



# Report on Irish Prisoners Abroad

Prepared by Chris Flood for the  
Minister for Foreign Affairs Mr. Dermot Ahern, T.D,



Report by Mr. Chris Flood to  
the Minister for Foreign Affairs  
Mr. Dermot Ahern, T.D.

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# Foreword



I am deeply grateful to Dermot Ahern, Minister for Foreign Affairs, for affording me the opportunity to undertake this important task. It was an exercise which I greatly valued.

Over the course of the last year, I gained many worthwhile insights into the circumstances of Irish prisoners overseas. It is an experience I will always retain. I regard it as personally enriching and rewarding.

As a people, we have a reputation for compassion and humanity which extends to those outside our country. This is clearly evidenced in Ireland's commitment to development in the Third World and in our responses to the Tsunami disaster in Asia and the evacuation of Irish citizens in Lebanon. I believe that this commitment to assist those less fortunate is also to be found in our attitude to our citizens who have, rightly or wrongly, been incarcerated abroad. This does not mean that we, as a people, are prepared to stand over wrong doings and criminality. However, we want to see Irish nationals receive accepted international standards of treatment, if imprisoned abroad.

I also would like to pay tribute to those working abroad for the welfare of our imprisoned citizens. Many freely give of their own time and incur expenses to ensure their welfare is safeguarded. I also want to thank those prisoners who spoke to me or took the time and effort to write to me, as well as those in the penal systems abroad who place the welfare of those entrusted to them at the top of their agenda. I also want to thank those relatives and friends of prisoners who wrote to me.

I would also like to express my gratitude to the following who were helpful to me during the course of the study:

- ▶ Ray Bassett, John Neville and Breda Lee of the Department of Foreign Affairs, Dublin

- ▶ Father Gerry McFlynn, Father Alan Hilliard and Gráinne Prior of the Irish Commission for Prisoners' Overseas
- ▶ Mr Liam O'Dwyer, formerly Department of Social Services, London
- ▶ Mr Paddy Hill, member of the Birmingham Six and founder of the Miscarriages of Justice Organisation (MOJO)
- ▶ Ms Gareth Pierce, Solicitor

I would especially like to place on record my own personal thanks and appreciation to Mr James O'Connell, formerly of the Department of Foreign Affairs and now in the Department of the Environment. James was seconded to me during the study and was of great assistance to me throughout my research.

In conclusion, I now put forward this report in a constructive and practical spirit and believe that, if the recommendations are accepted and implemented, we will have an extremely effective and responsive system in place to help ensure the welfare of Irish prisoners overseas. I believe that this is what the people of Ireland would expect.

A handwritten signature in dark ink, appearing to read 'Chris Flood'.

**Chris Flood.**  
22 May 2007

# Key Recommendations

## Minister for Foreign Affairs

- ▶ Recognise there is a need to ensure best international practice is employed by the Department of Foreign Affairs in relation to the support it gives to Irish prisoners abroad
- ▶ Establish a new unit within the Department of Foreign Affairs, dedicated to the consular needs of prisoners, with its own separate complement of staff. This new unit to be headed by a senior officer with the objective of overseeing prisoner welfare matters and keeping up to date with international developments in this area. The Unit to ensure that the Department's approach corresponds with the best in the world.
- ▶ Establish a register of Irish prisoners abroad. Such a database should include personal details of the prisoner, sentence, health status, last visit by a consular official etc. It should also provide a breakdown of Irish prisoners abroad on a gender basis. The data base could also include information on family visits and in particular if the prisoner is receiving financial support from their family,
- ▶ Establish that every prisoner overseas has a right to a consular visit at least once a year and twice in more difficult/distant countries. Ensure that prisoners should be visited as soon as possible after arrest.
- ▶ Embassies to pursue automatic notification of consular staff particularly on conviction and arrival in a prison facility.
- ▶ In view of the large number of Irish prisoners in Britain, agree with NGOs to establish special arrangements for visiting prisoners in Britain. The Irish Embassy in London should be properly resourced to ensure that it is in a position to undertake its responsibility in relation to prisoners.
- ▶ The Department of Foreign Affairs should endeavour to ensure that Irish prisoners are not falsely registered as British, as sometimes occurs.
- ▶ Establish a hardship fund, administered by the new unit in the Department of Foreign Affairs, to assist prisoners and/or their families in particularly difficult cases. Every effort should be made to ensure full transparency in entitlement to support from the hardship fund. The extent of the fund should be reviewed on an annual basis.
- ▶ Provide details of English-speaking lawyers and advice on local legal systems to prisoners and their families
- ▶ In view of the disproportionate number of deaths and self-harm incidents among Irish in custody, Embassies should assist bereaved families and advise on legal representation.
- ▶ Department and Embassies to act as an intermediary between families/prisoners and the prison authorities abroad. The Department should be in a position to advise families if extended visiting hours are permitted for families travelling a long distance to a prison.
- ▶ Give priority to issues relating to prisoners' health
- ▶ Engage in ongoing consultation with interested NGOs and relevant Government Departments in the form of regular six monthly meetings
- ▶ Irish consular staff should be trained in addressing prisoner needs and bodies such as the Irish Commission for Prisoners Overseas (ICPO) could play a very useful role in this area.
- ▶ Provide funding to NGOs, such as the ICPO, in support of policy dimension, particularly in the promotion of prison reform.
- ▶ Prisoners to receive an information pack including full details of ICPO and a permission form.
- ▶ Consider a financial contribution towards organisations working to overcome miscarriages of Justice.
- ▶ Recognising the particular difficulties faced by Irish Elders in Prison, funding to be provided to organisations like Aisling and to the FIS Pensioners Group.



- ▶ In the event of a transfer request from a convicting State, the Irish Government should arrange a Consular visit to inform the Prisoner of their rights and discuss arrangements for their re-settlements, should they choose to return to Ireland. The Irish Government should not participate in any transfer arrangement that does not have the consent of the Prisoner concerned.
- ▶ Consideration should be given to appointing additional Honorary Consuls in areas of the World where there is no Irish diplomatic or consular representation at present.
- ▶ Raise the issue of prison conditions at EU level, so that European countries can work together to improve conditions in third countries.
- ▶ The Department of Foreign Affairs should consider the provision of financial and diplomatic support for the European Group for Prisoners Abroad in resisting further pressures to normalise the practice of compulsory transfer of Prisoners.
- Former prisoners posing a risk to security.
- Address welfare needs of prisoners and help in re-settlement.
- Establish a sex offenders' register.
- Provide funding for an appropriate re-settlement agency.
- ▶ The Irish Government should seek to block repatriation without agreement with particular reference to Britain.
- ▶ Eliminate delays surrounding the transfer of convicted prisoners by putting in place effective administration procedures taking advantage of New Technology. The principal considerations should be welfare, family and re-settlement. The process should be open and transparent and notification of progress in key stages should be shared with the requesting prisoner, with consular staff, with NGOs and prisoners' family.
- ▶ The Irish Government should reject the use of transfer arrangements to address prison overcrowding in origin and destination states and therefore reject the case for compulsory transfer of Prisoners against their will.

### **Recommendations which cover a number of Departmental Responsibilities**

- ▶ The Irish Government must continue to support the extension of humanitarian arrangements for the transfer of convicted Prisoners to serve out their custodial sentences at a location in the country of imprisonment or back home in Ireland best suited to protect the prisoner, their entitlement to the care and support of family and friends and creation of the best possible circumstances for post-custody re-settlement and rehabilitation. It should be noted this will include establishing new arrangements outside of the EEA.
- ▶ Noting that when an Irish Prisoner completes their sentence in a prison overseas, they are free to decide to return or not to return to Ireland in some circumstances the State may still have duties, such as:
  - Public safety may require monitoring or registration of sex offenders.

# Executive Summary

## Background

- ▶ The Minister for Foreign Affairs, Dermot Ahern, asked me to prepare this report. This request arose out of a commitment in the Programme for Prosperity and Fairness (PPF) to undertake to “identify the numbers of Irish prisoners abroad and their needs for services in prison”. This in turn reflected a concern within the country that the welfare of Irish prisoners abroad should be afforded a high priority.
- ▶ The issue of prisoners in Ireland has always been an emotive and complex one in Ireland. Many of the founders of this State spent time behind bars, much of it overseas. Kilmainham Prison is now a shrine to the establishment of a separate State on this island. Tens of thousands of Irish men and women were shipped as convicts to Australia on the basis of an often unfair justice system where they subsequently made a huge contribution to the establishment of the new country of Australia.
- ▶ In more recent times, there have been very high profile cases of miscarriages of Justice in Britain including the Birmingham Six, the Maguire family, the Guildford Four, Giuseppe Conlon etc. There was also widespread concern in Ireland at the harsh regime inflicted on certain Irish prisoners in Britain during the recent Troubles.
- ▶ There are also countervailing impulses, as the whole issue of victims’ rights has quite correctly come to the fore. There is a strong recognition throughout society that just punishment should be proportionate to the crime committed. This is especially true for crimes of violence or for activities such as drug dealing.
- ▶ I have tried to reflect both tendencies in my report. I believe that if Irish people commit crimes abroad, it is only right and proper that they are made fully amenable to local justice. However, there is a moral and legal obligation on the Irish State to ensure that our people are treated correctly and have access to proper care.

## Objectives

- ▶ I have endeavoured to quantify the number of Irish prisoners abroad and the countries in which they are incarcerated. In reality the issue is dominated by the Irish prisoners in Britain who account for about 7/8s of the total.
- ▶ I have adopted the approach of matching Ireland’s performance against that of other countries. I believe that we are reasonably comparable in our approach to that of other European countries. However, I have identified a number of areas where I believe that we need, as a country, to upgrade our efforts. This is reflected in my key recommendations.
- ▶ I was conscious of the outstanding role that the ICPO plays in regard to overseas prisoners. This country has a long and honourable tradition of NGOs and the ICPO are very much in that tradition. It is my view that while the State has primarily responsibility for looking after the welfare of our citizens imprisoned abroad, this should be carried out in partnership with NGOs, especially the ICPO.

## Prisoner’s Unit

- ▶ While the Department of Foreign Affairs has in general operated a good support system for Irish prisoners, I believe that a dedicated unit should be established, within the Department, to oversee prisoner’s welfare issues. The establishment of such a unit, headed by a senior officer (Principal Officer) and with adequate staff resources would ensure that there would be a systematic approach to this area. It could direct the activities of our diplomatic missions abroad and ensure that all prisoners, who so desire, are visited on a regular basis.
- ▶ It would also ensure that the recommendations contained in this report are fully implemented.
- ▶ This unit should work in close cooperation with the ICPO and other NGOs as well as

providing the Minister with advice on the latest international developments.

## Hardship Fund

- ▶ While the bulk of Irish prisoners are in British jails, increasing affluence and a young population means that Irish people are travelling to more “exotic” places.<sup>1</sup> The Irish Honorary Consulate in Quito has witnessed increasing numbers of young Irish coming to the Andes. Growing numbers of Irish are backpacking through Indochina.
- ▶ While the vast majority of such travellers have trouble free experiences, the Consular Division of the Department are reporting that small numbers of Irish are falling victim to local crime and some others are being arrested for offences. When an arrest is made and if a custodial sentence is given, this can place pressure on missions. Some countries provide very little for prisoners and there is a need for supplementary food and toiletries. Against that background, I believe that there is a need for funds which the local mission (Embassy or Consulate) can draw on to maintain prisoners’ health in such circumstances. The Department of Foreign Affairs should also assist in providing modest grants for the translation of official documents.
- ▶ In addition, there is occasionally a need in exceptional circumstances to assist Irish prisoners closer to home who have no means of keeping in contact with their families.
- ▶ In the circumstances I have recommended that a Hardship fund be established which can be used in the above cases. I would point out that this

is not an automatic stipend for prisoners but a fund to overcome genuine hardships.

- ▶ I would propose €200,000 be allocated to the Hardship fund for the first year of operation. Further allocations would depend on the demand for services. €200,000 is a relatively modest amount when compared to the overall expenditure by the State on prisoners in Ireland.

## Prisoner Database

- ▶ It is clear that there is a greater need for more systematic tracking of Irish prisoners overseas, within the Department of Foreign Affairs. In this context, a register should be established which would include personal details of the prisoner, sentence, health status, last visit by a consular official etc. The right of a prisoner not to have his/her personal details on the database would of course be respected.
- ▶ This database should be maintained and monitored by the new Prisoner’s Unit.

## Miscarriages of Justice

- ▶ Miscarriages of justice, which involved several high profile Irish cases in Britain in the 1970s, is an area where there have been heightened concerns in Ireland for some time. I applaud the work done by many committed humanitarian organisations and individuals to achieve justice in those cases. I believe that there is a case for the Irish Government to consider providing funding for organisations such as The Miscarriages of Justice Organisation (MOJO), which already receives funding from the Scottish Executive.

