

Irish Council for Civil Liberties
An Comhairle um Chearta Daonna

**ICCL Submission to the
Government's Consultation on the
Content of its First Report under the
United Nations Convention Against
Torture**

January 2006

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The ICCL

The Irish Council for Civil Liberties (An Chomhairle um Chearta Daonna) is an independent, non-governmental membership organisation that works to promote and defend human rights and civil liberties. It was founded in 1976 by, among others, Mary Robinson, Kader Asmal and Donal Barrington.

Since its foundation the ICCL has consistently campaigned in the sphere of civil liberties and human rights reform. The ICCL has also been very active in a wide range of constitutional reform campaigns.

It has also championed the rights of minorities including gay and lesbian rights, travellers' rights, women's rights, and the rights of refugees and asylum-seekers.

For further details:

ICCL
Dominick Court
40 – 41 Lower Dominick Street
Dublin 1
Telephone: (01) 8783136
Fax: (01) 878 3109
E-mail: iccl@iol.ie
Web Site: <http://www.iccl.ie>

1. Introduction

- 1.1 The Irish Council for Civil Liberties (ICCL) welcomes the opportunity to contribute to the Irish Government's consultation on its First Report under the United Nations (UN) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (Convention against Torture - CAT). The ICCL appreciates that at this time there is not a draft report on which to comment, but looks forward to engaging again with the Government when the report is drafted.
- 1.2 As well as its explicit inclusion in several major international human rights and humanitarian treaties, the prohibition against torture is regarded as a principle of international customary law. The prohibition against torture is absolute, a universal right and is non-derogable even in times of war or state of emergency.
- 1.3 It is the view of the ICCL that the Irish Government has traditionally recognised the importance of this right. Indeed, in the 1970s Ireland took the United Kingdom (UK) to the European Court of Human Rights for employing interrogation techniques in Northern resulting in torture and serious harm to detainees. The ICCL also recognises that CAT is one of the few UN human rights treaties that the Irish Government has given further effect in domestic Irish law.
- 1.4 The submission of the Government's First Report under CAT initiates a new phase of 'constructive dialogue' with the UN Committee Against Torture. Hence, Ireland's first examination represents an opportunity for the States Parties to critically examine their own conduct and practices. In this light it is important that the Government's First Report accurately reflects where it meets its commitments under CAT and where it falls short.

2. Status of CAT in Irish Law

2.1 Ireland signed CAT in September 1992 and ratified it in April 2002. Certain sections of CAT were also given further effect in domestic law through the Criminal Justice (United Nations Convention Against Torture) Act, 2000, including Articles 1, 2, 3, 4, 5, 6 and 7¹. However, the ICCL is concerned that the Government has not made all aspects of CAT justiciable, in particular: Article 8 (including offences related to torture in extradition treaties and law); Article 9 (co-operation with states to bring torturers to justice); Article 10 (obligation to train law enforcement and medical personnel about the prohibition of torture and ill-treatment); Article 13 (right to complain for individuals who make allegations of torture); Article 14 (right to fair and adequate compensation and full rehabilitation for persons subjected to torture) and Article 15 (evidence extracted through torture is admissible in proceedings).

2.2 The ICCL believes that there is no reason why CAT has not been made fully justiciable. It appears that the Government has chosen to only give effect to largely negative obligations under CAT. In its First Report, the Government must explain why it has failed to give full legal effect to all obligations under this Convention.

¹ The ICCL will comment on deficiencies in the Criminal Justice (United Nations Convention Against Torture) Act in relation to Articles 6 and 7 in part 3 of this document.

- 2.3 The right to bodily integrity is an unenumerated constitutional right², and in *The State (C) v Frawley* the Courts have said that prisoners enjoy the right not to have their health endangered, and by extension that they enjoy the right not to be tortured or ill-treated.³ However, there is no express constitutional prohibition on torture, or clarity on the protection against torture provided by the Constitution. Given the universal and absolute nature of this right, it is the view of the ICCL that this is a deficiency in the Constitution. This was pointed out by the Constitutional Review Group (CRG) in their report in 1996. The CRG recommended that there should be express guarantee to health rights including the right not to be tortured or subjected to inhuman or degrading treatment or punishment.⁴ This recommendation has not been implemented.
- 2.4 We recommend that the UN Committee should be made aware of this and any plans by Government to remedy the situation.

² *Ryan v Attorney General* [1965] IR 294;

³ *The State (C) -v- Frawley* [1976] IR 365; *The State (Susan Richardson) -v- Governor of Mountjoy Prison* [1980] ILRM 82; *Brennan v. Governor of Portlaoise Prison* [1999] 1 ILRM 190.

