

International Human Rights Standards on Torture and Ireland's Response

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I am very pleased to be here today on behalf of the Irish Human Rights Commission (IHRC) to speak at this seminar on “Survivors of Torture: the Irish Response”.

On the eve of the UN International Day in Support of Victims of Torture, I would like to congratulate the Peace Studies programme of the Irish School of Ecumenics and SPIRASI for organising this timely event and for inviting the Irish Human Rights Commission to give a presentation on this extremely important issue.

Torture is regarded as one of the most brutal and reprehensible human rights violations because of the untold physical and psychological suffering it causes. It is for this reason that it is absolutely prohibited under international human rights law. Sadly however, its practice remains widespread in many parts of the world today.

It is for this reason that the absolute prohibition which exists in international human rights law must be guaranteed by the international community.

Prevention is paramount and monitoring is essential to ensure that the guarantee of freedom from torture is upheld.

I am going to:

- focus my presentation on the core international human rights standards in relation to torture
- examine the legal and other measures that are designed to ensure compliance with these international human rights obligations.
- look in particular at the relatively new United Nations Optional Protocol for the Prevention of Torture, which is not yet in force in Ireland, that aims to prevent torture and other ill-treatment in all places of detention, by means of regular, unannounced inspection visits.
- I would also like to take this opportunity to give examples of some of the work carried out by the IHRC in this important area.

2 key Definitions in international human rights law

Torture: International human rights treaties broadly define torture as the intentional infliction of severe pain or suffering, whether physical or mental, for purposes such as obtaining information or a confession, or punishing or coercing or otherwise discriminating against a person.

Inhuman or degrading treatment or punishment: are broadly defined as the infliction of pain or suffering that do not reach the same level of severity as torture, but are capable of causing intense physical or mental suffering or giving rise to fear and anguish in the victim.

Ireland's obligations under International Human Rights Law in relation to Torture

Ireland has ratified a number of international and regional human rights treaties which prohibit all forms of torture and inhuman and degrading treatment or punishment.

These include

- UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter the UN Convention Against Torture)
- International Covenant on Civil and Political Rights
- Convention on the Rights of the Child
- European Convention for Protection of Human Rights and Fundamental Freedoms (ECHR)
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment which is specifically dedicated to the issue of torture prevention.

The prohibition against torture holds a specific status under international human rights law

- a “non-derogable” right

That means it cannot be justifiably violated under *any* circumstances. A state of war, a threat of war, internal political instability or other public emergency can never be used to justify torture.

- Both Article 3 of the European Convention on Human Rights (ECHR) and Article 4 of the Charter of Fundamental Rights of the European Union state that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

In numerous cases taken before the European Court of Human Rights, the Court has repeatedly held that the requirements of investigation and the difficulties inherent in the fight against crime, cannot justify placing limits on the protection of the physical integrity of individuals.ⁱ

Preventing Torture

As I have said in my opening, prevention of torture is paramount. The devastating physical and psychological impact of torture means that its effects cannot be easily redressed.

In working to uphold the prohibition on torture, the international human rights system has put in place a number of preventative mechanisms.

These preventative mechanisms include direct interventions, such as ensuring that no-one is removed to a country where they are at risk of torture, and monitoring mechanisms for places where torture may be most likely to occur.

Under the UN Convention Against Torture, the State is required to put in place effective legislative, administrative, judicial or other measures to prevent acts of torture on its territory.

In Ireland, the Criminal Justice (United Nations Convention) Against Torture Act, 2000 is one of the main pieces of legislation put in place to meet Ireland's obligations under the UN Convention against Torture.

This Act makes it an offence for a public official acting on behalf of the government, to carry out torture, whether the torture occurs inside or outside the State. Similarly, this Act makes it an offence for a person to carry out torture at the instigation of, or with the consent or acquiescence of, a public official inside or outside the State. The public official is not required to be an Irish national for this Act to apply.

The Government is also required to ensure all acts of torture are offences under Irish law and are punishable by the appropriate penalty.

Finally, the Government is required to ensure that law enforcement officials who deal with people in custody, such as the Garda Síochána or Prison Officers, receive training and education in relation to torture prevention.

One of the better known torture prevention mechanisms in international human rights law is the prohibition against 'refoulement'.

