



IRELAND

ISSUES RELATED TO IMMIGRATION DETENTION

Submission to the European Committee for the Prevention of
Torture and Inhuman or Degrading Treatment or Punishment
(CPT)

in Preparation for its Visit to Ireland

Submitted in September 2019

THE GLOBAL DETENTION PROJECT MISSION

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

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Submission to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in Preparation for its Visit to Ireland

The Global Detention Project (GDP) is an independent research centre based in Geneva, Switzerland, that investigates the use of detention as a response to international immigration. Its objectives are to improve transparency in the treatment of detainees, to encourage adherence to fundamental norms, to reinforce advocacy aimed at reforming detention practices, and to promote scholarship of immigration control regimes.

The GDP is pleased to provide the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) the following submission in preparation for its visit to Ireland in 2019. The submission concerns detention of migrants and refugees. As such, it is informed by the CPT's relevant standards as included in "Foreign Nationals Detained Under Aliens Legislation" (7th General Report of the CPT, CPT/Inf (97)10, 1997) and "Safeguards for Irregular Migrants Deprived of their Liberty" (19th General Report of the CPT, CPT/Inf (2009)27, 2009).

This submission is based on the GDP's report on Ireland,¹ as appended. The key findings of our research include:

- Ireland continues to use prisons to confine immigration detainees, which has been repeatedly criticised by rights groups, including the CPT, who have urged the country to establish specialised detention facilities.
- A dedicated detention centre initially slated to open at Dublin Airport in 2016/2017 will reportedly open in 2019. However, the exact nature or purpose of this facility is unclear, as is whether it fulfills the requirements established in both CPT guidelines and the EU Returns Directive concerning types of facilities that can be used for immigration procedures, in particular return procedures. Publicly reported disputes concerning police (Garda) officials over the use of the new facility call into question how it will be used.
- Although the CPT and other observers have long called on Ireland to build a specialised immigration detention facility, it is unclear to GDP researchers if adequate assessment has been made of the long-term impact of building such a facility. Knowledgeable analysts have cautioned about the potential negative impacts of demanding that countries build more space to detain people, especially when such demands are made in the absence of calls to ensure the primacy of the right to liberty. In comparison to other states, Ireland detains comparatively fewer people for immigration reasons. Will building specialised facilities result in more people being detained?
- Non-citizens confined at a Dublin Airport transit facility lack access to legal safeguards and guarantees, including lawyers, medical assistance, and detention reviews.
- An immigration officer or a *Garda Síochána* (police officer) can detain an asylum seeker and other non-citizens without a warrant.

¹ Global Detention Project, "Immigration Detention in Ireland: Can You Detain Better Without Detaining More?" August 2019, https://www.globaldetentionproject.org/countries/europe/ireland#_ftnref97

- Asylum seekers can be repeatedly detained under orders of a District Judge for 21-day “committals,” making them potentially vulnerable to indefinite detention.
- Asylum seekers are often housed in “Direct Provision” reception centres, which some observers have argued operate as *de facto* detention facilities because of their limits upon freedom of movement.
- When age assessments fail to establish the exact age of a young person, immigration officials reportedly generally presume that the person is over 18 and can be placed in custodial settings intended for adults.

I. The use of penal facilities

Unlike its EU neighbours, Ireland does not have dedicated immigration detention centres. Rather, non-citizens subject to administrative detention can be confined briefly at police stations before being transferred to a select group of criminal prisons, which are operated by the Irish Prison Service (IPS). Importantly, because Ireland is not a state party to the EU Returns Directive, the practice of using penitentiaries for immigration purposes does not face the same legal challenges that it faces in other EU countries. The directive, which stipulates the use of separate facilities for this purpose, has led to rulings by the Court of Justice of the European Union (CJEU) against this practice, most notably in Germany.² Once the UK leaves the EU, Ireland will become the sole EU country not party to the Directive.

Observers have long criticised Ireland’s practice of confining immigration detainees in prisons, as well as the conditions of detention that asylum seekers and migrants face in these facilities. The CPT,³ Nasc,⁴ the Irish Refugee Council, the Immigrant Council of Ireland, the Irish Penal Reform Trust,⁵ and the UN Committee against Torture⁶ have been among the more prominent and consistent critics of Ireland’s use of prisons.

