



**ICCPR Follow-Up Submission on Ireland,  
subsequent to rule 71, paragraph 5 of the UN  
Human Rights Committee's rules of procedure**

**August 2009**

## Organisational Contact Details

### FLAC – Free Legal Advice Centres

FLAC is an independent human rights organization dedicated to the realisation of equal access to justice for all. It campaigns through advocacy, strategic litigation and authoritative analysis for the eradication of social and economic exclusion. FLAC offers information and referral over the telephone and free legal advice at local centres throughout the country. FLAC's areas of work include: credit and debt law; social welfare; public interest and human rights; comprehensive civil legal aid and access to the courts and to justice.

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### Irish Council for Civil Liberties (ICCL)

The ICCL is an independent human rights watchdog, which monitors, educates and campaigns in order to secure full enjoyment of human rights for everyone. The ICCL is involved in advocacy for positive changes in the area of human rights and monitoring policy and legislation to make sure that it complies with international standards. The ICCL also publishes reports and runs campaigns to raise public and political awareness of human rights, justice and equality issues.

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### Irish Penal Reform Trust (IPRT)

The IPRT is a non-governmental organisation (NGO) campaigning for the rights of people in prison and the progressive reform of Irish penal policy. The IPRT's work is based on the belief that the Irish Prison Service must meet or exceed international best practice and human rights standards, and that Ireland must reduce the overuse of incarceration by addressing the social inequality at the root of much criminal behaviour, and through the implementation of effective non-custodial sanctions and restorative justice programmes.

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## 1. Introduction

This submission aims to update the UN Human Rights Committee (hereafter “the Committee”) on the three priority areas highlighted in the Concluding Observations on Ireland of 23 July 2008.<sup>1</sup> The submission also highlights areas where the State has ignored the Committee’s recommendations and introduced measures in the last year which are regressive under the International Covenant on Civil and Political Rights (ICCPR). The following sections are organised in accordance with the Committee’s recommendations and section 5 includes an additional area of concern.

## 2. Priority Areas for the Human Rights Committee

### Para 11 – Extraordinary Rendition

The State has yet to establish a regime for the control of suspicious flights to ensure that all allegations of rendition flights are publicly investigated. In November 2008, the Government set up a Cabinet-Sub-Committee to examine certain aspects of international human rights law.<sup>2</sup> One of its key objectives is to examine legal provisions to ensure that the Gardaí and airport authorities have adequate legal powers for searches and inspections of aircraft. However, to date the Sub-Committee has not met and it has failed to issue any findings/reports.

### Para 15 – Conditions in Irish Prisons

#### Overcrowding in Irish Prisons

Since July 2008, overcrowding continues to be a major feature of Irish prisons. With a ‘design capacity’ of 2,969 places in July 2008, the Irish Prison Service had 3,589 people in custody.<sup>3</sup> Since July 2008, the prison population continued to grow steadily across the prison estate and reached nearly 4,000 at the end of May 2009.<sup>4</sup>

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<sup>1</sup> CCPR/C/IRL/CO/3, 30 July 2008.

<sup>2</sup> (3 Nov 2008) “Rendition Flights Promise Welcomed”, *Irish Times*. The Sub-Committee is comprised of the Minister for Foreign Affairs, Mr Michael Martin, TD; the Minister for Justice, Equality and Law Reform, Mr Dermot Ahern, TD; the Minister for Communications, Energy and Natural Resources, Mr Eamon Ryan, TD; the Minister for Environment, Heritage and Local Government, Mr John Gormley, TD and the Minister for Transport, Mr Noel Demspey, TD.

<sup>3</sup> (27 Jul 2008) “Overcrowding rife in all 14 Irish prisons”, *Sunday Tribune*.

<sup>4</sup> (1 Jun 2009) “Soaring numbers of inmates granted temporary release”, *Sunday Independent*.

