

Irish Council for Civil Liberties
An Comhairle um Chearta Daonna

**Preliminary Submission to the European
Committee for the Prevention of Torture
(CPT)**

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Contents

About the ICCL.....	3
1. Introduction.....	4
2. The Legal Position of Detainees in Police Custody.....	4
3. Combating Impunity	6
4. Training of Law Enforcement Personnel	13
5. Foreign Nationals Detained under Aliens Legislation	14
Appendix 1: Supporting Documentation for the CPT’s Delegation.....	15

About the ICCL

The Irish Council for Civil Liberties (An Chomhairle um Chearta Daonna) is the leading independent, non-governmental membership organisation working to defend and promote and human rights and civil liberties in Ireland. It was founded in 1976 by, among others, Mary Robinson (former President of Ireland and UN High Commissioner for Human Rights), Kader Asmal (Professor of Law and member of the South African Government), and Justice Donal Barrington (former Supreme Court judge, Judge at the European Court of Justice and the first President of the Irish Human Rights Commission). Its members and officers through the years have included many leading academics, politicians, lawyers and public figures.

ICCL has never sought or accepted Government funding for any of its work. The organisation has recently secured substantial funding from an international charitable trust, enabling it to expand and further professionalise its operations.

Over the last thirty years, the ICCL has campaigned in the sphere of civil liberties; in particular, it has consistently focused on the interface between criminal justice issues and human rights concerns.

The ICCL has also been very active in a wide range of constitutional reform campaigns, and has 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
DMG Business Centre
9-13 Blackhall Place
Dublin 7
Ireland
Tel: +353 1 7994504
Email: info@iccl.ie
Website: <http://www.iccl.ie>**

1. Introduction

The Irish Council for Civil Liberties (ICCL) greatly welcomes the opportunity to make a submission to the European Committee on the Prevention of Torture (CPT). Given the time constraints within which it has been produced, this document is a preliminary submission. The ICCL will present the CPT with a more detailed contribution in due course. As has been the case during all of the Committee's preceding visits to Ireland, it also looks forward to the opportunity to meet with the CPT's delegation during the 2006 periodic visit.

The present submission focuses on a number of key areas in respect of which the ICCL believes the CPT should consider making use of its powers under the European Convention for the Prevention of Torture, namely: the legal position of detainees in police custody; combating impunity; training of law enforcement personnel and the treatment of foreign nationals detained under aliens legislation.

2. The Legal Position of Detainees in Police Custody

2.1 Access to a Lawyer

Following its 1998 and 2002 visits, the CPT expressed concern about the absence of any formal legal right to the presence of a lawyer during interrogation. The situation has still not changed.

2.2 Detention in Garda Stations

The physical conditions, and especially the sanitary conditions, in some stations remain unsatisfactory. Stations where the ICCL has had reports of particularly poor conditions of detention include: Tallaght Garda Station, Dublin 24; Dundalk Garda Station (no video suite) in County Louth¹ and holding centres in the Four Courts, Bridewell and Special Criminal Courts in Dublin.

¹ One hour direct train journey from Dublin.

2.3 Increased Length of Detention in the Criminal Justice Bill 2004

Section 8 of the Criminal Justice Bill 2004 amends section 4 of the Criminal Justice Act 1984 to provide for increased powers of detention for all arrestable offences. Section 8 amends section 4 paragraph (c) of the 1984 Act to provide for the possibility of a further period of 12 hours detention on the approval of an officer of at least the rank of Chief Superintendent if he/she believes that such further detention is necessary for the proper investigation of the offence. Therefore a person may be detained up to 24 hours (in addition to a rest period of up eight hours which is excluded from the calculation of the time in custody) before being brought before a judge. This represents a 100% increase in the maximum length of police detention for arrestable offences as compared to the situation that obtained during the CPT's last visit to Ireland.

No credible and convincing research has been produced to suggest that the gardaí's current powers are inadequate, and this increase is justified. This point has also been made by the Irish Human Rights Commission.²

2.4 DNA and Bodily Samples

Section 13 of the Criminal Justice Bill 2004 amends the Criminal Justice (Forensic Evidence) Act 1990 in order to reclassify saliva as a "non-intimate", thereby allowing gardaí to take DNA samples without consent. Under the existing law, consent is required for intimate samples (blood, pubic hair, urine, dental imprints etc.) and all samples must be destroyed within six months.

