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Europe and Central Asia: Summary of Amnesty International's Concerns in Ireland: January – June 2007

IRELAND

This document (AI Index: EUR 29/001/2008) reflects Amnesty International's concerns in Ireland over the period from January to June 2007. If you are interested in AI's concerns in other European countries for the same period, see *Europe and Central Asia: Summary of Amnesty International's Concerns in the Region: January – June 2007* (AI Index: EUR 01/010/2007)

International treaties

In March Ireland signed the UN Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities and the UN Convention for the Protection of All Persons from Enforced Disappearances.

Criminal justice

There was widespread opposition to the introduction of the Criminal Justice Act 2007, which significantly amends Irish criminal law and procedure, laws of evidence, and sentencing. Following publication of the Bill in March, the Law Society and individual lawyers called for its adoption to be postponed until it could be fully debated. The Irish Human Rights Commission (IHRC), an independent body established by statute, also criticized the limited time-frame within which the Bill was being brought forward, stating that “desire to change the law should be balanced by the need to discuss, analyse and reflect on provisions which involve a significant restriction of long established rights”.

The Act extends the categories of offences in relation to which people may be held in police custody without charge for up to seven days. The IHRC expressed “doubt as to the rationale behind reform in this area”, and concern that, in this respect, implementation could lead to violations of Ireland’s obligations under the European Convention on Human Rights and the International Covenant on Civil and Political Rights. The Act extends the circumstances in which a decision on the part of individuals who have been charged with a criminal offence to exercise their right to remain silent could result in adverse inferences being drawn against them, and does not incorporate the IHRC’s proposal that any such drawing of inferences should be made conditional on the accused having been advised by a solicitor.

The Act also includes provisions requiring an individual charged with certain serious offences to supply a written statement as a precondition to being granted bail. The IHRC considered that these provisions raise serious concerns as to the right to liberty and the principle of the presumption of innocence, and expressed concern that certain information demanded in this statement, for instance as to the source of the individual’s income and the individual’s possession of assets, does not have a direct bearing on those factors which are of relevance in a decision to grant bail – that is, the likelihood that the individual will attend court to stand trial, will attempt to interfere with witnesses or will commit offences while on bail.

Policing

The case of John Carthy (update to AI Index: POL 10/001/2007 – Ireland)

Having reviewed the 2006 findings of the Tribunal of Inquiry (the Barr Tribunal) into the fatal shooting of John Carthy by the Garda Síochána (police) Emergency Response Unit (ERU) at Abbeylara, County Longford, in April 2000, the Garda Síochána Inspectorate published a report on so-called ‘barricade incidents’ in March. The report defines ‘barricade incidents’ as “situations in which persons secure themselves at a location, with or without hostages, and are perceived to present a threat to themselves or others”.

Amongst the recommendations in the Inspectorate’s report were: that An Garda Síochána should develop protocols on responding to and investigating barricade incidents; that special training should be given to on-scene commanders; and that access to equipment to enhance the safety of the police should be improved. It recommended the establishment of a roster of mental health professionals to work with Garda Síochána Negotiation Teams during siege situations, and the development of protocols and training in this area between the Garda Síochána and the Health Service Executive.

In its report the Inspectorate also supported a proposal by the Garda Commissioner to provide the ERU with conductive energy devices (‘tasers’) as a “less lethal” alternative to firearms. In 2002, the Garda Síochána introduced three “less lethal” options – bean-bag cartridges, 12-Gauge OC (more commonly known as pepper spray) cartridges and Mark

9/12 OC aerosol projectors. These are currently available only to the ERU. While noting concerns about the use of these devices in terms of their safety, the Inspectorate concluded that the Garda Commissioner was “taking a measured approach in recommending their procurement for use by the ERU in defined circumstances”. It recommended that any extension of the deployment of tasers to Garda personnel other than ERU personnel should be the subject of careful consideration, taking into account the ERU’s experience and the experience of usage in other police services.

AI considers the use of tasers to be an inherently excessive use of force when used on certain vulnerable groups, including people with mental illness. The organization therefore recommends that tasers should not be used at all in cases such as that of John Carthy. AI believes that taser use in such cases constitutes a violation of international standards which provide that law enforcement officials should use only the minimum necessary force. Individuals with mental illness should receive appropriate treatment, and alternatives to the use of force should be found, in line with best practice.

Police complaints mechanisms (update to AI Index: POL 10/001/2007 – Ireland)

The Garda Síochána Ombudsman Commission (GSOC), established in December 2005 to investigate complaints of ill-treatment by members of the police service, became operational in May. Complaints against the police were therefore no longer dealt with by the Garda Síochána Complaints Board (GSCB), which had been widely criticized, including by AI, as ineffective and lacking in independence. The GSCB continued to process cases already before it, but all new cases from May onwards would go to the GSOC. Investigators employed by the GSOC will now investigate all cases where it appears that “the conduct of a member of the Garda Síochána may have resulted in the death of, or serious harm to, a person”, but other complaints may continue to be investigated by Gardai themselves.

