

**Submission to the UN Human  
Rights Committee on Ireland 1  
Year Follow-up Report to its Third  
Periodic Report under the ICCPR**

September 2009

**IHRC**  
AN COIMISIÚN UM CHEARTA DUINE  
IRISH HUMAN RIGHTS COMMISSION

## I. INTRODUCTION

1. The Irish Human Rights Commission (IHRC) is Ireland Rights Institution, set up by the Irish Government under the Human Rights Commission Acts 2000 and 2001.<sup>1</sup> The IHRC has a statutory remit under the Human Rights Commission Act 2000 to endeavour to ensure that the human rights of persons in the State are fully realised and protected in the law and policy of the State.

2. In March 2008, the IHRC made a Submission to the Human Rights Committee in order to provide it with information to inform its examination of Ireland Third Periodic Report under the ICCPR ( 2008 Submission ). The IHRC made a further submission in July 2008 focussing on some of the issues raised in the Committee Taken up in Connection with the Consideration of the Third Periodic Report of Ireland, published on 2 May 2008.<sup>2</sup> The IHRC also attended a hearing before the UN Human Rights Committee in Geneva in July 2008, in order to brief the Committee in advance of its examination of Ireland<sup>3</sup>

3. In its Concluding Observations on Ireland ( , the Human Rights Committee called on the Irish Government to provide, within one year, relevant information on its implementation of the Committee 11, 15 and 22.<sup>4</sup> In response, the Irish Government provided follow-up information in relation to those recommendations in July 2009 ( one year follow-up Report ).<sup>5</sup>

4. In order to further inform the one year review process the IHRC has prepared this brief submission which provides additional information relating to the issues identified by the Committee in paragraphs 11, 15 and 22 of the Concluding Observations. In addition, this submission highlights some emerging issues that have occurred since the Committee that impact on the protection of human rights under the ICCPR.

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<sup>1</sup> For detailed information on the work of the IHRC, see [www.ihrc.ie](http://www.ihrc.ie).

<sup>2</sup> CCPR/C/IRE/Q/3 (2 May 2008).

<sup>3</sup> See IHRC Press Release, Ireland July 2008. The IHRC highlighted the following issues in its briefing: periods of detention and access to a solicitor, Garda Síochána Ombudsman Commission (GSOC), poor physical conditions and health and education services in Irish prisons, the Special Criminal Court, immigrants and asylum seekers: removal from the State and access to judicial review, recognition of Traveller ethnicity, equal rights of women and men, and the Charities Bill.

<sup>4</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* (Reference: CCPR/C/IRL/CO/3 of July 2008) ( 2008

<sup>5</sup> *Information provided by Ireland on the Human Rights Committee paragraphs 11, 15 and 22 of the Committee periodic report submitted by Ireland under Article 40 of the International Covenant on Civil and Political Rights* (Reference: CCPR/C/IRL/CO/3 of July 2008), 30 July 2009 ( follow-up report ).

## II. REVIEW OF THE CONCLUDING OBSERVATIONS

### 1. Prison Conditions

5. In its Concluding Observations, the Human Rights Committee expressed concerns regarding increased levels of incarceration, the shortage of mental health care for detainees and the high level of inter-prisoner violence. The Committee recommended that Ireland should improve prison conditions, fulfilling the UN Standard Minimum Rules for the Treatment of Prisoners. In particular, the Committee recommended overcrowding and -out should be addressed as priority issues and Ireland should detain remand prisoners in separate facilities and promote alternatives to imprisonment.<sup>6</sup> The Government one year follow-up report noted that the Irish Prison Service has been engaged in an extensive programme of investment in prison infrastructure which in the Government should address the concerns raised by the Human Rights Committee.<sup>7</sup> As noted in the IHRC 2008 Submission, the IHRC is concerned that the physical conditions in many of the State are wholly inadequate and fail to comply with Ireland ations under Articles 7 and 10 of the ICCPR.<sup>8</sup>

#### (a) Overcrowding

6. In its 2008 Submission, the IHRC raised detailed concerns about overcrowding, including the accommodation of two prisoners in cells of 9.5m squared which were originally designed for single occupancy.<sup>9</sup> The Government one year follow-up report notes that there has been an 8.8% rise in numbers in custody in the last 12 months and accepts that some prisons are currently operating in excess of their bed capacity. There was 104% occupancy in prisons on 23 July 2009 (number of prisoners against number of permanent beds). However, the Government asserts that in the short to medium term this will be addressed by the provision of an additional 400 prison spaces this year.<sup>10</sup>

7. In his most recent Annual Report, the Inspector of Prisons, Judge Michael Reilly, stated that the problem of prison overcrowding is acute in Ireland.<sup>11</sup> He asserted that doubling up of prisoners in cells should only be accepted as a temporary measure that should be kept under constant review.<sup>12</sup> In addition, he noted that the stated bed capacity exceeds the original design capacity in older

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<sup>6</sup> UNHRC Concluding Observations on Ireland 2008, at para. 15.

