

**Immigration-related detention in Ireland**

**A research report for the  
Irish Refugee Council  
Irish Penal Reform Trust and  
Immigrant Council of Ireland**

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## Foreword

Demographic developments in Ireland have created a new ethnic diversity, not just in the broader population but also in Irish prisons over recent years. People of more than 70 different nationalities were detained in Irish prisons in 2004, consisting of people convicted of criminal offences, people on remand and people detained for immigration-related reasons, which may sometimes include asylum seekers. Detention for immigration purposes is sometimes referred to as administrative detention as it is detention without a conviction, and usually takes place in order that a further administrative measure can take place (i.e. deportation or expulsion).

People detained for immigration reasons are a particularly disadvantaged group - away from the public eye they may not have access to services which have been made available for immigrants, they may not be made aware of their rights and entitlements or may not be able to exercise them because of language and/or literacy difficulties. They may also experience problems due to cultural differences. These issues are compounded for detainees who are not entitled to legal aid.

The Irish Refugee Council, the Immigrant Council of Ireland and the Irish Penal Reform Trust commissioned this independent research in May 2004 due to an increasing number of queries relating to people detained for immigration-related reasons and a general lack of clarity and knowledge on the rights and entitlements of these people, the legal basis for their detention and their treatment during the period of detention. The research examines current legislation, policy and practice in Ireland and benchmarks this against international human rights standards.

Our organisations are very aware of the increasing trend internationally towards the use of detention for immigration-related purposes – with certain countries constructing dedicated “holding centres” for this purpose while other countries, such as Ireland, use existing prison services. The findings of this independent research report serve to confirm that prisons are, by definition, inappropriate places in which to hold immigration detainees. It recommends that the practice of holding immigration detainees in prisons in Ireland be brought to an end.

In those cases where it is deemed necessary to deprive persons of their liberty for an *extended* period under immigration legislation, the report stresses that they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified personnel. Other alternatives, such as reporting requirements, although not examined in this report are also worthy of further consideration for persons who may currently be detained for shorter periods. Joint initiatives with non-governmental organisations and building relationships of trust with local community groups is vital for the success of any non-custodial alternatives.

Our three organisations wish to thank Mark Kelly for his excellent work on this research. We also wish to thank the main funder of this research, The Allen Lane Foundation.

We hope that the publication will be of use to Government and to people working in the area of immigration, particularly as we await the publication of the Immigration and Residence Bill.

In addition we hope that the report will stimulate informed discussion on the issues raised.

The Immigrant Council of Ireland  
The Irish Penal Reform Trust  
The Irish Refugee Council

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## Executive Summary

### Introduction

Until recently, it was comparatively rare for people to be detained for immigration-related reasons in Ireland. However, over the last few years, a range of statutory detention powers has been introduced to authorise the detention – in Garda Síochána stations and prisons – of:

- people refused permission to land
- applicants for asylum and
- people due to be deported.

In addition, people may be held in prison on remand (i.e. awaiting trial) for immigration-related reasons.

Official figures published for the first time in this report show that, in 2003-2004, a total of 2,798 people were held in prison for immigration-related reasons. In 2004, some two thirds of those detained were held in prison for periods of longer than 51 days.

### The legal framework for immigration detention in Ireland

The report provides a detailed description of the legal framework that applies to immigration-related detainees, outlines the legal authority on which people can be detained, lists the authorised places of detention in which they can be held, and identifies possibilities for them to appeal against their detention and/or request that its legality be reviewed. This is the first time that an up-to-date synthesis of the law in this area has been published.

The report also examines the formal legal safeguards that are offered to persons detained for immigration-related reasons and benchmarks these against international human rights standards.

As matters stand, Irish law and practice do not adequately protect the rights of people refused permission to land and people detained pending deportation. Such persons are not being informed in writing, in a language that they understand, of their right to challenge the legality of their detention and/or the validity of a decision to remove them from the State. Moreover, the law does not formally recognise their rights to inform a person of their choice of their situation, to have access to a lawyer and to have access to medical care. Nor are such people being systematically provided with written information in a language that they understand in order to explain the legal procedures that apply to them and to outline their rights.

<b>RIGHTS OF IMMIGRATION DETAINEES UNDER INTERNATIONAL HUMAN RIGHTS STANDARDS</b>					
<b>LEGAL STATUS OF DETAINED PERSON</b>	<b>Formal legal right to notify a third party of one's detention</b>	<b>Formal legal right to have access to a lawyer</b>	<b>Formal legal right to have access to a doctor</b>	<b>Formal legal right to appeal against the legality of one's detention</b>	<b>Provision of written information about rights in a language understood by the detainee</b>
<b>Refused permission to land</b>	---	---	---	+	---
<b>Detained pending deportation</b>	---	---	---	+	---
<b>Detained asylum seekers</b>	+	+	+	+	+
<b>Immigration-related remand</b>	+	+	+	+	+

Key: + = Irish law broadly in conformity with international human rights standards  
 --- = Irish law not in conformity with international human rights standards

The rights of detained asylum seekers are more fully protected in Irish law; however, the report identifies a number of areas where improvements are required, including as regards the precise nature and content of their rights to inform a person of their choice of their situation and to have access to a lawyer as from the very outset of their detention.

The report contains recommendations designed to bring Irish law and practice in these areas into conformity with international human rights standards.

### Life in prison for immigration-related detainees

Over 90% of the persons detained for immigration-related reasons in Ireland are held in one of two prisons in Dublin: Cloverhill Prison (which holds male detainees) and the Dóchas Centre at Mountjoy Prison (which accommodates female detainees). Private interviews were carried out with male and female third country nationals held for immigration-related reasons in both of these establishments.

On the basis of those interviews, and of an independent examination of the living conditions at Cloverhill and the Dóchas Centre, the report provides a description of life in prison for immigration-related detainees. It concludes that neither Cloverhill Prison nor the Dóchas Centre provide an appropriate environment in which to hold immigration detainees.

Cloverhill Prison accommodates immigration detainees in overcrowded conditions – three to an 11m<sup>2</sup> cell – together with people suspected of criminal offences. They are locked in their cells for more than seventeen hours a day and significant restrictions – including closed visiting arrangements – are placed on their contacts with the outside world.

Although conditions at the Dóchas Centre are better in certain respects (e.g. open visits and more time unlocked), immigration detainees held there appear to be bearing the brunt of the establishment's overcrowding problems. Indeed, two of them were found to be sleeping on mattresses placed directly on the floor of an 8m<sup>2</sup> office. Moreover, immigration detainees at the Dóchas Centre are held together with people on remand *and* convicted prisoners.

The report recommends that, for so long as immigration detainees continue to be held at Cloverhill and the Dóchas Centre, they should be kept in more spacious living conditions. It also recommends a number of other specific measures designed to improve the quality of their daily lives. These include providing all newly-admitted detainees with an information booklet including details about life in the establishment, and about the legal rights and entitlements of immigration detainees. That booklet should be made available in the languages most commonly spoken by those detained for immigration-related reasons.

The holding of immigration detainees in Irish prisons has been repeatedly criticised by authorities including the Council of Europe, the Inspector of Prisons and Places of Detention, the Visiting Committees of the establishments concerned and the National Prison Chaplains.

The findings of this independent research report serve to confirm that prisons are, by definition, inappropriate places in which to hold immigration detainees. It recommends that the practice of holding immigration detainees in prisons in Ireland be brought to an end.

In those cases where it is deemed necessary to deprive persons of their liberty for an extended period under immigration legislation, the report stresses that they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified personnel.

### Future prospects

Finally, the report looks to the future; it recommends that the legislative changes necessary to bring Irish law on immigration-related detention into conformity with international human rights standards be incorporated into the Government's forthcoming Immigration and Residence Bill.

## A. Introduction

1. This research report was commissioned by three non-governmental organisations: the Irish Refugee Council (IRC), the Irish Penal Reform Trust (IPRT) and the Immigrant Council of Ireland (ICI). The research was carried out by Human Rights Consultants (HRC), with the approval of the Prisoner Based Research Ethics Committee of the Department of Justice, Equality and Law Reform.

The purpose of this report is to describe and critically analyse the use of immigration-related detention in Ireland.

2. Until recently, it was comparatively rare for people to be detained for immigration-related reasons in Ireland. However, over the last few years, a range of statutory detention powers has been introduced which authorise the detention, for immigration-related reasons, of a number of categories of third country nationals.

Irish law currently permits the detention, in Garda Síochána stations and prisons, of:

- people refused “permission to land”
- applicants for asylum and
- people due to be deported.

In addition, people may be held in prison on remand (i.e. awaiting trial) for immigration-related reasons.

3. The legal framework for immigration detention in Ireland is complex, and has evolved rapidly in recent years. Provisions permitting or regulating immigration-related detention are now to be found in a number of different Acts of the Oireachtas, as well as in secondary legislation.

The report provides a detailed description of the legal framework that applies to immigration-related detainees, outlines the legal authority on which people can be detained, lists the authorised places of detention in which they can be held, and identifies possibilities for them to appeal against their detention / request that its legality be reviewed.

The report also examines the formal legal safeguards that are offered to persons detained for immigration-related reasons and benchmarks these against international human rights standards. Where necessary, it recommends that Irish law and practice be amended in order to bring it into conformity with international standards.

This is the first time that an up-to-date synthesis of the law in this area has been published, and it is hoped that this section of the report will prove useful to legal practitioners and others with a specific interest in the rights of people detained for immigration-related reasons.

4. The vast majority of persons detained for immigration-related reasons in Ireland are held in one of two prisons in Dublin: Cloverhill Prison and the Dóchas Centre at Mountjoy Prison. Private interviews were carried out with third country nationals held for immigration-related reasons in both of these establishments. On the basis of those interviews, and of an independent examination of the living conditions at Cloverhill and the Dóchas Centre, the report provides a description of life in prison for immigration-related detainees. It describes their living conditions, as well as other salient features of their daily lives in prison. It also stresses that a prison is, by definition, not an appropriate place in which to hold people who are neither suspected, nor convicted, of criminal offences.
5. Finally, the report looks to the future, and examines the prospects for reform of immigration-related detention in the light of the Government's recently-published outline policy proposals for an Immigration and Residence Bill.
6. The IRC, IPRT and the ICI hope that this report will help to raise awareness of the situation of people detained for immigration-related reasons in Ireland, and stimulate a constructive debate about the prospects for future reform.

The three organisations would greatly welcome comments from interested parties on the contents of this report.

## B. Methodology

7. The research methodology used in the production of this report included a detailed literature review / desk study of primary and secondary legislation, case law and other relevant materials.

For the purposes of the research, the legislative framework was examined under the different possible stages of a third country national's presence in Ireland, namely: detention as a result of refusal of permission to land; incarceration during the asylum determination process; detention pending deportation; and detention on remand for immigration-related reasons.

8. Private interviews with third country nationals detained in prisons for immigration-related reasons formed another important element of the research methodology.

Research involving people held in prisons in Ireland can only be carried out with the approval of the Prisoner Based Research Ethics Committee (PBREC) of the Department of Justice, Equality and Law Reform. The PBREC considered and approved the project description for this research, as well as the content of a detailed interview questionnaire prepared by HRC (see Appendix II). The questionnaire, which includes open and closed questions, covers topics including the background to the detention; legal safeguards made available to the detainee (including the right to notify someone of his/her detention; right of access to a lawyer; and right of access to medical care); and daily life in prison for immigration detainees.

9. Once the approval of the PBREC had been obtained, access to Cloverhill Prison and to the Dóchas Centre was negotiated directly with the Governors of the prisons concerned. Prison staff in both establishments assisted by providing access to records which enabled the immigration status of detainees to be verified.
10. All of the interviews were conducted out of the sight and hearing of prison staff. The nationalities of those interviewed included Chinese, Nigerian, Romanian, Russian, South African and Ukrainian. Detained persons who could speak English or French were interviewed on a one-to-one basis, and Chinese, Russian and Ukrainian speaking detainees were interviewed with the assistance of interpreters. A total of fifteen immigration detainees were interviewed in depth; five women and ten men.

The five women interviewed at Dóchas House constituted all (100%) of the immigration detainees being held there for immigration-related reasons over a two-day interview period. The ten men interviewed at Cloverhill Prison constituted some 50% of the 21 men being held there for immigration-related reasons over a similar period of time. In both cases, the samples included people being held for all of the immigration-related reasons identified in this report.<sup>1</sup>

11. At Cloverhill Prison and at the Dóchas Centre it also proved possible to directly examine the living conditions and the daily routine of persons detained for immigration-related reasons.
12. Consultations were held with the Garda Síochána, the Irish Prison Service, legal practitioners and non-governmental organisations.

As regards, more particularly, the Garda Síochána, the Deputy Assistant Commissioner (Operations) gave permission for an interview to be carried out with the Head of the Garda National Immigration Bureau (GNIB). The IRC, IPRT and the ICI are grateful to the Head of the GNIB for the considerable time that he took to answer questions, and to respond to follow-up requests.

13. Lastly, the information gathered during the literature review / desk study, private interviews with detainees, on-site observations in prisons and consultations was used to benchmark law and practice in Ireland against international human rights standards.

Insofar as Ireland is concerned, the leading synthesis of international human rights standards regarding the treatment of immigration detainees is to be found in the work of the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The norms and standards developed by the CPT have been used to benchmark law and practice in Ireland as regards the following factors: formal safeguards during detention (including the right to notify someone of one's detention, the right of access to a lawyer, the right of access to a doctor, and the right to be expressly informed – without delay and in a language that one understands – of all of one's rights); the existence of a right of appeal against the validity of detention and/or against an expulsion decision; and the nature, quality and appropriateness of the facilities used to accommodate immigration-related detainees.