<sup>1</sup> According to a recent Gallup poll on EU citizens’ views towards consular protection, Irish people are the most likely to travel outside the EU. 71% of Irish citizens intend to travel outside the EU in the next three years. The European average is 51%.  
[http://ec.europa.eu/justice\\_home/news/intro/doc/CP\\_analytical\\_report\\_en.pdf](http://ec.europa.eu/justice_home/news/intro/doc/CP_analytical_report_en.pdf) December 2006





## 1. Introduction

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- 1.1 The Government's Programme for Prosperity and Fairness (PPF) identified an objective *"to address the special needs of those Irish emigrants abroad who are particularly marginalised or at greatest risk of exclusion"*.<sup>2</sup> To meet this objective, the PPF called for the establishment of a Task Force on Emigrants, to develop a coherent, long-term approach to Irish emigrants and their needs, and for a research project to be undertaken to *"identify the numbers of Irish prisoners abroad and their needs for services in prison"*.
- 1.2 The Task Force on Emigrants was established in December 2001 and submitted its report, *Ireland and the Irish Abroad*, to the Minister of Foreign Affairs on 28 August 2002. With the Irish Abroad Unit now up and running, it was deemed timely to move on the second part of the commitment in the PPF and to establish a research study on Irish prisoners abroad.
- 1.3 Based on the commitment in the PPF, the Terms of Reference for this study are as follows:
- ▶ To identify the numbers of Irish people in prison overseas and the countries in which they are being held;
  - ▶ To examine the needs of Irish overseas prisoners; and
  - ▶ Based on this identification and estimate, to make recommendations for the future provision of services to overseas prisoners, taking into account the services available in comparable countries.
- 1.4 The study presents a brief overview of existing international protection mechanisms and norms in relation to the minimum acceptable prison standards and the human rights of prisoners. In particular, the principal international agreements which have a bearing on the treatment of prisoners are identified.
- 1.5 Various authorities were consulted in the process of this study, primarily relevant Government Departments, the prison authorities and non-governmental organisations such as the Irish Commission for Prisoners Overseas<sup>3</sup>. Initial consultations assisted in establishing the numbers and locations of Irish prisoners abroad, nature of their offences and the duration of their sentences.
- 1.6 Cognisant of the fact that the majority of Irish prisoners overseas are located in Britain, meetings were also held with the Foreign and Commonwealth Office, the Home Office and Prison Service. NGOs such as Prisoners Abroad, Advice on Individual Rights in Europe (AIRE), Brent Irish Advisory Service, the London Office of the ICPO and numerous individuals expert in the area were also consulted. Irish prisoners and prison officials were also interviewed in Brixton Prison in London. In addition, relevant published reports from various interested parties were scrutinized.
- 1.7 This study considers a person's consular rights when arrested and imprisoned abroad and delineates the services provided by Irish Embassies and Consulates to Irish prisoners overseas, as well as corresponding services of other EU and comparable countries to their nationals imprisoned abroad. It also outlines the limitations imposed by operating in a different jurisdiction and judicial system.
- 1.8 Existing sources of support in Ireland for prisoners abroad, as well as support structures after repatriation, are also considered.

<sup>2</sup> Programme for Prosperity and Fairness – Section 4.6: Commitment to the Wider World; Stationary Office, Dublin, 2000

<sup>3</sup> Subsection of the Irish Catholic Church's Episcopal Commission for Emigrants.

- 1.9 The report discusses the desirability and possibility of transferring prisoners to complete their sentences in Ireland.
- 1.10 Recommendations are made for improvements in service to Irish prisoners abroad both during their imprisonment and on their release. I acknowledged that many Irish missions already carry out some of these recommendations but I believe that there is a need for consistency in this area.

## Acknowledgements

- ▶ Irish Commission for Prisoners' Overseas (Maynooth & London offices)
- ▶ Prisoners Abroad
- ▶ Advice on Individual Rights in Europe (AIRE)
- ▶ Brent Irish Advisory Service
- ▶ Miscarriages of Justice Organisation (MOJO)
- ▶ Gareth Pierce, Solicitor
- ▶ Staff of the Department of Foreign Affairs
- ▶ Staff of the Irish Embassy, London
- ▶ Staff of the Department of Justice, Equality and Law Reform
- ▶ The Probation Service
- ▶ Staff of the Department of Social & Family Affairs
- ▶ H M Prison Service, London
- ▶ Foreign and Commonwealth Office
- ▶ The Home Office
- ▶ The Governor of Brixton, Brixton







## 2. International Protection Mechanisms

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- 2.1 The Mission of the Irish Prison Service is “to provide safe, secure and humane custody for people who are sent to prison”.<sup>4</sup> This should be the guiding principle under which the Department of Foreign Affairs seeks to support and safeguard the welfare of Irish prisoners in foreign jurisdictions. However, I recognise that the penal system in many countries has a different objective to this Country, and by our standards would not necessarily be considered to be safe, secure or humane.
- 2.2 Likewise, the criminal justice system in many countries is different to the Irish system. However, this does not mean that those systems are automatically inferior. It does mean that Irish prisoners may be at a disadvantage because of differences in standards, culture, language and familiarity with the local penal and judicial systems.
- 2.3 If an Irish citizen breaks the laws of another country, he/she is subject to the judicial system of that country. If a foreigner breaks the law in Ireland, he/she is tried under Irish law, in an Irish court and if convicted, sentenced accordingly. Irish citizens have an obligation to make themselves aware of local practice, as not knowing the local laws is not a justifiable defence. In the same way that the Irish Government would not accept a foreign government interfering with the Irish judicial process, the Irish Government cannot directly interfere in the judicial process of another country. Therefore, the Irish Government cannot exempt a citizen from the due process of another country. There should be no expectation among citizens that the Government can assist them in escaping justice in foreign jurisdictions.
- 2.4 However, the Government has a duty to ensure that an Irish prisoner is not discriminated

against because of nationality and that he/she receives equitable treatment under the local judicial system. To provide safeguards in this area, there has been a proliferation of international human rights instruments which have a bearing on the treatment of persons detained and on prisoners’ rights. These include United Nations conventions on human, economic, social, cultural and civil rights and on prevention of discrimination, as well as various instruments on rules for the treatment of prisoners.<sup>5</sup>

- 2.5 Under these various instruments, a prisoner has the right to the following:
- ▶ Consular assistance from the embassy or consulate.
  - ▶ Legal representation
  - ▶ Periodic means of communication with family and with their consular authorities as they desire.
  - ▶ Visits from family members
  - ▶ Detention in conditions which meet a minimum standard in terms of their health, privacy, hygiene, nutrition and human dignity.
  - ▶ Medical attention as required
  - ▶ Reasonable recreation and educational materials, e.g. suitable reading materials in the English language
  - ▶ Request a trans-national transfer
- 2.6 Consular rights of foreign prisoners flow from the *Vienna Convention on Consular Relations* (1963). Individuals arrested in a state other than their own are entitled to access to their consular representative. Article 36 of the Convention obliges the competent authorities of the state in which the arrest takes place,

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<sup>4</sup> Mission Statement from the Irish Prison Service Annual Report 2005

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<sup>5</sup> This includes, *United Nations Standard Minimum Rules for the Treatment of Prisoners* (1957)

provided the arrested person does not object, to inform his/her consular authorities. It also requires the competent authorities of the state in which the person is detained to inform arrested persons without delay of their rights in this respect. It provides for visits by consular officers and guarantees the right to conversation with arrested persons and correspondence with them. Furthermore, it obliges the state in which the person is detained to forward any communication addressed to the consular post by the person arrested.

**2.7** The *United Nations Standard Minimum Rules for the Treatment of Prisoners* (1957) is the original paradigm for all prisoner protection and treatment.<sup>6</sup> It set a series of principles which, whilst not binding in international law, served to interpret other international instruments, such as the International Covenant on Civil and Political Rights and the European Convention on Human Rights. However, the UN Rules acknowledge that prisoner protection and the management of penal institutions is an area which is evolving and accepts that not all of these standards are capable of application in every country. “They should, however serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application.” The UN Rules make specific reference to prisoners who are foreign nationals, emphasising their right to communicate with their families and diplomatic and consular representatives of the State to which they belong, or the state which takes charge of their interests in that country. Several subsequent international instruments dealt with new developments and strategies in penal policy. A selective list of these is contained in Appendix A.

**2.8** A European version of these rules was advanced by the Council of Europe in 1987

to more accurately reflect the contemporary situation of prisoners and provide a more comprehensive and coherent approach to the management and treatment of prisoners. The European Prison Rules were revised in 2006 to take account of developments in penal policy following the implementation of the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as the accession of new member states in the Council of Europe.

**2.9** These Rules constitute the recognised benchmark for prison standards and for the observance of the human rights of prisoners covering issues such as admission, hygiene, nutrition, exercise, health care, communication with the outside world, security, legal advice, work (as a positive rather than a punitive measure), education, release and transfer. The rules are applied and interpreted differently by the member states of the Council of Europe and by a significant number of non-European countries, including the United States, Canada and Australia, as well as a number of countries in Latin America where Irish prisoners are detained. While they may not be legally enforceable, they place certain obligations on States concerning the rights of prisoners, prohibit arbitrary imprisonment and set out standards to be achieved in the aforementioned categories.

**2.10** There is specific provision for prisoners who are foreign nationals, including the following rules:

- Prisoners who are foreign nationals shall be informed without delay of their consular rights, including the right to communicate with the diplomatic or consular representatives of their state.

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<sup>6</sup> Approved by the First United Nations Congress on the Prevention of Crime in 1955 and subsequently endorsed by the United Nations Economic and Social Council in 1957.

- ▶ Foreign nationals shall be informed of the possibility of requesting that the sentences be served in another country.

Also a separate provision is made for prisoners to have contact “as often as possible” by letter, telephone, or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons. However, the frequency of such communications and visits may be restricted because of criminal investigation. Significantly, prison authorities are enjoined “to assist prisoners to maintain and develop family relationships in as normal a manner as possible”. Furthermore, “*prison authorities shall assist with the appropriate welfare support to do so*” (Article 24.5).

2.11 Article 17.1 provides for prisoners to be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation. While this does not specifically refer to the repatriation of foreign prisoners to complete their sentence in their own country, it can be interpreted as recognising that allocation of all prisoners to prisons close to their homes is beneficial.

2.12 One of the experts appointed to redraft the European Prison Rules, Professor Dirk van Zyl Smit of the University of Nottingham<sup>7</sup>, has described the need to accommodate conflicting positions on untried and sentenced prisoners, namely:

- ▶ Except for the loss of liberty, prisoners retained their rights after detention, and therefore there was no distinction;

- ▶ Untried prisoners are innocent until proven guilty and therefore deserving of special recognition;

- ▶ Implementation of a sentence could place additional obligations on prisoners, e.g. a sentenced prisoner may be compelled to work.

To that end, there are separate provisions regarding unsentenced (Part VII) and sentenced prisoners (Part VIII); the basic distinction being that untried prisoners should be given the opportunity to work and follow the regime of a sentenced prisoner, but should not be compelled to do so. The primary aim in the regime of a sentenced prisoner should be facilitating “*their reformation and social rehabilitation*” (Article 10(3)). The Rules also stress the need to cooperate closely with social services and support agencies to assist released prisoners, as well as provision for independent monitoring and inspection.

2.13 Even though the European Prison Rules are comprehensive in addressing concerns in relation to penal policy, there is growing support to advance a European Prison Charter which would be legally binding on governments. A primary reason for this is the introduction of the European arrest warrant within the European Union. This would not only complement the 2006 European Prison Rules, but would also be a very significant development in the humanisation of the prison services.

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<sup>7</sup> Dr van Zyl Smit was one of three experts appointed to undertake the drafting of the 2006 European Prison Rules by the Council of Penological Cooperation in 2002. Please see van Zyl Smit, Dirk, *The 2006 European Prison Rules*, [http://www.gencat.net/justicia/doc/foc\\_16992330\\_1.pdf](http://www.gencat.net/justicia/doc/foc_16992330_1.pdf)

2.14 The Minister for Justice, Equality and Law Reform published **Irish Prison Rules** in June 2005, affecting prisoners in Ireland and taking into consideration the contemporary needs of Irish prisoners.<sup>8</sup> The Irish Rules took account of developments at the Council of Europe, in particular the then emerging European Prison Rules. For example, the rules for the first time gave a statutory basis for the inspection of prisons.

2.15 It is of vital importance that new developments in penal policies worldwide, as well as the Vienna Convention on Consular Relations, the UN Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules<sup>9</sup> are the template under which the Department of Foreign Affairs operates in addressing the welfare of Irish prisoners abroad.

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<sup>8</sup> It should be noted that the published document referred to was new Draft Prison Rules which have not been signed into law as yet. Furthermore following legal advice it was decided that the most prudent approach for the provision of the Inspector of Prisons and Places of Detention on a statutory basis was by way of primary legislation. This provision has been included in the Prisons Bill, 2006, which is expected to become law very shortly. New Prison Rules, which have been amended since 2005, will be signed into law following the enactment of the Prison Bill.