Places of detention (update to AI Index: POL 10/001/2007 – Ireland)

Following the enactment of the Prisons Act 2007, an Inspector of Prisons was appointed on a statutory basis for the first time. The Act provides that it is not a function of the Inspector to investigate or adjudicate on individual prisoner complaints.

A study of young male offenders in detention schools published in May by the School of Psychology at University College Dublin, entitled Emotional Intelligence, Mental Health and Juvenile Delinquency, found that 83 per cent had at least one psychiatric disorder, and that the vast majority did not receive any treatment for such disorders.

Residential facilities for vulnerable groups (update to AI Index: POL 10/001/2007 – Ireland)

The Health Act 2007, which was enacted in April, places the Social Services Inspectorate (SSI) on a statutory basis, under the name of the Office of the Chief Inspector of Social Services, and provides for its role to be expanded beyond residential centres for children in care to include the inspection and registration of residential services in the public, private and voluntary sectors for older people and people with a disability. The sections of the Act that confer these functions will be enacted on a phased basis and, until they are brought into force, the registration and inspection system for such residential services remains inadequate.

Asylum-seekers and victims of trafficking (update to AI Index: POL 10/001/2007 – Ireland)

The Immigration, Residence and Protection Bill, published in April, contained proposals for consolidating and reforming Ireland's immigration and asylum legislation, and for the establishment of single protection procedure to assess all claims for protection.

Concerns were raised in relation to several proposals in the Bill, including the lack of clarity in distinguishing between refugee protection and subsidiary forms of protection, and the failure, in provisions relating to the establishment of a Protection Review Tribunal, to address the lack of transparency and the inconsistent decision-making in the current appeal mechanism. Proposals set out in the Bill did not address the continued inappropriate use of prisons for holding immigration detainees. The Bill had not become law by the time of the general election in May, but following the election was revived by the new Government.

Ireland signed the Council of Europe Convention on Action Against Trafficking in Human Beings in April. However, while a Scheme (i.e. a proposal) for a Criminal Law (Trafficking in Persons and Sexual Offences) Bill had been published in 2006, no such Bill emerged prior to the dissolution of the Oireachtas (parliament) in May ahead of the general election. Trafficking, other than of children under 16 years of age for the purposes of sexual exploitation, was therefore still not specifically criminalized. Neither the 2006 Scheme of this Bill nor the Immigration, Residence and Protection Bill contained specific measures for the protection and support of trafficked persons.

Arms trade (update to AI Index: POL 10/001/2007 – Ireland)

The Control of Exports Bill 2007 was published in February and, while it contained many welcome proposals for military, security and police (MSP) trade export controls, many gaps remained.

The Bill did not address the control of overseas licensed production agreements undertaken by Irish companies, despite the Irish Government having previously stated its support, in principle, for the regulation of

such production agreements, at least at a European level. Furthermore, although the Bill contained provisions for the control of physical exports, and the supply of some intangible technical assistance, it introduced no controls or reporting mechanisms specifically covering the supply of military and security services and personnel.

The Bill may even weaken existing controls on the transit and transshipment of military and security goods. It required export licences for “the exportation of goods brought into the State for re-export”, but did not specify whether this covers goods held under bond. The current Control of Exports Act 1983, by contrast, explicitly imposes export controls on “goods brought into the State for transshipment, whether under bond or otherwise”.

Nor did the draft Bill specify whether export controls would apply to arms and equipment transiting through Irish ports and airports for technical stop-overs or refuelling, without passing through customs. Existing aviation rules on the carriage of weapons and munitions also exempt military personnel and their “personal weapons”; thus, military forces with a record of human rights violations, or destined for conflict zones, could pass through Irish airports and airspace with their weaponry, without any notification or scrutiny.

The Bill introduced, for the first time, a statutory requirement for the Department of Enterprise, Trade and Employment (DETE) to submit an annual report to the Oireachtas (parliament) on its export control activities. However, it did not specify what is to be included in these annual reports; in the past, the DETE has released far less information on export licences than is required for adequate scrutiny of the potential human rights impact of military and security exports.

The Bill did not provide for post-export monitoring of delivery and end-use. AI welcomed the Bill’s introduction of more extensive powers for Irish authorities to inspect and audit companies exporting MSP goods and services, but such inspection powers could uncover only some abuses of the licensing system, unless complemented by a systematic and rigorous process for monitoring the delivery and end-use of exports themselves, to ensure that the goods have been delivered to the stated end-user. The Bill did not mandate post-shipment checks of this sort.

Treatment of people with intellectual disabilities (update to AI Index: POL 10/001/2007 – Ireland)

In its annual report for 2006, published in March, the Inspectorate of Mental Health Services found mental health provision to be *ad hoc* in nature, with “serious deficiencies in community mental health teams” around the country, “basic staffing” unavailable in children’s mental health services, and “no teams in mental health services for people with intellectual disability”. The Inspector concluded that in-patient units would “continue to be the first-line treatment locations”, long-stay wards “will not close”, and there would be “little or no access to alternatives to medication if community mental health and other multidisciplinary teams are not resourced”. The report also found: that there was a lack of

information provided to services users about their diagnosis and treatment; that waiting lists for children's services continued to be long, sometimes over a year; that there was an almost complete absence of in-patient facilities for people with intellectual disability with a mental disorder who require in-patient treatment; and that these patients were receiving treatment in units that were not approved under the Mental Health Act 2001, and that the patients were not protected by the Act.