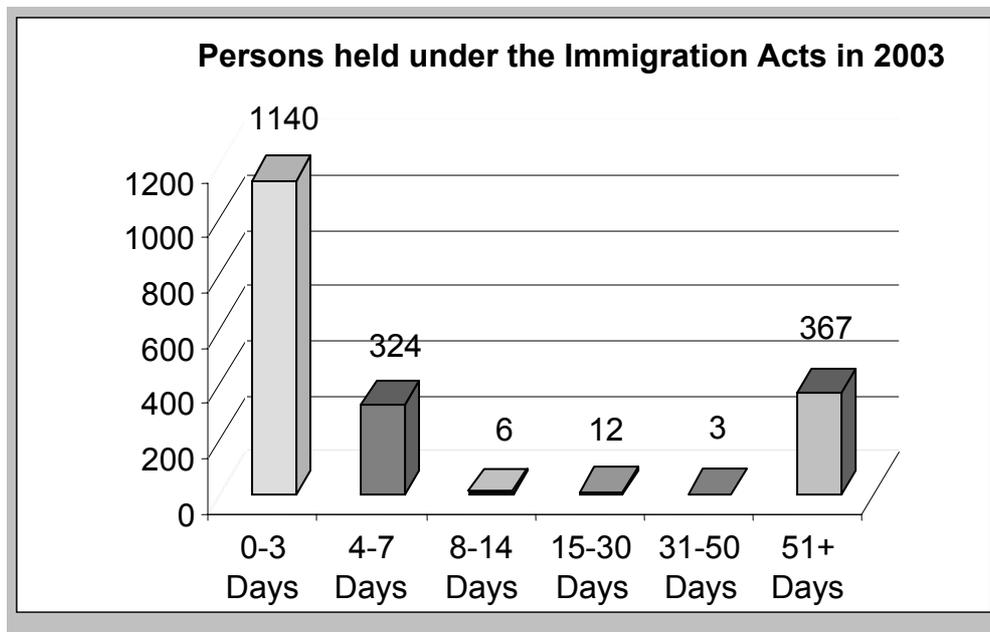
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<sup>1</sup> Namely: (1) persons refused permission to land, (2) those detained during the asylum process, (3) people detained pending deportation, and (4) those remanded in custody for immigration-related reasons. See the section of this report on the legal framework for immigration-related detention for further details.

### C. Who is being detained for immigration-related reasons?

14. In its most recent Annual Report, the Irish Prison Service provided statistics on the numbers of people held in prisons for immigration-related reasons. The report noted that, in 2003, such persons constituted 15.8% of all committals to prison, but that the “length of time spent in prison for immigration purposes tends to be very short in most cases: in 2003, 61.5% of those detained in prison for immigration reasons spent three days or less in custody, 17.5% spent 4 to 7 days in custody and 19.8% spent more than 51 days in custody.”<sup>2</sup>

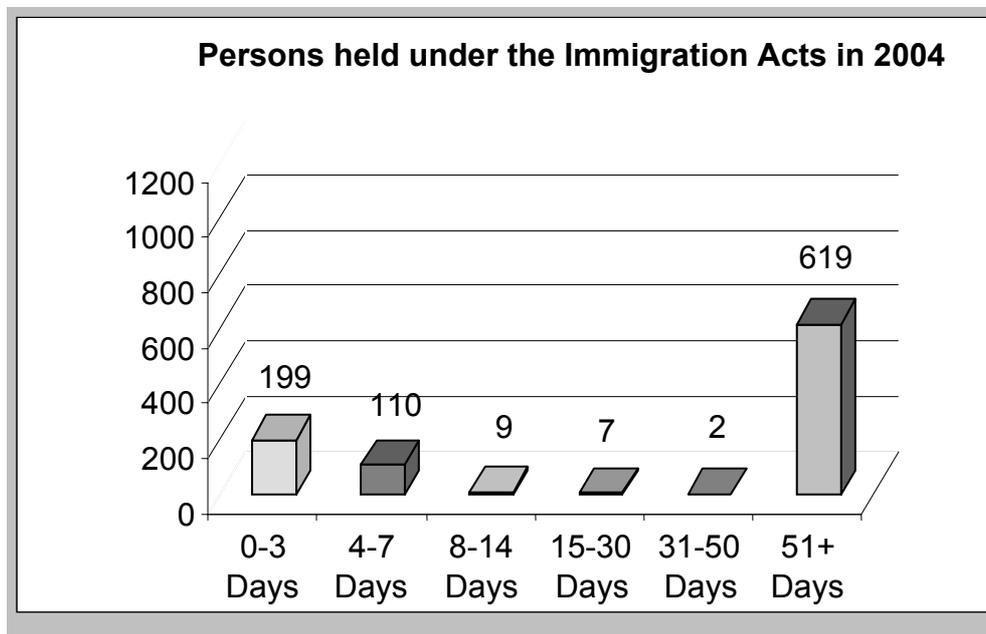
The following table shows the approximate length of detention of the **1852 people held in prison for immigration-related reasons in 2003.**



15. In the course of this research, the Irish Prison Service kindly provided equivalent statistics for the year 2004, which are published here for the first time. As compared with the 2003 figures, the figures for 2004 demonstrate that there have been some significant changes both in the frequency of use of immigration-related detention and in the length of time spent in prison by people detained under the immigration laws.

<sup>2</sup> Irish Prison Service Annual Report 2003, page 16.

The following table shows the approximate length of detention of the **946 people held in prison for immigration-related reasons in 2004.**



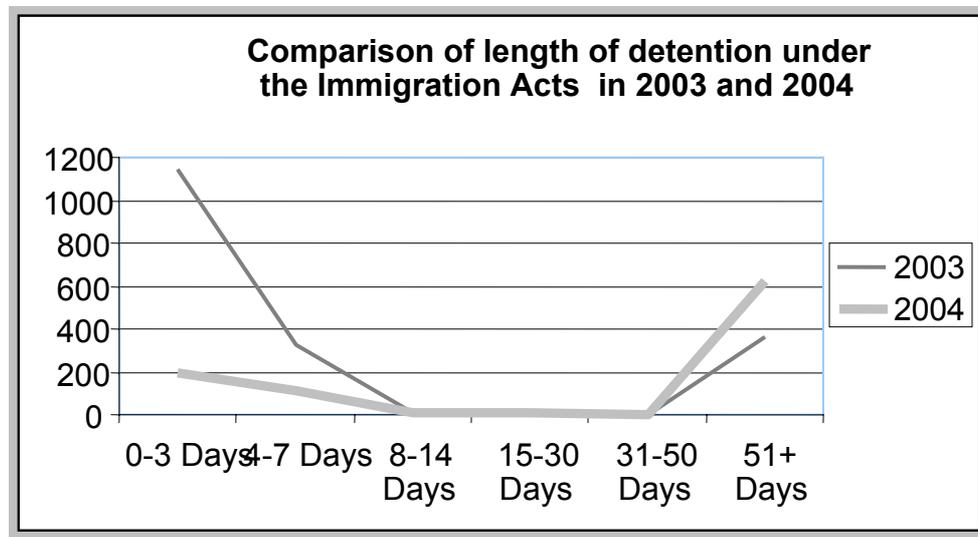
16. It can be seen that, in 2004, there was a significant fall in the total number of people detained in prison under the immigration laws, from 1,852 in 2003 to 946, a reduction of some 48%. This would appear to mirror the drop in the number of applications for asylum in Ireland during the same period which, according to UNHCR, was in the order of some 40% between 2003 and 2004.<sup>3</sup> However, immigration detainees who were held in prisons in 2004 tended to be incarcerated for longer than had been the case during the previous year.

In 2004, 21% of those detained in prison for immigration reasons spent 3 days or less in custody (61.5% in 2003), 11.6% spent 4 to 7 days in custody (17.5% in 2003) and 65.4% spent more than 51 days in custody (19.8% in 2003). In other words, whereas in 2003 three-fifths of immigration detainees were held in prison for no more than 3 days, in 2004, two thirds of immigration detainees were held in prison for more than 51 days.

Moreover, although the total number of immigration detainees held in prison decreased sharply between 2003 and 2004, 252 more such people were held in prison for longer than 51 days in 2004 than had been the case in 2003. This constitutes an increase of some 40% in the actual number of immigration detainees being held in prison for extended periods of time.

<sup>3</sup> From 7,900 applications in 2003 to 4,766 in 2004. Source: Asylum Levels and Trends in Industrialized Countries. UNHCR Geneva, May 2005.

These trends are illustrated in the following table.



17. It should also be noted that the **2798 immigration detainees held in prisons in 2003-2004** do not constitute the total number of people detained for immigration-related reasons during that period.

People refused permission to land in Ireland may be detained at their port of entry, or on Garda Síochána premises, for short periods of time before being returned on the aircraft or ship by which they arrived. According to the Garda National Immigration Bureau (GNIB), in 2003, 4,827 people were refused permission to land and, in 2004, 4,844 were denied entry to Ireland. Only a limited number of these people will have been taken to prison before being returned; however, in principle, all of them will have been subject to short-term *de facto* detention at their point of arrival.

18. Male immigration detainees outnumber female detainees by a ratio of almost four to one. In 2004, of the 946 persons detained for immigration-related reasons, 200 were women, and the remaining 746 were men.
19. People of more than 70 different non-EU nationalities were detained in prisons for immigration-related reasons in 2004. In descending order, the largest numbers detained by nationality were: Romanian (359); Nigerian (175); Chinese (107); Moldovan (79); Brazilian (57); Russian (45); Algerian (31); Albanian (29); South African (27); Ukrainian (24) and Congolese (24).

## **D. The legal framework for immigration-related detention in Ireland**

### **1. Introduction**

20. This chapter provides an overview of the legal framework under which persons may be deprived of their liberty for immigration-related reasons.

The main legislative provisions are to be found in a number of Acts of the Oireachtas,<sup>4</sup> as well as in secondary legislation.<sup>5</sup>

The following sections set out the legal basis on which persons may be detained for immigration-related reasons if they are:

- refused “permission to land” in Ireland;
- applicants for asylum in Ireland;
- due to be deported from the State;
- on remand (awaiting trial) for an immigration-related offence.

The formal legal safeguards that apply to people in each of these positions are also outlined.

### **2. Detention of people refused “permission to land”**

#### **a. Legal basis**

##### **i. Legal authority to detain**

21. Non-nationals arriving in Ireland “by air or sea” are legally obliged to present themselves to an immigration officer and apply for “permission to land”.<sup>6</sup>

An immigration officer may refuse to give permission to land on any one of the grounds set out in section 4 (3) (a) to (k) of the Immigration Act 2004, namely that the non-national:

(a) is not in a position to support himself or herself and any accompanying dependents;

<sup>4</sup> Including the Refugee Act, 1996, the Immigration Acts, 1999, 2003 and 2004, and the Illegal Immigrants (Trafficking) Act 2000.

<sup>5</sup> Including the Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000, the Immigration Act 1999 (Deportation) Regulations 2005, and the Immigration Act 2003 (Removal Places of Detention) Regulations 2005.

<sup>6</sup> Section 4 (2), Immigration Act 2004.

(b) intends to take up employment in the State, but is not in possession of a valid employment permit;

(c) suffers from any one of the following conditions:

1. diseases subject to International Health Regulations adopted by the World Health Organisation;
2. tuberculosis in an active state or showing a tendency to develop
3. syphilis;
4. other infectious or contagious parasitic diseases in respect of which special provisions are in operation to prevent the spread of such diseases from abroad;
5. drug addiction;
6. profound mental disturbance, i.e., manifest conditions of psychotic disturbance with agitation, delirium, hallucinations or confusion.

(d) has been convicted (whether in the State or elsewhere) of an offence that may be punishable under the law of the place of conviction by imprisonment for a period of one year or by a more severe penalty;

(e) not being exempt from the requirement to have an Irish visa, is not the holder of a valid Irish visa;

(f) is the subject of -

1. a deportation order,
2. an exclusion order, or
3. a determination by the Minister that it is conducive to the public good that he or she remain outside the State;

(g) is not in possession of a valid passport or other equivalent document, issued by or on behalf of an authority recognised by the Government, which establishes his or her identity and nationality;

(h) 1. intends to travel (whether immediately or not) to Great Britain or Northern Ireland, and  
2. would not qualify for admission to Great Britain or Northern Ireland if he or she arrived there from a place other than in the State;

(i) having arrived in the State in the course of employment as a seaman, has remained in the State without the leave of an immigration officer after the departure of the ship in which he or she so arrived;

(j) is a person whose entry into, or presence in, the State could pose a threat to national security or be contrary to public policy;

(k) is a person in respect of whom there is reason to believe that he or she intends to enter the State for purposes other than those which he or she has expressed to the immigration officer.

22. Non-nationals (other than seamen) who land in Ireland other than at approved ports and/or who remain in Ireland without permission are defined by the Immigration Act 2004 as being “unlawfully present” in the State.<sup>7</sup>
23. Section 5 (2) of the Immigration Act 2003 provides that a person over the age of 18 who is refused permission to land, or whom an immigration officer or a member of the Garda Síochána “with reasonable cause suspects has been unlawfully in the State for a continuous period of less than 3 months” may be arrested by an immigration officer or a member of the Garda Síochána.<sup>8</sup>

Such persons may be detained under warrant of the immigration officer or member of the Garda Síochána in an authorised place of detention (see the following section for a full list of such places), pending his or her removal from the State.<sup>9</sup>

This means that people refused permission to land in Ireland may be detained in a Garda station or in a prison on the sole authority of an immigration officer or a member of the Garda Síochána (i.e. without any automatic requirement for the approval of a judge / court).

24. The law provides that a person arrested and detained under these provisions may be detained “only until such time (being as soon as practicable) as he or she is removed from the State [...] but, in any event, may not be detained for a period exceeding 8 weeks in aggregate”.<sup>10</sup>

However, certain periods of time spent in detention need not counted as part of this 8-week maximum, including any period spent on remand awaiting a criminal trial or serving a sentence. In this connection, it is worth noting that, by virtue of the Immigration Act 2004, two of the grounds on which a person may be detained under section 5 (2) of the Immigration Act 2003 now also constitute criminal offences punishable on conviction by penalties including imprisonment for a term not exceeding 12 months.<sup>11</sup>

<sup>7</sup> Sections 6 (1) and 5 (1) and (2), Immigration Act, 2004.

<sup>8</sup> In other words, section 5 (2) of the Immigration Act 2003 applies to persons who fail to comply with section 4 (2) of the Immigration Act 2004; who have been refused permission to land under section 4 (3) of the 2004 Act; or who are in Ireland in contravention of sections 5 (1) or 6 (1) of the 2004 Act. The aforementioned provisions of the 2004 Act fall within the scope of the Immigration Act 2003 by virtue of the amendment of section 5 (1) (e) to (h) of the 2003 Act by section 16 (8) of the 2004 Act.

