

The Situation on Civil and Political Rights in Ireland

Friday, 28 March 2008

Presentation for Members of the Human Rights Committee

Tanya Ward, Deputy Director, Irish Council for Civil Liberties (ICCL)

Introduction

- The purpose of this meeting is to brief you on some of the key civil and political rights issues in Ireland.
- This presentation has been compiled as part of a joint project undertaken by three non-governmental organisations (NGOs).
- The Irish Council for Civil Liberties (ICCL) was founded in 1976 and is Ireland's leading independent human rights watchdog.
- FLAC (Free Legal Advice Centres) is an independent organisation which campaigns for equal access to justice.
- The Irish Penal Reform Trust (IPRT) is an organisation which campaigns for the rights of prisoners and for the progressive reform of Irish penal policy.

Outline of Main Concerns

1. Status of the ICCPR in Domestic Law
2. Extraordinary Rendition
3. Abortion
4. Prison Conditions
5. Summary Removals
6. Independent Refugee Appeals
7. Imprisonment for Failure to Fulfil a Contractual Obligation
8. Limits to Ireland's Anti-Discrimination Regime
9. Discrimination Against Non-Traditional Families
10. Withdrawal of Child Benefit

1. The Status of the ICCPR in Irish Domestic Law

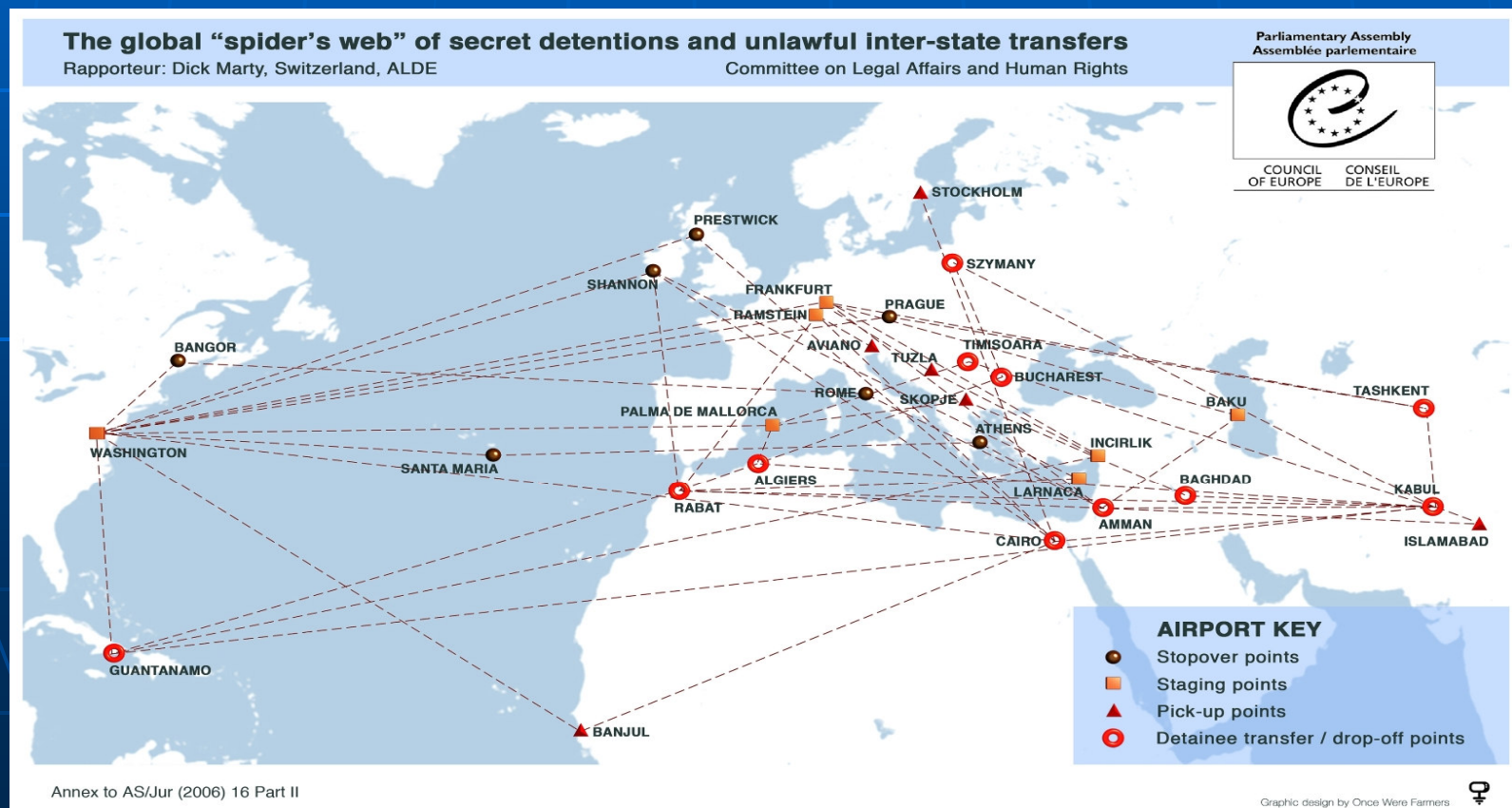
- Ireland has a dualist legal system, meaning that the Irish Parliament must pass a legislative act to make the rights and protections in the ICCPR justiciable.
- Since Ireland's last examination, no measures have been taken to incorporate or give 'further effect' to all of the ICCPR's provisions.
- The Constitution Review Group in 1996 recommended that the Irish Constitution be amended to include the full range of ICCPR provisions.
- The ICCPR only has persuasive effect in the Irish courts.

