IPRT Submission to Human Rights Committee
on Ireland’s Fourth Periodic Examination of Ireland
under the International Covenant on Civil and Political Rights

Introduction

The Irish Penal Reform Trust (IPRT) is Ireland’s leading non-governmental organisation campaigning for the rights of everyone in the penal system, with prison as a last resort. IPRT is committed to reducing imprisonment and the progressive reform of the penal system based on evidence-led policies. IPRT works to achieve its goals through research, raising awareness, building alliances and growing our organisation.

IPRT wholly endorses the Joint Submission of the Irish Council for Civil Liberties “Civil Society Report to the Fourth Periodic Examination of Ireland under the International Covenant on Civil and Political Rights” submitted 13 June 2014, insofar as it specifically relates to issues of detention. This submission initially follows the order of the Ireland’s Reply to the List of Issues and amplifies some specific points which arise both from the Reply and the substance of the Joint Submission.

At the end we have also included a section called “Other Issues” which addresses some remaining issues of concern relating to Ireland’s obligations under the International Covenant on Civil and Political Rights.

Reservation to Article 10, paragraph 2 [Reply to List of Issues, para 2; Joint Submission, page 14]

Ireland entered a reservation to Article 10 ICCPR on 8 December 1989 as follows:

“Ireland accepts the principles referred to in paragraph 2 of Article 10 and implements them as far as practically possible. It reserves the right to regard full implementation of these principles as objectives to be achieved progressively”.

At the time of writing children continue to be detained in adult prisons (both in dedicated units in Wheatfield and in St. Patricks). In the National Children’s Detention Centre in Oberstown, accused young people are to be held in a separate location from those who have been found guilty of a crime only ‘where practicable’. The Children’s Rights Alliance Report Card for 2014 has found that “in practice, the segregation of children on remand and children serving a sentence is not always the case”.

In Ireland’s Reply to the List of Issues, the Government has stated that while “all reservations are kept under review, with a view to their withdrawal where possible” it is “not possible” at this stage to withdraw the reservation to Article 10, paragraph 2. While stating that it remains committed to the implementation of the principles, the Government has failed to identify the remaining obstacles to withdrawal of the reservation as expressly requested by the Committee.

IPRT’s position is that it is a founding principle of the criminal justice system that one is both seen
and treated as innocent until proven guilty. Children and young people held on remand must be
detained separately from children who have been convicted and are serving a sentence. This is an
internationally recognised principle also reflected in Article 37(c) of the 1989 Convention on the
Rights of the Child, Rule 8(d) of the 1955 Standard Minimum Rules for the Treatment of Prisoners

The number of Prisoners accommodated in each of the prisons of the State Party [Reply to List of
Issues, paragraph 13; Joint Submission, page 28]

Despite a recent decrease of 7.6% in committals to prison (15,735 in 2013 from 17,026 in 2012),
overcrowding persists within Irish prisons. Of 3,973 people in prison on 14th January 2014: 1,854
prisoners (47%) were accommodated in single cells; 809 cells accommodated 2 prisoners (1,618
prisoners); 121 cells accommodated 3 prisoners (363 prisoners); and 36 cells accommodated 4 or
more prisoners. Updated figures for 1 April 2014 [see Table 3 page 29 ICCL submission] reveal the
extent of current overcrowding, particularly in Cloverhill (24 prisoners sharing a 4+ cell), Midlands
(32 prisoners sharing a 4+ cell) and Shelton Abbey (56 prisoners sharing a 4+ cell).

It should be specifically noted that overcrowding is a particular cause for concern in Ireland’s two
female prisons. On 12th March 2014, there were 134 women in the Dóchas Centre (design
capacity 105) and 35 women in Limerick female prison (design capacity 24). There was a 9.4% increase
in female sentenced committals in 2013 (2,265 up from 2,071 in 2012) and an overall
increase of 36.4% from 2011 to 2013 in female sentenced committals.