<sup>7</sup> Government follow-up report, at p. 3.

<sup>8</sup> 2008 Submission, at para. 51.

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

<sup>10</sup> Government one year follow-up report, at p. 4.

<sup>11</sup> Inspector of Prisons, *Annual Report 2008*, at p. 23. See also *Interim Report presented to the Minister for Justice, Equality and Law Reform by Judge Michael Reilly, Inspector of Prisons* (September 2008), at pp. 5-6.

<sup>12</sup> Inspector of Prisons, *Annual Report 2008*, at p. 23.

prisons.<sup>13</sup> It is noteworthy that the Government one year follow-up report appears to refer to the percentage of excess occupancy in relation to the stated bed capacity as opposed to the original design bed capacity.<sup>14</sup> The Inspector of Prisons has noted that when the stated bed capacity is exceeded, prisoners may be accommodated on mattresses on the floor in cells already occupied, in cells not meant for that purpose or in holding cells in the reception area.<sup>15</sup>

8. According to the Inspector of Prisons, since 1 January 2008 Mountjoy Prison and Cork Prison have consistently operated beyond their stated bed capacity.<sup>16</sup> On 24 February 2009, there were 15 prisoners kept for the night on mattresses in three holding rooms in the reception area of Mountjoy Prison, with eight in one room. The Inspector of Prisons wrote to the Department of Justice, Equality and Law Reform and the Irish Prison Service expressing concern that this could lead to possible serious injury or loss of life.<sup>17</sup> On 27 June 2009, Limerick Female Prison was at almost treble its design capacity, which the Inspector stated amounted to inhuman treatment.<sup>18</sup>

9. The Inspector of Prisons believes that overcrowding leads to inter-prisoner violence and tension throughout the prisons. Existing facilities, even if adequate to cater for the design capacity, are not sufficient to deal with an increase in population. In addition, when prisons are overcrowded certain posts are of their officers to provide cover in more sensitive and important areas, which the Inspector found amounts in nearly all cases to facilities for prisoners being withdrawn. He also noted that the Irish Prison Service are making arrangements to double up cells in a number of prisons to accommodate the increasing prison population, which will exacerbate the already serious situation.<sup>19</sup>

#### (b) In-cell Sanitation and Separation of Remand Prisoners

10. In its 2008 Submission, the IHRC raised detailed concerns regarding the practice of <sup>20</sup> The Government one year follow-up report states that over 70% of prisoners in custody have 24 hour access to in-cell sanitation. It acknowledges the need for greater progress and states that due to its investment

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<sup>13</sup> Thus, he noted that the original design capacity of the cells in use in Mountjoy prison as of 16 February 2009 was for 489 prisoners whereas the stated bed capacity of these cells was 573. Similarly, the design bed capacity of Cork Prison is 168 prisoners and the stated bed capacity is 282. The stated bed capacity of Limerick Prison, at 20, is double its design capacity. *Ibid.*, at pp. 25, 28 and 29.

<sup>14</sup> See paragraph 8 above. The Government follow-up report refers to the number of permanent beds as against the number of prisoners as of 23 July 2009. This would reflect what the Inspector refers to as the stated bed capacity, since it would include beds doubled up in cells that were originally designed for single occupancy.

<sup>15</sup> *Ibid.*, at pp. 26, 29.

<sup>16</sup> *Ibid.*, at pp. 26 and 28. Thus, Cork Prison was operating at 140 over its design capacity and 26 over its stated bed capacity.

<sup>17</sup> *Ibid.*, at p. 26.

<sup>18</sup> *Ibid.*, at p. 29.

<sup>19</sup> *Ibid.*, at pp. 29-30.

