IRELAND: BRIEFING TO THE UN COMMITTEE AGAINST TORTURE

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INTRODUCTION

The United Nations (UN) Committee against Torture (the Committee) will consider the initial report of Ireland[1] under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) during its forthcoming 46th session. This document provides Amnesty International's information concerning the Irish government's implementation of some provisions of the Convention. Throughout this document, mention is made of the 'new government', which refers to the executive government established on 9 March 2011 pursuant to the General Election of 25 February 2011 in which the 31st Dáil Éireann (Lower House of Parliament) was elected.

1. TORTURE IN IRISH LAW

Articles 1.1, 2.1, 2.3, 4 and 5

In line with Articles 2.1, 4 and 5 of the Conventions, all acts of torture are offences under Irish criminal law.

The Convention was incorporated into Irish law via the Criminal Justice (United Nations Convention against Torture) Act 2000.[2] This law provides a definition of torture[3] and also introduces offences relating to the carrying out of an act of torture by a public official, whatever his or her nationality may be, and whether within or outside the state. Furthermore, it provides for a sentence on conviction of imprisonment for life.[4] Amnesty International generally welcomes the law and in particular the fact that the offences provided for encompass virtually all prohibited acts contained in Article 4 of the Convention,[5] the definition of torture is generally in line with Article 1,[6] and the penalties reflect the serious nature of the crimes.

However, the organization would like to make the following three comments:

Firstly, Amnesty International regrets that the provision on the "lawful sanctions" exception (section 1.1) fails to clarify that such sanctions refer only to measures involving the deprivation of liberty in conditions consistent with the UN Standard Minimum Rules for the Treatment of Prisoners.[7] This clarification is particularly relevant to suspected acts of torture committed outside Ireland.

Secondly, while welcoming the statement in the State report that "Irish law does not allow a defence of following orders as a justification for the use of torture",[8] Amnesty International believes it would have been preferable for the Act to reflect Article 2.3 of the Convention explicitly.

Amnesty International welcomes the provision penalizing attempts or conspiracies to commit an act of torture and the obstruction or impediment of an arrest or prosecution in relation to allegations of torture (section 3), but would like to encourage the Committee to enquire whether or not the provision includes assistance/abetment after the act of torture has been committed.

Amnesty International welcomes the introduction of extraterritorial jurisdiction of torture in line with Article 5 of the Convention, and the ratification of the Rome Statute of the International Criminal Court[9] by Ireland, including the incorporation of its provisions by the International Criminal Court Act 2006, providing for universal jurisdiction by the Irish courts over genocide, crimes against humanity, war crimes and other offences as defined by the Rome Statute.[10] Particularly welcome is its provision that diplomatic or State immunity shall not prevent proceedings under the 2006 Act.[11]

However, the offences set out in the Criminal Justice (United Nations Convention against

Torture) Act 2000 apply only to acts carried out after the Act came into force. Under general international law, reflected *inter alia* in Article 15(2) of the International Covenant on Civil and Political Rights (ICCPR), to which Ireland is a state party, legislation which appears to be retrospectively criminalizing "any act or omission which, at the time it was committed, was criminal according to the general principles of law recognized by the community of nations", including torture, is fully consistent with the *nullum crimen sine lege* principle. Therefore, Amnesty International considers it a significant omission that this Act does not provide for the retrospective application of these crimes.[12]

In addition, Amnesty International would encourage the Committee to request state representatives to detail measures to comply with the investigatory and prosecutorial requirements of Articles 6 and 7 of the Convention beyond this legislation. For instance, Amnesty International recommends that state parties should develop and implement programs for the training of police, judges and prosecutors concerning their respective obligations under the Convention to ensure that perpetrators of torture are brought to justice.

Given its relevance for the protection from and prevention of torture, Amnesty International would also welcome the encouragement of Ireland to ratify the International Convention for the Protection of all Persons from Enforced Disappearance. While conscious that the Department of Justice and Law Reform has stated it must first consider and take any legislative steps necessary to implement the Convention domestically, Amnesty International is concerned at the delay in Ireland's initiative to ratify this Convention.[13]

2. PREVENTION OF REFOULEMENT

Article 3

While Amnesty International is not aware of any recent instances of Ireland's having forcibly returned individuals to situations where they have been tortured, Amnesty International considers that there are gaps in the protection against *refoulement*. This is particularly distressing for individuals who may already have experienced torture in their countries of origin.

While the Criminal Justice (United Nations Convention against Torture) Act 2000 contains a general prohibition on expulsion or return of a person to another state where he or she would be in danger of being subjected to torture, the state's mechanisms to determine if returns of individuals would violate Article 3 of the Convention lack effectiveness and transparency, and expose people to the risk of being forcibly returned to a country where they would be at risk of torture.