IPRT recommends that the State immediately address overcrowding, particularly through the
effective implementation of safe custody limits and the embedding of the principle of
imprisonment as a last resort in both law and practice.

Remaining Prison Cells Without In-Cell sanitation [Reply to List of Issues, para 13; Joint
Submission, page 28]

On 14th January 2014, 465 prisoners (11.7%) were required to slop out and 1,628 prisoners (40.9%)
were required to use the toilet in the presence of another prisoner. Only 1,880 (47.3%) prisoners
were in a single cell with a flush toilet or had access to toilet facilities in private at all times.

The act of discharging human waste, and more particularly of defecating, in a chamber pot in the
presence of one or more other persons, in a confined space used as a living area, is degrading. It is
degrading not only for the person using the chamber pot but also for the persons with whom he
shares a cell. In 2011, the Committee for the Prevention of Torture also called upon the Irish
authorities to eradicate “slopping out” from the prison system.

Despite repeated calls to end this practice, on 1 April 2014, 334 prisoners continue to “slop out” in

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1 Ibid.
2 Irish Prison Service Annual Report 2013
6 Irish Prison Service Annual Report 2013
8 Ibid.
9 Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture
Irish prisons. A number of prisons within the wider prison estate in Ireland, including Limerick Male Prison and Cork Prison, have attracted negative criticism due to the high numbers of prisoners slopping out, overcrowding, inadequate facilities among other issues. While we welcome the formal commitment in the Reply to the List of Issues to eliminate slopping out by 2015, we have noted that the Irish Prison Service has been recently reported as describing the abolition of the practice in Portlaoise prison as “capital dependent”. IPRT strongly opposes any move away from the express commitment provided in the formal Reply.

**Mortality Rate in Prisons [Reply to List of Issues; para 13; Joint Submission pg 28]**

The Report of the Commission of Investigation into the Death of Gary Douch was published on 1st May 2014 exactly 7 years and 9 months after the young man’s brutal death in Mountjoy Prison on 1st August 2006. IPRT strongly believes that investigations into deaths in custody must be prompt so that any systemic failures that led to the death of a prisoner can be addressed, and potential future deaths can be avoided. In this case, the family of Gary Douch has waited almost eight years for this report: by any standards such a delay is completely unacceptable.

System failures, severe overcrowding, inadequate oversight, and inaccurate recording and sharing of critical information were among the litany of failures identified by the Commission. The Commission found “reckless disregard for the health and safety” of prisoners and staff alike in the decision taken by Cloverhill Prison to transfer a prisoner who had been assessed by a Central Mental Hospital treatment psychiatrist as “acutely psychotic” to Mountjoy Prison. The State failed in its duty to provide safe custody to 21-year old prisoner Gary Douche and the Report found it was “impossible not to conclude that flawed management, poor decision-making, lack of accountability and a culture of inattentiveness prevailed throughout the system.”

The appalling findings of the report again underline the need for Ireland to (1) maintain and impose safe custody limits (2) divert those with mental illness away from the criminal justice system and towards a community setting (3) ratify the Optional Protocol to the Convention Against Torture and (4) establish a National Preventative Mechanism in order to prevent future deaths in prison custody in similar circumstances.

**Timeline for Ending the use of St. Patrick’s Institution for detention of minors [Reply to List of Issues para 13, Joint Submission page 30]**

The detention of children in St Patrick’s Institution, an adult prison, has been criticised as a glaring human rights violation by a number of domestic and international bodies, in direct contravention with Article 37 of the UN Convention on the Rights of the Child. The decision to close St Patrick’s Institution is a positive and long overdue development.

Building work at the Oberstown campus to facilitate the transfer of all detained 17-year olds is expected to be complete during 2014. The transfer of sentenced 17-year olds to an interim unit in Wheatfield Prison (completed in December 2013) must be a temporary, short-term measure. An adult prison, even one where a dedicated unit has been put in place, is entirely unsuitable for young people.