After its most recent visit in September 2014, the CPT reiterated that a prison is by definition not a suitable place to detain someone who is neither suspected nor convicted of a criminal offence. Rather, non-citizens should be placed in specific detention centres (para.19).⁷

Suggestions. Ireland may be encouraged to opt-in to the Returns Directive (like Denmark did) in order to ensure that the basic safeguards spelled out in the Directive are provided across the EU.

² See the 2014 CJEU judgement in: “Bero and Bouzalmate,” 17 July 2014, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-473/13>

³ UN Human Rights Committee (HRC), “Concluding Observations on the Fourth Periodic Report of Ireland CCPR/C/IRL/CO/4,” 19 August 2014, <http://bit.ly/1P3CIPE>

⁴ Fiona Finn (Nasc), Email correspondence with Global Detention Project (GDP), 1 July 2016.

⁵ M. Kelly, “Immigration-Related Detention in Ireland: Research Report for the Irish Refugee Council,” Irish Penal Reform Trust and Immigrant Council of Ireland, November 2005, <http://idc.rfbf.com.au/wp-content/uploads/2009/06/irc-detention-report-2005.pdf>

⁶ UN Committee against Torture (CAT), “Concluding Observations on the Second Periodic Report of Ireland, CAT/C/IRL/CO/2,” 31 August 2017, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/IRL/CO/2&Lang=En

⁷ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, “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 16 to 26 September 2014, CPT/Inf (2015) 38,” November 2015, <https://rm.coe.int/pdf%20/1680727e23>

II. New centre at Dublin Airport: Specialised immigration detention centre?

In response to CPT recommendations and numerous calls by other actors over the course of many years, in January 2015 Irish authorities announced that they had identified a suitable location at Dublin airport for establishing a facility for immigration detainees and that it would be ready in 2016.

The opening of the facility, however, has been repeatedly delayed. During parliamentary questioning in July 2016, an official at the Ministry for Justice and Equality stated that “plans are being progressed for the provision of a dedicated immigration detention facility at Dublin Airport. ... This redevelopment will be completed as soon as possible within the next 12 months and will replace the existing Garda Station at the airport, provide office accommodation for Gardaí and civilians as well as providing a modern detention facility.”⁸

After numerous delays, in mid-2017 the Ministry of Justice stated that the construction of a dedicated immigration detention centre was to begin in September 2017 and would be completed by July 2018.⁹ During parliamentary questioning in October 2017, authorities clarified that construction was still pending. The Minister of Justice and Equality confirmed that the commencement of the project’s development phase was due during the fourth quarter of 2017.¹⁰ After more delays, in June 2018 the Minister for Justice and Equality stated that works had finally begun in May 2018 and were expected to be completed by December of that year.¹¹

However, as of early 2019 the Dublin Airport facility had still not opened.¹² According to June 2019 news reports, Garda officials stated that the dedicated facility at Dublin Airport would open in 2019. The reports also indicated that the detention centre will be located in the Transaer House building, which would also host a new Garda station. The detention facility will supposedly be composed of two detention rooms.¹³ One report indicated that the facility was ready for use but lay idle because of disputes over its use. According to this report, the facility has “detention pens” which are to be used for “inadmissible people” who are “denied entry to Ireland by the Border Management Unit when they land at Dublin Airport.”¹⁴

⁸ Minister for Justice and Equality (Deputy Frances Fitzgerald), “Dáil Answer to Question No 69, Addressed by Deputy Jonathan O’Brien,” 7 July 2016, <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016070700075>

⁹ The Irish Times, “Work on Dublin Airport Immigration Detention Centre to begin,” *The Irish Times*, 28 July 2017, <https://www.irishtimes.com/news/politics/work-on-dublin-airport-immigration-detention-centre-to-begin-1.3169079>

¹⁰ Department of Justice and Equality, “Parliamentary Questions,” 19 October 2017, <http://www.justice.ie/en/JELR/Pages/PQ-19-10-2017-134>

¹¹ Minister for Justice and Equality, “Response to Parliamentary Question 545, Detention Centres Provision – Dáil Éireann Debate,” 12 June 2018, <https://www.oireachtas.ie/en/debates/question/2018-06-12/545/#pq-answers-545>