The Refugee Act 1996, which came into full effect in November 2000, gives effect in Irish law to the UN Convention relating to the Status of Refugees and a statutory basis to the procedures for determining applications for refugee status. The Act established two statutory bodies to process applications for refugee status: the Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal (RAT). While stated in the Act to be independent, Amnesty International is concerned that neither body is effectively independent, both being appointed by, and accountable to, the Department of Justice and Law Reform. Concerns have also been expressed at the poor quality of decision-making[14] and low recognition rates by these bodies.[15] A further consequence has been a large number of High Court challenges to RAT decisions,[16] with significant backlogs and delays for applicants to have their protection needs assessed.

An additional procedure came into force on 10 October 2006, whereby applications for subsidiary protection against *refoulement* beyond the refugee status definition can be made to the Minister for Justice and Law Reform.[17] However, Amnesty International considers that this procedure has a number of serious weaknesses. Firstly, such an application may only be made where the applicant has already exhausted the refugee status determination process and has received notification of the state's intention to deport them.[18] Secondly, this procedure suffers from a lack of independence. Appeals against decisions made by the Minister to not consider or to reject such an application can be made through judicial review procedures before the High Court, but it is well established case law that in judicial reviews it is not the function of the court to consider the merits of the decision. The High Court will only overturn a Minister's decision if that decision is unreasonable in the strict legal sense, or if there was an incorrect understanding or application of the law, or a failure to comply with fair procedures.

Moreover, instead of a single procedure for considering claims for asylum and subsidiary protection, ORAC and then RAT must first consider whether a claimant is a refugee at risk of persecution on the grounds defined under the Refugee Act system, and only then can the wider risk of *refoulement*, such as generalized or indiscriminate violence, be considered through the subsidiary protection process. Consequently many asylum-seekers from countries such as Afghanistan, Somalia and Iraq face long delays before their claims for subsidiary protection are considered, with an average wait of four years for the decision to be made.[19] In addition, the applicant must have been notified with the government's intention to deport him/her in order to make this application, reducing time and opportunity to successfully raise risks of *refoulement* in case of forced return.

Successive governments have committed to reforming and consolidating the various processes, and providing a unified process at the end of which each applicant has been provided with a full assessment of any protection needs and a decision on his/ her right to remain. The Immigration, Residence and Protection Bill 2010 sets out legislative proposals to establish a single protection procedure, with a Protection Review Tribunal to replace the Refugee Appeals Tribunal and to decide on appeals against all protection decisions.[20] The United Nation's High Commissioner for Refugees has published concerns and recommendations on the legislative proposals prepared to date regarding this procedure.[21] It is important that this legislation provides clarity and transparency in how decisions are made, and a prompt, fair, effective and independent appeal against first instance decisions.

Currently, legislative provisions governing deportation of persons unlawfully in the state, including rejected asylum-seekers, are set out in section 3 of the Immigration Act 1999 (as amended) and are subject to the overarching principle of *non-refoulement* contained in section 5 of the Refugee Act 1996.[22] Under section 3, once a person has been served with notice of deportation, they may submit written representations to the Minister against the issuance of a deportation order. The Act provides that in making the decision, consideration is given by the Minister to the eleven separate headings set out in Section 3 (6) of that Act, the provisions of Section 5 of the Refugee Act 1996 (as amended) on the prohibition of *refoulement* and other relevant legal and constitutional provisions. The decision of the Minister is whether to issue a deportation order or to grant leave to remain in Ireland.[23] No reasoning in writing is required from the Minister for decisions on the granting or refusing of such permission to remain, and the process through which *refoulement* concerns are assessed before deportation lacks transparency.

Section 59(2) of the Immigration, Residence and Protection Bill 2010 provides for summary removal by an immigration officer or member of An Garda Síochána of a foreign national who is unlawfully present in the state or at a frontier of the state to a territory the officer or member considers appropriate. Section 58 provides that such a removal shall not take place where it is to a territory where there is a risk of *refoulement*. However the Bill's provisions are silent as to the process whereby *refoulement* concerns would be assessed, and there would appear to be no avenue for appeal against such a decision.

3. PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Article 2.11 and 16

PRISON CONDITIONS

Amnesty International is concerned at Ireland's failure to address longstanding unsatisfactory and degrading conditions and regimes in many prisons. In the report of its 2010 visit to Ireland, the European Committee for the Prevention of Torture criticized the overcrowding,[24] inadequate healthcare, and "slopping out"[25] due to the lack of basic in-cell sanitation in many prisons. It found vulnerable prisoners in need of protection consigned to 23-hour lock up regimes akin to solitary confinement. Mountjoy Prison, in particular, experiences high levels of overcrowding and inter-prisoner violence, making it unsafe for prisoners and prison staff.[26] A report by the Mountjoy Visiting Committee described this prison as "chronically overcrowded", "vermin infested", with "filthy facilities and no structured approach to a prisoner's day", and "20 % of prisoners … sleeping on the floors".[27] In a more recent inspection report of Mountjoy Prison, the Inspector of Prisons and Places of Detention described a "sea change for the better in many aspects of the prison". However, this report expressly does not address prison discipline, use of observation cells (see below), healthcare or education services.[28] In this report, the Inspector observed that a number of cells had been equipped with commodes to replace 'slop out' buckets on a pilot basis. While he stated that he was not in a position to give a view on the effectiveness of this measure, he noted that, "from what prisoners have told [him] this arrangement does not address the problem", and advised that this practice should not be used as an excuse for delaying the installation of in-cell sanitation in all cells. In the report, he also found 710 prisoners in the prison on 11 March 2011 despite a prison's capacity of 517.[29] Amnesty International is encouraged by the 2011 Programme for Government which recognizes "the need to provide in-cell sanitation to all prisons and, in so far as resources permit, to upgrade prison facilities".[30] However, swift and meaningful action is required without delay in line with the CPT recommendations. The Committee itself has consistently found poor prison conditions in states parties to be a violation of Article 16.[31]

During its 2010 visit, the CPT found individuals with severe mental health problems inappropriately kept in prison. It stated: "Irish prisons continued to detain persons with

psychiatric disorders too severe to be properly cared for in a prison setting; many of these prisoners are accommodated in special observation cells for considerable periods of time."[32] Safety observation cells are designed to accommodate prisoners who required frequent observation for medical reasons or because they are a danger to themselves. However, the CPT found numerous instances where these observations cells were used as punishment or to accommodate troublesome or at-risk prisoners.[33] It found one prisoner with mental health problems placed in such a cell for a considerable time on several occasions during which time his mental health deteriorated.[34] The Inspector of Mental Health Services has also commented on this practice.[35] At the request of the CPT, the Inspector of Prisons conducted a study on the use of safety observation cells and found no general clear policy for their use, minimal record-keeping, and their frequent inappropriate use for accommodation or management purposes.[36] Amnesty International believes that, given the spartan environment, limitation on clothing and restricted regime in such observations cells, adequate safeguards need to be in place to prevent that they are used inappropriately or for periods longer than absolutely necessary.

MENTAL HEALTH SERVICES

Annual reports issued by the Inspector of Mental Health Services repeatedly point to mental health facilities that are unacceptable for care and treatment.[37] The Inspector's comments on the unacceptable physical conditions in some 'long-stay' wards[38] give rise to possible concerns of inhuman or degrading treatment. In the report of its April 2010 inspection of St. Senan's Hospital, Enniscorthy (a long stay facility), the Inspector stated: "The building of St. Senan's Hospital was impressive from the outside but inside was dilapidated, depressing and not fit for human habitation. Residents were cared for in wards that were cramped, run down and afford no privacy. Paint was peeling from most walls on the wards visited and some bathrooms were in need of refurbishment. St. Christopher's ward was unsuitable for the assessed needs of the residents." Also in this report, the seclusion rooms were described as "grim and dark". In the report of its June 2010 inspection of St. Finan's Hospital, Killarney, it stated: "This hospital [built in 1849] was old and unfit for purpose. It continued to be of concern to the Inspectorate that 52 people lived within the walls of this stark, grey, sprawling building."

Children continue to be treated in adult inpatient facilities centres,[39] a practice that has been described as "in-excusable, counter-therapeutic and almost purely custodial" by the Inspector of Mental Health Services,[40] and in some cases likely to amount to inhuman or degrading treatment. 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 in practice.

A 2010 report from the Mental Health Commission found worryingly high levels of seclusion and restraint within in-patient services.[41] In addition, in a number of recent inspection reports, the Inspector of Mental Health Services has highlighted the high incidence of use of benzodiazepines in many inpatient services, and has recommended that the practice be reviewed as a matter of urgency. The CPT too met with patients who had been administered

medication for behaviour control rather than for decreasing symptoms of their mental health problems.[42] Yet the use of medication for the purposes of restraint and control ('chemical restraint') does not come within the definition of restraint under Irish law and is therefore not subjected to oversight as such.

