

IRELAND

**Protecting human rights
on the ground**

*Amnesty International
Submission to the UN Universal
Periodic Review, October 2011*

**AMNESTY
INTERNATIONAL**



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INTRODUCTION

In this submission, prepared for the UN Universal Periodic Review of Ireland in October 2011, Amnesty International expresses concern in relation to the promotion and protection of human rights on the ground. Longstanding unsatisfactory conditions and regimes in many prisons give rise to concerns of ill-treatment. Ireland continues to refuse to investigate evidence that Shannon airport was used as a transit point for aircraft operating in the context of the US rendition programmes. Mental health services remain widely inadequate. Amnesty International also expresses concern in relation to the rights of children and asylum seekers and refugees.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

PRISON SYSTEM

Amnesty International is concerned at Ireland's failure to address longstanding unsatisfactory conditions and regimes in many prisons that give rise to concerns of ill-treatment, including overcrowding, "slopping out" due to the lack of basic in-cell sanitation,¹ and inadequate healthcare.² Many vulnerable prisoners in need of protection are consigned to 23-hour lock up regimes akin to solitary confinement, and individuals with severe mental health problems are inappropriately kept in prison.³ Mountjoy Prison, in particular, is reported to have high levels of overcrowding and inter-prisoner violence, making it unsafe for both prisoners and prison staff.⁴ Safety observation cells should only be used to accommodate prisoners, who require frequent observation for medical reasons or who constitute a danger to themselves, but are in fact sometimes used as punishment or to accommodate troublesome or at-risk prisoners.⁵ It is, however, encouraging that the 2011 Programme for Government recognizes "the need to provide in-cell sanitation to all prisons and, in so far as resources permit, to upgrade prison facilities" and promises to "end the practice of sending children to St. Patrick's Institution".⁶ Moreover, the current prison complaints system is flawed.⁷

CHILDREN'S RIGHTS

Following the 2009 report of the Commission to Inquire into Child Abuse⁸ outlining the physical, emotional and sexual abuse of over 30,000 children placed by the state in institutions operated by Catholic religious orders from 1936 to 2000, the government adopted an Implementation Plan⁹ to give effect to the recommendations and to address the many serious gaps in current child protection and care systems. Its 99 actions were to be implemented by the end of 2011; however, many are delayed or stalled.¹⁰ The Ombudsman for Children has found poor and inconsistent adherence to the state's child protection guidelines¹¹ by the responsible agencies,¹² resulting in failure to identify or protect children at risk of abuse. In order to improve compliance by ensuring that all agencies are aware of

their duties, the government had committed to placing these guidelines on a statutory basis; to date this has not happened. The Constitution, *Bunreacht na hÉireann*, fails to adequately incorporate the provisions of the Convention on the Rights of the Child regarding the right of the child to be heard or to have their best interests paramount in decisions that affect them. The Constitution sets an overly high threshold for state intervention in the family to protect children, and leaves children voiceless in how their lives are planned.¹³ A referendum to provide improved protection of the rights of children in the Constitution, as recommended by the UN Committee on the Rights of the Child,¹⁴ has been promised since 1997.¹⁵ In 2010, the Oireachtas (Parliament) Joint Committee on the Constitutional Amendment on Children proposed comprehensive wording for the amendment, which was approved by all political parties. No referendum has yet been held.

RIGHT TO MENTAL HEALTH

Amnesty International is concerned that mental health services are widely inadequate. The government set out a comprehensive reform agenda in its 2006 mental health policy, *A Vision for Change*, promising to transform the institutionalised, in-patient mental health service model into a comprehensive, community-based model, and to overcome the over-use of pharmacological interventions through the provision of a full range of psycho-social supports in line with the right to the least restrictive or intrusive treatment. However, progress in implementing this reform has been slow.¹⁶ Cuts in resources in 2009 and 2010 have almost halted the reform process, and, according to the Inspector of Mental Health Services, “it is the progressive community services which are culled, thus causing reversion to a more custodial form of mental health service”.¹⁷ Annual reports issued by the Inspector repeatedly point to mental health facilities that are unacceptable for care and treatment, in particular in some ‘long-stay’ units. A 2010 report from the Mental Health Commission found worryingly high levels of seclusion and restraint within in-patient services.¹⁸ Despite some recent modest improvements, services for children remain seriously inadequate.¹⁹ Children continue to be treated in adult in-patient facilities²⁰ in breach of the UN Convention on the Rights of the Child.²¹ Amnesty International welcomes the Mental Health Commission’s recent amendment to the code of practice, which seeks to ensure that by 1 December 2011 no child under the age of 18 years will be admitted to an adult facility, but is concerned that previously imposed age-limits have not been complied with.