¹² Irish Refugee Council, “Country Report: Ireland,” *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, February 2019, http://www.asylumineurope.org/sites/default/files/report-download/aida_ie_2018update.pdf

¹³ A. Bracken, “Brand New €3.6m Garda Station Lying Idle At Dublin Airport Amid Row,” *Extra.ie*, 17 June 2019, <https://extra.ie/2019/06/17/news/irish-news/garda-station-dublin-airport-row>; C. O’Keefe, “Dedicated Immigration Facility Due to Open at Dublin Airport,” *Irish Examiner*, 12 June 2019, <https://www.irishexaminer.com/breakingnews/ireland/dedicated-immigration-facility-due-to-open-at-dublin-airport-930395.html>

¹⁴ A. Bracken, “Brand New €3.6m Garda Station Lying Idle At Dublin Airport Amid Row,” *Extra.ie*, 17 June 2019, <https://extra.ie/2019/06/17/news/irish-news/garda-station-dublin-airport-row>

Reported descriptions of this facility raise questions about its adequacy as a dedicated immigration detention centre. In fact, one report indicates that it will be used for very brief periods, and if people cannot be removed immediately, they may be sent to police stations, as per long-standing practice in Ireland. According to this report: “Once a person is deemed ‘inadmissible’, they are either held at the airport by Garda National Immigration Bureau officers until they can be sent back, or, if a flight is not available until the following day, they are sent to a Garda station for the night. Children are housed in a hotel or reception centre with their mother, if she is present. These are not people seeking asylum at the airport, because anyone who does cannot be turned away by the State. Transaer House, on the outskirts of Terminal 1, is to replace the current Garda station. There are around a dozen gardai based at the station and all are to be relocated to Transaer House. However, the new station needs 30 more officers, and sources say management ‘simply cannot find the manpower.’”¹⁵

Suggestions: There is a real need to confirm the status of this facility, its operating procedures, and its intended use. Available information appears to indicate that this facility is not the kind of specialised detention centre that the CPT and others have long called for. If it is not, the CPT may wish to inquire whether there are any plans for a specialised facility. This is particularly important in light of Ireland’s decision to opt-in to the EU Recast Reception Conditions Directive, which requires the state to provide a specialised detention facility for detained asylum seekers, amongst other measures.

III. Conditions of detention

Places of detention are specified in Irish law and can vary depending on the ground for detention. In total, nine prisons are authorised for immigration detention, together with every Garda station in the country (see list below).

For those detained under the 1999 Immigration Act, the 1999 Immigration Act 1999 (Deportation) Regulations of 2005 apply. For those detained under the 2003 Immigration Act, the 2003 Immigration Act (Removal Places of Detention) Regulations of 2005 apply. Both regulations list the same facilities that individuals can be held in: Every Garda Síochána station and [Castlerea Prison](#); [Cloverhill Prison](#); [Cork Prison](#), [Limerick Prison](#), [Midlands Prison](#); [Mountjoy Prison](#); [Saint Patrick’s Institution](#) (Dublin); the [Training Unit](#) (Glengarriff Parade, Dublin); and [Wheatfield Prison](#) (Dublin).

For those detained under the 2015 International Protection Act, the 2015 International Protection Act (Places of Detention) Regulations, as amended by the 2018 Reception Conditions Regulations, apply. Applicants may be detained in the following facilities: Every Garda Síochána station and Cloverhill Prison (2018 Reception Conditions Regulations, Section 31).

Although nine prisons are listed, according to the Irish Department of Justice and Equality, by 2013 only seven prisons were in use for immigration-related reasons: Castlerea Prison, Cloverhill Prison, Cork Prison, Limerick Prison, Mountjoy Prison, Dochas (Mountjoy

¹⁵ A. Bracken, “Brand New €3.6m Garda Station Lying Idle At Dublin Airport Amid Row,” *Extra.ie*, 17 June 2019, <https://extra.ie/2019/06/17/news/irish-news/garda-station-dublin-airport-row>

Women's Prison), and Wheatfield Prison.¹⁶ At one time, Ireland also reportedly used the [Arbour Hill](#) prison in Dublin to hold non-citizens for immigration reasons, despite the fact that it was not designated in the 2003 Immigration Act for this purpose.¹⁷

The prisons traditionally used for immigration purposes have been Cloverhill Prison (for men) and the Dóchas Centre at Mountjoy Prison (for women).¹⁸ In 2014, 273 non-citizens were held in Cloverhill and 76 in Dóchas. However, as stated above, the prescribed places of detention for applicants detained under the 2015 International Protection Act (amended with the adoption of the 2018 Reception Conditions Regulations) include just Cloverhill Prison (and Garda Stations). According to the Irish Refugee Council, it is unclear where women are supposed to be held since these changes have been introduced.¹⁹ Various observers, however, informed the GDP that Dóchas remains the main facility for woman detainees.

