

**National Human Rights  
Institution Submission to the  
UN Committee Against Torture  
on the Examination of Ireland's  
First National Report**

1 April 2011

**IHRC**

AN COIMISIÚN UM CHEARTA AN DUINE  
IRISH HUMAN RIGHTS COMMISSION

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## I. INTRODUCTION AND GENERAL COMMENTS

1. The Irish Human Rights Commission (IHRC) welcomes the opportunity to make a submission to the United Nations Committee Against Torture on Ireland's First Periodic Report under the United Nations Convention Against Torture (CAT). This submission is provided with the aim of presenting the Committee with focussed and objective information on Ireland's compliance with CAT and identifying what the IHRC considers are key challenges for Ireland's implementation of the Convention.

2. The IHRC is an independent National Human Rights Institution with "A" status accreditation from the International Co-ordinating Committee of National Human Rights Institutions (NHRIs) and also currently holds the Chair of the European Group of National Human Rights Institutions. The IHRC has a statutory remit to endeavour to ensure that the human rights of all persons in the State are fully realised and protected in the law and policy of the State.<sup>1</sup> The IHRC seeks to ensure that Irish law and policy set the standards of best international practice. Its functions include, keeping under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights, and making such recommendations to the Government as it deems appropriate in relation to the measures which the IHRC considers should be taken to strengthen, protect and uphold human rights in the State.

3. As both Chair of the European Group of NHRIs and Ireland's NHRI, the IHRC is committed to engaging with the United Nations treaty monitoring process and improving the collaboration between treaty monitoring bodies and NHRIs in a strategic manner. The IHRC therefore welcomes the opportunity to make its first submission to the Committee Against Torture and aims to continue its role in this regard for Ireland's future examinations.

4. As a general comment, the IHRC would like to draw the Committee's attention to its concern that the **State Report does not include details in relation to actual conditions in places of detention in Ireland**. In addition, the IHRC considers that the consultation process carried out by the State – which focused on an invitation to submit written inputs in 2005 – to be wholly inadequate and not in keeping with the CAT Committee's recommendations regarding national consultations.

### **Human Rights Education and Training**

5. The IHRC wishes to highlight that it considers there is a lack of sufficient education and training for Civil and Public Servants, including the Garda Síochána (police), on human rights, including those relating to CAT. The IHRC undertook a comprehensive review of the provision of human rights education and training (HRET) across the formal, informal and continuing professional development sectors (including Civil and Public Servants) and identified that there was a pressing need for education and training for Civil and Public Servants in relation to human rights. The IHRC has therefore launched a Human Rights Education and Training Project, the first phase of which is aimed at Civil and Public Servants. On 29 September 2010, the IHRC published a human rights guide for the Civil and Public Service with the aim of improving awareness of human rights among this group. The IHRC considers that the State must prioritise

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<sup>1</sup> For detailed information on the work of the IHRC, see [www.ihrc.ie](http://www.ihrc.ie). The statutory mandate of the IHRC is derived from the Human Rights Commission Acts 2000 and 2001.

HRET for those working in the Civil and Public Service and is working with the Government to try to assist it in this goal. However, serious cuts to its budget over the last two years mean that the IHRC is unable to undertake more widespread work in the area of awareness raising of human rights including of CAT. **The IHRC considers that there has been insufficient action by the State in raising awareness of CAT and other international human rights treaties and in ensuring that all Civil and Public Servants are trained in human rights.**

6. In particular, **human rights training should be in place for those working in the prison service and those working with prisoners or former prisoners, including prison and probation officers.** The IHRC hopes to work with these officers, as well as with the Garda Síochána (police), in providing human rights training.<sup>2</sup> In this regard, the IHRC would draw to the Committee's attention the 2011 Concluding Observations of the CERD Committee, which recommended 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 raise awareness and provide human rights training to all civil servants including the *Garda Síochána* (Police) and the judiciary."<sup>3</sup>

#### **Budget Cuts to Statutory Bodies**

7. Since 2008, as part of the Government's response to the economic crisis, there have been severe cuts to the budgets of the IHRC and the Equality Authority. In addition, the state-funded National Consultative Committee on Racism and Interculturalism (NCCRI) and Combat Poverty Agency have been closed down and the National Action Plan Against Racism, which came to an end in 2008, has not been renewed. These measures have had a disproportionately damaging effect on the human rights and equality sector.

8. The IHRC's grant-in-aid which is provided annually by the Department of Justice & Defence (formerly the Department of Justice, Equality and Law Reform), was reduced by 32% in 2009.<sup>4</sup> **In total, it has had a 37.5% reduction in funding since 2008.** The IHRC has publicly highlighted the negative impact of this reduction in its budget and stated that any further reduction in its budget would seriously impair its ability to effectively perform its statutory functions.<sup>5</sup> The IHRC continues to lack adequate financial resources. A moratorium on the recruitment of public sector positions has had an extremely negative impact on the IHRC's staff situation as staff who have left cannot

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<sup>2</sup>There are some positive developments in this area. An Garda Síochána (Police) is to be commended for the positive human rights based reform process it is currently embarking upon. The IHRC considers it vital that all the initiatives in the Garda Human Rights Action Plan are fully implemented and reinforced with effective management and training.

<sup>3</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination: Ireland, 10 March 2011, CERD/C/IRL/CO/3-4.

<sup>4</sup> IHRC Press Release, IHRC Launches Its 2008 Annual Report, 10 July 2009. [www.ihrc.ie/newsevents/press/2009/07/10/ihrc-launches-its-2008-annual-report/](http://www.ihrc.ie/newsevents/press/2009/07/10/ihrc-launches-its-2008-annual-report/) The IHRC has had a 37.5% reduction in funding since 2008, with its total grant-in-aid being reduced from €2,342,000 in 2008 to €1,596,000 in 2009, to €1,532,000 in 2010. Its budget (2011) now stands at €1,463,000. Budget 2009 saw a reduction of the total budget of the Equality Authority (EA) from €5,897,000 to €3,333,000. Equality Authority Press Release Budget 2009 may render Equality Authority unable to carry out the full range of its core functions, 11 November 2008.

<sup>5</sup> See for example IHRC, Submission to the UN Human Rights Committee on Ireland's 1 Year Follow-up Report to its Third Periodic Report under the ICCPR, September 2009, at p. 11. IHRC Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland March 2011.



be replaced. **The IHRC's ability to continue operating as an effective NHRI is now seriously jeopardised.** In this regard it may be noted that the CERD Committee in its Concluding Observations has asked for the State to provide information on the budget situation of statutory human rights and equality bodies as part of the one-year follow-up process.<sup>6</sup>

9. In June 2010, the Government changed the Department to which the IHRC is administratively linked from the Department of Justice, Equality and Law Reform (hereinafter in this report referred to as the Department of Justice) to the Department of Community, Equality and Gaeltacht Affairs. Given that much of the IHRC's work relates to issues covered by the Department of Justice, the Commission welcomed the change as being a step in the right direction. However, with a change in Government in February 2011, the IHRC has been moved back to the Department of Justice. The IHRC continues to believe that direct accountability to the Oireachtas (Parliament) would be the optimal situation and meets international best practice.

#### **IHRC RECOMMENDATIONS**

10. The IHRC recommends that the budgets of the IHRC and Equality Authority be returned to 2008 levels. In addition, the independence of the IHRC should be ensured with direct accountability to the Oireachtas (Parliament).

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<sup>6</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination: Ireland, 10 March 2011, CERD/C/IRL/CO/3-4. 11. "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 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.**"

## II. SUMMARY OF KEY CONCERNS AND RECOMMENDATIONS

### GENERAL COMMENTS

- The IHRC would like to draw the Committee's attention to its concern that the **State Report does not include details in relation to actual conditions in places of detention in Ireland**. In addition, the IHRC considers that the consultation process carried out by the State – which focused on an invitation to submit written inputs in 2005 – to be wholly inadequate and not in keeping with the Committee's recommendations regarding national consultations.
- **The IHRC considers that there has been insufficient action by the State in raising awareness of CAT and other international human rights treaties and in ensuring that all Civil and Public Servants are trained in human rights.**
- **Human rights training should be in place for those working in the prison service and those working with prisoners or former prisoners, including prison and probation officers.**
- The IHRC recommends that the budgets of the IHRC and Equality Authority be returned to 2008 levels. In addition, the independence of the IHRC should be ensured with direct accountability to the Oireachtas (Parliament).

### INDEPENDENT INSPECTION MECHANISMS FOR ALL PLACES OF DETENTION

- **Ratification of the Optional Protocol to the Convention Against Torture (OPCAT) and the establishment of the National Preventative Mechanism (NPM) that meets the OPCAT requirements, including compliance with the Paris Principles, is required as a matter of urgency.**
- In advance of the ratification of OPCAT the Government should **engage in consultations** with all relevant independent statutory bodies, civil society organisations and other relevant stakeholders in its consideration of the designation of an effective system of national monitoring mechanisms in Ireland.
- The Government should **undertake a comprehensive assessment**, in consultation with the relevant statutory bodies, agencies and civil society organisations, of the extent to which the current inspection mechanisms in all places of detention meet the requirements of OPCAT.
- In drafting legislation for the creation and designation of the NPM the relevant Minister should **refer the draft legislation at Scheme stage to the IHRC. The designation of a NPM in Ireland must include allocation of specific and adequate resources.**
- In designating the bodies that will form part of an NPM in Ireland, the Government should **consider giving the IHRC a co-ordinating role. Any such role for the IHRC must include additional resources as a prerequisite.**

## COMPLAINTS AND INVESTIGATIONS MECHANISMS IN PLACES OF DETENTION

- The IHRC is concerned that **there are serious gaps in relation to current complaints and investigation mechanisms in places of detention in Ireland.**
- **Irish Prisons:** The IHRC recommends that an independent statutory complaints mechanism, such as a Prison Ombudsman, be established as a matter of priority.
- **Police Service:** The powers of the Garda Síochána Ombudsman Commission (GSOC) should be strengthened, including that GSOC should have the power to instigate a review of practice, policy or procedure for the purpose of preventing complaints or to reduce the incidence of such complaints of its own volition.
- **Deaths in Detention:** The IHRC recommends that an Garda Síochána (police), in conjunction with the Department of Justice, implement the recommendations of the GSOC inquiry report into the death of Terence Wheelock as promptly as possible.
- In light of clear issues of non-compliance of Irish law with the requirements of the European Convention on Human Rights (ECHR) and with CAT amongst other international human rights law treaties, the IHRC considers that the proposed legislation to amend the Coroners Act 1962 should be progressed through the Houses of the Oireachtas (Parliament) as a matter of immediate priority.
- The IHRC considers that the report of the Commission of Investigation into the death of Gary Douch should be published as promptly as possible and that it is ensured that Commission has sufficient resources to complete its work and the recommendations of the Commission should be implemented without delay by all relevant stakeholders. At a minimum an independent mechanism capable of investigating suspicious deaths in prisons should be introduced.
- **Children in Detention:** The IHRC recommends that the Irish Youth Justice Service should develop a clear policy on complaints from young people in all child detention schools that is child friendly and offers children in detention the assurance of the school's capacity to keep the child safe. Child friendly information on the complaint functions of the Ombudsman for Children should be provided to each child in detention. The IHRC further recommends, in line with the recommendations of the Ombudsman herself and the UN Committee on the Rights of the Child, that the mandate of the Ombudsman for Children should be widened to include children detained in St Patrick's Institution.
- **Residential Centres for People with Disabilities:** The IHRC recommends that the complaints and investigation mechanisms for residents of centres for people with disabilities should be reviewed to ensure all residents have access to an effective and accessible remedy that fully complies with the standards of international human rights law, in particular the European Convention on Human Rights (ECHR) and CAT.
- **Residential Centres for Older People:** The IHRC recommends that the complaints and investigation mechanisms for residents of centres for older people in residential centres should be reviewed to ensure all residents have access to an effective and accessible remedy that fully complies with the standards of international human rights law, in particular the ECHR and CAT.

## CONDITIONS OF DETENTION IN PRISONS

- The IHRC considers that **urgent action is required to address the most problematic features of the present system**. Government undertakings in relation to the provision of future facilities cannot relieve it of its responsibilities for ensuring minimum human rights standards in Irish prisons and places of detention in the intervening period.
- **Overcrowding**: The IHRC considers overcrowding in prisons to be an urgent human rights concern in Ireland. **The urgent problem of overcrowding needs to be addressed**, not only through short term measures to double up the capacity of cells, but through law reform and policy measures to reduce the number of people who are being sent to prison.
- **Lack of In-Cell Sanitation**: The IHRC considers that **the practice of “slopping out” should be eliminated as a matter of urgent priority**. Where a sanitary facility is not available in a prisoner’s cell, the IHRC considers that a prisoner should be entitled to be released from his cell to use the available facilities at all hours of the day and night.
- **Lack of adequate Mental Health Services**: The IHRC recommends that the Prison Inreach and Court Liaison service at Cloverhill Prison should be replicated in all prisons that accept remand prisoners. Further consideration should be given by the State to recommendations of the doctors who provide services to the Court Liaison Service which suggest the introduction of a specialised mental health court. Particular attention should also be given to prisons outside of the catchment area of cities that may particularly lack access to services.
- **Non-Segregation of Remand Prisoners**: The IHRC recommends that remand prisoners should always be detained in separate facilities from convicted prisoners.
- **Inter-Prisoner Violence**: The IHRC recommends that efforts must be increased to tackle the issues that cause inter-prisoner violence, in particular there is a need for the State to tackle the issues causing an increase in violence in society in general. In particular, facilities and constructive activities should be increased in order to improve conditions and to reduce the likelihood of inter-prisoner violence, in order to ensure the safety of all prisoners.
- **Women in Prison**: The IHRC considers that the overcrowding at the Dóchas Centre and Limerick Prison should be urgently addressed.
- **Education and Training**: In line with its comments in relation to inter-prisoner violence, the IHRC recommends that facilities and constructive activities should be increased in order to improve conditions for all prisoners. In particular, young people detained in St Patrick’s institution must be provided with activities.
- **Proposed New Prison Complex**: In reviewing the Thornton Hall proposal, consideration should be given to best international practice which suggests that smaller prisons are now recommended. The IHRC is further concerned that until any new prison building scheme is introduced, many of the most problematic features of the present system will remain for many years to come.
- **Need for alternative sanctions**: The IHRC considers that there should be an increased policy focus on the development of alternative, non-custodial sanctions rather than an increase in overall prison population. In addition, there should be a comprehensive published penal policy in the State and consideration of measures that would result in a reduction in the prison population.

## TREATMENT OF PEOPLE IN DETENTION IN MENTAL HEALTH ESTABLISHMENTS

- **Inadequate Legal Framework:** The IHRC has identified a number of areas where measures should be taken to improve the safeguards that are in place to protect certain categories of mentally ill patients who are subject to detention, in line with the State's obligations under international human rights law. The IHRC is concerned at a lack of procedural safeguards for compliant incapacitated patients, lack of procedural safeguards for "wards of court", and the lack of adequate protection for children detained in psychiatric institutions.
- **Conditions of detention:** The IHRC is concerned that there are 'approved centres' that are not meeting international standards or fulfilling treaty obligations and would recommend that resources be made available to ensure that adequate levels of accommodation are guaranteed. **Resources must be made available as a priority to ensure full compliance of Ireland's psychiatric facilities with international standards.**
- **Conditions of Detention in the Central Mental Hospital:** The IHRC is of the view that the living conditions in some units in the Central Mental Hospital (CMH) are inadequate and do not provide conditions that are conducive to the treatment and welfare of patients and do not comply with the standards set out in the UN Principles for the Protection of Persons with Mental Illness. The IHRC recommends that steps should be taken to improve the conditions without delay and that decisions on a site for the new CMH should be made expeditiously and with the involvement of relevant stakeholders.
- **Lack of appropriate mental health services for children:** The IHRC is concerned at the admission of children to adult mental health units.

## CHILDREN IN DETENTION

- **The IHRC is concerned at the detention of children in adult prisons.** The ongoing detention of 16 and 17 year old male juveniles in an adult prison should be ended as promptly as possible and a specific timeline should be set for the completion of the National Child Detention Facility.
- **Conditions in St Patrick's Institution:** The IHRC recommends that appropriate measures should be taken to improve activities, including educational and vocational training, sport, and rehabilitative classes and services offered to young offenders at St Patrick's, pending the development of the National Child Detention Facility. Furthermore, **the Ombudsman for Children should have full access to St Patrick's facility.**
- **Child Detention Schools:** The IHRC recommends that the use of single separation as a routine method of behaviour management in child detention schools should be minimised and should only be used as an exceptional measure of control in situations of immediate risk and should not be used as punishment. The deficiencies in the vetting of staff working in children detention schools should be improved as a matter of priority.

## PREVENTION OF ILL- TREATMENT OF CHILDREN

- The IHRC recommends that a properly constituted independent statutory inquiry should be constituted, with all necessary powers, to inquire into child protection matters, including apparent failings in the protection system.

## DETENTION OF ASYLUM SEEKERS AND IMMIGRATION RELATED DETENTION

- While the IHRC considers that the detention of asylum seekers should be a measure of last resort, in the limited circumstances where it does occur, detention must be in a place which is suitable and in line with international standards. The IHRC considers that prisons and police stations are not suitable places for the detention for asylum applicants who have not been convicted of a criminal offence. In addition, the IHRC considers people should only be detained in specifically designated and suitable centres pending deportation where there is a real risk that the person will abscond, and the period of their detention pending deportation should be as short as possible. Alternatives to detention such as the use of sureties should be used as much as possible.

## THE PROHIBITION AGAINST REFOULEMENT AND THE PROTECTION SYSTEM

- **Education and Training:** Immigration officers or members of the Garda Síochána must receive the necessary and ongoing training to ensure that they have sufficient knowledge of Ireland's international protection obligations.
- **Definition of Subsidiary Protection:** In line with the position of the United Nations High Commission for Refugees (UNHCR) in relation to the definition of subsidiary protection, the IHRC recommends that the definition in any new legislation should be broadened to include people who are forced to flee their country of origin, or remain outside of that country, as a result of a threat to their life, security or liberty, for reasons of indiscriminate violence arising from situations such as, but not limited to, armed conflict.
- **Immigration Appeals:** The IHRC considers that the 14 day time limit within which an application for judicial review can be made combined with the proposed restriction of the grounds on which the High Court can extend the 14 day time limit, creates unnecessary difficulties for people seeking to challenge immigration decisions, and may prevent some people from making such applications. This is likely to render the judicial review remedy in relation to immigration decisions less effective in practice.
- **Access to decisions of the Protection Review Tribunal:** In light of best international practice in jurisdictions such as New Zealand and Canada, and in the interests of overall transparency and consistency in decision making, the IHRC considers that the decisions of the Refugee Appeals Tribunal should be published as a matter of course and generally accessible, with any redactions necessary to protect the identity of the persons concerned.

## EXTRAORDINARY RENDITION

- The IHRC recommends that the Irish Government should put in place a reliable and independently verifiable system of inspection so that no prisoner is ever transported through Ireland, except in accordance with proper legal formalities and the highest observance of human rights standards.
- The IHRC recommends that the Government act expeditiously to implement its commitments in the Programme for Government 2011-2016.



## **FEMALE GENITAL MUTILATION (FGM)**

- The IHRC welcomes the proposed future FGM Bill, and urges the Minister to introduce, as soon as possible, the specific legislation to reflect the severity and complexity of the practice through both criminalisation and protection. The IHRC urges that legislation be enacted in line with international best practice and in conformity with Articles 1, 4 and 16 of the Convention Against Torture with regard to criminalisation, and to ensure that Article 2 is respected in terms of effective measures to prevent the practice of FGM. Further, the IHRC urges that provisions for training of relevant professionals as well as appropriate access to support/redress and rehabilitation for victims of FGM be put in place, in line with Articles 10 and 14 of the Convention Against Torture.

## **HUMAN TRAFFICKING PREVENTION AND PROTECTION OF VICTIMS**

- The IHRC is concerned that in approaching the recovery and reflection period the Garda Síochána in conjunction with the Anti-Human Trafficking Unit should ensure that the correct standard of proof is applied in a consistent and correct manner.
- The IHRC considers that permission to remain should also be allowed for humanitarian reasons having regard to the personal situation of the victim, in accordance with Article 14 of the Council of Europe Convention on Trafficking. Special consideration should be given to providing leave to remain for child victims of trafficking.
- The IHRC has called for consideration to be given to the establishment of a central fund to compensate victims of trafficking. Civil proceedings in this sphere should be supported by a legal aid scheme for victims.

### III. INDEPENDENT INSPECTION MECHANISMS FOR ALL PLACES OF DETENTION: OPCAT

#### a. IRELAND'S RATIFICATION OF OPCAT

**Article 2** of the Convention and **Article 3 of the Optional Protocol** are of relevance to this section.<sup>7</sup>

As outlined in the 2009 **State Report**,<sup>8</sup> the Irish Government signed the Optional Protocol to the UN Convention against Torture and All Forms of Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) on 2 October 2007, but it has not yet ratified OPCAT.<sup>9</sup>

11. It is unclear from the State Report what national authorities will be designated as forming part of the National Preventative Mechanism (NPM) or whether in fact a new national mechanism will be established. The Department of Justice has not provided any timeframe within which the legislation will be drafted and the NPM established.<sup>10</sup>

12. The IHRC has called on the Irish Government on a number of occasions to ratify OPCAT as promptly as possible.<sup>11</sup> The IHRC has not yet been consulted in relation to the drafting of the legislation that is required to advance Ireland's ratification of OPCAT. As will be seen below, at present there is no independent inspection or monitoring mechanism that has access to all places of detention in Ireland. **Ratification of OPCAT and the establishment of the National Preventative Mechanism that meets the OPCAT requirements, including compliance with the Paris Principles, are required as a matter of urgency.**

#### b. POSSIBLE NPM STRUCTURE IN IRELAND

13. The IHRC regards the ratification of OPCAT as a significant and valuable opportunity for the Irish Government to put in place a comprehensive and effective system of inspections for all places of detention in Ireland that meets the requirements of OPCAT in relation to independence, membership, mandate and powers. While the IHRC has not carried out a comprehensive analysis of the extent to which current inspection mechanisms meet the requirements of OPCAT, **it is clear from the preliminary analysis that there are currently gaps in the inspection system and**

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<sup>7</sup> Article 2 of the Convention requires State Party's to take effective legislative, administrative, judicial or other measures to prevent acts of torture in its jurisdiction. Article 3 of the Optional Protocol states that "each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the National Preventative Mechanism)".

<sup>8</sup> Initial Periodic Report by the Government of Ireland to the UN Committee Against Torture, July 2009 ("State Report to the Committee Against Torture").

<sup>9</sup> State Report to the Committee Against Torture at paras. 73-74.

<sup>10</sup> The State Report to the Committee Against Torture provides that the Attorney General has advised that legislation will be required prior to ratification of OPCAT in order to provide for the creation of the NPM arrangement. State Report to the Committee Against Torture at paras. 73-74. It further indicates that the drafting of that legislation has been commenced in the Department of Justice and Law Reform. Ibid. at p.20.

<sup>11</sup> For example, IHRC Submission to the UN Human Rights Committee on the Examination of Ireland's Third Periodic Report on the ICCPR, March 2008, at p.21, IHRC (2007) "Extraordinary Rendition", A Review of Ireland's Human Rights Obligations, at p.5.



**that existing mechanisms do not fully comply with OPCAT requirements.** OPCAT clearly envisions a *system* of regular visits undertaken by independent international and national bodies. In particular, there is currently no centralised body in Ireland to co-ordinate the activities of the different inspection mechanisms and to ensure co-ordinated communication with the Sub-Committee for the Prevention of Torture.

14. As Ireland's Paris Principle compliant NHRI, the IHRC considers that it can play a key role in advising Government on the designation of an effective NPM and that it may also play a role within an NPM structure where different organisations are designated. Among its key functions the IHRC is empowered to provide recommendations on draft legislation pursuant to section 8(b) of the Human Rights Commission Act 2000 and to consult with international bodies or agencies that have a knowledge or expertise in human rights pursuant to section 8(c), which would include for example the Sub-Committee for the Prevention of Torture. These functions which are important elements for OPCAT compliance are clearly deficit in many of the current inspection mechanisms in Ireland.<sup>12</sup>

#### **c. DESIGNATION AND ESTABLISHMENT OF AN NPM STRUCTURE IN IRELAND**

15. There are several existing inspection and monitoring mechanisms for places of detention in Ireland. The degree to which each mechanism complies with the requirements of OPCAT,<sup>13</sup> varies widely as outlined below. At present, none of these mechanisms are empowered to contact or send information to the Sub-Committee on Torture.

##### ***Inspection Mechanisms for Police Stations***

16. There is no existing inspection mechanism for police stations that complies with the standards of OPCAT. The Garda Síochána Ombudsman Commission (GSOC), which is an independent statutory body, is empowered to carry out investigations into complaints concerning the conduct of the Garda Síochána (police). GSOC is primarily an individual complaints mechanism rather than a preventative inspection mechanism. GSOC does not have a general power to inspect a Garda Station on a regular and unannounced basis.<sup>14</sup> **In the area of police detention, there is no independent inspection mechanism that currently fulfils the requirements of OPCAT.**

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<sup>12</sup> The IHRC notes that the New Zealand Human Rights Commission (NHRI) has been designated as the Central National Preventative Mechanism "to ensure that there is co-ordination and consistency among multiple NPMs so that they can operate as a cohesive system".