ICCPR Infringement

- Article 2(2) – obligation to adopt laws and other measures to give effect to the ICCPR.

2. Extraordinary Rendition

- Reports from the European Parliament and the Council of Europe indicate that Irish airports are being used as 'stopovers' for flights involving the unlawful transfer of detainees by the CIA.



2. Extraordinary Rendition

- The Council of Europe Report (2006) stated that Ireland could be held responsible for:

Active or passive collusion... involving secret detention and unlawful inter-state transfers of a non-specified number of persons whose identity so far remains unknown (para 289).

- There have been no searches of these flights of by Irish authorities and no independent inquiry as recommended by the European Parliament.

2. Extraordinary Rendition

- The Irish Government is arguing that it is entitled to rely on diplomatic assurances from the United States Government that Irish airports have not been used to facilitate rendition.
- The Irish Human Rights Commission has stated that the mere acceptance of diplomatic assurances is not adequate to discharge the State's obligations.



Minister for Foreign Affairs, Mr Dermot Ahern

2. Extraordinary Rendition

- Recent report from Amnesty International (2008) confirmed that Ireland is being used as a staging point.
- Khaled al Maqtari was held by the CIA without charge for 30 months.
- He claims he was subjected to inhuman and degrading treatment and was held in isolation in unknown locations from 2004 to 2007.
- Amnesty say that Shannon Airport (in the west of Ireland) was used as a stopover point when he was being relocated from Bagdad to Kabul.



Mr Khaled al Maqtari

2. Extraordinary Rendition

ICCPR Infringement

- Article 7 - freedom from torture, cruel, inhuman or degrading treatment or punishment.
- Article 9 - right to liberty and security of the person.

3. Abortion

- Article 40.3.3° of the Irish Constitution states that the right to life of a mother and that of her unborn child have equal status, though the meaning of the word “unborn” remains undefined.
- Approximately 6,000 women travel to the United Kingdom (UK) from Ireland every year to avail of abortion.
- 1992 ‘X’ Case – the Supreme Court confirmed that abortion was lawful if there is a “real and substantial risk to the life as distinct from the health of the mother”.
- In 2000, the Human Rights Committee expressed concern that abortion was not available in situations where the pregnancy is a result of rape.

3. Abortion

- In 2002, the Government held a referendum to overturn the X case to prevent abortion happening in cases of suicide.
- The referendum proposals also included criminal sanctions against women for having abortions in Ireland, up to 12 years imprisonment.



Campaigners during the 2002 Referendum on Abortion

3. Abortion

- Failure to legislate by the Government has resulted in a lot of litigation.
- D Case, 2006.
- Miss D Case, 2007.
- Media reports of clandestine abortions.



Protestors outside the Court during the Miss D Case.

3. Abortion

ICCPR Violations

- Article 6 – right to life.
- Article 7 – freedom from inhuman and degrading treatment.

4. Prison Conditions

- In four Irish prisons, (Mountjoy, Cork, Limerick and Portlaoise prisons) sanitation facilities are inadequate and prisoners are still required to “slop-out” every morning.
- The assertion in the State’s report that “a small number of prisons operate in excess of capacity” and that overcrowding has been “largely eliminated” (para 210 in State Report) is incorrect.



Prison Capacity Statistics

6 February 2008

Institution	Design Capacity	Bed Capacity	Number in Custody on 6 February 2008
Arbour Hill	138	139	139
Castlerea	183	228	229
Cloverhill	400	431	450
Cork	150	272	264
Limerick (f)	12	20	20
Limerick (m)	211	275	277
Loughan House	85	110	100
Midlands	475	474	446
Mountjoy (f)	80	85	103
Mountjoy (m)	547	540	561
Portlaoise	316	210	106
Shelton Abbey	60	60	53
St. Patrick's Institution	220	213	214
Training Unit	96	96	94

4. Prison Conditions

- Following its visit to Ireland in 2006, the Committee on the Prevention of Torture (CPT) found three Irish prisons (Limerick and Mountjoy Prisons and St. Patrick's Institution for young offenders) were unsafe for prisoners and prison staff.
- In particular, the CPT were concerned about the level of inter-prisoner violence, which it found related to the wide availability of drugs and the lack of meaningful activities/poor regime in the prisons.
- Two prisoners were killed by fellow inmates in 2006 (Gary Douch) and 2007 (Derek Glennon-Kennedy).