<sup>9</sup> Appendices C, D & E respectively





### 3. Present Position of Irish Prisoners Abroad

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**3.1** It has been noted elsewhere that an unexpected consequence of affluence and more overseas travel has been an increase in the number of countries which have Irish prisoners. At the same time, the number of prisoners abroad is constantly changing, as some are released and others newly detained. For this reason, it is not possible to be fully precise about how many Irish citizens are imprisoned abroad, or to give a completely comprehensive breakdown by crime and country at any particular time.

**3.2** The following figures compiled by the Department of Foreign Affairs are intended to give an indication of the numbers of Irish citizens imprisoned abroad and of the range of countries in which they are located. The table is intended to be a snap shot of the situation at a particular time.

## Irish Prisoners in EU Countries<sup>10</sup>

Austria	0
Belgium	1
Cyprus	0
Czech Republic	0
Denmark	1
Estonia	0
Finland	0
France	6
Germany	8
Greece	1
Hungary	0
Ireland	
Italy	1
Latvia	1
Lithuania	0
Luxembourg	0
Malta	0
Poland	0
Portugal	5
Slovakia	0
Slovenia	0
Spain	14
Sweden	1
The Netherlands	12
United Kingdom	708

<sup>10</sup> Figures compiled from Irish Embassies and Consulates, 19th October 2006

## Irish Prisoners in Non-EU Countries

Australia	3
Bolivia	1
Brazil	2
Canada	1
Cuba	1
Ecuador	2
Guatemala	1
Japan	1
Middle East	1
Panama	2
Peru	2
Thailand	1
United States	28
Venezuela	1

Total Estimate: 800. This should be regarded as a minimum figure since it is probable that there are other non recorded prisoners throughout the world. Not all Irish citizens request consular assistance when detained and therefore, may not come to the attention of the nearest Irish Embassy or Consulate. In order to provide a more sophisticated means of tracking Irish prisoners abroad and ensure timely consular assistance, it is recommended that the Department of Foreign Affairs establish a database which would maintain an up to date register of Irish prisoners abroad. This would include detailed information on case history, consular assistance, healthcare etc.

**3.3** Little detailed information is available on the profile of Irish prisoners abroad. Some are vulnerable persons who emigrate in an attempt to escape their problems, but they find that they cannot cope with life abroad and end up in prison. Others are imprisoned after being charged with crimes or misdemeanours committed while on holiday. The crimes are of varying seriousness. Some have engaged in serious transgressions, including drug trafficking, manslaughter and murder. A small number, not eligible for release under the Good Friday Agreement, are imprisoned for dissident paramilitary activities.



3.4 Wherever they are, prisoners incarcerated outside their home countries can be disadvantaged, marginalised and vulnerable. Their plight sometimes evokes little sympathy among some sections of the wider community in Ireland. Some in society may consider their uncomfortable circumstances as self inflicted, or even as just punishment for their crimes. However, it is important to bear in mind that, wherever they are, international law places obligations on the Irish Government to ensure their consular rights.

3.5 Prisoners abroad often suffer unintended, adverse consequences of detention in a penal institution. They are not part of the local community and hence may endure discomfort due to overcrowding, to cultural differences, an inability to satisfy normal material and hygienic needs, isolation from friends and family and inability to communicate with them at will.

3.6 In its report *Conditions of Detention for European Prisoners Around the World*, the European Group for Prisoners Abroad (EGPA) describes the typical difficulties of imprisonment abroad. In many countries, foreign national prisoners suffer violations of their human rights through poor treatment and conditions. Conditions vary from country to country and are generally determined by the economic, social and political situation.

3.7 In developing countries, local prisoners can often have to rely on their families to supplement their diet by bringing in food for them to the prisons, but that is not an option, e.g. for an Irish prisoner incarcerated in Latin America or Thailand. The problem is not so severe for those whose families can afford to provide funds for the purchase of alternative food. However, this is not always possible.

3.8 Although international conventions and rules guarantee the rights of prisoners to articles of hygiene, in practice even basic necessities

such as toilet paper, soap and toothbrushes are not always provided, may be difficult to obtain or may be expensive. Indeed, even funds sent by the family for a prisoner's benefit may not be immune from corrupt officials. One prisoner in a Latin American country is quoted by the EGPA as saying that everything must be bought from the money sent by families, nothing is free, not even drinking water, "and when the police do our shopping, nine times out of ten they steal from the money."<sup>11</sup>

<sup>11</sup> EGPA, *Conditions of Detention for European Prisoners Around the World*, <http://www.egpa.org/pdf/conditions&20of%20detention.pdf> August 2002





## 4. Prisoner Needs Analysis

# 4. Prisoner Needs Analysis

4.1 The EGPA has categorised the main obstacles facing Irish prisoners abroad as problems of isolation, communication, cultural appreciation, lack of information with regard to legal procedures and fundamental rights. Family support and access to communications are of vital importance in alleviating these difficulties. A sentence of imprisonment is not intended to have the necessary consequence of termination or curtailment of contact with family, subject to normal requirements of prison routine and discipline. Nor is it intended to punish the families of prisoners, nor lead to hardship for them, even if this is the inevitable consequence of imprisonment.

4.2 Geographical isolation from family has adverse consequences not only for the prisoner, but for society at large, since it is generally accepted that continuing contact and support from family can be a positive factor in determining whether or not a prisoner re-offends or can be successfully re-integrated into society. I have been informed that a British Home Office official, quoted in an ICPO-sponsored survey, indicated that good family ties can reduce a prisoner's risk of offending by a factor of six. It is usually difficult for prisoners abroad to maintain regular contact with family. Families are usually unable to visit except on rare occasions.

4.3 The EGPA has stated that research carried out in Britain found that 40% of families had been unable to visit their relative at all since detention. When they did attempt to visit, the cost was often prohibitive. Families face financial demands to pay for the legal defence of their relative, as well as sending money to their relative in prison abroad for basics such as food, water and clothing.

4.4 In Ireland, the ICPO survey also found that cost was an obstacle for families of Irish prisoners overseas who would wish to visit their relatives in prison. The survey acknowledged that families entitled to social

welfare allowances can apply for exceptional needs payments under the supplementary welfare allowance scheme in Ireland. However, such payments are at the discretion of the individual community welfare officers. A report by the National Social and Economic Forum, "Reintegration of Prisoners" in 2002 recommended that low-income families travelling long distances (within Ireland) to visit prisoners should be given additional supports, including "adequate financial supports to make regular visits". This recommendation is even more pertinent to family members who have to travel overseas to visit the imprisoned relative.

4.5 Therefore, this report recommends that a hardship fund to assist families and prisoners in such difficulty be established and administered by the new prisoner unit in the Department of Foreign Affairs. This would not be an automatic stipend for prisoners, but a fund to overcome genuine hardships and would be granted in the first instance to alleviate difficulties experienced by Irish prisoners abroad in obtaining basic necessities.

4.6 Telephone calls provide an essential means of regular and immediate communication between prisoners and their families. Usually prison authorities will allow prisoners to make occasional telephone calls to family or friends. However, the cost of these calls can be very high for the prisoner and much higher than public telephone calls outside the prison. For example, it has been reported that the cost of making a telephone call from Brixton Prison to an Irish number is in the region of 66p (€1) per minute, or 6 times the rate which applies outside the prison. As a result, telecom companies have been accused of making undue profits from calls made from prisons. In response to complaints, they have pointed out that the cost of providing the telephone line infrastructure within prisons is much

higher than outside and they have to recoup their outlay by increased call charges.

- 4.7 According to a survey carried out in 1999 by the EGPA, almost 50% of those incarcerated in non-English-speaking countries stated that they could not communicate with the prison doctor, and a further 10% stated that communication was limited. Over two-thirds revealed that there was no interpreter or translator available to assist them when they saw a doctor.
- 4.8 According to the ICPO, the health of Irish prisoners abroad is a cause for concern and there is a high incidence of some diseases, e.g. of AIDS, amongst them, as well as alcoholism and drug addiction. They have emphasised that systems should be in place to allow the referral of Irish prisoners abroad to addiction centres in Ireland on release, to be paid for by the appropriate local authority.
- 4.9 There are reports, e.g. from Prisoners Abroad<sup>12</sup>, that in some countries there is a high incidence of dental problems amongst foreign prisoners, in most cases probably linked to poor dental hygiene, lack of regular access to toothpastes and brushes and indeed infrequent or non-existent dental checks. In addition some countries, prisoners have to pay to see a doctor or to receive medication.

## Irish prisoners in Britain

- 4.10 The British prison population has reached the maximum capacity of 80,000 and, in the absence of new prisons, measures are being examined to reduce numbers. As the great majority of Irish prisoners abroad are in Britain, securing an agreement with the British Government to exclude Irish citizens from any EU compulsory deportation on completion of their sentence on grounds of the historic, cultural and political links between our two countries is clearly an

issue of the highest importance. In February 2007, British Home Secretary, John Reid, announced a change of approach which will ensure that Irish prisoners will no longer be considered for deportation from Britain, except in exceptional circumstances. This is a very welcome development and will come as a great relief to individual prisoners and their families.<sup>13</sup> Details regarding the number of foreign prisoners in Great Britain are contained in Appendix B. According to the Home Office, 698 Irish prisoners were detained in England and Wales at the end of September 2006.<sup>14</sup>

- 4.11 Internationally, the practice among most countries is to ensure that every prisoner overseas has a right to a consular visit at least once a year and twice in more difficult/distant countries. However, given the large number of Irish prisoners in Britain it is not possible for consular officials to achieve this. Therefore, the Department of Foreign Affairs should seek the assistance of and agreement of NGOs, in particular the ICPO, for special arrangements for visiting prisoners in Britain to safeguard Irish prisoner rights and ensure any pertinent issues are being addressed. The Department should conclude a service agreement with the ICPO, with measurable outcomes in this regard. It should also ensure that NGOs which are carrying out work for the Government in this area have the capacity to do so.

12 British overseas prisoners' welfare organisation.

13 Following controversy in Britain in 2006 about the non-deportation of over 1000 foreign national prisoners at the end of their sentences, the British Government introduced a strict new policy under which all foreign national prisoners sentenced to two or more years were automatically considered for deportation. This included for the first time Irish prisoners. The Minister for Foreign Affairs, Dermot Ahern, wrote to the Home Secretary, John Reid, requesting a reconsideration of this new policy, bearing in mind the close ties between the two countries and the Common Travel Area.

14 The British Home Office figure differs from that supplied by the Department of Foreign Affairs. This is not surprising as many "Irish" prisoners have dual Irish/British nationality and may be classified differently in different counts.

- 4.12 There have been a number of allegations of racial prejudice against Irish prisoners on the part of prison staff in Britain. This was discussed with senior management in the Home Office, the Prison Service and with the Governor of Brixton Prison. The Director of the British Prison Service gave assurances that all prison officers receive racism awareness training. He also denied other allegations, namely that there was a significant problem in relation to the attitude of former British soldiers who had served in Northern Ireland and who were now prison officers, although he was aware of allegations that such ex-soldiers often displayed anti-Irish bias. However, such allegations of anti-Irish racism are difficult to prove or disprove.
- 4.13 The Governor in Brixton Prison said that he encourages prisoners to demonstrate their cultural identity and had arranged special St. Patrick's Day celebrations in the prison for Irish prisoners. He himself celebrates St Patrick's Day with Irish prisoners. In relation to allegations of anti-Irish bias on the part of ex-British Army prison officers, he was not aware of any particular problem. In any case, he stated that there are very few ex-military personnel serving as prison officers. The modern Prison Service looks for recruits from diverse backgrounds. Where any abuse of prisoners is established, there are severe punishments and he had dismissed several officers for verbal abuse of prisoners.
- 4.14 The authorities in Brixton Prison facilitated meetings with some 20 or so Irish prisoners detained there, both as a group and individually. One of the prisoners' story was particular poignant. A homeless drug addict (by his own account) who had participated in a detoxification programme in prison, told of his experience of being released, with no support on the outside and no accommodation, with only £40. Due to lack of outside support, he immediately re-offended and was now facing a new sentence. He believed that, without adequate rehabilitation and sufficient short-term financial support, he had no choice but to turn again to crime to support himself in the short term.
- 4.15 A grievance often expressed by Irish prisoners in Britain is the lack of provision to allow prisoners, whose homes are in Ireland, to avail of temporary release to visit seriously ill relatives in Ireland or for other serious family emergencies. European Prison Rules provide that, whenever circumstances allow, a prisoner should be authorised to leave prison, either under escort or alone, in order to visit a sick relative, attend a funeral or for other humanitarian reasons.
- 4.16 Concerns have been raised by the ICPO that remand prisoners, or others liable to transfer, may be transferred between prisons without notice to their families. This was raised with the Governor of Brixton Prison who stated that it was not practicable to inform families whenever prisoners are being moved. For example, there are fifty movements of prisoners, twice daily from Brixton. Prisoners must be sent wherever there are vacancies, and it is not possible to choose individual prisons for each prisoner. Prisoners are allowed to phone home when they are transferred.
- 4.17 ICPO has suggested that additional funds should be provided to ICPO to enable the engagement of expertise to assess the competence of defence lawyers abroad. This is an area where no consular service has ventured. However, it might be possible for Embassies and Irish organisations abroad to establish a panel of experienced lawyers who would be prepared to offer advice to Irish prisoners on a pro-bono basis. This is something the British FCO does on a regular basis.