The ICCL is concerned at the granting of such broad powers to the gardaí to take bodily samples without consent. Clearly, such powers may, in exceptional circumstances, be justified; however, they should be accompanied by appropriate safeguards. In particular, gardaí should be provided with guidance as to the circumstances in which they may resort to the use of force in the event that people in their custody refuse to provide DNA samples. They should also be reminded that, even if the taking of a sample by force is legally justified, no more force than is reasonably necessary should be used to obtain the sample, and appropriate use of force reporting procedures should be followed in every case in which a sample is obtained by force.

As far as the ICCL has been able to ascertain, no such safeguards are currently envisaged.

² IHRC (2005) *Final Observations on the Criminal Justice Bill 2004*, IHRC: Dublin, p. 3-4, appended.

What can the CPT do?

- Visit places of detention in Tallaght Garda Station, Dublin 24; Dundalk Garda station (no video suite), County Louth and holding centres in the Four Courts, Bridewell and Special Criminal Courts in Dublin.
- Ask what credible evidence/research exists indicating the need to double the maximum possible length of police detention for arrestable offences?
- Insist upon the introduction of appropriate safeguards designed to minimise the risk that persons from whom DNA samples are forcibly removed by gardaí will be subjected to excessive force.

3. Combating Impunity

3.1 Investigating and Prosecuting Allegations of Torture

The ICCL is concerned that the State does not fulfil all its positive obligations under Article 3 of the ECHR in relation to investigating and prosecuting incidents of torture. 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.

Since 2004 serious allegations have been made that US aircraft landing at Shannon Airport near Limerick may be transporting people to secret locations where they risk being tortured.³ Indeed, the Irish Human Rights Commission recently passed a resolution calling on the Irish Government to seek agreement from the US authorities to inspect aircraft landing in Shannon Airport and other Irish airports.⁴ In response to the Council of Europe Secretary General's recent request⁵, the Irish Government indicated that it made inquiries on this matter and received assurances that US secret rendition flights were not passing through Shannon Airport.

³ Human Rights Watch statements on "US Secret Detention Facilities in Europe", 7 November 2005; "CIA Whitewashing Torture", 21 November 2005; "List of Ghost Prisoners Possibly in CIA Custody", 30 November 2005.

⁴ Irish Human Rights Commission (2006) *Resolution in relation to claims of US aircraft carrying detainees*, IHRC: Dublin.

⁵ Request made by Terry David, Secretary General, Article 52 Request in respect for Unacknowledged Deprivation of Liberty, 21 November 2005.

The Government are satisfied that they are entitled under the Convention to rely on clear and explicit factual assurances given by the Government of a friendly state, on a matter which is within the direct control of that Government.⁶

For the IHRC, “reliance on diplomatic assurances is not sufficient to protect against the risk of torture and other forms of ill-treatment”⁷ and the ICCL shares this view as, we believe, does the CPT.

The Irish Government’s Reply to the Secretary General also indicated that “in the case of a credible complaint of criminal activity being made to An Garda Síochána, a full investigation would be conducted, which could include an inspection of the aircraft in question”.⁸

It subsequently states that:

Three complaints have been made. In two instances, in accordance with standard procedures in cases of allegations of serious offences, papers were forwarded to the Office of the Director of Public Prosecutions. In neither instance was any further action found to be warranted, owing to a lack of evidence that any unlawful activity had occurred.⁹

No attempt is made in the report to explain what actions the Gardaí took other than forwarding on papers to the Director of Public Prosecutions. What were the details of the complaints received? Who did the Gardaí decide to question? Did inspections of aircrafts take place? Were passenger manifests examined? What records were obtained from the American authorities? In other words, there is nothing to suggest that a “full investigation” of these complaints was conducted.

What can the CPT do?

- Request and examine the substance of the criminal complaints received and the process and quality of Garda investigations which subsequently took place.
- Visit Shannon Airport, and use its powers under the Convention¹⁰ to seek to establish whether the documentation available (e.g. flight records and passenger manifests) to the Irish authorities is sufficient to enable them to discharge their procedural obligations under the European Convention on Human Rights.

⁶ Reply of Irish Government to Article 52 Request in respect of Unacknowledged Deprivation of Liberty, 20 February 2006, p. 18.

⁷ IHRC, *ibid*, p. 4.

⁸ Reply of the Irish Government, *ibid*, p. 19.

⁹ *Ibid*.