<sup>20</sup> 2008 Submission, at para. 51.

commitment to replace almost 40% of the entire prison estate, the practice of  
will be separated from  
sentenced prisoners.<sup>21</sup>

11. The Inspector of Prisons recently stated that he echoes the former Inspector of Prisons, Mr. Justice Kinlen<sup>22</sup> and the European Committee for the Prevention of Torture (CPT) in observing that the procedure of inhuman and degrading treatment.<sup>23</sup> He noted that on 16 February 2009, 521 prisoners in Mountjoy Prison were accommodated in cells without in-cell sanitation.<sup>24</sup> Similarly, none of the 136 cells in the main block in Cork Prison have in-cell sanitation.<sup>25</sup>

12. The IHRC acknowledges that the proposed prison building programme has the potential to address some of the concerns in relation to overcrowding and in-cell sanitation. However, 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. Where a sanitary facility is not available in a prisoner cell, the prisoner should be entitled to be released from his cell to use the available facilities at all hours of the day and night.<sup>26</sup>

#### (c) Developments with Respect to the New Prison Complex

13. The Government one year follow-up report notes that the Irish Prison Service broke off negotiations with the preferred bidder for Thornton Hall because the price was unaffordable in current economic circumstances. It stated that the revised plans aim to replace the Mountjoy Prison complex in the shortest possible timeframe. An EU-wide tender competition will be launched early next year and the construction is expected to take three years from the date of signing of the contract. The new prison will have capacity of 1,400 in single occupancy cells but with operational flexibility to accommodate a larger number.<sup>27</sup> There is no planned timeframe for the construction of the proposed prison development at Kilworth.<sup>28</sup>

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<sup>21</sup> Government follow-up report, at p. 4.

<sup>22</sup> The late Mr. Justice Dermot Kinlen held the position of Inspector of Prisons and Places of Detention from 2002 until 2007.

<sup>23</sup> Inspector of Prisons, Annual Report 2008, at p. 26.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*, at p. 28.

<sup>26</sup> The CPT made a similar recommendation in its latest report. 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>27</sup> Government follow-up report, at p. 5.

<sup>28</sup> Response to Parliamentary Question 13865/09, 2 April 2009.

14. In his most recent report, the Inspector of Prisons notes that the current plans reveal imaginative thinking for the accommodation and segregation of prisoners, and for the provision of relevant workshops, educational, recreational, medical and other appropriate facilities. The Inspector recommends that segregated prisoners should not be deprived access to educational, vocational and recreational facilities and states that lock up for extended periods would be unacceptable.<sup>29</sup>

15. As noted above, the proposed prison building programme has the potential to address some of the concerns in relation to overcrowding and in-cell sanitation that currently persist. However, until the building of the prison is complete, many of the most problematic features of the present system will remain for some years to come. In the interim period measures should be taken to alleviate overcrowding and the lack of adequate sanitation facilities. The IHRC considers that, in the longer term, there should be an increased policy focus on the development of alternative, non-custodial sanctions rather than an increase in overall prison capacity.<sup>30</sup>

#### (d) Mental Health Care

16. The Government one year follow-up report states that the Central Mental Hospital provides 21 Consultant-led in-reach sessions to prisons in the Dublin area and Portlaoise/Midlands complex. Specialist in-reach services are also in place for Consultant-led mental health sessions in Cork, Limerick and Castlereagh Prisons. In December 2008, ten additional beds were made available to the Irish Prison Service at the Central Mental Hospital, which the Government state have been of considerable assistance to prison management and healthcare staff in tackling waiting lists and in treating acutely mentally ill prisoners.<sup>31</sup>

17. In his 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>32</sup> In its Annual Report 2008, the Irish Prison Service notes that its psychology service totalled 19 psychologists, comprising nine counselling psychologists, seven clinical psychologists, one forensic psychologist and two psychology assistants. 956 prisoners were seen on a one-to-one basis and the duration of therapy ranged from short-term interventions (1-9 sessions) to longer-term work (20+ sessions).<sup>33</sup>

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<sup>29</sup> Inspector of Prisons, *Annual Report 2008*, at p. 48.

<sup>30</sup> 2008 Submission, at paras 53-54. See also Section 2(f) below.

<sup>31</sup> Government follow-up report, at p. 5.

<sup>32</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>33</sup> Irish Prison Service, *Annual Report 2008*, at pp. 32-33.