The Mental Health Act 2001 governs involuntary admission and detention in in-patient care, and involuntary treatment. Many of the Act’s provisions fail to comply with human rights standards relating to deprivation of liberty and informed consent to medical treatment.²² For instance, contrary to the right to consent to or refuse treatment, it provides that electro-convulsive therapy or the continuation of medicine after three months may be administered where a patient is “unwilling” to consent to the treatment if both the treating consultant psychiatrist and a second consultant psychiatrist approve. Its provisions regarding admission and treatment of children are also inconsistent with obligations deriving from the Convention on the Rights of the Child.²³

As in many other countries, people with mental health problems experience high levels of social exclusion, discrimination and prejudice, which are also a barrier to

their exercising the right to mental health.²⁴

ASYLUM-SEEKERS AND REFUGEES

Under the current asylum system, decision-makers at first exclusively assess whether a claimant is a refugee at risk of individual persecution, while the wider risk of *refoulement*, such as generalized or indiscriminate violence, is only considered through a separate procedure of subsidiary protection. Ireland lacks a single procedure to assess the entitlement to international protection through either refugee or subsidiary protection status concurrently, as is the practice in the majority of EU member states. Consequently many asylum-seekers from countries such as Afghanistan, Iraq and Somalia face long delays before their claims for subsidiary protection are considered, with an average wait of four years for the decision to be made.²⁵

While awaiting a decision on their asylum/protection claims, asylum-seekers are accommodated in hostels where they receive food and other basic necessities. They receive a weekly allowance of €19.10 per adult and €9.60 per child, the only social welfare payment not to have increased since its introduction 10 years ago. Responsibility for accommodation, called “direct provision”, lies with the Reception and Integration Agency (RIA), which is contracting private companies to provide these services. In 2010, of the 6,149 asylum-seekers accommodated in this system, 2,778 were there for more than three years.²⁶ Recent research has revealed overcrowding and lack of privacy in many centres, especially for families and children, resulting in physical and mental health problems.²⁷

RENDITIONS

Amnesty International is concerned at Ireland’s steadfast refusal to heed calls from national and international bodies for a human rights compliant investigation into evidence that Shannon airport was used as a transit point for aircraft operating in the context of the US rendition programmes.²⁸ The government instead claims that Ireland has not been implicated in renditions. While government denials may be based on an understanding that complicity in renditions means that an actual rendition victim had transited through Ireland, it has not conceded the indirect facilitation issue, i.e. that Shannon airport was used as a stopover and/or re-fuelling point by CIA-operated aircraft en route to or returning from rendition missions between 2001 and 2005, which facilitated renditions and their consequent human rights abuses. The government has repeatedly insisted that it relies on US ‘assurances’ that no prisoner has been or would be transferred through Irish territory without the Irish government’s express permission. In addition the wording of these ‘assurances’ has been explicitly limited to the transfer of actual prisoners through Irish territory, not overflights or landings of aircraft on rendition circuits. In 2009, the government established a Cabinet Committee on Aspects of International Human Rights, part of which remit was to review and strengthen police and civil authorities’ statutory powers regarding the search and inspection of aircraft potentially engaged in renditions. However, at the time of writing the Committee had met just three times and had not published conclusions or legislative or other proposals.²⁹

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Ireland:

Prison system:

- To bring conditions and treatment of detainees in Irish prisons into line with international human rights standards, including through implementing outstanding recommendations from international human rights bodies;
- To establish an independent and effective statutory complaints mechanism for prisoners.

Children's rights:

- To address the serious gaps in child protection and care systems to protect children from violence;
- To ensure the comprehensive and effective incorporation of children's rights in Ireland's legal framework in line with the UN Convention on the Rights of the Child, by incorporating children's rights in the Constitution.

Right to mental health:

- To introduce legislation to place a statutory obligation on the Health Service Executive to plan and progressively deliver the reform programme set out in the national mental health policy, A Vision for Change, to provide a comprehensive mental health service;
- To review and amend the Mental Health Act 2001 to ensure compliance with the UN Convention on the Rights of Persons with Disabilities;
- To promote cross-departmental action in areas such as education, employment and housing to effectively combat social exclusion, prejudice and discrimination against people with mental health problems.