## Travellers

**4.18** The Report of the NESF on the Re-integration of Prisoners stated that figures on the number of people from the travelling community in prison were not available. In discussion the Brent Irish Advisory Service, the particular problems of imprisoned travellers were emphasised. Adult travellers are often illiterate and this increases their isolation and alienation because they cannot read prison notices or read or write letters. Imprisonment is often chosen as a first option for travellers convicted of offences, partly because of the difficulty of enforcing non-custodial sentences. They are also discriminated against when bail is considered, because some have no fixed home and often no regular employment. Illiteracy rates among some groups of male Irish travellers are reputed to be as high as 97%. The new prisoner register should also seek to address the absence of authoritative information on those Prisoners claiming Irish Traveller background. The Department of Foreign Affairs should press for “Irish Nationals” and “Irish Travellers”, to be used by the Prison service and related agencies as categories for the monitoring of their experience in the criminal justice system.

## Irish Prisoners in Developing Countries

**4.19** While the vast majority of Irish prisoners overseas are located in Britain and where prison conditions are, in many respects, comparable to those in Ireland, there is particular concern about conditions in certain other countries where some Irish prisoners are incarcerated. It is understood that the Department of Foreign Affairs has been in touch with a number of foreign authorities, including those in Ecuador, which recently acceded to the Strasbourg Convention. A draft bilateral transfer agreement with Cuba was forwarded to the Cuban authorities for

consideration in April, 2005. However, despite a number of reminders, no response to this document has been received from the Cuban authorities. In the meantime, efforts are currently underway to secure the voluntary transfer of a number of Irish prisoners detained abroad to Irish prisons.

**4.20** In Venezuela, according to Human Rights Watch, “conditions in prisons are notoriously abusive. Overcrowding is chronic and armed gangs maintain effective control within the prison walls. Prison riots and inmate violence claim hundreds of lives every year.” Concerns have been expressed by the Irish Embassy about the safety and welfare of an Irish citizen imprisoned there. Conditions in Panama, Cuba and Guatemala, where other Irish prisoners have been held recently have also been the source of concern, including problems in accessing basic necessities. As all four countries are Spanish-speaking, Irish prisoners have the added burden of communication difficulties.

**4.21** Given the distance from Ireland, and from the nearest Irish Embassy, visits from family and from Irish consular representatives to such countries are often difficult to arrange. In the cases of two of the countries in Central America, Guatemala and Panama, in which there are currently Irish prisoners, the nearest Embassy does not have formal accreditation. This can cause difficulties for consular representatives in dealing with the appropriate authorities. Phone calls to prisoners are also difficult to arrange.

**4.22** In many cases the local Irish representation is through the Honorary Consul system. These unpaid representatives of Ireland have played a very important and valuable role in looking after the welfare of prisoners in places distant from Ireland. This is particularly true in the cases of Panama and Ecuador. However, in some areas such as Cuba, the lack of a local Honorary Consul can adversely affect the

ability of the Government to assist prisoners. It is clear from this study, that a review of countries where there is no current Irish Honorary Consul should be conducted by the Department of Foreign Affairs, with a view to strengthening this aspect of consular network to ensure it can adequately meet the demands of prisoner welfare.

- 4.23 An additional problem which has been brought to my attention is that when a family member is in a position to send funds to a prisoner, the family may become subject to extortion by other inmates. A family member of at least one Irish prisoner has been the subject of serious threats and intimidation.
- 4.24 An Irish prisoner in Panama was the subject of a successful application for transfer to Ireland. However, due to the very considerable delay in arranging this repatriation, the prisoner ultimately decided to complete the sentence in Panama. Another prisoner in Panama is expected to apply for transfer to Ireland once her sentence has been finalised. An Irish citizen imprisoned in Venezuela decided to withdraw a request for repatriation due to the significant waiting period, and as he felt that a pending repatriation request might prejudice a separate application for conditional liberty in Venezuela. I understand that authorities in the Latin American and Caribbean region are very willing to facilitate the speedy repatriation of foreign prisoners, due to chronic overcrowding in their prison systems and in the interests of the welfare of foreign prisoners. However, the Department of Justice, Equality and Law Reform has experienced significant problems in obtaining the required information, as specified under the Strasbourg Convention, in respect of applications from countries in these regions.<sup>15</sup>

- 4.25 The Government should continue to raise the issue of prisoners' conditions at European level, so that EU countries can together put pressure on certain countries to improve conditions for prisoners. Discussions are currently being held at EU level on prison conditions in Latin America where targeted acts of violence against foreign prisoners in the general prison population are giving raise to concern. Sharing information and coordinating dialogue through the EU Presidency with relevant national prison authorities is essential to guarantee a minimum standard of security for European prisoners.

<sup>15</sup> For example, in regard to the case of the prisoner in Venezuela, this Department did not receive any paperwork from the authorities in that country to allow Ireland to commence processing his application.





## 5. Consular Assistance & International Best Practice

# 5. Consular Assistance & International Best Practice

- 5.1 It is the right of every Irish citizen who is arrested or imprisoned abroad to seek consular assistance from the Department of Foreign Affairs. However, not all Irish citizens who are so arrested or imprisoned avail of this right.
- 5.2 As outlined in Chapter 2, the consular rights of Irish prisoners abroad are established by the *Vienna Convention on Consular Relations (1963)*. Beyond the obligations provided for in prison regulations, international conventions and legal instruments, consular assistance given by Irish diplomatic and consular representatives is broadly similar to that provided by other EU states, and in some instances goes beyond it. A primary task of all consuls is to render necessary assistance to their citizens abroad and, in cases of arrest, to see that they receive fair, equal and humane treatment while in custody.
- 5.3 A survey carried out by the Council for Research and Development (which, like the ICPO, is an agency of the Irish Bishop's Conference) entitled *Separated Families*, identified a lack of clear information in relation to the legal systems in countries where relatives are imprisoned. Prompt contact, directly or by telephone can be crucial in ensuring observance of an arrested person's rights. For example, they may not know whether they have the right to silence, the right to legal representation, whether legal aid is available, or whether they are entitled to contact their families.
- 5.4 Consular assistance is necessary even when lawyers are provided by the arresting state, especially in non English-speaking countries, as the appointed lawyer may not speak English adequately and may not be able to properly inform and advise the client. Consular officers should ensure that, in non-English speaking countries, the arrested person has timely access to an English-speaking lawyer and/or another English-speaking advisor.
- 5.5 The practice of some police forces, however well-intentioned, of using one of their own English-speaking colleagues to provide interpretation during interrogation is unsatisfactory, since the interpreter cannot be regarded as impartial or even on the side of ensuring the arrested person's rights. In many countries, interpreters for accused persons are provided only at the court stage, and sometimes not even then. Often, such court-appointed interpreters will only summarise proceedings for the defendant, who therefore may have no adequate idea of what is going on. It can be the case that English-speaking lawyers hired privately, even on the recommendation of consular officials, may charge fees. While the mission has a responsibility to ensure that the detained citizen has rights to legal representation, consular representatives cannot provide funds for legal representation where the state concerned does not have a system of legal aid. As far as the Department of Foreign Affairs is aware this is the position of all other consular services also.
- 5.6 In addition to ensuring rights which are legal entitlements of the arrested person, Irish Embassies and Consular offices usually provide additional practical assistance to persons detained overseas. They can:
- ▶ Provide a list of English-speaking lawyers
  - ▶ Give general information about the legal and criminal prosecution system
  - ▶ Visit prisoners from time to time where this is possible, depending on distance and remoteness
  - ▶ Give information about the services of the ICPO and any other NGOs involved in prisoner support services

- ▶ Act as a channel of communication between the prisoner and family
- ▶ Where possible, the mission may arrange the occasional provision of newspapers or other reading material in English.
- ▶ Where allowed by the prison authorities, they may convey small sums of money from prisoners' families for lodging in the prisoner's account in the prison. This is usually done upon request and a deposit from the prisoner or from the family.

**5.7** The outreach of the Department of Foreign Affairs in providing information and advice to prisoners abroad is generally regarded as satisfactory and is up to international standards. The Department of Foreign Affairs is ready to respond to any requests for information about prison and legal systems overseas and to consider any requests for practical assistance from families sympathetically. Missions are ready to make arrangements for prison visits for families and to help them on arrival with advice and guidance on local conditions or the welfare of the prisoner, including providing ICPO information leaflets as available.

**5.8** However, there is a need to put in place a standardised set of procedures in dealing with prisoners abroad which would be overseen by a unit within the Consular Division in the Department of Foreign Affairs. As indicated in Chapter 3, such a unit would maintain a database of all Irish prisoners abroad and provide Irish Embassies and Consulates with guidance on how to look after the interests of prisoners. It should also publish material on the internet and in booklet form setting out in clear language what citizens can and cannot expect from their Government.

## Services Provided by Missions of other EU Countries

**5.9** Amongst the organisations with which discussions were held in Britain as part of this study, was the British overseas prisoners' welfare organisation, Prisoners Abroad. They provided an account of the services available from them and from the British Government to British prisoners overseas. Prisoners Abroad works closely with the British Foreign and Commonwealth Office (FCO) and its missions abroad. The Foreign Office provides the organisation with information about prisoners. Prisoners can then choose whether they wish to "sign up" for contact and assistance.

**5.10** The FCO, as well as other donors, provides limited funds through Prisoners Abroad to certain prisoners and their families in need. Small cash grants can be provided for prisoners outside western countries, for food supplements etc. There is an emergency fund available for once-off medical treatment. Practical Relief up to £50 once a year will be considered on application. According to Prisoners Abroad, any subventions are very modest in size and are always means tested bearing in mind which families are in receipt of benefits and which have other sources of income.

**5.11** In Britain FCO funds can be used for example to pay for translations of documents for prisoners or for magazine subscriptions. Small grants of up to £40 to subsidise travel to visit relatives imprisoned abroad are available for families which are in receipt of welfare benefits. There is close cooperation with the Foreign Office and all funds expended abroad are used through the agency of the local British mission, since Prisoners Abroad has no overseas staff (they have 16 staff based in Britain). The British Government, through the Foreign Office, provides 10% of BPO funding, while the National Offender Management Service (NOMS) provides another 10 - 15%.

Apart from these small grants, there is no regular financial provision for British prisoners from the British authorities.

- 5.12 The authorities in *Spain* can provide up to €100 per month to their citizens detained abroad, but only in exceptional cases.
- 5.13 *Norwegian* citizens, if in financial difficulty, can apply for Norwegian free legal aid to the relevant legal aid authorities in Oslo. An arrested citizen may also be granted an allowance of up to €64 if local conditions necessitate it.
- 5.14 The *USA* has a system of loans which can be made available to their detained citizens overseas.
- 5.15 *Canada* has provisions for regular financial assistance to prisoners, but exceptional cases are examined with a view to possible, additional exceptional assistance.
- 5.16 *Ireland*, as well as *Denmark*, *Germany*, *Luxembourg*, *Austria*, *Italy* and *Portugal* currently provides no direct financial assistance from state resources to their citizens arrested abroad, though the Irish Government provided €212,171 to the ICPO in 2006.



## 6. Other Sources of Support at Home and Abroad

## 6. Other Sources of Support at Home and Abroad

6.1 Prisoners generally come from disadvantaged backgrounds. When combined with a criminal conviction, released prisoners often find themselves in a uniquely disadvantaged position in terms of their financial situation and rehabilitation. Prisoners being released from prisons abroad face the immediate risk of extreme poverty which without support can result in them quickly re-offending.

6.2 As early as 1984, the National Economic and Social Forum (NESF) recognised the crucial need for supports for prisoners being released into the community to assist rehabilitation and prevent re-offending. It recommended that “improved post-release facilities be provided for prisoners including: improved coordination with social welfare officers so that the released person is not rendered destitute on release”. In 1985, the Whitaker Report on the Penal System recommended financial and other assistance for prisoners on release.

6.3 In its report “Re-integration of Prisoners” (January 2002), the NESF found that support structures were being developed, but too slowly. It stated that post release services and support structures were “patchy” and lacked a national framework. It observed that financial assistance was often not readily available to prisoners on release. The NESF recommended the development of more structured and integrated post release services for prisoners. It also recommended the establishment by the Irish Prison Service of a reintegration group of key interests to devise, monitor and evaluate a prisoner reintegration strategy. It recommended that consideration be given to dedicating a percentage of the overall prison budget to reintegration support services. NESF’s focus was on reintegration of persons leaving Irish prisons, but its findings may be considered relevant to prisoners returning from abroad also.