A small number of 17-year olds are still detained under remand in St. Patrick’s Institution. Given

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the serious criticisms of conditions in St Patrick’s Institution, an alternative solution needs to be put in place until the new facility is operational. There have also been worrying indications that there have been remands to custody of children on welfare and not justice grounds.\footnote{Ombudsman for Children’s Office, A Meta-Analysis of Repeat Root Cause Issues Regarding the Provision of Services for Children in Care, http://www.oco.ie/assets/files/publications/complaints_and_investigations/OCOmetaanalysisofservicesforchildrenincare.pdf}

IPRT recommends that given the positive measures taken in relation to St. Patrick’s Institution and towards the building of a dedicated National Children Detention Facility, the Government must withdraw its reservation to Article 10 (2b) of the International Covenant on Civil and Political Rights without delay. Further, as recommended by the Children’s Rights Alliance, a review should be carried out on the use of remand for children and young people to ensure it is used appropriately; children and young people must not be held on remand longer than necessary, and their cases must come before the court within a reasonable period of time. IPRT also urges the Committee to remind the State of its clear international law obligations in this regard and to indicate an acceptable timeline for the completion of the Oberstown project.

**Statistical Data on the Number of Complaints and Ill Treatment filed against prison officers and the Introduction of an effective complaints system** [Reply to List of Issues para 14; Joint Submisson at pg 30]

In its Reply to the List of Issues, the State has singularly failed to provide the statistical data on the specific issues identified by the Committee, namely (1) number of complaints of torture and ill-treatment (2) the number of investigations instituted (3) the number of prosecutions commenced and (4) the number of convictions imposed. IPRT would reiterate the call on the State to ratify the Optional Protocol to the Convention Against Torture and establish a National Preventative Mechanism and further urges the Committee to repeat its request to the State for this important data.

While Ireland has provided information in the Reply to the List of Issues on the introduction of a new complaints model, IPRT remains of the view that the establishment of an independent external mechanism for the review of prisoner’s complaints is central to the protection of the human rights of prisoners and forms part of Ireland’s obligations under international law. The Inspector of Prisons Judge Michael Reilly has also asserted that the absence of an Office of Prisoner Ombudsman with a remit to review such complaints is a significant gap in the accountability system in Ireland. IPRT believe that there remains an urgent need for reform of existing monitoring structures and the establishment of an oversight mechanism fully independent of both the Irish Prison Service and the Minister for Justice. Behind bars and hidden out of sight, enormous power differentials exist. The exceptional nature of the powers of the State over individuals in detention makes effective external scrutiny of their use a matter of particular import. The introduction of an Ombudsman would prevent violations, protect both prisoners and staff, spur further improvement in standards and constitute a major step towards accountability and transparency in the prison system.

**Imprisonment for Failure to fulfil a contractual obligation** (Reply to List of Issues, para 21; Joint Submission at page 34)

While IPRT welcomes the passage of the Fines (Payment and Recovery Bill) 2013 we would sound a note of caution. The previous legislation, the *Fines Act 2010*, had no impact on committals for fines

default as it was never fully commenced. Likewise unless the legislation is fully commenced it will fail to fulfil its intended purpose of ending Ireland’s wasteful and damaging practice of imprisoning thousands of people every year for failing to pay court-ordered fines.

There were 8,121 committals (1,894 female and 6,227 male) to prison for the non-payment of a court ordered fine in 2013\textsuperscript{13}. There was a 12.3% increase in female committals for fines and debt default in 2013\textsuperscript{14} (1,894 in 2013 up from 1,687 in 2012). In 2013, 22 debtors (21 male, 1 female) were committed to prison\textsuperscript{15}.

There have been more than 30,000 committals to prison for fines default since the \textit{Fines Act 2010} was signed into law, almost four years ago. Although parts of the \textit{Fines Act 2010} were commenced, it is still not possible to pay fines by instalment, as provided for in that legislation. IPRT is also disappointed that a number of proposed amendments to the 2013 Bill, including the recommendation to allow fines of less than €100 to be paid by instalment – in order to ease the burden on families – were not accepted. IPRT strongly believes that even €100 can be a significant amount of money for families in the current economic climate.