On 21 May 2009, media reports highlighted the now-desperate situation in Mountjoy Prison in Dublin, quoting the figures provided by the Irish Prison Service: on 20 May 2009, the prison held 678 prisoners, 128 more than the official bed capacity (20% over) or 228 more than the design capacity of the prison (50% over).<sup>5</sup> Other establishments also continue to operate above capacity. On 23 May 2009, the press reported that 30 prisoners in the Limerick Women's Prison were held in 10 cells designed for single use.<sup>6</sup> According to the Prison Officers Association, two other prisons were also above capacity. Cork Prison held 298 prisoners and Castlerea held 265 prisoners even though the design capacity for both prisons was 150.<sup>7</sup>

In June 2009, it has been reported that prisoners were sleeping in showers due to overcrowding in Mountjoy Prison.<sup>8</sup> In the same month the press reported high levels of overcrowding in the Dóchas Centre, the women's prison at the Mountjoy complex, quoting the Governor Kathleen McMahon who said that the facility is operating at 40% above capacity.<sup>9</sup> In its follow-up submission to the Committee, the Government states that "[a]s of 23 July 2009 there were 3,786 permanent beds available in the prison system. On the same day there were 3,924 prisoners in custody. This represented an occupancy level of 104%." These figures, however, refer to what the Government calls 'the official bed capacity'. The use of this measure does not appropriately reflect the situation of prison conditions and fails to reflect the measures taken by the Prison Service to achieve such capacity, including the detention of more than one prisoner in single-use cells in a number of establishments. The *Sunday Tribune* published the following figures on 28 June 2009 which relates to the whole of the prison estate.<sup>10</sup>

- 2,082 prisoners were housed in multi-occupancy cells at the end of June 2009
- 1,326 prisoners were in double cells, with 576 held with two other prisoners
- A total of 120 prisoners were held in cells with three other prisoners
- Up to 60 prisoners were held in cells with four other prisoners

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<sup>5</sup> (21 May 2009) "Inmates 'crammed' into Mountjoy", *Irish Examiner*.

<sup>6</sup> (23 May 2009) "30 female prisoners crammed into 10 single cells", *Irish Examiner*.

<sup>7</sup> *Ibid.*

<sup>8</sup> (6 Jun 2009) "Mountjoy inmates being forced to sleep in showers", *Irish Times*.

<sup>9</sup> (20 Jun 2009) "Governor warns of overcrowding in women's prison", *Irish Times*.

<sup>10</sup> (28 Jun 2009) "Prisoners forced to share cells due to increase in convictions", *Sunday Tribune*.

## Violence in Irish Prisons

The serious situation in relation to overcrowding contributes to continuing high levels of violence in prisons. In the period between March to July 2009, eight serious incidents were reported by the press, one resulting in a death of a prisoner assaulted by another prisoner in Mountjoy Prison.<sup>11</sup> Three of those took place in Mountjoy Prison over three consecutive days in June 2009.<sup>12</sup> We are disappointed that the Government in its submission does not provide information on those incidents, particularly on the incident in Mountjoy Prison that resulted in a death of a prisoner.

## Prison Building Programme

The physical conditions in the prisons and, in particular, the on-going use of 'slopping-out' of human waste remain a serious concern. Despite the Government's claims to the contrary, significant questions remain as to the direction of the prison building programme. On 7 May 2009, the *Corkman* newspaper reported that doubts about the building of a new 'super-prison' at Kilworth were expressed by the Director General Brian Purcell who stated that the prison, planned to replace the old facilities of Cork Prison, will not be built before Thornton Hall is finished.<sup>13</sup> On 19 May 2009, the Irish Prison Service indicated that they have "broken off negotiations with the Léargas Consortium, the preferred bidder in the competition to design, build, maintain and finance a major prison facility at Thornton in North County Dublin".<sup>14</sup>

After much speculation as to the future of Thornton Hall, the Minister for Justice, Equality and Law Reform announced on 23 June 2009 that this project will proceed on a phase-by-phase basis, starting in late 2009 or early 2010.<sup>15</sup> There are no further details available as to the proposed timeframe of the project, although it has been suggested in the press that the new prison will not be operational before 2015, five years after its original timeframe.<sup>16</sup> We note that the Government's submission does not provide a detailed timetable for the building on Thornton Hall; neither does it provide any information regarding the future of the investment in the new prison at Kilworth.