<sup>13</sup> Part IV of OPCAT sets out requirements including: functional independence as well as the independence of its personnel; necessary resources for the functioning of the NPM; and in establishing an NPM the State should have regard to the Paris Principles. The NPM should be empowered to regularly examine the treatment of persons deprived of their liberty; to make recommendations to the relevant authorities to improve the treatment of such persons and the conditions of detention and to submit proposals and observations concerning existing or draft legislation of relevance.

<sup>14</sup> The recommendation to extend the powers of the Garda Síochána Ombudsman Commission in this regard was previously made to the Government, prior to the enactment of the Garda Síochána Act 2005, by the IHRC as well as the European Committee for the Prevention of Torture (CPT). *See* IHRC, Observations on the Garda Bill 2004, (February 2004); Council of Europe, Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 2002 (2003).

### *Inspection Mechanisms for Prisons*

17. The Inspector of Prisons is an independent body,<sup>15</sup> empowered to undertake regular inspections of prisons and may at any time enter any prison and request relevant documentation.<sup>16</sup> The Inspector currently has a very small staff which he has stated he may wish to review at a later date.<sup>17</sup> The Inspector is not authorised to investigate an individual complaint raised by a prisoner.<sup>18</sup> The Inspector can undertake an investigation in relation to any matter arising out of the management or operation of a prison where requested by the Minister for Justice, or may also do so at his or her own volition. The Inspector is required to submit an annual report to the Minister for Justice.<sup>19</sup> In order to fully meet the requirements of OPCAT, the Inspector should have full functional independence, including in relation to the appointment of staff and the power to submit proposals and observations concerning existing or draft legislation of relevance. The Inspector should also be provided with adequate resources.

### *Inspection Mechanisms for Children Detention Schools*

18. Under the legislation that establishes the mandate of the **Office of the Ombudsman for Children** it is explicitly precluded from inspecting places of detention for children.<sup>20</sup> Since late 2008, the Health Information and Quality Authority (HIQA), which incorporates the Social Services Inspectorate (SSI), has commenced inspections of children detention schools.<sup>21</sup> Inspections by the SSI are based on the Standards and Criteria for Children Detention Schools, which were adopted by the Irish Youth Justice Service in November 2008.<sup>22</sup> In relation to the requirements of OPCAT, there are some areas where changes would be required. For example, the SSI is only required to inspect individual schools at least once a year rather than on a regular basis and is not empowered to submit proposals on existing or draft legislation.

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<sup>15</sup> In accordance with section 30(5) of the Prison Act 2007 the Inspector of Prisons is independent in the performance of his or her functions. However, it is to be noted that the Inspector of Prisons is appointed by the Minister for Justice, he or she holds office on the terms and conditions, including remuneration, as the Minister may determine and is appointed for a term not exceeding 5 years with the possibility for reappointment. (Section 30, Prisons Act 2007).

<sup>16</sup> Section 31 (1) (a), Prisons Act 2007. In addition to the Inspector of Prisons, Prison Visiting Committees are empowered to visit the prisons in respect of which they are appointed from time to time and at regular intervals. These committees are appointed by the Minister for Justice.

<sup>17</sup> Annual Report of the Office of the Inspector of Prisons, 2008 at para. 2.4.

<sup>18</sup> He may examine the circumstances relating to the complaint where it is necessary to carry out his statutory functions. Section 31(6), Prisons Act 2007.

<sup>19</sup> Section 32 (1), (2), Prisons Act 2007.

<sup>20</sup> Section 11(e)(iii) of the Ombudsman for Children Act 2002.

<sup>21</sup> HIQA is an independent statutory body established under the Health Act 2007, which is responsible for developing quality, safety and accountability in the State's health and social care services. In accordance with the Health Act 2007 the SSI undertakes inspections of children detention schools, a role previously carried out by Government Departments. The Children Act 2001 as amended, requires inspections of detention schools to be carried out at least once every 12 months. Section 186(1) Children Act 2001.

<sup>22</sup> HIQA, *Standards and Criteria for Children Detention Schools*. The standards include areas such as: health, education, premises and safety, security, management and staffing, the recruitment, vetting and appointment of staff, staff training, administration, planning, the quality of care provided, children's rights including independent advocacy, child protection, the management of behaviour, and programmes for dealing with offending behavior. In carrying out an inspection the SSI is required to pay particular attention to the conditions in which the children are detained and facilities available to them; their health, safety and well-being; policies and practices concerning their family relationships; policies and practices concerning their discipline and policies and practices concerning their normal routine. The Inspectors may interview children with their consent and, if they agree, interviews can take place in private. The Inspector is required to be independent in the exercise of his or her functions and is required to submit a report to the Minister for Health and to publish the report.

### ***Inspection Mechanisms for Mental Health Institutions***

Mental health institutions are inspected by the Inspector of Mental Health Services.<sup>23</sup> The Inspector is appointed by the independent statutory Mental Health Commission.<sup>24</sup> The function of the Inspector is to visit and inspect every approved centre at least once in each year and to visit and inspect any other premises where mental health services are being provided as he or she thinks appropriate.<sup>25</sup> When carrying out an inspection the Inspector is required to see any resident or other person who has requested to meet with the Inspector during an inspection.<sup>26</sup> The Inspector is also required to see any resident where he or she has reason to doubt that a person is being properly detained under the 2001 Act.<sup>27</sup> Amendments would be required in order to meet OPCAT requirements. For example, the Inspector is only required to inspect mental health centres at least once a year rather than on a more regular basis.

### ***Inspection Mechanisms for Residential Centres for People with Disabilities and Residential Centres for Older Persons***

19. The Health Information and Quality Authority (HIQA) has a statutory remit<sup>28</sup> to register and inspect residential services for people with disabilities and residential centres or services for the elderly in accordance with standards set by HIQA.<sup>29</sup> HIQA has the power to enter the relevant premises, to inspect records and other items and to interview in private any person working or receiving a service.<sup>30</sup> At the time of writing, HIQA's functions in relation to the inspection of residential centres for persons with disabilities as set out in the 2007 Act have yet to be commenced.<sup>31</sup> In relation to residential care settings for the elderly, HIQA can inspect both private and public residential care homes for the elderly using the *National Quality Standards for Residential Care Settings for Older People*. In terms of OPCAT compliance, similarly to the situation pertaining to child detention schools, there is no stipulation that inspections should take place on regular basis. HIQA is also not empowered to submit proposals on existing or draft legislation.

20. The **Office of the Ombudsman** can examine administrative complaints about the actions of a range of public bodies, including the Health Service Executive (HSE), which includes publicly owned residential care centres for the elderly and persons with disabilities.<sup>32</sup>

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<sup>23</sup> Section 50, Mental Health Act 2001.

<sup>24</sup> The Mental Health Commission is an independent statutory body established under the Mental Health Act 2001 with the responsibility to promote high standards in the delivery of mental health services and to ensure the interests of those involuntarily admitted to approved centres are protected. Mental Health Commission, available at: [http://www.mhcirl.ie/About\\_Us/](http://www.mhcirl.ie/About_Us/)

<sup>25</sup> Section 51 (a), Mental Health Act 2001.

<sup>26</sup> Mental Health Act 2001, Section 52 (a).

<sup>27</sup> Ibid. Section 52(b).

<sup>28</sup> Part 2 and Part 9, Health Act 2007.

<sup>29</sup> Health Act 2007. 'Currently there are 8000 adults and 200 children with disabilities in the care of the HSE and HSE funded service providers around the country Health Service Executive.' HSE Official Statement on Complaints at Residential Centres for People with Intellectual Disabilities, issued May, 13<sup>th</sup> 2010, at <http://www.hse.ie/eng/services/newscentre/2010archive/feb2010/intellectual%20disability%20residential%20centres.html>

<sup>30</sup> Part 9 of the Health Act 2007.

<sup>31</sup> Various sections of the Health Act 2007 have been commenced by way of statutory instrument. There were three commencement orders in 2007, one in 2008 and two in 2009. There were none in 2010 and none to date in 2011.

<sup>32</sup> The Ombudsman can examine complaints about agencies delivering health and personal social services on behalf of the HSE. These agencies can include charitable organisations and voluntary bodies. The

#### d. IHRC RECOMMENDATIONS

21. In advance of the ratification of OPCAT the Government should **engage in consultations** with all relevant independent statutory bodies, civil society organisations and other relevant stakeholders in its consideration of the designation of an effective system of national monitoring mechanisms in Ireland. The Government should **undertake a comprehensive assessment**, in consultation with the relevant statutory bodies, agencies and civil society organisations, of the extent to which the current inspection mechanisms in all places of detention meet the requirements of OPCAT.

22. In drafting legislation for the creation and designation of the NPM the relevant Minister should **refer the draft legislation at Scheme stage to the IHRC** pursuant to section 8(b) of the Human Rights Commission Act 2000. **The designation of a NPM in Ireland must include allocation of specific and adequate resources.**

23. In designating the bodies that will form part of an NPM in Ireland, the Government should **consider giving the IHRC a co-ordinating role** similar to the model in New Zealand to ensure an effective and cohesive *system* of inspections and to ensure effective communication with the Sub-Committee for the Prevention of Torture.<sup>33</sup> **Any such role for the IHRC must include additional resources as a prerequisite.**

#### IV. COMPLAINTS AND INVESTIGATION MECHANISMS IN PLACES OF DETENTION

**Articles 4, 12, 13 and 14** of the Convention are of relevance to this section.<sup>34</sup> In addition, it is of note that detainees and other persons at risk of ill-treatment should have “judicial and other remedies that will allow them to have their complaints promptly and impartially examined, to defend their rights, and to challenge the legality of their detention or treatment” General Comment No. 2, para. 13

The **State Report** indicates that “there are standing independent mechanisms for systematic oversight of the operation of the prison system and of the conditions of custody and the treatment of all persons detained therein” and cites (a) Prison Visiting

Ombudsman can examine complaints about how staff of the HSE, or other agencies, carry out their everyday administrative activities when providing services to members of the public. See further below pp. 24;27.

<sup>33</sup> In the *Concluding Observations* on New Zealand in May 2009, the Committee Against Torture noted with appreciation the establishment of the NPM which is coordinated by the New Zealand Human Rights Commission (para. 3). In contrast, in the *Concluding Observations* on Sweden in June 2008, the Committee expressed concern that Sweden designated the Parliamentary Ombudsman’s Institution and the Chancellor of Justice as its NPM under the OPCAT. It stated that these institutions are reactive, not preventative in nature, that neither organisation has multi- professional staff and that the Government had not allocated any additional resources which would allow these institutions to deal with the new tasks (para. 25).

<sup>34</sup> Article 4 requires States to ensure that all acts of torture are an offence under the criminal law.

Article 12 requires States to “ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable grounds to believe that an act of torture has been committed in any territory under its jurisdiction”. Article 13 enshrines the right of alleged victims of torture to make a complaint to and have the case heard expeditiously by the authorities. Article 14 enshrines the right of victims of torture to have access to redress and the means for as full as rehabilitation as possible.

Committees, (b) the Inspector of Prisons, and (c) the Council of Europe Committee for the Prevention of Torture in this regard. (State Report, para. 225)

**The IHRC is concerned that there are serious gaps in relation to current complaints and investigation mechanisms in places of detention in Ireland.**

**a. IRISH PRISONS**

The **State Report** provides that “A prisoner may complain of ill-treatment to the Governor of the prison, a member of the Visiting Committee of the prison, the Director General of the Irish Prison Service or the Minister for Justice, Equality and Law Reform.” (State Report, para 270)

24. **At present there is no independent statutory mechanism through which a person in prison in Ireland can make a complaint.** As outlined previously, the Prison Act 2007 provides for a statutorily independent **Inspector of Prisons**.<sup>35</sup> While the Inspector of Prisons has the power to carry out regular inspections of prisons and to enter a prison at any time of his choosing, he is excluded from hearing individual complaints from prisoners.<sup>36</sup> Both the current and former Inspector of Prisons and the CPT have recommended the establishment of a Prisoner Ombudsman.<sup>37</sup>

25. In addition to the Inspector of Prisons, there are **Prison Visiting Committees** to visit the prisons in respect of which they are appointed from time to time.<sup>38</sup> Prison Visiting Committees can hear complaints if they are requested by a prisoner and can hear complaints in private.<sup>39</sup> They are required to investigate any report that they receive that indicates a prisoner may have been injured by the discipline or treatment in prison and to communicate their opinion thereon to the Board and to the Minister for Justice.<sup>40</sup> These committees are appointed by the Minister of Justice.<sup>41</sup>

***Concerns expressed about the current system***

26. The Inspector of Prisons in his 2010 publication *Guidance on Best Practice Relating to Prisoners' Complaints and Prison Discipline*, found that internal complaints procedures in operation in Irish prisons<sup>42</sup> fell short having regard to prisoners' rights, in accordance

<sup>35</sup> Prison Act 2007, Part 5.

<sup>36</sup> The Inspector can only examine the circumstances relating to a complaint where it is necessary for the performance of his or her functions. Section 31 (6), Prison Act 2007

<sup>37</sup> Inspector of Prisons, *Fifth Annual Report of the Inspector of Prisons and Places of Detention 2006-2007*, (Government Publications: 2007), p. 37; Report on an Inspection of Mountjoy Prison by the Inspector of Prisons, Judge Michael Reilly, 2009, p.37, para.7.12; Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) at para. 37. In 2006, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) report stated that they had “serious concerns as to the effectiveness of the investigations carried out by the Garda Síochána into allegations of ill- treatment by staff” and that “many prisoners did not have confidence in the complaints system and did not wish to file a complaint, even if it involved ill- treatment”. Ibid, at paras 35- 37.

<sup>38</sup> Prison (Visiting Committees) Act 1925, Section 3 (1) (a). Prison (Visiting Committees) Act 1925 and Prison (Visiting Committees) Order 1925.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid., Section 2 (2).

<sup>42</sup> Those governed by Rules 55 to 57 of the Irish Prison Rules 2007.



with the State's obligations to prisoners and best practice.<sup>43</sup> The Report found that the current complaints procedure is neither fair nor transparent.<sup>44</sup> Based on these findings, the Report made a number of recommendations including the establishment of an independent complaints body,<sup>45</sup> and that a proper Appeals Procedure should be put in place.<sup>46</sup> In addition, he recommended that protocols be put in place to ensure that prison officers are not in contact with the prisoner making the complaint during the period of investigations,<sup>47</sup> and that there should be a dedicated independent person or persons in each prison whose duty it is to assist prisoners' in making complaints.<sup>48</sup>

27. The February 2011 *CPT Report* on Ireland reflected these concerns.<sup>49</sup> Despite the setting up of a special Garda investigation team following the above concerns of the Inspector of Prisons, the CPT reported that on the basis of information supplied to them in relation to one particular incident in Portlaoise Prison on June 30<sup>th</sup>, 2009, 'neither the Garda nor the prison authorities acted promptly to preserve evidence of the alleged assault or to carry out an effective investigation into the incident.'<sup>50</sup> The CPT welcomed the introduction of a new policy document on the Investigation of Prisoner Complaints/Allegations, which came into effect on 20 January, 2010, and recommended that the effectiveness of this policy be assessed after an appropriate interval.<sup>51</sup> The CPT also recommended that staff members against whom allegations have been made be transferred to other duties pending the results of the investigation.<sup>52</sup>

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<sup>43</sup> Inspector of Prisons, *Guidance on Best Practice Relating to Prisoners' Complaints and Prison Discipline*, September 2010.

<sup>44</sup> This was due *inter alia* to: literacy problems means prisoners' are unable to adequately fill out prisoner complaints forms; delegation of the complaints investigation to the Chief Officer in the prison and especially to the Chief Officer in charge of officers who may be under investigation are problematic; the submission of photocopies of prisoners' complaints to officers; the absence of thorough investigation and the identification of other evidence or witnesses; lack of protocols to ensure evidence is harvested; and the procedure whereby Governors make decisions lacks transparency. *Ibid.*, at para. 4.2.

<sup>45</sup> *Ibid.*, at para. 4.4.

<sup>46</sup> *Ibid.*, at para. 4.9. The Inspector found that many prisoners who were dissatisfied with the Governor's decisions felt that there was no point in appealing the decision; they had no confidence in the appeals procedure. It was found that, '[in] most cases the Governor makes a decision on the prisoner's complaint from the information in the file submitted to him/her by the Chief Officer. In most cases the Governor does not direct any further enquiries to be made, does not take oral evidence and does not afford the prisoner a right of rebuttal (at para. 2.4g). The '*de facto*' position is that when a prisoner appeals a Governor's decision it is appealed to the Director General of the Irish Prison Service being an officer of the Minister' (at para. 2.8 & 2.9).

<sup>47</sup> *Ibid.*, at para. 4.11.

<sup>48</sup> *Ibid.*, at para. 4.12. The Inspector found that virtually all prisoner complaints examined had minimal details, names of witnesses, the circumstances leading to the complaint and other relevant information was rarely included. Further recommendations included that Prisoners' complaints are dealt with expeditiously, the immediate gathering of evidence immediate (including CCTV, forensic and medical) and that possible witnesses are identified. *Ibid.* para 4.10: 'The reason is that relevant evidence may be lost, relevant witnesses may be moved, transferred or released.' The Inspector found that in the majority of files examined there was no evidence of statements taken from other witnesses (at para. 2.4d). The Inspector also repeated his call from his Annual Report 2009, that all prison officers should wear some form of identification as a matter of urgency. *Ibid.*, at para. 4.13. 'In a significant number of complaints the prisoners were unable to identify the officer or officers against whom they were complaining' (at para. 2.10).

<sup>49</sup> CPT/Inf (2011) 3, 10 February, 2011 at para.s34 – 37, at pp. 22-24.

<sup>50</sup> *Ibid.*, para. 35, p. 22.

<sup>51</sup> *Ibid.*, para. 36, p. 23.

<sup>52</sup> *Ibid.*, para. 35-37, p. 22-24.

## IHRC RECOMMENDATIONS

28. The IHRC recommends that **an independent statutory complaints mechanism, such as a Prison Ombudsman, be established as a matter of priority** to hear and determine complaints from prisoners in relation to their treatment while they are detained. This body must be sufficiently resourced and fully independent. The remit of such a Prison Ombudsman could include enquiry powers relating to the investigation of circumstances surrounding a death in prison so as to ensure that the full circumstances surrounding a death in prison are elucidated and recommendations to prevent such future deaths are adopted.

### b. COMPLAINTS AND INVESTIGATION MECHANISMS FOR THE POLICE SERVICE

The **State Report** indicates that the rights of persons in Garda Síochána (Police) custody are governed by the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987.<sup>53</sup> The objective of the Garda Síochána Ombudsman Commission (GSOC) is to provide for full fairness to all persons involved in complaints and investigations concerning members of An Garda Síochána.<sup>54</sup>

29. The IHRC has welcomed the establishment of the **Garda Síochána Ombudsman Commission** (GSOC) as marking a historic step towards placing human rights at the centre of Irish policing.<sup>55</sup> The GSOC is an independent statutory body established under the Garda Síochána Act 2005. The overall function of GSOC is to provide the public with independent oversight of the police and to deal with the public's complaints concerning the conduct of the Police.<sup>56</sup> The IHRC participates on an ongoing basis in a Consultative Group established by GSOC to guide it in the development of its operating policies and protocols.<sup>57</sup> The IHRC has made a number of recommendations to strengthen certain aspects of GSOC's legislative powers. In particular, the IHRC has recommended that **GSOC should have the power to instigate a review of practice, policy or procedure for the purpose of preventing complaints or to reduce the incidence of such complaints of its own volition**, rather than at the request of the

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<sup>53</sup> State Report to the Committee Against Torture, at P.19, para. 92-94.

<sup>54</sup> State Report to the Committee Against Torture, 2011, at p.20, para. 95.

<sup>55</sup> See IHRC Press Release, 'Human Right Commission gives broad welcome to amendments in Garda Bill 2004', (1 March 2004).

<sup>56</sup> During the investigation of alleged criminal offences, GSOC generally has many of the same powers as a Police Officer. Where GSOC considers a criminal offence may have occurred following its investigation it is empowered to refer the matter to the Director of Public Prosecution who considers whether to institute proceedings in light of the evidence. Where a complaint is investigated but does not amount to a criminal offence, GSOC can recommend whether disciplinary proceedings should be instituted. See further [www.gardaombudsman.ie](http://www.gardaombudsman.ie). Under the Garda Síochána Act 2005, GSOC is mandated to directly and independently investigate complaints against members of the Police; to investigate any matter, even where there is no complaint, where it appears a member of the Police has committed a criminal offence or a breach of discipline; and to investigate any practice, policy or procedure of the Police with the aim of reducing the incidence of complaints. Where death or serious harm results from a Police operation or while in police custody, the Ombudsman shall immediately direct an officer to examine the complaint and recommend whether it should be investigated as a criminal offence or as a non-criminal complaint. The Police Commissioner is also required to refer any matter where it appears to indicate that the conduct of a police officer has resulted in death or serious harm.

<sup>57</sup> The GSOC Consultative Group consists of Garda management, Garda staff associations, the Department of Justice, Equality and Law Reform, the Garda Síochána Inspectorate and the Irish Human Rights Commission.

Minister for Justice as is currently the case under Section 106 of the Garda Síochána Act 2005.<sup>58</sup>

30. The IHRC has also expressed **concern that the restrictions on the powers of GSOC** to search a police station that has been designated by the Minister for Justice as containing information, documents or things relating to the security of the State are unnecessarily restrictive.<sup>59</sup> The IHRC has recommended that alternative measures could be put in place to meet the objective of protecting national security.<sup>60</sup>

31. Finally, it is of note that GSOC has been involved in discussions with the Department of Justice to request modifications to the Garda Síochána Act 2005, which they believe will aid the efficiency and effectiveness of GSOC.<sup>61</sup> One of the proposed amendments is to introduce a provision to allow for the “leaseback” of investigations to An Garda Síochána, whether for disciplinary issues or the investigation of *prima facie* criminal offences.<sup>62</sup> The IHRC considers that any potential amendment to the Garda Síochána Act 2005, to allow for the “leaseback” of investigations to An Garda Síochána must be strictly limited to cases involving minor offences or to cases which do not involve serious misconduct and should be accompanied by appropriate safeguards including a requirement of mandatory supervision of the police investigation by GSOC and the consent of the complainant should be required.

#### **IHRC RECOMMENDATIONS**

32. The IHRC reiterates its recommendation that the powers of GSOC should be strengthened, including that GSOC should have the power to instigate a review of practice, policy or procedure for the purpose of preventing complaints or to reduce the incidence of such complaints of its own volition.

#### **c. INVESTIGATION OF THE CIRCUMSTANCES SURROUNDING DEATHS IN DETENTION**

The **State Report** indicates that the Garda Síochána Ombudsman Commission (GSOC) must directly investigate complaints concerning the death of a person in Garda custody.<sup>63</sup> The **State Report** makes no reference to any specific legislation, procedure or statistics concerning investigation of deaths in prisons.<sup>64</sup>

#### ***Deaths in Police Custody***

33. The Garda Síochána Ombudsman Commission (GSOC) is required to immediately undertake an investigation where death or serious harm results from a Police operation

<sup>58</sup> See further, IHRC Policy Statement, Human Rights Compliance of An Garda Síochána, April 2009

<sup>59</sup> Provisions in Section 99 and Section 126 of the Garda Síochána Act 2005.

<sup>60</sup> Ibid.

<sup>61</sup> Garda Síochána Ombudsman Commission, *Two Year Report*, March 2008, p. 22. The Garda Síochána (Amendment) Bill is listed in the Government’s Legislative Programme for 2009. Remarks by Dermot Ahern, TD, Minister for Justice, Equality and Law Reform, 5 March 2009.

<sup>62</sup> The proposed amendment under Section 94 of the Garda Síochána Act 2005 includes a specific requirement that the Garda Commissioner forwards to GSOC all the information, documentation and evidence collected during the investigation, as GSOC would remain responsible for sending the file to the Director of Public Prosecution. Ibid., p. 27.

<sup>63</sup> State Report to the Committee Against Torture, p. 45, para. 264.

<sup>64</sup> State Report to the Committee Against Torture, pp. 46-7, re: Arts. 12, wherein no reference is made.



or while in police custody.<sup>65</sup> GSOC may also open of its own volition ‘public interest’ inquiries to “investigate any matter that appears to it to indicate that a member of the Garda Síochána may have: (a) committed an offence, or (b) behaved in a manner that would justify disciplinary proceedings”.<sup>66</sup> **The IHRC considers the GSOC public enquiry function very important to elucidate the circumstances surrounding a death in police custody and to identify systemic issues and recommendations that should be put in place to prevent future deaths in police custody.**

34. In July 2007, GSOC opened its first public interest inquiry into the death of Mr Terence Wheelock, under Section 102(4) of the Garda Síochána Act 2005. The report concluded that there was insufficient evidence to support allegations that Terence Wheelock was assaulted by Garda members during his arrest and that he was mistreated in any way during his detention. However, the report concluded that “a lack of clear instruction and process allowed Terence Wheelock to bring a ligature with him into the cell during his detention”.<sup>67</sup> The report made several recommendations to the Garda Síochána with regard to people in custody.<sup>68</sup>

#### **IHRC RECOMMENDATIONS**

35. The IHRC recommends that the Garda Síochána, in conjunction with the Department of Justice, implement the recommendations of the GSOC inquiry report into the death of Terence Wheelock as promptly as possible.