The impact of the recession on the ability to pay fines is evidenced by the figures. Committals to prison for fines default increased sharply from 1,335 in 2007 to 8,121 in 2013. In 2013, there were 411 committals to prison for non-payment of a fine relating to a TV license, up from 75 in 2009. The soaring numbers of women imprisoned for non-payment of fines is a particular concern, with female committals for fines default rising from 163 in 2007 to 1,894 in 2013. The imprisonment of women for fines default is particularly damaging on communities, as they are more likely to be the primary carers of children and elderly family members.

**Other Issues**

**Article 7 - Overuse of Protection**

On 14\textsuperscript{th} January 2014 there were 228 prisoners (5.7% of a prison population of 3,973) subject to a restricted regime involving in-cell time of 19 hours or more per day\textsuperscript{16}, including 50 prisoners on 22/23-hour lock-up\textsuperscript{17}. The UN Special Rapporteur on Torture, Juan Méndez, has proposed a worldwide ban on prolonged solitary confinement (of over 15 days), as well as solitary confinement used as a penalty, in pre-trial detention, for persons with mental disabilities, and for juveniles\textsuperscript{18}. IPRT would urge an increase out of cell time and access to facilities for all prisoners, including those on protection.

**Article 10 - Resources for Rehabilitative Programmes**

Expenditure on work training and educational services within the Irish Prison Service budget has decreased significantly since 2006, from €3.037m in 2006 to €2.077m in 2012. Resource implications of provision of relevant structured activities for prisoners cannot be used as an excuse for failing to comply with our obligations under Article 10 of the ICCPR. The Inspector Prisons has stated ‘that workshops must be staffed on a full time basis, must be open and functioning, schools

\textsuperscript{13} Irish Prison Service Annual Report 2013
\textsuperscript{14} Ibid
\textsuperscript{15} Ibid
\textsuperscript{17} Ibid.
\textsuperscript{18} Special Rapporteur on Torture Tells Third Committee Use of Prolonged Solitary - Confinement on Rise, Calls for Global Ban on Practice (2011), \url{http://www.un.org/News/Press/docs/2011/gashc4014.doc.htm}
must be operating and that other relevant work must not be curtailed\textsuperscript{19}.

The numbers of prisoners participating in accredited vocational training courses increased from 314 in 2007 to 1,459 in 2012. However, the Inspector of Prisons has urged caution in the treatment of these figures, and has called for vigilance by prison management to ensure that there is no double counting\textsuperscript{20}.

IPRT would make a number of recommendations in relation to the issue of reformation and social rehabilitation. Adequate health care facilities must be provided in prisons, including in particular adequate mental health assessment and services, and drug-dependency services\textsuperscript{21}. The main focus for 18 to 20 year old prisoners must be on providing rehabilitation through education, work and training. This cohort should be accommodated on a separate wing(s) of a general prison(s) where they could recreate separately from the greater prison population. They could participate in education and work training with the general prison population\textsuperscript{22}. A separate small unit should be established to accommodate those 18 to 20 year old prisoners assessed as vulnerable; prisoners placed in such a unit should not be disadvantaged in such areas as education, healthcare, recreation, etc\textsuperscript{23}. Young people leaving detention have ongoing and complex care needs similar to young people leaving care. The commitment by the Minister for Children and Youth Affairs to introduce a statutory right to an aftercare plan should be extended to include those in detention\textsuperscript{24}.