The government's report states: "The Mental Health Act, 2001 … brings Ireland's mental health law into compliance with international conventions". However, Part 4 of the Act (consent to treatment) is significantly out of step with international human rights standards. In particular, the need to respect patient autonomy and the right of a competent person to refuse treatment is given insufficient weight. For instance the provisions of section 59[43] of the Act allow a programme of electro-convulsive therapy (ECT) to be administered to an involuntary patient (i.e. a person involuntarily admitted or detained in an inpatient facility) where the patient is "unable or unwilling to give consent". Firstly, the term "unwilling" permits overriding competent refusals of treatment. Secondly, the term "unable" is not accompanied by any test of incapacity or 'incapability', leaving almost unfettered discretion to the consulting psychiatrist making these decisions. In addition, no formal weight is given to advance directives or decisions of substitute decision makers.[44] The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has stated that "[w]hereas a fully justified medical treatment may lead to severe pain or suffering, medical treatments of an intrusive and irreversible nature, when they lack a therapeutic purpose, or aim at correcting or alleviating a disability, may constitute torture and ill-treatment if enforced or administered without the free and informed consent of the person concerned".[45] The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has stated that "policies and legislation sanctioning non-consensual treatments … aimed at correcting or alleviating a disability, including … electro-convulsive therapy and unnecessarily invasive psychotropic therapy, violate the right to physical and mental integrity and may constitute torture and ill-treatment".[46]

Other provisions in the Act fail to comply with human rights standards relating to informed consent to treatment; and its provisions regarding the involuntary admission and treatment of children are incompliant with the Convention, as well as with the UN Convention on the Rights of the Child.[47] The 2011 Programme for Government contains a welcome commitment that the Act will be reviewed for compliance with human rights standards. Amnesty International would like to point to the relevance of the UN Convention on the Rights of Persons with Disabilities in this regard, which Ireland has signed (2007).

RENDITION FLIGHTS THROUGH IRELAND

Amnesty International is concerned at Ireland's 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 by aircraft operating in the context of the US rendition programme.[48] Shannon airport has been 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.[49] Those missions involved the international transfer of individuals in a manner that avoided

established procedural safeguards, and resulted in human rights abuses, including torture and cruel, inhuman and degrading treatment or punishment. A 2007 diplomatic cable from the US Embassy in Ireland was recently released by WikiLeaks describing a December 2007 meeting between the then US Ambassador to Ireland and the then Minister for Foreign Affairs, which stated that the latter "seemed quite convinced that at least three flights involving renditions had refuelled at Shannon airport before or after conducting renditions elsewhere".[50] The cable also states that the Ambassador thanked the Minister for his "staunch rejection" of the Irish Human Rights Commission's recommendation that the government inspect aircraft suspected to have been involved in rendition flights.

The government has repeatedly insisted that it relies on US 'assurances' that no detainee 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 detainees through Irish territory, not overflights or landings of aircraft on rendition circuits.[51] 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, by the time the then government was dissolved in February 2011 the Committee had met just three times and had not published conclusions or legislative or other proposals.[52] This committee could not in any event have fulfilled the criteria for a full, effective, independent and impartial investigation into Ireland's role in the US-led rendition programme. The report prepared by the UN Working Group on enforced or involuntary disappearances (WGEID) for the 13th session of the Human Rights Council in March 2010[53] referred to reports the Working Group received alleging that the Irish government allowed planes to land on its territories without adopting any measures to prevent Irish territory from being used to facilitate rendition and/or secret detention. In its follow-up communications report to the 16th session of the Council, the WGEID "regrets that no response was received from the [Irish] Government to its general allegation sent on 15 May 2009, concerning its alleged involvement in a practice of renditions and secret detention (A/HRC/13/31)".[54] The new government, in its 2011 Programme for Government, promises to "enforce the prohibition on the use of Irish airspace, airports and related facilities for purposes not in line with the dictates of international law", but no concrete actions have yet emerged from this commitment.

4. RIGHT TO REMEDY AND DUTY TO INVESTIGATE COMPLAINTS

Articles 12, 13 and 16

PRISONERS

While the majority of prisoners interviewed by the CPT delegation during its 2010 visit considered that they were being treated correctly by prison officers, in some of the prisons visited it "received a number of allegations of verbal abuse (particularly at Cork Prison, in relation to prisoners from the traveller community and foreign nationals, which on occasion was of a racist nature) and of physical ill-treatment of inmates by certain members of the prison staff".[55] While certain improvements have been noted in the current internal prison complaints system, where complaints are made and decided by the prison Governor,[56] Amnesty International would like to highlight concerns about the effectiveness of the complaints mechanism.