6.4 In 2003, the Report of the Inspector of Prisons, the Kinlen Report highlighted the fact that

offenders may leave prison with little or no money and be forced to wait for the dole for two weeks. During this time, homeless prisoners may not have money to pay for basic accommodation. Poverty and other social deprivations are often linked to crime. The Combat Poverty Agency has pointed out that that poverty is one of the largest factors leading to incarceration. According to Combat Poverty figures, 88% of Dublin’s Mountjoy prisoners were unemployed before arrest, 94% were school drop-outs, 70% have an addiction of some sort and 25% have psychiatric disorders. However, prisoners who leave prison in Ireland or who return to Ireland following time spent in prison abroad can apply for the jobseeker’s allowance. While their application for the jobseeker’s allowance is being processed, they can apply for a supplementary welfare allowance payment from the community welfare officer.

6.5 The EGPA and ICPO have highlighted that prisoners returning to Ireland from imprisonment abroad often fall outside the scope of statutory agencies and do not receive the support provided to prisoners who are released in their home country. They may have a critical need for adequate funds to maintain themselves as well as for accommodation. The survey of prisoners’ families, commissioned by the ICPO and carried out by the Centre for Research and Development, found that families of overseas prisoners were concerned about a perceived lack of any post-release support services for their relative on release from prison. In addition, the EGPA has pointed out that, in most European countries, there is little or no statutory support for prisoners returning from abroad. This means that these prisoners being released find themselves excluded from any provision for accommodation, training or employment for ex-offenders. The process of rehabilitation is therefore substantially more difficult for them and, as a consequence, even those ex-prisoners who want to find a settled

way of life may drift back into a life of crime because they feel they have no other option.

- 6.6 Finding accommodation on their return to Ireland upon release is a major problem for many Irish prisoners who have served sentences abroad, as Irish authorities are not made aware as a matter of routine, of their arrival. European Prison Rules require that, on release, prisoners are assisted in finding suitable accommodation and work (33.7). There is considerable research evidence to suggest that securing accommodation is the most challenging difficulty for returning prisoners. The 2002 NESF Report recommended that statutory agencies should treat prisoners in need of accommodation as high priority cases. NESF also recommended that prisoners should be provided with immediate means of subsistence and have sufficient means to reach their destination. Whilst the Health Service Executive and the Department of Social and Family Affairs have a role to play in alleviating this problem, the establishment of a hardship fund, administered by the new prisoner unit in the Department of Foreign Affairs, could provide a resettlement grant for prisoners in this regard.
- 6.7 There are also a range of existing supports, linked to general social services, which are available to Irish prisoners returning home. The National Development Plan 1999 committed nearly €90 million to services for offenders in Ireland, including provision of work and training for prisoners.
- 6.8 The Department of Social and Family Affairs has produced a very useful and easy-to-understand booklet for prisoners being released, "What Now?" This booklet explains in simple, direct terms what financial and other supports are available at time of release. This includes details of how to apply for unemployment assistance and other welfare payments, as well as crucial information such as how to find emergency accommodation.

It points out that there are more than 70 community-based projects that can help the released prisoner with accommodation, training, employment, addiction treatment and specialised services for ex-offenders. There are also contact numbers for the Probation Service to ensure that advice and assistance are available during working hours. Amongst the useful information provided, the booklet highlights the fact that prisoners can make application to put their names on waiting lists for local authority housing up to nine months before the expected date of release.

- 6.9 County Laois Citizens' Information Centre has also produced a very useful booklet for prisoners being released – "The Road Back". As well as listing sources of financial and other supports, it gives contact numbers and addresses for use in securing emergency accommodation.
- 6.10 Aside from the question of providing supports to returning prisoners, there is also the issue of supervision of certain ex-offenders. Some may pose a continuing risk to the public and are likely to re-offend. Supervision and monitoring of persons released from prison in Ireland only occurs in certain instances. These include persons sentenced to life imprisonment who have been granted early release and sex offenders who have been made subject by the courts to post release supervision orders. There is no legal framework for the supervision in Ireland of those on licence from prison sentences in the United Kingdom or elsewhere. In a very small number of cases agreement was reached between the Irish and the United Kingdom authorities to voluntarily supervise life sentenced prisoners who have been granted parole. However, serious difficulties have arisen in some of these cases and the Department of Justice, Equality and Law Reform would have strong reservations about extending this any further without a proper legislative basis.

6.11 In the case of prisoners being released in overseas jurisdictions who return to Ireland, the Probation Service is likely to have no knowledge of them, their material, medical and psychiatric or counselling needs or their potential for re-offending. Both the welfare of the prisoner and the public are at stake when a prisoner returns from abroad. There is often a crucial lack of knowledge with regard to basic services such as the following:

- ▶ Accommodation other than homeless hostels available
- ▶ Information support and advice
- ▶ Advice to families on how to access support services

6.12 The welfare of ex-prisoners who return to Ireland does not come within the Departmental responsibility of Foreign Affairs. The ICPO and other NGOs should initiate a discussion with the Departments of Social and Family Affairs and the Health Service Executive about facilitating re-entry into Irish society for this group. The support systems which are available to prisoners on release from prisons in this State should also be available to those returning to Ireland having served sentences abroad.





## 7. Transfer and Deportation of Prisoners To Ireland

# 7. Transfer and Deportation of Prisoners To Ireland

## Transfers

**7.1** The Council of Europe Convention on the Transfer of Sentenced Persons, otherwise known as the Strasbourg Convention (please see Appendices F, G & H), was ratified by Ireland following the passing of the Transfer of Sentenced Person Act, 1995. This Act provides the legislative basis for the operation of the Convention between Ireland and other parties to the Convention. It is open to States outside of Europe and there are over fifty states operating the Convention at present.<sup>16</sup> The Department of Justice, Equality and Law Reform has responsibility for the operation of the Convention in Ireland

**7.2** The Strasbourg Convention's main purpose is humanitarian in nature. It endeavours to overcome the difficulties posed for prisoners serving sentences in foreign jurisdictions, such as cultural and language difficulties and absence of contact with relatives. It is established Government policy that, wherever possible, prisoners should be permitted to serve their sentences close to their families.

**7.3** To this end, the Strasbourg Convention provides a procedural framework for the repatriation of prisoners to serve the rest of their sentences. It sets out six conditions which must be satisfied if the transfer is to proceed. These are as follows:

- ▶ The offender seeking a transfer is regarded as a national of the State to which the transfer is sought (the administering State);
- ▶ The order or judgement under which the sentenced person was sentenced is final;

- ▶ There is at the time of the receipt of the request for transfer, at least six months of sentence remaining to be served;
- ▶ The act or omission constituting the offence would also constitute an offence in the administering State;
- ▶ The sentenced person consents to the transfer; and
- ▶ Both States consent to the transfer.

**7.4** Under the terms of the Convention, a prisoner may express interest in being transferred either to the local prison authorities or to the authorities in the country to which he/she wishes to be transferred. The authorities in the sentencing State can request the Minister for Justice, Equality and Law Reform in writing to consent to the transfer into Ireland of an Irish citizen on whom a sentence has been imposed in that State so that he/she may serve the sentence, or remainder thereof, in Ireland. Irish prisoners, who wish to apply to the Irish authorities for a transfer to Ireland, can write to the Minister for Justice, Equality and Law Reform, 94 St. Stephen's Green, Dublin 2. Enquiries about the status of applications should be directed to the Prisons Policy Section of the Department of Justice, Equality and Law Reform.

**7.5** Due to the detailed process of information exchange and the large volume of documentation involved in ensuring the above conditions are met, the transfer of a prisoner back to Ireland can be extremely time-consuming. This process is necessary to ensure all parties concerned (offender, sentencing State and administering State) are fully aware of the legal consequences of a transfer.

**7.6** In total, one hundred and twenty eight have now transferred to Ireland from abroad since the Transfer of Sentenced Person Act came

<sup>16</sup> Report by the Minister for Justice, Equality & Law Reform, Mr Michael McDowell, T.D., to the Houses of the Oireachtas on the Operation of The Transfer of Sentenced Persons Acts, 1995 and 1997 for the period 1 January, 2005 – 31 December, 2005 (Appendix I)

**Table A – Prisoner Transfers to Ireland, Applications Received**

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	Total
UK	8	44	41	33	21	31	26	20	14	11	17	13	279
USA		2	2						1	1			6
Canada		1											1
Hong Kong			1										1
Greece		1											1
Isle of Man			1			1		1					3
Spain				3		1					2		6
Italy								1					1
Panama								1			1		2
Holland									1			1	2
Japan										1			1
Australia										1			1
Trinidad & Tobago										1			1
<b>Total</b>	8	48	45	36	21	33	26	23	16	15	20	14	305

**Table B – Completed Prisoner Transfers to Ireland**

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	Total
UK	8	11	34	11	10	4	8	8	5	5	13	117
USA		2	1						1			4
Canada		1										1
Hong Kong		1										1
Isle of Man				1				1				2
Panama								1	1			2
Spain											1	1
<b>Total</b>	8	15	35	12	10	4	8	10	7	5	14	128

into operation on 1<sup>st</sup> November, 1995.<sup>17</sup> This is from a total of two hundred and ninety one applications received in the same period. Table A above shows a breakdown of these applications by jurisdiction and year of application.

**7.7** Table B above illustrates the breakdown for the number of transfers successfully completed since the Act came into force.

**7.8** The discrepancy between the figures is due to several reasons, such as: applications at various stage of consideration (27), prisoners withdrawing their applications, prisoners being released by the sentencing State in the course of having their applications processed, applications being refused (primarily due to applicants having insufficient ties in Ireland to justify a transfer under the Convention) or sentencing state was not a party to the Strasbourg Convention.

<sup>17</sup> Ibid. page 4 – Department of Justice, Equality & Law Reform figures. (Sixty-three prisoners have transferred out of Ireland since the Act came into operation.)

- 7.9** The repatriation of prisoners carries benefits for all parties concerned. The prisoner is allowed to serve the sentence close to family members and in a familiar environment thereby aiding the prisoner's social rehabilitation and reintegration into the community; the financial burden on both the prisoner and his/her family is lessened; outward transfer may relieve pressure on overcrowding in its prison system. It is generally recognised also that the average cost of incarcerating foreign national prisoners is usually far higher than that of imprisoning a citizen national within his/her own state.
- 7.10** Not all prisoners are eligible for transfer under the Strasbourg Convention. Examples include:
- ▶ Applicants having insufficient ties in Ireland to justify a transfer under the Convention
  - ▶ If the sentencing state is not a party to the Strasbourg Convention.
  - ▶ The nature of the offence
  - ▶ Transfer is usually not possible if the equivalent sentence in the home country is shorter than in the country of original detention<sup>18</sup>
  - ▶ Prisoners with psychiatric problems detained under mental health legislation are often excluded from the arrangements
  - ▶ Prisoners serving indeterminate sentences are often also excluded. This has been an obstacle in USA.
- ▶ Prisoners serving life sentences, e.g. Britain, may be excluded if they are obliged to serve the full term of their "licence" in the country of conviction.
- 7.11** There are however, disadvantages to the transfer system which prisoner should be made aware of:
- ▶ In some territories, heavy customs fines are imposed on some prisoners and no transfers are allowed until these are paid. This is particularly an issue for prisoners in France, where prisoners convicted of trafficking drugs face customs fines in addition to their custodial sentences. Many prisoners do not even submit applications to transfer as they know there is no prospect of being able to pay the fines.
  - ▶ In the US, differing sentencing practices may add to the complications. Some States habitually impose heavy sentences with mandatory minimum terms and this makes it difficult to reach agreement with the authorities in Ireland on the future prison regime of the applicant.
  - ▶ Even where prisoners can qualify for transfer, it is not always clear to them whether transferring would be to their advantage. Others who do decide to apply for transfer may end up being disappointed and frustrated by delays and difficulties encountered.
  - ▶ The amount of time to be spent in prison may be increased by transfer to Ireland. For example, remission of sentence is more generous in England than in Ireland. The English system allows remission of 1/2 of sentences, whereas in Ireland the statutory rate of remission is 1/4 of sentence.
- 7.12** It is important to ensure that the prisoner has accurate information about all of the implications of transferring. Therefore,

<sup>18</sup> This does not arise in respect of applications to transfer to Ireland. The Transfer of Sentenced Persons (Amendment) Act, 1997 provided for the transfer into the State of persons who have been sentenced to periods of imprisonment greater than the maximum penalties allowed under Irish law for similar offences.

prisoners are fully informed, in writing, of the consequences on the enforcement of their sentence before their consent is given. In each case, the information provided to the prisoner is exhibited to the sworn affidavit made to the High Court for the necessary warrant of transfer. In relation to transfers from the United Kingdom, applicants are informed that given the different rates of remission in Ireland and the United Kingdom, their final release date in Ireland will extend beyond their date in the United Kingdom. A detailed estimate of a release date in Ireland based on a 'notional' date of transfer is also provided before the prisoner consents (unlike other countries). Information in respect of temporary release is also provided and prisoners are clearly advised that there can be no guarantee that the Minister would see fit to authorise any form of temporary release in their case. Copies of the Transfer of Sentenced Persons Acts, 1995 and 1997 and an explanatory leaflet on its operation are provided to the prisoner, as well as an information booklet on the Parole Board for those prisoners serving longer sentences. If the prisoner has outstanding charges in Ireland, he or she is advised of these matters before consent is given.