#### ***The Role of the Coroner in relation to Deaths in Prison or other Places of Detention***

36. Where a death occurs in prison or in Garda custody, it is obligatory to report the death to the Coroner. The responsibility to report a death falls to the person in charge of

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<sup>65</sup> Following such an investigation, a file can be referred to the Director of Public Prosecutions where GSOC considers a criminal offence may have taken place or can make recommendations relating to disciplinary action.

<sup>66</sup> Section 102(4) of the Garda Síochána Act 2005 states that: “The Ombudsman Commission may, if it appears to it desirable in the public interest to do so and without receiving a complaint, investigate any matter that appears to it to indicate that a member of the Garda Síochána may have: (a) committed an offence, or (b) behaved in a manner that would justify disciplinary proceedings.”

<sup>67</sup> Garda Síochána Ombudsman Commission (GSOC), *The Death of Terence Wheelock: Report Pursuant to Section 103 Following Investigation*, March 2010, at p. 197.

<sup>68</sup> These recommendations included:

- An Garda Síochána should commence a State wide review of all custody facilities to ensure that no ligature points exist within cells;
- An Garda Síochána should initiate a process of regular documented ligature reviews of all cells;
- A review of the feasibility of installation of CCTV cameras in custody areas should be undertaken;
- The Gardaí should introduce a specialist role for Garda members charged with the responsibility for custody of prisoners;
- An Garda Síochána should issue consolidated, clear and comprehensive instruction as to the need for prisoners to be searched for potential ligatures and the removal of cords etc., from clothing;
- That An Garda Síochána issue clear and comprehensive instruction as to the need for Custody Record entries to be accurate and complete;
- That An Garda Síochána issue a reminder to all members as to the need for accurate recording of the time on Custody Records;
- That An Garda Síochána commence a review of the provision of safety equipment within custody areas (First Aid Equipment, Vent Aids...);
- That An Garda Síochána commence a review of the First Aid Training and First Aid refresher training provided to its members;
- That An Garda Síochána review the feasibility of providing ligature cutting equipment to each station designated for the custody of prisoners.

*Ibid*, at p. 198.

the institution or any member of the Garda Síochána who becomes aware of a reportable death in the coroner's jurisdiction. Moreover, when the death occurred in prison or in Garda custody a post-mortem must be held as well as an inquest.<sup>69</sup> The function of the Coroner is limited to investigating the proximate medical cause of death.<sup>70</sup> The current law, and as interpreted by the Courts, restricts the mandate of an inquest to examine "how" a person died. A review of the Coroners Service in 2000<sup>71</sup> recommended the extension of the remit of the Coroner to the investigation of the wider circumstances in which a death occurred.<sup>72</sup> In response to this Review, the Department of Justice published the Coroners Bill 2007, which proposed to "widen the current scope of the inquest from investigating the proximate medical cause of death to establishing in what circumstances the deceased met his or her death".<sup>73</sup> The 2007 Bill has remained at the Committee stage in Seanad Éireann since 4<sup>th</sup> October 2007 and has lapsed at time of writing due to the change in Government.

### IHRC RECOMMENDATIONS

37. In light of clear issues of non-compliance of Irish law with the requirements of the European Convention on Human Rights and with CAT, amongst other international human rights law treaties, the IHRC considers that the proposed legislation to amend the Coroners Act 1962 should be progressed through the Houses of the Oireachtas as a matter of immediate priority.

### *Deaths in Prisons*

38. In contrast to deaths or serious harm occurring during a Police operation or while in police custody, **there is no independent Prison Ombudsman equivalent to GSOC to undertake an investigation into the circumstances surrounding deaths occurring in prison.**

39. According to the Irish Prison Service Annual Report 2009, there were nine deaths in Irish Prisons in 2009.<sup>74</sup> It is obligatory to report a death in custody to the Coroner who must carry out a post-mortem examination and hold an inquest (see above). However, under the current Coroner's legislation the Coroner cannot investigate the circumstances

<sup>69</sup> Coroners role description, available at:

<http://www.justice.ie/en/JELR/coronersfulljob.pdf/Files/coronersfulljob.pdf>.

<sup>70</sup> The principal legislation that establishes the role and responsibilities of Coroners in Ireland is the Coroners Act 1962. Following the investigation of a reportable death, a Coroner will decide whether a death was due to natural or unnatural causes. If a death may have been due to unnatural causes an inquest must be held by law. A Coroner is not permitted to consider civil or criminal liability but must simply establish the facts.

<sup>71</sup> 'Review of the Coroner Service', Report of the Working Group, published by the Department of Justice, Equality and Law Reform, 2000.

<sup>72</sup> 'Review of the Coroner Service', 2000, p. 13, Para. 49.

<sup>73</sup> In the Explanatory Memorandum to the 2007 Bill it is recognised that current Coroner's System requires reform in order to fully comply with the jurisprudence under Articles 2 and 13 of the European Convention on Human Rights. Department of Justice, Equality and Law Reform, *Crime, Law and Enforcement*, available at: <http://www.oireachtas.ie/documents/bills28/bills/2007/3307/b3307s.pdf>

See further IHRC Observations on the General Scheme of the Coroner's Bill 2005, at p. 10.

<sup>74</sup> Irish Prison Service Annual Report 2009, August 2010 available at <http://www.irishprisons.ie/documents/AnnualReport2009PDF.pdf> At the end of the year, an inquest was held in one case where a verdict of death by misadventure was returned. Inquests were pending in the remaining cases therefore the proximate medical cause of death was not known. Verdicts were reached in 9 inquests held in 2009 in relation to incidents in previous years. A verdict of death due to natural causes was recorded at three inquests and the remaining deaths were attributed to misadventure (3), narrative verdict (2), open verdict and suicide (1 each). *Ibid.* at p. 37.

surrounding a death in detention and can only address the proximate medical cause of death.

40. Violent deaths have occurred in Irish prisons as a result of inter-prisoner violence in recent years. The circumstances surrounding the death of Gary Douch have been described by the CPT as “a tragic illustration of the unsafe nature of certain prisons in Ireland”.<sup>75</sup> Mr. Douch died following an attack on him by another prisoner while he was detained in a holding cell with 6 other prisoners in Mountjoy Prison on 1 August 2006. The prisoner who attacked Gary Douch was found guilty of manslaughter by diminished responsibility. It emerged during the criminal trial that the convicted person was transferred from the Central Mental Hospital to Mountjoy Prison where he was put in a holding cell with six others without the medication he needed for his mental illness.

41. In April 2007, following a proposal made by the Minister for Justice, the Government established a Commission of Investigation into the circumstances surrounding the death of Gary Douch.<sup>76</sup> It may be noted that **this is an *ad hoc* commission established following a proposal from the Minister for Justice subject to the consent of the Minister for Finance rather an enquiry that is automatically initiated following a death in prison.**<sup>77</sup> In a press release issued in April 2007, the Department of Justice indicated that in light of delays in the criminal trial the Commission has not yet published its report but it was expected to be published before the end of the 2007.<sup>78</sup> However, this has not happened at time of writing, and there have more recently been reports in the media that the delay has been due to financing issues.<sup>79</sup>

42. In light of ongoing and chronic overcrowding in prisons, particularly in holding cells, the lack of adequate mental health supports in all prisons and the lack of specialised training for prison officers, **the IHRC is seriously concerned that lessons have not been learned from this case.** It is expected that the Report of the Commission of Enquiry into the Death of Gary Douch will provide further recommendations in relation to the prevention of deaths of this kind in the future.

#### **IHRC RECOMMENDATIONS**

43. The IHRC considers that the report of the Commission of Investigation into the death of Gary Douch should be published as promptly as possible and that it is ensured that the Commission has sufficient resources to complete its work and the recommendations of the Commission should be implemented without delay by all relevant stakeholders. At a minimum an independent mechanism capable of investigating suspicious deaths in prisons should be introduced.

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<sup>75</sup> Report of the European Committee on the Prevention of Torture, Inhuman and Degrading Treatment (CPT) from 2 to 13 October 2006, para. 40. See also, Prisoner gets life sentence for killing cellmate’, The Irish Times, Tuesday, June 30, 2009. No mention is made of this in the 2011 State Report of Ireland to the CAT. See particularly paragraphs 224/5 relating to detention in prisons.

<sup>76</sup> Commission of investigation (death of Gary Douch in Mountjoy Prison) Order 2007.

<sup>77</sup> Section 3(1) of the Commission for Investigation Act 2004.

<sup>78</sup> Department of Justice and Law Reform, Press Releases, “Establishment of a Commission of investigation following the death of Mr. Gary Douch”, 23 April 2007.

<sup>79</sup> The Report has not yet been furnished. In March 2008 the then Minister for Justice, Equality and Law Reform, Brian Lenihan T.D. informed the Dail that it was expected to be published in 2009 (See Dail Written Answers for March 4, 2008) In November 2010, it was reported that the report was expected in February 2011 [See RTE Barrister conducting inquiry not being paid, 16 November 2010 <http://www.rte.ie/news/2010/1116/douchg.html>]. At time of writing the Report has not yet been published.

#### **d. COMPLAINTS MECHANISMS IN MENTAL HEALTH ESTABLISHMENTS**

44. As noted above, the Mental Health Act 2001 provides for an Inspector of Mental Health Services whose duty is to visit and inspect every approved centre at least once a year and to visit and inspect any other premises where mental health services are being provided as the Inspector considers appropriate.<sup>80</sup> Where a person is involuntarily detained their detention is reviewed by a Mental Health Tribunal and the decision of the Tribunal in relation to detention can be appealed to the Circuit Court.<sup>81</sup>

45. Statutory regulations require the details of relevant advocacy and voluntary agencies to be provided to each resident.<sup>82</sup> Regulations also stipulate that an internal complaints procedure should be established in all approved centres, each resident shall be made aware of the complaints procedure, the complaints procedure should be displayed in a prominent position and complaints shall be investigated promptly.<sup>83</sup> In 2009, the Inspector of Mental Health Services noted that “many [approved centres] proactively sought the views of service users through satisfaction questionnaires”.<sup>84</sup>

#### **e. COMPLAINTS MECHANISMS FOR CHILDREN IN DETENTION**

46. The four child detention centres in Ireland have a complaints system in place. The Irish Youth Justice Service “*Standards and Criteria for Children Detention Schools*” require detention schools to have “a documented complaints procedure which is readily available in written format to young people (in age appropriate language), parents, guardians and other representatives”.<sup>85</sup> However, the Social Services Inspectorate (SSI), on an inspection of Trinity House Children Detention School in 2009, found that although the children had received information on admission about how and to whom they should make a complaint, they were still uncertain about their rights.<sup>86</sup> Significant difficulties with the complaints system were found by Inspectors, such as the requirement to write a letter to lodge a complaint rather than fill in a form, which the Inspector observed would inhibit those with literacy difficulties. Also, there is no appeal procedure available if the outcome is not accepted by the child.<sup>87</sup>

47. The SSI recommended that the Irish Youth Justice Service should develop a clear policy on complaints for young people in all of the children detention schools. The SSI

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<sup>80</sup> Mental Health Act 2001, Section 51 (1) (a)

<sup>81</sup> Ibid. Sections 18 and 19.

<sup>82</sup> Article 20 (1) (d) of Mental Health Act 2001 (Approved Centres) Regulations 2006. In 2006 94% (61) of approved centres were in compliance with this requirement, see Mental Health Commission's Annual Report including the Report of the Inspector of Mental Health Services 2009, p. 213.

<sup>83</sup> Article 31 of Mental Health Act 2001 (Approved Centres) Regulations 2006.

<sup>84</sup> Mental Health Commission's Annual Report including the Report of the Inspector of Mental Health Services 2009, p. 213.

<sup>85</sup> Irish Youth Justice Service, *Standards and Criteria for Children Detention Schools*, at p. 9. Both the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) and the European Rules for Juvenile Offenders subject to Sanctions and Measures state that a child being held in detention should have the opportunity to make complaints or requests to the authority which is responsible for the institution

<sup>86</sup> Health Information and Quality Authority, Social Services Inspectorate, *Report on Trinity House Children Detention School*, April 2009, at p.15.

<sup>87</sup> Ibid.

notes that the complaints system should “work well for each young person who uses it” and offer him “assurance about the school’s capacity to keep him safe”.<sup>88</sup>

48. Under the Ombudsman for Children Act 2002, the **Ombudsman for Children** (OCO) operates a complaint and investigative function. The OCO is empowered to receive complaints made by children and young people or by adults on their behalf about public organisations, schools or hospitals.<sup>89</sup> The OCO can investigate “individual complaints relating to the administrative actions of a public body where it appears to the office that the action complained of may have adversely affected the child at the centre of the complaint.”<sup>90</sup> In 2008, 10% of complaints were in the justice category<sup>91</sup> and in 2009, 7% of complaints received related to justice issues.<sup>92</sup> The OCO has the power to investigate complaints relating to children detention schools. However, as noted above, **the OCO is not empowered to investigate complaints relating to children detained in St Patrick’s prison because such investigations are excluded from the remit of that Office under the Ombudsman for Children Act 2002.** The Ombudsman has recommended that the powers of the Ombudsman be extended to include complaints from children detained in St Patrick’s Institution.<sup>93</sup> The Committee on the Rights of the Child in its examination of Ireland has also made this recommendation.<sup>94</sup>

#### **IHRC RECOMMENDATIONS**

49. The IHRC recommends that the Irish Youth Justice Service should develop a clear policy on complaints from young people in all child detention schools that is child friendly and offers children in detention the assurance of the school’s capacity to keep the child safe. Child friendly information on the complaint functions of the Ombudsman for Children should be provided to each child in detention. The IHRC further recommends, in line with the recommendations of the Ombudsman herself and the UN Committee on the Rights of the Child, that the mandate of the Ombudsman for Children should be widened to include children detained in St Patrick’s Institution.

#### **f. COMPLAINTS MECHANISMS FOR RESIDENTIAL CENTRES FOR PEOPLE WITH DISABILITIES**

50. Serious complaints regarding allegations of abuse for instance, are not within the remit of the general administrative complaints system that exists for people using the services of the Health Services Executive (HSE).<sup>95</sup> For residential centres for persons

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<sup>88</sup> Ibid.

<sup>89</sup> Ombudsman for Children, *Annual Report*, 2008, at p. 21.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid, p.24. The justice category includes complaints relating to concerns about court proceedings, juvenile justice and issues related to asylum or immigration. Annual Report of the Ombudsman for Children 2008, at p. 25.

<sup>92</sup> Annual Report of the Ombudsman for Children 2009, at p. 23.

<sup>93</sup> IPRT, *Detention of Children in Ireland: International Standards and Best Practices*, Foreword by Emily Logan (ombudsman for Children), 2009, p. 1.

<sup>94</sup> Committee on the Rights of the Child, *Concluding Observations on Ireland*, 2006, CRC/C/IRL/CO/2, at para. 73.

<sup>95</sup> There is a complaints system within the Health Service Executive (HSE) available to service users, or people seeking or who have sought the provision of services provided by the HSE. Any person who is currently or was previously a service user of a health or personal social service provided by the Health Service Executive (HSE) or a Service Provider or, alternatively, is seeking or has sought the provision of such services, can make a complaint to the HSE. Section 45 of the Health Act 2004, Section 2 of the Health Act 2004 defines ‘Service Provider’ as a person who enters into an arrangement under section 38 of



with disabilities complaints concerning allegations of abuse are managed under a separate HSE policy framework. Under that framework, the HSE is obliged to conduct an internal investigation into all allegations of abuse. Where reasonable grounds are found for suspecting that an offence has been committed by a staff member the matter must be reported by the HSE to the Garda Síochána.<sup>96</sup> Unlike the administrative complaints system, **an investigation by the HSE into allegations of abuse is at the discretion of the HSE and is not subject to independent review.**<sup>97</sup>

51. In an enquiry on the human rights issues arising from the operation of a residential and day care centre for persons with a severe to profound intellectual disability, the IHRC concluded following a comprehensive review of the relevant mechanisms that **the right to an effective, accessible remedy that complies with international human rights law standards does not appear to be available to residents and their families in residential and day care centres.**<sup>98</sup>

#### IHRC RECOMMENDATIONS

52. The IHRC recommends that the complaints and investigation mechanisms for residents of centres for people with disabilities should be reviewed to ensure all residents have access to an effective and accessible remedy that fully complies with the standards of international human rights law, in particular the ECHR and CAT.

#### g. COMPLAINTS MECHANISMS FOR RESIDENTIAL CENTRES FOR OLDER PEOPLE

The **State Report** makes no reference to any specific legislation, procedure or statistics concerning investigation of complaints in residential centres for older people.

53. Residential centres for older people are also required to ensure they have internal operational policies and procedures relating to the making, handling and investigation of complaints.<sup>99</sup> The HIQA National Quality Standards for Residential Care Settings for

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the Act to provide a health of personal social service on behalf of the HSE. Complaints may only relate to actions concerning 'fair and sound administration' (Section 46(2)) of the Health Act states that an action does not accord with fair and sound administrative practice if it is: (a) taken without proper authority, (b) taken on irrelevant grounds, (c) the result of negligence or carelessness, (d) based on erroneous or incomplete information, (e) improperly discriminatory, (f) based on undesirable administrative practice or (g) in any other respect contrary to fair or sound administration. The person concerned must have been adversely affected by the action giving rise to the complaint. Dissatisfied complainants can request the Ombudsman to conduct an independent review.<sup>95</sup> While the Ombudsman can provide an independent review of the complaint, the recommendations of the Ombudsman, while generally complied with, are non-binding. Section 53 of the Health Act 2004. The IHRC has pointed out that there are areas which extend beyond the scope of Part 9 of the Health Act 2004 – including substantive decision-taking on the provision of health and social services in State-funded centres which can be distinguished from such complaints arising in physician-patient situations in, for example, hospitals; *see further* IHRC, Enquiry on the Human Rights Issues Arising from the Operation of a Residential and Day Care Centre for Persons with Severe to Profound Intellectual Disability, March 2010.

<sup>96</sup> HSE, Trust in Care: Policy for Health Service Employers on Upholding the Dignity and Welfare of Patients/Clients.

<sup>97</sup> *See further*, IHRC Enquiry on the Human Rights Issues Arising from the Operation of a Residential and Day Care Centre for Persons with Severe to Profound Intellectual Disability, March 2010 at p. 226 at para. 9.21.

<sup>98</sup> *Ibid.* at p. 360, para. 12.84 and p. 374, para. 12.121.

<sup>99</sup> In accordance with the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2009 (2009 Regulations).

Older People in Ireland provide that in the first instance, issues of concern to the resident or his or her family or representatives are addressed immediately at local level and without recourse to the formal complaint procedure administered by the HSE unless the complainant wishes otherwise. Where a resident of a centre for older people wishes to make a formal complaint he or she may use the public complaints system outlined above in relation to persons with disabilities, where the matter concerns fair and sound administration.

54. Some inspection reports have documented instances where residential centres for the elderly have not complied with the requirements of the 2009 Regulations and have not put in place an adequate complaints procedure.<sup>100</sup> **It appears that there is a lack of consistency in the complaints systems across residential centres for older people and that some centres have not put in place an adequate internal complaints system.** It is also of note that **the Ombudsman cannot investigate complaints made against private residential centres for the elderly which comprise almost 80% of the total number of registered residential centres for older people.**<sup>101</sup>

#### IHRC RECOMMENDATIONS

55. The IHRC recommends that the complaints and investigation mechanisms for older people in residential centres should be reviewed to ensure all residents have access to an effective and accessible remedy that fully complies with the standards of international human rights law, in particular the ECHR and CAT.

## V. CONDITIONS OF DETENTION IN PRISONS

**Articles 10, 11 and 16** are of relevance to this section.<sup>102</sup>

The **State Report** focuses on the legal and statutory framework for prisons but does not provide information on actual conditions in Irish Prisons.

### a. INTRODUCTION

56. There are fourteen prisons and places of detention in Ireland. These consist of 11 traditional "closed" institutions, two open centres, which operate with minimal internal and perimeter security, and one "semi-open" facility with traditional perimeter security but minimal internal security (the Training Unit).<sup>103</sup> **International and national bodies including the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the UN Human Rights Committee, as well as the Irish Human Rights Commission, the Irish Inspector of Prisons and other prison visit mechanisms have been widely critical of the conditions of**

<sup>100</sup> Inspection Report Designated Centres for Older People, Glenberie Nursing Home, March 2010 at p. 4; Inspection Report Designated Centres for Older People, St Joseph's Hospital, March 2010 at p. 3.

<sup>101</sup> See further List of residential care centres for older people in operation on 1 July, 2009 available on [www.hiqa.ie](http://www.hiqa.ie)

<sup>102</sup> Article 10 requires that those involved in inter alia the custody, arrest and detention of persons shall as part of their training receive education and information regarding the prohibition of torture.

Article 11 requires States to keep under systematic review inter alia the rules and arrangements for the detention of persons with a view to preventing torture.

Article 16 requires States to prevent public officials from undertaking in or consenting to the occurrence of other acts of cruel, inhuman or degrading treatment or punishment, not defined as torture.

<sup>103</sup> Information available on the website of the Irish Prison Service

**detention in Irish Prisons.**<sup>104</sup> Particular concerns relate to persistent overcrowding, inadequate sanitation facilities, inadequate mental health services, non-segregation of remand prisoners and inter-prisoner violence.

57. As a general point, **the IHRC is concerned that the State Report does not refer to or discuss conditions in Irish Prisons.**

58. Further more, the IHRC considers that **urgent action is required to address the most problematic features of the present system.** Government undertakings in relation to the provision of future facilities cannot relieve it of its responsibilities for ensuring minimum human rights standards in Irish prisons and places of detention in the intervening period.

#### **b. OVERCROWDING**

59. **The IHRC has repeatedly expressed its serious concerns to the Government about ongoing overcrowding in Irish prisons.**<sup>105</sup> The Inspector of Prisons has repeatedly highlighted the problem of overcrowding in regular reports to the Irish Prison Service and Department of Justice and Law Reform.<sup>106</sup> The CPT in its visit to Ireland in 2006, and again in 2010, expressed concern stating that “the de facto overcrowding, combined with the conditions in certain of the old and dilapidated prisons, raises concerns as to the safe and humane treatment of prisoners kept in such establishments”.<sup>107</sup>

60. In June 2010, according to statistics provided by the Minister for Justice, there were 4,304 prisoners in custody as compared to a stated bed capacity of 4,066.<sup>108</sup> On 15 November 2010, there were 4,416 prisoners in custody as compared to a bed capacity of 4,430.<sup>109</sup> **In Mountjoy Prison for male offenders there were 697 prisoners detained as compared to a bed capacity of 590.**<sup>110</sup> The Government asserted in November 2010 that in the short to medium term the problem of overcrowding will be addressed by the

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<sup>104</sup> For example: CPT Reports/ Inf (95) 14, CPT/ Inf (99) 15, CPT/ Inf (2003) 36, CPT/ Inf (2007) 40. UN Human Rights Committee, *Concluding Observations in respect of the third periodic report submitted by Ireland under Article 40 of the ICCPR* (CCPR/C/IRL/CO/3 of July 2008). Inspector of Prisons, Annual Report 2008, Prison Visiting Committee: Mountjoy Prison Visiting Committee Annual Report 2008, Cork Prison Visiting Committee Annual Report 2008.

<sup>105</sup> For example: IHRC, *The treatment of persons deprived of their liberty in Ireland*, Observations of the IHRC on the Third Report of the European Committee for the Prevention of Torture on their visit to Ireland in February 2002, IHRC Submission to the UN Human Rights Committee on the Examination of Ireland's Third Periodic Report on the ICCPR, March 2008, IHRC Further Submission on the Examination of Ireland's Third Periodic Report in relation to the List of Issues, July 2008, IHRC Submission to the UN Human Rights Committee on Ireland's 1 Year Follow-up Report to its Third Periodic Report under the ICCPR.

<sup>106</sup> For example: Report of the Inspector of Prisons covering period March 15 2009 to September 30, 2010, at para.3.1; Report on an Inspection of Castlereagh Prison, 2008-2009, Report on an Inspection of Mountjoy Prison *by the Inspector of Prisons*, August 2009, Inspector of Prisons Annual Report 2008, Interim Report 2008.

<sup>107</sup> Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), October 2006, at para. 29. This exact statement is repeated in the Committee's Report of February 2011, at p. 15, para 21.

<sup>108</sup> Reply to Parliamentary Question put to the Minister for Justice, Equality and Law Reform, June 2010.

<sup>109</sup> Replies to Parliamentary questions put to the Minister for Justice, Equality and Law Reform, November 17, 2010. Available at <http://debates.oireachtas.ie/dail/2010/11/17/unrevised2.pdf>.