In a 2010 report, the Inspector of Prisons identified a number of substantive flaws in the internal process, including that in the majority of the files he examined, he could not find evidence of statements taken from other persons such as prisoners who might be potential witnesses; in the majority of cases the Prison Governor did not instruct that any 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 the prison complaints policy.[57] The CPT report of its 2010 visit concluded that in the establishments visited, prisoners had no faith in the internal complaints system and this was reflected by the low number of complaints registered.[58]

The only way for a prisoner to appeal against the Prison Governor's decision regarding his or her complaint of ill-treatment is for the prisoner to request a meeting with the Minister for Justice and Law Reform, or an officer of the Minister. According to the above mentioned 2010 report of the Inspector of Prisons "[t]he *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."[59] The Inspector stated in this report that many prisoners say they see no point in issuing an appeal. With regard to the evidence-gathering process the Inspector noted in this report: "The prisoner, if he/she is sufficiently literate, writes out the nature of his/her complaint. On virtually all prisoner complaint forms that I examined I found the detail of the complaint minimal. Relevant details such as the names of witnesses, the circumstances leading to the complaint and other relevant information was rarely included. There is no dedicated person in the prison to assist prisoners complete a prisoner complaint form. They must rely on their own resources, help from a friend or assistance from a prison officer, chaplain or other such person."

The Prisons Act 2007 expressly provides that it is not the function of the Inspector of Prisons and Places of Detention to investigate individual complaints made by prisoners (although, according to the state report, the Inspector may investigate the circumstances which give rise to the complaint[60]).

Amnesty International considers that an independent statutory complaints mechanism should be established.

GARDA SÍOCHÁNA OMBUDSMAN COMMISSION

According to the report of the CPT visit in 2010, the majority of persons who met its delegation made no complaints about the manner in which they were treated while in the custody of An Garda Síochána (police service), and many persons with past experience of detention stated that the treatment by the Gardaí had improved in recent years. However, the CPT found that "a number of persons did allege verbal and/or physical ill-treatment by Gardai".[61] While commenting that the main safeguards against ill-treatment advocate by the CPT were in place, the Committee stated that it "continues to consider that a detained person should, in principle, be entitled to have a lawyer present during any interview conducted by the police".[62] The CPT also remarked that "effective mechanisms to tackle police misconduct [are] an important safeguard against ill-treatment of persons deprived of their liberty".[63] In this regard, Amnesty International welcomes the establishment of an independent police complaints body, the Garda Síochána Ombudsman Commission (GSOC), under the Garda Síochána Act 2005, which has been cited as a model of independent oversight of policing by the Council of Europe Commissioner for Human Rights.[64] In addition to its role in receiving and adjudicating on complaints regarding police conduct on a case-by-case basis, the Act provides that GSOC may also carry out an investigation into general policing practice, policy or procedure for "the purpose of preventing complaints arising in relation to a practice, policy or procedure of the Garda Síochána or of reducing the incidence of such complaints". However, it may only do so at the request or agreement of the Minister for Justice and Law Reform, and not of its own volition,[65] thus hampering its potential effectiveness and independence in preventing ill-treatment.

IRISH HUMAN RIGHTS COMMISSION

The Irish Human Rights Commission (IHRC) has a key role to play in ensuring Ireland's compliance with Articles 12 and 13 of the Convention. It is tasked with the promotion and protection of human rights in Ireland in a number of different ways, including the competence to appear before the High Court and Supreme Court as *amicus curiae* in respect of the interpretation of human rights law and standards in specific cases. It is also statutorily empowered to carry out enquiries into whether law, policy or practice in a given area

complies with the state's national and international human rights obligations. It may also provide individuals who feel their human rights have been violated with assistance for legal proceedings which involve law or practice relating to human rights; and in this role can provide legal advice, legal representation and/or such other assistance as is appropriate.

However, the budget of the IHRC was cut by 32 per cent in 2009, and in total by 37.5 per cent in the period since 2008, causing a significant impact on the performance of its functions.[66]

Amnesty International would also like to stress that, in order to comply with the Paris Principles, the IHRC should be made independent of any government department and accountable directly to the Oireachtas (parliament). While the transfer of its administrative link to the government from the Department of Justice, Equality and Law Reform to the Department of Community, Equality and Gaeltacht Affairs had been welcome given that the bulk of its work is related to the former,[67] the new government has proposed to move it back again to a new titled Department of Justice, Equality and Defence.

5. OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE

Ireland signed the Optional Protocol on 2 October 2007, but has not yet ratified it. Amnesty International is concerned at the delay in moving forward with the establishment of a National Preventive Mechanism and with ratification. The first legislative programme published by the new government includes a proposed law, entitled the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) Bill, the stated purpose of which is to "give legislative effect to the OPCAT, strengthen Prisons Inspectorate and put Council of Europe inspection regime on a statutory footing".[68] No publication date is indicated. The IHRC should play a key role in advising government on the designation of National Preventive Mechanism, which would require it to be adequately resourced and invited to comment on proposals for the establishment of an NPM by government.