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<sup>11</sup> (6 Jul 2009) "Hostage-takers demand Valium and Big Macs in prison siege", *Irish Independent*.

<sup>12</sup> *Ibid*; see also: (12 Jun 2009) "Mountjoy jail crisis talks after female officer hospitalized", *Irish Independent*; (11 Jun 2009) "Part of Mountjoy locked down after disturbance", *Sunday Tribune*.

<sup>13</sup> (7 May 2009) "Funding doubts over Kilworth's 'super-prison'", *Corkman*.

<sup>14</sup> Irish Prison Service (Press notification) *Léargas Bid for Thornton Rejected* (available at: <http://www.irishprisons.ie/MediaNotification-LeargasbidforThorntonrejected.htm>).

<sup>15</sup> Department of Justice, Equality and Law Reform (Press notification) *Government go-ahead for revised Thornton Hall Prison* (available at:

<http://www.justice.ie/en/JELR/Pages/Government%20Go-Ahead%20for%20revised%20Thornton%20Hall%20Prison>).

<sup>16</sup> (21 Jun 2009) "Funding crisis puts Thornton Hall plan back three years", *Sunday Tribune*.

## Para 22 – Non-Denominational Primary Education

### Lack of Regional Spread for New School Model

The Government's follow-up report highlights its activities regarding the establishment of a new model of primary school and notes that: "the new model of primary school patronage is not intended to replace the existing models but to provide an additional model, likely to be used particularly in areas of growing population". However, the Committee has made it very clear in its recommendation that Ireland should ensure that non-denominational education "is widely available in all regions of the State party".<sup>17</sup> If the new model of school is only to open in areas of high population growth, namely parts of Dublin (Ireland's capital city), the vast majority of parents in the state will continue to have no choice but to send their children to denominational schools.

### Provision of Ethics and Religious Education

In an address given by the former Minister for Education, Mary Hanafin TD, on the new school model, the Minister indicates that these schools will be "multi-faith and will aim to accommodate the wishes of parents to have their children receive religious education, undertake faith formation, or follow an ethics programme during the school day".<sup>18</sup> However, there is currently no formal ethics programme on the school curriculum and the religious educational programme that does exist employs a religious narrative deriving from Christian, Muslim, and Jewish sacred texts which aims to shape children's understanding of moral and ethical issues, and cultivate a relationship with a personal creator-God. Furthermore, the programme is not restricted to knowledge of religion; it requires that children engage in religious practice, for example, the memorizing and recitation of prayers, as well as meditative practices intended to foster a sense of God's presence.<sup>19</sup>

The failure to separate *religious education and faith formation* from *general ethics* education may force parents to withdraw their children if they do not wish them to receive doctrinal religious instruction. However, no clear exemption scheme has been put in place. Doubts remain as to whether parents can opt out of the entire religious education programme for their children or whether they can choose to request only partial exemption from the religious education programme. Concerns also remain as to whether such an arrangement places an undue burden upon parents who do not share an 'Abrahamic' religious perspective to determine those elements of the curriculum which

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<sup>17</sup> CCPR/C/IRL/CO/3, para 22.

<sup>18</sup> Speech delivery by the Minister for Education on 25 March 2008 to the Irish National Teachers Organisation (INTO) Congress in Kilkenny. This speech is accessible at: <http://www.education.ie/home/home.jsp?maincat=&pcategory=10861&ecategory=11469&sectionpage=12251&language=EN&link=link001&page=2&doc=40146>

<sup>19</sup> Information supplied by on Wednesday, 29 August 2009 by Dr Alison Mawhinney (School of Law, Queens University Belfast) who is an expert on access to education,

are not in conformity with their own religious or philosophical convictions. There is no information available as to what alternatives are available to children who do not take part in either class.

### **Roman Catholic Sacrament Preparation**

In addition to offering doctrinal religious education, the new model of primary school will provide sacramental preparation for Roman Catholic children (First Confession and First Communion take place at the age of 7-8 and Confirmation at the age of 11) during the school day. Sacrament preparation will be given by teachers trained and paid for by the State. The Department of Education and Science has given assurances to the Roman Catholic Bishops that such provision will be made;<sup>20</sup> no equivalent assurances has been sought or received by other denominational groupings. The proposed new model will be a rare example of publicly funded, publicly run primary schools providing instruction in the sacramental rites of a particular religion.