<sup>9</sup> Section 5 (2), Immigration Act 2003.

<sup>10</sup> Section 5 (3) (a), Immigration Act 2003.

<sup>11</sup> The grounds concerned are: 1. failure to present oneself to an immigration officer and apply for permission to land (section 5 (1) (e), Immigration Act, 2003 / section 4 (2) Immigration Act 2004) which is now a criminal offence under section 4 (9) of the 2004 Act, and 2. landing at an unapproved port (section 5 (1) (h), Immigration Act 2003 / section 6 (1), Immigration Act 2004) which is now a criminal offence under section 6 (4) of the 2004 Act.

Moreover, if a detained person brings legal proceedings to challenge the validity of his or her detention (see the section below on appeals / review of detention), the period from when a legal challenge is brought until the final appeal is decided also “stops the clock” on this 8-week aggregate detention period.

In consequence, people refused permission to land who are held under section 5 (2) of the Immigration Act 2003 who are also charged with / convicted of a criminal offence, or who seek to challenge the validity of their detention could, at least in principle, lawfully be detained for periods considerably in excess of 8 weeks.

## ii. Authorised places of detention

25. People detained under section 5 (2) of the Immigration Act 2003 may be held in any of the places of detention authorised by the Immigration Act 2003 (Removal Places of Detention) Regulations 2005.<sup>12</sup>

These are “every Garda Síochána station” and:

Castlerea Prison  
 Cloverhill Prison  
 Cork Prison  
 Limerick Prison  
 The Midlands Prison  
 Mountjoy Prison  
 Saint Patrick’s Institution, Dublin  
 The Training Unit, Glengariff Parade, Dublin  
 Wheatfield Prison, Dublin.

In practice, it appears that persons detained under section 5 (2) of the 2003 Act tend to spend only short periods of time on police premises. In most cases, they are taken directly to one of the prisons mentioned above.

26. In the report on its most recent visit to Ireland (in May 2002), the European Committee for the Prevention of Torture (CPT) made clear that “a prison is by definition not a suitable place in which to detain someone who is neither convicted nor suspected of a criminal offence. In those cases where it is deemed necessary to deprive persons of their liberty for an extended period under aliens legislation, they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified

<sup>12</sup> S.I. No. 56, of 3 February 2005.

personnel.”<sup>13</sup> The CPT recommended that arrangements for accommodating immigration detainees be reviewed.

It cannot be considered satisfactory that, nearly three years later, the revised list of places of detention authorised by the Minister for Justice, Equality and Law Reform in February 2005 still consists exclusively of Garda Síochána stations and prisons.

### iii. Review of detention / appeals

27. A decision by an immigration officer / a member of the Garda Síochána to detain someone under section 5 (2) of the Immigration Act 2003 may be internally reviewed by their hierarchical superior (by a sergeant in the case of a decision by a Garda, an inspector in the case of a decision by a sergeant and so on).

There is also the possibility to challenge the legality of this form of immigration-related detention by bringing an action in the High Court pursuant to Article 40 (4) of the Constitution (*habeas corpus*).

Section 5 of the 2003 Act further provides that “where a person detained under this section institutes court proceedings challenging the validity of his or her proposed removal from the State, the court hearing those proceedings may [...] determine whether the person shall continue to be detained or shall be released [...]”.<sup>14</sup>

28. Section 5 (2) of the 2003 Act is a “lawful” form of detention, recognised by the European Convention on Human Rights. In this connection, Article 5 (1) (f) of the Convention specifies that a State may carry out “the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or a person against whom action is being taken with a view to deportation or extradition”.

However, such forms of detention must be accompanied by appropriate safeguards, including the right for a detained person “to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful” (Article 5 (4) of the European Convention on Human Rights).

In principle, Irish law offers such possibilities; however, in practice, persons detained under section 5 (2) of the Immigration Act 2003 are not told that they have the right to bring such proceedings (see the section on information on rights, below, for further details). This could easily have the effect of rendering this right ineffective in practice. In order to ensure that this is not

<sup>13</sup> Document CPT/Inf (2003) 36, paragraph 69.

<sup>14</sup> Section 5 (4) Immigration Act 2004.

the case, it is **recommended that all persons detained under section 5 (2) of the Immigration Act 2003 be informed in writing, in a language that they understand, of their right to challenge the legality of their detention and the validity of a decision to remove them from the State.**

b. Formal safeguards

i. Introduction

29. International human rights standards require that persons deprived of their liberty for immigration-related reasons “should - in the same way as other categories of persons deprived of their liberty - be entitled, as from the outset of their detention, to inform a person of their choice of their situation and to have access to a lawyer and a doctor. Further, they should be expressly informed, without delay and in a language they understand, of all their rights and of the procedure applicable to them.”<sup>15</sup>

ii. Right not to be held incommunicado

30. Persons deprived of their liberty under section 5 (2) of the Immigration Act 2003 do not enjoy an express right to notify a person of their choice of their situation.

31. According to the Head of the Garda National Immigration Bureau (GNIB),<sup>16</sup> for so long as such persons are detained by members of the GNIB (for example, if they are refused permission to land at an airport), they may be allowed to make telephone calls if this is “absolutely necessary”. He also asserted that visits to persons held in the custody of the GNIB under section 5 (2) have, on occasion, been allowed. However, he stressed that people detained on these grounds have no absolute right to inform anyone of their situation and that, unless they ask, they will not be informed that they may do so.

32. If a person arrested under section 5 (2) of the Immigration Act 2003 is to be detained for longer than a few hours, he or she will usually be transferred to one of the prisons listed above. After arrival in the prison, he or she will be able to have contact with a person of their choice in the same manner as any other prisoner (see the section on “life in prison” for further details).

<sup>15</sup> Standards on Foreign Nationals Deprived of their Liberty under Aliens Legislation in “The CPT Standards”, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), document CPT/Inf/E (2002) 1 - Rev. 2004, page 42.

<sup>16</sup> Interviewed for the purposes of this research on 2 June 2005.

33. Several of the people held under section 5 (2) of the Immigration Act 2003 who were interviewed as part of this research confirmed that they had not been told of / offered the possibility to inform someone of their situation. However, they added that they had asked to notify someone, and that this request had been granted by members of the GNIB without delay.

34. In order to ensure that persons held under section 5 (2) of the Immigration Act 2003 cannot be held incommunicado, it is **recommended that their right to inform a person of their choice of their situation, as from the outset of their detention, be formally recognised in law.**

### iii. Right of access to a lawyer

35. The right of persons detained for immigration-related reasons to have access to a lawyer should apply throughout their detention period and include both the right to speak with the lawyer in private and to have him or her present during interviews with the authorities.

Persons deprived of their liberty under section 5 (2) of the Immigration Act 2003 are not afforded such a right of access to a lawyer.

36. The Head of the GNIB indicated that access to a lawyer might be facilitated upon request; however, persons detained under section 5 (2) of the 2003 Act are not asked if they require legal assistance (nor are they informed that they may request it).

In this connection, none of the persons held under section 5 (2) who were interviewed as part of this research had requested access to a lawyer, and they stated that they had not been offered, nor had they received, legal assistance.

37. Action is required to recognise and render effective the right of access to a lawyer for persons detained under section 5 (2) of the Immigration Act 2003; it is **recommended that their right of access to a lawyer, as from the outset of their detention, be formally recognised in law.**

iv. Right of access to medical care

38. All places where immigration detainees may be held should provide access to medical care. In the interests of the prevention of ill-treatment, it is important that right of immigration detainees to have access to medical care should be the subject of formal legal provisions.
39. According to the Head of the GNIB, persons held under section 5 (2) of the Immigration Act 2003 by the GNIB may be granted access to medical care if it is “obvious” that they require medical attention. However, they will not be asked if they require medical attention, nor will they be informed that this is a possibility. If transferred to a prison, they will be offered a medical examination on, or shortly after admission, as are all other prisoners.
40. Persons held under section 5 (2) who were interviewed as part of this research confirmed that they had not been asked if they required medical attention while in the custody of the GNIB; their first contact with a doctor had been on the day after their arrival in prison.
41. None of the data gathered in the course of this research suggested that people detained under section 5 (2) of the 2003 Act who required medical attention had been denied it by members of the GNIB.

However, non-nationals arriving in the State may be suffering from a variety of conditions requiring medical attention, some of which may only be obvious to medical professionals. In the interests of the welfare of the persons concerned (as well as for public health reasons), it is essential that they should be informed of, and placed in a position to exercise, their right of access to medical care.

**It is recommended that the right of persons detained under section 5 (2) of the Immigration Act 2003 to have access to medical care, as from the outset of their detention, be formally recognised in law.**

v. Right of access to information about the reasons for detention / information on rights

42. People refused permission to land in Ireland are provided with a written notice informing them of the grounds on which permission has been refused. The specific grounds which apply in an individual case are selected from amongst those set out in section 4 (3) (a) to (k) of the Immigration Act 2004 (see above).

This notice is only produced in English and, if a person on whom it is served does not understand English, the services of an interpreter may be secured.

43. According to the Head of the GNIB, no other written information is provided to persons refused permission to land regarding either their detention in terms of section 5(2) of the Immigration Act 2003, or their rights.

This situation is complicated by the fact that, as matters stand, few, if any, of the rights of such persons are formally recognised in law. Questioned about this, the Head of the GNIB asserted that, if the persons concerned have been refused permission to land, they have not entered the territory of Ireland and, consequently, are not entitled to the rights which would be available to a person present on Irish territory.

It should be emphasised that this argument, which has been advanced in the past by the authorities of a number of states, was rejected by the European Court of Human Rights some nine years ago. In its 1996 judgment in the case of *Amuur v France*, the Court made clear that a transit zone at an international airport did not have extraterritorial status. Persons kept in such a zone were found to be present on the territory of the State, and fully entitled to the protection of the European Convention on Human Rights. Moreover, the Council of Europe's European Committee for the Prevention of Torture (CPT) has carried out two visits to the transit zone at Shannon Airport (during its visits to Ireland in 1993 and 1998); the Irish authorities have never attempted to suggest to the CPT that persons who may be held in that zone are not present on Irish territory.

It follows that persons detained under section 5 (2) of the Immigration Act 2003 are entitled, in accordance with international human rights standards, to all of the rights identified in the preceding sections, and have a right to be informed of their entitlement to those rights.

44. To meet international human rights standards, "immigration detainees should be systematically provided with a document explaining the procedure applicable to them and setting out their rights. This document should be available in the languages most commonly spoken by those concerned."<sup>17</sup>

**It is recommended that the necessary steps be taken to draw up and distribute such a document to people detained under section 5(2) of the Immigration Act 2003. The rights concerned should include all of those set out in the preceding sections.**

<sup>17</sup> Standards on Foreign Nationals Deprived of their Liberty under Aliens Legislation in "The CPT Standards", European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), document CPT/Inf/E (2002) 1 - Rev. 2004, page 42.

### 3. Immigration-related detention of applicants for asylum in Ireland

#### a. Legal basis

##### i. Legal authority to detain

45. The legal authority to detain applicants for asylum in Ireland is to be found in the Refugee Act 1996 (as amended).<sup>18</sup>

The 1996 Act provides that “a person who arrives at the frontiers of the State seeking asylum in the State or seeking the protection of the State against persecution or requesting not to be returned or removed to a particular country or otherwise indicating an unwillingness to leave the State for fear of persecution”<sup>19</sup> shall be given permission to enter the State.

However, in terms of section 9 (8) of the 1996 Act, where an immigration officer or a member of the Garda Síochána, “with reasonable cause, suspects” that an asylum seeker over the age of 18,

“( a ) poses a threat to national security or public order in the State,  
 ( b ) has committed a serious non-political crime outside the State,  
 ( c ) has not made reasonable efforts to establish his or her true identity,  
 ( d ) intends to avoid removal from the State in the event of his or her application for asylum being transferred to a convention country pursuant to section 22 or a safe third country (within the meaning of that section),<sup>20</sup>  
 ( e ) intends to leave the State and enter another state without lawful authority, or  
 ( f ) without reasonable cause has destroyed his or her identity or travel documents or is in possession of forged identity documents,

he or she may detain the person in a prescribed place (referred to subsequently in this Act as “a place of detention”).”

46. By contrast with the situation of persons refused permission to land (who may be detained on the sole authority of an immigration officer or a member of the Garda Síochána, see above), asylum seekers detained under section 9 (8) of the Refugee Act 1996 must “as soon as practicable”, be brought before a District Court judge. If the judge is satisfied that one or more of the grounds for detention set out in section 9 (8) (a) to (f) of the 1996 Act applies,

<sup>18</sup> Relevant sections of the Refugee Act 1996 have been amended by the Immigration Act 1999, the Illegal Immigrants (Trafficking) Act 2000, and the Immigration Act 2003.

<sup>19</sup> Section 8 (1) (a), Refugee Act 1996.

<sup>20</sup> Section 9 (8) (f) appears here as amended by section 7 (c) of the Immigration Act 2003. Section 22 of the 1996 Act concerns transfers to “safe third countries” under the Dublin Convention and other international agreements. See also, in this respect, the Refugee Act (Section 22) Order 2003 (S.I. No. 423 of 2003), as amended by the Refugee Act (Section 22) (Amendment) Order 2004 (S.I. No. 500 of 2004).

he or she may “commit the person concerned to a place of detention for a period not exceeding 21 days from the time of his or her detention”.<sup>21</sup>

This 21-day period may subsequently be extended by a District Court judge for further periods of 21 days at a time if the judge is satisfied that one or more of the grounds for detention set out in section 9 (8) (a) to (f) of the 1996 Act continue to apply.<sup>22</sup>

47. An additional power to detain asylum seekers is to be found in section 9 (13) of the Immigration Act 1996. This provides that a member of the Garda Síochána may re-detain an asylum seeker who has been released by the District Court if “in the member’s opinion” that person has failed to comply with a court-imposed condition of their release.<sup>23</sup>

In such cases, the detained asylum seeker must again be brought before a judge of the District Court “as soon as practicable”, and the judge may order his or her detention for a period or periods not exceeding 21 days at a time.