ENDNOTES

[1] Committee against Torture, Initial periodic report of state parties due in 2003: Ireland, UN Doc. CAT/C/IRL/1, 31 July 2009.

[2] Like other common law countries, Ireland has a "dualist" system under which international agreements to which Ireland becomes a party are not automatically incorporated into domestic law. Article 29.6 of the Constitution of Ireland provides that: "No international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas (Parliament)."

[3] Section 1.

[4] Section 2.

[5] In section 3, "related offences", the Act uses the term "attempt to commit" in line with the Convention, but instead of complicity/participation uses the term "conspires to commit", presumably because this is an inchoate offence well established in Irish law, and it would appear to satisfactorily cover complicity/participation where the offences of carrying out an act of torture or attempting to commit an act of torture would not apply. It also establishes the offence to commit any act with the intent to obstruct or impede the arrest or prosecution of another person, including a person who is a public official, in relation to the offence of torture. These offences carry a penalty on indictment of imprisonment for life.

[6] The Act defines torture as "an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person". Note that the definition initially omitted the qualification that the pain or suffering must be inflicted by or of or with the consent or acquiescence of a public official or other person acting in an official capacity. This was rectified in section 186 of the Criminal Justice Act 2006 which amended the 2000 Act's definition by including after the word "omission" the phrase "done or made, or at the instigation of, or with the consent or acquiescence of a public official". The 2000 Act defines "public official" as including a person acting in an official capacity.

[7] As reflected in the Committee's consistent position against the imposition of corporal punishment, including within the family settings in its concluding observations Committee against Torture on states parties' reports, for instance the Report of the Committee against Torture, UN Doc. A/62/44 (2006-7), para. 37(25) (concerning South Africa); UN Doc. A/63/44 (2007-8), para. 32(23) (Benin); UN Doc., para. 36(15) (Portugal), para. 38(19) (Algeria); UN Doc. A/64/44 (2008-9), para. 37(24) (Belgium), para. 38(5)(d) (China), para. 45(2) (Serbia). See also Commission on Human Rights, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to the Commission on Human Rights resolution 1995/37 B, UN Doc. E/CN.4/1997/7, 10 January 1997, paras. 7-8.

[8] UN Doc. CAT/C/IRL/1, para. 98.

[9] Ireland signed the Statute on 7 October 1998 and ratified it on 11 April 2002.

[10] For a critique of the Act, see Amnesty International, *Ireland: Comments and recommendations on the International Criminal Court Bill 2003* (AI Index: EUR 29/001/2004).

[11] Section 63.

[12] Equally, Amnesty International regrets that Section 9(4) of the International Criminal Court Act prohibits, with the exception of acts of genocide covered by the Genocide Act 1973, investigations and prosecutions of

crimes against humanity and war crimes which occurred before the enactment of the Bill.

[13] An implementing law was mentioned in the *Government Legislation Programme for Autumn Session 2007*, where the Criminal Justice (United Nations International Convention for the Protection of all Persons from Enforced Disappearance) Bill was listed as a Section C Bill. As such, the general ambit of the Bill ('Heads of Bill') had not yet been approved by the government, and its publication date was not indicated. However, such a Bill did not emerge, nor appear in subsequent legislative programmes.

[14] The fact that a high percentage of refugees are granted refugee status only on appeal – rather than at first instance - raises concerns regarding the thoroughness of decision-making by ORAC. Asylum decisions by ORAC or RAT are not published, preventing a comprehensive analysis of the quality of decisions other than based on a sample gathered by approaching individual applicants themselves.

[15] On 29 March 2011, Eurostat, the EU statistical office, reported that Ireland rejected over 98 per cent of asylum claims at first instance in 2010. Granting refugee status to just 25 applicants out of a total of 1,600 (1.6 per cent), Ireland's was the lowest first instance acceptance rate in Europe (see http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-29032011-AP/EN/3-29032011-AP-EN.PDF). UNHCR stated that, in total, Ireland granted refugee status to 160 asylum-seekers and subsidiary protection status to two persons in 2010, and observed in this regard: "The recognition rate is particularly low, when compared to other EU member States." (*Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Ireland*, March 2011).

[16] As of 31 December 2010, approximately 950 cases were pending before the High Court against decisions by the Office of the Refugee Applications Commissioner, the Refugee Appeals Tribunal and the Minister (Minister for Justice and Law Reform in written answer to Dáil question 2792/11, 18 January 2011). 749 new asylum-rated challenges were received by the High Court in 2009, and 785 in 2008 (Courts Service, Annual Report 2009 (July 2010)).