¹⁰ Article 8(2)(d).

3.3 Garda Síochána Ombudsman Commission

Part III of the Garda Síochána Act 2005 refers to the establishment of a three member Garda Síochána Ombudsman Commission to investigate complaints against the Gardaí from members of the public. Justice Kevin Haugh has been appointed by the Minister for Justice¹¹ to chair the Ombudsman Commission. Once the body becomes operational it will replace the now widely discredited Garda Complaints Board¹². However, the ICCL retains a number of concerns about the potential operation of the Ombudsman Commission.

Over bureaucratic procedure for investigating complaints

If a complaint cannot be resolved through a mediation process (section 90), the Ombudsman Commission can decide to refer the complaint to the Garda Commissioner for investigation (section 94), deal with the complaint through an informal mechanism (section 95) or through a formal mechanism where a complaint involves a possible offence (section 98). The ICCL believes that the current procedures for investigating complaints in the Garda Síochána Act are too complex and overly bureaucratic. The Ombudsman Commission should have a broad range of powers and be able to tailor its own investigation depending on the nature of the complaint.

Over-reliance on the Garda Commissioner

Section 94 empowers the Ombudsman Commission to refer certain complaints to the Garda Commissioner for investigation. The ICCL is concerned that the Ombudsman Commission may be forced to refer complaints to the Garda Commissioner because of funding shortages. Referral to the Garda Commissioner should only occur if it is the most appropriate avenue for resolving a complaint. While €10 million has been allocated for 2006, there is no guarantee that the Ombudsman Commission will continue to receive this level of funding annually.

One of the main difficulties with the Garda Complaints Board is the fact that members of the Gardaí investigate complaints. It is important that new investigators are not former members of the Gardaí or current members of any police service. This is the view of the Irish Human Rights Commission and of Senator Maurice Hayes, Chair of the Garda Síochána Act 2005 Implementation Group, together with the Association of Garda Sergeants and Inspectors (AGSI)¹³ and the Garda Representative Association (GRA).¹⁴

¹¹ Members of the Garda Síochána Ombudsman Commission were appointed by the Minister and this did not involve a transparent public competition. The other members are a former Editor of the Irish Times, Conor Brady, and a former Insurance Ombudsman, Carmel Foley.

¹² www.gscb.ie

¹³ www.agsi.ie

¹⁴ www.gra.ie

Search of a Garda station

Section 99(1) concerns searches of Garda stations where the Ombudsman Commission is investigating serious offences (murder and serious harm). The Ombudsman Commission must first notify the Garda Commissioner and Minister for Justice before it can authorise an officer to conduct a search in a station designated under section 99(3) as holding information or documents relating to the security of the State (section 126). Section 99(4) gives the Garda Commissioner the power to object to a search for reasons relating to the security of the State. In these circumstances the Ombudsman Commission can request the Minister to consider the objection and the Minister may issue give permission, together with issuing specific instructions. The Ombudsman Commission's officer may then enter a Garda station **one week** after the issuing of the authorisation.

While it is important to protect information relating to state security, on balance the ICCL believes that this provision may be open to abuse and the Garda Commissioner and Minister could use it to curtail the efficacy of investigations. If investigating officers were treated as the equivalent of the Gardaí, they would be bound by the same duties under the Official Secrets Act, 1963, and there would be no need for this restriction (which does not apply to members of the CPT).

What can the CPT do?

- Seek a meeting with the newly appointed members of the Commission.
- Review the level of human and financial resources to be accorded to the Commission in the future.
- Raise the above mentioned issues with members of the Commission and with the Minister for Justice.
- Seek an assurance from members of the Commission and the Minister for Justice that investigators appointed by the Commission will be genuinely independent and that the Commission will make the maximum possible use of its own investigators rather than delegate investigations to the Garda Commissioner.

3.4 Morris Tribunal

On 9 March 2003, the Irish Government established this tribunal of inquiry to investigate allegations of police misconduct in the Donegal Division. Justice Frederick Morris found that individual members of the police were culpable for several instances of negligence and of corruptly orchestrating the planting of ammunition and hoax explosives. Blaming poor management of the police, Morris suggests that:

If there is a lack of proper management at senior level, corruption at middle level and a lack of review throughout the force, it is certainly possible that that in similar corruption could arise.... What has been so serious about this Inquiry has been the neglect of the fundamental duty of police management to ask questions and get answers. This is shocking.¹⁵

The report of the Morris Tribunal is appended to this preliminary submission.