18. The Irish Prison Service notes that the prevalence of severe mental illness is significantly higher among prisoners compared to the general population. Its Annual Report asserts 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. In addition, to properly discharge its responsibilities, it requires continued integration and development of mental health services, with statutory and voluntary partners. One the lack of capacity at the Central Mental Hospital, although the report notes that the addition of 10 beds has been of considerable assistance.<sup>34</sup>

19. In its 2008 Submission, the IHRC expressed a number of concerns in relation to mental health care: the lack of an attached psychologist in four prison institutions; the inadequate counselling for prisoners on methadone substitution programmes in some of the main prisons in the State; the fact that prisoners who had committed acts of self harm and/or attempted suicide were usually not provided with any psychological support following such an incident; and the fact that there is only one treatment programme with eight places available for sex offenders in Ireland.<sup>35</sup>

#### (e) Inter-Prisoner Violence

20. The Government one year follow-up report states that it has introduced a number of security initiatives to ensure safety for prisoners, which has led to a marked reduction in the number of incidents of violence where a weapon was used. The Government asserts that it is not possible to completely eliminate the possibility of violent acts in prisons holding a high proportion of violent offenders without introducing a regime that would be unacceptable.<sup>36</sup> The Irish Prison Service contends that the number of assaults in Irish prisons was comparatively low: there were a total of 749 incidents of violence in 2008, which amounts to an average of 2 incidents a day among a population of more than 3,500. It also stated that the majority of prisoners who seek to go on protection do so not because they fear random acts of violence in prison but rather because of gang-related issues that occurred on the outside.<sup>37</sup>

21. In his Annual Report 2008, the Inspector of Prisons states that anecdotal evidence suggests ongoing incidents of violence among prisoners. The existence of gangs has escalated into the prison system and on 24 February 2009 22% of the total prisoner population was on protection. Such prisoners can be confined to their cells for up to 23 hours a day. The Inspector argues that violence is

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<sup>34</sup> *Ibid.*, at pp. 39-40.

<sup>35</sup> 2008 Submission, at p. 20; 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), at pp. 36-37.

<sup>36</sup> Government follow-up report, at p. 6. See also Irish Prison Service, *Annual Report 2008*, at pp. 25-26.

<sup>37</sup> Irish Prison Service, *Annual Report 2008*, at pp. 26-27.

increased by factors such as lack of facilities and constructive activities, shortage of telephones, confined space, overcrowding and poor and inhuman conditions.<sup>38</sup>

#### (f) Developments with Respect to Alternatives to Custody

22. The Government one year follow-up report notes a number of developments with respect to alternatives to custody. These include the National Commission on Restorative Justice, whose report is currently being examined by the Minister for Justice, Equality and Law Reform, and two restorative justice projects funded by his Department. Other measures outlined are Community Service Orders, the potential use of electronic monitoring technology, and new legislation protecting debt defaulter and non-custodial alternatives for fine defaults.<sup>39</sup>

23. On the basis of statistical information available in the Annual Report of the Irish Prison Service, the IHRC notes an increase of 13.6% in committals to Irish prisons in 2008.<sup>40</sup> This includes increases of 88.7% in committals for non-payment of court ordered fines and of 54% in short-term sentences (3 months or less).<sup>41</sup> 43% of all committals under sentence in 2008 were for 3 months or less and 62% were for 6 months or less.<sup>42</sup> In addition, 87.5% were for non-violent offences and 93% of women committed under sentence to prison in 2008 were for non-violent offences.<sup>43</sup>

24. The Inspector of Prisons has noted a the Irish prison population. He recommends that consideration be given to dealing with debtors who cannot pay their bills in a non custodial manner, and believes it is inappropriate to detain illegal immigrants in prison. In his view, restorative justice has an important role in deflecting persons from further criminality.<sup>44</sup> The IHRC also considers that the direction of the Government penal policy should focus increased attention and resources on the development of alternative, non-custodial sanctions in line with best international practice.<sup>45</sup>

## 2. Religion and Education

25. In its Concluding Observations, the Human Rights Committee noted with concern that the vast majority of Ireland privately run denominational schools that have adopted a religious integrated curriculum,

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<sup>38</sup> Inspector of Prisons, *Annual Report 2008*, at pp. 41-42.

<sup>39</sup> Government follow-up report, at pp. 6-7.

<sup>40</sup> Irish Prison Service, *Annual Report 2008*, at p. 7.

<sup>41</sup> *Ibid.*, at pp. 7, 19, 21 and 22.

<sup>42</sup> *Ibid.*, at p. 22.