⁴ *The Report of the Constitution Review Group, The Constitution Review Group, Dublin, Stationery Office, 1996, pp. 238 and 241.*

3. Investigating and Prosecuting Incidents of Torture

3.1 The ICCL believes that in relation to the fundamental negative obligation not to engage in torture, Ireland has a very good record. Torture is not a regular occurrence. It is not systematically practiced nor condoned by the Government and incidents of ill-treatment by state officials are usually isolated.

3.2 However, the ICCL is concerned that the State does not fulfil all its positive obligations under CAT, in particular, in relation to providing an effective remedy to individuals who have complaints of torture, and in relation to investigating and prosecuting incidents of torture.

Lodging allegations of torture

3.3 CAT requires that any victim of torture has a right to complain and have his case promptly dealt with and impartially examined by competent authorities, and that redress be accessible and enforceable. In relation to this the complainant and witnesses must be protected.

3.4 Although the Criminal Justice (United Nations Convention Against Torture) Act, 2000 makes acts of torture a specific offence, it does not set out how a victim of torture can make a complaint and have that complaint investigated. Previous cases alleging inhuman or degrading treatment or conditions in custody have been addressed by way of judicial review, or a

habeas corpus investigation.⁵ This process is clearly unsatisfactory.

3.5 The ICCL recommends that the Government in its First Report must explain how a person who alleges to be a victim of torture in Ireland can complain, who investigates the complaint, how the complainant accesses the process, and how the investigating authorities' independence is assessed. In particular, the Government must explain how vulnerable persons, including regular prisoners, immigrants who may be held awaiting deportation, and those in enclosed spaces – which may be residential care mental health institutions – can *effectively* access the complaints mechanism and how they can be protected against reprisals for any complaints made.

Investigation of torture

3.6 The Criminal Justice (United Nations Convention Against Torture) Act, 2000 sets out that if someone, alleged to be complicit in torture is in Ireland, the state must investigate and prosecute or extradite that person to a country that will prosecute them. The obligation to prosecute is not limited to the alleged perpetrator of torture, but extends to others who were complicit in its commission – regardless of where the torture was committed. The ICCL recommends that the Government in its First Report should detail the procedure for

⁵ E.g. Russell v. Fanning and Ors. [1988] IR 505; Brennan v. Governor of Portlaoise Prison [1999] 1 ILRM 190

accepting and investigating complaints of this nature. Is there a special unit with responsibility once a complaint has been made? Does the Garda Commissioner act on the advice of Government or can he act independently even if the person against whom the allegation is made is an official agent of another state?

3.7 The Government's report is also timely in relation to the allegations which have been made about

- a. The transition of victims of torture through Irish territory, i.e. Shannon airport, by US authorities.
- b. The transition of prisoners through Shannon airport by the US authorities to destinations where they are likely to be tortured.
- c. The use of Shannon airport as a transit zone by persons who are alleged to have perpetrated torture
- d. The potential acceptance of "intelligence" briefings based on interrogations conducted under torture.

3.8 The Government has to date relied on assurances from the US Government that the actions under a) and b) do not occur. The ICCL submits that acceptance of assurances does not meet the obligation of the Government under CAT. In its report under CAT, the Government must set out all the steps which it can and has taken to ensure that the situation in a) and b) do not happen. The Government must set out and explain any immunities it provides to state actors of other nationalities present on Irish soil from effective investigation into allegations of torture. This includes immunities from

inspection of areas where victims of torture are alleged to be held.

3.9 The Government must also set out clearly what safeguards are in place to ensure that authorities in Ireland, would not accept or rely on intelligence provided by another government, where it can reasonably be suspected that the intelligence was obtained under torture. This is separate from the legal position that evidence extracted under torture would not be permitted as evidence in court.

Individual cases

3.10 The UN Committee Against Torture should also be informed of cases where individuals have died in Garda custody, and where there may be reasonable suspicion of ill-treatment occurring during that time in custody. For example,

- e. Brian Rossiter, a 15-year-old, was found unconscious in a cell in 2002 while being held overnight and he later died in hospital. Although an inquiry was announced in September 2005, three years after he died, there are grave concerns over the scope of the inquiry and its independence.
- f. Terence Wheelock, a 20-year-old young man, died in September 2005, having been transferred to hospital from Garda custody. There has been no official response yet to this case.