What can the CPT do?

- Ask for details of the disciplinary action, if any, that has been taken against members of the gardaí following the publication of the Morris Tribunal report?

3.5 Deaths in Custody

Since the CPT's last visit, there have been two deaths in Garda custody where there have been allegations of Garda ill-treatment. In both cases, the ICCL is dissatisfied with the Government's response and subsequent delays in setting up independent inquiries.

As the Committee is well aware, the "procedural obligation" jurisprudence of the European Court of Human Rights (which has been adopted by the CPT) obliges states to conduct "effective investigations" of deaths in police custody. On the evidence of the under noted cases, Ireland cannot be said to be in compliance its procedural obligations to investigate such cases in a manner which is independent, effective, prompt and transparent.

¹⁵ Morris Tribunal (2004) *Report of the Tribunal of Inquiry Set up Pursuant to the Tribunal of Inquiry (Evidence) Acts 1921-2002 into Certain Gardaí in the Donegal Division*, Government Stationary Office: Dublin, p. 542.

Case 1: Brian Rossiter

Brian Rossiter, a 14-year-old, was arrested on suspicion of public order offences in Clonmel, County Tipperary on 10 September 2002 and held overnight in Garda custody with the consent of his father. The next morning, Brian was found to be in a coma and he died in hospital two days later amidst – as yet unsubstantiated – allegations of Garda mistreatment.

After a delay of **three years**, in September 2005, the Minister of Justice, Equality and Law Reform finally announced that an independent inquiry would be set up to investigate the arrest and detention of Brian Rossiter. This inquiry – which has yet to report – is being conducted by Mr Hugh Harnnett, Senior Counsel.¹⁶

Case 2: Terence Wheelock

On 2 June 2005, the late Terence Wheelock, a 20-year-old man, was found unconscious in a cell at Store Street Garda Station, Dublin, with a ligature tied around his neck; he was immediately transferred to the Mater Hospital, Dublin. Press reports at the time suggested that he had other, unexplained, injuries on his body; although an official gardaí statement indicated that no such injuries had been noticed by them. Terence then spent three months in a coma, before dying in September 2005.

An internal Garda inquiry into the circumstances of his death was carried out by Detective Superintendent Oliver Hanley of Dun Laoghaire Garda Station. The findings of this inquiry have not been released; however, they have apparently formed the basis for a decision by the Director of Public Prosecutions that no criminal charges should be brought in connection with his death. The inquest into Terence's death opened in Dublin on 17 February 2006, and was adjourned for several weeks, reportedly because his family do not accept that he committed suicide, and are seeking an independent inquiry into his death. His family complain, in particular, that they have not been allowed to be involved in the investigation of his death to the extent that is necessary to safeguard their legitimate interests.

¹⁶ Department of Justice, Equality and Law Reform Press Release, 14 September 2005
<http://www.justice.ie/80256E01003A02CF/vWeb/pcJUSQ6G9J86-en>

What can the CPT do?

- In advance of the visit, request and review the reports of the autopsies carried out on for Brian Rossiter and Terence Wheelock
- Request further information regarding the recently-established independent inquiry into the death of Brian Rossiter, and, during the visit, ask the Minister for Justice, Equality and Law Reform to justify the delay in setting up this inquiry
- In advance of the visit, request and review the report of the internal Garda inquiry into the circumstances of the death of Terence Wheelock which was carried out by Detective Superintendent Oliver Hanley of Dun Laoghaire Garda Station. Request information regarding the manner in which the State has sought to comply with its ECHR obligation to involve the next-of-kin of the deceased in the investigation to the extent that is necessary to safeguard their legitimate interests. Ask to be kept informed of the progress of the inquest in this case.

4. Training of Law Enforcement Personnel

After its last visit, the CPT recommended that Irish authorities “integrate human rights concepts into practical professional training for high-risk situations, such as the arrest and interrogation of suspects”¹⁷. A Garda human rights audit completed in 2004 (appended) found that there were “no explicit preventative measures such as training, codes of conduct, monitoring, recording and supervision to routinely combat ill-treatment and torture.”¹⁸ The report also indicated that there is no central structure or mechanism by which to monitor/evaluate the implementation of human rights policies and procedures.¹⁹

In response, An Garda Síochána published a Garda Human Rights Action Plan in April 2005 outlining points for action with timelines and completion dates. Recommendation 1.2 states that a Garda Strategic Human Rights Committee will be appointed to oversee the Plan. Recommendation 4.2 refers to the delivery of enhanced human rights, diversity and ethics training and states that human rights/diversity training for all senior managers. However, to date the Garda Strategic Human Rights Committee has only met once in November 2005 and senior managers have only received an introductory day of human rights/diversity training.²⁰ Finally, the Gardaí have clearly missed several key completion dates in the Plan.