<sup>43</sup> *Ibid.*, at p. 21. See also Irish Penal Reform Trust, dramatic increase in numbers

rt: IPRT greatly concerned at

<sup>44</sup> Inspector of Prisons, *Annual Report 2008*, at pp. 47 and 50.

<sup>45</sup> 2008 Submission, at para. 54.



depriving many parents and children who so wish to have access to secular primary education. The Human Rights Committee recommended Ireland should increase its efforts to ensure that non-denominational primary education is widely available in all regions of the State party, in view of its increasingly diverse and multi-ethnic population.<sup>46</sup>

26. In response, the Government one year follow-up report notes a number of points of progress in relation to the education system changing composition of Irish society. These include a conference for the main school patron bodies to discuss issues such as school ethos and inclusion, details on pilot schemes for new models of Vocational Education Committee (VEC) schools<sup>47</sup> and a Commission on School Accommodation to review the issues of school patronage and the establishment of new schools. The one year report states that until a new system of patronage is in place, the Minister for Education does not intend to recognise new schools, except where increases in pupil numbers cannot be catered for by extending existing schools. It also notes that most new schools are multid denominational and argues that Irish schools are welcoming of all backgrounds.<sup>48</sup>

27. The IHRC welcomes the proposal highlighted in the Irish Government one year follow-up report that legislation will be brought forward to put in place a new model of patronage in the primary school system, allowing for greater diversity and inclusion in its education system.<sup>49</sup> The IHRC also welcomes the pilot model of VEC schools highlighted in the Government report as a positive model for the primary education sector in the future.

28. In the interim, however, the IHRC wishes to highlight the lack of multi-denominational and non-denominational education, particularly in the primary sector, and its impact on children from religious minorities and non-religious families.<sup>50</sup> At present, 98% of Irish primary schools are religious, with 92% under the patronage of the Catholic Church.<sup>51</sup> In practice this means that the Patron of such schools is in general a senior religious figure and there is church

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<sup>46</sup> UNHRC Concluding Observations on Ireland 2008, at para. 22.

<sup>47</sup> VECs are statutory bodies set up by local authorities (usually county councils) under the Vocational Education Act 1930 as amended by the Vocational Education (Amendment) Act 2001. Traditionally VEC schools only provided second level and further education, and are largely funded by the Department of Education and Science. Unlike at second level, where the boards of management for these schools are sub-committees of the VEC (which acts as patron), at primary level the boards of managements will be independent of the patron. Membership of the boards includes VEC representatives and parent, teacher and community representatives, as outlined under the Education Act 1988.

<sup>48</sup> Government follow-up report, at pp. 8-12.

<sup>49</sup> Government follow-up report, at pp. 10-12.

<sup>50</sup> See IHRC, *Submission to the UN Committee on the Rights of the Child on Ireland Periodic Report under the CRC* (May 2006), at para. 5.3. Similar concerns were expressed by the UN CERD Committee in its *Concluding Observations on Ireland* in 2005, at para. 18.

<sup>51</sup> *Supplementary additional information by the Government of Ireland concerning the List of Issues (CCPR/C/IRL/Q/3) taken up in connection with the consideration of the Third Periodic Report of Ireland under the International Covenant on Civil and Political Rights (CCPR/C/IRL/3)*, at p. 10.

representation on the Boards of Management of each school.<sup>52</sup> Although there is provision to opt out of religious instruction in the Irish Constitution, the policy for the primary school curriculum is that all subjects, including religious education, should be integrated.<sup>53</sup> The IHRC is concerned that parents should have adequate choice in the range of primary schools available in keeping with increased diversity and the changing nature of Irish society.

29. The IHRC is of the view that the Government should ensure that there is sustained progress in this area, particularly in the development of a new legal framework to facilitate the new model of patronage in the primary system and the role out of the pilot scheme of multi-denominational schools. In formulating these important reforms the Government should have due regard to the relevant human rights standards including the best interests of the child and should continue its consultation with all relevant stakeholders.

30. In addition, the IHRC is of the view that in light of the reforms that are underway or forthcoming, consideration should be given to the fuller inclusion of human rights education (HRE) within the primary school curriculum, in particular through the mainstreaming of successful HRE pilot projects which meet the aims of the established Primary Curriculum.<sup>54</sup>

31. The IHRC believes that to achieve its educational aims, any programme of human rights education must include comprehensive teacher education at pre- and in-service levels, which to date is given limited and discretionary attention in higher colleges of primary education.<sup>55</sup> Human rights education implies both the practice and the learning of human rights, and requires learning environments to apply as well as teach human rights.<sup>56</sup> The IHRC urges the government to encourage the application of human rights principles in the development of the statements of ethos of new VEC primary schools, and to use the opportunity to create learning environments that truly facilitate human rights being taught in and through education.