<sup>110</sup> Replies to Parliamentary Questions put to the Minister for Justice, Equality and Law Reform, April 2009.



provision of an additional 150 prison spaces in 2010 and 2011.<sup>111</sup> The Minister for Justice and Law Reform has stated that overcrowding in prisons is an international problem which is not unique to prisons and acknowledges that Irish prisons “are operating in excess of their bed capacity at this time”.<sup>112</sup> His response to the overcrowding is to introduce “temporary bed spaces” in some Irish prisons until the construction of new prisons at Thornton Hall, Co. Dublin and Kilworth, Co. Cork.<sup>113</sup>

61. The Inspector of Prisons stated in a 2010 report, that “[i]n the case of **Mountjoy Prison** there are no factors that could be acceptable by any reasonable person for suggesting that the prison could accommodate in excess of 540 prisoners.”<sup>114</sup> The Report states that the stated bed capacity in Mountjoy Prison was increased in July 2010 from 590 to 630 by, which means an increase in beds or bunks only.<sup>115</sup> On 24 June 2010 there were 681 prisoners in Mountjoy Prison, on the 23 July 2010 the population reached 728.<sup>116</sup> In **Cork Prison**, the stated bed capacity as of the 23 July 2010 was 272,<sup>117</sup> on that date the prison population was 316;<sup>118</sup> and the Inspector of Prisons states that, ‘the prison could accommodate a maximum of 194 prisoners.’<sup>119</sup> Mountjoy Prison and Cork Prison, which are two of the largest Irish prisons, are consistently operated beyond their stated bed capacity.<sup>120</sup>

62. In his 2008 Annual Report the Inspector cites an incident where 15 prisoners were kept for the night on mattresses in three holding rooms in the reception area of Mountjoy Prison, with eight in one room.<sup>121</sup> On this occasion the Inspector of Prisons wrote to the Department of Justice and the Irish Prison Service expressing concern that this could lead to possible serious injury or loss of life.<sup>122</sup> On the occasion of his visit to **Limerick Female Prison** in 2009 it was at almost treble its design capacity, which the Inspector stated amounted to inhuman treatment.<sup>123</sup> The Inspector has stated, in the 2010 Report, that ‘[t]here is no conceivable case that could be made for continuing to accommodate more than 10 prisoners in Limerick Female Prison even in the short term pending the opening of 14 extra cells’;<sup>124</sup> on the 23 July 2010 there was 23 prisoners in the prison.<sup>125</sup>

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<sup>111</sup> Minister of Justice, Dermot Ahern TD, reported on RTE news, 3 November 2010.

Available at <http://www.rte.ie/news/2010/1103/prison.html>

<sup>112</sup> Replies to Parliamentary Questions put to the Minister for Justice, Equality and Law Reform, “the way the Minister will respond to the latest visiting committee report on Mountjoy Prison”, April 2009.

<sup>113</sup> Parliamentary Questions Reply from the Minister for Justice on Tuesday 27<sup>th</sup> April 2010.

<sup>114</sup> Inspector of Prisons, *The Irish Prison Population – An Examination of Duties and Obligations Owed to Prisoners*, July 2010, at para. 14.21.

<sup>115</sup> *Ibid.*, at para. 14.5.

<sup>116</sup> *Ibid.*, at para. 14.7.

<sup>117</sup> *Ibid.*, at para. 9.1.

<sup>118</sup> *Ibid.*, at para. 9.3.

<sup>119</sup> *Ibid.*, at para. 9.16.

<sup>120</sup> Inspector of Prisons, *Annual Report 2008*, at pp. 26; 28. Thus, Cork Prison was operating at 140 over its design capacity and 26 over its stated bed capacity.

<sup>121</sup> Inspector of Prisons, *Annual Report 2008* para 7.16.

<sup>122</sup> *Ibid.*, at p. 26.

<sup>123</sup> *Ibid.*, at p. 29.

<sup>124</sup> Inspector of Prisons, *The Irish Prison Population – An Examination of Duties and Obligations Owed to Prisoners*, July 2010, at para. 11.30.

<sup>125</sup> *Ibid.*, at para. 11.22.

63. The 2009 Prison Visiting Committee to **Mountjoy** highlighted a similar trend and lack of progress,<sup>126</sup> stating bluntly that they considered merely resubmitting their previous findings with some minor changes. The Committee state at the introductory paragraph of their 2009 Report that the Prison is “[s]till chronically overcrowded, vermin infested [with] more drugs in the prison than sweets in the tuck shop, filthy facilities and no structured approach to a prisoner’s day [sic]”.<sup>127</sup> The Committee stated that, “despite assurances that the extra bed spaces being provided nationally would improve conditions at Mountjoy, this is blatantly not the case”, that “the prison system continues to accept prisoners from the courts, without question, into unsafe, unhygienic and overcrowded conditions” and that such conditions amount to “punishment additional to the intended deprivation of freedom intended by the courts”. They found that “20% of prisoners in the base are sleeping on the floors, accompanied by assorted vermin and cockroaches”.<sup>128</sup>

64. Much of the above concerns are echoed in the most recent CPT Report on Ireland.<sup>129</sup> The CPT noted that in the three and a half years since its previous visit, the Irish prison population had risen from 3,150 to over 4,000, that the official operational capacity belies the very real overcrowding that exists and that many inmates are required to sleep on mattresses in certain prisons.<sup>130</sup> The CPT also advised that overcrowding had considerable repercussions on hygiene, out-of-cell activities and other services, such as allocating accommodation according to risk, needs, attitude and behaviour. The Committee commented that the problems were exacerbated by the high turnover of inmates.<sup>131</sup>

65. Overcrowding is further exacerbated by imprisonment for minor offences such as failure to pay fines.<sup>132</sup> Numbers imprisoned for minor offences are also high. In 2009, 24% of the prison population was serving sentences of two years or less, with 1.2% serving sentences of three months or less.<sup>133</sup>

## IHRC RECOMMENDATIONS

66. The IHRC considers overcrowding in prisons to be an urgent human rights concern in Ireland as it is contributing to increased levels of inter-prisoner violence, a lack of sufficient educational and other rehabilitative facilities for prisoners and combined with other conditions, such as lack of in-cell sanitation as outlined below, overcrowding raises concerns as to the safe and humane treatment of prisoners in some of Ireland’s prisons.

67. While it is asserted by the State that the proposed prison building programme at Thornton Hall has the potential to address the critical level of overcrowding that is

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<sup>126</sup> *The Mountjoy Prison Visiting Committee Annual Report 2009*, available at: [www.justice.ie/en/JELR/Pages/VC\\_Rpts\\_2009](http://www.justice.ie/en/JELR/Pages/VC_Rpts_2009).

<sup>127</sup> *Ibid.*, at p. 1.

<sup>128</sup> *Ibid.*, at p. 3.

<sup>129</sup> CPT/Inf (2011) 3, published February 10, 2011, based on a visit carried out between January 25 and February 5, 2010.

<sup>130</sup> *Ibid.*, para. 21, p. 15.

<sup>131</sup> *Ibid.*, para 25, p. 16.

<sup>132</sup> The Constitutionality of imprisoning a person for not fulfilling a contractual obligation was challenged for the first time in the Irish Courts in 2009 under *McCann v The Judge of the Monaghan District Court & others* in which the IHRC was joined as *amicus curiae* (friend of the court). The Court found that a person facing imprisonment for non payment of a civil debt should be treated in a similar manner to a person facing a criminal charge in terms of some of the safeguards that should apply to the judicial process. Accordingly, the Enforcement of Court Orders (Amendment) Act 2009, was enacted in July 2009, which in a number of respects remedied the specific gaps in the law identified in the Court's Judgment.

<sup>133</sup> See Irish Prison Service Annual Report 2009.

occurring in Irish prisons, the IHRC is concerned it will take many years before the Thornton Hall project in particular is completed, particularly in light of Ireland's current financial situation. In addition, the IHRC has concerns about the Thornton Hall complex. In the short to medium term, **the urgent problem of overcrowding needs to be addressed, not only through short term measures to double up the capacity of cells, but through law reform and policy measures to reduce the number of people who are being sent to prison.**

### c. LACK OF IN-CELL SANITATION

The **State Report** does not address the issue of in-cell sanitation or "slopping out".<sup>134</sup>

**68. The IHRC has repeatedly raised its serious concerns regarding the practice of "slopping out" in Irish Prisons.**<sup>135</sup>

69. In its one year follow-up report to the Human Rights Committee, the State asserted that over 70% of prisoners in custody have 24-hour access to in-cell sanitation. However, the State acknowledged the need for greater progress to reduce 'slopping out' and stated that due to its investment commitment to replace almost 40% of the entire prison estate, the practice will be eliminated.<sup>136</sup>

**70. The Inspector of Prisons has stated that the procedure of "slopping out" is inhuman and degrading treatment.**<sup>137</sup> He noted that on 16 February 2009, 521 prisoners in Mountjoy Prison were accommodated in cells without in-cell sanitation.<sup>138</sup> Similarly, none of the 136 cells in the main block in Cork Prison have in-cell sanitation.<sup>139</sup> The Inspector of Prisons in a 2010 report found that the practice of "slopping out" in Cork, Limerick and Mountjoy Prisons "was carried out in a chaotic and unstructured manner"<sup>140</sup> because of the numbers and short period of time allocated. The Inspector described the practice in the following terms:

Prisoners often have to queue to 'slop out'. The total contents of their 'slop out' buckets or pots do not always end in the slop hoppers but splash on the surrounding floor or worse onto the prisoners. In certain prisons the slop hoppers were invariably dirty. The facilities for cleaning the 'slop out' buckets or pots was inadequate. The smell in most of these areas was unacceptable.<sup>141</sup>

<sup>134</sup> The *State Report* does state that the European Committee on the prevention of Torture had visited Irish Prisons in 1993, 1998, 2002 and 2006. It does not refer to the fact that the CPT found that the practice of 'slopping out' in Irish prisons was a degrading act. See *State Report to the Committee Against Torture* para. 225.c, and *CPT Report* February 2011, para.48.

<sup>135</sup> IHRC Submission to the UN Human Rights Committee on the Examination of Ireland's Third Periodic Report on the ICCPR, March 2008, at para. 51.

<sup>136</sup> Government follow-up report to the ICCPR, August 2009, at p. 4.

<sup>137</sup> Inspector of Prisons, Annual Report 2008, at p. 26. In stating this, he noted he was echoing the statements of the former Inspector, the late Mr. Justice Dermot Kinlen, who held the position of Inspector of Prisons and Places of Detention from 2002 until 2007. He first raised concerns regarding the practice of "slopping out" in his Second Annual Report, 2003- 2004.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid., at p. 28.

<sup>140</sup> Inspector of Prisons, *The Irish Prison Population – An Examination of Duties and Obligations Owed to Prisoners*, July 2010, at para. 3.17.

<sup>141</sup> Ibid., at para. 3.18.

71. In its 2009 *Annual Report*, the Mountjoy Visiting Committee noted that “a programme of fitting out all cells [with in-cell sanitation] should commence without delay and treated as a matter of urgent necessity”.<sup>142</sup>

72. The system of ‘slopping out’ in Irish Prisons has been held to be degrading treatment by the CPT in their most recent report on Ireland.<sup>143</sup> It stated that “the whole process [of slopping-out] is extremely humiliating for the prisoners. Moreover, ‘slopping out’ is also debasing for the prison officers who have to supervise it.”<sup>144</sup> The CPT first expressed concern about this issue in their first report to Ireland in 1993 and has reiterated this concern in several subsequent reports in 1998, 2002, 2006 and 2011.<sup>145</sup> Specific mention is given in that Report to **Cork Prison**, in the single occupancy cells which were being used to hold two or three prisoners. Where those prisoners were on protection, they were locked into the 7.5-9 metre squared cell for up to 23 hours, without in-cell sanitation, resulting in the air being ‘rank and humid’. The CPT Report notes that there has been little improvement in the conditions in Cork Prison since its first report in 1993.<sup>146</sup>

73. The ‘slopping out’ procedure also remains in place in the old E Block in Portlaoise Prison and any of the main accommodation blocks in the old wings in Mountjoy Prison, where a significant majority of prisoners are accommodated.<sup>147</sup> The latter was deemed ‘totally unacceptable’ by the CPT.<sup>148</sup> In relation to **Mountjoy Prison**, the CPT reported that some of the communal toilets were out of order and dirty, that some landing areas were dirty and noted overflowing rubbish bins.<sup>149</sup> Similar recommendations were made about the E Block of **Portlaoise Prison**. The Committee observed small cells of 6 metres squared, some ‘dilapidated with broken windows and dirty walls’.<sup>150</sup> The CPT reported that in-cell sanitation was in place in the female unit of **Limerick Prison**, but

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<sup>142</sup> Report available at:

<http://www.inis.gov.ie/en/JELR/Mountjoy%20Prison%20Visiting%20Committee%20Annual%20Report%202009%20-%20English%20Version.pdf/Files/Mountjoy%20Prison%20Visiting%20Committee%20Annual%20Report%202009%20-%20English%20Version.pdf>

<sup>143</sup> Council of Europe, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 2010 Report*, of February 10, 2011, pages 26-29, at paras. 41 – 48.

<sup>144</sup> Ibid, para 48, pg 29.

<sup>145</sup> Cf. CPT/ Inf (95) 14, para. 100- 101, CPT/ Inf (99) 15, CPT/ Inf (2003) 36, para. 130, CPT/ Inf (2007) 40, para. 56. Council of Europe, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 2010 Report*, 10 February 2011pp. 26-29, at paras. 41 – 48.

<sup>146</sup> Further complaints by prisoners to the visiting Committee members related to lack of sufficient cleaning products to allow them to keep the cells clean, the fact that they were offered only one shower per week, and the fact that they were not permitted to change their underwear more than once per week. One particular cell visited by the Committee members did not possess a chamber pot. In that cell, the prisoners were required to share a plastic bottle for urinating, and were required to defecate into a plastic bag. CPT Report, para 41, p. 26.

<sup>147</sup> Ibid, para. 45 and para 46.

<sup>148</sup> Ibid, para. 45.

<sup>149</sup> Ibid, para. 45.

<sup>150</sup> Ibid, para. 46. It also reports that “None of the cells had in-cell sanitation, and, at night, if a prisoner had to defecate he was likely to thereafter wrap up the faeces in a parcel, and sometimes throw it out of the window.” Ibid, para. 46.

that the sliding modesty screen provided did not allow any privacy from the other two or three cell inmates in what had been originally single-occupancy cells.<sup>151</sup>

74. The situation of overcrowding exacerbates the degrading nature of the ‘slopping out’ procedure. In this regard, the CPT states that it has “repeatedly stated that it considers the act of discharging human waste, and more particularly of defecating, in a chamber pot in the presence of one or more other persons, in a confined space used as a living area, to be degrading ... not only for the person using the chamber pot but also for the persons with whom he shares a cell.”<sup>152</sup>

75. A July 2010 High Court Case found that, on the specific facts of the case the practice of ‘slopping out’ did not violate the rights of the applicant, under the Constitution and the European Convention on Human Rights, primarily because the plaintiff had a single cell on a floor that was not overcrowded. However, the judge found that “the hygiene facilities were primitive and substandard”.<sup>153</sup> The new Government has acknowledged the need to provide in-cell sanitation in all prisons in its Programme for Government.<sup>154</sup>

#### **IHRC RECOMMENDATIONS**

76. The IHRC considers **the practice of slopping out’ should be eliminated as a matter of urgent priority.** Where a sanitary facility is not available in a prisoner’s cell, the IHRC considers that a prisoner should be entitled to be released from his cell to use the available facilities at all hours of the day and night.<sup>155</sup>

#### **d. LACK OF ADEQUATE MENTAL HEALTH SERVICES IN PRISONS**

##### ***Mental Health within the Irish Prison Population***

77. The 2009 Irish Prison Service *Annual Report* stated “the prevalence of severe mental illness is significantly worse among prisoners compared to the general population.”<sup>156</sup>

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<sup>151</sup> The Committee also received complaints of a lack of hygiene, in that the toilets had no seat covers, and in some cells they did not flush properly. It is noted in the Report that an extension to the Female Unit was due to open in April 2010. Ibid, para. 42..

<sup>152</sup> CPT Report 2011, p. 29.

<sup>153</sup> *Mulligan v. Governor of Portlaoise Prison & Anor*, [2010] IEHC 269. ‘Slopping out’ *per se* has not been found to by the European Court of Human Rights to be in breach of Article 3. The Court has found that, [w]hen assessing conditions of detention one must consider the cumulative effects as well as the applicant’s specific allegations’ (*Bakhtmutsky v Russia*, Judgement of 19<sup>th</sup> April 2001). Clearly, there is Article 3 implications for the state in the context of ‘slopping out’, particularly when coupled with prison overcrowding.

<sup>154</sup> Programme for Government 2011-2016, (March 2011) at p. 19.

<sup>155</sup> The CPT made a similar recommendation in its reports of 2006 and of the above mentioned report of February 10, 2011. See Council of Europe, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 2006* (October 2007).

p. 28. See also 2008 Submission, at paras. 53-54.

<sup>156</sup> Irish Prison Service Annual Report 2009, p.42. It noted that a study undertaken in 2003 by the National Forensic Mental Health Service “estimated that 3.7% of male committals, 7.5% of men on remand, 2.7% of sentenced men and 5.4% of female prisoners should be diverted to psychiatric services, while as many as 20% of male committals and 32% of female committals needed to be seen by a psychiatrist.” A study undertaken of the Irish prison population in 2000 found that 48% of male prisoners and 74% of female prisoners were in need of some level of psychiatric or psychological help. Hannon F., Kelleher C. & Friel S. *General Healthcare study of the Irish Prisoner Population*, Report prepared for the Minister for Justice, Equality



78. The IHRC considers that **the ongoing high rate of mental illness among the prison population demonstrates the importance of having in place adequate identification and diversion procedures to ensure that people suffering from mental illness receive the appropriate care and treatment, as well as adequate mental health services within prisons.**<sup>157</sup>

***Inadequate mental health care services in Irish Prisons***

79. In its 2008 *Annual Report*, the Irish Prison Service recognised that in view of the limitations of the prison environment, it is desirable that prisoners with a severe and enduring mental illness are afforded care in the most appropriate settings.<sup>158</sup> Its 2009 Report notes the presence and increased roll-out of a Psychology service.<sup>159</sup>

80. In an interim report in 2008, the Inspector of Prisons highlighted mental health issues as one of his chief areas of concern in Irish prisons, noting that the right of prisoners with mental health problems to treatment in an appropriate setting is not respected as matters stand in Ireland.<sup>160</sup>

81. In 2006, the CPT noted the following key concerns in relation to the mental health services provided to Irish Prisoners:

- while detainees were medically assessed promptly on reception, poor records were kept especially in relation to any injuries existing or subsequently sustained, and existing records from community care were not transmitted promptly or at all;<sup>161</sup>
- many prisoners in Mountjoy and Wheatfield prisons were being prescribed anti-psychotic drugs without adequate follow-up or supervision;<sup>162</sup>
- there was over reliance on pharmacological treatment as opposed to the development of non-pharmacological interventions;<sup>163</sup>
- that prisoners who committed acts of self-harm and/or attempted suicide, the majority of whom were drug and alcohol abusers, were not considered to require a psychiatric assessment.<sup>164</sup>

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and Law Reform by the Centre for Health Promotion Studies, Department of Health Promotion, NUI, Galway, July 2000.

<sup>157</sup> International human rights law places the State under an obligation to protect the right to health of people who are deprived of their liberty and the lack of adequate medical care can in certain circumstances amount to inhuman and degrading treatment. *Keenan v. The United Kingdom*, (2001) 33 EHRR 913 at para. 111.

<sup>158</sup> *Supra* note 81 at p. 39.

<sup>159</sup> Irish Prison Service *Annual Report* 2009, p.35.

<sup>160</sup> *Interim Report presented to the Minister for Justice, Equality and Law Reform by Judge Michael Reilly, Inspector of Prisons* (September 2008), at p. 6. In his most recent report, he stated that he is engaged in a consultation process and intends to publish a report in the future on all issues of health care in Irish prisons with a particular emphasis on the important issue of mental health. See Inspector of Prisons, *Annual Report* 2008, at p. 36.

<sup>161</sup> *Report to the Irish Government on the visit to Ireland* Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment –(CPT) from 2 to 13 October 2006 at Para 73, available at : <http://www.cpt.coe.int/documents/irl/2007-40-inf-eng.pdf>

<sup>162</sup> *Ibid*, at Para 82.

<sup>163</sup> *Supra*, note 8 at Para 82.

<sup>164</sup> *Ibid*, at Para 83 This also runs contrary to the International Classification of mental and behavioural disorders which clearly recognises that behavioural disorder in the context of drug abuse should be considered as a mental disorder (cf. ICD-10 classification, World Health Organisation 1993).

Due to what it called ‘scant record keeping’ the CPT was unable, in its 2011 Report, to assess in detail whether there had been an improvement in the situation.<sup>165</sup>

82. Similarly, in its *Concluding Observations* issued to the Irish Government in 2008, the Human Rights Committee stated that it is particularly concerned about the shortage of mental health care for detainees.<sup>166</sup>

### ***Good Practice: Prison Inreach and Court Liaison Service Cloverhill***

83. The IHRC welcomes the introduction of the Prison Inreach and Court Liaison Service. The service, introduced in 2008, is located at the main remand prison in Ireland, Cloverhill Prison.<sup>167</sup> The aim of the service is to identify those with mental health needs and to facilitate treatment in healthcare settings in the least restrictive environment necessary.<sup>168</sup> In 2007, the Prison Inreach and Court Liaison Service at Cloverhill diverted 97 mentally ill prisoners from prison to community based or forensic treatment.<sup>169</sup>

84. The IHRC is concerned that individuals remanded to other prisons nationally will not be in a position to benefit from the effective Prison Inreach and Court Liaison Service that is in place in Cloverhill and that the opportunity to divert more individuals with mental health needs to the least restrictive environment possible is being missed at the remand stage. The IHRC also notes that the decision to locate the Prison Inreach and Court Liaison Service in Cloverhill Prison means that diversions to hospital or community based treatment centres are made *after* people with mental health needs have already entered the prison system.

85. In a review of the Prison Inreach and Court Liaison Service it was noted that inappropriate custodial periods for persons with major mental illness and minor offending behaviour may be further reduced by the introduction of a specialised mental health court, such as exists in other jurisdictions.<sup>170</sup> **The IHRC considers this is a positive suggestion and encourages further discussion of this matter with reference to best practice in other jurisdictions in order to ensure that all people with severe mental illness are afforded prompt treatment in the least restrictive conditions possible.**

### **IHRC RECOMMENDATIONS**

86. The IHRC recommends that the Prison Inreach and Court Liaison service at Cloverhill should be replicated in all prisons that accept remand prisoners. Further consideration should be given by the State to recommendations of the doctors who provide services to the Court Liaison Service which suggest the introduction of a

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<sup>165</sup> CPT Report of February 2011, p. 47, para. .86. It did re-iterate that most of the care remained based on pharmacotherapy.

<sup>166</sup> Human Rights Committee of the UN, *Concluding Observations* on Ireland, 30 July, 2008, Para.15, pp. 4-5.

<sup>167</sup> Cloverhill is the principal remand prison in Ireland and it primarily caters for remand prisoners from the Leinster area. However, remand prisoners are also detained in prisons in Limerick, Cork, Portlaoise and the Dochas Centre for Women in Dublin.

<sup>168</sup> Dr. Conor O'Neill, Dr. Clare McNerney and Ms. Mary Fitzpatrick, 'Prison Inreach and Court Liaison Services in Ireland', in *Judicial Studies Institute Journal* 2.2008. Previous psychiatric contact and a history of psychiatric medication, self-harm and homelessness is assessed. Following this, the identification of appropriate treatment is developed by experts in the area; community based treatment, transfer to the Central Mental Hospital and/or follow-up mental health services in prison.

<sup>169</sup> *Ibid*, pg 4.

<sup>170</sup> O'Neill, McNerney & Fitzpatrick, 'Prison Inreach and Court Liaison Services in Ireland' in *Judicial Studies Institute Journal* 2.2008.

specialised mental health court. Particular attention should also be given to prisons outside of the catchment area of cities that may particularly lack access to services.

#### e. NON-SEGREGATION OF REMAND PRISONERS

87. It has been reported that since the coming into effect of the Bail Act 1997, there has been a significant increase in the number of remand prisoners in Ireland and an increase in the length of time spent on remand.<sup>171</sup> The IHRC acknowledges the positive developments by Government in opening the remand prison of Cloverhill. While the accommodation provided at Cloverhill is separate, it is still at times overcrowded.<sup>172</sup> In addition, male remand prisoners outside Dublin and female prisoners on remand are not always provided with separate accommodation. Remand prisoners in Limerick, Cork, Portlaoise, Castlereagh, the Midlands and the Dóchas Centre for Women are accommodated with sentenced prisoners.<sup>173</sup>

88. Although international human rights law requires that remand prisoners should be separated from convicted prisoners, in a reservation entered by the Irish Government on its ratification of the ICCPR it stated that separation between prisoners on remand from those with convictions and separation of juveniles from adult prisoners will be achieved “progressively” and “as far as practically possible.”<sup>174</sup> In its concluding observations on Ireland in July 2008, the UN Human Rights Committee expressed concern on this issue and recommended that “the State should detain remand prisoners in separate facilities and promote alternatives to imprisonment.”<sup>175</sup>

#### IHRC RECOMMENDATIONS

89. The IHRC recommends that remand prisoners should always be detained in separate facilities from convicted prisoners.

#### f. INTER-PRISONER VIOLENCE

The <b>State Report</b> does not address the issue of inter-prisoner violence.
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90. In its one year follow-up report to the Human Rights Committee in 2009, the Government states that it has introduced a number of security initiatives to ensure safety

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<sup>171</sup> IPRT, Submissions to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) in preparation for the 2006 CPT visit to Ireland, at p.4.