## Compulsory Transfers

**7.13** The Strasbourg Convention has an additional, optional protocol, which includes provision for the transfer of prisoners to their home countries without their consent. Some parties to the convention have ratified this protocol. This additional protocol contains two substantive provisions, i.e. Articles 2 and 3. Article 2 of the protocol provides that where a person has fled from a sentencing State, without either serving or completing a sentence, and has returned to his/her State of nationality, the sentencing State may request the State of nationality to enforce the sentence, or the remainder thereof. Article 3 deals with people who are subject to an

expulsion or deportation order at the end of their sentence. The Article provides that such persons may be transferred earlier without their consent, from the sentencing State to their State of nationality for the purpose of completing their sentence.

**7.14** Whilst Ireland has ratified the additional protocol, the Government has decided not to give effect to Article 3. It considers the transfer of a prisoner without his/her consent does not create the best circumstances for successful rehabilitation. There have been examples of Irish citizens who have lived most, if not all of their lives in another country and are then subject to deportation to Ireland from that country at the end of their sentence. They are then exiled in Ireland with little or no family or friends and without their familiar support network. Therefore, at the time of ratification,<sup>19</sup> Ireland declared that it would not take over the execution of sentence in the circumstances described in Article 3. This was a specific concern of prisoner support groups, such as AIRE and the European Group for Prisoners Abroad. However, there is an EU Framework Agreement on prisoner transfers under consideration under which Ireland would be expected to comply with compulsory transfers.

## Detention of Prisoners Beyond their Sentences

**7.15** The recent controversy in Britain concerning the non-deportation of over a thousand foreign prisoners at the end of their sentences resulted in a much stricter policy being introduced by the British Government. European Prison Rules provide that "all prisoners shall be released without delay when their commitment orders expire, or when a court or other authority orders their release" (33.1). The British Government's new approach allowed for prisoners sentenced

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<sup>19</sup> 13th December 2006

to two or more years to be automatically considered for deportation. However, as described in 4.10, separate provisions are being made by the British authorities for Irish prisoners, given the close ties between our two countries. This Agreement ensures that Irish prisoners will not be subject to automatic deportation during or after their sentence.

### **Detention of Prisoners beyond their “Tariff”**

**7.16** It is understood that some Irish prisoners are detained in prison in Britain beyond the dates of the “tariff” set by the courts or other authorities. However, I have been informed by the British Home Office that such continued detention is usually because they deny the crime and consequently refuse rehabilitation training and other measures. The question of the release of these prisoners is an issue which is also relevant for the British prison system in general and is not confined to Irish prisoners. The safety of the public is also a key consideration with regard to detention over the tariff. In addition, as indicated above, transfers of foreign prisoners to their home countries are usually only available in the case of fixed sentences of more than two years remaining to be served.

**7.18** Despite its limitations, the Strasbourg Convention has benefited many families of Irish prisoners overseas and I believe it is a very valuable instrument which can greatly alleviate the burden, both financial and emotional, on prisoners and their families during the period of detention. There has been criticism of the long delays which frequently occur in such transfers. The Minister for Justice, Equality and Law Reform must, for inward transfers, obtain a warrant from the High Court authorising a prisoner’s continued detention in this country under the Irish Constitution. Such a procedure is not required in some of the other countries which are signatories to the Convention and this necessity unfortunately, does cause delays in processing applications for transfers into this country. The Department Justice, Equality and Law Reform has engaged in an ongoing basis with the State’s Legal Officers and others in an effort to minimise delays in operating the Convention. However, a legal framework is in place in Ireland based on the Convention and it must be adhered to in processing all applications.

### **Supervision of Prisoners on Licence**

**7.17** The ICPO has pointed out that prisoners released on licence are obliged to remain in Britain until their licence order expires. Those on life licences may not ever return to live in Ireland. This can be gravely disruptive for released prisoners and their families. ICPO recommended that the Department of Foreign Affairs, Department of Justice, Equality and Law Reform and the Irish Embassy in London should engage with the Probation Service authorities in Britain to highlight this and to look at ways of advancing this issue.



## 8. Conclusion

# 8. Conclusion

- 8.1 The Government should ensure that Ireland follow best international practice in relation to its support for Irish prisoners overseas.
- 8.2 There is a need for the Department of Foreign Affairs to improve its records of prisoners abroad. It needs to devote the necessary resources to establish a comprehensive database of Irish prisoners. It also needs to adopt a policy whereby every Irish prisoner is entitled, on request, to a consular visit at least once a year and more often in more difficult environments.
- 8.3 Whilst it is evident from this study that prison standards and the approach to prisoner welfare has evolved considerably since the UN Standard Minimum Rules for the Treatment of Prisoners, there is still a great need to address the situation of Irish prisoners abroad and to ensure that this vulnerable section of the Irish Nation are protected. Under the UN Rules, Irish prisoners abroad are Irish citizens who are deprived of their liberty. Otherwise their rights remain intact and it is the responsibility of the State to ensure these rights are protected.
- 8.4 It is also evident from this study that the detention pattern of Irish citizens abroad is changing. With the proliferation of travel links and growing economic wealth, Irish citizens are travelling to and being detained in more distant regions of the world, where the UN Rules may not be fully adhered to, or where the distance is a monumental burden on families. Special attention needs to be paid to prisoners incarcerated in developing countries, where conditions are greatly affected by the current political, economic and social situation in that country.
- 8.5 Ireland should take a lead in promoting greater and more effective international cooperation, especially at EU level, in protecting prisoners' welfare throughout the world.
- 8.6 The establishment of a dedicated prisoner unit within the Department of Foreign Affairs would allow for a more coherent approach to the welfare of Irish prisoners abroad. It would work in close partnership with concerned NGOs, especially the ICPO, in order to coordinate activities, ensure the best use of available resources and keep up to date on the latest international developments. This would provide Irish prisoners abroad with the best chance for rehabilitation into society and help lessen stress on their families





## Appendices

# Appendices

- A: International Agreements relating to penal policy and/or prisoner protection
- B: Population in prison by nationality and sex in England and Wales, September 2006, H M Prison Service London
- C: Vienna Convention on Consular Relations (1963)  
[http://untreaty.un.org/ilc/texts/instruments/english/conventions/9\\_2\\_1963.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf)
- D: UN Standard Minimum Rules for the Treatment of Prisoners Office of the High Commissioner for Human Rights [http://www.unhchr.ch/html/menu3/b/h\\_comp34.htm](http://www.unhchr.ch/html/menu3/b/h_comp34.htm)
- E: European Prison Rules [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/fight\\_against\\_sexual\\_exploitation\\_of\\_children/1\\_pc-es/Rec\\_2006\\_2E%20on%20the%20European%20Prison%20Rules.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/fight_against_sexual_exploitation_of_children/1_pc-es/Rec_2006_2E%20on%20the%20European%20Prison%20Rules.pdf)
- F: Council of Europe Convention on Transfer of Sentenced Persons (Strasbourg Convention)  
<http://conventions.coe.int/Treaty/en/Treaties/Html/112.htm>
- G: Countries party to the Strasbourg Convention
- H: Additional Protocol to the European Convention on The Transfer Of Sentenced Persons, 2006 European Treaty Series - No. 167
- I: Report by the Minister for Justice, Equality & Law Reform, Mr Michael McDowell, T.D., to the Houses of the Oireachtas on the Operation of The Transfer of Sentenced Persons Acts, 1995 and 1997 for the period 1 January, 2005 – 31 December, 2005  
[http://www.justice.ie/80256E010039C5AF/vWeb/flJUSQ6PEFSG-en/\\$File/TSPAnnIRpt2005.pdf](http://www.justice.ie/80256E010039C5AF/vWeb/flJUSQ6PEFSG-en/$File/TSPAnnIRpt2005.pdf)
- J: Submission from the Irish Commission for Prisoners Overseas

## Appendix A: International Agreements relating to penal policy and/or prisoner protection

- ▶ Standard Minimum Rules for the Treatment of Prisoners
- ▶ Basic Principles for the Treatment of Prisoners
- ▶ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- ▶ United Nations Rules for the Protection of Juveniles Deprived of the Liberty
- ▶ Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- ▶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- ▶ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- ▶ Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- ▶ Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- ▶ Safeguards guaranteeing protection of the rights of those facing the death penalty
- ▶ Code of Conduct for Law Enforcement Officials
- ▶ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- ▶ Basic Principles on the Role of Lawyers
- ▶ Guidelines on the Role of Prosecutors
- ▶ United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)
- ▶ United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)
- ▶ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")
- ▶ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- ▶ Basic Principles on the Independence of the Judiciary
- ▶ Model Treaty on the Transfer of Proceedings in Criminal Matters
- ▶ Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released
- ▶ Declaration on the Protection of All Persons from Enforced Disappearances
- ▶ Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

Links to these international instruments can be found on the following webpage:  
<http://www.unhchr.ch/html/intlinst.htm>

## Appendix B: Population in prison by nationality and sex in England and Wales, September 2006, H M Prison Service London

Nationality	Male	Female	Total
<b>All nationalities</b>	<b>75241</b>	<b>4378</b>	<b>79619</b>
<b>UK nationals</b>	<b>64013</b>	<b>3348</b>	<b>67361</b>
<b>Foreign nationals</b>	<b>10420</b>	<b>934</b>	<b>11354</b>
<b>Not recorded</b>	<b>808</b>	<b>96</b>	<b>904</b>

Africa	Male	Female	Total
Angola	85	2	<b>87</b>
Burundi	9	2	<b>12</b>
Dahomey (Benin)	7	-	<b>7</b>
Botswana	4	-	<b>4</b>
Ivory Coast	30	1	<b>31</b>
Central African Republic	9	2	<b>11</b>
Congo	110	11	<b>121</b>
Cameroon, United Republic	46	4	<b>50</b>
Cape Verde	1	-	<b>1</b>
Algeria	198	2	<b>200</b>
Egypt	14	1	<b>15</b>
Ethiopia	64	3	<b>67</b>
Ghana	181	34	<b>215</b>
Gambia	37	3	<b>40</b>
Guinea	12	-	<b>12</b>
Equatorial Guinea	1	-	<b>1</b>
Guinea/Bissau	1	-	<b>1</b>
Kenya	57	7	<b>64</b>
Liberia	30	4	<b>34</b>
Libya	23	-	<b>23</b>
Morocco	47	2	<b>49</b>
Mali	2	-	<b>2</b>
Mauritania	4	-	<b>4</b>
Mauritius	26	1	<b>27</b>
Malawi	15	-	<b>15</b>
Mozambique	4	-	<b>4</b>
Namibia	3	1	<b>4</b>
Niger	6	-	<b>6</b>
Nigeria	894	196	<b>1091</b>

Rwanda	16	3	<b>19</b>
Seychelles	2	-	<b>2</b>
Sudan	55	-	<b>55</b>
St Helena	-	1	<b>1</b>
Sierra Leone	74	7	<b>81</b>
Senegal	7	-	<b>7</b>
Somalia	329	12	<b>341</b>
Swaziland	1	-	<b>1</b>
Chad	2	-	<b>2</b>
Togo	7	4	<b>12</b>
Tunisia	16	-	<b>16</b>
Tanzania	19	1	<b>20</b>
Uganda	82	8	<b>89</b>
Western Sahara	1	-	<b>1</b>
South Africa	143	38	<b>181</b>
Zambia	11	1	<b>12</b>
Congo, Democratic Republic	40	-	<b>40</b>
Zimbabwe	154	28	<b>182</b>
<b>Total Africa</b>	<b>2882</b>	<b>379</b>	<b>3261</b>

Asia	Male	Female	Total
Bangladesh	182	1	<b>183</b>
Burma	1	-	<b>1</b>
China	240	27	<b>266</b>
Hong Kong	10	-	<b>10</b>
Indonesia	4	-	<b>4</b>
India	277	6	<b>283</b>
Cambodia	1	-	<b>1</b>
Korea Republic of (Sth)	5	-	<b>5</b>
Sri Lanka	164	3	<b>167</b>
Mongolia	7	-	<b>7</b>
Maldives	1	-	<b>1</b>
Malaysia	24	3	<b>26</b>
Nepal	1	-	<b>1</b>
Phillipines	14	10	<b>24</b>
Pakistan	438	11	<b>448</b>

## Appendix B: Population in prison by nationality and sex in England and Wales, September 2006, H M Prison Service London

Singapore	4	-	<b>4</b>
Thailand	4	5	<b>9</b>
East Timor (Portuguese)	1	-	<b>1</b>
Vietnam	330	32	<b>362</b>
<b>Total Asia</b>	<b>1708</b>	<b>97</b>	<b>1805</b>