[17] Set out in the European Communities (Eligibility for Protection) Regulations, 2006 S.I. No. 518 of 2006, pursuant to the EU Asylum Qualification Directive which requires the provision of international protection for persons at risk of the death penalty, torture or generalised or indiscriminate violence in the context of internal or international conflict.

[18] Note that applications will be deemed invalid in cases where the deportation orders have been issued prior to the entering into force of the regulations.

[19] UNHCR Ireland, "UNHCR Ireland statement on need for introduction of single procedure", *News Stories,* 14 February 2011.

[20] This was among the Bills which lapsed on the dissolution of the then government on 1 February 2010 but was restored to the new government's legislative programme.

[21] *UNHCR's Comments on the Immigration, Residence and Protection Bill, 2008*, UNHCR Dublin (2008); *UNHCR's Comments on the Immigration, Residence and Protection Bill 2007*, UNHCR Dublin (2007); *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Ireland,* UNHCR (March 2011).

[22] The provisions governing removal of non-nationals who have been unlawfully present in the state for a continuous period of less than 3 months are set out in section 5 of the Immigration Act 2003 and are subject

to the overarching principle of *non-refoulement* contained in section 5 of the Refugee Act 1996 and section 4 of the Criminal Justice (United Nations Convention against Torture) Act 2000.

[23] This process has become known as seeking "permission to remain".

24 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 25 January to 5 February 2010 (CPT/Inf (2011) 3). See also Inspector of Prisons and Places of Detention, *The Irish Prison Population - an examination of duties and obligations owed to prisoners*, presented to the Minister on 29 July 2010, published on 23 October 2010.

25 "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.

26 In a 2010 report, *The Irish Prison Population - an examination of duties and obligations owed to prisoners*, the Inspector of Prisons and Places of Detention described inter-prisoner violence in Mountjoy as "endemic".

[27] The Mountjoy Prison Visiting Committee Annual Report 2009, Department of Justice, Equality & Law Reform (2010).

[28] Judge Michael Reilly,"*Guidance on Best Practice relating to Prisoners' Complaints and Prison Discipline*." Office of the Inspector of Prisons, (2010).

[29] The Inspector disagreed with the Prison Service's assessment that Mountjoy Prisons had a bed capacity of 630 on that date, on the basis that this figure was "no more than a statement that either beds or bunks to accommodate those numbers are in place" without regard to the cell size or international best practice.

[30] *Towards Recovery – Programme for a National Government 2011-2016*.

[31] See, among numerous examples, the annual reports of the Committee, UN Doc. A/62/44 (2006-7), para. 32(17), concluding observations on Burundi; UN Doc. A/63/44(2007-8), paras. 32(18), (19) (Benin); paras. 33(19), (24) (Estonia, the latter referring to psychiatric facilities); paras. 45(15),(16), (19) (Zambia); UN Doc. 4/64/44 (2008-9), paras. 37(18), (23) (Belgium); para. 42(15) (Kenya); para. 52(17) (the Philippines).

[32] Para. 87.

[33] Paras. 79 to 83.

[34] Para. 87.

[35] "It was of concern to the Inspectorate that at times, the only resource available to the prison mental health service to safeguard vulnerable prisoners was to place prisoners in safety observation cells, sometimes for a period of weeks. In addition, the decision to place prisoners in the safety observation cells for the purpose of alleviating mental illness was taken by nursing staff without the necessity for medical review after four hours (as is the case for residents of approved centres, Rules Governing the Use of Seclusion, Section 69(2), Mental Health Act (2001)." (Inspection report on Forensic Psychiatric Service – Mountjoy, April 2010 available at www.mhcirl.ie/Inspectorate_of_Mental_Health_Services/AC_IRs/Mountjoy_IR2010.pdf)

36 *Report of an Investigation on the use of 'Special Cells' in Irish Prisons*, presented to Minister on 26 August 2010, and published on 23 October.

[37] Inspection reports available at www.mhcirl.ie/Inspectorate_of_Mental_Health_Services.

[38] A long stay patient is one who has been continuously in hospital for a period exceeding one year.

39 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)).

[40] *Mental Health Commission Annual Report 2008* (2009), at www.mhcirl.ie/News_Events/MHC_Annual_Report_2008.pdf.

[41] See *The Use of Seclusion, Mechanical Means of Bodily Restraint and Physical Restraint in Approved Centres: Activities Report 2009* (2010). This report observed that in 2009 a total of 35 episodes of seclusion lasted more than 72 hours.

[42] Para. 132.