What can the CPT do?

- Seek to evaluate the extent to which human rights considerations of the nature alluded to in the CPT’s last report have effectively been mainstreamed into Garda training. This would entail, *inter alia*, a visit to the Garda Training College at Templemore (a one-hour direct train journey from central Dublin)
- Request, in advance of the visit, further and better particulars regarding the state of implementation of the Garda Human Rights Action Plan.

¹⁷ CPT Report Ireland, Visit 20/05/2002-28/05/2002, para 15.

¹⁸ Ionnán Consultants (2004) *An Garda Síochána Human Rights Audit*, Ionnán Consultants: UK, p. 24.

¹⁹ *Ibid*, p. 124.

²⁰ In November 2005, December 2005, and January 2006, Mark Kelly and Jim McManus of Human Rights Consultants delivered a series of these one-day seminars.

5. Foreign Nationals Detained under Aliens Legislation

The ICCL is extremely concerned about the situation of certain categories of foreign nationals detained under aliens legislation. In a recently published research report it was found that Irish law and practice fail to protect the rights of people refused permission to land and people detained pending deportation.²¹

Article 3 Issues at Ports of Entry

The ICCL is concerned that, when refusing leave to land to foreign nationals at ports of entry, immigration officers may not be giving enough consideration to the need to respect the prohibition against torture. According to the Garda National Immigration Bureau (GNIB), in 2003, 4,827 people were refused permission to land and, in 2004, 4,844 were denied entry to Ireland.²² To date, the ICCL has no reason to believe that Immigration Officers have undergone training on their obligations under Article 3 of the ECHR. In the absence of any independent monitoring at ports of entry; we believe that there is a serious risk that persons may be refused leave to land and summarily returned to countries in which they may be at risk of ill-treatment.

What can the CPT do?

- Closely examine immigration practices at the Garda National Immigration Bureau (GNIB) facilities at passport control in Dublin airport. Ideally, such an examination could be conducted, on an unannounced basis, upon the arrival in Ireland of part of the delegation. In particular, the CPT could seek to examine the quality of the risk assessment procedures conducted by immigration officers when refusing leave to land to foreign nationals, as well as the operation in practice of the safeguards that accompany a decision to refuse leave to land.

²¹ Kelly, M. (2005) *Immigration Related Detention in Ireland*, IRC, ICI and IPRT: Dublin.

²² *Ibid*, p.16.

Appendix 1: Supporting Documentation for the CPT's Delegation

An Garda Síochána (2005) *Garda Action Plan for the Implementation of the Garda Human Rights Audit Report*, Garda Commissioner, Dublin.

Garda Síochána Act 2005 Implementation Review Group (2005) *Report of the Garda Síochána 2005 Implementation Review Group*, Department of Justice, Equality and Law Reform: Dublin.

ICCL (2005) *ICCL Submission on the Garda Síochána Bill 2004*, ICCL: Dublin.

IHRC (2004) *Observations on the Garda Síochána Bill 2004*, IHRC: Dublin.

IHRC (2005) *Final Observations on the Criminal Justice Bill 2004*, IHRC: Dublin.

IHRC (2004) *The Treatment of Persons Deprived of Their Liberty in Ireland; Observations of the Irish Human Rights Commission on the Third Report of the European Committee for the Prevention of Torture on their Visit to Ireland in February 2002*, IHRC: Dublin

IHRC (2005) Irish Human Rights Commission; Resolution in relation to claims of US aircraft carrying detainees, IHRC: Dublin

Ionnán Consultants (2004) *An Garda Síochána Human Rights Audit*, Ionnán Management Consultants, published by Garda Commissioner in June 2005.

Morris Tribunal (2004) *Report of the Tribunal of Inquiry Set up Pursuant to the Tribunal of Inquiry (Evidence) Acts 1921-2002 into Certain Gardaí in the Donegal Division*, Government Stationary Office: Dublin.