48. To sum up, asylum seekers detained under section 9 (8) or (13) of the Refugee Act 1996 may be held in a place of detention, on the authority of a District Court judge, for a potentially indefinite period consisting of successive 21 day committals, until their application for asylum has been resolved.

In this connection, it is interesting to note that immigration officers and members of the Garda Síochána are legally obliged to notify the Refugee Applications Commissioner (“the Commissioner”) and the Refugee Appeals Tribunal (“the Tribunal”) of the detention or release of a person under section 9 of the 1996 Act.<sup>24</sup> The 1996 Act provides that, upon receipt of such notification, the Commissioner or the Tribunal shall ensure that the person’s application for asylum “shall be dealt with as soon as may be and, if necessary, before any other application [...] of a person not so detained”.<sup>25</sup>

In other words, the Refugee Act 1996 (as amended) could be said to place the Commissioner and the Tribunal under a legal obligation to “fast track” applications from asylum seekers who have been detained under section 9 (8) or (13) of the 1996 Act.

<sup>21</sup> Section 10 (b) (i), Refugee Act 1996 (as amended by section 7 (c) of the Immigration Act 2003).

<sup>22</sup> Section 9 (14) (a), Refugee Act 1996 (as amended by section 7 (c) of the Immigration Act 2003).

<sup>23</sup> Such conditions can include requirements to: reside or remain in a particular place; regularly report to a specified Garda station or immigration officer; surrender any passport or travel documents. See section 9 (10) (b) (ii), Refugee Act 1996.

<sup>24</sup> Section 10 (3), Refugee Act 1996.

<sup>25</sup> Section 10 (4) Refugee Act 1996.

## ii. Prescribed places of detention

49. Asylum seekers detained under section 9 (8) or (13) of the Refugee Act 1996 may be detained in any of the prescribed places of detention set out in the Schedule to the Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000 (S.I. No. 344 of 2000).

These are the following Garda Síochána stations: Bridewell and Togher, Cork; Bridewell, Fitzgibbon Street and Store Street, Dublin; Cavan; Drogheda; Dundalk; Dún Laoghaire; Ennis; Mill Street, Galway; Henry Street, Limerick; Killarney; Letterkenny; Monaghan; New Ross; Santry; Shannon Airport; Sligo; Swinford; Waterford and Wexford,

and

Castlerea Place of Detention  
 Central Mental Hospital, Dundrum  
 Cloverhill Prison  
 Cork Prison  
 Limerick Prison  
 The Midlands Prison  
 Mountjoy Prison  
 Saint Patrick's Institution, Dublin  
 The Training Unit, Glengariff Parade, Dublin  
 Wheatfield Place of Detention, Dublin.

50. It would appear that detained asylum seekers are rarely kept in a Garda station for more than a short period of time. In this connection, S.I. No. 344 of 2000 provides that an asylum seeker may not be detained in a Garda station for “any continuous period longer than 48 hours”.<sup>26</sup> In most cases, persons detained under section 9 (8) or (13) of the Refugee Act 1996 will be fairly rapidly transferred to one of the prisons listed above.

As has been made clear earlier in this report “a prison is by definition not a suitable place in which to detain someone who is neither convicted nor suspected of a criminal offence. In those cases where it is deemed necessary to deprive persons of their liberty for an extended period under aliens legislation, they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified personnel.”<sup>27</sup>

<sup>26</sup> Regulation 11, Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000 (S.I. No. 344 of 2000).

<sup>27</sup> Document CPT/Inf (2003) 36, paragraph 69.

None of the places listed in the Schedule to the Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000 can be said to comply with these criteria.

### iii. Review of detention / appeals

51. As already mentioned, asylum seekers detained under section 9 (8) or (13) of the Refugee Act 1996 must be brought before a District Court judge “as soon as practicable” after being detained.

If the judge is not satisfied that one or more of the grounds for detention set out in section 9 (8) (a) to (f) of the 1996 Act applies, he or she may release the detained person, either unconditionally, or subject to “such conditions as he or she considers appropriate”.<sup>28</sup>

The question of whether grounds for detention under the 1996 Act continue to exist must be re-examined by a District Court judge, and the court’s authority to detain an asylum seeker must be renewed, at least every 21 days.

52. If circumstances change between the above-mentioned periodic reviews by the Court, and an immigration officer or a member of the Garda Síochána becomes “of the opinion” that the grounds for detention under that Act no longer apply, the 1996 Act requires that the detained person be brought before a District Court judge, who may order his or her release.

53. In addition to the provisions regarding judicial review of detention set out in the Refugee Act 1996, an asylum seeker detained under the provisions of the 1996 Act can challenge the legality of this form of immigration-related detention by bringing an action in the High Court pursuant to Article 40 (4) of the Constitution (*habeas corpus*)

<sup>28</sup> Sections 9 (10) (b) (ii) and 9 (13) (b) , Refugee Act 1996.

## b. Formal safeguards

### i. Introduction

54. It should be recalled that international human rights standards require that persons deprived of their liberty for immigration-related reasons “should - in the same way as other categories of persons deprived of their liberty - be entitled, as from the outset of their detention, to inform a person of their choice of their situation and to have access to a lawyer and a doctor. Further, they should be expressly informed, without delay and in a language they understand, of all their rights and of the procedure applicable to them.”<sup>29</sup>
55. The application of formal legal safeguards to asylum seekers detained under section 9 (8) and (13) of the Refugee Act 1996 is governed by section 10 of that Act, and by the Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000 (S.I. No. 344 of 2000).

### ii. Right not to be held incommunicado

56. Section 10 (1) (d) of the Refugee Act 1996 provides that:

“(1) The immigration officer or, as the case may be, the member of the Garda Síochána concerned shall, without delay, inform a person detained pursuant to subsection (8) or (13) (a) of section 9 or cause him or her to be informed, where possible in a language that the person understands—

[...]

(d) that he or she is entitled to have notification of his or her detention, the place of detention concerned and every change of such place sent to the [United Nations] High Commissioner [for Refugees] and to another person reasonably named by him or her”.

57. As regards detention in Garda stations, regulation 16 of S.I. No. 344 of 2000 specifies that:

“16 (1) Information as to the station where a detained person is detained shall be given—

<sup>29</sup> Standards on Foreign Nationals Deprived of their Liberty under Aliens Legislation in “The CPT Standards”, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), document CPT/Inf/E (2002) 1 - Rev. 2004, page 42.

[...]

(b) if the detainee consents and the member in charge is satisfied that giving the information will not prejudice the detainee's safe custody or the safety of any other person, in response to an enquiry from any person.”

However, notification must only be given “as soon as practicable” if a detained asylum seeker makes a request “between 9 a.m. and 6 p.m. on a normal working day (Monday to Friday, excluding bank holidays)”.<sup>30</sup> If a request to notify someone is made at any other time, notification must only be given “as soon as practicable during the next available period of 9 a.m. to 6 p.m. on a normal working day”.<sup>31</sup>

As already mentioned, the maximum period for which an asylum seeker may lawfully be detained in a Garda station under the Refugee Act is 48 hours. It follows that, if such a person were to be detained (for example) on a Friday evening after 6pm, they could be denied the possibility to notify someone of their situation for the entire two-day period that they could spend in Garda custody. This would be completely unacceptable.

58. In order to ensure that persons held under section 9 (8) and (13) of the Refugee Act 1996 cannot be held incommunicado in Garda Síochána stations, it is **recommended that their right to inform a person of their choice of their situation, as from the outset of their detention, be formally recognised in law.**
59. Asylum seekers detained in Garda stations under section 9 (8) and (13) of the Refugee Act 1996 may also receive visits “from a relative, friend or other person with an interest in his or her welfare provided the detainee consents and the member in charge is satisfied that the visit can be adequately supervised and that it will not be prejudicial to the interests of justice.”

They are also to be allowed to “make a telephone call of reasonable duration free of charge to a person reasonably named by him or her or send a letter (for which purpose writing materials and, where necessary, postage stamps shall be supplied on request).”<sup>32</sup>

These are welcome provisions.

<sup>30</sup> Regulation 16 (5) (a), S.I. No. 344 of 2000.

<sup>31</sup> Regulation 16 (5) (b), S.I. No. 344 of 2000.

<sup>32</sup> Regulation 17 (3) and (4), S.I. No. 344 of 2000.

60. Once transferred to a prison, detained asylum seekers are entitled to have contact with a person of their choice in the same manner as any other prisoner (see the section on “life in prison” for further details).

iii. Right of access to a lawyer

61. A detained asylum seeker’s right of access to a lawyer is set out in section 10 (1) (c) and (f) of the Refugee Act 1996, according to which:

“(1) The immigration officer or, as the case may be, the member of the Garda Síochána concerned shall, without delay, inform a person detained pursuant to subsection (8) or (13) (a) of section 9 or cause him or her to be informed, where possible in a language that the person understands—

[...]

(c) that he or she is entitled to consult a solicitor, [and]

(f) that he or she is entitled to the assistance of an interpreter for the purpose of consultation with a solicitor.”

62. The precise content of the right of access to a lawyer for asylum seekers detained in Garda Síochána stations is laid out in the Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000 (S.I. No. 344 of 2000).

A solicitor must be notified “as soon as practicable” if a detained asylum seeker makes a request “between 9 a.m. and 6 p.m. on a normal working day (Monday to Friday, excluding bank holidays)”.<sup>33</sup> If a request to notify solicitor is made at any other time, notification must only be given “as soon as practicable during the next available period of 9 a.m. to 6 p.m. on a normal working day”.<sup>34</sup> However, this is subject to the caveat that “a detainee shall not be brought before a court or removed from the State without having first had the opportunity, at his or her request, to consult with his or her solicitor.”<sup>35</sup>

Given that an asylum seeker detained under section 9 (8) or (13) of the Refugee Act 1996 must in any case be brought before a District Court judge “as soon as practicable” after being detained, it is difficult to understand the justification for this additional regulatory time limitation on requests by detained persons for a solicitor to be notified of their detention. It is **recommended that the relevant legal provisions be amended to reflect the fact that all persons detained under the 1996 Act should be able to have access to a lawyer as from the outset of their detention.**

<sup>33</sup> Regulation 16 (5) (a), S.I. No. 344 of 2000.

<sup>34</sup> Regulation 16 (5) (b), S.I. No. 344 of 2000.

<sup>35</sup> Regulation 16 (6), S.I. No. 344 of 2000.

63. Asylum seekers detained in Garda stations who request a solicitor of their own choice are to have “reasonable access” to that solicitor and “shall be enabled to communicate with him or her privately”.<sup>36</sup> This means that “a consultation may take place in the sight but out of the hearing of a member [of the Garda Síochána]”.<sup>37</sup>

Provision is also made for a solicitor whose presence has not been requested to present her or himself at a Garda station and indicate that he or she wishes to visit a detainee who has not requested a lawyer. This might happen, for example, at the request of a family member or friend of a detained person. In such circumstances, a detainee is to be asked if she or he wishes to consult the solicitor concerned and, if so, is to be allowed to do so.<sup>38</sup>

#### iv. Right of access to medical care

64. By virtue of regulation 20 of the Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000, medical care for asylum seekers detained in Garda stations is to be provided on the same basis as for persons taken into custody by the Garda on suspicion of having committed a criminal offence.

This means that members of the Garda Síochána are legally obliged to apply the following provisions of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 (S.I. No. 119/1987):

“(1) If a person in custody—

- (a) is injured,
  - (b) is under the influence of intoxicating liquor or drugs and cannot be roused,
  - (c) fails to respond normally to questions or conversation (otherwise than owing to the influence of intoxicating liquor alone),
  - (d) appears to the member in charge to be suffering from a mental illness,
  - or
  - (e) otherwise appears to the member in charge to need medical attention,
- The member in charge shall summon a doctor or cause him to be summoned, unless the person's condition appears to the member in charge to be such as to necessitate immediate removal to a hospital or other suitable place. The member in charge shall ensure that any instructions given by a doctor in relation to the medical care of a person in custody are complied with.

<sup>36</sup> Regulation 17 (1), S.I. No. 344 of 2000.

<sup>37</sup> Regulation 17 (3), S.I. No. 344 of 2000.

<sup>38</sup> Regulation 17 (2), S.I. No. 344 of 2000.

(2) Notwithstanding that paragraph (1) may not apply, medical advice shall be sought if the person in custody claims to need medication relating to a heart condition, diabetes, epilepsy or other potentially serious condition or the member in charge considers it necessary because the person has in his possession any such medication.

(3) The removal of a person in custody to a hospital or other suitable place and the time of removal shall be recorded. Any instructions given by a doctor regarding the medical care of a person in custody and the steps taken to comply with them shall also be recorded.

(4) If a person in custody asks to be examined by a doctor of his choice at his own expense, the member in charge shall, if and as soon as practicable, make arrangements accordingly. This shall not preclude his examination by another doctor summoned by the member in charge provided that the person in custody consents to the examination.

(5) A record shall be made of any medical examination sought by the member in charge or person in custody, the time the examination was sought and the time it was carried out. If it is not practicable to accede to a request by a person in custody for medical examination by the doctor of his choice at his own expense, the relevant circumstances shall also be recorded.

(6) Where a person in custody has been removed to a hospital or other suitable place, an immediate relative and any other person required to be notified under Regulation 9 of the person's detention shall be so informed as soon as practicable. The time at which the relative and other person were informed shall be recorded.<sup>39</sup>

65. In principle, these regulations for the provision of medical care to asylum seekers held in Garda stations are in conformity with international standards. That said, **it would be desirable for the 1987 Regulations also to specify that the results of every medical examination, as well as any relevant statements by the detainee and the doctor's conclusions, should be recorded in writing by the doctor and made available to the detainee and his lawyer.** Indeed, the adoption of such a measure has been formally recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).<sup>40</sup>

<sup>39</sup> Regulation 20, S.I. No. 119/1987.