[43] The relevance, in practice, of this concern is underpinned by the fact that 11 people who were deemed 'able but unwilling' were administered ECT without consent in 2008. In addition six individuals who were deemed 'unwilling' by either their treating consultant psychiatrist or the second consultant psychiatrist were administered ECT without consent during that period. Mental Health Commission *Report on the Use of Electroconvulsive Therapy in Approved Centres in 2008* (Mental Health Commission, November 2009) 16. Nine times in 2009 a patient was administered ECT when they were assessed by two psychiatrists as being able but unwilling (*Administration of Electro-Convulsive Therapy in Approved Centres: Activity Report 2009*, Mental Health Commission (March 2011).

[44] Provision in Section 60 for the continued administration of medication beyond three months against a person's will is stated in similar terms, and thus has the same lack of regard to the right to refuse treatment.

[45] Interim report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/63/175 (28 July 2008), p. 11. In a clarification provided by the UN Special Rapporteur on Torture, Manfred Nowak, to AI Ireland by email dated 28 August 2009, he stated: "If the person lacks capacity to give free and informed consent, ECT may still be administered to that person, provided that there is an emergency and that the necessary safeguards are in place and respected". In the same email, Mr. Nowak emphasized the importance of providing appropriate supports to enable persons with mental health problems to exercise their legal capacity, in accordance with Article 12 of the UN Convention on the Rights of Persons with Disabilities.

[46] Report of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc A/64/272 (10 August 2009), para 73.

[47] For example, the only consent required for the admission and treatment of a child under 18 years is that of their parent(s) or guardian(s), 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).

48 AI annual reports; '*Extraordinary Rendition': A Review of Ireland's Human Rights Obligations*, Irish Human Rights Commission (2007).

[49] Amnesty International first publicly commented on the use of Shannon airport for renditions in a press statement, "USA: 800 secret CIA flights into and out of Europe", published on 5 December 2005 (AMR 51/198/2005). For details of the use of Shannon airport by aircraft en route to or returning from the

renditions of four known individuals, each of whom reportedly suffered torture at the final destination, see AI Ireland, *Breaking the Chain: Ending Ireland's role in renditions* (2009).

[50] http://213.251.145.96/cable/2007/12/07DUBLIN916.html (accessed December 18 2010). Also see The Irish Times, http://www.irishtimes.com/newspaper/ireland/2010/1218/1224285836937.html (accessed December 18 2020)

[51] These assurances are described in the State's report to the Committee, and also in the Irish Human Rights Commission's 2007 report, '*Extraordinary Rendition': A Review of Ireland's Human Rights Obligations*.

[52] For details of concerns and recommendations, see AI Ireland, *Breaking the Chain: Ending Ireland's role in renditions* (2009).

[53] UN Doc. A/HRC/13/31. The report was prepared for the *UN Joint Study on Global Practices in relation to Secret Detention* (UN Doc. A/HRC/13/42) by the Special Rapporteur on Torture, the Special Rapporteur on Counter-terrorism, the Working Group on Arbitrary Detention (WGAD) and the Working Group on Enforced or Involuntary and presented to the Human Rights Council in March 2010.

[54] UN Doc. A/HRC/16/48, para 271

[55] Para. 29.

[56] For example, complaints now continue to be investigated even if the prisoner has been released or transferred, and an investigation is now begun when a prisoner withdraws a complaint into why they withdrew that complaint.

[57] Judge Michael Reilly, "*Guidance on Best Practice relating to Prisoners' Complaints and Prison Discipline*." Office of the Inspector of Prisons, (2010)

[58] Para. 103.

[59] Judge Michael Reilly, "*Guidance on Best Practice relating to Prisoners' Complaints and Prison Discipline*." Office of the Inspector of Prisons, 2010

[60] UN Doc. CAT/C/IRL/1, para. 96.

[61] Para. 14.

[62] Para. 17.

[63] Para. 11.

[64] Report by the Commissioner for Human Rights Mr. Thomas Hammarberg on his visit to Ireland 26 - 30 November 2007 (April 2008), CommDH(2008)9.

65 Section 106, Garda Síochána Act.

[66] See IHRC Annual Reports for 2009 and 2010. Regarding it *amicus curiae* function, its website states: "Due to funding cuts to the IHRC's Budget in 2008-09, its ongoing participation in proceedings relies heavily on the goodwill of Counsel who are willing to act *pro bono* for the IHRC." (www.ihrc.ie/enquiriesandlegal/amicuscuriae.html, consulted 11 April 2011) The IHRC's submission to the Committee also refers to the detrimental impact of the moratorium on staff recruitment, whereby departed staff cannot be replaced.

[67] This move has also been welcomed by the IHRC. See for instance Submission to the UN CERD Committee

on the Examination of Ireland's Combined Third and Fourth Periodic Reports (November 2010), p.7.

[68] Government Legislation Programme for Summer Session 2011, Office of the Government Chief Whip, 5 April 2011

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