Individuals refused entry may be detained in Dublin Airport until the next available flight. According to Nasc, this is not a designated place of detention and those placed there do not have access to legal safeguards and basic entitlements, such as access to a lawyer, medical assistance, or substantial review of decision. Nasc also observed that at times people are not placed on the next available flight and thus spend several hours at the airport.²⁰

During its previous visit to Ireland in September 2014, the CPT visited Cloverhill and Limerick Prisons, the Dóchas Centre, and police stations.

The CPT noted that there was no register of detainees in the holding room at Dublin Airport and recommended remedying it without delay (para.18)

Regarding Cloverhill Prison, the CPT noted that non-citizens were mixed with remand or convicted prisoners in the cells and were bullied by these detainees. Immigration detainees were merely offered screened visits and the prison personnel admitted that they were not adequately prepared to look after immigration detainees. The CPT recommended that, as long as immigration detainees are kept in prisons, the authorities take all appropriate steps to ensure that their exposure to remand and sentenced prisoners is limited, that they are offered as much time out of cell as possible, and that they are afforded open visits. In addition, interpretation services should be readily accessible in prison to assist immigration detainees and staff as required (para.19).

Even though they can legally be used, the extent to which police stations are used also remains unclear. To date, the GDP has been unable to obtain adequate statistics detailing the numbers of people detained in police stations for immigration reasons.

¹⁶ Aisling Brennan (Ireland Department of Justice and Equality), Letter to Lydia Medland (Access Info) Responding to Joint Access Info-Global Detention Project Questionnaire, 14 October 2013.

¹⁷ Irish Prison Service (IPS), "Irish Prison Service Annual Report 2007," 18 December 2008, www.irishprisons.ie/documents/IPS_AR_2007.pdf

¹⁸ T. O'Riordan, "Ireland of the Exclusionary Welcomes: Uncovering Immigration-Related Detention," *Irish Quarterly Review*, 96 (381), March 2007, http://www.jstor.org/stable/27896430?seq=1#page_scan_tab_contents

¹⁹ Irish Refugee Council, "Country Report: Ireland," *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, February 2019, http://www.asylumineurope.org/sites/default/files/report-download/aida_ie_2018update.pdf

²⁰ Nasc, the Migrant and Refugee Rights Centre, "Immigration Detention and Border Control in Ireland: Revisiting Irish Law, Policy and Practice," 2018, <http://www.nascireland.org/wp-content/uploads/2018/03/Nasc-Immigration-Detention-Border-Control-in-Ireland.pdf>

Similarly, there are not adequate statistics on the number of immigration detainees in each prison.

Suggestions: The CPT may wish to verify whether all nine prisons continue to be used for immigration purposes and the extent to which police stations are used. How are non-citizens separated from people detained under criminal law in these facilities? How is their status as administrative detainees upheld? And can the country provide statistics on the numbers of immigration detainees placed in all facilities—prisons and police stations—or does it fail to keep such statistics?

Name	City and State	Centre Status
Castlerea Prison	Harristown, Castlerea, Co. Roscommon	In use (2019)
Cloverhill Prison	Clondalkin, Dublin	In use (2019)
Cork Prison	Cork City	In use (2019)
Dochas Centre (Mountjoy Female Prison)	Dublin	In use (2019)
Dublin Airport Garda Detention Facility (Transaer House)	Dublin, Ireland	Pending opening (2019)
Limerick Prison	Limerick	In use (2019)
Mountjoy Prison	Dublin	In use (2019)
The Midlands Prison	Portlaoise, Laois	In use (2019)
The Training Unit, Glengarriff Parade	Glengarriff Parade, Dublin	In use (2019)
Wheatfield Prison	Clondalkin, Dublin	In use (2019)



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