While it is acknowledged that international human rights law permits the teaching of doctrinal religious instruction in schools, the aim of attempting to provide faith formation in each of the *main* faiths in a non-denominational school is problematic at a number of levels. First, it prioritises certain faiths (Abrahamic faiths) above other belief systems. Second, it can cause severe logistical challenges in schools. On 30 June 2008, the Irish Primary Principals' Network ([www.ippn.ie](http://www.ippn.ie)) published the results of a comprehensive independent survey of school principals and parents on the place of religion in primary schools. It found that "the proposed new [...] model of multi-faith schools where the school is responsible for religious instruction and faith formation for each faith group is considered difficult or impossible to implement by 80% of principals".

## **3. Reservations**

### **Para 5 – Withdrawal of Reservations under the ICCPR**

Despite the intention expressed by the Irish Government at the time of the examination of the Third Periodic Report to work towards withdrawing its remaining reservations, reservations are still in place under Article 10(2), Article 19(2) and Article 20(1).

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<sup>20</sup> (13 Nov 2008) "O'Keefe reassures on religious instruction", *Irish Times*.

## 4. Regressive Measures since Ireland's Last Examination

### Para 4 – Domestic Violence

At the third periodic review of Ireland by the Committee in 2008, the State referred to Cosc – the National Office for the Prevention of Domestic, Sexual and Gender-based Violence as an example of its commitment to addressing domestic violence. In 2008, Cosc had a budget of €3,450,000 and in 2009 its budget was cut by 18% to €2,846,000.<sup>21</sup> There is concern that this cut will seriously hamper the State's ability to comply with the Committee's recommendation.

### Para 7 – Strengthening the independence and capacity of the Irish Human Rights Commission

In July 2008, one week after Ireland's formal examination under the ICCPR, the Secretary General of the Department of Justice, Equality and Law Reform wrote to the heads of the Irish Human Rights Commission,<sup>22</sup> the Equality Authority,<sup>23</sup> the Equality Tribunal,<sup>24</sup> the Data Protection Commissioner<sup>25</sup> and the National Disability Authority<sup>26</sup> seeking responses in relation to a proposed merger of all five bodies.<sup>27</sup> In 2008, the Government announced that the merger would not go ahead but instead, it drastically cut the Equality Authority's budget by 43% from €5.9 million to €3.2 million for 2009. It also reduced the Irish Human Rights Commission's budget from €2.1 million to €1.9 million for 2009.<sup>28</sup> These cuts have seriously hampered the effectiveness of the Irish Human Rights Commission Legal and Inquiries Team which has lost key staff members as a result. The cuts have also seriously affected the legal and public information work of the Equality Authority and it has also resulted in its Chief Executive<sup>29</sup> and six board members resigning in protest.<sup>30</sup>

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<sup>21</sup> 2009 Estimate for Public Services and Summary Public Capital Programme, p. 19.

<sup>22</sup> Accessible at: [www.ihrc.ie](http://www.ihrc.ie)

<sup>23</sup> The Equality Authority is a national independent institution established to support the implementation of Ireland's anti-discrimination legislation. It also provides legal advice to individuals and assistance in taking anti-discrimination cases. The Authority is accessible at: [www.equality.ie](http://www.equality.ie)

<sup>24</sup> Accessible at: [www.equalitytribunal.ie](http://www.equalitytribunal.ie)

<sup>25</sup> Accessible at: [www.dataprotection.ie](http://www.dataprotection.ie)

<sup>26</sup> Accessible at: [www.nda.ie](http://www.nda.ie)

<sup>27</sup> (13 Sep 2008) "Rights agencies submit response to Government's amalgamation plans", *Irish Times*.

<sup>28</sup> (15 Oct 2008) "Human rights groups criticise 'savage cuts', *Irish Times*.

<sup>29</sup> (13 Dec 2008) "Equality body chief praised for courage and integrity", *Irish Times*.