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<sup>52</sup> For a brief history of the Irish primary education system see Áine Hyland, The multi-denominational experience in the national school system in Ireland, 8(1) 1989 *Irish Educational Studies*, at pp. 89-114.

<sup>53</sup> Rule 68 of the *Rules of National Schools* promulgated by the Department of Education in 1965; *Primary School Curriculum* adopted in 1999; Article 44.2.4 of the Irish Constitution.

<sup>54</sup> Amnesty International as a model example of HRE that should be mainstreamed within Irish primary education. It is currently the only programme that explicitly delivers human rights education at primary level and has been independently evaluated as positively contributing to student and critical thinking skills, and leading to decreased incidences of bullying and conflict, as well as increasing awareness of the content and instruments of human rights. See, the LIFT OFF evaluation: Dr Mark Morgan and Karl Kitching, *An Evaluation of LIFT OFF, The Cross Border Human Rights Education Initiative*, December 2006.

<sup>55</sup> IHRC Human Rights Education Mapping Study, forthcoming.

<sup>56</sup> *Plan of Action, World Programme for Human Rights Education, First Phase*, New York and Geneva 2006, p 3.

### 3. Extraordinary Rendition

32. In its Concluding Observations, the Human Rights Committee recommended, *inter alia*, that the State should exercise the utmost care in relying on official assurances and should establish a regime for the control of suspicious flights and ensure that all allegations of so-called renditions are publicly investigated.<sup>57</sup> The Government one year follow-up Report states that any person with information that Irish airports have been used for any alleged unlawful purpose should immediately report their concerns to the Garda Síochána (Irish Police Service) for investigation. It notes that in the small number of cases investigated, no further action was found to be warranted, owing to a lack of evidence. The report also reiterates that the Irish Government has received assurances from the US authorities at the highest level that extraordinary rendition has not and would not take place.<sup>58</sup>

33. As noted by the IHRC in its 2008 Submission, in 2007 the IHRC published its Report on Extraordinary Rendition. In preparing this Report, the IHRC conducted a detailed review of Ireland obligations following a dialogue with the Irish Government in relation to the State that Shannon airport was being used by United States CIA aircraft involved in the practice of<sup>59</sup> 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.<sup>60</sup> In line with the position which it has again put forward in its one year follow-up 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.<sup>61</sup>

34. Following a review of the international human rights law and standards, the IHRC concluded in its 2007 Report that the Irish Government assurances of the US Government was insufficient to comply with Ireland international human rights obligations.<sup>62</sup> In addition, the IHRC concluded that, in light of the relevant human rights standards, the Irish Government could not seek

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<sup>57</sup> UNHRC Concluding Observations on Ireland 2008, at para. 11.

<sup>58</sup> Government one year follow-up Report, at pp. 2-3.

<sup>59</sup> See IHRC, *Extraordinary Rendition: A Review of Ireland* December 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 and All Forms of Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), the ICCPR and the ECHR. See further *IHRC Submission to the UN Human Rights Committee on the Examination of Ireland* , March 2008 ( , at paras 89-96.

<sup>60</sup> IHRC Extraordinary Rendition Report 2007, at pp. 2-3.

<sup>61</sup> *Ibid.*, at p. 3.

<sup>62</sup> *Ibid.*, at p. 45.

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>63</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>64</sup> To date the Irish Government has not implemented this recommendation.

### III. EMERGING ISSUES FOR THE PROTECTION OF CIVIL AND POLITICAL RIGHTS

#### 1. Reduction in Budget Allocation of the IHRC

35. In its Concluding Observations on Ireland Third Periodic Report, the Human Rights Committee recommended that the State should strengthen the independence and capacity of the IHRC to fulfil its mandate by endowing it with adequate and sufficient resources and linking it to the Oireachtas.<sup>65</sup>

36. As a result of a 32% cut in the IHRC budget by the Department of Justice, Equality and Law Reform, the IHRC had a third less financial resources available to it in 2009 with its total grant-in-aid being reduced from

in 2009. The IHRC has highlighted that there is a serious risk that it will be unable to perform its statutory functions as a national human rights institution. The budgetary allocation for 2009 has left the IHRC under severe financial pressure and the IHRC has highlighted to Government that any further cuts would put its continued survival in jeopardy.<sup>66</sup>