<sup>40</sup> The CPT first raised this issue in the report on its 1993 visit to Ireland (CPT/Inf (95) 14, paragraph 47) and, in the report on its 2002 visit, made a formal recommendation on the subject (CPT/Inf (2003) 36, paragraph 23).

v. Right of access to information about the reasons for detention / information on rights

66. Anyone who “arrives at the frontiers of the State” or who is in Ireland “whether lawfully or unlawfully” and who seeks asylum is to be informed “where possible in a language that the person understands” that he or she is entitled to consult a solicitor and to contact the United Nations High Commissioner for Refugees.<sup>41</sup>

If such a person is detained under section 9 (8) or (13) of the Refugee Act 1996, section 10 of that Act requires that an immigration officer or member of the Garda Síochána must “without delay” inform him or her that he or she:

- is being detained under section 9 of the 1996 Act;
- must “as soon as practicable” be brought before a court, which will decide whether he or she should be detained or released pending consideration of an asylum claim;
- is entitled to consult a solicitor;
- is entitled to have the United Nations High Commissioner for Refugees and another person “reasonably named” by him or her notified of the fact and place of his or her detention (and of any change in his or her place of detention);
- is entitled to leave the State at any time during his or her detention (subject to a judge approving his or her removal from the State);
- is entitled to the assistance of an interpreter when consulting with a solicitor and during court appearances.<sup>42</sup>

67. According to the Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000 (S.I. No. 344 of 2000), the information referred to above is to be given to a detainee “by way of written notice”, which shall also state that the detainee’s detention will be governed by the following general principles:

“(a) due respect shall be had for the personal rights of detainees and their dignity as human persons, and regard shall be had for the special needs of any of them who may be under a physical or mental disability, while complying with the obligation to prevent escapes from detention;

<sup>41</sup> Section 8, Refugee Act, 1996.

<sup>42</sup> Section 10, Refugee Act, 1996.

(b) where a detainee is in the State as a member of a family group, regard shall be had for the right of the detainee to maintain reasonable contact with the other members of that group, whether other members of the group are also detained or not, subject to the requirements of safety and security and the availability of accommodation in suitable places specified in the Schedule [see above];

(c) information regarding a detainee shall not be conveyed to the consular authorities of the state from which the detainee claims to be fleeing, and contact shall not be made with those authorities, except at the express request, or with the express consent, in writing of the detainee.”<sup>43</sup>

Additionally, the written notice is to specify that the detainee may be detained in a Garda station, prison or place of detention; that detention in a Garda station or stations cannot last for longer than a continuous period of 48 hours; that detainees may be searched; that access to a solicitor will be facilitated in the manner previously described and that “if detained in a prison or other place of detention, the detainee will be subject to the same conditions as a person awaiting trial”.<sup>44</sup>

68. In principle, section 10 of the Refugee Act 1996, taken together with regulations 4 and 5 of the Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000 constitute an exemplary set of legal provisions on the right of access to information about the reasons for detention / information on rights.

In practice, however, the written notice that is given to persons detained under section 9 (8) or (13) of the Refugee Act 1996 only mentions the points set out in section 10 of the 1996 Act (see above); it does not include the additional information which regulations 4 and 5 of S.I. 344 of 2000 require to be given to detained persons. As a result, persons detained under these provisions are not being informed, in writing, of important rights including their right to maintain reasonable contact with members of their families, their right not to be held in a Garda station for longer than 48 hours, and their right to be protected from unwanted contact with the consular authorities of the state from which they claim to be fleeing.

**It is recommended that immediate steps be taken to issue a written notice for persons detained under sections 9 (8) and (13) of the Refugee Act 1996 that fully complies not only with section 10 of the 1996 Act, but also with regulations 4 and 5 of S.I. 344 of 2000. That written notice should be made available in a range of the languages most commonly spoken by persons detained under section 9 of the 1996 Act.**

<sup>43</sup> Regulation 5 (2) (a), read in conjunction with regulation 4 of S.I. No. 344 of 2000.

<sup>44</sup> Regulation 5 (2) (b) to (f), S.I. No. 344 of 2000.

#### 4. Detention pending deportation

##### a. Legal basis

##### i. Legal authority to detain

69. The legal authority to detain persons subject to deportation orders is set out in sections 3 (1A) and 5 (1) of the Immigration Act 1999.

According to section 3 (1A), a “person the subject of a deportation order under this section may be detained in accordance with the provisions of this Act for the purpose of ensuring his or her deportation from the State.”<sup>45</sup>

In terms of section 5 (1) of the 1999 Act:<sup>46</sup>

“Where an immigration officer or a member of the Garda Síochána, with reasonable cause suspects that a person against whom a deportation order is in force—

- (a) has failed to comply with any provision of the order or with a requirement in a notice under section 3 (3) (b) (ii),<sup>47</sup>
- (b) intends to leave the State and enter another state without lawful authority,
- (c) has destroyed his or her identity documents or is in possession of forged identity documents, or
- (d) intends to avoid removal from the State,

he or she may arrest him or her without warrant and detain him or her in a prescribed place”.

70. Detention of a deportee under section 5 of the Immigration Act 1999 may not exceed a period of 8 weeks in aggregate.<sup>48</sup>

However, as is the case for detention under section 5 (2) of the Immigration Act 2003 (see above), certain periods of time spent in detention under the 1999 Act need not be counted as part of this 8-week maximum.

<sup>45</sup> Section 3 (1A) was introduced into the Immigration Act 1999 by section 10 (a) of the Illegal Immigrants (Trafficking) Act 2000.

<sup>46</sup> As amended by section 10 (b) of the Illegal Immigrants (Trafficking) Act 2000.

<sup>47</sup> Section 3 (3) (b) (ii) of the Immigration Act 1999 provides that the Minister for Justice, Equality and Law Reform shall provide a potential deportee with written notice of his reasons for making a deportation order.

<sup>48</sup> Section 5 (6) (a), Immigration Act 1999.

These including any period spent on remand awaiting a criminal trial or serving a sentence.<sup>49</sup> In this connection, for a deportee to obstruct, hinder or fail to facilitate an attempt to deport him or her is, by virtue of section 8 of the Immigration Act 1999, a criminal offence punishable on conviction by penalties including imprisonment for a term not exceeding 12 months.<sup>50</sup>

Moreover, if a detained person brings court proceedings to challenge the validity of the deportation order (see the section below on appeals / review of detention), the period from when a legal challenge is brought until the final appeal is decided also “stops the clock” on this 8-week aggregate detention period.<sup>51</sup>

In consequence, deportees who are held under section 5 (1) of the Immigration Act 1999 who are also charged with / convicted of a criminal offence, or who seek to challenge the validity of their deportation before a court could, at least in principle, lawfully be detained for periods considerably in excess of 8 weeks.

## ii. Prescribed places of detention

71. People detained pending deportation may be held in any of the places of detention authorised by the Immigration Act 1999 (Deportation) Regulations 2005.<sup>52</sup>

These include every Garda Síochána station and:

Castlerea Prison  
 Cloverhill Prison  
 Cork Prison  
 Limerick Prison  
 The Midlands Prison  
 Mountjoy Prison  
 Saint Patrick’s Institution, Dublin  
 The Training Unit, Glengarriff Parade, Dublin  
 Wheatfield Prison, Dublin

<sup>49</sup> Section 6 (b) (i), Immigration Act 1999.

<sup>50</sup> Sections 8 and 9, Immigration Act 1999. It is also a criminal offence under section 8 of the 1999 Act for a deportee to “behave in a manner likely to endanger the safety of himself or herself or the safety of others in the course of his or her deportation from the State”.

<sup>51</sup> Section 6 (b) (iii), Immigration Act 1999. Any period spent by a deportee “on board a ship, railway train, road vehicle or aircraft” pending deportation can also be discounted from the 8-week maximum (section 6 (b) (ii), Immigration Act 1999.

<sup>52</sup> S.I. No. 55, of 3 February 2005.

72. In addition, a person arrested and detained under section 5 (1) of the Immigration Act 1999, “may be placed on a ship, railway train, road vehicle or aircraft about to leave the State by an immigration officer or a member of the Garda Síochána, and shall be deemed to be in lawful custody whilst so detained and until the ship, railway train, road vehicle or aircraft leaves the State”.<sup>53</sup>
73. It seems that people detained pending deportation are rarely kept in Garda stations for more than a short period of time. In most cases, they are rapidly transferred to one of the prisons listed above.

Once again, it is necessary to reiterate that “a prison is by definition not a suitable place in which to detain someone who is neither convicted nor suspected of a criminal offence. In those cases where it is deemed necessary to deprive persons of their liberty for an extended period under aliens legislation, they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified personnel.”<sup>54</sup>

### iii. Review of detention / appeals

74. A person detained under section 5 of the Immigration Act 1999 may bring court proceedings to challenge the validity of their deportation.<sup>55</sup> If they do so, then “the court hearing those proceedings or any appeal therefrom may, on application to it, determine whether the person shall continue to be detained or shall be released”.<sup>56</sup>

There is also the possibility to challenge the legality of this form of immigration-related detention by bringing an action in the High Court, pursuant to Article 40 (4) of the Constitution (*habeas corpus*).

<sup>53</sup> Section 5 (2), Immigration Act 1999.

<sup>54</sup> Document CPT/Inf (2003) 36, paragraph 69.

<sup>55</sup> The existence of such a right was expressly affirmed by the Supreme Court in its August 2000 judgment “In the matter of Article 26 of the Constitution and sections 5 and 10 of the Illegal Immigrants (Trafficking) Bill 1999”, [2000] 2 I.R. 360.

<sup>56</sup> Section 5 (5), Immigration Act 1999.

75. A further review possibility is outlined in the so-called “15-day letter” that is sent to potential deportees in the name of the Minister of Justice, Equality and Law Reform. This informs a potential deportee that, in accordance with section 3 of the Immigration Act 1999, the Ministers proposes to deport him/her, and that he/she is entitled to make “written representations” to the Minister setting out any reasons why he/she should be allowed to remain in Ireland.

Written representations must be made within 15 working days of the sending date of the letter informing a person that the Minister proposes to make a deportation order. Before making a deportation order, the Minister is legally obliged to take account of any such representations, and must notify the potential deportee in writing of his decision.

Formal proposals by the Minister to make a deportation order, and deportation orders themselves, can only be challenged by way of judicial review within 14 days of the date on which the person concerned is notified of the proposed, or actual, deportation order.<sup>57</sup>

76. Section 5 of the 1999 Act is another “lawful” form of detention, as recognised by the European Convention on Human Rights. As already mentioned, Article 5 (1) (f) of the Convention specifies that a State may carry out “the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or a person against whom action is being taken with a view to deportation or extradition”.

However, such forms of detention must be accompanied by appropriate safeguards, including the right for a detained person “to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful” (Article 5 (4) of the European Convention on Human Rights).

In principle, Irish law offers such possibilities; however, in practice, the only review possibility of which persons detained under section 5 of the Immigration Act 1999 receive written notification is their right to make written representations to the Minister within 15 working days of notification of a proposed deportation being sent to them (and, if they make representations, of the 14-day judicial review possibility outlined above).

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<sup>57</sup> Section 5, Illegal Immigrants (Trafficking) Act 2000. This 14-day period may, however, be extended by the Court where “good and sufficient reason” is shown (section 5(2) of the 2000 Act).

They receive no written notification of the fact that they also have the right to bring court proceedings to challenge the validity of their detention (see the section on information on rights, below, for further details). This could easily have the effect of rendering this right ineffective in practice. In order to ensure that this is not the case, it is **recommended that all persons detained under section 5 of the Immigration Act 1999 be informed in writing, in a language that they understand, of their right to challenge the legality of their detention and the validity of a decision to remove them from the State.**

## b. Formal safeguards

### i. Introduction

77. As already mentioned, international human rights standards require that persons deprived of their liberty for immigration-related reasons “should - in the same way as other categories of persons deprived of their liberty - be entitled, as from the outset of their detention, to inform a person of their choice of their situation and to have access to a lawyer and a doctor. Further, they should be expressly informed, without delay and in a language they understand, of all their rights and of the procedure applicable to them.”<sup>58</sup>

### ii. Right not to be held incommunicado

78. Persons deprived of their liberty under section 5 of the Immigration Act 1999 do not enjoy an express right to notify a person of their choice of their situation.

79. According to the Head of the Garda National Immigration Bureau (GNIB), in practice, persons detained under these provisions are accorded their “full constitutional rights” and are allowed to make a telephone call and/or be visited by a family member or other third party whilst in Garda custody. This was confirmed by a number of the people held under section 5 of the 1999 Act who were interviewed as part of this research.

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<sup>58</sup> Standards on Foreign Nationals Deprived of their Liberty under Aliens Legislation in “The CPT Standards”, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), document CPT/Inf/E (2002) 1 - Rev. 2004, page 42.

80. People detained under section 5 of the 1999 Act who are held for longer than a few hours are usually transferred to one of the prisons listed above, where they are allowed to have contact with a person of their choice in the same manner as any other prisoner (see the section on “life in prison” for further details).

81. It would appear that, in practice, people held under section 5 of the Immigration Act 1999 who ask to notify a person of their choice of their situation are being allowed to do so.

Nonetheless, the exercise by a detained person of such an important right should not be left to the discretion of the arresting authorities. It is **recommended that the right of persons held under section 5 of the Immigration Act 1999 to inform a person of their choice of their situation, as from the outset of their detention, be formally recognised in law.**

### iii. Right of access to a lawyer

82. The Immigration Act 1999 contains no explicit right for persons detained under section 5 to have access to a lawyer.

However, in a judgment in August 2000, the High Court held that there is a “constitutional presumption” that, upon arrest, a person detained under the 1999 Act has the right to obtain legal advice.<sup>59</sup>

83. The Head of the GNIB asserted that anyone held under section 5 of the Immigration Act 1999 who requested access to a lawyer would be allowed to contact, and to consult with a solicitor. This was confirmed by persons held under section 5 of the 1999 Act who were interviewed as part of this research.

84. The High Court’s judgment to the effect that persons held under section 5 of the Immigration Act 1999 have a right of access to a lawyer would appear to be being respected in practice. Nonetheless, it would be highly desirable for more explicit legal provisions to be adopted, outlining the precise content of such persons’ right of access to a lawyer, as well as the manner in which that right can be exercised. It is **recommended that the right of persons held under section 5 of the Immigration Act 1999 to have access to a lawyer, as from the outset of their detention, be enshrined in formal legal provisions.**

<sup>59</sup> D.P. v Governor of the Training Unit, Mountjoy Prison, [2001] 1 I.R. 492.