<sup>30</sup> (20 Jan 2009) "Five Equality Authority board members resign", *Irish Times*.

## Para 8 – Recognition of the Rights of Persons with Identity Issues

The State has not yet recognised the rights of persons with gender identity disorders to a change of gender by permitting the issuance of new birth certificates. This is in spite of recommendations made by the Irish Human Rights Commission<sup>31</sup> and Mr Thomas Hammarberg,<sup>32</sup> the Council of Europe Commissioner for Human Rights, as well as this Committee.

The State's appeal of the decision of the High Court in the *Foy* case<sup>33</sup> has still not been scheduled for hearing before the Supreme Court.

## Para 10 – Equality between Men and Women

The State has not taken any measures towards amending the Constitution to replace its sexist and outdated language relating to Article 41.2.

Funding of the National Women's Strategy (NWS) has been severely cut in the last year. For example, in the 2009 April Budget, almost €5 million was allocated to the NWS with almost €4 million being redirected within the Department of Justice, Equality and Law Reform. In the 2008 Budget, €9 million was also redirected to that department.<sup>34</sup>

The level of female candidates in political life remained extremely low after the 2009 European and Local June elections. Female candidates constituted 16.5% per cent of all candidates elected in the Local Elections. In the European Election race, female candidates represented 27.27% of all candidates. Of the twelve female candidates running only three were elected as MEP's. Of the 883 Local Election seats to be filled in the election, just 146 were won by women.<sup>35</sup>

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<sup>31</sup> (1 October 2008) "Irish law needs urgent reform to ensure the rights for transgendered people", Irish Human Rights Commission Press Release.

<sup>32</sup> Video message delivered by Commissioner Hammarberg at the Transgender Equality Network Ireland conference, 17-18 April 2009 held in the Law Society of Ireland.

<sup>33</sup> [2007] IEHC 470, unreported. In the *Foy* case in October 2007, the High Court held that the failure of the State to officially recognise the realigned gender of a woman and its failure to issue a new birth certificate to reflect the realigned gender, amounted to a breach of Article 8 (right to family and private life) under the European Convention on Human Rights and potentially Article 12 (right to marry and found a family) if *Foy* was free to marry.

<sup>34</sup> (30 Jul 2009) "Women's organisations are facing closure as government ransack equality budget according to the National Women's Council of Ireland", National Women's Council of Ireland Press Release.

<sup>35</sup> Irish Times Election Supplement, Tues 9 June 2009.

### **Para 13 – Abortion**

The Government has made no efforts to bring its laws into conformity with the ICCPR and its jurisprudence. On 9 December 2009, the Grand Chamber of the European Court of Human Rights will hear a case brought by three women against Ireland challenging the State's ban on abortion.<sup>36</sup> The applicants' claims relate to the right to life, the right to freedom from cruel or inhuman treatment, the right to freedom from discrimination and the right to family and private life.

### **Para 14 – Garda Síochána Ombudsman Commission (GSOC)**

In our 2008 shadow report under the ICCPR,<sup>37</sup> FLAC, the ICCL and the IPRT provided statistics from GSOC's annual reports indicating that it had a backlog of cases. In April 2009, GSOC publicly stated that it had cleared the backlog.<sup>38</sup> However, GSOC has been attempting to 'lease back' the investigation of certain complaints to the Garda Síochána to investigate. This practice removes the guarantee of independence from the investigation of the case and is clearly a retrograde step.

GSOC is currently headed by three commissioners who are formally appointed by the President on the recommendation of the Oireachtas (Irish Parliament). However, the Oireachtas recommendation is in reality the result of a decision made by the Minister for Justice, Equality and Law Reform. This has given rise to complaints of political interference as these appointments are not made through a public recruitment process. More recently, the Minister recommended the appointment a former civil servant to be the Chairman of the Ombudsman Commission, and that individual has now taken up his position.<sup>39</sup>

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<sup>36</sup> *A, B and C v. Ireland*, application no. 25579/05, Grand Chamber, European Court of Human Rights. The case is scheduled for an admissibility hearing before the Grand Chamber in the first instance.

