



IPRT Submission to Seanad Public Consultation Committee: “Key Priorities and Challenges facing Ireland in complying with its obligations under the ICCPR”

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.

This submission highlights the key priorities and challenges facing Ireland in complying with its obligations under the ICCPR, with reference to those articles relevant to IPRT’s area of work.

Article 7

‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’

Physical Conditions of Prisoner Accommodation

1. 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 prisoner¹. 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 times².

2. The European Committee for the Prevention of Torture (CPT) has repeatedly stated that it considers 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, to be 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 CPT called upon the Irish authorities to eradicate “slopping out” from the prison system³.

Overcrowding in Prison

3. Despite a recent decrease of 7.6% in committals to prison (15,735 in 2013 from 17,026 in 2012)⁴, 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 prisoners⁵.

4. Overcrowding is a particular cause for concern in Ireland’s two female prisons. On 12th March 2014, there were 134 women⁶ in the Dóchas Centre (design capacity 105) and 35 women in Limerick female prison

¹ General Cell Information Census of Prison Population, http://www.irishprisons.ie/images/monthlyinforote/form1_jan_14.pdf

² Ibid.

³ 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, <http://www.cpt.coe.int/documents/irl/2011-03-inf-eng.pdf>

⁴ Irish Prison Service Annual Report 2013

⁵ General Cell Information Census of Prison Population, http://www.irishprisons.ie/images/monthlyinforote/form1_jan_14.pdf

⁶ Prisoner Population on Wednesday 12th March 2014, http://www.irishprisons.ie/images/dailynumbers/12_mar_2014.pdf

(design capacity 24)⁷. 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 committals⁸.

Overuse of Protection

5. On 14th 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 day⁹, including 50 prisoners on 22/23-hour lock-up¹⁰.

6. 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 juveniles¹¹.

Recommendations

- Prevent overcrowding, particularly through the implementation of the principle of imprisonment as a last resort¹²;
- Resource the independent system of inspection and monitoring of prison conditions and adherence to human rights standards by the Irish Prison Service in line with international best practice¹³;
- Implement all outstanding recommendations made by the Inspector of Prisons and international monitoring bodies regarding the physical conditions in Irish prisons, prison policies and practices¹⁴;
- Increase out of cell time and access to facilities for all prisoners, including those on protection.

Article 10 (1)

'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'

7. 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 issues¹⁵.

Article 10 (2a)

'Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons'

9. 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 'where practicable'.¹⁶ However, in practice, the segregation of children on remand and children serving a sentence is not always the case¹⁷.

Recommendations

- Children and young people held on remand must be detained separately from children who have been convicted and are serving a sentence¹⁸.

⁷ Report on an Inspection of Limerick Prison by the Inspector of Prisons Judge Michael Reilly, 25th January 2011.

⁸ Irish Prison Service Annual Report 2013

⁹ Census of Restricted Regime Prisoners January 2014, http://www.irishprisons.ie/images/monthlyinfonote/form2_jan_14.pdf

¹⁰ Ibid.

¹¹ Special Rapporteur on Torture Tells Third Committee Use of Prolonged Solitary - Confinement on Rise, Calls for Global Ban on Practice (2011), <http://www.un.org/News/Press/docs/2011/gashc4014.doc.htm>

¹² IPRT Position Paper 4: Human Rights in Prison, http://www.iprt.ie/files/IPRT_Position_Paper_4_-_Human_Rights_in_Prison.pdf

¹³ Ibid

¹⁴ Ibid

¹⁵ See for example the Inspector of Prisons' Report on an Inspection of Limerick Prison, 25 November 2011.

¹⁶ Children Act, 2001 s.88 (8).

¹⁷ Children's Rights Alliance Report Card 2014, Is Government keeping its promises to children?, http://childrensrights.ie/sites/default/files/submissions_reports/files/REPORTCARD2014_0.pdf

¹⁸ Ibid.

Article 10 (2b)

'Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication'.

11. 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.

12. 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.

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

14. There are indications that there have been remands to custody of children on welfare and not justice grounds¹⁹.

Recommendations

- 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 delay²⁰.
- 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 time²¹.

Article 10 (3)

'The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status'.

Resources for Rehabilitative Programmes

15. 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 must be operating and that other relevant work must not be curtailed'²².

16. 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.

17. The numbers of prisoners participating in accredited vocational training courses increased from 314 in

¹⁹ 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

²⁰ Children's Rights Alliance Report Card 2014,

http://childrensrights.ie/sites/default/files/submissions_reports/files/REPORTCARD2014_0.pdf

²¹ Ibid.

²² An Assessment of the Irish Prison System May 2013, Inspector of Prisons.

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 counting²³.

Integrated Sentence Management (Preparation for Release)

18. 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 *Three Year Strategic Plan 2012-2015*²⁴.

19. 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.

Spent Convictions

20. The 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.

Recommendations

Rehabilitative Programmes

- Adequate health care facilities must be provided in prisons, including in particular adequate mental health assessment and services, and drug-dependency services²⁵;
- The main focus for 18 to 20 year 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 population²⁶.
- 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, etc²⁷.
- 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 detention²⁸.

Integrated Sentence Management

- 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.

Spent Convictions

- The *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 custodial sentences to be increased to a minimum of 48 months²⁹.
- 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 risk³⁰.

²³ Office of the Inspector of Prisons Annual Report 2012

²⁴ Irish Prison Service *Three Year Strategic Plan 2012-2015*, <http://www.irishprisons.ie/images/pdf/strategicplanfinal.pdf>

²⁵ IPRT Position Paper 4 – Human Rights in Prison, http://www.iprt.ie/files/IPRT_Position_Paper_4_-_Human_Rights_in_Prison.pdf

²⁶ Office of the Inspector of Prisons Annual Report 2012

²⁷ Ibid.

²⁸ Children's Rights Alliance Report Card 2014, Is Government keeping its promises to children?,

http://childrensrights.ie/sites/default/files/submissions_reports/files/REPORTCARD2014_0.pdf

²⁹ IPRT Submission on Criminal Justice (Spent Convictions) Bill 2012, http://www.iprt.ie/files/IPRT_Spent_Convictions_29012013.pdf

³⁰ Ibid

Article 11

'No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation'.

21. There were 8,121 committals (1,894 female and 6,227 male) to prison for the non-payment of a court ordered fine in 2013³¹. There was a 12.3% increase in female committals for fines and debt default in 2013³² (1,894 in 2013 up from 1,687 in 2012). In 2013, 22 debtors (21 male, 1 female) were committed to prison³³.

Recommendations

- Prison must be a sanction of last resort, reserved for the most serious crimes.
- Imprisonment for fines default and for debt must end.

Article 17(1)

'No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation'.

Article 17(2)

'Everyone has the right to the protection of the law against such interference or attacks'

22. 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.

Recommendations

- 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 proportionate³⁴ in line with Guidelines on the Imposition of Disciplinary Sanctions in Accordance with the Prison Rules 2007. Under these guidelines 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 prisoners³⁵.

Article 18

'Everyone shall have the right to freedom of thought, conscience and religion'.

Recommendations

- 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

³¹ Irish Prison Service Annual Report 2013

³² Ibid

³³ Ibid

³⁴ IPRT Position Paper 4 – Human Rights in Prison, http://www.iprt.ie/files/IPRT_Position_Paper_4_-_Human_Rights_in_Prison.pdf

³⁵ IPRT Briefing on Solitary Confinement, Isolation, Protection and Special Regimes, http://www.iprt.ie/files/IPRT_Briefing_on_Solitary_Confinement.pdf

“In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”.

23. 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.

Recommendations

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.