#### iv. Right of access to medical care

85. All places where immigration detainees may be held should provide access to medical care. This is particularly important as regards people detained pending deportation, who may experience a variety of somatic and/or psychological problems (anxiety, depression, sleeping problems etc.) associated with the stress of having been detained with a view to their removal from Ireland.

The Immigration Act 1999 makes no formal provision for people detained pending deportation to have access to medical care.

86. According to the Head of the GNIB, anyone held on Garda premises under section 5 of the 1999 Act who requires medical assistance will be granted it without delay. However, it remains unclear whether such persons are proactively asked if they require medical attention, or informed that this is a possibility. If transferred to a prison, they will be offered a medical examination on, or shortly after admission, as are all other prisoners.

87. A number of the persons held under section 5 of the 1999 Act who were interviewed as part of this research indicated that they had not been asked if they required medical attention until they were seen by medical staff in the prisons to which they had been transferred.

88. In order to ensure that people detained pending deportation under section 5 of the Immigration Act 1999 are placed in a position to exercise their right of access to medical care as from the outset of their detention, it is **recommended that this right be formally recognised in law.**

#### v. Right of access to information about the reasons for detention / information on rights

89. Persons detained pending deportation are informed in writing (by the so-called “15-day letter” mentioned above) that the Minister for Justice, Equality and Law Reform proposes to deport them. If the Minister subsequently confirms his decision to deport, this is also notified in writing to the person concerned. In both cases, the 1999 Act provides that “where necessary and possible” the deportee shall be given a copy of these notifications in a language that he or she understands”.<sup>60</sup>

<sup>60</sup> Section 3 (3) (a) and 3 (b) (ii), Immigration Act 1999.

However, no other written information is provided to people detained pending deportation regarding either their detention under section 5 of the Immigration Act 1999, or their rights whilst detained.

Given that the courts have formally recognised that people detained under section 5 of the 1999 Act have a number of important rights, including a right to bring legal proceedings to challenge the validity of their detention<sup>61</sup> and a right of access to a lawyer,<sup>62</sup> this is a significant lacuna. To meet international human rights standards, people detained under section 5 of the 1999 Act should also be informed that they are entitled to exercise all of the other rights identified in the preceding sections.

**It is recommended that people detained under section 5 of the Immigration Act 1999 be systematically provided with a document explaining the procedure applicable to them and setting out their rights. This document should be available in the languages most commonly spoken by those concerned.**

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<sup>61</sup> In the matter of Article 26 of the Constitution and sections 5 and 10 of the Illegal Immigrants (Trafficking) Bill 1999, [2000] 2 I.R. 360.

<sup>62</sup> D.P. v Governor of the Training Unit, Mountjoy Prison, [2001] 1 I.R. 492.

## 5. Detention on remand for immigration-related reasons

### a. Legal basis

#### i. Legal authority to detain

90. In addition to the various immigration-related offences mentioned in the preceding sections, people can be detained on remand (awaiting trial) for immigration-related reasons under the Criminal Justice (Theft and Fraud Offences) Act 2001
91. Sections 26 and 29 of the Criminal Justice (Theft and Fraud Offences) Act 2001 create offences related to the use / possession of “false instruments”, which can include false passports (or other documents which can be used instead of passports) as well as forgeries of official documents which authorise a person to enter, remain or work in Ireland. A number of third country nationals interviewed in the course of this research had been remanded in custody on suspicion of having committed such offences, after having been found to be in possession of identity documents suspected of being forged. Criminal offences of this nature are punishable by fines and/or imprisonment of between 5 and 10 years.
92. Section 4 of the Criminal Justice Act 1984 provides that a person arrested on suspicion of a criminal offence punishable by imprisonment of 5 years or more may be detained by the Garda Síochána for a period of up to six hours from the time of his/her arrest. This may be extended by an additional six hours by a member of the Garda Síochána of at least the rank of Superintendent, if he/she has reasonable grounds for believing that an extension is necessary for the proper investigation of the offence.

If the "member in charge" of the Garda station considers that questioning a detained person should be suspended in order to allow him/her a reasonable time to rest, and the detainee consents in writing, a period of time between midnight and 8 am may be excluded from the calculation of this twelve-hour maximum. As a result, persons detained under the Criminal Justice Act may spend up to twenty hours in the custody of the Garda Síochána. By the end of this period, if charged with a criminal offence, they must either be released on bail or taken to the District Court, from where they will either be released or remanded in custody in a prison.<sup>63</sup>

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<sup>63</sup> In terms of section 25 (1) of the Criminal Procedure Act 1967, if the Court remands a person suspected of a criminal offence in custody for a period of no more than four days, he or she may be committed to the custody of the Garda Síochána, and will be detained in a Garda station for that period.

A court may remand a person in custody for an initial period of up to 8 days, following which he or she may be remanded for successive periods of longer than 8 days, but not exceeding 30 days at a time.<sup>64</sup>

There is no legally-enforceable upper limit to the period of time that a person may spend on remand before being brought to trial for an offence under sections 26 or 29 of the Criminal Justice (Theft and Fraud Offences) Act 2001. In consequence, persons held on remand for immigration-related reasons under these provisions may spend weeks, or even months in prison awaiting trial.

## ii. Authorised places of detention

93. A person who is remanded in custody may be committed to prison “or other lawful custody”. In terms of section 25 (1) of the Criminal Procedure Act 1967, if the Court remands a person suspected of a criminal offence in custody for a period of no more than four days, he or she may be committed to the custody of the Garda Síochána, and will be detained in a Garda station for that period.

Consequently, a person remanded in custody for immigration-related reasons may be detained in any Garda station (for an initial period of up to 20 hours, followed by a further period of up to 4 days)<sup>65</sup> or in any prison.

## iii. Review of detention / appeals

94. As already mentioned, a person may not be remanded in custody for more than an initial period of 8 days, after which he or she may be remanded in custody for a period or periods of longer than 8 days, but not exceeding 30 days at a time.<sup>66</sup>

Unless the Court is satisfied that a person on remand is ill, he or she must appear before the Court in person, and may challenge his or her detention, at each remand hearing.

There is also the possibility to challenge the legality of this form of immigration-related detention by bringing an action in the High Court, pursuant to Article 40 (4) of the Constitution (*habeas corpus*).

<sup>64</sup> Section 24 (1) and (3), Criminal Procedure Act, 1967.

<sup>65</sup> The Criminal Procedure Act 1967 does provide that, if remanding someone to the custody of the Garda Síochána outside the Dublin Metropolitan Police District, the Court “shall satisfy itself that suitable facilities are available” for remand in custody on Garda premises (section 25 (2)).

<sup>66</sup> Section 24 (1) and (3), Criminal Procedure Act, 1967.

## b. Formal safeguards

95. International human rights standards require that persons deprived of their liberty for immigration-related reasons “should - in the same way as other categories of persons deprived of their liberty - be entitled, as from the outset of their detention, to inform a person of their choice of their situation and to have access to a lawyer and a doctor. Further, they should be expressly informed, without delay and in a language they understand, of all their rights and of the procedure applicable to them.”<sup>67</sup>

A person remanded in custody for immigration-related reasons is accorded exactly the same legal rights as any other person remanded in custody on suspicion of having committed a criminal offence.

96. Insofar as their time in Garda custody is concerned, the formal legal rights of such persons are set out in the Criminal Justice Act 1984 and in the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 (S.I. 119 of 1987). In general, these provisions can be said to comply with international human rights standards, in particular as regards the right not to be held incommunicado, the right of access to a lawyer, the right of access to medical care and the right of access to information about the reasons for detention / information on rights

If committed to a prison, persons remanded in custody for immigration-related reasons are accorded the same legal rights as other prisoners held on remand (see the section on “life in prison” for further details).

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<sup>67</sup> Standards on Foreign Nationals Deprived of their Liberty under Aliens Legislation in “The CPT Standards”, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), document CPT/Inf/E (2002) 1 - Rev. 2004, page 42.

## **E. Life in prison for immigration-related detainees**

### **1. Introduction**

97. Virtually all male immigration detainees in Ireland are held at Cloverhill Prison, Dublin, and almost all female immigration detainees are accommodated at the Dóchas Centre, Mountjoy Prison, Dublin. Of the 946 immigration detainees held in Irish prisons in 2004, only a small number were accommodated in any other establishments (39 in Cork Prison, 10 in Limerick Prison, and 1 in Castlerea Prison).

Private interviews were carried out with immigration detainees held at Cloverhill Prison and at the Dóchas Centre, on the basis of a detailed questionnaire approved by the Prisoner Based Research Ethics Committee (see Appendix II). The author was also able to visit the cellular accommodation and other facilities used by immigration detainees at both establishments.

98. On 22 June 2005, the Department of Justice, Equality and Law Reform published new prison rules: to be known as the Prison Rules 2005. For the purposes of the 2005 Rules, the term “prisoner” explicitly includes all four categories of immigration-related detainees identified earlier in this report.<sup>68</sup> It is anticipated that these new rules will enter into force in November 2005. Given that the Prison Rules currently in force date from 1947, this is a highly-significant development for the governance of prisons.

The following sections describe the situation found by the author during his visits to Cloverhill Prison and the Dóchas Centre in spring 2005, and refer to the current legal situation of persons held in prisons for immigration-related reasons. Nonetheless, where the Prison Rules 2005 contain provisions that are capable of having an impact on the lives of immigration detainees held in prisons, reference is also made to relevant provisions of the new rules.

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<sup>68</sup> Namely: (1) persons refused permission to land, (2) those detained during the asylum process, (3) people detained pending deportation, and (4) those remanded in custody for immigration-related reasons. See the chapter of this report on the legal framework for immigration-related detention for further details.

## 2. Living conditions

### a. Cloverhill Prison

99. Cloverhill Prison is a purpose-built remand prison located in Clondalkin in the western suburbs of Dublin. It opened in April 2000, has a bed capacity of 456 places and a population of male adults and juveniles aged 15 and over.

Male immigration-related detainees over the age of 18 are held mainly in C wing, which accommodates between 80 and 90 third-country nationals at any one time. All four of the categories of immigration-related detainees identified earlier in this report<sup>69</sup> are held in C wing, together with other foreign nationals suspected of criminal offences.

100. Physical conditions in this recently-built establishment were, in general, of a fairly high standard.

The cells were clean, properly furnished (with a bed, table, chairs and television), well-lit and ventilated, and fitted with a washbasin and integral sanitation.

Cells designed for one person measured some 9.5 m<sup>2</sup>, which is a reasonable size for single-person accommodation. However, larger cells measuring around 11 m<sup>2</sup> were being used to detain up to three immigration detainees. It is not appropriate that any inmate – let alone those who are neither suspected nor convicted of criminal offences – should be held in overcrowded conditions of this nature.

101. The planned use of cells of this size at Cloverhill Prison to hold three persons was the subject of international criticism even before the prison opened. In the report on its 1998 visit to Ireland, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommended that “no more than two prisoners should be accommodated within them”,<sup>70</sup> a finding that it reiterated after its visit to Cloverhill in 2002.<sup>71</sup>

<sup>69</sup> Namely: (1) persons refused permission to land, (2) those detained during the asylum process, (3) people detained pending deportation, and (4) those remanded in custody for immigration-related reasons. See the section of this report on the legal framework for immigration-related detention for further details.

<sup>70</sup> Report to the Irish Government on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 August to 9 September 1998, CPT/Inf (99) 15, paragraph 61.

<sup>71</sup> Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 28 May 2002, CPT/Inf (2003) 36, paragraph 42.

More recently, the Inspector of Prisons and Places of Detention, Mr Justice Dermot Kinlen has deemed the cells concerned to be “too small” for three persons.<sup>72</sup>

**It is recommended that the practice of holding male immigration detainees three to an 11m<sup>2</sup> cell at Cloverhill Prison should cease.**

b. Dóchas Centre

102. The Dóchas Centre is a unit of Mountjoy Prison, located in Phibsborough, to the north of Dublin city centre. The Centre opened in December 1999 and has a bed capacity of 81 places. It operates as a closed medium-security prison, accommodating female inmates aged 17 and over. Inmate accommodation is in six self-contained “houses”: Cedar, Elm, Hazel, Laurel, Maple and Phoenix.

In principle, female immigration-related detainees over the age of 18 can be allocated to any location in the establishment; however, if a space is available in the so-called “bedsit” unit in Phoenix House, they will often be placed there. This is an L-shaped area originally designed as a pre-release facility for one sentenced prisoner, which now contains four beds. Space permitting, the 18-cell Cedar House, which has a fairly stable population of drug-free, sentenced and long-term prisoners is also used to accommodate immigration detainees.

103. As at Cloverhill Prison, physical conditions of a generally high standard were being blighted by the problem of overcrowding, especially insofar as immigration detainees were concerned.

Most inmates at the Dóchas Centre were being accommodated one-to-a-cell in clean, adequately-lit and ventilated, well-equipped and generously-sized cells measuring around 13.5m<sup>2</sup>. All of the cells were equipped with integral sanitation. However, many immigration detainees were being kept in less spacious shared accommodation.

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<sup>72</sup> Irish Prisons Inspectorate, Revisit Inspection of Cloverhill Prison, 20<sup>th</sup> and 21<sup>st</sup> January 2004, Chapter 2.

104. At the time of the author's visits to the establishment, three to four immigration detainees were sharing a "bedsit" facility in Phoenix House originally designed for one prisoner. Although well-equipped (including with a kitchen area and a separate lavatory/shower room) it represented somewhat cramped accommodation for four people. Moreover, a further two immigration detainees were sleeping on mattresses placed directly on the floor in an 8m<sup>2</sup> office in Maple House. Admittedly, the two persons concerned, who were sisters, had asked to be kept together; however, it is apparently not uncommon for immigration detainees admitted to the Dóchas Centre to be required to sleep on mattresses on the floor until a place becomes available in the "bedsit" in Maple House, in Cedar House or in another cell in the establishment.

In short, immigration detainees at the Dóchas Centre appeared to be bearing the brunt of the establishment's overcrowding problems.