<sup>172</sup> IPRT, Submissions to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) in preparation for the 2006 CPT visit to Ireland, at p. 5, CPT/Inf (2003) 36, para. 42, CPT/Inf (2007) 40, para. 54. See also CPT Report of February 2011, at p. 19, in which it states that “on February 2, 2010, Cloverhill Prison was holding 443 inmates for an occupational capacity of 431”.

<sup>173</sup> Inspector of Prisons, “The Irish Prison Population; An Examination of the Duties and Obligations Owed to Prisoners”, October 2010, at p. 41. See also, Irish Penal Reform Trust (IPRT), *Submissions to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) in preparation for the 2006 CPT visit to Ireland*, at p. 5.

<sup>174</sup> The Irish Government has entered a reservation to Article 10 (2) of the ICCPR, which states that “Ireland accepts the principles referred to in paragraph 2 of Article 10 and implements them as far as practically possible. It reserves the right to regard full implementation of these principles as objectives to be achieved progressively.”

<sup>175</sup> UN Human Rights Committee, Concluding Observations in respect of the third periodic report submitted by Ireland under Article 40 of the International Covenant on Civil and Political Rights, July 2008, para. 15.



for prisoners, which the Government states has led to a marked reduction in the number of incidents of violence where a weapon was used.<sup>176</sup>

91. The 2011 *CPT Report* noted “Stabbings, slashings and assaults with various objects are an almost daily occurrence” in **Mountjoy Prison** in 2010.<sup>177</sup> The CPT considered that the Prison is unsafe for prisoners and staff alike. The CPT report that the reasons for this remain the same as it reported in 2006; namely; availability of drugs, lack of purposeful activities, existence of feuding gangs, continued lack of individual risk and needs assessment of all prisoners, and lack of space and poor material conditions.<sup>178</sup>

#### **IHRC RECOMMENDATIONS**

92. The IHRC recommends that efforts must be increased to tackle the issues that cause inter-prisoner violence, in particular there is a need for the State to tackle the issues causing an increase in violence in society in general. In particular, facilities and constructive activities should be increased in order to improve conditions and to reduce the likelihood of inter-prisoner violence, in order to ensure the safety of all prisoners.

#### **g. WOMEN IN PRISON**

93. Among Ireland’s fourteen prisons, there are two for female prisoners: one is the **Dóchas Centre Dublin** (Mountjoy female prison) and the other is **Limerick Prison**, a male prison where imprisoned women are accommodated on one wing.

94. In its 2009 *Annual Report*, the Visiting Committee for the Dóchas centre (Prison) highlighted the problem of overcrowding.<sup>179</sup> The Dóchas centre is designed to accommodate 85 prisoners but is reported to frequently run at 150% capacity, with the Inspector of Prisons reporting that he has found up to 140 prisoners accommodated there.<sup>180</sup> According to the Dóchas Centre Visiting Committee, this problem impacts on physical conditions for inmates and prevents the correct use of leisure space designed to facilitate recreation. The Visiting Committee for **Limerick prison** noted the same problem of overcrowding in the female wing of the prison in its 2009 Report.<sup>181</sup> The Inspector of Prison has expressed concern on a number of occasions at the high level of overcrowding experienced in Limerick female prison.

95. In April 2010, the Governor of the Dóchas Centre resigned stating that it was because of the chronic overcrowding.<sup>182</sup>

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<sup>176</sup> Information provided to the Government of Ireland on the Implementation of the Concluding observations of the UN Human Rights Committee, CCPR/C/IRL/CO/3/Add.1, July 2009 at p. 6

<sup>177</sup> *CPT Report*, CPT/Inf (2011) 3, para.32, at p. 21.

<sup>178</sup> *Ibid.*

<sup>179</sup> *Report of the Visiting Committee*, Dóchas Centre to the Minister for Justice, Equality and Law Reform, 2009.

<sup>180</sup> *The Irish Prison Population- an examination of obligations and duties owed to prisoners*, Oct 2010, at para. 10.4.

<sup>181</sup> “The Committee has again noted that the bed capacity in the female prison has been exceeded throughout the year. We again recommend that the capacity of the female wing be maintained at 12 in order to ensure less pressure on staff and offenders in this confined area or alternatively extra accommodation should be made available”. (Limerick Prison Visiting Committee Annual Report 2009)

<sup>182</sup> *The Irish Times* reported said Governor Kathleen McMahon resigned because of “the serious undermining” of her position, adding she had been excluded from a recent decision to put bunk beds into rooms designed for one prisoner. ‘Governor of women's prison resigns over 'impossible' role’, *The Irish Times*, 26 April 2010.

96. A particular concern of the Visiting Committee for Dóchas prison in its 2008 report was that some of the women are mothers and are separated from their children. This is particularly an issue for women serving longer sentences or where there is limited family support. Thus, “the Visiting Committee would like to engage with prison authorities to review means of maintaining parental bonds to the greatest capacity within the context of a prison sentence and to improve parenting capacity for those mothers leaving prison”.<sup>183</sup>

#### IHRC RECOMMENDATIONS

97. The IHRC considers that the overcrowding at the Dóchas Centre and Limerick Prison should be urgently addressed.

#### h. USE OF ‘SPECIAL CELLS’

98. The Inspector of Prisons in a 2010 report of an Investigation on the use of ‘Special Cells’ in Irish Prisons,<sup>184</sup> made a number of findings, particularly in relation to the use of ‘safety observation’ cells.<sup>185</sup> The Inspector highlighted the lack of clear policy in the use of such cells, the lack of clear records kept of their use and the minimal nature of records kept.<sup>186</sup> The Inspector found that such cells were often used for accommodation purposes (51.75% of time in Mountjoy) and management purposes (47% of time in St Patricks),<sup>187</sup> not for their intended medical purposes. The Inspector found that all cells inspected complied with approved characteristics, save three cells in Mountjoy, two in Limerick (male) and one in Limerick (female). He expressed particular concern about the conditions of the cells in Mountjoy.<sup>188</sup>

#### i. EDUCATION AND TRAINING

Prison Rule 27 (3) of the Irish Prison Rules 2007 states that each sentenced prisoner shall be engaged in a structured activity for ‘not less than five hours of five days in each week’ in so far as is practicable. In this connection, the Inspector of Prisons has stated that relevant structured activity should be available for prisoners who wish to avail of it for a minimum of five hours a day, five days a week.<sup>189</sup>

99. The CPT in its 2011 Report, found that opportunities for purposeful work or access to educational and sports activities remain insufficient, and that for prisoners on protection there continued to be almost no organised activities.<sup>190</sup> The Committee did report that investment had been made by the Irish Prison Service, and that figures for

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<sup>183</sup> Dochas Prison Visiting Committee Annual Report 2008 at p. 2. available online at <http://www.justice.ie/en/JELR/Dochas.pdf/Files/Dochas.pdf>

<sup>184</sup> Inspector of Prisons, Report of an Investigation into the use of ‘Special Cells’ in Irish Prisons, August 2010.

<sup>185</sup> Safety observation cells are designed to accommodate prisoners who require frequent observation for medical reasons or because they are a danger to themselves. Such cells should be constructed to a common design. (at para. 4.3).

<sup>186</sup> Ibid., at para. 5.3.

<sup>187</sup> Management purposes: prisoners who are a danger to others or causing disruption (at para. 5.4).

<sup>188</sup> The Inspector found that “The majority of safety observation cells in Mountjoy prison were dirty on all of my visits, one had human excrement on a wall, a number required major repair work, showers in certain areas were not working (I am satisfied that this was not an isolated malfunction), in two instances call bells were not working. Prisoners were accommodated in these cells in the conditions in which I found the cells.” Ibid., at para. 5.6.

<sup>189</sup> Inspector of Prisons, The Irish Prison Population- An examination of the duties and obligations owed to prisoners, October 2010, at p. 19.

<sup>190</sup> CPT Report, February 10, 2011, para 50, p. 30.

the end of 2008 showed that 48% of prisoners were involved in education, with approximately 25% being involved for ten hours or more per week.<sup>191</sup> The CPT recommended therefore that the prison regimes try to develop a broader range of purposeful activities. The Inspector of Prisons has also found regime deficiencies in some prisons including Castlerea Prison, Limerick Prison and Mountjoy Prison.<sup>192</sup>

100. With particular reference to the young offenders at St Patrick's Institution, the CPT noted that despite an increase in the number of workshops and courses available, that the majority of inmates were "spending far too much of their time locked up in their cells."<sup>193</sup>

#### **IHRC RECOMMENDATIONS**

101. In line with its comments in relation to inter-prisoner violence, the IHRC recommends that facilities and constructive activities should be increased in order to improve conditions for all prisoners. In particular, young people detained in St Patrick's Institution must be provided with activities.

#### **j. PROPOSED NEW PRISON COMPLEX AT THORNTON HALL**

102. One of the main solutions offered by the Government to solve overcrowding, lack of in cell sanitation and other ongoing issues within the prison system is the construction of new larger prisons at Thornton Hall, Co. Dublin and Kilworth, Co. Cork.<sup>194</sup> The CPT noted that building on the Thornton Hall project had been initially due to commence in 2006 to be completed by 2010, and was due to begin in late 2010, for a completion date in 2015.<sup>195</sup> On date of writing, it has not commenced.<sup>196</sup>

103. Reservations regarding the Thornton Hall Prison Complex plan are noted in the CPT Report. It states that the Committee has "serious misgivings about the construction of very large prison complexes, which have proven historically difficult to manage and unable to deliver the targeted services required by the various population groups within them".<sup>197</sup>

#### **IHRC RECOMMENDATIONS**

104. In reviewing the Thornton Hall proposal, consideration should be given to best international practice which suggests that smaller prisons are now recommended. The IHRC is further concerned that until any new prison building scheme is introduced,

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<sup>191</sup> Ibid, para 49.

<sup>192</sup> Inspector of Prisons, *The Irish Prison Population- An examination of the duties and obligations owed to prisoners*, October 2010, at pgs. 38, 56 and 72 respectively.

<sup>193</sup> *CPT Report*, para 52, p. 31.

<sup>194</sup> The Minister for Justice announced on 23 June 2009 that this project will proceed on a phase-by-phase basis, starting in late 2009 or early 2010. ("Government Go-Ahead for revised Thornton Hall Prison" Department on Justice and Law reform, Press Release, 23 June 2009). On 29 April 2010, the then Minister for Justice stated in a speech addressed at the Prison Officers' Association that expanding prisoner accommodation at this time is of course made all the more difficult by the overall financial situation. (Address by the Minister for Justice and Law Reform Mr. Dermot Ahern T.D., at the Prison Officers Association Conference Killarney, Kerry, 29 April 2009).

<sup>195</sup> *CPT Report*, February 10, 2011, para 22, p. 15.

<sup>196</sup> Latest reports at time of writing have proposed that, "[t]he first phase of the development is expected to be completed in 2014 and will contain 400 cells capable of housing 700 prisoners" (Government to press ahead with Thornton Hall prison, *The Irish Times*, July 27 2010); however this first phase is still in a pre-procurement stage. Dáil Éireann Debate, Priority Questions – Prison Building Program, 30 June 2010.

<sup>197</sup> *CPT Report*, 10 February, 2011, para 23, p. 15.

many of the most problematic features of the present system will remain for many years to come. Law reform and policy interventions to alleviate overcrowding and lack of in cell sanitation should be prioritised as matter of urgency.

#### k. NEED FOR ALTERNATIVE SANCTIONS

105. The number of people in prison in Ireland has increased from 2,124 in 1997 to 4,416 in 2010.<sup>198</sup> It has been reported that this could increase to 6,000 in the coming year.<sup>199</sup> There is a need for alternatives to custodial sanctions, and for a reduction in the number of people imprisoned for failure to pay fines. The Inspector of Prisons has noted that the Fines Act 2010 should reduce the numbers in prisons by 32 on any given day.<sup>200</sup> The Inspector of Prisons has identified a number of initiatives which could reduce the prison population, including community courts, automatic suspension of shorter prison sentences and improved supervision processes.<sup>201</sup> The Programme for Government 2011-2016 provides that the Government will try to move “away from prison sentences and towards less costly non-custodial options for non-violent and less serious offenders”.<sup>202</sup>

#### IHRC RECOMMENDATIONS

106. The IHRC considers that there should be an increased policy focus on the development of alternative, non-custodial sanctions rather than an increase in overall prison population.<sup>203</sup> In addition, there should be a comprehensive published penal policy in the State and consideration of measures that would result in a reduction in the prison population.

### VI. TREATMENT OF PEOPLE IN DETENTION IN MENTAL HEALTH ESTABLISHMENTS

**Articles 10, 11 and 16** of the Convention are of relevance to this section.

The **State Report** provides that “a patient detained under the Mental Health Act 2001 may appeal the decision of a Mental Health Tribunal to the Circuit Court (within 14 days). It is up to the patient to prove his/her case that he/she is not suffering from a mental disorder. Patients may also appeal their detention under article 40 of the Constitution (*habeas corpus*).”<sup>204</sup>

107. It may be noted that the CPT has expressed concern that persons with an intellectual disability residing in certain residential centres, are in *de facto* detention insofar

<sup>198</sup>Reply to Parliamentary Question put to the Minister for Justice, 12 January 2011 And replies to Parliamentary questions put to the Minister for Justice, Equality and Law Reform, 17 November, 2010.

<sup>199</sup> Irish Times *State's prison population to reach 6,000 by next year*, 14 October 2010.

<http://www.irishtimes.com/newspaper/ireland/2010/1014/1224281063837.html>

<sup>200</sup>*The Irish Prison Population- An examination of the duties and obligations owed to prisoners*, Oct 2010, at p. 95

<sup>201</sup>*Ibid* at pages 95-97.

<sup>202</sup> Programme for Government 2011-2016, (March 2011) at p.18.

<sup>203</sup> IHRC, Submission to the UN Human Rights Committee on Ireland's 1 Year Follow-up Report to its Third Periodic Report under the ICCPR, September 2009.

<sup>204</sup> State Report to the Committee Against Torture, at 282.

as they are accommodated in closed units and are not allowed leave without permission although they are designated as “voluntary patients.”<sup>205</sup> The State had previously made a commitment that all persons with an intellectual disability residing in psychiatric facilities would be transferred to more appropriate residential settings in the community by 2006, however to date there are still some 238 such persons still residing in psychiatric facilities.<sup>206</sup>

108. In the Programme for Government 2011-2016, the Government has committed itself to reviewing the Mental Health Act 2001 in consultation with “service users and other stakeholders, informed by human rights standards and introduce a Mental Capacity Bill that is in line with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)”.<sup>207</sup>

#### **a. LEGAL FRAMEWORK FOR THE DETENTION OF PEOPLE WITH A MENTAL DISORDER**

109. Through its analysis of legislation and in its policy submissions **the IHRC has identified a number of areas where measures should be taken to improve the safeguards that are in place to protect certain categories of mentally ill patients who are subject to detention in line with the State’s obligations under international human rights law.**<sup>208</sup>

110. The civil confinement of people with a “mental disorder”<sup>209</sup> is governed by the Mental Health Act 2001 (“2001 Act”). The 2001 Act applies to two categories of patient, voluntary and involuntary patients, and provides for treatment of voluntary and involuntary patients in “approved centres”, including in some instances the Central Mental Hospital.<sup>210</sup>

111. The detention of mentally disordered people who become involved in criminal proceedings is governed by the Criminal Law (Insanity) Act 2006.<sup>211</sup> The 2006 Act is

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<sup>205</sup> CPT/Inf (2011) 3, February 10, 2011 at para.151-152. (p.71). It is noted that under Article 14 of the United Nation Convention on the Rights of Persons with Disabilities the existence of a disability can in no case justify detention.

<sup>206</sup> Letter from the Department of Health and Children to the IHRC, January 2011.

<sup>207</sup> Programme for Government 2011-2016, (March 2011) at p. 38.

<sup>208</sup> See, IHRC *Policy Paper concerning the Definition of a “voluntary patient” under s.2 of the Mental Health Act 2001*, (February 2010) and IHRC *Observations on Scheme of Mental Capacity Bill* (November 2008) and IHRC *Observations on Criminal Law Insanity Bill* (April 2010). In this context the Commission has sought to reflect the move towards a functional approach to the determination of capacity as contained in the UN Convention on the Rights of Persons with Disabilities which has been signed by the Irish Government, but has not yet been ratified.

<sup>209</sup> “Mental disorder” is defined in the Section 32 of the 2001 Act as: “mental illness, severe dementia or significant intellectual disability where: (a) because of the illness, disability or dementia, there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons, or (b)(i) because of the severity of the illness, disability or dementia, the judgment of the person concerned is so impaired that failure to admit the person to an approved centre would be likely to lead to a serious deterioration in his or her condition or would prevent the administration of appropriate treatment that could be given only by such admission, and (ii) the reception, detention and treatment of the person concerned in an approved centre would be likely to benefit or alleviate the condition of that person to a material extent.”

<sup>210</sup> The Central Mental Hospital is the only in-patient Forensic Mental Health Service in Ireland. It is a national service based in Dublin with 82 bed occupancy.

<sup>211</sup> “Mental disorder” is defined in s.1 of the 2006 Act as follows: “mental disorder” includes mental illness, mental disability, dementia or any disease of the mind but does not include intoxication.



designed to provide for the treatment and detention in the Central Mental Hospital of people who have been found not guilty by reason of insanity or who have been deemed not fit to be tried and the treatment of prisoners who are found to be suffering from a mental disorder.<sup>212</sup>

112. “Wards of Court”, whose treatment is governed by the Lunacy Regulation (Ireland) Act 1871, are treated in psychiatric approved centres where they are suffering from a mental disorder within the meaning of the 2001 Act.

***Lack of Procedural Safeguards for Compliant Incapacitated Patients***

113. Under the 2001 Act, voluntary patients<sup>213</sup> do not have their admission to an approved centre independently reviewed.<sup>214</sup> The detention of involuntary patients is subject to periodic independent review by Mental Health Tribunals.<sup>215</sup> **The IHRC is concerned that the definition of a voluntary patient is not sufficiently precisely drawn to protect the right to liberty of *all* those who may be admitted to an approved centre.**<sup>216</sup> The IHRC considers the current definition imprecise because it defines a voluntary patient by way of default; by what he or she is not, rather than assessing the capacity of the patient to consent to the admission.<sup>217</sup>

114. Under current Irish law so-called “compliant incapacitated patients”, who by virtue of the fact that they are not subject to an admission order, are considered to be voluntary patients.<sup>218</sup> Compliant incapacitated patients include people who may not have the capacity either to consent to their admission to an approved centre for treatment, or consent to ongoing treatment in the centre. The classification of compliant incapacitated patients as voluntary patients means that these people do not benefit from the statutory protections conferred upon involuntary patients by the 2001 Act; therefore they do not have their initial admission or subsequent detention independently reviewed by a Mental Health Tribunal. **The absence of any statutory safeguards in relation to these patients is of ongoing concern to the IHRC.**<sup>219</sup> This concern is also shared with the Irish College of Psychiatrists and the Law Society of Ireland.<sup>220</sup>

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<sup>212</sup> Section 15 of the Criminal Law (Insanity) Act 2006 provides that: “where (a) a relevant officer certifies in writing that a prisoner is suffering from a mental disorder for which he or she cannot be afforded appropriate care or treatment within the prison in which the prisoner is detained, and (b) the prisoner voluntarily consents to be transferred from the prison to a designated centre for the purpose of receiving care or treatment for the mental disorder, then the Governor of the prison may direct in writing the transfer of the prisoner to any designated centre for that purpose.”

<sup>213</sup> Section 2 of 2001 Act defines a voluntary patient as “a person receiving care and treatment in an approved centre who is not the subject of an admission order or a renewal order.”

<sup>214</sup> This approach complies with the common sense understanding that a voluntary patient is not being detained against their will and has given consent to their treatment, and so do not require an independent mechanism to protect their right to liberty.

<sup>215</sup> Section 16 of 2001 Act.

<sup>216</sup> See IHRC Policy Paper concerning the Definition of a “voluntary patient” under s.2 of the Mental Health Act 2001, (February 2010) at p.3.

<sup>217</sup> Ibid.

<sup>218</sup> The category of patient “compliant incapacitated patients” is defined by the ECtHR. See *HL v UK* 45508/99 (2004) ECHR 471

<sup>219</sup> See IHRC Policy Paper concerning the definition of a “voluntary patient” under s.2 of the Mental Health Act 2001, (February 2010) at p. 4.

<sup>220</sup> See Proposed model for the delivery of a mental health service to people with intellectual disability, Occasional paper OP58 (July 2004), at pp. 20-21. See also Submission by the Law Society to the Department of Justice, Equality and Law Reform on Scheme of Mental Capacity Bill 2008, [2008] at p.6.

115. The 2011 CPT Report found that many so-called ‘voluntary’ patients were in reality deprived of their liberty, being accommodated in closed units, subjected to seclusion or administered medication for prolonged periods against their wish. The CPT delegation was particularly concerned that under the provisions of Section 23 of the Mental Health Act, “voluntary patients who have not expressly stated their wish to leave the hospital, may not have their status changed to involuntary whether they comply with the prescribed treatment or not.”<sup>221</sup> The CPT observed that Irish legislation does not offer safeguards to patients voluntarily remaining in a psychiatric hospital, the status of voluntary patient cannot be easily changed to that of involuntary patient.<sup>222</sup>

116. The current interpretation of Section 2 of the 2001 Act, which precludes capacity and consent as relevant factors in determining the status of a patient, coupled with the lack of safeguards for compliant incapacitated patients is contrary to international best practice.<sup>223</sup> **The IHRC has therefore recommended to Government that a person’s capacity to consent or object to admission to an approved centre needs to be determined under appropriate mental health legislation,** rather than by reference to Section 2 of the 2001 Act as currently formulated.<sup>224</sup> The IHRC is aware that a Bill to amend the Mental Health Act 2001 had been under preparation as part of the previous Government’s Legislative Programme for 2010. The IHRC considers this Bill presents an important opportunity to amend the 2001 Act in order to ensure full compliance with international human rights standards in line with the recommendations of the IHRC in its Policy Paper on this issue.

#### ***Lack of Procedural Safeguards for “Wards of Court”***

117. A second category of vulnerable people, so called “Wards of Court”, are also of ongoing concern to the IHRC. When a person becomes unable to manage his or her assets because of mental incapacity, an application can be made to the courts for this person to become a Ward of Court.<sup>225</sup> Wards of Court who are admitted to an approved centre are neither categorised as voluntary or involuntary for the purposes of the 2001 Act, but are administratively considered in a category of their own. The Mental Health Commission’s 2007 Annual Report records that there were 70 Wards of Court in psychiatric facilities during 2007.<sup>226</sup>

118. In 2008, the Scheme of the Mental Capacity Bill 2008 was referred to the IHRC for its consideration and recommendations.<sup>227</sup> The IHRC urged the Government to afford legislative priority to the introduction of the proposed Mental Capacity Bill which, at the time of writing, was yet to be published. In revising this draft legislation the IHRC

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<sup>221</sup> CPT Report, para. 117.

<sup>222</sup> CPT/Inf (2011) 3, February 10, 2011 at para. 117.

<sup>223</sup> See Article 5 ECHR; Article 14 CRPD; Article 11 CAT.

<sup>224</sup> See IHRC Policy Paper concerning the Definition of a ‘voluntary patient’ under s. 2 of the Mental Health Act February 2010 p. 29.

<sup>225</sup> The powers of the High Court in relation to wards and their estates are set out in the Lunacy Regulation (Ireland) Act 1871. While the 1871 Act recognises that wardship may be necessary, it does not deal with the issue of withholding medical treatment and fails to address how the court is to determine issues relating to the person, as opposed to their property. The IHRC considers the 1871 Act outdated and unsuitable and welcomes the commitment by Government to amend this legislative framework.

<sup>226</sup> Mental Health Inspectorate, Annual Report 2007, at p. 58.