Overcrowded conditions of prisoners in holding cell in “B” basement in Mountjoy prison on 16 February 2006.

4. Prison Conditions

- CPT noted that prisoners 'did not have confidence in the (internal) complaints system and did not wish to file a complaint, even when it involved ill-treatment' (para 37).
- Many prisoners are residing in isolation.
- The CPT also found that the main reason behind the violence was the availability of drugs and the lack of meaningful activities.



4. Prison Conditions

- Recent report from the Irish Prison Chaplains (Nov 2007) criticised the lack of rehabilitative measures, the widespread misuse of drugs and the incarceration of the mentally ill.

ICCPR Infringements

- Article 7 - freedom from torture, cruel, inhuman or degrading treatment or punishment.
- Article 10 – persons deprived of their liberty should be treated with humanity and respect for inherent dignity.
- Article 10(3) – reformation and social rehabilitative treatment.

5. Summary Removal

- The Immigration, Residence and Protection Bill 2008 was introduced on 29 January 2008 with the purpose of consolidating and updating the legislative framework for dealing with inward migration .
- Section 4(3)(a) of the new Bill provides that a foreign national who is present in or enters the State unlawfully shall be guilty of an offence.

5. Summary Removal

- Section 4(5) makes it clear that a foreign national may be removed without notice and arrested/detained for the purposes of removal [section 4(6)].
- Section 54(1) provides a general power to immigration officers or any member of An Garda Síochána to remove a foreign national from the State when “it appears” to them that he/she is unlawfully present in the State or at the frontier of the State.
- In addition, persons resident in Ireland on entry permits and non-renewable permits will have no form of review if they face removal.
- Currently, if the Minister for Justice, Equality and Law Reform wishes to remove an individual then that person is given 15 working days to make representations [section 3(6) Immigration Act 1999].

5. Summary Removal

ICCPR Infringements

- Article 2(1) – application of all ICCPR protections to everyone within the territory.
- Article 2(3) – access to an effective remedy.
- Article 7 - freedom from torture, cruel, inhuman or degrading treatment or punishment.
- Article 13 – procedural rights for lawfully resident migrants in removals.
- Article 14(3)(b) – adequate time and facilities to prepare a defence (summary removal will hamper judicial review proceedings).
- Article 17 - freedom from arbitrary and unlawful interference with the family.

6. Independent Refugee Appeals

- The Refugee Appeals Tribunal has been plagued by allegations of non-transparency, unfairness and bias.
- It lacks the basic hallmarks of independence (security of tenure for members, a transparent independent appointments system, rules on case allocation).
- Until the Tribunal lost its appeal to the Supreme Court, it refused to publish its own decisions.

6. Independent Refugee Appeals

- No regulations on the allocation of cases to Tribunal, and members paid by the number of cases they process.
- Statistics obtained by media sources revealed that one member earned 10 per cent of the total earned by 33 members (Irish Times, 6 June 2005).
- In *Nyembo v. Refugee Appeals Tribunal*, a refugee applicant sought an order preventing a Refugee Appeals Tribunal member, Mr Jim Nicholson, from hearing his appeal, on the basis that there is a reasonable apprehension of bias.



6. Independent Refugee Appeals

- The applicant cited Mr Nicholson's reputation among immigration and asylum lawyers, together with statistics compiled by two leading legal practitioners in the area of refugee law which led one of them to advise clients that there was no prospect of success for an applicant appearing before Mr Nicholson in an oral hearing.
- The Refugee Appeals Tribunal settled this case and two other identical cases in December 2007.
- In March 2008, it emerged that three of its most Tribunal members are preparing a legal challenge against the Tribunal Chairman to the Supreme Court.
- The subject of the challenge related to the decision-making record of Mr Nicholson.

6. Independent Refugee Appeals

ICCPR Infringements

- Article 2(3) – right to an effective remedy.
- Article 14 – right to a fair and public hearing by a competent, independent and impartial tribunal.

6. Independent Refugee Appeals

- The Refugee Appeals Tribunal will be replaced with a new Protection Review Tribunal when the Immigration, Residence and Protection Bill 2008 becomes law.
- However, it may not in practice guarantee protection seekers their rights under Article 14.
- Although section 92(5) provides that the Chairperson of the Tribunal or full-time Tribunal member will be appointed through the Public Appointments Service, section 92(4) allows the Minister to personally appoint part-time Tribunal members.
- Section 93(2) also provides for the Chairperson to establish rules and procedures for the conduct of oral appeals which take account of “the need to preserve fair procedures”.