**It is recommended that, for so long as female immigration detainees continue to be held at the Dóchas Centre, efforts be made to ensure that they are held in conditions which are at least as spacious as those of remand and sentenced prisoners.**

### 3. Daily life

#### a. Information on / after arrival

105. Immigration detainees should be expressly informed, without delay and in a language they understand, of all their rights and of the procedure applicable to them. The legal framework chapter of this report describes the information on rights that is provided (or, in certain cases, not provided) when people are first deprived of their liberty for immigration-related reasons. The admission to prison of immigration detainees constitutes another opportunity to provide them with information about their situation in a language that they understand.

106. At Cloverhill Prison, newly-admitted inmates, including immigration detainees, are given a copy of a 25-page booklet entitled "Information for Persons in Custody". This contains a wide range of useful information about daily life in the prison, and about the legal rights and entitlements of remand and sentenced prisoners. However, with the exception of a brief reference to the fact that an "order of habeas corpus is obtainable in the High Court if, and when, a person proves that he is being detained in custody illegally", it contains no information relating specifically to the rights and entitlements of immigration detainees. Moreover, the booklet is available only in English.

If immigration detainees continue to be held at Cloverhill Prison, it is **recommended that the information booklet given to newly-admitted inmates be revised in order to include information about the specific legal rights and entitlements of immigration detainees. The booklet should also be made available in a range of the languages most commonly spoken by immigration detainees.**

107. No written information is provided to any newly-admitted inmates at the Dóchas Centre. Apparently, at one stage in the establishment's history, written information had been displayed in inmates' cells; however, at the time of the author's visits, this was no longer the case. This is a serious lacuna, which should be swiftly rectified.

It is **recommended that all newly-arrived inmates at the Dóchas Centre be provided with an information booklet providing details about life in the establishment, as well as about inmates' legal rights and entitlements. For so long as immigration detainees continue to be held at the Dóchas Centre, the booklet should include information about their specific legal rights and entitlements. The booklet should also be made available in a range of the languages most commonly spoken by immigration detainees.**

108. It should also be noted that, under rule 14 of the 2005 Prison Rules,

- “(1) Each prisoner shall, upon admission to prison, be given an explanatory booklet outlining his or her entitlements, obligations, and privileges under these Rules.  
 (2) Each prisoner who was admitted to prison before the commencement of these Rules and who is in prison on the date of such commencement shall be given an explanatory booklet outlining his or her entitlements, obligations, and privileges under these Rules.  
 [...]
 (3) The booklet referred to in paragraph (1) and (2) shall, in so far as is practicable, be provided to a foreign national in a language that is understood by him or her.  
 (4) Where the booklet referred to in paragraph (1) and (2) is not available in a language that is understood by the foreign national concerned or he or she does not understand the contents thereof, all reasonable efforts shall be made to ensure that the said contents shall be explained to him or her in a language that he or she understands”

Insofar as the provision of information to immigration detainees is concerned, the entry into force of Rule 14 of the 2005 Rules will be a welcome development.

b. The daily routine

109. Immigration detainees at Cloverhill Prison follow the same daily routine as all other remand prisoners held in the establishment.

They are unlocked from their cells at 8.30am, and collect breakfast, which is eaten in the cells. They are locked in their cells until 9.30am, from which time they are allowed to shower, and then have access to an exercise yard from 10am until noon, when lunch is served. From noon to 2pm they eat lunch and remain locked in their cells. From 2pm until 4pm they are released from their cells and permitted to use the indoor recreation facilities on the wing in which they are being held, which include snooker and table tennis. They may also visit the prison's gym and make telephone calls during this period. An evening meal is served at 4pm, and immigration detainees are locked in their cells to eat it until 5.30 – 5.45pm, when they are released and can again use the wing's recreation facilities until 7.10pm, when they are locked in their cells for the night.

In short, they are out of their cells for some six and half hours every day, and locked up (often with two other inmates) for the remaining seventeen and half hours.

110. At the Dóchas Centre, inmates, including immigration detainees, are unlocked from their cells for around 12 hours per day (from 7am to 7pm), during which time they are free to avail of the various activities and facilities described in the following sections.

c. Visits and other contacts with the outside world

111. At both Cloverhill Prison and the Dóchas Centre, immigration detainees were granted the same visiting entitlement as remand prisoners, namely one 15-minute visit every day from Monday to Saturday.

All visits at Cloverhill Prison were “closed”, taking place with detainees and their visitors on opposite sides of glass screens whereas, at the Dóchas Centre, “open” visits took place in a room otherwise used as dining facility, and limited physical contact between detainees and their visitors was allowed. **It would be far preferable if male immigration detainees at Cloverhill were to receive visits in similarly open conditions.**

112. Immigration detainees are allowed to make a telephone call or calls of no longer than six minutes in total every day. They are asked to complete a written “application for phone calls”, on which they are obliged to specify three telephone numbers that they wish to be able to dial from the prison. The first telephone number specified must be that of their solicitor, and the remaining two can be personal numbers. Telephone calls to a solicitor are counted as part of detainee’s daily six-minute call allowance.

Complaints were heard from immigration detainees interviewed that this call allowance was insufficient to allow them to maintain meaningful contact with family and friends, particularly given that any time spent speaking to their solicitors was deducted from the time that could be spent speaking to their two other designated persons.

**It is recommended that time spent speaking to a solicitor by telephone should not be counted as part of the daily call allowance of immigration detainees. Consideration should also be given to increasing the call allowance for immigration detainees and/or allowing them to call an increased number of persons.**

113. There is no restriction on the number of letters that may be sent or received by immigration detainees during their time in prison. However, all incoming and outgoing mail, with the exception of legal correspondence, may be censored by the prison authorities.

#### d. Association

114. At Cloverhill Prison, when released from their cells, male immigration detainees associated freely with all other foreign prisoners held in C Wing. Although many of their fellow inmates were being held for immigration-related reasons, C Wing also holds the vast majority of Cloverhill’s non-Irish remand prisoners. Consequently, immigration detainees were being held together with, and associating with, persons suspected of ordinary criminal offences. This is highly undesirable.
115. Female immigration detainees held at the Dóchas Centre had more limited contact with inmates being held for non-immigration reasons. Although people accommodated in the “bedsit” area in Phoenix House were themselves relatively free to come and go between 7am and 7pm, other prisoners had more restricted access to this area. Immigration detainees held in Cedar House could, if they chose, associate with the sentenced prisoners held there.

At the time of the author's visits to the Dóchas Centre, immigration detainees held in Phoenix and Cedar Houses (and in the office in Maple House) were choosing to keep themselves to themselves as much as possible. One immigration detainee indicated that this was as a result of having been subjected to racist taunts by other prisoners. Staff accepted that there were occasional outbursts of racist abuse by remand or sentenced prisoners directed at immigration detainees. It would appear that mealtimes, when immigration detainees and remand /sentenced prisoners eat together in a communal facility constitute a particular flashpoint. Staff asserted that, when such incidents occur, they intervene swiftly to defuse the situation, and to castigate the perpetrators.

The existence of such incidents only serves to highlight the undesirability of immigration detainees being held together with remand and sentenced prisoners.

e. Food

116. No complaints of any substantive nature were heard from immigration detainees at either Cloverhill Prison or the Dóchas Centre regarding the quantity, quality or temperature of the prison food.

Given the diversity of nationalities and cultures represented amongst the immigration detainees interviewed, catering staff at both establishments can justifiably regard this finding as an accolade.

f. Recreation and sport

117. Recreational and sporting activities at Cloverhill Prison were of a reasonably good standard. Inmates had access to indoor recreation areas containing snooker and table tennis tables, and an outdoor exercise yard. Those who so chose could visit the well-equipped gymnasium, where additional sporting activities were available. The prison's library offered reading material in a range of languages, including Albanian, Arabic, Chinese, Croatian, French, Polish, Portuguese, Russian and Spanish.

The Dóchas Centre also offers a good range of recreational and sporting activities to its inmates although, at least at the time of the author's visits, the take-up rate for such activities amongst immigration detainees was low. By contrast with the prison library at Cloverhill, no foreign language publications were available in the Dóchas Centre library.

**It is recommended that additional efforts be made by staff at the Dóchas Centre to encourage immigration detainees to participate in the activities available at the establishment. Subject to the agreement of the prison authorities, non-governmental organisations could also make a difference to the lives of female immigration detainees held at the Dóchas Centre by collecting magazines and periodicals in foreign languages and supplying them to the prison library.**

4. Assessment of the appropriateness of the prisons visited for the detention of immigration detainees

118. It should be apparent from the information set out in the previous sections of this chapter that neither Cloverhill Prison nor the Dóchas Centre provides an appropriate environment in which to hold immigration detainees.

Cloverhill Prison accommodates immigration detainees in overcrowded conditions, together with people suspected of criminal offences. They are locked in their cells for more than seventeen hours a day and significant restrictions – including closed visiting arrangements – are placed on their contacts with the outside world.

Although conditions at the Dóchas Centre are better in certain respects (e.g. open visits and more time unlocked), immigration detainees held there are also kept in cramped conditions and held together with people on remand *and* convicted prisoners.

119. The holding of immigration detainees in Irish prisons has been repeatedly criticised by authorities including the Council of Europe, the Inspector of Prisons and Places of Detention, the Visiting Committees of the establishments concerned and the National Prison Chaplains.

The findings of this independent research report only serve to confirm that prisons are, by definition, inappropriate places in which to hold immigration detainees. As has been emphasised throughout this report, in those cases where it is deemed necessary to deprive persons of their liberty for an extended period under immigration legislation, they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified personnel.

**It is recommended that the practice of holding immigration detainees in prisons be brought to an end.**

## F. Future prospects

120. In April 2005, the Department of Justice, Equality and Law Reform published outline policy proposals for a new Immigration and Residence Bill.

According to the outline proposals, the “Government is now embarked upon this root-and-branch replacement of the present law with a view to putting in place a modern legislative framework that will enable policies to be made and modified as needs require and that will provide a fair and transparent set of procedures for the day-to-day implementation of those policies”.<sup>73</sup>

The outline proposals recognise that, in so doing, the “development of the legislative framework for immigration in Ireland should reflect best international practice developments in this area and should fulfil our constitutional and international obligations in this area. International human rights conventions and other international agreements and policy developments at European level will be important inputs in informing developments.”<sup>74</sup>

121. The outline proposals cover a wide range of topics, including visas and pre-entry clearance, border controls, entry and admission to the State, residence issues, monitoring and compliance, and removals.

Detention issues are raised in relation to both border controls (chapter 5 of the outline proposals) and removals (chapter 12). The proposals specifically re-emphasise that future removals from Ireland must continue to comply with the principle of *non-refoulement* as currently reflected in section 5 of the Refugee Act 1996 and section 4 of the Criminal Justice (UN Convention Against Torture) Act 2000.

122. The adoption of a new Immigration and Residence Bill represents a significant opportunity to consolidate existing legislation as regards the rights of persons detained for immigration-related reasons. As matters stand, the extent to which legislation places a detained person in a position to exercise his or her fundamental rights varies considerably according to whether he or she has been refused permission to land, is an asylum seeker, is facing deportation or is remanded in custody.

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<sup>73</sup> Immigration and Residence in Ireland, Outline policy proposals for and Immigration and Residence Bill, A discussion document, Department of Justice, Equality and Law Reform, April 2005, page 21.

<sup>74</sup> *Ibid.*, page 23.

This should not be the case; all persons deprived of their liberty, for whatever immigration-related reason, should be able – as from the very outset of their detention – to exercise the fundamental rights described in the legal framework chapter of this report.

**It is recommended that the proposals for legislative change recommended in the legal framework chapter of this report be taken into account in the context of drafting the Immigration and Residence Bill.**

## Appendix I

### Summary of recommendations

#### A. The legal framework for immigration detention in Ireland

##### 1. Detention of people refused permission to land

- all persons detained under section 5 (2) of the Immigration Act 2003 to be informed in writing, in a language that they understand, of their right to challenge the legality of their detention and the validity of a decision to remove them from the State (paragraph 28);
- the rights of persons detained under section 5 (2) of the Immigration Act 2003 to:
  - inform a person of their choice of their situation;
  - have access to a lawyer;
  - have access to medical care,

as from the outset of their detention, to be formally recognised in law (paragraphs 34, 37 and 41);

- a document explaining the legal procedures that apply to them, and outlining all of their rights (including those identified above), to be drawn up and systematically distributed to people detained under section 5(2) of the Immigration Act 2003. That document should be available in the languages most commonly spoken by those detained under section 5(2) of the 2003 Act (paragraph 44).

##### 2. Detention of asylum seekers

- the right of persons detained under section 9 (8) and (13) of the Refugee Act 1996 to inform a person of their choice of their situation as from the outset of their detention to be formally recognised in law (paragraph 58);
- regulation 16 of the Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000 to be amended to reflect that fact that all persons detained under the Refugee Act 1996 should be able to have access to a lawyer as from the outset of their detention (paragraph 62);

- it would be desirable for the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 to be amended in order to specify that the results of every medical examination, as well as any relevant statements by the detainee and the doctor's conclusions, should be recorded in writing by the doctor and made available to the detainee and his lawyer (paragraph 65);
- immediate steps to be taken to issue a written notice for persons detained under sections 9 (8) and (13) of the Refugee Act 1996 that fully complies not only with section 10 of the 1996 Act, but also with regulations 4 and 5 of the Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000. That written notice should be made available in a range of the languages most commonly spoken by persons detained under section 9 of the 1996 Act (paragraph 68).

### 3. Detention pending deportation

- all persons detained under section 5 of the Immigration Act 1999 to be informed in writing, in a language that they understand, of their right to challenge the legality of their detention and the validity of a decision to remove them from the State (paragraph 76);
- the rights of persons detained under section 5 of the Immigration Act 1999 to:
  - inform a person of their choice of their situation;
  - have access to a lawyer;
  - have access to medical care,

as from the outset of their detention, to be formally recognised in law (paragraphs 81, 84 and 88);
- a document explaining the legal procedures that apply to them, and outlining all of their rights (including those identified above), to be drawn up and systematically distributed to people detained under section 5 of the Immigration Act 1999. That document should be available in the languages most commonly spoken by those detained under section 5 of the 1999 Act (paragraph 89).

#### 4. Future prospects

- the proposals for legislative change identified above to be taken into account in the context of drafting the new Immigration and Residence Bill (paragraph 122).