<sup>227</sup> IHRC Observations on Scheme of the Mental Capacity Bill 2008, 11 November 2008. The main purpose of the 2008 Scheme is to reform the existing Wards of Court system, insofar as it applies to adults, and replace it with a modern statutory framework governing decision making on behalf of persons who lack capacity. This would allow the State to move forward to ratification of the United Nations Convention on the Rights of Persons with Disabilities which it has signed.

encourages the Government to take full consideration of the recommendations it has made in its Observations on the Scheme of the Mental Capacity Bill 2008 and its Policy Paper on Section 2 of the Mental Health Act 2001.<sup>228</sup>

119. The 2011 CPT Report stressed that the new mental capacity legislation will only apply to new cases, therefore the current wards of court under the old legislation “will be deprived of any safeguards’ set out in the new legislation”. The Committee stated that, “such a state of affairs would not be acceptable”.<sup>229</sup>

#### ***Lack of Adequate Protection for Children Detained in Psychiatric Institutions***

120. Section 25 of the Mental Health Act 2001 refers to the HSE making an application for the involuntary admission of a child, it is otherwise within the discretion of the child’s parent or guardian whether they will be admitted as a voluntary patient, and whether or not the child objects to such an admission is not a consideration.<sup>230</sup> Similarly, when the HSE makes an application for an involuntary admission order **it is unclear what safeguards are in place to ensure that the views of the child are taken into account by the court.**<sup>231</sup>

#### ***Legal Framework for People Detained under the Criminal Law (Insanity) Act 2006***

121. The Criminal Law (Insanity) Act 2006 provides the legislative framework for the treatment of individuals suffering from mental disorder that are charged with offences, or found not guilty by reason of insanity in respect of such offences and consequently detained in designated institutions or centres. The 2006 Act also provides the legislative basis for the treatment of prisoners who are found to be suffering from mental disorder. The Mental Health (Criminal Law) Review Board (“Review Board”) has a statutory obligation to review the detention of patients under the 2006 Act at least every six months.

122. The IHRC has welcomed the Government’s proposals for the amendment of the 2006 Act as per the Criminal law (Insanity) Bill 2010 (“2010 Bill”).<sup>232</sup> The 2010 Criminal Law Insanity Bill improves the compliance of Irish law with the ECHR as it aims, amongst other measures, to make better provision for the Review Board to make orders for the conditional or unconditional discharge of patients who are no longer deemed to require detention. The Bill was enacted on 22 December 2010 as the Criminal Law (Insanity) Act 2010.

123. In its Observations on the Bill the IHRC noted that under the terms of the amended legislation the Review Board cannot make a conditional discharge order unless it is satisfied the conditions considered necessary by the Clinical Director have been

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<sup>228</sup> See IHRC Observations on Scheme of the Mental Capacity Bill 2008, 11 November 2008; IHRC Policy Paper on Section 2 of the Mental Health Act 2001, 1 February 2010.

<sup>229</sup> CPT/Inf (2011) 3, 10 February, 2011 at para. 149.

<sup>230</sup> Under section 2 of the Mental Health Act 2001, a “child” is defined as a person under 18 years of age. Section 25 of the 2001 Act sets out the procedure for the involuntary admission of children. Under section 25 the HSE has the competence to make an application to the District Court for an Order authorising the detention of a child in an approved centre for treatment for up to a period of 21 days. This order may be extended by the court by three months initially and thereafter by six months. IHRC *Policy Paper on Section 2 of the Mental Health Act 2001*, 1 February 2010, at pp. 9-10.

<sup>231</sup> Ibid. at p. 10.

<sup>232</sup> See IHRC Observations on the Criminal Law (Insanity) Bill 2010, April 2010.

made in respect of the patient.<sup>233</sup> The same provision is contained in section 8 of the 2010 Act. In this regard, the IHRC noted the conclusions of the Mental Health Commission in their Annual Report 2008 that, “[c]ommunity-based mental health services with sufficient staffing and appropriate skill mix are woefully inadequate in many parts of the country”.<sup>234</sup> Therefore, the powers to allow for conditional discharge will only be effectively operated *in practice* if services are available within the community to effectively supervise people who are eligible for conditional discharge under the 2006 Act as amended.

124. The IHRC considers **that it is essential that adequate resources should be allocated to put in place the types of community outpatient treatment or supervision that will be necessary to allow for conditional discharge as soon as reasonably possible where a person is deemed suitable for such discharge.**<sup>235</sup> The IHRC also recommended that the legislation should explicitly provide that the conditions of discharge imposed should be reasonable and proportionate having regard to all of the circumstances of the case.<sup>236</sup>

#### **b. CONDITIONS OF DETENTION IN APPROVED PSYCHIATRIC CENTRES**

The **State Report** makes reference the Mental Health Act 2001 (Approved Centres) Regulations 2006 (2006 Regulations) and the provisions of advocacy services and complaint procedures under the legislation.<sup>237</sup> It does not provide information on actual conditions in psychiatric centres.

#### ***Conditions of Detention in Adult Psychiatric Facilities***

125. The Inspector of Mental Health Services has expressed concern in relation to the physical conditions in a number of specific approved centres.<sup>238</sup> **In 2010, the Mental Health Commission confirmed that it ordered three psychiatric hospitals to cease admitting new patients due to inhumane conditions and their failure to meet minimum standards of care.**<sup>239</sup>

126. In November 2006, new regulations came into force governing standards and conditions related to the care of patients in approved centres.<sup>240</sup> These regulations apply

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<sup>233</sup> Ibid. at p. 2.

<sup>234</sup> Mental Health Commission, Annual Report 2008, p. 67, para. 7.9.

<sup>235</sup> IHRC Observations on the Criminal Law (Insanity) Bill 2010, April 2010, at p. 4

<sup>236</sup> Ibid.

<sup>237</sup> State Report to the Committee Against Torture p. 56.

<sup>238</sup> For example, in the report on St Loman's Centre the Inspectorate expressed concern at the continued use of wards that were “dilapidated, desolate and depressing, and unsuitable for accommodating residents and providing them with care and treatment.” The recommendations made by the Inspectorate in 2008 in respect of St Loman's Centre had not been adopted in 2009 when a return inspection visit was undertaken. *See Report of the Inspector of Mental Health Services 2009* HSE Dublin Mid Leinster StLoman's Hospital Mullingar. The Inspector of Mental Health Services carried out inspections of 64 approved centres in 2009, 57 centres are under the auspices of the Health Service Executive (HSE) and 7 centres are provided by independent service providers.

<sup>239</sup> *See* ‘Mental Health Commission orders three psychiatric hospitals to take no more patients’ June 2010, available online at [http://www.mhcirl.ie/Publications/Annual\\_Reports/MHC\\_PRAR2009.pdf](http://www.mhcirl.ie/Publications/Annual_Reports/MHC_PRAR2009.pdf)

<sup>240</sup> Mental Health Act 2001 (Approved Centres) Regulations 2006. The 2001 Act and associated Regulations were enacted with a view to aligning Irish Mental Health Services with best international practice and standards, in particular the 2006 Regulations “specify the minimum standards required in a number of areas including care for patients”.

in addition to the standards in the 2001 Act. On the application of these standards to each of the approved centres, the Inspector found numerous instances of failure to comply with the standards set in the regulations.<sup>241</sup>

127. **The IHRC is also concerned about the lack of therapeutic services for persons with mental illness in approved centres.** In his report on Sligo/Leitrim Mental Health Services, the Inspector noted that the “provision of therapeutic programmes was hampered by the lack of suitable space.”<sup>242</sup>

128. The 2011 *CPT Report* confirms the comments made by the Inspector, which described the material conditions in St Ita’s Hospital as ‘poor’ and those in St Brendan’s Hospital as ‘unsuitable’. The CPT recommends that every effort be made to put in place appropriate conditions at these two hospitals notwithstanding their planned closure.<sup>243</sup>

129. The CPT also recommended that all necessary steps be taken to reduce violence amongst patients and by patients against staff in St Ina’s and St Brendan’s, which is linked to factors/problems such as: material conditions, including availability of single bedrooms; training of staff; staff-patient ratio; the availability of activities; and the mix of patients on a particular unit.<sup>244</sup> Finally, the CPT looked for confirmation that all patients at St Brendan’s Hospital have access to outdoor exercise for at least one hour every day, as patients on upper floors had not had such access due to lack of an elevator and staff shortages.<sup>245</sup>

#### **IHRC RECOMMENDATIONS**

130. The IHRC is concerned that efforts to comply with the 2006 Regulations have been slow. The IHRC is concerned that there are ‘approved centres’ that are not meeting international standards or fulfilling treaty obligations and would recommend that resources be made available to ensure that adequate levels of accommodation are guaranteed.<sup>246</sup> Resources must be made available as a priority to ensure full compliance of Ireland’s psychiatric facilities with international standards.

#### ***Conditions of Detention in the Central Mental Hospital***

131. **The IHRC is concerned about the conditions of detention at the Central Mental Hospital (CMH)** which remains the only ‘designated centre’ for the detention of people who are deemed unfit to plead or who are found not guilty by reason of insanity under the Criminal Law (Insanity) 2006 Act.<sup>247</sup>

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<sup>241</sup> For example, the Inspector recorded a number of breaches of Article 15, the duty to supply each patient with an individual care plan, in a number of different approved centres. Report of the Inspector of Mental Health Services 2009 St. Ita’s Hospital Portrane August 2009; Report of the Inspector of Mental Health Services 2009 St. Loman’s Hospital Mullingar May 2009; Report of the Inspector of Mental Health Services 2009 St Brendan’s Hospital Dublin July 2009.

<sup>242</sup> See Report of the Inspector of Mental Health Services 2009 HSE Sligo Leitrim Ballytynnan Mental Health Services.

<sup>243</sup> CPT/Inf (2011) 3, 10 February, 2011 at para 120.

<sup>244</sup> Ibid at para 119.

<sup>245</sup> Ibid at para 121.

<sup>246</sup> Articles 7, 10 and 19 International Convention for Civil and Political Rights; Article 12 International Convention Economic, Social and Cultural Rights; Article 11 Convention Against Torture.

<sup>247</sup> The Central Mental Hospital (CMH) is currently located in Dundrum, Dublin 14. The building, constructed in 1850, accommodates 93 beds and is currently at full capacity.



132. The 2009 Report on the Central Mental Hospital (CMH) by the Inspector of Mental Health Services stated that “the condition of the building was very poor [...] There appeared to be a continuous battle to keep the fabric of the current building intact and allow the building to be habitable.”<sup>248</sup> The Inspector also stated that “urgent decisions are required by the HSE and the Department of Health and Children on the provision of forensic in-patient accommodation”.<sup>249</sup>

133. While the 2011 *CPT Report* welcomed material improvements at the Central Mental Hospital since its previous visits, particularly the end of the ‘slopping out’ practice with the refurbishment of the isolation cell in the female unit, they found that the overall situation for female patients remains unsatisfactory and ‘requires immediate attention’, as ‘female patients in different phases of their treatment are accommodated in a single unit with a uniform regime, in disregard of different needs as regards security’.<sup>250</sup>

134. In May 2006, the Government confirmed a decision to move the CMH to a site adjacent to the new prison complex at Thornton Hall.<sup>251</sup> However, this decision was met with considerable concern by many, including the NGO the Irish Penal Reform Trust.<sup>252</sup> There are now unconfirmed reports which suggest that a new facility will be built at an alternative site in Portrane. However, there is no confirmation that this relocation will be progressed and no clear timeframe within which the relocation of the CMH will be progressed.

#### IHRC RECOMMENDATIONS

135. The IHRC is of the view that the living conditions in **some units in the CMH are inadequate and do not provide conditions that are conducive to the treatment and welfare of patients and do not comply with the standards set in the UN Principles for the Protection of Persons with Mental Illness**. The IHRC recommends that steps should be taken to improve the conditions without delay and that decisions on a site for the new CMH should be made expeditiously and with the involvement of relevant stakeholders.

#### c. LACK OF APPROPRIATE MENTAL HEALTH SERVICES FOR CHILDREN

136. **The IHRC is concerned at the admission of children to adult mental health units.** In 2009, there were 365 admissions of children to 31 units.<sup>253</sup> Of the 365 admissions 55% (200) were to adult units, of which 94% (188) of these admissions were aged 16 and 17 years and the remaining 6% (12) were 15 years or under.<sup>254</sup> There were eight involuntary admissions of children to approved centres in 2008.<sup>255</sup> Of the eight admissions, six were to adult units. In 2007, all involuntary admissions of children were to adult units. The Mental Health Commission has stated that **the provision of age appropriate approved centres for children and adolescents must be addressed as a**

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<sup>248</sup> Central Mental Hospital Report by the Inspector of Mental Health Services, 2009, at p. 44.

<sup>249</sup> Ibid.

<sup>250</sup> CPT/Inf (2011) 3, 10 February, 2011 at para. 122.

<sup>251</sup> Dáil Debate, 1 July 2009, Other Questions, vol. 686, no.3.

<sup>252</sup> See IPRT Position Paper on Prison Building Policy - Thornton Hall, June 2008

<sup>253</sup> Mental Health Commission, Annual Report 2009, at p. 41.

<sup>254</sup> Ibid.

<sup>255</sup> See Mental Health Commission Annual Report 2008, at pp. 29-31.

**matter of urgency**, a view shared by the IHRC.<sup>256</sup> In its Programme for Government 2011 - 2013, the new Government has stated that it will endeavour to end the practice of placing children and adolescents in adult psychiatric wards.<sup>257</sup>

## VII. CHILDREN IN DETENTION

Articles 10, 11 and 16 of the Convention are of relevance to this section.

### a. DETENTION OF JUVENILES IN AN ADULT PRISON

137. **The IHRC is concerned at the detention of children in adult prisons.**

138. In accordance with international human rights law the arrest, detention and imprisonment of children should be a measure of last resort and should take place for the shortest appropriate period of time.<sup>258</sup> This is reflected in Irish law in section 96 of the Children Act 2001 (2001 Act) which sets out the principle that detention of children should only be used as a measure of last resort. Children who are detained are generally detained in Children Detention Schools, under the auspices of the Irish Youth Justice Service, an executive office of the Department of Justice and Law Reform.<sup>259</sup> **However, the State Report does not provide information on the fact that the 2001 Act allows as an interim measure the detention of 16 and 17 year old males in St Patrick's Institution in contravention of international human rights law.**<sup>260</sup> In the Programme for Government 2011-2016 the new Government made a pledge to end the practice of sending children to St Patrick's Institution.<sup>261</sup>

139. St Patrick's Institution is a closed, medium security place of detention for males aged 16 to 21 years, accommodating both remand and sentenced prisoners.<sup>262</sup> This is the only prison in which 16 and 17 year old male juveniles are legally entitled to be accommodated. The daily average number of males in custody in 2008 was 207. It has been reported that at any one time just under one third of the population are aged 16 and 17.<sup>263</sup> On 10 December 2010 there were 38 juveniles aged 16 and 17 detained there.<sup>264</sup>

<sup>256</sup> See Mental Health Commission, Code of Practice Relating to Admission of Children under the Mental Health Act 2001 November 2006 at Preamble

<sup>257</sup> Programme for Government 2011-2016, (March 2011) at p. 8.

<sup>258</sup> Article 37 (b) Convention on the Rights of the Child.

<sup>259</sup> First National Report by Ireland, Submitted under the UN International Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, July 2009 at p. 58.

<sup>260</sup> Article 10 (3), International Convention for Civil and Political Rights, Article 37 (c), Convention on the Rights of the Child, Rule 26.3, UN Minimum Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rule 29, United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 11.1, Recommendation No. R (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules, 59.1, Recommendation No. R (2008) 11 of the Committee of Ministers to Member States on the European Rules for juvenile offenders subject to sanctions or measures, 69 (1), Irish Prison Rules.

<sup>261</sup> Programme for Government 2011-2016, at p. 19, at

[http://www.taoiseach.ie/eng/Publications/Publications\\_2011/Programme\\_for\\_Government\\_2011.pdf](http://www.taoiseach.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf)

<sup>262</sup> Irish Prison Service, Annual Report 2008, at p. 11. It is situated in the Mountjoy prison complex which dates back to 1850.

<sup>263</sup> Inspector of Prisons, The Irish Prison Population- An examination of the duties and obligations owed to prisoners, Oct 2010, at p. 81.

<sup>264</sup> Irish Penal Reform Trust, Briefing on Detention of Children in St Patrick's Institution, December 2010

140. **The detention of children in St Patrick’s Institutions has been the subject of criticism by domestic and international monitoring bodies for many years.** In 1985, a Committee of Inquiry into the Penal System (Whitaker Committee) declared it “highly inappropriate” for children who came into conflict with the law to be detained in St Patrick’s.<sup>265</sup> Over 20 years later, the CPT in their 2006 report repeated their recommendation to Government that children deprived of their liberty ought to be held in detention centres designed specifically for persons of their age and staffed by people trained in dealing with young people.<sup>266</sup> The Committee on the Rights of the Child in their concluding observations on Ireland in 2006 stated that they were “deeply concerned” with the detention of 16 and 17 year olds in this institution.<sup>267</sup> The Council of Europe Report by the Commissioner for Human Rights in November 2007 expressed similar concerns.<sup>268</sup> These concerns are reiterated by the 2011 CPT Report 2011.<sup>269</sup>

An Expert Group on Children Detention Schools established in April 2006 has been tasked with the transfer of boys aged 16-17 years from St Patrick’s Institution to the new National Children Detention Facility.<sup>270</sup> The Expert Group made a number of recommendations to Government in relation to the size and location of the new detention facility which was approved by Government in March 2008.<sup>271</sup> The Irish Youth Justice Service undertook a welcome consultation process with a range of bodies and individuals on the design of the future facility and on the incorporation of international human rights standards for the detention of children into any future development in Ireland.<sup>272</sup> It is understood that this facility will hold all children, whether there on remand, on sentence or for assessment purposes.<sup>273</sup> Thus, it is vital that this facility be designed to accommodate the specific needs and provide for the security of all children.<sup>274</sup>

#### IHRC RECOMMENDATIONS

141. While the IHRC welcomes the Government’s commitment to establish a new Children Detention Facility, and in particular the consultative approach it has adopted in relation to the design of the new facility, the IHRC is concerned that the Government

<sup>265</sup> The Whitaker Committee of Inquiry into the Penal System was established on 31<sup>st</sup> January 1984. It was chaired by T. K. Whitaker. The bulk of the terms of reference related to prison accommodation and the prison regime. It also reviewed the growth and the causes of crime, reform of the criminal law, imprisonment as a sanction and alternatives to imprisonment.

<sup>266</sup> Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2002, paras. 107-108, referred to in the IHRC’s Observations on the 3<sup>rd</sup> CPT Report, November 2004. Following publication of the CPT Report the Government decided not to go ahead with plans for a special wing in St Patrick’s Institution for 14 and 15 year olds.

<sup>267</sup> Committee on the Rights of the Child, Concluding Observations on Ireland, CRC/C/IRL/CO/2, 29 September 2006, at para. 72.

<sup>268</sup> Council of Europe, Report by the Commissioner of Human Rights, Thomas Hammarberg, 26- 30 November 2007, at para. 72.

<sup>269</sup> Report to the Government of Ireland of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, February 10, 2011, CPT/Inf (2011) 3, para. 26, at p. 17.

<sup>270</sup> Irish Youth Justice Service, Expert Group on Children Detention Schools, Final Report, 14 December 2007.

<sup>271</sup> Ibid, at p. 27. The then Minister for Children, Mr Brendan Smith T.D., confirmed the Government had approved the building of the facility in a speech made at the Irish Youth Justice Service Conference on 6<sup>th</sup> March 2008, as at [www.iyjs.ie/en/IYJS/Pages/NE08000088](http://www.iyjs.ie/en/IYJS/Pages/NE08000088)

<sup>272</sup> Irish Youth Justice Service, Working Group on Children’s Rights Standards for the National Children Detention Service at Oberstown, Lusk, Co. Dublin.

<sup>273</sup> Irish Penal Reform Trust, *Detention of Children in Ireland: International Standards and Best Practice*, at p. 24.

<sup>274</sup> Ibid.

has not made a clear time bound commitment in relation to the completion of the National Children Detention Facility. In the interim, children will continue to be detained in an adult prison in contravention of international human rights law. **The ongoing detention of 16 and 17 year old male juveniles in an adult prison should be ended as promptly as possible and a specific timeline should be set for the completion of the National Child Detention Facility.**

#### b. CONDITIONS OF DETENTION IN ST PATRICK'S INSTITUTION

142. **Concerns have been raised about the conditions of detention in St Patrick's Institution.**<sup>275</sup>

143. The 2011 *CPT Report* found that while the majority of younger prisoners were separated from older prisoners, 'in practice the main criterion for placement was to keep conflicting groups apart'.<sup>276</sup> The Report does note that levels of violence at the prison had reduced significantly since the previous CPT visit.<sup>277</sup> While the 2011 Report acknowledged that there has been an increase in the number of workshops and educational courses available, "the majority of inmates were spending far too much time locked up in their cells".<sup>278</sup>

139. The Inspector of Prisons, when dealing with St Patrick's Institution, acknowledged in a recent report that "great strides have been made in the provision of vocational work training".<sup>279</sup> He recommended that "further workshops should be opened and the present workshops should be expanded in order that all prisoners who wish to engage in such activities could be accommodated".<sup>280</sup>

144. The Prison Visiting Committee, in their most recent report on St Patrick's Institution, stated that with regard to education, more incentives should be offered to all inmates to encourage them to attend and use the facilities that are available.<sup>281</sup>

145. A February 2011 report by the Ombudsman for Children on Young People in St Patrick's Institution, made a range of recommendations, and specifically highlighted the **lack of an external, independent mechanism to deal with the complaints from young people** in St Patricks Institution. People of 16 and 17 years in children detention schools can make a complaint to the Office of the Ombudsman for Children, while those placed in prisons cannot. **The Ombudsman for Children has urged the**

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<sup>275</sup> In 1985, the Whittaker Committee highlighted the "de-moralising effect" of detaining juveniles in St Patrick's Institution and stated that the conditions of detention could "easily lead to psychological deterioration of the young offenders in the institution". Cited in Kilkelly, U. (2006) *Youth Justice in Ireland: Tough Lives, Rough Justice*, Dublin, Irish Academic Press, at p.226, in: IPRT, *Detention of Children in Ireland: International Standards and Best Practices*, December 2009, at pp. 15-16.

<sup>276</sup> CPT/Inf (2011) 3, February 10, 2011 at para. 28. On 3 February the prison held 210 inmates, of whom 58 were 16 or 17 years.

<sup>277</sup> Ibid at para. 32.

<sup>278</sup> Ibid at para. 52. Some 35 prisoners were not assigned to any educational or vocational courses. One explanation for this was staff concern with keeping various factions apart.

<sup>279</sup> Inspector of Prisons, *The Irish Prison Population- An examination of duties and obligations owed to prisoners*, October 2010, at p. 83.

<sup>280</sup> Ibid.

<sup>281</sup> St Patrick's Institution, Prison Visiting Committee Annual Report for year ending 21 December 2008, at p.2.

government - once again - to 'remove the exclusion to her investigatory mandate'.<sup>282</sup> The IHRC supports this call.

#### IHRC RECOMMENDATIONS

146. The IHRC recommends that appropriate measures should be taken to improve activities, including educational and vocational training, sport, and rehabilitative classes and services offered to young offenders at St Patrick's, pending the development of the National Child Detention Facility. Furthermore, the Ombudsman for Children should have full access to St Patrick's facility.

#### c. CHILDREN DETENTION SCHOOLS

147. There are currently four children detention schools in Ireland, for which the Irish Youth Justice Service is responsible since March 2007.<sup>283</sup> In 2009, the Social Services Inspectorate (SSI) within the Health Information and Quality Authority (HIQA) carried out inspections of children detention schools.<sup>284</sup> While the detention schools measured well against these standards, some areas of concern were noted by HIQA, in particular the overuse of single separation as a routine method of behaviour management and deficiencies in staff vetting.<sup>285</sup>

148. In addition, as noted above, it is understood that when the new National Children Detention Facility is completed, it will hold all children detained in the State, whether there on remand, on sentence or for assessment purposes. **The IHRC is concerned that the proposed centralised location of the National Children Detention Facility may not meet best international practice in a number of respects.**

149. The facility will hold all children under the age of 18 years for a wide range of sentences or assessment purposes and may lead to younger children being detained with older children. Also, the proposed central location of the facility will not easily facilitate family contact and may limit contact with local community and friends.<sup>286</sup> A report by the Council of Europe's Commissioner for Human Rights stated that "detention facilities for juveniles should be decentralised and small-scale detention facilities should be set up and integrated into the social, economic and cultural environment of the community. Easy access for family is of particular importance."<sup>287</sup> These aspects of a centralised detention facility for children may also impinge on the reintegration of the child following release and does not fully comply with the fundamental principle of the best interests of the child.<sup>288</sup>

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<sup>282</sup> Ombudsman for Children, *Young People in St Patricks Institution*, February 2011 Report at p. 61.

<sup>283</sup> Trinity House School, Oberstown Boys School, Oberstown Girls School, in Lusk, and Finglas Child and Adolescent Centre in Finglas West.

<sup>284</sup> These were carried out against the Standards and Criteria for Child Detention Schools, which were issued by the Department of Education and Science in November 2004 and adopted by the Irish Youth Justice Service in November 2008. Health Information and Quality Authority, *Inspection Reports of Children's Detention Schools*, available at: [http://www.hiqa.ie/functions\\_ssi\\_inspect\\_rep\\_cds.asp](http://www.hiqa.ie/functions_ssi_inspect_rep_cds.asp)

<sup>285</sup> Ibid.

<sup>286</sup> Ibid.