#### 2. Criminal Justice (Amendment) Bill 2009

37. In June 2009, the Government published the Criminal Justice (Amendment) Bill 2009 which was enacted in July 2009. The IHRC published observations on the Bill expressing its concern in particular at the extension of the non-jury Special Criminal Court for organised crime offences.<sup>67</sup> In line with the concluding observations and jurisprudence of the Human Rights Committee, the IHRC recommended that any limitation of the Constitutional right to trial by jury

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<sup>63</sup> *Ibid.*, at p. 4.

<sup>64</sup> *Ibid.*, at p. 46.

<sup>65</sup> UNHRC Concluding Observations on Ireland 2008, at para. 7.

<sup>66</sup> See IHRC, Press Release Launch of Annual Report 2008, 9<sup>th</sup> July 2009.

<sup>67</sup> IHRC *Observations on the Criminal Justice (Amendment) Bill 2009* (June 2009); see also IHRC *Observations on the Scheme of the Criminal Justice (Amendment) Bill 2009* (June 2009).

should take place in exceptional circumstances, where the Director of Public Prosecutions (DPP) can clearly establish, on reasonable and objective grounds, that the effective administration of justice cannot be delivered in the ordinary courts in the specific circumstances of a case.<sup>68</sup>

38. The IHRC also queried whether jury intimidation is at such a serious level in Ireland as would warrant the extension of the jurisdiction of the Special Criminal Court, in the absence of supporting data. In addition, the IHRC considered that there are many intermediate measures to protect jurors which should be explored, such as having an anonymous jury, screening the jury from public view, protection of the jury during the trial or locating the jury in a different place from where the trial is being held with communication by video link.<sup>69</sup>

39. The IHRC recommended that the category be removed from the Offences Against the State Acts. Cases should only be heard before the Special Criminal Court where in an individual case the DPP can establish on reasonable and objective grounds that the ordinary courts are inadequate to deal with the case. In addition, the IHRC recommended that where the DPP refers a case for trial before the Special Criminal Court, his or her decision should be subject to a positive review mechanism.<sup>70</sup> The Irish Government did not take on board the recommendations of the IHRC on these issues and the legislative proposal was passed by the Houses of Parliament and signed into law by the President on 23 July 2009.

### 3. Imprisonment for Failure to Fulfil a Contractual Obligation

40. In January 2009, the High Court granted leave to the IHRC to be joined as *amicus curiae* (or friend of the court) in the proceedings entitled *McCann v The Judge of the Monaghan District Court & others*.<sup>71</sup> This case challenged the Constitutionality of imprisoning a person for not fulfilling a contractual obligation. The case concerned a single parent with two children who was dependent on social welfare, who faced imprisonment for inability to pay a contractual debt in circumstances where she does not appear to have been present or represented when the Court ordered her arrest and imprisonment. In its *amicus curiae* submission the IHRC particularly drew the High Court expressed by the Human Rights Committee in relation to Irish legislation dealing with civil debt when Ireland by the Committee in July 2008.

41. The Court found that the current system for enforcement of civil debt was unconstitutional as it did not secure fundamental rights under the Irish Constitution including the right to fair administration of justice (Article 34); the

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<sup>68</sup> IHRC *Observations on the Criminal Justice (Amendment) Bill 2009* (June 2009), at paras 15-16.

<sup>69</sup> *Ibid.*, at para. 17.

<sup>70</sup> *Ibid.*, at paras 20-23.

<sup>71</sup> *McCann v. Judges of Monaghan District Court and Ors.*, [2009] IEHC 276.

guarantee of fair procedures (Article 40.1.3); and, the right to personal liberty (Article 40.4.1). In particular, the High Court took note of the recent exchange between the State and the UN Human Rights Committee on Article 11 of the ICCPR and the Concluding Observations of the Committee on the State obligation not to permit imprisonment merely for failure to fulfil a contractual obligation, to which the IHRC had drawn the Court. The Enforcement of Court Orders (Amendment) Act 2009 was passed by the Houses of Parliament in response to the *McCann* judgment. This legislation amended the law to remedy the constitutional and human rights deficiencies identified by the High Court.

Irish Human Rights Commission  
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