### **B. Life in prison for immigration-related detainees**

#### 1. Living conditions

For so long as immigration-related detainees continue to be held at Cloverhill Prison and at the Dóchas Centre:

- male immigration detainees at Cloverhill Prison no longer to be held three to an 11m<sup>2</sup> cell (paragraph 101);
- female immigration detainees at the Dóchas Centre to be held in conditions which are at least as spacious as those of remand and sentenced prisoners (paragraph 104).

#### 2. Daily life

For so long as immigration-related detainees continue to be held at Cloverhill Prison and at the Dóchas Centre:

- newly-admitted detainees to be given an information booklet providing details about daily life in the establishment and about the specific legal rights and entitlements of immigration detainees. The booklet should be made available in the languages most commonly spoken by those detained for immigration-related reasons (paragraphs 106 and 107);
- it would be far preferable if male immigration detainees at Cloverhill Prison were to receive visits in open conditions, as is the case for female immigration detainees at the Dóchas Centre (paragraph 111);
- time spent speaking to a solicitor by telephone not to be counted as part of the daily call allowance of immigration detainees. Consideration also to be given to increasing the call allowance for immigration detainees and/or allowing them to call an increased number of persons (paragraph 112);
- additional efforts to be made by prison staff to encourage immigration detainees at the Dóchas Centre to participate in the activities available at the establishment (paragraph 117);

- subject to the agreement of the prison authorities, non-governmental organisations to consider collecting magazines and periodicals in foreign languages and supplying them to the library at the Dóchas Centre (paragraph 117).
3. The inappropriateness of the prisons visited for the detention of immigration detainees
- the practice of holding immigration detainees in prisons in Ireland to be brought to an end. In those cases where it is deemed necessary to deprive persons of their liberty for an extended period under immigration legislation, they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified personnel (paragraph 119).

## **Appendix II**

### **Research questionnaire**

<b>Date Completed:</b>
<b>Date Reviewed:</b>
<b>Place of detention:</b>
<b>Questionnaire ref. no.:</b> ...../05

## IMMIGRATION-RELATED DETENTION QUESTIONNAIRE

Your answers to all of these questions are strictly confidential and will not be disclosed to any official of the Irish State, or to any other organisation, in a way that allows you to be identified. The only purpose of this questionnaire is to help us to understand the experiences of people who are detained under the immigration laws in Ireland.

<b>Name</b> <i>(Last, First, Middle):</i>	<input type="checkbox"/> M <input type="checkbox"/> F	<b>D.O.B.:</b>
<b>Marital status:</b> <input type="checkbox"/> Single <input type="checkbox"/> Partnered <input type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed		
<b>Country of origin / nationality:</b>	<b>Date of committal:</b>	
<b>Custody number:</b>	<b>Location in establishment (wing/cell):</b>	
<b>A. BACKGROUND TO THE DETENTION</b>		

<b>1.</b> <b>Can you tell me where you were immediately before being brought to this prison? :</b>	<input type="checkbox"/> At home <input type="checkbox"/> In a police station (specify which?) <input type="checkbox"/> In court (specify which?) <input type="checkbox"/> In another prison (specify which?) <input type="checkbox"/> On the street <input type="checkbox"/> Other (specify where?)	
<b>2.</b> <b>Do you know the reason why you have been brought here?</b>	<input type="checkbox"/> Refused entry to the country at an airport	<input type="checkbox"/> Refused entry to the country at another port
YES <input type="checkbox"/> : (specify reason opposite)	<input type="checkbox"/> Detained by the police due to lack of correct documents	<input type="checkbox"/> Detained by the police for some other reason (specify)
NO <input type="checkbox"/> (go to question 4)	<input type="checkbox"/> Due to be deported (when?)	<input type="checkbox"/> Other (specify)
<b>3.</b> <b>I would like to know more about the way in which you were told about the reason for bringing you here? Can you tell me about that, in your own words?</b> (Then go to question 5)		
<b>4.</b> <b>Have you been given any information about the reason for bringing you here, including in writing? If so, could you understand the information that you were given?</b>		

**5.**  
**Is there anything else that you would like to tell me about the events that led up to you being brought here?**

**B. FORMAL LEGAL SAFEGUARDS SURROUNDING DETENTION**

**6.**  
**I would like to talk to you about the other people who may know that you have been detained.**  
**Since you have been detained, have you been able to inform:**

Your family / a friend?	YES <input type="checkbox"/> NO <input type="checkbox"/>	When?	A lawyer?	YES <input type="checkbox"/> NO <input type="checkbox"/>	When?	A doctor?	YES <input type="checkbox"/> NO <input type="checkbox"/>	When?
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**7.**  
**Since you have been detained, have you been able to personally speak by telephone with any of the following people:**

Your family / a friend?	YES <input type="checkbox"/> NO <input type="checkbox"/>	When?	A lawyer?	YES <input type="checkbox"/> NO <input type="checkbox"/>	When?	A doctor?	YES <input type="checkbox"/> NO <input type="checkbox"/>	When?
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**8.**  
**Since you have been detained, have you been personally visited by any of the following people:**

Your family / a friend?	YES <input type="checkbox"/> NO <input type="checkbox"/>	When?	A lawyer?	YES <input type="checkbox"/> NO <input type="checkbox"/>	When?	A doctor?	YES <input type="checkbox"/> NO <input type="checkbox"/>	When?
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**9.**  
**Have you been told when you can expect to be released / taken back to court?**

YES       NO       When? :

How were you informed? :

**C. PRISON LIFE**

**Now I would like to ask you some questions about the quality of your life in this prison.**

**10.**  
**In your own words, can you describe to me the routine that you follow during a "typical day" here?**

**11.**  
**I would like to know a bit more about your living conditions. Have you always been held in this particular cell? If you have been held in other cells here (or in other prisons), how did conditions in those cells compare with conditions here?**

[Note: Interviewer should make a brief note of their own observations regarding the conditions in the cell in which the interview is taking place].

**12.**  
 (If there is no in-cell sanitation) **What are the arrangements for using a lavatory? If you need to use a lavatory at night, what happens?**

**13.**  
**What are the arrangements for taking a shower / a bath? How frequently does this happen?**

**14.**  
**How do you get clean clothes / underclothes? How frequently?**

**15.**  
**For how many hours per day can you leave the cell, other than to use a lavatory / shower / bath? Is this the same every day? If not, can you describe any significant differences (e.g. compare weekdays to the weekend).**

**16.**  
**When you leave the cell, other than to use a lavatory / shower / bath, which of the following activities are available to you?**

Exercise?  Yes  No

If yes, what kind? Alone or with other detainees? If with other detainees, do you know if they are being held for immigration reasons, or for other reasons? Where does exercise take place? How frequently?

	Sporting activities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	If yes, what kind? Alone or with other detainees? If with other detainees, do you know if they are being held for immigration reasons, or for other reasons? Where do sporting activities take place? How frequently?		
	Visits?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	If yes, what kind (open / closed)? With whom (family / friends / chaplain etc.) Where do they take place? How frequently? During visits, are you allowed to speak your own language, if your first language and that of your visitor is not English?		
	Association with other detainees, other than already mentioned?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Please describe.		
	Work?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	If yes, what kind? Alone or with other detainees? If with other detainees, do you know if they are being held for immigration reasons, or for other reasons? Where does work take place? How frequently?		
	Education (including language classes)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	If yes, in what subjects? Alone or with other detainees? If with other detainees, do you know if they are being held for immigration reasons, or for other reasons? Where does education take place? How frequently?		
<b>17.</b> <b>Are there any other <u>in-cell</u> activities that you haven't already mentioned?</b>	Watching television?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	If yes, are any channels available in your own language?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Listening to the radio?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	If yes, are any channels available in your own language?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Reading?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	If yes, are books / magazines / newspapers available in your own language?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Handicrafts / <u>in-cell</u> work?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	If yes, please specify.		
Any other in-cell activities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
If yes, please specify.			
<b>18.</b> <b>Tell me something about the quality of the food here. In general, would</b>	Excellent		<input type="checkbox"/>
	Good		<input type="checkbox"/>
	Satisfactory		<input type="checkbox"/>

	Unsatisfactory <input type="checkbox"/>
	Poor <input type="checkbox"/>
	Please explain your choice. I would particularly like to know whether or not the food meets any special dietary and/or religious needs that you may have.
<b>19. If you are a religious person, are you able to practice your religion in this prison?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If yes, how? If no, what prevents you from practicing your religion?

**D. PRISON MEDICAL SERVICES**

**I am not a medical doctor, and so I cannot give you health advice about any medical problems that you may have. However, I would like to ask you a few brief questions about your impressions of the quality of the medical care that you have received in this prison.**

<b>20. After your arrival in this prison, were you seen by a medical doctor?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO (go to question 21)	If yes, did the doctor physically examine you, or just talk to you?
<b>21. After your arrival in this prison, were you seen by a nurse?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO (go to question 23)	If yes, did the nurse physically examine you, or just talk to you?
<b>22. If you were seen by a doctor and/or a nurse after arrival, how soon after your arrival did this take place?</b>	DOCTOR ..... after arrival	NURSE ..... after arrival
<b>23. During your stay here, have you ever been seen by a medical doctor / nurse?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	If yes, approximately how many times?
<b>24. During your stay here, have you made use of any other specialist medical services (e.g. dentist etc.)?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	If yes, can you specify which services?
<b>25. If you have made use of the general medical service in the prison (doctors / nurses), can you please indicate your overall opinion of</b>	Excellent	<input type="checkbox"/>
	Good	<input type="checkbox"/>
	Satisfactory	<input type="checkbox"/>
	Unsatisfactory	<input type="checkbox"/>

	Poor	<input type="checkbox"/>
	Please explain your opinion. Are there any specific aspects of the general medical service that you would like to single out for praise or criticism?	
<b>26. If you have made use of specialist medical services in the prison (dentist etc.), can you please indicate your overall opinion of the quality of the service that you have obtained?</b>	Excellent	<input type="checkbox"/>
	Good	<input type="checkbox"/>
	Satisfactory	<input type="checkbox"/>
	Unsatisfactory	<input type="checkbox"/>
	Poor	<input type="checkbox"/>
	Please explain your opinion. Are there any specific aspects of the specialist medical services that you would like to single out for praise or criticism?	

### E. RELATIONS WITH PRISON STAFF AND OTHER INMATES

Now I would like to ask you a few questions about your relations with the prison staff and other inmates. Again, I want to emphasise that any information that you share with me is confidential. It will not be shared with prison staff, or anyone else, in a way that could lead to you being identified.

<b>27. In general terms, which word best describes your relationship with the staff here?</b>	Excellent	<input type="checkbox"/>
	Good	<input type="checkbox"/>
	Satisfactory	<input type="checkbox"/>
	Unsatisfactory	<input type="checkbox"/>
	Poor	<input type="checkbox"/>
	Please explain your opinion. Are there any specific aspects of your relationship with prison staff that you would like to single out for praise or criticism?	
<b>28. Have you ever had difficulty communicating with a member of staff (or members of staff)?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	If yes, can you tell me about it? [Record in notebook, code on form]
<b>29. Have you ever had other difficulties with a member of staff (or members of staff) which have caused you worry or concern?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	If yes, can you tell me about it? [Record in notebook, code on form]
<b>30. Are you aware of anyone else here who may have had difficulties with a member of staff (or members of staff) which have caused then worry or concern?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	If yes, can you tell me about it? [Record in notebook, code on form]
<b>31.</b>	Excellent	<input type="checkbox"/>

	Good	<input type="checkbox"/>
	Satisfactory	<input type="checkbox"/>
	Unsatisfactory	<input type="checkbox"/>
	Poor	<input type="checkbox"/>
	Please explain your opinion. Are there any specific aspects of your relationships with other detainees that you would like to highlight?	
<b>32. Have you ever had difficulty communicating with other detainees?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	If yes, can you tell me about it? [Record in notebook, code on form]
<b>33. Have you ever had other difficulties with other detainees which have caused you worry or concern?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	If yes, can you tell me about it? [Record in notebook, code on form]
<b>34. Are you aware of anyone else here who may have had difficulties with other detainees which have caused then worry or concern?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	If yes, can you tell me about it? [Record in notebook, code on form]

**F. COMPLAINTS PROCEDURES**

<b>35. Are you aware of the procedures that should be followed if you want to make a formal complaint about anything that has happened in the prison?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>36. Have you ever made a formal complaint about anything that has happened in the prison?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, how do you feel that you complaint was handled?	Fairly and resolved in my favour	<input type="checkbox"/>
	Fairly, although not resolved in my favour	<input type="checkbox"/>
	Unfairly, although resolved in my favour	<input type="checkbox"/>
	Unfairly and not resolved in my favour	<input type="checkbox"/>
	I do not think that the substance of my complaint was examined at all	<input type="checkbox"/>
	Please explain your opinion. What made you feel that your complaint was handled fairly / unfairly / not examined?	

**G. QUESTIONS FOR PERSONS REFUSED LEAVE TO LAND / DEPORTEES**

Before we finish talking, I would like to go back a little, and ask a few more questions about your contacts with officials outside the prison.

<b>37.</b> When you first made contact with immigration officials (either at a port or in another location), were you given an opportunity to tell your side of the story?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>38.</b> If English is not your first language, were you offered the services of an interpreter?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>39.</b> Were you asked if you would like to notify your family / a friend of your detention?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>40.</b> Were you asked if you required the assistance of a lawyer?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>41.</b> Were you asked if you needed medical attention / the assistance of a doctor?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>42.</b> Did you think that immigration officials clearly understood the information that you gave them?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If not, why not?		
<b>43.</b> Were you told about any possibilities to appeal against the decision to detain you?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>44.</b> Did you appeal against the decision to detain you?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, did you appear in person at the appeal?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, did you think that the person who heard the appeal was well-informed about your situation / the situation in your country of origin?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
What made you think that the person who heard your appeal was well informed / not well-informed about your situation / the situation in your country of origin? Please specify:		

**H. ANY OTHER ISSUES**

**45.**  
Are there any other issues relating to the treatment of people detained under immigration laws in Ireland that you think are important, and which we have not discussed?

Would you like to tell me about them?