The Inspector highlighted the lack of therapeutic activities for inpatients, especially for patients within 'long-stay wards' but also in a number of acute units. The Inspector expressed particular concern at the number of vulnerable patients remaining in long-stay wards, living in unacceptable conditions in institutional environments that were drab, bare and in some cases, dirty, with no way of developing their interests or leisure pursuits, and sometimes locked into the wards. In many long-stay wards patients were observed by the inspectors to be "wandering around aimlessly or sitting motionless, and this is the pattern for these patients every day of the year, punctuated by the odd outing or Christmas party".

Women (update to AI Index: POL 10/001/2007 – Ireland)

A National Women's Strategy was published in April, outlining the Government's commitments towards achieving women's equality in the period 2007-2016. However, it lacked measurable targets and timescales, and also lacked specific quotas to encourage an increase in the representation of women in decision-making structures.

Non-governmental organizations (NGOs) working in the area of violence against women responded to the announcement, in April, of a new executive office within the Department of Justice, Equality and Law Reform, known as COSC -- the Irish Office for the Prevention of Domestic Violence -- stating that they would not work with this office if it were established in its proposed form. Shortcomings they identified in this office included: it was limited to prevention of domestic violence, rather than protection and criminalisation all forms of violence against women; it did not provide for NGO involvement, and did not recognize the NGOs' expertise in these areas; and it emphasised awareness-raising over law enforcement.

Children (update to AI Index: POL 10/001/2007 – Ireland)

Following the government's consultation with key stakeholders in late 2006 to agree a wording for a Constitutional referendum on children's rights, the Twenty-Eighth Amendment of the Constitution Bill 2007 was published in February. While welcoming the proposal in the Bill to create a new, free-standing article in the Constitution entitled 'children', the Ombudsman for Children concluded that the proposed provisions appeared to represent a restricted application of the principles of the UN Convention on the Rights of the Child, and did not meet the specific recommendations of the UN Committee on the Rights of the Child, as set out in its Concluding Observations on Ireland's Second Report, issued in

September 2006. It noted that there was a limited application of the 'best interests' principle in the Bill. It also noted that, while the proposed article includes a statement of children's rights, there was no requisite commitment on the part of the state to defend and vindicate those rights, and the statement did not include express provision for the right of children to participate.

Renditions (update to AI Index: POL 10/001/2007 – Ireland)

In its programme for government for 2007 to 2012, entitled *An Agreed Programme for Government*, the new Irish Government appointed in June declared that it was "completely opposed to the practice of extraordinary rendition", and made some limited commitments in this regard, mainly through prioritizing effective enforcement by An Garda Síochána of the Criminal Justice (United Nations Convention Against Torture) Act 2000 and other statutes. It also stated that Ireland would seek European Union and international support to address deficiencies in aspects of the regulation of civil aviation under the Chicago Convention.

Discrimination (update to AI Index: POL 10/001/2007 – Ireland)

In May, the European Commission Against Racism and Intolerance (ECRI) issued its third report on Ireland. It found that progress had been made in a number of areas it had highlighted in its 2001 report, but that a number of its recommendations had not been implemented, or had only been partially implemented.

In particular, ECRI noted: that Ireland had not yet ratified Protocol 12 to the ECHR, which contains a general prohibition on discrimination; that, although it was under review, the criminal legislation had not yet been amended to include sufficiently strong provisions for combating racist acts affecting in particular visible minorities and Travellers; that further measures were necessary to raise awareness among members of minority groups of existing mechanisms for seeking redress against racism and racial discrimination; and that there was also still a need for the establishment of policies aimed at integrating asylum-seekers and refugees into Irish society.

ECRI noted that the Employment Permits Act 2006 required close monitoring in order to ensure that its implementation addressed some of the problems faced by non-Irish workers in the workplace, such as racism and discrimination. It called for measures for integrating Travellers into society to be reinforced, in particular in the area of employment, and for national Traveller organizations to be further involved and included in such initiatives.

ECRI's also recommended that the Housing (Miscellaneous) Provisions Act 2002, which converted trespass on private or public land from a civil offence into a criminal offence, with significant implications for the Traveller Community, due to the dearth of government-provided Traveller accommodation, be reviewed and amended where necessary to prevent Travellers being further disadvantaged with regard to access to adequate

housing. It also found that the IHRC was under-resourced, and recommended that the Irish authorities allocate it sufficient human and financial resources.

ECRI recommended that the implementation of the Immigration Acts 2003 and 2004 be monitored and that any problems of, *inter alia*, racial profiling against visible minorities noted in this regard be addressed. ECRI recommended that the Irish authorities take into consideration submissions made by NGOs and civil society organizations on the Scheme for an Immigration, Residence and Protection Bill (see above), and that they continue their consultation process before adopting the final Bill.