6. Independent Refugee Appeals

- Rules on the distribution of cases are important to ensure that they are not allocated to one specific decision-maker to obtain a certain result.
- Section 92(4) be amended to impose an obligation on the Chairperson to distribute cases through a system of lots or automatic distribution after having due regard to specialisms.
- Code of Ethics for Tribunal members.
- Publication of decisions (refer to section 95(1) of Bill on access to Tribunal decisions).

7. Imprisonment for Failure to Fulfil a Contractual Obligation

- In 2000, the Human Rights Committee expressed concern at the use of imprisonment for failure to pay a debt.
- Despite a promise by the Government to address this issue, no legislation has been introduced in this area.
- January 2002 – September 2006, almost 1,000 people were imprisoned for periods of up to 3 months in Ireland for 'offences related to debt' with 94 people re-committed for the same debt (Irish Prison Service).

ICCPR Violation

- Article 11 – freedom from imprisonment on the ground of inability to fulfil a contractual obligation.

8. Limits to Ireland's Anti-Discrimination Regime

- Ireland's equality regime essentially consists of formal equal treatment measures and is not designed to bring about substantive equality.
- The Employment Equality Acts (EEA) 1998-2004 prohibit discrimination in relation to employment on the basis of: gender, family status, marital status, age, disability, sexual orientation, religious belief, race and membership of the Traveller community.
- The Equal Status Acts (ESA) 2000-2004 outlaw discrimination on the same grounds with regard to goods, services and education.

8. Limits to Ireland's Anti-Discrimination Regime

- Main limit to Ireland's anti-discrimination regime relates to the scope of the Equal Status Act.
- It does not include all government functions.
- Equality institutions are poorly resourced i.e. it takes three years to take a case to the Equality Tribunal.

8. Limits to Ireland's Anti-Discrimination Regime

- The Government has also undermined the effectiveness the Equal Status Acts by amending it to:
 - Change the rules for publicans and hotels. Individuals who want to take a case must go to the District Courts.
 - New exemption to allow the Minister for Education to discriminate against non-citizens in relation to education grants.
 - New exemption to allow discrimination against same-sex couples with regard to welfare.



8. Limits to Ireland's Anti-Discrimination Regime

ICCPR Infringements

- Article 2(3) – right to an effective remedy.
- Article 26 – equality before the law and freedom from discrimination.

9. Discrimination Against Non-Traditional Families

- As is the case in many other countries, domestic relationships in Ireland have become more diverse in the past 30 years.
- Recent statistics from the Central Statistics Office (CSO) reveal that cohabiting couples represent 11.6 per cent of all family units in 2006.
- The Irish Constitution, as interpreted by the Irish courts, only affords married families constitutional recognition and Article 41 has been used to uphold discrimination against children born outside marriage, unmarried fathers and gay men.



9. Discrimination Against Non-Traditional Families

- The State has also enacted legislation that specifically discriminates against same-sex couples to:
- Restrict access to welfare (section 19 of the Social Welfare (Miscellaneous) Act 2004);
- Restrict access to residential tenancies (section 39 of the Residential Tenancies Act 2004).



Ms Anne Louise Gilligan and Ms Katherine Zappone who are currently taking a case to the Supreme Court to have their Canadian marriage recognised.

9. Discrimination Against Non-Traditional Families

ICCPR Infringements

- Article 17 – freedom from arbitrary or unlawful interference with the family.
- Article 23(1) – protection of the family.
- Article 26 – equality before the law and freedom from discrimination.

10. Withdrawal of Child Benefit

- Until 1 May 2004, Child Benefit was paid equally to every child living in Ireland regardless of their parents' status or income.
- Child Benefit was anti-child poverty measure and was universally paid to all children.
- The Government introduced the 'habitual residence condition' – meaning that you have to be two years resident in the country to avail of certain welfare payments.
- This policy particularly disadvantages children of protection seekers as their parents only receive €8.70 for a child per week and cannot work.
- New rules from 2005 mean that asylum seeking children can never obtain Child Benefit.



10. Rights of the Child

ICCPR Infringements

- Article 24(1) – every child shall have, without any discrimination....the right to such measures of protection as are required by his status as a minor.
- In General Comment 17 para 3, the Human Rights Committee indicated that this also applies to possible economic, and social measures to eradicate malnutrition among children.

Contact Details

Tanya Ward
Deputy Director
Irish Council for Civil Liberties (ICCL)
9-13 Blackhall Place
Dublin 7
Tel: ++ 353 1 799 4506
Fax: ++ 353 1 799 4512
Email: tanya.ward@iccl.ie
Web: www.iccl.ie