<sup>37</sup> GSOC issued its second Annual Report on 9 May 2008 and it reveals that it has received 2,905 complaints and 294 referrals from the Garda Commissioner. The Report also indicates that GSOC has sent nine files to the Director of Public Prosecutions and that over 750 investigations of criminal conduct are ongoing. On the same day, GSOC also released a "Two Year Report" reviewing its own effectiveness, and the adequacy of its powers under the 2005 Act. That Report indicates that given the volume of complaints which GSOC has received it is now considering 'leasing back' the investigation of a number of complaints involving potentially criminal conduct by Gardaí to the Garda Commissioner.

<sup>38</sup> Commissioner Carmel Foley made this statement from the floor of the NGO Follow-up ICCPR follow-up conference on Monday, 6 April 2009 at the Radisson Hotel.

<sup>39</sup> (4 Feb 2009) "Gallagher to chair Garda Ombudsman Commission", *Irish Times*.

## Para 16 – Anti-Trafficking Measures

The Government updated its Administrative Immigration Arrangements for the Protection of Victims of Trafficking in November 2008.<sup>40</sup> The arrangements now provide for a recovery and reflection period for victims of human trafficking of 60 days (not extendable), and for the granting of a (renewable) temporary 6-month residence permit to a victim that cooperates with the authorities. The granting of a residence permit to a victim of trafficking on humanitarian grounds is not provided for under the Administrative Immigration Arrangements.

Ireland has not yet ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Palermo Protocol).

## Para 18 – Imprisonment for Debt

We congratulate the State on the introduction of the Enforcement of Court Orders (Amendment) Bill 2009.<sup>41</sup> The Bill was proposed by the Government in response to the High Court decision in the *McCann* case which it lost in 2009.<sup>42</sup> The new Bill attempts to remedy defects in the 1940 legislation highlighted in the case by effectively making attendance at the committal hearing compulsory, and by providing that the onus be placed on the creditor to establish that the debtor's failure to pay instalments was due to wilful refusal or culpable neglect. It further provides for the debtor's right to criminal legal aid where he or she cannot afford a solicitor.

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<sup>40</sup> This document is accessible on the website of the Irish Nationalisation and Immigration Service: <http://www.inis.gov.ie/en/INIS/Victim%20of%20Human%20Trafficking%20-%20notice%20Nov%202008.pdf/Files/Victim%20of%20Human%20Trafficking%20-%20notice%20Nov%202008.pdf>

<sup>41</sup> The Bill is accessible at the following location: <http://www.oireachtas.ie/viewdoc.asp?DocID=12341&&CatID=59>

<sup>42</sup> *McCann (Applicant) and Judge of Monaghan District Court, The Commissioner of An Garda Síochána, The Chief Executive of the Irish Prison Service, The Minister for Justice, Equality and Law Reform, Ireland and the Attorney General (Respondents) and the Human Rights Commission, Monaghan Credit Union (Notice Parties)* High Court, 13-15 May 2009 [2006] No. 4300P. In this case, the High Court declared the Enforcement of Court orders Act of 1940 unconstitutional for three reasons. Firstly, it allowed for the imprisonment of the debtor in his/her absence. Secondly, the onus of proof was on the debtor to show that his/her failure to pay an Installment Order on a judgment is not due to 'wilful refusal' or 'culpable neglect'. Thirdly, the State did not provide legal representation for the debtor to defend him or herself. Given that the sanction that can be imposed at such a hearing is a term of imprisonment, these were found to be unacceptable infringements on a debtor's right to liberty and fair trial procedures.

Concerns remain that it may still be possible in certain circumstances for a debtor to be imprisoned for failure to fulfil a contractual obligation, but the new safeguards do greatly reduce this probability. The Law Reform Commission will publish a consultation paper on debt enforcement in September 2009 and this may be a possible source of future changes in the law.

#### **Para 19 – Provisions in the Immigration, Residence and Protection Bill 2008**

The Immigration, Residence and Protection Bill 2008 has completed its passage through the Lower House of Parliament (the Dáil) and has yet to progress to the Upper House of Parliament (the Seanad). So far the Government has not made any amendments to the Bill in order to comply with the Committee's recommendations despite the fact that it had plenty of opportunity when the Bill was being considered by the Select Committee on Justice, Equality, Defence and Women's Rights in late 2008.<sup>43</sup> It is understood that the Bill will continue its passage through the Oireachtas (Houses of Parliament) in late 2009.