<sup>287</sup> Commissioner for Human Rights (2009) *Children and Juvenile Justice: Proposals for Improvements*, Strasbourg: Council of Europe, at p.16.

<sup>288</sup> Under Article 3(1) of the UN Convention on the Rights of the Child the best interests of the child shall a primary consideration "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies".



## IHRC RECOMMENDATIONS

150. The IHRC recommends that the use of single separation as a routine method of behaviour management in child detention schools should be minimised and should only be used as an exceptional measure of control in situations of immediate risk and not be used as punishment. The deficiencies in the vetting of staff working in children detention schools should be improved as a matter of priority.

## VIII. PREVENTION OF ILL-TREATMENT OF CHILDREN

Articles 2, 4 and 16 of the Convention are of relevance to this section.

### a. LAWS RELATING TO CORPORAL PUNISHMENT

151. Corporal punishment is lawful in the home in Ireland under the common law right to use “reasonable and moderate chastisement”<sup>289</sup> in disciplining children. Corporal punishment is prohibited in schools under section 24 of the Offences against the Person (Non Fatal) Act 1997. It is unlawful in the penal system as a sentence for crime and as a disciplinary measure in penal institutions.<sup>290</sup> Section 201 of the Children Act 2001 prohibits the “use of corporal punishment or any other form of physical violence” and “treatment that is cruel, inhuman or degrading” in children detention schools. It is also prohibited in some, but not all, alternative care settings.<sup>291</sup>

152. The Committee on the Rights of Child has twice expressed its concern about the lack of prohibition in legislation of corporal punishment within the family in Ireland.<sup>292</sup>

153. In a Collective Complaint taken against Ireland before the Council of Europe European Committee of Social Rights, Ireland’s law was held not to comply with the Revised European Social Charter as it does not effectively prohibit corporal punishment. The European Committee of Social Rights concluded that Ireland was in violation of Article 17 of the Revised Charter because corporal punishment of children within the home is permitted by the common law defence of reasonable chastisement, which is also applicable in foster care, residential care and certain childminding settings.<sup>293</sup> The

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<sup>289</sup> Section 37 of the Children Act (1908). This section of the Act was repealed by the Children Act 2001 however, the common law right still exists.

<sup>290</sup> Section 12 Criminal Law Act 1997.

<sup>291</sup> It is prohibited in pre-schools but under Rule 58 of the Child Care Act 1991. The following are exempt from the prohibition: childminders caring for children of relatives and childminders caring for children of the same family or not more than three children of different families.

<sup>292</sup> The 1998 Concluding Observations of the Committee on the Rights of Child: Ireland (CRC/C/15/Add.85) and the 2006 Concluding Observations of the Committee on the Rights of Child: Ireland (CRC/C/IRL/CO/2). In its Concluding Observations in relation to Ireland, the Committee urged the Government to “prohibit all forms of corporal punishment in the family”, “sensitize and educate parents and the general public about the unacceptability of corporal punishment” as well as “promote non-violent forms of discipline as an alternative to corporal punishment”. Concluding Observations of the Committee on the Rights of Child: Ireland, CRC/C/IRL/CO/2, forty-third session, 2006, p. 9, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/450/74/PDF/G0645074.pdf?OpenElement>

<sup>293</sup> Resolution ResChS(2005)9, Collective complaint No. 18/2003 by the World Organisation against Torture (OMCT) against Ireland, adopted by the Committee of Ministers on 8 June 2005.

previous Government had made a long term commitment to prohibition but gave no clear indication of when it intends to amend the law in this area.<sup>294</sup>

## **b. DEATHS OF CHILDREN IN THE CARE OF THE STATE**

154. Under the Child Care Act 1991, the Health Service Executive (HSE) has a responsibility to “identify children who are not receiving adequate care and protection”.<sup>295</sup> The Children’s First Guidelines (1999) state that Case Management Reviews can occur in cases where suspected or confirmed abuse involves the death of a child or when the case of suspected or confirmed abuse involves serious injury of a child.<sup>296</sup>

### ***Mechanisms to Investigate and Review Circumstances Surrounding the Death of Children in the Care of the State***

155. In December 2010, the HSE indicated that 199 children and young adults in State care, or known to social services, died between 1 January 2000, and 30 April 2010.<sup>297</sup> A number of individual reports into the death of children in its care were completed by the HSE, and some were ultimately made public.<sup>298</sup> In one case, nearly eight years had passed since the death of an 18-year old.<sup>299</sup>

156. In April 2007, the Ombudsman for Children’s Office (OCO) advised the Minister for Health and Children that consideration be given to the establishment of a child death review mechanism.<sup>300</sup> In February 2009, the OCO produced an option paper setting out what aspects of child death are already being examined in Ireland and what issues should be considered in the context of establishing a child death review mechanism in this jurisdiction.<sup>301</sup>

157. In January 2010, the Health Information and Quality Authority (HIQA) published a report entitled “Guidance for the Health Service Executive for the Review of

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<sup>294</sup> *Briefing from Global Initiative to end all corporal punishment of children*, for the Human Rights Committee, April 2008:

[http://www2.ohchr.org/english/bodies/hrc/docs/ngos/GlobalInitiative93\\_Ireland.doc](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/GlobalInitiative93_Ireland.doc)

<sup>295</sup> Child Care Act 1991, Part II “promotion of welfare of children”, Section 3(2)(a).

<sup>296</sup> Children First, National Guidelines for the protection and welfare of children, p. 83, available at:

[http://www.dohc.ie/publications/pdf/children\\_first.pdf?direct=1](http://www.dohc.ie/publications/pdf/children_first.pdf?direct=1)

<sup>297</sup> *The Irish Times*, Wednesday January 5<sup>th</sup>, 2011, Jamie Smyth ‘HSE delays publication of report into girl’s death’.

<sup>298</sup> HSE, Child in Care Death Report-Child; Young Person B, April 2010, HSE, Child in Care Death Report-Child; Young Person A, April 2010. See also HSE Statement on Deaths of Children in HSE Care, 4 March 2010 as at:

<http://www.hse.ie/eng/services/newscentre/2010archive/april2010/carerips.html>

<sup>299</sup> For an outline of the facts of one of these cases, see *The Irish Times*, March 4, 2010, ‘The Life of Tracey Fay, 1983-2002’, based on the contents of the report into her death, published unofficially on 2 March 2010.

<sup>300</sup> Child Death Review Options Paper, Ombudsman for Children, February 2009, available at: <http://www.oco.ie/assets/files/issues/Optionspaperfeb09.pdf>

<sup>301</sup> *Ibid.* It was noted that child death review mechanisms have been established in every State in the USA, and in New Zealand, Australia and Canada. In addition, new child death review procedures became mandatory in England and Wales in April 2008, while the Department of Health, Social Service and Public Safety in Northern Ireland has undertaken a consultation process on the establishment of a regional child death review protocol. The then Scottish Executive also established a Child Death and Significant Case Review Group to examine the possibility of introducing a child death review mechanism in Scotland in 2005. *Ibid.*

Serious Incidents including Deaths of Children in Care”.<sup>302</sup> HIQA recommended the establishment of the Review Panel for Serious Incidents and Child Deaths which will be a panel of experts to review child deaths in State care. This Review Panel comprises 17 members: a Chairperson, a Deputy Chairperson and 15 panel members (2 are currently employed by the HSE, 3 are currently state employees in other agencies and 4 are former HSE staff).<sup>303</sup>

158. In March 2010, the then Minister for Children and Youth Affairs, Mr Barry Andrews T.D., established an Independent Child Death Review Group<sup>304</sup> to review the HSE’s investigations into the deaths of children while in State care since 2000. The Child Death Review Group should examine existing information on deaths of children in care in order to review the categorisation of those children who were deemed to have died from natural causes. In relation to children other than those who died from natural causes, the Child Death Review Group is tasked with examining existing reports completed by the HSE and, based upon this information, it shall provide an overall report for publication.<sup>305</sup>

159. As result of the inability of the Child Death Review Group to retrieve the files of some of the deceased children in State Care from the Health Service Executive (due to statutory confidentiality clauses), the Health (Amendment) Act, 2010 was enacted.<sup>306</sup> Under this emergency legislation, the Minister for Health may require the HSE to provide files to him or her.<sup>307</sup> The Minister may then release this information to an inquiring body.<sup>308</sup> In response to the passing of this legislation, the Ombudsman for Children stated that a “properly constituted statutory inquiry should have its own means of compelling documents and information” rather than relying on the power of the Minister.<sup>309</sup> The Oireachtas Special Rapporteur on Child Protection in his third report, had previously stated that: “It is vital that in the future, inquiries into child protection

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<sup>302</sup> This Guidance was produced in response to the Department of Health and Children’s implementation plan following the Report of the Commission to Inquire into Child Abuse, (commonly referred to as the “Ryan Report”) which states that the HIQA should develop guidance for the Health Service Executive (HSE) for the review of serious incidents including deaths in relation to children in the care of the State. The Guidance describes what a standard, unified, independent and transparent system for the review of serious incidents including deaths of children in care in Ireland should consist of. The guidance outlines the purpose of national review, the national review panel and team and the review process. The guidance also addresses the timing of review, benchmarks for individual reviews, publication and external reporting and monitoring of the review process. See Report of the Commission to Inquire into Child Abuse-Implementation Plan, July 2009, at p. 37.

<sup>303</sup> “HSE confirms membership of Review Panel for Serious Incidents and Child Deaths under the HIQA Guidance for the HSE and Review Team for Daniel McAnespie’s Case”, As per HSE Website - [www.hse.ie/eng/services/newscentre/2010/archive/may\\_2010](http://www.hse.ie/eng/services/newscentre/2010/archive/may_2010)

<sup>304</sup> “Independent Review into Deaths of Children in Care”, Office of the Minister for Children and Youth Affairs, 8 March 2010: <http://www.omc.gov.ie/viewdoc.asp?DocID=1253>

<sup>305</sup> This Report Provides on an anonymised basis key summary information regarding each child and the circumstances leading up to their death. With particular focus on the relevant involvement of State services with the child and his/her family;. It examines the strengths and weaknesses of such involvement. In so far as learning was or can be identified from these reports, make recommendations as to how child protection responses can be strengthened. If considered useful, it shall comment on the nature of the reports available for its consideration.

<sup>306</sup> July 2010. The full title of the Act is ‘An Act to Amend the Health Act 2004 to provide, in the public interest, for the furnishing by the Health Service Executive of information and documents to the Minister for Health and Children and to provide for matters connected therewith.’

<sup>307</sup> S.1 of the Health (Amendment) Act, 2010, which inserts S.40C of the Health Act 2004 as amended.

<sup>308</sup> S.40D of the Health Act, 2004, as inserted by the 2010 Act.

<sup>309</sup> Advice of the Ombudsman for Children on the Health Amendment Bill, 2010, 15 June 2010 and *The Irish Times*, Jamie Smith, Tuesday, 22 June 2010, ‘State’s Child Death Review Flawed, claims Ombudsman’.

matters and apparent failings in the child protection system are fully independent and statutory so as to ensure their effectiveness as inquiries”<sup>310</sup>.

#### IHRC RECOMMENDATIONS

160. The IHRC recommends that a properly constituted independent statutory inquiry should be constituted, with all necessary powers, to inquire into child protection matters, including apparent failings in the protection system.

#### c. THE IMPLEMENTATION OF NATIONAL GUIDELINES FOR THE PROTECTION AND WELFARE OF CHILDREN

161. In 1999, the Department of Health and Children launched *Children First: National Guidelines for the Protection and Welfare of Children*.<sup>311</sup> These guidelines are intended to assist people in identifying and reporting child abuse and to improve professional practice in both statutory and voluntary agencies and organisations that provide services for children and families.<sup>312</sup>

162. In April 2010, the Ombudsman for Children (OCO) published a report entitled “a Report based on the implementation of *Children First: National Guidelines for the Protection and Welfare of Children*” by the HSE and the monitoring of this implementation by the Office of the Minister for Children and Youth Affairs.<sup>313</sup> According to the OCO, protection and promotion of children’s rights and welfare needs to be further improved, and this is not simply a matter of resources. The OCO has identified other problems such as a lack of internal and external scrutiny or a failure of inter-agency collaboration.<sup>314</sup>

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<sup>310</sup> Third Report of the Special Rapporteur on Child Protection, Mr Geoffrey Shannon, published by the Department of Health and Children in April 2010, at p.64.

<sup>311</sup> *Children First National Guidelines for the Protection and Welfare of Children*, 1999, available at: [http://www.omc.gov.ie/documents/publications/Children\\_First\\_A4.pdf](http://www.omc.gov.ie/documents/publications/Children_First_A4.pdf)

<sup>312</sup> The objectives of these *National Guidelines* are:

- improve the identification, reporting, assessment, treatment and management of child abuse,
- facilitate effective child protection work by emphasising the importance of family support services and the need for clarity of responsibility between various professional disciplines,
- maximise the capacity of staff and organisations to protect children effectively by virtue of their relevance and comprehensiveness;
- consolidate inter-agency co-operation based on clarity of responsibility, co-ordination of information, and partnership arrangements between disciplines and agencies.

<sup>313</sup> A report based on the implementation of *Children First: National Guidelines for the Protection and Welfare of Children*, the Ombudsman for Children, April 2010. Available at: <http://www.oco.ie/assets/files/PressReleases/Children%20First/OCOinvestigationintoimplementatofChildrenFirst.pdf>

<sup>314</sup> More precisely, the OCO made a list of recommendations to improve child protection in Ireland:

- Resources should be better matched to need around the State in social work departments to ensure equitable service provision through evidence based resource allocation.
- Family support services (locally and nationally) should be properly planned for with appropriate strategies in place.
- It is recommended that Social Service Inspectorate (SSI), upon recommencing inspection of child protection work and consistent with its normal practice in other fields, examine case files to get a true picture of the state of implementation in practice.
- Work to standardise processes and improve how data is recorded by the HSE should be continued as a priority.
- Though not a requirement of *Children First*, it is recommended that consideration be given to the creation of a national Child Protection Notification System, rather than only a local one.

## IX. DETENTION OF ASYLUM SEEKERS AND IMMIGRATION RELATED DETENTION

Articles 2 and 3 of the Convention are of relevance to this section.

The **State Report** provides that detention of asylum seekers is not the norm.<sup>315</sup>

### a. INTRODUCTION

163. Under Irish law asylum seekers and other immigration related detainees can be detained on specific legislative grounds and where they are detained in prisons or police stations. In its 2007 Report on Ireland, the CPT recommended that, asylum seekers and other immigration detainees “should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified personnel”.<sup>316</sup> In its most recent report the CERD Committee expressed concern 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...”.<sup>317</sup> The UN Human Rights Committee in its concluding observations addressed to the Irish Government in 2008 also expressed concern about the absence of special detention facilities for asylum-seekers whose request for asylum has been rejected and for undocumented migrants awaiting deportation.<sup>318</sup>

### b. PLACES AND CONDITIONS OF DETENTION

164. Current Irish law allows asylum seekers to be detained in any prescribed place which includes prisons and police stations.<sup>319</sup> Under current Irish law asylum seekers and undocumented migrants under 18 years of age cannot be detained.<sup>320</sup> However, where an immigration officer or member of the police has reasonable grounds for believing that the person is not under the age of 18 he or she may be detained on the same grounds as an adult asylum seeker.<sup>321</sup> As noted above, there are ongoing and persistent problems in Irish prisons, including high levels of overcrowding and inter-prisoner violence.

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- Joint liaison structures should be established between the HSE and the Garda Síochána in all areas where they are outstanding.
  - The SSI and a Garda Síochána Inspectorate should jointly inspect the implementation of Children First’s requirements on Garda/HSE cooperation more generally, including the early holding of strategy meetings.
  - The HSE should provide further training to professionals on their duty to report abuse, including regarding retrospective cases.

<sup>315</sup> State Report to the Committee Against Torture, at p. 59.

<sup>316</sup> Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 13 October 2006 (Strasbourg, 10 October 2007), at p. 38.

<sup>317</sup> Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland. CERD/C/IRL/CO/3-4, March 2011, at p.4.

<sup>318</sup> Concluding observations of the Human Rights Committee: Ireland, July 2008, at p.5.

<sup>319</sup> Sections 1(1) and 9(8) of the Refugee Act 1996; Section 3 of the Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000; Section 70(3)(a) of the 2008 Immigration Bill as amended.

<sup>320</sup> Section 9 (12) (a), Refugee Act 1996.

<sup>321</sup> Section 9(12) of the Refugee Act 1996; Sections 5(2)(b) and 5(2)(c) of the Immigration Act 2003.



## IHRC RECOMMENDATIONS

165. While the IHRC considers that the detention of asylum seekers should be a measure of last resort, in the limited circumstances where it does occur, detention must be in a place which is suitable and in line with international standards. The IHRC considers that prisons and police stations are not suitable places for the detention for asylum applicants who have not been convicted of a criminal offence. In addition, the IHRC considers people should only be detained in specifically designated and suitable centres pending deportation where there is a real risk that the person will abscond, and the period of their detention pending deportation should be as short as possible. Alternatives to detention such as the use of sureties should be used as much as possible.<sup>322</sup>

## X. THE PROHIBITION AGAINST REFOULEMENT<sup>323</sup> AND THE PROTECTION SYSTEM

**Articles 2 and 3** of the Convention are relevant to this section. Article 3 requires that “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

In its **State Report** the Government outlines that the principle of non-refoulement is contained in section 5 of the Refugee Act 1996 and section 4 of the Criminal Justice (United Nations Convention Against Torture) Act 2000, and that the Immigration, Residence and Protection Bill 2008 (2008 Bill), would maintain the existing legal protection against refoulement.<sup>324</sup>

### a. INTRODUCTION

166. The IHRC considers that while the principle of non-refoulement is clearly provided for under Irish legislation, there are areas where Irish law and practice relating to the protection of asylum seekers should be strengthened or reviewed to ensure that comprehensive legal protection exists in practice to protect against any possible risk of refoulement.

167. The IHRC notes that at time of writing, there is no consolidated immigration framework in place in Ireland.

### b. ACCESS TO THE PROTECTION SYSTEM

168. In 2008, an Immigration, Residence and Protection Bill was introduced. This Bill was subsequently withdrawn and in 2010 a new Bill was published. The two bills are substantially the same. With the dissolution of the Dáil (Parliament), the 2010 Bill was

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<sup>322</sup> See further IHRC, Submission on the National Action Plan Against Racism, December 2002.

<sup>323</sup> Article 33(1) of the 1951 Convention relating to the Status of Refugees states that “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.

<sup>324</sup> Ireland’s Initial Report to the Committee against Torture, at p. 12

suspended. The new Minister for Justice, Mr Alan Shatter T.D. has recently stated that he would re-introduce the Bill but that he would propose substantial amendments.<sup>325</sup> The new Government has pledged to introduce comprehensive reforms of the immigration, residency and asylum systems in its Programme for Government.<sup>326</sup>

169. In the 2010 Bill it was proposed that a person who is the subject of an “exclusion order” is not entitled to make a protection application without the consent of the Minister.<sup>327</sup> The Minister for Justice can issue an exclusion order if he or she considers it necessary “in the interests of national security, public security or public order or for reasons of public policy (*ordre public*)” either indefinitely or for such period as may be specified in the order.<sup>328</sup>

170. **The IHRC considers that the power of the Minister to issue an exclusion order is too broadly drawn**, and does not comply with the limited exceptions permitted to the provision of international protection under the 1951 UN Convention Relating to the Status of the Refugees. The European Court of Human Rights has found that there are no exceptions to non-refoulement on the basis of national security or previous criminal conviction.<sup>329</sup> The IHRC has recommended that these provisions should be redrafted in a manner that ensures compliance with the limited exceptions which apply under the Refugee Convention.<sup>330</sup>

171. The reception which potential protection applicants receive at the frontiers of the State from immigration officials or members of the Garda Síochána is of crucial importance in ensuring adequate access to the protection system. **The IHRC has recommended that immigration officers or members of the Garda Síochána must receive the necessary and ongoing training to ensure that they have sufficient knowledge of Ireland’s international protection obligations to this vulnerable group of people.**

172. The provisions in the Immigration Bill 2010 in relation to exclusion orders should be redrafted in a manner that ensures compliance with the limited exceptions under the Refugee Convention as well as Article 3 of the ECHR.

### c. DEFINITION OF SUBSIDIARY PROTECTION

173. Under the 2010 Bill it is proposed that a person is eligible for subsidiary protection where they can demonstrate that there are substantial grounds for believing that, if returned to their country of origin or of his/her country of former habitual residence, they would face a real risk of suffering serious harm.<sup>331</sup> Also, the person is required to demonstrate that owing to the risk of serious harm they are unable, or

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<sup>325</sup> Stated in “Case Review for non-Irish parents of Irish citizens”, in *The Irish Times*, 22 March 2011.

<sup>326</sup> Programme for Government 2011-2016, (March 2011) at p. 21.

<sup>327</sup> Section 29(4) Immigration, Residence and Protection Bill 2010.

<sup>328</sup> Section 29(4) Immigration, Residence and Protection Bill 2010. Ensuring unimpeded access to the protection system is a key aspect of the prohibition against refoulement contained in international human rights law including Article 3 of CAT. This prohibition is applicable to expulsion as well as any other form of forcible removal, including deportation, extradition or informal transfers. The prohibition also applies to measures which amount to rejection or non-admittance at the frontier of the State. *See further* Article 33 of the 1951 Convention Relating to the Status of Refugees.

<sup>329</sup> *Soering v UK*, Judgement of the European Court of Human Rights, 7 July 1989.

<sup>330</sup> IHRC Observations on the Immigration, Residence and Protection Bill 2008, at p. 8.

<sup>331</sup> Section 67(1).

unwilling, to avail themselves of the protection of that country.<sup>332</sup> The definition of subsidiary protection set out in the Bill reflects the definition in Article 15(c) of the EU Qualifications Directive.<sup>333</sup>

174. The IHRC has noted Ireland's obligation to implement EU Directives in a manner that complies with its obligations under international human rights law. Transposition of EU Directives should not constitute grounds for a reduction in the level of standards already applied by Ireland in the area of asylum.

#### **IHRC RECOMMENDATIONS**

175. In line with the position of the United Nations High Commissioner for Refugees (UNHCR) in relation to the definition of subsidiary protection,<sup>334</sup> the IHRC recommends that the definition in any new legislation should be broadened to include people who are forced to flee their country of origin, or remain outside of that country, as a result of a threat to their life, security or liberty, for reasons of indiscriminate violence arising from situations such as, but not limited to, armed conflict.

#### **d. IMMIGRATION APPEALS**

##### ***Figures on applications for a Declaration as a Refugee***

176. Figures published by the Office of the Refugee Applications Commissioner (ORAC) for 2010, show 24 positive recommendations to grant refugee status to asylum seekers were made up to December 2010 by the Department of Justice out of 2,193 cases.<sup>335</sup> **The acceptance rate of 1.38%, for the first 6 months of 2010, which was overseen by the ORAC, ranks Ireland at the bottom of the EU league for granting protection.**<sup>336</sup> The UNHCR criticised the acceptance rates as "low" and expressed its intention to engage with the Government in order to further understand the contributory factors behind the current rates.<sup>337</sup>

##### ***Limited Time Limits in relation Judicial Review Proceedings***

177. The 2010 Immigration, Residence and Protection Bill provides that an application for leave to apply for judicial review must be made within a period of 14 calendar days beginning on the date on which the person was notified of the act, decision or determination.<sup>338</sup> The High Court may extend the 14 day period where the specific conditions specified in the legislation are satisfied.<sup>339</sup> This contrasts with the time limits for judicial review generally which are provided for under Order 84, Rule 21(1) of the Rules of the Superior Courts 1986.<sup>340</sup> This same provision was contained in the 2008

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<sup>332</sup> Section 67(1).

<sup>333</sup> European Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

<sup>334</sup> See UNHCR, Statement on Subsidiary Protection under the EC Qualification Directive for People Threatened by Indiscriminate Violence

<sup>335</sup> Irish Times, *State has EU's lowest rate of granting refugee status*, 10 July 2010. Office of the Refugee Applications Commissioner Monthly Statistics available at <http://www.orac.ie/pages/Stats/2010.htm>.

<sup>336</sup> Irish Times, *State has EU's lowest rate of granting refugee status*, 10 July 2010.

<sup>337</sup> Ibid.

<sup>338</sup> Section 133(2). Bill available at:

<http://www.inis.gov.ie/en/INIS/IRP%20Bill%202010.pdf/Files/IRP%20Bill%202010.pdf>.

<sup>339</sup> Immigration, Residence and Protection Bill 2010, Ibid p.163 Section 133(4).