Refoulement is the prohibition against removing a person from the State where there are substantial grounds for believing that a person would be in danger of being subjected to torture.

The prohibition against “refoulement” is a core part of the State’s obligations under the UN Convention Against Torture.

Under the European Convention on Human Rights the European Court of Human Rights has also repeatedly emphasised that the absolute prohibition on torture under Article 3 also entails the principle of *non-refoulement*.ⁱⁱ

In a recent case against the Italian Government, the Court emphasised this applies irrespective of the conduct of the person the authorities wish to remove or the crime they are alleged to have committed.ⁱⁱⁱ

The area of immigration and the protection system for asylum seekers is one where the risk of *refoulement* may arise as it involves removing people from the State. Under current Irish law, deportations under Section 3 of the Immigration Act 1999 are subject to the prohibition against *refoulement* under Section 5 of the Refugee Act 1996.

As you will no doubt be aware, the entire immigration and asylum system will be reformed in the near future with the enactment of the Immigration, Residence and Protection Bill 2008 which has been before the Houses of the Oireachtas for some time. The 2008 Bill also provides that a foreign national who is being removed from the State will not be sent to a territory if doing so would be *refoulement*.

The IHRC, in its March 2008 submission on the 2008 Immigration Bill, made a number of recommendations to strengthen this fundamental guarantee to ensure that it is fully reflected at all stages of the immigration and protection process.

New International Human Rights Standards for the Prevention of Torture

In addition to legislative provisions prohibiting torture, and requiring training for those in the prison and police services, monitoring is considered a key component of preventing torture and ill-treatment.

Inspection of all places of detention is regarded as having an important deterrent effect for officials working in such institutions and as providing an opportunity for the inspecting authority to monitor conditions of detention and the general detention regime.

Currently, there is a system of independent international monitoring of places of detention under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Committee for the Prevention of Torture provides a non-judicial preventive mechanism for the protection of detainees.

It is based on a system of visits by the Committee for the Prevention of Torture (CPT).^{iv} The Committee Delegations who conduct visits to Member States of the Council of Europe have unlimited access to places of detention and may interview persons deprived of their liberty in private.^v On the basis of these visits, the CPT formulates a state report which is sent to the State concerned. The basis for the work of the CPT is cooperation with the State concerned.

The CPT has visited Ireland four times, most recently in October 2006.

The IHRC met with and briefed the Committee during its visit in 2006 and publicly expressed its concerns regarding safety in Irish prisons. The IHRC highlighted a number of issues such as the issue of slopping out and inadequate sanitation in a number of Irish prisons, the treatment of mentally ill prisoners and the absence of an effective system of accountability in our prisons.

These issues had been raised by the Committee for the Prevention of Torture and had also been addressed in detail in previous reports by the IHRC.

The Irish Human Rights Commission expressed particular concern at the fact that the Committee deemed a number of prisons to be unsafe for both prisoners and staff due to inter-prisoner violence.

In addition, the IHRC emphasised that prisoners who seek protection out of fear of attack should not be subjected to a punitive regime of isolation.^{vi}

There is another monitoring system for the prevention of torture which has been put into place by way of a new Optional Protocol to the UN Convention Against Torture which has recently entered into force and is currently being ratified by countries across the world.

The Optional Protocol to the UN Convention Against Torture (OPCAT) provides for a system of regular visits by independent international *and* national bodies to all places where persons are deprived of their liberty.

The focus of the optional protocol is on prevention of torture, rather than on a complaints-receiving or investigation role.

OPCAT provides for the inspection of:

- prisons,
- police stations
- psychiatric institutions
- care institutions (for children and the elderly)
- airports
- places of asylum/immigration detention
- places of ‘secret’ detention.^{vii}

Ratification of OPCAT is required for the Irish Government to be legally bound by its terms.

In order to ratify it, the State will have to designate one or more bodies as the National Preventative Mechanism.

The State can either assign the functions of the national preventative mechanism to an existing body, or establish an entirely new body as the national preventative mechanism.

The National Preventative Mechanism must conform to a number of strict criteria.

For example, it must possess the necessary mandate and powers and adequate resources which are ring-fenced for the purposes of carrying out

inspections. It must be independent and comply with the UN Paris Principles for the status and functioning of National Human Rights Institutions.