\textbf{Article 10 - Integrated Sentence Management (Preparation for Release)}

The development of Integrated Sentence Management (ISM) and the delivery of prison-based rehabilitative programmes such as education, work training and resettlement programmes, forms a central part of the Irish Prison Service \textit{Three Year Strategic Plan 2012-2015}\textsuperscript{25}. At the end of April 2013, there were over 2,300 current and active cases, and over 1,000 prisoners had sentence plans in place. There are currently sixteen ISM Co-ordinators in place in ten institutions. IPRT is concerned at sixteen ISM Co-ordinators having a reported caseload of over 2,300 current and active cases, and the lack of ISM Co-ordinators in Cork, Shelton Abbey, Limerick Male and Limerick Female Prison.

IPRT considers that it is imperative that the ISM system is implemented in a meaningful and effective manner which genuinely addresses prisoners needs. Full-time ISM Co-ordinators must be assigned to all prisons in order to enhance the effectiveness of the sentence management system and facilitate the growing number of prisoners participating in the process.

\textbf{Article 10 - Spent Convictions}

The continuing absence of any system for expunging convictions has the effect of making the punishment of crime permanent with substantial collateral consequences for the convicted person.

The \textit{Criminal Justice (Spent Convictions) Bill 2012} must be progressed and enacted with urgency. Among a number of proposed amendments, IPRT has called for the 12-month limit for qualifying

\textsuperscript{19} An Assessment of the Irish Prison System May 2013, Inspector of Prisons.
\textsuperscript{20} Office of the Inspector of Prisons Annual Report 2012
\textsuperscript{22} Office of the Inspector of Prisons Annual Report 2012
\textsuperscript{23} Ibid.
\textsuperscript{25} Irish Prison Service \textit{Three Year Strategic Plan 2012-2015}, \url{http://www.irishprisons.ie/images/pdf/strategicplanfinal.pdf}
custodial sentences to be increased to a minimum of 48 months\(^{26}\). While it is critically important that any sensitive area of public employment or any work with children or vulnerable individuals should be given special attention, the exclusion of any area of employment from the Bill should be justified by demonstration of clear link to a particular risk\(^{27}\).

**Article 17 – Prison Visits**
IPRT is concerned about the use of open-ended bans on visitors to prisoners, and recommends that any restrictions on contact be the subject of review. IPRT is also concerned that the possible length of a ban is not laid down in legislation or publically available policy. Screened visits must only be used where is a specific security concern and not as standard; the rights and best interests of children must be taken into account when decisions are made about non-contact visits. Contact with the outside world should be facilitated to the greatest possible effect. Any restrictions should be strictly necessary and proportionate\(^{28}\). Prisoners should not lose the right to communicate with their families, and the loss of family visits is not employed as a sanction in response to a breach of prison discipline. Protection prisoners and other prisoners on restricted regimes must be facilitated to receive the same number and duration of family visits as other prisoners\(^{29}\).

**Article 18 – Freedom of Thought, Conscience and Religion**
Prisoners with particular expressions of religious practice and associated dietary customs (Halal diet, Kosher diet, strict vegetarianism) should, as far as possible, be supported in the dietary practices of their religion or culture.

**Article 14 - Fair and Public Hearing**
The European Court of Human Rights, when dealing Article 6 of the Convention, which is expressed in similar terms to Article 14 of the ICCPR, has held that when a prisoner is subject to a decision affecting their right to receive visits, then Article 6’s ‘civil limb’ is engaged. IPRT is concerned that prisoners wishing to challenge such decisions do not have effective access to an independent and impartial tribunal. While taking a case by means of judicial review is an option for a prisoner, the lack of legal aid for such a claim means that access to the courts is not effective.

IPRT submits that the possibility of legal representation should be afforded to prisoners at the first stage of a disciplinary hearing, and that legal aid be provided to prisoners seeking to challenge disciplinary sanctions and decisions to restrict their contact with visitors.


\(^{27}\) Ibid


\(^{29}\) IPRT Briefing on Solitary Confinement, Isolation, Protection and Special Regimes, [http://www.iprt.ie/files/IPRT_Briefing_on_Solitary_Confinement.pdf](http://www.iprt.ie/files/IPRT_Briefing_on_Solitary_Confinement.pdf)