (articles 2 and 4)

The Committee recommends that the State party investigates the reports of ‘knife stabbings’ against people mainly from sub-Saharan Africa and ensure that the perpetrators are prosecuted and when convicted, punished with appropriate penalties. The Committee further encourages the State party to compile disaggregated statistical data on these incidents, which must be included in its next periodic report.

24. While welcoming the efforts of the State party with regard to the development of a training package for the *Garda Síochána* (Police) under the programme ‘Diversity Works’ and the efforts by the Judicial Studies Institute to provide training for the judiciary, the Committee is concerned that human rights training has not been mainstreamed in the civil service. (articles 6 and 7)

The Committee recommends that the State party strengthens its efforts to sensitise relevant civil servants on human rights issues particularly against racism and intolerance by ensuring that human rights training is mainstreamed in the civil service. In this regard, the Committee invites the State party to develop a coordinated work plan with the Irish Human Rights Commission (IHRC) that allows the IHRC to raising awareness and provide human rights training to all civil servants including the *Garda Síochána* (Police) and the judiciary.

25. The Committee regrets that notwithstanding the existence of the Refugee Act of 1996, there is no legal framework for family reunification, which is currently handled on a

non-statutory basis. The Committee also regrets the current narrow meaning ascribed to the word 'family' for purposes of family reunification. The Committee further regrets the lapsing of the Immigration Residence and Protection Bill which provided that family reunification would be provided for in a statutory instrument. (articles 2(2) and 5 (d)(iv), 6)

The Committee recommends to the State party to adopt legislation that would elaborate the principles, rights and obligations governing family reunification. In this regard, the State party is encouraged to assign the responsibility of dealing with applications for family reunification to an independent authority that would follow due process, and develop a system that would provide an appellate procedure to challenge its decisions.

26. The Committee recalls its previous concluding observations (CERD/C/IRL/CO/2) and notes with concern that the education system in the State party is still largely denominational and is mainly dominated by the Catholic Church. The Committee further notes that non-denominational or multi-denominational schools represent only a small percentage of the total and, regrets that, according to reports, there are not enough alternative schools, and students of the Catholic faith are favoured for enrolment into Catholic schools against students of other faiths in case of shortage of places. The Committee further expresses its regret that the provisions of the Equal Status Act give the power to schools to refuse to admit students to denominational schools on grounds of religion if it is deemed necessary to protect the ethos of the school (articles 2, 5(d)(vii) and 5(e)(v))

Recognising the 'intersectionality' between racial and religious discrimination, the Committee reiterates its previous concluding observations (CERD/C/IRL/CO/2) and recommends that the State party accelerates its efforts to establish alternative non-denominational or multi-denominational schools and to amend the existing legislation that inhibits students from enrolling into a school because of their faith or belief. The Committee further recommends to the State party to encourage diversity and tolerance of other faiths and beliefs in the education system by monitoring incidents of discrimination on the basis of belief.

27. The Committee notes the inclusion of migrant and minority women including Traveller women in the State party's National Women Strategy currently under review (article 2 and 5)

Bearing in mind the Committee's General Recommendation No. 25 (2000) and General Recommendation No. 32 (2009), the Committee recommends that the State party take all necessary measures to ensure that, following the review, migrant and minority women continue to be the focus of the target actions and objectives of the National Women's Strategy.

28. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

29. In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party continues to give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report

specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

30. The Committee recommends that the State party undertake and publicize adequately an appropriate programme of activities to commemorate 2011 as the International Year for People of African Descent, as proclaimed by the General Assembly at its sixty-fourth session (A/Res/64/169 of 18 December 2009).

31. The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

32. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

33. Noting that the State Party submitted its Core Document in 1998, the Committee encourages the State Party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3).

34. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 11, 12, 15 and 16 above.

35. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations, 18, 19, 25 and 27 and request the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

36. The Committee recommends that the State party submit its combined 5th to 7th periodic reports in a single document, due on 28 January 2014, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, para. 19).