It must be mandated to submit proposals and observations concerning existing or draft legislation. Finally, it must be mandated to make recommendations to the Government and authorities and to publish its reports independently.^{viii}

This National Preventative Mechanism is an important development in international human rights law.

It recognises that a key component of ensuring adherence to international standards is national monitoring and prevention.

This realisation and increased linkage between the international and national systems is one which has developed over the past twenty years, and has included developments such as the creation of National Human Rights Institutions for the promotion and protection of human rights.

The Irish Human Rights Commission is Ireland's National Human Rights Institution, and as such, has a vital role to play in supporting and enabling this link between the international and national levels. This is why the IHRC engages actively with the UN, Council of Europe and other bodies to promote and protect international human rights standards.

In May 2008, the IHRC held a roundtable discussion on OPCAT to discuss the options for ratification of OPCAT and designation of a National Preventative Mechanism within Ireland.

A number of stakeholders attended this event, including representatives of the Department of Justice, Equality and Law Reform and members of the UN Subcommittee on Prevention of Torture, the international body mandated to carry out inspections in States which are party to OPCAT.

The IHRC is monitoring this area and aims to remain engaged to ensure that an effective national preventative mechanism is put in place in Ireland that best suits the Irish context.

Human Rights Standards relating to Rehabilitation

The final area of international law that I would like to mention briefly is the area of redress and rehabilitation for victims of torture.

Article 14 of the UN Convention Against Torture provides that the State responsible for the infliction of torture should ensure that victims of torture obtain redress and have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible.

In Ireland, the means of obtaining legal redress for victims of torture, inhuman or degrading treatment that occurred at the hands or direction of an official of the Irish State or with his or her consent exist *via* a criminal prosecution or a civil suit seeking compensation from the responsible authorities.

The fact that we are fortunate enough to live in a State where officially sanctioned torture is unthinkable should not allow us to forget the devastation it causes and the needs of survivors of torture living in Ireland today.

It is for that reason that we must applaud the dedicated, humanitarian work carried out by SPIRASI.

SPIRASI's provision of specialised medical and psychosocial support to victims of torture, and its promotion of their well-being, self-reliance and integration in the State help to fulfil the ideal expressed in Article 14 of the UN Convention Against Torture that victims of torture be provided with the means for "as full rehabilitation as possible".

While adequate redress and compensation under Article 14 from the State or other entity responsible for these gross violations may be difficult to obtain, the rehabilitation work carried out by SPIRASI is invaluable and we must commend them for it.

While rehabilitation for victims of torture is vital and must be supported, it is imperative that the full efforts of the international community are engaged in preventing torture.

The Irish Government must ratify the Optional Protocol to the Convention Against Torture as soon as possible, to ensure that there is a robust system in place to monitor places of detention.

The Irish government must also ensure that the national system for promoting, protecting and upholding human rights is strong and effective.

Ensuring that human rights are promoted and protected in all areas of Irish society is key to ensuring that torture and ill-treatment are truly things of the past.

It is the responsibility of all of us, whether statutory bodies, Government agencies and services or civil society organisations, to remain vigilant to ensure that all measures and mechanisms exist to prevent the suffering that results from this grave violation of human rights and to ensure that the victims of such crimes are rehabilitated to the fullest extent possible.

Thank you

ⁱ *Tomasi v. France*, Judgment of 27 August 1992, 15 EHRR 1, para. 119; *Ribitsch v. Austria*, Judgment of 4 December 1995, 21 EHRR 573, para. 38.

ⁱⁱ *Soering v. The United Kingdom*, Judgment of 7 July 1989, paras 85-91.

ⁱⁱⁱ *Saadi v. Italy*, Judgement of 28 February 2008, 24 BHRC 123, para. 127.

^{iv} Article 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

^v See 'About the CPT' on website of the European Committee for the Prevention of Torture at <http://www.cpt.coe.int/en/about.htm> Page last updated 7 May 2009.

^{vi} See IHRC Press Release, 'Urgent Action needed to address Unsafe and Degrading nature of Irish Prisons', 11 October 2007.

^{vii} See Association for the Prevention of Torture (APT), *The Optional Protocol to the Convention Against Torture: Frequently Asked Questions*.

^{viii} See APT, *Guide to the Establishment and Designation of National Preventive Mechanisms*, 2006.