<b>Central and South America</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>
Argentina	2	1	<b>3</b>
Bolivia	7	2	<b>9</b>
Brazil	70	18	<b>88</b>
Belize	1	-	<b>1</b>
Chile	12	1	<b>13</b>
Columbia	112	9	<b>121</b>
Costa Rica	2	-	<b>2</b>
Ecuador	17	-	<b>17</b>
French Guyana	4	-	<b>4</b>
Guatemala	5	-	<b>5</b>
Guyana	31	8	<b>39</b>
Honduras	1	-	<b>1</b>
Mexico	14	2	<b>16</b>
Panama	2	1	<b>3</b>
Peru	6	-	<b>6</b>
Surinam	6	1	<b>7</b>
El Salvador	-	1	<b>1</b>
Venezuela	30	8	<b>38</b>
<b>Total Central and South America</b>	<b>322</b>	<b>52</b>	<b>373</b>

<b>Europe</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>
Albania	146	1	<b>147</b>
Armenia	5	-	<b>5</b>
Austria	9	3	<b>12</b>
Azerbaijan	4	-	<b>4</b>
Bosnia-Herzegovina	4	4	<b>8</b>
Belgium	35	5	<b>40</b>
Bulgaria	11	3	<b>13</b>
Croatia	8	1	<b>9</b>

Switzerland	6	-	<b>6</b>
Czech Republic	41	4	<b>45</b>
Cyprus	57	1	<b>58</b>
Germany	125	17	<b>142</b>
Denmark	9	1	<b>10</b>
Estonia	18	2	<b>20</b>
Spain	66	12	<b>78</b>
Finland	3	-	<b>3</b>
France	153	12	<b>165</b>
Georgia	11	-	<b>11</b>
Gibraltar	3	-	<b>3</b>
Greece	13	4	<b>17</b>
Hungary	20	3	<b>23</b>
Irish Republic	658	38	<b>696</b>
Italy	102	10	<b>112</b>
Kazakhstan	4	-	<b>4</b>
Kyrgystan	6	-	<b>6</b>
Lichtenstein	1	-	<b>1</b>
Lithuania	177	11	<b>188</b>
Latvia	51	3	<b>54</b>
Moldova	46	2	<b>48</b>
Macedonia	5	-	<b>5</b>
Serbia and Montenegro	102	1	<b>103</b>
Malta	8	-	<b>8</b>
Netherlands	122	27	<b>149</b>
Norway	8	-	<b>8</b>
Poland	285	11	<b>296</b>
Portugal	171	9	<b>181</b>
Romania	108	16	<b>124</b>
Sweden	15	5	<b>20</b>
Slovakia	18	2	<b>20</b>
Slovenia	6	-	<b>6</b>
Russia	109	13	<b>122</b>
Turkey	246	1	<b>247</b>
Uzbekistan	2	-	<b>2</b>
<b>Total Europe</b>	<b>3000</b>	<b>221</b>	<b>3221</b>

## Appendix B: Population in prison by nationality and sex in England and Wales, September 2006, H M Prison Service London

Middle East	Male	Female	Total
United Arab Emirates	7	-	7
Afghanistan	90	-	90
Bahrain	1	-	1
Iran	216	1	217
Israel	26	-	26
Iraq	303	2	305
Jordan	14	-	14
Kuwait	10	-	10
Lebanon	22	1	23
Oman	1	-	1
Qatar	1	-	1
Saudi Arabia	11	-	11
Syrian Arab Republic	6	-	6
Yemen, Republic of	9	-	9
<b>Total Middle East</b>	<b>718</b>	<b>4</b>	<b>722</b>

North America	Male	Female	Total
Canada	21	5	27
United States of America	83	13	95
<b>Total North America</b>	<b>104</b>	<b>18</b>	<b>122</b>

Oceania	Male	Female	Total
Australia	26	2	28
Fiji	12	-	12
French Southern Territories	1	-	1
Johnston Island	1	-	1
Kiribati	1	-	1
New Zealand	5	2	7
Papua New Guinea	1	-	1
<b>Total Oceania</b>	<b>48</b>	<b>4</b>	<b>51</b>

Other	Male	Female	Total
<b>Total other</b>	<b>9</b>	<b>-</b>	<b>9</b>



Unrecorded	Male	Female	Total
<b>Total unrecorded</b>	<b>808</b>	<b>96</b>	<b>904</b>

West Indies	Male	Female	Total
Aruba	2	-	<b>2</b>
Anguilla	1	-	<b>1</b>
Netherlands Antilles	23	6	<b>29</b>
Barbados	26	1	<b>27</b>
Bermuda	7	1	<b>8</b>
Bahamas	5	-	<b>5</b>
Cuba	1	-	<b>1</b>
Dominica	3	-	<b>3</b>
Dominican Republic	6	3	<b>9</b>
Grenada	22	4	<b>26</b>
Haiti	3	-	<b>3</b>
Jamaica	1402	109	<b>1511</b>
St Lucia	23	7	<b>30</b>
Montserrat	15	1	<b>16</b>
St Christopher & Nevis	1	-	<b>1</b>
St Kitts and Nevis	1	-	<b>1</b>
Trinidad and Tobago	76	25	<b>101</b>
St Vincent & The Grenadines	11	3	<b>14</b>
<b>Total West Indies</b>	<b>1630</b>	<b>160</b>	<b>1790</b>

## Appendix G: Countries party to the Strasbourg Convention

### Convention on the Transfer of Sentenced Persons

#### CETS No.: 112

Treaty open for signature by the member States and the non-member States which have participated in its elaboration and for accession by other non-member States

#### Opening for signature

Place: Strasbourg

Date : 21/3/1983

#### Entry into force

Conditions: 3 Ratifications.

Date : 1/7/1985

Status as of: 1/12/2006

#### Member States of the Council of Europe

States	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.
Albania	19/5/1998	4/4/2000	1/8/2000			X				
Andorra	4/11/1999	13/7/2000	1/11/2000			X	X			
Armenia		11/5/2001 a	1/9/2001			X				
Austria	21/3/1983	9/9/1986	1/1/1987			X				
Azerbaijan	25/1/2001	25/1/2001	1/5/2001		X	X	X			
Belgium	21/3/1983	6/8/1990	1/12/1990			X				
Bosnia and Herzegovina	30/4/2004	15/4/2005	1/8/2005							
Bulgaria	30/9/1993	17/6/1994	1/10/1994			X				
Croatia		25/1/1995 a	1/5/1995			X				
Cyprus	27/2/1984	18/4/1986	1/8/1986			X				
Czech Republic	13/2/1992	15/4/1992	1/1/1993	17						
Denmark	21/3/1983	16/1/1987	1/5/1987			X		X		
Estonia	4/11/1993	28/4/1997	1/8/1997			X				
Finland		29/1/1987 a	1/5/1987			X				
France	27/4/1983	11/2/1985	1/7/1985		X	X				
Georgia		21/10/1997 a	1/2/1998			X				
Germany	21/3/1983	31/10/1991	1/2/1992			X				X
Greece	21/3/1983	17/12/1987	1/4/1988			X				
Hungary	19/11/1991	13/7/1993	1/11/1993			X				
Iceland	19/9/1989	6/8/1993	1/12/1993			X				
Ireland	20/8/1986	31/7/1995	1/11/1995		X	X				
Italy	20/3/1984	30/6/1989	1/10/1989			X				
Latvia	30/10/1996	2/5/1997	1/9/1997			X				
Liechtenstein	3/5/1983	14/1/1998	1/5/1998			X	X			

States	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.
Lithuania	25/1/1995	24/5/1996	1/9/1996			X				
Luxembourg	21/3/1983	9/10/1987	1/2/1988			X				
Malta	4/11/1988	26/3/1991	1/7/1991			X				
Moldova	6/5/1997	12/5/2004	1/9/2004			X				
Monaco										
Netherlands	21/3/1983	30/9/1987	1/1/1988			X		X		
Norway	8/3/1985	9/12/1992	1/4/1993			X		X		
Poland	22/11/1993	8/11/1994	1/3/1995			X				
Portugal	21/3/1983	28/6/1993	1/10/1993			X				
Romania	30/6/1995	23/8/1996	1/12/1996			X			X	
Russia	7/4/2005									
San Marino	17/3/2004	25/6/2004	1/10/2004							
Serbia		11/4/2002 a	1/8/2002	54						
Slovakia	13/2/1992	15/4/1992	1/1/1993	17		X				
Slovenia	14/5/1993	16/9/1993	1/1/1994							
Spain	10/6/1983	11/3/1985	1/7/1985			X	X			
Sweden	21/3/1983	9/1/1985	1/7/1985			X	X			X
Switzerland	21/3/1983	15/1/1988	1/5/1988			X	X			
the former Yugoslav Republic of Macedonia	28/7/1999	28/7/1999	1/11/1999							
Turkey	19/6/1985	3/9/1987	1/1/1988			X				
Ukraine		28/9/1995 a	1/1/1996							
United Kingdom	25/8/1983	30/4/1985	1/8/1985		X	X	X		X	

### Non-member States of the Council of Europe

States	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.
Australia		5/9/2002 a	1/1/2003							
Bahamas		12/11/1991 a	1/3/1992			X	X			
Bolivia		2/3/2004 a	1/6/2004			X	X			
Canada	21/3/1983	13/5/1985	1/9/1985							
Chile		30/7/1998 a	1/11/1998							
Costa Rica		14/4/1998 a	1/8/1998							
Ecuador		12/7/2005 a	1/11/2005			X	X			
Israel		24/9/1997 a	1/1/1998			X				
Japan		17/2/2003 a	1/6/2003			X				
Korea		20/7/2005 a	1/11/2005			X				
Mauritius		18/6/2004 a	1/10/2004					X		
Mexico										
Montenegro		11/4/2002 a	6/6/2006	54						
Panama		5/7/1999 a	1/11/1999			X	X			
Tonga		3/7/2000 a	1/11/2000							
Trinidad and Tobago		22/3/1994 a	1/7/1994							
United States	21/3/1983	11/3/1985	1/7/1985			X				
Venezuela		11/6/2003 a	1/10/2003							
<b>Total number of signatures not followed by ratifications:</b>					<b>1</b>					
<b>Total number of ratifications/accessions:</b>					<b>61</b>					

**Notes :** (17) Dates of signature and ratification by the former Czech and Slovak Federal Republic

(54) Date of accession by the state union of Serbia and Montenegro.

a: Accession

s: Signature without reservation as to ratification

su: Succession

r: Signature "ad referendum".

R.: Reservations

D.: Declarations

A.: Authorities

T.: Territorial Application

C.: Communication

O.: Objection

Source : Treaty Office on <http://conventions.coe.int>

# Appendix J: Submission to Mr Chris Flood from the Irish Commission for Prisoners Overseas

## Introduction

The ICPO is now in its twenty-first year of service to Irish prisoners and their families.

Over that time it has acquired a considerable amount of experience in dealing with the problems faced by prisoners and their families. We welcome this Government research into the plight of Irish prisoners abroad and hope that it will result in the most comprehensive overview of this neglected and needy constituency. We hope too, that in addition to facts and figures, the research will offer an insight into what life is like for those who find themselves in custody far from home. The strength of any such research lies in its findings and recommendations. We would hope that this piece of research would result in specific recommendations for improving the plight of prisoners and their families. To that end we have outlined below those areas of greatest concern to us with suggestions for improvement.

## Consular Services

Speedy initial contact from the Irish Consular Services is vital for Irish citizens arrested and held in custody overseas. As well as making them aware of their rights at the time of arrest, Irish citizens in prison overseas report that contact with embassies and consulates greatly adds to their sense of security and well being. Conversely, prisoners report feelings of confusion and isolation when their letters and /or requests for a visit from consular officials are not responded to.

ICPO believes that the needs of Irish prisoners overseas and their families should be given greater attention within the Department of Foreign Affairs so that policy from the department facilitates best international practice and standards and concomitantly the outreach from the diplomatic staff will be committed to the needs of both these groups.

The needs of foreign nationals in the European Prison System have recently been officially recognised in the EU. On January 11<sup>th</sup> 2006, the Council of Ministers

formally adopted Rule 37 on Foreign Nationals. This is an addition to the European Prison Rules, which form the guidelines for the prison systems in the EU.

### Recommendation:

- ▶ Clear guidelines be set down which govern the outreach from the Dept of Foreign Affairs through its embassies and consulates overseas. As far as possible, all requests for visits from Irish nationals in prison overseas are acceded to, particularly for those who are newly imprisoned, those who are in countries with very different systems and those who are vulnerable for whatever reason. A policy is put in place with regard to how often a prisoner can expect a visit from embassy staff. Irish people in overseas prisons to be informed of this policy when they first make contact with the embassy.
- ▶ Irish people in custody need to be made aware of their rights and receive guidelines re same as soon as possible after they are arrested.
- ▶ Information on legal and prison systems be readily available. Particular attention given to problematic areas for families, such as booking visits, visiting orders, accumulated visits.
- ▶ Requests for assistance to embassy staff are acknowledged and replied to within a reasonable time frame.
- ▶ Taking into account the prisoner's wishes and issues of confidentiality, every assistance is given to families who wish to know where a family member is imprisoned or who wish to be updated on their wellbeing.
- ▶ An ICPO information leaflet is given to prisoners and their families when they make initial contact.
- ▶ Finding a visitor for prisoners far from home and those with special needs is made a priority.