Rights of refugees, asylum-seekers and victims of trafficking:

- To establish a single protection procedure for the prompt, fair and effective determination of claims for international protection to prevent undue delays in the granting of subsidiary protection;
- To ensure that residents in the "direct provision" system have an adequate standard of living and ensure the right to private and family life.

Renditions:

- To confirm that Ireland would not allow Irish territory or airspace to be used by aircraft en route to or returning from rendition missions;
- To provide in Irish law and policy that aircraft owned, operated, or leased by foreign intelligence services, but characterized by those services as "civilian", are denied the automatic overflight or landing clearances to which unscheduled civilian aircraft are entitled;

- To establish an independent inquiry into allegations that foreign aircraft operating in the context of the US-led rendition programmes have transited Irish airspace or airports to seek accountability for the possible commission of human rights violations and to ensure that measures are taken in future to prevent the direct or indirect facilitation of renditions or other human rights violations.

ENDNOTES

¹ “Slopping out” refers to the practice by which prisoners have to urinate and defecate into a small pot in their cell (which they often share with others), have no access to running water to wash their hands, sleep with the contents overnight and then publicly take the contents to a sluice area the next day.

² Amnesty International Annual Reports; Concluding Observations of the Human Rights Committee: Ireland, 30 July 2008, CCPR/C/IRL/CO/3; 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 from 25 January to 5 February 2010 (CPT/Inf (2011) 3); Inspector of Prisons and Places of Detention, The Irish Prison Population - an examination of duties and obligations owed to prisoners, presented to Minister on 29 July 2010, published on 23 October 2010.

³ CPT report of 2010 visit, op cit.

⁴ CPT report of 2010 visit; Inspector of Prisons report, op cit, described inter-prisoner violence in Mountjoy as “endemic”; The report of the Mountjoy Visiting Committee, published on 23 October 2010, said the prison was “chronically overcrowded”, “filthy” and “vermin infested”, with “20 % of prisoners ... sleeping on the floors”.

⁵ The CPT report of its 2010 visit found numerous instances where prisoners were placed naked in observation cells for disciplinary reasons. One prisoner with mental health problems had been placed in such a cell alone for more than six weeks, during which time his mental health further deteriorated. At the request of the CPT, the Inspector of Prisons subsequently conducted a study on the use of safety observation cells and found no clear policy for their use, minimal record-keeping, and their frequent inappropriate use for accommodation or management purposes. (Report of an Investigation on the use of ‘Special Cells’ in Irish Prisons, presented to the Minister on 26 August 2010, and published on 23 October 2010.)

⁶ Towards Recovery – Programme for a National Government 2011-2016.

⁷ In his 2010 report, Guidance on Best Practice relating to Prisoners' Complaints and Prison Discipline, the Inspector of Prisons identified a number of substantive flaws, including that in the majority of the files he examined, he could not find evidence of statements taken from other prisoners who might be potential witnesses; in the majority of cases the Governor did not instruct that further enquiries be made, did not take oral evidence and did not afford the prisoner a right of rebuttal; and An Garda Síochána (police) were not always informed of complaints alleging criminal behaviour, contrary to policy. The CPT report of its 2010 visit concluded that in the establishments visited, prisoners had no faith in the internal complaints system as reflected by the low number of complaints registered.

⁸ Frequently referred to as the Ryan Commission (see www.childabusecommission.ie).

⁹ Office of the Minister for Children and Youth Affairs, Report of the Commission to Inquire into Child Abuse, 2009: Implementation Plan.

¹⁰ These include independent inspection of all residential centres for children in state or foster care to commence by July 2010, and the registration and inspection of all residential centres and respite services for children with disabilities by December 2010; yet neither have begun.

¹¹ Children First: National Guidelines for the Protection and Welfare of Children (1999).

¹² A report based on an investigation into the implementation of Children First: National Guidelines for the Protection and Welfare of Children (2010).

¹³ See 2010 report of the Oireachtas (Parliament) Joint Committee on the Constitutional Amendment on Children, which explains that the state can only intervene where there is a failure of duty and exceptional circumstances, or an extreme threat to the child. It also outlines that the rights of children are secondary to parental rights.

¹⁴ See Concluding Observations of the UN Committee on the Rights of the Child: Ireland, 29 September 2006, CRC/C/IRL/CO/2, paras 8, 9 & 25.

¹⁵ Programme for Government, 1997.