#### **Para 20 – Special Criminal Court**

In June and July 2009, the Government rushed the Criminal Justice (Amendment) Act 2009 through the Oireachtas (Houses of Parliament).<sup>44</sup> This Act has far-reaching consequences for the criminal justice system and the rights of individuals. In particular, the legislation solidifies the capacity of the non-jury Special Criminal Court to try persons charged with the offence of directing a criminal organisation, participation or contribution to certain activities and the commission of an offence for a criminal organisation.<sup>45</sup>

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<sup>43</sup>The Bill as amended by the Select Committee on Justice, Equality, Defence and Women's Rights is accessible at the following location (see above). From this version of the Bill it is apparent that the Government has failed to implement the Committee's recommendations.

<http://www.oireachtas.ie/documents/bills28/bills/2008/0208/b02a08d.pdf>

<sup>44</sup> The Bill and parliamentary debates covering its passage are accessible at the following location: <http://www.oireachtas.ie/viewdoc.asp?DocID=12287&&CatID=59&StartDate=01%20January%202009&OrderAscending=0>

<sup>45</sup> Section 8 (1), Criminal Justice (Amendment) Act 2009.

Clearly this change is in direct contravention of the Committee's recommendation and its decision in the *Kavanagh* case.<sup>46</sup> The protection of jury members and witnesses has been mooted as the reason why the remit of the Special Criminal Court should be extended. However, as recently as June 2009, speaking at the Annual Prosecutors' Conference 2009, the Director of Public Prosecutions (DPP) raised an important point in relation to the participation of the ordinary citizen in the criminal justice system through service on juries. This, he said, "imports a degree of democratic legitimacy into the system".<sup>47</sup>

A central concern identified by the Committee in the *Kavanagh* case was the discretion afforded to the DPP, whose decisions are not made public, in assigning cases to the Special Criminal Court. Discretion remains with the DPP in this Bill (albeit that there is now to be a presumption in favour of the use of the Special Criminal Court) and no clear referral grounds are stipulated in the legislation. This is clearly in breach of the Committee's recommendations.

#### **Para 21 – Religious Oaths for Judges**

No steps have been taken in the past year to amend the constitutional requirement for judges to make a non-religious declaration when taking office.

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<sup>46</sup> Communication to the Committee No 819/1998: Ireland, *Kavanagh v. Ireland*, 24 April 2001, CCPR/C/71/D/819/1998.

<sup>47</sup> Hamilton (23 May 2009), "Opening Address" at the 10th Annual National Prosecutors' Conference, Dublin Castle Conference Centre, at p. 2.

## 5. Additional Area of Concern

### Article 9 (Right to Liberty) and Article 14 (Right to Fair Trial)

#### Secret Detention Hearings

Under Part 4 of the Criminal Justice (Amendment) Act 2009, procedures of District Court detention hearings for the purposes of extending the detention of the person being questioned under the Offences against the State Act 1939 have changed.<sup>48</sup> Contrary to the principles of fair trial, the Act allows for a hearing to take place in private if the judge considers that there may be a risk of prejudice. This provision fundamentally alters the nature of criminal justice in Ireland and allows a judge to hear evidence of a Garda (police officer) of any rank, in private, and without legal representation, in order to justify the continuing detention of a person. This includes answers to questions under cross-examination without either the defendant or his or her legal representative or the prosecutor present.<sup>49</sup> In essence what this means is that a person can be held without knowledge of the grounds on which the judge is justifying their continued detention. This detention can be justified by the undisclosed information from any member of the Garda Síochána, regardless of his or her expertise or experience. There is no opportunity to test those making the charge or complaint by cross examination in violation of article 14(3)(e) of the ICCPR.

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<sup>48</sup> Section 20, Criminal Justice (Amendment) Act 2009.

<sup>49</sup> If the judge considers that there is nothing material in the evidence, the tendering of the evidence will be heard again in open court.