## Communication

Maintaining family relationships during a period of imprisonment is vital for the well being of offenders and their families. In addition, all the evidence suggests that the chances of successful reintegration into society and cessation of crime will depend to a large degree on the quality and frequency of the family contact. However, both prisoners overseas and their families have difficulty in maintaining contact due to distance and expense. Prisoners are not allowed to receive a phone call into prison. Phone charges from a prison in England and Wales to Ireland at 66c/minute are six times what they would cost from a public phone box. Phone calls from other countries are generally strictly controlled, with some having little or no access to the phone. For example, in France people can spend up to two years in a remand prison and those prisons do not have phone facilities for prisoners.

Prisoners need an income for living expenses such as phone cards, stamps, toiletries, clothes, renting a television, supplementing their diet to a greater or less degree, buying tobacco and in rare cases paying for their cell. The average wage in the UK prisons is around £2.50 per week. In other countries, prisoners may not be allowed to work while they are on remand, or even when they are sentenced because there is no prison work available or because they do not speak the language. In the majority of cases, the cost of providing for the prisoner is borne by the family. In some countries, supplementary food is required to augment inadequate prison food. In most cases, the imprisonment overseas of a family member is a financial burden for families. In addition, travelling overseas to visit a family member can be extremely costly as well as being emotionally demanding and time consuming. Due to these and other factors eg -poor health, commitments because of young children, many prisoners receive few, if any, visits from families.

### Recommendation:

- ▶ Consideration is given to removing the discretionary element of the Supplementary

Welfare Allowance to the families of prisoners and the extension of this allowance to those on small incomes.

- ▶ A phone allowance is available to prisoners which would allow them to phone a relative a number of times in the month.
- ▶ An allowance is made available to families to visit a vulnerable relative in prison overseas more than twice a year.
- ▶ An allowance is made to Irish citizens in overseas prisons to ensure they can afford the basics, e.g. food supplements, toiletries, stamps, phone cards, clothes. This is in line with other European countries. (Spanish Government gives an allowance of €100 a month).
- ▶ Special provision is made for those with no family support whatsoever.

## Culturally sensitive practices

Many Irish citizens in prison overseas feel they are in an alien environment where they are not understood. This is particularly the case in the UK where, at the very least, Irish prisoners often complain about the lack of awareness of their identity by prison staff. Also, some prisoners, especially travellers, claim to be badly treated by staff. Irish travellers now constitute a distinct ethnic group for the purpose of census-taking in the UK.

### Recommendation:

- ▶ That the Department of Foreign Affairs use its influence with the British Home Office and the Prison Service to ensure that Irish nationals in custody are treated as a distinct ethnic group and accorded the same treatment and privileges as others in this category.
- ▶ That a special effort is made to examine the problems faced by travellers, eg literacy, refusal of bail, non allocation of jobs in the prison and discrimination within the prison system.

- ▶ That the relevant authority liaises with prison regimes and authorities overseas to ensure that Irish people are assisted in maintaining their cultural identity and family ties as per the recommendations in the European Prison Rules (38.2).

### Supervised release at time of serious illness

On occasion, Irish citizens in prison in the UK have been refused permission to visit a seriously ill family member in Ireland. There appears to be no provision to allow this. Our information is that in similar circumstances, English prisoners in the Irish prison system have been facilitated. The European Arrest Warrant gives backup for this provision.

#### Recommendation:

That the Department of Foreign Affairs would engage with the Department of Justice and the UK prison service on this matter to see if guidelines could be drawn up that would facilitate supervised release at time of serious illness or death of a family member.

- ▶ That such an arrangement is considered for prisoners in other countries.

### Going to trial

Free legal aid is not available or is of a very poor quality in some countries. Families often run up considerable debts because of this. Prisoners are not always well served by their legal teams.

#### Recommendation:

- ▶ There is a need for the Department of Foreign Affairs to make sure that countries live up to their obligations to provide adequate resources for free legal aid.
- ▶ Irish citizens held in custody and their families have available clear and concise information

around the legal system, difficulties and entitlements.

- ▶ Good quality translation services are available.

### Supervision of prisoners on licence

Prisoners released on licence in the UK must remain in the UK until their licence order expires. Those on life licences may not ever return to live in Ireland. This can be gravely disruptive for released prisoners and their families.

#### Recommendation:

- ▶ The Department of Foreign Affairs would engage with Probation Service authorities in the UK and here to highlight this and to look at ways of advancing this issue at Council of Europe or bilateral level.

### Deportation

Irish citizens in prison in the UK are increasingly being issued with threatening letters deportation. They have always been deported from the US and are generally deported from other countries in Europe. In the case of the UK, many are afraid to fight these orders in case they will not be released at the due date. Many who are deported to Ireland have lived virtually all of their lives in the country of imprisonment and consequently are homeless when they arrive in Ireland. They are also deported without any prison money which means that they may arrive in Ireland without even the price of a phone call! Deportation also needs to be examined in the light of EU legislation and in view of the fact that more Irish people are travelling overseas for work and leisure.

#### Recommendation:

- ▶ The Irish authorities note and take appropriate action to ensure that Irish nationals are not deported without just cause and are given every reasonable chance to appeal.

- ▶ The Irish authorities look at EU legislation with a view to ascertaining the legality of deporting Irish citizens from other EU countries.
- ▶ That Irish citizens being deported are given the opportunity to make plans with the appropriate authorities so as to assist them with resettlement in Ireland. .

### Post release Services

All newly released prisoners face problems associated with reintegration into society. Those who are homeless face the most difficulties. While the Homeless Person's Unit in Dublin has made great strides in ensuring that people will not have to sleep on the streets, people returning from prison overseas report that the homeless hostels are not suitable for those who wish to leave the drink and drug culture behind, or those who wish to have some personal space. Certain categories of prisoner are excluded from the Probation funded hostels such as Priorswood House. Irish prisoners who choose to remain in the UK have many of the same concerns around rehabilitation.

#### Recommendation:

- ▶ Other forms of accommodation besides the homeless hostels are made available to returning homeless Irish citizens returning from prison overseas until they can get established.
- ▶ Of the above group, appropriate accommodation is sourced for sex offenders, arsonists and those with special needs.
- ▶ Information, support and advice are made readily available for newly returned Irish citizens returning from prison overseas.
- ▶ Likewise, their families know where to access support services.
- ▶ Integrated support services are in place for those who are known to be vulnerable prior to their release.

### Repatriation

Under the terms of the Council of Europe Transfer of Sentenced Prisoners Act 95/97, Irish prisoners overseas, once they have been sentenced and have no appeal outstanding, are entitled to apply for repatriation so that they may be permitted to serve the remainder of their prison sentence in this country. This has a dual humanitarian and rehabilitative goal. Repatriation has been of great assistance to many Irish nationals and their families and even to know that they can apply for repatriation is a morale booster for many prisoners. Problems we have noted are: lengthy procedural processes, which mean that some prisoners spend over three years waiting for the process to be completed. In addition, prisoners in countries which are not signatories to the Convention are not eligible for repatriation. This can mean that prisoners have to serve out their sentence in very distant and sometimes difficult circumstances.

#### Recommendation:

- ▶ The department of Foreign Affairs would establish bilateral treaties with countries in South and Central America and other countries as deemed necessary, to facilitate repatriation of Irish nationals.
- ▶ With regard to procedural delays, systems are reviewed to ensure speedy processing of applications.
- ▶ As per Rule 37 of the European Prison Rules, enacted by the EU on January 11th 2006, Irish prisoners are made aware of their right to apply for repatriation when they are imprisoned overseas.
- ▶ Systems are put in place which will enable speedy processing of special cases, eg where very young or vulnerable people are in prison overseas.

### Education:

While the European Prison Rules recommend that allocation to education should be of comparable status as allocation to work, in practice, many



prisoners complain of not having access to educational courses, or of only having access to courses of limited or no formal educational value, such as those which address offending behaviour. In addition, prisoners receive no payment for educational courses. This is a serious deterrent to undertaking an educational course. Prisoners in non-English speaking countries often report that language barriers prevent them from taking part in education.

#### Recommendation:

- ▶ Access and provision of educational courses to Irish prisoners overseas be monitored and addressed.
- ▶ Particular attention is paid to those who are illiterate and/or those who are young and have very low educational levels.
- ▶ Distance learning courses are made available to prisoners who would not otherwise be able to partake in educational courses.
- ▶ Prisoners are not penalised for taking part in an educational course by not being paid.

## Health

In the UK a disturbingly high number of Irish prisoners as well as having learning difficulties, have health problems around AIDS, alcohol and drug addiction. Pilot research schemes in recent years have shown that there is a high incidence of mental health problems with Irish prisoners. The treatment they receive for these conditions varies considerably from prison to prison, and may be non-existent in other countries. Many prisoners with serious mental health problems are in custody mainly because there is nowhere else for them to be incarcerated.

People with chronic or acute illnesses or those who suffer an injury are especially vulnerable in prison overseas. A minority of prisoners have complained of serious shortfalls in the care extended to them. In some cases neglect of an existing condition or

injury has been alleged. In other cases, it takes the form of not having adequate medication or dental treatment available and the prisoner having to make arrangements independently where it is possible.

In parts of Central and South America and in parts of the Far East, prisoners have reported that the food is unpalatable or of poor quality and in order to stay healthy, they need to supplement their diet. Reports of food quality and quantity differ in other parts of the world. Finally, some prisoners have reported 23 hour lock-up because of staff shortages or other reasons within the prison. This is not specific to any particular country.

#### Recommendation:

- ▶ Attention is paid to the food and the general prison regime, to include time out of cell, exercise facilities etc., to ensure that it is at least adequate to maintain good health.
- ▶ Good quality medical and dental treatment and aftercare is afforded to Irish citizens in overseas prisons
- ▶ Particular attention is paid to those with mental health problems to ensure that they are getting the care they need.
- ▶ Irish citizens in overseas prisons or their families have a forum where they can bring their concerns.
- ▶ Systems are put in place so that referral to addiction centres can take place from an overseas prison and the cost of this to be paid for by the appropriate local authority.

## Prisoners serving past their tariff dates/elderly prisoners

ICPO is concerned at the number of people serving very lengthy sentences in England and Wales who appear to make little or no progress in the prison system. A number of these are quite elderly and have served between ten and twenty years beyond their tariff. These people are virtually 'lost' in the system and have become so institutionalised as to be

beyond rehabilitation. Some have been turned down for repatriation because they would not normally be resident in Ireland, or have little support in Ireland. We believe that this interpretation of the legislation around repatriation unfairly discriminates against those who have little or no family support either in England or Ireland, but who would prefer to spend their declining years in prison in their own country.

#### Recommendation:

- ▶ Prisoners serving past their tariff are monitored and the reason(s) found why there has been no progress to release on licence. Appropriate responses can then be made.
- ▶ In the case of those 'lifers' who have served well beyond their tariff, that pressure is put on the Parole Board in the UK and the relevant bodies abroad to examine the special problems faced by elderly people in prison with a view to rehabilitation.
- ▶ Supported accommodation, taking account of these prisoners, is put in place both in the UK and in Ireland.
- ▶ The possibility of repatriation or return to Ireland is investigated.

### Miscarriage of justice cases/Human rights

A number of people in the prison system in the UK and overseas allege that they are the victims of a miscarriage of justice and that they should not be in prison. In some cases they make little progress within the prison system because they do not engage with the system. In other cases, people allege that their human rights are being breached, either because of the prison conditions or because they are being held against their will in a mental institution.

#### Recommendation:

- ▶ These cases are monitored by the Irish authorities. In the UK, their status with reference

to the Criminal Cases Review Commission is ascertained.

- ▶ Those Irish citizens in overseas prisons in other parts of the world have access to an independent body which can give legal assistance in problematic cases.
- ▶ Since the sentence that has been handed down forms the basis of the sentence that is to be served back in Ireland, that Irish citizens who wish to apply for repatriation have recourse to the above body to ensure before they proceed that the sentence they have been handed down is fair and equitable.
- ▶ That the Irish authorities have a person/unit in their headquarters in Dublin where expert advice can be sought on a range of human rights issues.
- ▶ In the case of Irish citizens detained against their will in mental health institutions, that their cases are examined and appropriate steps taken to monitor their situation.

### Conclusion

These are the issues of greatest concern to us at present and which we would like to see addressed by the Government Research Project. This project offers a unique opportunity to open a window into the world of Irish prisoners abroad, their problems and anxieties, as well as the difficulties faced by their families. Research on this scale does not happen very often, so it is imperative that maximum use be made of this opportunity. This research could be very important in providing Consular bodies, the ICPO as well as other agencies and individuals, with a template of action for the future. At very least, it must result in increased efforts to improve the plight of Irish prisoners and their families, a constituency which the ICPO has been privileged to serve for over two decades.