¹⁶ Council of Europe Commissioner for Human Rights, Report by the Commissioner on his Visit to Ireland 26-30 November 2007 (commdh (2008)9); CPT report of its 2010 visit. See successive annual

progress reports published by the Independent Monitoring Group established to monitor implementation of A Vision for Change, at www.dohc.ie/publications. See also successive annual reports of the Mental Health Commission, at www.mhcirl.ie

¹⁷ Report of the Inspector of Mental Health Services, Mental Health Commission Annual Report 2009 (June 2010).

¹⁸ The Use of Seclusion, Mechanical Means of Bodily Restraint and Physical Restraint in Approved Centres: Activities Report 2009 (2010). During its 2010 visit, the CPT met with patients who had been administered medication for behaviour control rather than for decreasing symptoms of their mental health problem.

¹⁹ Concluding Observations of the UN Committee on the Rights of the Child, op cit, paras 46 & 47. There are just 55 Child and Adolescent Mental Health Teams, where A Vision for Change states there should be 99. Few are fully staffed and thus lack vital multidisciplinary input. Consequently there are long waiting lists for access to their services. See Health Services Executive, Second Annual Child and Adolescent Mental Health Service Report (2010).

²⁰ In the first nine months of 2010, 120 children under the age of 18 were admitted to adult units, including 13 children under the age of 16 (HSE, Second Annual Child and Adolescent Mental Health Service Report (2010)).

²¹ Concluding Observations of the UN Committee on the Rights of the Child, op cit, para 46. This practice has been described as "counter-therapeutic and almost purely custodial" by the Inspector of Mental Health Services.

²² Articles 12, 14, 17 and 25 of the UN Convention on the Rights of Persons with Disabilities, which has been signed by Ireland and which the government has promised to ratify shortly. See CPT report of its 2010 visit, paras 124 & 125.

²³ For example, under the Act, the only consent required for the admission and treatment of child under 18 years is that of their parent(s) or guardian(s), thereby failing to recognise the right of the child to express his or her views freely and have those views given due weight in accordance with the child's age and maturity as required by Article 12 of the Convention on the Rights of the Child. The Law Reform Commission has made welcome preliminary recommendations for the amendment of the provisions of the Act relating to children (Consultation Paper, Children and the Law: Medical Treatment (LRC CP59-2009), 2009).

²⁴ Amnesty International Ireland report, Hear my voice: the experience of discrimination of people with mental health problems in Ireland (2010). Concluding Observations of the UN Committee on the Rights of the Child, op cit, para 46.

²⁵ UNHCR Ireland, "UNHCR Ireland statement on need for introduction of single procedure", News Stories, 14 February 2011.

²⁶ Reception and Integration Agency, Monthly Statistics Report December 2010.

²⁷ Free Legal Advice Centres, One Size Doesn't Fit All: A legal analysis of the direct provision and dispersal system in Ireland, 10 years on (2010). Report by Council of Europe Commissioner for Human Rights op cit. Complaints relating to accommodation in "direct provision" centres can only be directed to the RIA, and no appeal is available against its decisions, resulting in residents' lack of confidence in its effectiveness.

²⁸ Amnesty International annual reports; Irish Human Rights Commission; Report by Council of Europe Commissioner for Human Rights op cit.

²⁹ Moreover, the seating of this Committee does not comport with the requirement under Ireland's international legal obligations to conduct a full, effective, independent, and impartial investigation into Ireland's role in the US-led rendition programmes. For details of concerns and recommendations, see Amnesty International Ireland, Breaking the Chain: Ending Ireland's role in renditions (2009).

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE

Documents issued by Amnesty International¹

Ireland: Briefing to the UN Committee Against Torture, 1 April 2011, AI Index: EUR 29/001/2011

Documents issued by Amnesty International Ireland²

Breaking the chain: Ending Ireland's role in renditions, June 2009

Hear my voice: Mental health prejudice and discrimination research, October 2010

Submission to the Department of Justice, Equality and Law reform on the scheme of the Mental Capacity Bill 2008, December 2009

Legislating for change: Accountability and reform of our mental health services, August 2010

The missing link: Coordinated government action on mental health, February 2010

Amnesty International Ireland's Mental Health Act 2001 Review, June 2011, available at: <http://www.amnesty.ie/content/amnesty-international-irelands-mental-health-act-2001-review>

¹ These documents are available on the Amnesty International website:

<http://www.amnesty.org/en/region/ireland>

² These documents are available on the Amnesty International Ireland website:

<http://www.amnesty.ie/reports>.

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