

SPIRASI Submission to UN Committee Against Torture -List of issues Prior to Reporting (Ireland) - August 2013



A. Follow-up to Principal Subjects of Concern and Recommendations from 46th Session:

Refugees and International Protection (Recommendation 10¹) –

1. Re-drafting of the Immigration Residence and Protection Bill (IRPB) to bring it in line with the UNCAT:

The state has not yet published the redrafted 2008 IRPB despite extensive efforts by civil society to lobby for its prioritisation. No consultation process on the re-drafting of the IRPB has occurred.

Recommended issue to be raised with the State Party:

Could the state highlight what has been included in the re-drafted IRPB that brings it in line with the UNCAT (Criminal Justice (United Nations Convention Against Torture) Act 2000). The re-drafted bill is expected to be published toward the end of 2013. Additionally, the state could provide a description of the process of consultation with civil society on the re-drafting of the IRPB?

2. Investigation into considerable drop in the level of positive recommendations for refugee status to ensure applications are processed following due process:

SPIRASI is not aware of any investigation process undertaken by the state that has been made publically available that provides any systematic information around the collapse in recommendations that occurred at the beginning of 2010. The current level of positive recommendations has substantially increased however they still remain very low in an EU and global context.

Recommended issue to be raised with the State Party:

Has the state investigated the considerable drop in the level of positive recommendations that occurred at the beginning in 2010? If so has it been made public? Has there been any review of the recommendations made in 2010 to ensure the non-refoulement of victims of torture?

Detention of Refugees and Asylum Seekers (Recommendation 17) –

3. Concern over the placement of persons detained for immigration related reasons in ordinary prison facilities with convicted and remand prisoners:

¹ <http://www2.ohchr.org/english/bodies/cat/cats46.htm>

It continues to be the practice that immigration related detention still takes place in the manner described on the previous page. There seem to be no actions taken by the state to date that indicate the creation of a separate facility for people who are detained for immigration related offences.

Recommended issue to be raised with the State Party:

What plans are in place to provide separate facilities for people detained for immigration related offences?

B. CAT/C/GC/3 General Comment No. 3: Implementation of Article 14 by States Parties –

4. The committee's affirmation in Paragraph 11² in General Comment No.3 which provides a definition for as full a rehabilitation as possible and further paragraphs 12 to 15 which establish the mode of delivery for rehabilitation services:

SPIRASI is largely state funded and is considered the national centre providing for the rehabilitation needs of victims of torture in Ireland by the Irish Health Services Executive. SPIRASI provides a level of care that can be considered as a step toward rehabilitation however when this comment is closely examined our service, by virtue of resource deficit, would not fulfil this definition:

“Rehabilitation, for the purposes of this general comment, refers to the restoration of function or the acquisition of new skills required as a result of the changed circumstances of a victim in the aftermath of torture or ill-treatment. It seeks to enable the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the person's physical and social environment. Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society.”

From a rehabilitation perspective SPIRASI is able to provide a first level of safety and some re-connection; however the service is unable to provide the restorative element of this definition. In addition SPIRASI is restricted, via resource constraints, to the provision of services to adult victims; child victims and the families of victims do not currently receive care. In addition the service is largely geared toward victims in the protection process and does not fully address the needs of the settled refugee population. Efforts are currently underway with the support of the state to explore these wider needs and address issues of access to rehabilitation service.

Recommended issue to be raised with the State Party:

Provide an explanation about what services are in place to ensure that Article 14 is implemented to the fullest possible extent and how the state is fulfilling the obligations laid out in paragraphs 11 to 15 in CAT/C/GC/3?

² http://www2.ohchr.org/english/bodies/cat/docs/GC/CAT-C-GC-3_en.pdf

C. Interpretation of Medical Legal Report in the Assessment of Claims for Protection

5. In a report by the Irish Refugee Council in 2012 titled 'Difficult to believe'³ the examination of Medical Legal Reports by the Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal was examined:

The report concluded that:

“ORAC and the Tribunal have referred to the regard in which they hold the work of SPIRASI’s Centre for the Care of Survivors of Torture and that appears evident in the statements they make about the veracity of the conclusions reached by the authors of the medico-legal reports. However, in the cases examined in this study, they have not accepted the conclusions of the reports as having any material value to their decisions with the exception of one case where the doctor found that the injuries were not consistent with the applicant’s account (although the report was supportive of psychological trauma). In several decisions, both ORAC and the Tribunal note that the reports do not assist because they either do not say how the injuries were sustained or are mainly based on the testimony of the applicant.”

SPIRASI conducts extensive assessments of victims of torture with full regard to the Istanbul Protocol. It is known to us that in the majority of cases in which SPIRASI has submitted Medical Legal Reports those victims of torture receive negative decisions by the various Refugee Status Determination bodies within the state.

Recommended issue to be raised with the State Party:

Does the State monitor and review the decisions of the various Refugee Status Determination bodies (ORAC, Refugee Appeals Tribunal, and the Irish Naturalisation and Immigration Service Repatriation Unit) with a specific focus on the use and interpretation of Medical Legal evidence in arriving at a finding on protection claims. If so, please provide any information about the use and interpretation of Medico-Legal evidence in these proceedings and what evidentiary value it is afforded.

³ <http://www.irishrefugeecouncil.ie/wp-content/uploads/2012/10/Full-Copy-of-Report1.pdf>