<sup>340</sup> Generally, applications for judicial review "shall be made promptly" and in any event within three months from the date when the grounds for the application first arose, or six months when the relief is certiorari". Where "there is good reason" for doing so, "the court has a discretion to extend these time

Immigration, Residence and Protection Bill and the IHRC expressed its concern at the short time-limit in its Observations in relation to that Bill. The new Government has stated in its Programme for Government that it will introduce a statutory appeals system.<sup>341</sup>

#### IHRC RECOMMENDATIONS

178. The IHRC considers that the 14 day time limit, within which an application for judicial review can be made combined with the proposed restriction of the grounds on which the High Court can extend the 14 day time limit, creates unnecessary difficulties for people seeking to challenge immigration decisions, and may prevent some people from making such applications. This is likely to render the judicial review remedy in relation to immigration decisions less effective in practice.<sup>342</sup>

#### e. ACCESS TO THE DECISIONS OF THE PROTECTION REVIEW TRIBUNAL

The **State Report** points out that the Refugee Appeals Tribunal (RAT) in 2006 “provided facilities for accessing and searching a data base of previous decisions of the Tribunal, as a means of facilitating *bona fide* legal research”.<sup>343</sup>

179. Section 107(1) of the 2010 Bill provides that the Chairperson of the Protection Review Tribunal shall ensure that a protection applicant or his or her legal representative is provided with reasonable access to any previous decisions of the tribunal under section 96(2). Section 107(3) states that the Chairperson may, at his or her discretion, where he or she considers that a decision of the Tribunal is of legal importance, publish the decision.

#### IHRC RECOMMENDATIONS

180. In light of best international practice in jurisdictions such as New Zealand<sup>344</sup> and Canada<sup>345</sup>, and in the interests of overall transparency and consistency in decision making, the IHRC considers that the decisions of the Refugee Appeals Tribunal should be published as a matter of course and generally accessible, with any redactions necessary to protect the identity of the persons concerned.

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limits”. Hogan, G. and Gwynn Morgan, D. (1998), *Administrative Law in Ireland*, Round Hall Sweet and Maxwell, at p.722.

<sup>341</sup> Programme for Government 2011-2016 (March 2011), at p. 21.

<sup>342</sup> The IHRC has recommended that the time limit for judicial review proceedings should be extended, and the grounds on which the High Court can extend this time limit as currently set out the Illegal Immigrants (Trafficking) Act 2000, should be retained. IHRC, Observations on the Immigration, Residence and Protection Bill 2008 pp.55-62.

<sup>343</sup> Consideration of reports submitted by States parties under Article 19 of the Convention: Ireland, (July 2009) at p. 55.

<sup>344</sup> The IHRC notes that the *Practice Note 2004 of the Refugee Status Appeals Authority of New Zealand* requires that “[e]xcept in rare circumstances, a depersonalised research copy of each Authority decision will be published in addition to the confidential, personalised version of the decision released to the appellant. The research copy will be prepared solely for research purposes. It will not contain the name of the appellant or other identifiers. The published research copy decisions and/or abstracts will be available for research purposes on the Authority's website”.

<sup>345</sup> Section 159(1)(h) of the Immigration and Refugee Protection Act of Canada provides that the Chairperson may issue guidelines in writing to members of the Board and identify decisions of the Board as jurisprudential guides which the members are required to follow. These are available on the website of the Immigration and Refugee Protection Board as are decisions of persuasive authority.

## XI. EXTRAORDINARY RENDITION

Articles 2, 4 and 16 of the Convention are of relevance to this section.

The **State Report** provides that “the assurances the Government has received from the US authorities are specific that prisoners have not been transferred through Irish territory, nor would they be, without our permission”.<sup>346</sup>

In addition, the State outlines that commitments had been made in the Programme for Government 2007- 2012 to “ensure that all relevant legal instruments are used so that the practice of extraordinary rendition does not occur in this State”. The State reiterates its position that any person in possession of information that demonstrates Irish airports have been used for any alleged unlawful purpose should immediately report their concerns to the Garda Síochána, which would have responsibility for investigating such matters.<sup>347</sup>

The State notes that in the small number of cases investigated by the Garda Síochána, where appropriate, files have been submitted to the Director of Public Prosecutions and no further action was found to be warranted, owing to a lack of evidence of any unlawful activity.<sup>348</sup>

### a. IHRC POSITION IN RELATION TO EXTRAORDINARY RENDITION

181. In December 2007, the IHRC published its Report entitled, “*Extraordinary Rendition: A Review of Ireland’s International Human Rights Obligations*”. In preparing this Report, the IHRC conducted a detailed review of Ireland’s international human rights obligations, including jurisprudence of the Committee Against Torture, following a dialogue with the Irish Government in relation to the State’s obligations to investigate claims that Shannon airport was being used by United States CIA aircraft involved in the practice of “extraordinary rendition”.<sup>349</sup>

182. Following a review of the international human rights law and standards, the IHRC concluded that the Irish Government’s reliance on the assurances of the US Government was insufficient to comply with Ireland’s international human rights

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<sup>346</sup> State Report to the Committee Against Torture, at p.79.

<sup>347</sup> Ibid.

<sup>348</sup> Ibid.

<sup>349</sup> See IHRC, *Extraordinary Rendition: A Review of Ireland’s Human Rights Obligations*, December 2007 (‘IHRC Extraordinary Rendition Report 2007’). This review relied on a number of UN and Council of Europe investigations, resolutions by the European Parliament and the Parliamentary Assembly of the Council of Europe and jurisprudence under the UN Convention Against Torture, the ICCPR and the ECHR. See further IHRC Submission to the UN Human Rights Committee on the Examination of Ireland’s Third Periodic Report on the ICCPR, March 2008 (‘2008 Submission’), at paras. 89-96. In correspondence with the IHRC in April 2006, the Irish Government asserted that in October 2004 it had sought and received assurances from the US administration that prisoners had not and would not be transported illegally through Irish territory and that it felt it was appropriate to rely on such assurances. In line with the position which it has again put forward in the State Report, the Government asserted that any person with credible information in this regard should immediately report their concerns to the Garda Síochána which has the responsibility and relevant powers to investigate the matter Ibid. at pp. 2-3.



obligations.<sup>350</sup> In addition, the IHRC concluded that, in light of the relevant human rights standards, the Irish Government could not seek to rely on private individuals to bring forward evidence of suspicious activities of aircraft. In particular, in the absence of a proper system of inspection, the IHRC asserted it is impossible for an ordinary citizen to gain evidence regarding such activity or to ascertain with any level of confidence whether such illegal activity is taking place.<sup>351</sup> In pursuance of its statutory mandate, the IHRC recommended that the Irish Government should put in place a reliable and independently verifiable system of inspection so that no prisoner is ever transported through Ireland, except in accordance with proper legal formalities and the highest observance of human rights standards.<sup>352</sup>

183. The new Programme for Government 2011-2016 states that the Government will enforce the prohibition on the use of Irish airspace and related facilities for purposes no in line with the dictates of international law.<sup>353</sup> In its *Renewed Programme for Government* in October 2009, the previous Irish Government stated that it would “review and change if necessary the legislation affecting civilian aircraft in the context of existing and ongoing work of the Cabinet Sub-Committee on Human Rights and will as soon as appropriate, strengthen the powers of inspection of such aircraft and the collection of flight information”.<sup>354</sup> However, the previous Irish Government did not implement the recommendations of the IHRC in relation to the need for an inspection mechanism. In addition, it is unclear whether the work of the Cabinet Sub-Committee on Human Rights had progressed and whether in fact a review of the relevant legislation had been undertaken by the previous Government.

#### **b. POSITION OF UN HUMAN RIGHTS COMMITTEE**

184. In its examination of Ireland’s Third Periodic Report in July 2008, the UN Human Rights Committee expressed concern regarding “allegations that Irish airports have been used as transit points for so called rendition flights of persons to countries where they risk being subjected to torture or ill-treatment”.<sup>355</sup> The Human Rights Committee concluded that the “utmost care” should be exercised by the Irish State when relying on official assurances, that a regime should be established for the control of suspicious aircraft and advised that allegations of renditions should be publicly investigated.<sup>356</sup>

185. In its Concluding Observations on Ireland’s Third Periodic Report the Human Rights Committee called on the Irish Government to provide, within one year, relevant information on its implementation of the Committee’s recommendations made in relation to “extraordinary rendition”.<sup>357</sup> In a response to the Government’s follow-up report, the Human Rights Committee *Special Rapporteur for Follow-up on Concluding Observations* indicated in January 2010 that the information provided by the Government was incomplete with regard to the Committee’s Observations on ‘extraordinary

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<sup>350</sup> Ibid. at p. 45.

<sup>351</sup> Ibid. at p. 4.

<sup>352</sup> Ibid. at p. 46.

<sup>353</sup> Programme for Government 2011-2016, (March 2011) at p. 57.

<sup>354</sup> Renewed Programme for Government, October 2009, at p. 40.

<sup>355</sup> ICCPR Human Rights Committee, Concluding Observations to Ireland, July 2008, at para. 11.

<sup>356</sup> Ibid.

<sup>357</sup> UN Human Rights Committee, Concluding Observations in respect of the third periodic report submitted by Ireland under Article 40 of the International Covenant on Civil and Political Rights, July 2008, at para. 25.

rendition’.<sup>358</sup> The Human Rights Committee therefore requested additional information from the Government on “how terrorist acts have been investigated and prosecuted, including information on the length of pre-trial detention and access to lawyer in practice, on the safeguards in place when relying on official assurances, as well as on the mandate of, and the work carried out by, Cabinet Committee on Aspects of International Human Rights in relation to monitoring traffic through Irish airports”.<sup>359</sup> Therefore, the dialogue between the Irish Government and the UN Human Rights Committee is ongoing in respect of this issue.

#### IHRC RECOMMENDATIONS

186. The IHRC recommends that **the Irish Government should put in place a reliable and independently verifiable system of inspection so that no prisoner is ever transported through Ireland, except in accordance with proper legal formalities and the highest observance of human rights standards.**

187. The IHRC recommends that the Government act expeditiously to implement its commitments in the Programme for Government 2011-2016.

## XII. FEMALE GENITAL MUTILATION

**Articles 2, 4 and 16** of the Convention are of relevance to this section.

The **State Report** makes no reference to legislation regarding the prohibition against female genital mutilation (FGM) or the preventative measures taken by the State to eliminate the practice.

188. Although there is no explicit evidence of the practice of FGM in Ireland, preliminary estimates of 2,585 women living in the State have undergone FGM based on 2006 census information.<sup>360</sup> Ireland currently has no specific legislation prohibiting FGM, nor has the State taken any specific measures, in terms of a coordinated strategy or interagency working group, to protect those at risk in line with international best practice.<sup>361</sup> It may be further noted that there is migration to Ireland from countries with high FGM prevalence.<sup>362</sup>

<sup>358</sup> Ibid.

<sup>359</sup> United Nations High Commissioner for Human Rights, Special Rapporteur for Follow-up on Concluding Observations Human Rights Committee, Letter to Irish Government, 4 January 2010, available at: <http://www2.ohchr.org/english/bodies/hrc/docs/Ireland98.pdf>

<sup>360</sup> AkiDwa 2008. Figure based on numbers of women from each country and in each age group integrated with applicable global prevalence data from World Health Organisation. Ireland’s National Plan of Action to Address Female Genital Mutilation, Irish Family Planning Association & the National Steering Committee at p. 8, available at: [www.ifpa.ie](http://www.ifpa.ie) (‘Plan of Action’).

<sup>361</sup> Many states have passed specific legislation against FGM, including: the UK, Austria, Denmark, Norway, Italy, Spain, Australia (6 of 8 States), New Zealand and United States. With specific reference to Italy, the UN Report on Good Practices in Legalisation of ‘Harmful Practices’ Against Women found that:

Given the unique social dynamics that surround female genital mutilation, the enactment of a comprehensive stand-alone is recommended. The most promising example in this regard to date is Italy’s *Law No. 7/2006 on the prevention and the prohibition of female genital mutilation practice*, which not only criminalizes female genital mutilation, but also mandates a range of preventative activities, including: information campaigns for immigrants from countries where female genital mutilation is practiced; specific training programmes for teachers in primary and junior high schools; and implementation of training and information programmes, and the creation of

189. The UN Committee on the Rights of the Child in 2006 noted “with concern that immigrant communities continue to practice female genital mutilation (FGM) in Ireland.”<sup>363</sup> It urged Ireland to continue its efforts to end the practice of FGM, through prohibiting FGM by law, including the possibility of extra-territorial jurisdiction, and implementing targeted programmes which sensitize all segments of the population about its extremely harmful effects.<sup>364</sup>

190. A Criminal Justice (Female Genital Mutilation) Bill 2011 was introduced in January 2011. It has currently lapsed due to the change in Government. However, the Programme for Government 2011-2016 includes a commitment to enact legislation prohibiting FGM.<sup>365</sup>

#### **IHRC RECOMMENDATIONS**

191. The IHRC welcomes the proposed future FGM Bill, and urges the Minister to introduce, as soon as possible, the specific legislation to reflect the severity and complexity of the practice through both criminalisation and protection. The IHRC urges that legislation be enacted in line with international best practice and in conformity with Articles 1, 4 and 16 of the Convention Against Torture with regard to criminalisation, and to ensure that Article 2 is respected in terms of effective measures to prevent the practice of FGM. Further, the IHRC urges that provisions for training of relevant professionals as well as appropriate access to support/redress and rehabilitation for victims of FGM be put in place, in line with Articles 10 and 14 of the Convention Against Torture.

### **XIII. HUMAN TRAFFICKING – PREVENTION, AND PROTECTION OF VICTIMS**

**Articles 2, 4 and 16** of the Convention are of relevance to this section.

The **State Report** details the provisions of the Criminal Law (Human Trafficking) Act 2008 with regard to relevant domestic legislation. There is no reference to measures taken, statistical data or the *de facto* situation.

#### **a. INTRODUCTION**

192. Irish law makes it a criminal offence to organise or knowingly facilitate human trafficking.<sup>366</sup> A number of welcome initiatives have been commenced by the Irish Government to prevent and combat human trafficking in recent years. An Anti-Human Trafficking Unit has been established in the Department of Justice to coordinate the

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antiviolence centres, as a part of development cooperation programmes (available at: [www.un.org/womenwatch](http://www.un.org/womenwatch)).

<sup>362</sup> Such as migration from Northern Sudan (90% estimated prevalence of FGM in girls and women aged 15-49), Somalia (98%) and Nigeria (19%), from World Health Organisation ‘Eliminating Female Genital Mutilation’ (Geneva 2008).

<sup>363</sup> Concluding Observations on Ireland CRC/C/IRL/CO/2 2006, para 54.

<sup>364</sup> Ibid.

<sup>365</sup> Programme for Government 2011-2016, (March 2011) at p. 17.

<sup>366</sup> Section 3 - 4 of the Child Trafficking and Pornography Act 1998; Section 2 - 4 of the Criminal Law (Human Trafficking) Act 2008.

State's response to trafficking.<sup>367</sup> In addition, an Interdepartmental High Level Group has been set up to recommend measures to the Minister to combat trafficking.<sup>368</sup> As set out in the 2009 State Report the Anti-Human Trafficking Unit has published a National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012, which focuses on prevention, awareness raising, prosecution, protection and trafficking of children.<sup>369</sup> The Irish Government ratified the Council of Europe Convention on Trafficking in Human Beings in July 2010.

193. The United States Trafficking in Persons Report 2010, places Ireland in its 1<sup>st</sup> Tier Ranking.<sup>370</sup> The Report recommended that the State establish an independent national anti-trafficking rapporteur to draft critical assessments of Ireland's prosecution, protection and prevention practice.<sup>371</sup>

#### **b. DATA ON HUMAN TRAFFICKING IN IRELAND**

194. A Government report reveals that in 2009, 68 incidents of human trafficking involving a total of 66 cases of potential and suspected trafficking in human beings came to the attention of the Garda Síochána.<sup>372</sup> In relation to investigation and prosecution, the report reveals that at the end of 2009, 53 cases were the subject of ongoing investigation, while in 13 cases it was concluded that there was no evidence of trafficking.<sup>373</sup> Of the 53 investigations ongoing, 11 people had been granted either a recovery and reflection period and/or a temporary residence permit. Six people were prosecuted for human trafficking offences in 2009.<sup>374</sup>

#### **c. PROVISION FOR VICTIMS OF TRAFFICKING**

195. Temporary administrative immigration arrangements have been put in place to provide for presumed victims in advance of the enactment of the Immigration, Protection and Residence Bill.<sup>375</sup> The current Administrative Arrangements provide

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<sup>367</sup> The Anti-Human Trafficking Unit regularly engages in consultation with various Government Departments, the IHRC and other statutory agencies and NGOs through convening both a High Level Group on Human Trafficking and five interdisciplinary working groups on the themes of child trafficking, the development of a national referral mechanism, awareness raising and training, sexual exploitation issues and labour exploitation.

<sup>368</sup> See 'Administrative Arrangements' at:

<http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/whatisbeingdone-administrativearrangements-en>.

<sup>369</sup> See further State Report to the Committee Against Torture para. 37-39.

<sup>370</sup> United States Department of State, *Trafficking in Persons Report 2010 – Ireland*, 14 June 2010, at p. 183, available at: [www.unhcr.org/refworld](http://www.unhcr.org/refworld). The report stated that '[t]he government in Ireland fully complies with the minimum standards for the elimination of trafficking' and that the State has 'made substantial strides in acknowledging Ireland's human trafficking problem and implementing legislation and policies to punish trafficking offenders and protect trafficking victims'.

<sup>371</sup> Ireland is due to be examined under the Council of Europe Convention on Action against Trafficking in Human Beings under the Article 38 procedure in 2012.

<sup>372</sup> Anti-Human Trafficking Unit of the Department of Justice, Equality and Law Reform, *Summary Report of Trafficking in Human Beings in Ireland for 2009*, May 2010 at p. 7. At the end of 2009, 40 potential and suspected victims were in the asylum process, 15 required immigration permission, 5 were minors in the care of the HSE, 4 were EU citizens who did not require permission to remain in the State and 2 voluntarily left the State. *Ibid.* p. 8.

<sup>373</sup> *Ibid.* p. 9.

<sup>374</sup> *Ibid.*

<sup>375</sup> These arrangements may be amended from time to time. They apply only to suspected victims of trafficking from outside the European Economic Area, but those from the European Economic Area are

presumed victims of trafficking with a recovery and reflection period of 60 days and for a temporary residence permit for six months. Their residence permit may be renewed to facilitate them to assist the police in their investigation of the alleged trafficking offence. The temporary residence permit can be revoked where, among other grounds, the victim no longer wishes to assist the Garda Síochána, or the Minister is satisfied that it is in the interests of public security, public policy or public order to do so.<sup>376</sup> The administrative arrangements also state that the Minister for Justice will make arrangements to facilitate voluntary repatriation of suspected victims of trafficking.<sup>377</sup> The 2010 Immigration, Residence and Protection Bill proposes to allow 60 days of “recovery and reflection” in the State to persons whom the Garda Síochána have reasonable grounds for suspecting are victims of trafficking.<sup>378</sup>

### *Identification and Referral of Presumed Victims of Trafficking*

196. The National Action Plan to Prevent and Combat Human Trafficking 2009-2012, states that the Garda Síochána take account of all information available to them when considering whether a person is a suspected victim of trafficking.<sup>379</sup> To be regarded as a suspected victim of trafficking there must be reasonable grounds for suspecting the person to be a victim of trafficking. In making this assessment, the Garda Síochána state that they use the indicators published by the United Nations Global Initiative to Fight Human Trafficking.<sup>380</sup>

197. The IHRC notes that of the 53 investigations ongoing in relation to trafficking only 11 people were granted the recovery and reflection period in 2009 on the basis that they were suspected victims of trafficking. Within the consultation mechanisms established by the Anti-Human Trafficking Unit a number of NGOs have expressed the view that in their experience working with people who they suspect to be victims of trafficking, in some instances the Garda Síochána require potential victims to provide detailed information before the recovery and reflection period is being granted. It has been stressed by NGOs that the assessment of reasonable grounds must be seen as the start of the process and must be distinguished from the process where it is decided whether somebody is or is not a victim of trafficking. **The IHRC is concerned that in approaching the recovery and reflection period the Garda Síochána in conjunction with the Anti-Human Trafficking Unit should ensure that the correct standard of proof is applied in a consistent and correct manner.**

### *Requirement for Suspected Victims to Co-operate with Police Investigations*

198. Under the Administrative Scheme a six month period of temporary residence may be granted after the recovery and reflection period if the suspected victim has severed all ties with the alleged traffickers and is willing to assist in an investigation or prosecution arising in relation to trafficking. This proposal is also contained in the provisions on victims of trafficking in the 2010 Immigration, Residence and Protection

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to be treated no less favourably. See INIS, *Administrative Arrangements for the Protection of Victims of Human Trafficking*, 13 November 2008, at paras 2 and 4.

<sup>376</sup> Ibid., at paras 5, 11-16.

<sup>377</sup> Ibid., at para. 17.

<sup>378</sup> Sections 139(11) of the 2010 Immigration, Residence and Protection Bill. The Administrative Arrangements for the Protection of Victims of Human Trafficking state that a person identified by a member of the Garda Síochána, not below the rank of Superintendent, as a suspected victim of trafficking will be granted permission to remain lawfully in the State for a period of 60 days.

<sup>379</sup> Anti-Human Trafficking Unit, *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland, 2009-2012* at p. 134.

<sup>380</sup> Ibid. at p. 135.



Bill.<sup>381</sup> In its Observations on the 2008 Immigration, Residence and Protection Bill, which contained the same provision, the IHRC expressed the view that the issuance of a six month temporary permission to remain in the State should not be conditional on the victim's co-operation in the criminal prosecution of alleged traffickers. **The IHRC considers that permission to remain should also be allowed for humanitarian reasons having regard to the personal situation of the victim, in accordance with Article 14 of the Council of Europe Convention on Trafficking. Special consideration should be given to providing leave to remain for child victims of trafficking.**

### ***Housing for Presumed Victims of Trafficking***

199. In accordance with the National Action Plan, potential or suspected victims of trafficking are provided with the same accommodation and ancillary services as those provided to newly arrived asylum seekers in direct provision hostel accommodation.<sup>382</sup> Direct Provision hostels were envisaged for asylum seekers and tend to provide little private space in practice. In addition, they are known to the public and therefore victims of trafficking staying in them can be easily traced by former exploiters, who can then monitor their movements to and from the hostels. Ruhama, a NGO which works on a national level with women affected by prostitution, including victims of trafficking, has also been advised by its clients, by hostel managers and by other service providers that the hostels have become targets for those seeking to exploit poor and vulnerable women through prostitution.<sup>383</sup>

### ***Access to information, legal advice and redress***

200. Access to adequate information in relation to their legal situation should be provided to suspected victims of trafficking, an issue that has been raised by the Ombudsman for Children.<sup>384</sup> Victims should be informed, through the medium of a translator where required, of their options for remaining in the State. Provision should also be made for free legal advice to be provided to victims. In this regard, the Minister for Justice announced in July 2010 that legal aid and legal advice will be provided to potential and suspected victims of trafficking in both civil and criminal cases by the States Legal Aid Board.<sup>385</sup> This is particularly important in the context particularly for the purpose of seeking compensation and legal redress in respect of their ordeal.<sup>386</sup> The Anti-Human Trafficking Unit has recently arranged the provision of legal representation to suspected victims of trafficking by the Refugee Legal Service of the Legal Aid Board.<sup>387</sup> **The IHRC welcomes this development. The IHRC has called for consideration to be given to the establishment of a central fund to compensate victims of**

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<sup>381</sup> Section 139(1).

<sup>382</sup> Anti-Human Trafficking Unit, *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland, 2009-2012* at p. 13.

<sup>383</sup> Ruhama, *Proposal on Safe Accommodation for Trafficked Women (Suggestions for interim period until support structures envisaged under the Immigration Bill 2007 are in place)*, June 2008, at 3. See also statement by Denis Naughten T.D., then Fine Gael Spokesman on Immigration and Integration, '70% of human trafficking victims are within asylum system – Naughten', 14 July 2009.

<sup>384</sup> Ombudsman for Children's Office, *Advice on the General Scheme of the Criminal Law (Trafficking in Persons and Sexual Offences) Bill 2006*, May 2007, at p. 21.

<sup>385</sup> Department of Justice and Law Reform Press Release *Ahern announces Anti Trafficking Measure*, 15 July 2010. <http://www.justice.ie/en/JELR/Pages/Ahern%20announces%20Anti%20Trafficking%20Measure>

<sup>386</sup> Ibid; Ombudsman for Children's Office, *Advice on the General Scheme of the Criminal Law (Trafficking in Persons and Sexual Offences) Bill 2006*, May 2007, at p. 21.

<sup>387</sup> Address by Marion Walsh, Executive Director of the Anti-Human Trafficking Unit, Department of Justice, p. 8, at MRCI, Irish Congress of Trade Unions and Department of Justice Seminar on Strategies for Tackling Forced Labour, 1 October 2009.

trafficking. Civil proceedings in this sphere should be supported by a legal aid scheme for victims.<sup>388</sup>

#### **d. RATIFICATION OF INTERNATIONAL TREATIES**

201. The UN Human Rights Committee has advised the Irish Government to consider ratifying the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organised Crime 2000.<sup>389</sup> The IHRC has also called for its ratification and the ratification of the Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.<sup>390</sup>

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<sup>388</sup> IHRC, Submission to the development of the National Action Plan on the Prevention and Combating of Human Trafficking, January 2008, at p. 7.

<sup>389</sup> Human Rights Committee Concluding Observations on Ireland 2008, at para. 16.

<sup>390</sup> IHRC Observations on the Immigration, Residence and Protection Bill 2008 (March 2008), at p. 22.