3.8 In relation to each of these cases, the Government must explain, how the authorities reacted to each death in custody. The Government should also set out what the automatic

response is to a) a death in custody or b) cases in which a detainee is required to receive medical treatment during or immediately following a period of detention. The Government must explain the investigation procedure and should also indicate whether it considers these mechanisms adequate or whether it intends to put in place other measures.

- 3.9 The ICCL is concerned about the State's failure to investigate and prosecute allegations of ill-treatment by members of the Gardaí. The Council of Europe's Committee for the Prevention of Torture (ECPT) - which has made three visits to Ireland, the last in 2002 - found that individuals were mistreated in detention around the country. The ECPT has over the decades made recommendations to the Government in how to combat the risk of torture including, access to a lawyer during questioning and the establishment of an independent complaints mechanism. The ICCL believes that the UN Committee Against Torture should be made aware of this and the extent to which the Government has implement its recommendations and if not, why not.

Training and safeguards against torture

- 3.10 The Ionnán Report (the Garda Human Rights Audit) found that: "There is no explicit preventative measures such as training, codes of conduct, monitoring, recording and supervision to routinely combat ill treatment and torture."⁶ The Report also indicated that there is no central structure or

⁶ Ionnán Consultants (2004) *An Garda Síochána Human Rights Audit*, Ionnán Consultants: UK, p. 124.

mechanism by which to monitor/evaluate the implementation of human rights policies and procedures.⁷ In the preceding paragraph, the ICCL has also noted that the ECPT has found Ireland's system lacking in preventative measures against ill-treatment.

- 3.11 The ICCL recommends that the Government be frank in its disclosure of these findings, and indicate how the Government intends to overcome this failure to fulfil its positive obligations under CAT.

⁷ Ibid, p. 124.

4. Extradition and ‘Non-Refoulement’

- 4.1 Article 3 of CAT and Section 4 of the Criminal Justice Act includes a prohibition on expulsion/refoulement of persons to another State where he/she may be subject to torture. It is the responsibility of the Minister for Justice, Equality and Law Reform to determine whether the State can extradite or remove individuals to another country.
- 4.2 The ICCL believes that the Government’s First Report must include comprehensive statistics on extraditions and removals to third countries. In addition, the Report should clearly explain the procedure for determining whether a person will be subject to torture upon their return. The Government’s Report also needs to describe the training the Department of Justice Officials have received in relation to CAT.
- 4.3 Finally, the Government’s First Report should detail how Immigration Officers at ports of entry determine whether an individual will be subject to torture if returned to their country of origin before refusing leave to land.

5. Conclusion

- 5.1 Ireland's first Report to the UN Committee on CAT, represents an opportunity for the Government to critically examine its own conduct and practices in relation to preventing torture, and the ICCL would urge the Government to accurately report where it meets its commitments under CAT and where it falls short.
- 5.2 The ICCL recommends that the Government set out in detail in its report, not just the basic framework prohibiting torture, e.g. the Criminal Justice (United Nations Convention Against Torture) Act, 2000, but also how the prohibition is implemented in practice. For example,
- a. To whom does an alleged victim complain?
 - b. How does the victim access the complaint mechanism?
 - c. How is the investigation conducted?
 - d. What are the powers of the investigative authority?
 - e. How is redress provided?
 - f. When is an investigation instigated when there is a death in custody, or a detainee requires medical treatment while, or immediately following detention?
 - g. How does the Minister for Justice assess whether a person is likely to be exposed to a risk of torture if deported or extradited to another country?
 - h. How do immigration officials assess whether individuals, if refused leave to land, will be subject to torture if returned to their country of origin?
- 5.3 Although the primary negative obligation under CAT (i.e. not to engage in torture) is respected overall by Ireland, there are aspects of Ireland's positive obligations that ICCL urges the Government to be frank about in their shortcomings. For example, both the European Committee on the Prevention of Torture and the Garda Human Rights Audit point to systemic gaps in the safeguards of preventing incidents of torture or ill-treatment, including training and accountability of use of powers. The Government should be frank in disclosing the measures it will put in place to address these gaps, and when they will be in place.
- 5.4 Finally the Government should explicitly address how it ensures that its obligations under CAT are fully implemented in the context of the so-called "war on terror". In this regard the Government must set out how in practice
- a) It ensures that it does not allow its territory to act as a transit zone for a) victims of torture, b) detainees likely to be subjected to torture and c) alleged perpetrators of torture who are being transported other than in connection with their prosecution.
 - b) It ensures that in none of its cooperations with other countries or law enforcement agencies of other countries, it receives uses or relies on intelligence extracted under torture.