

IPRT Briefing on **Solitary Confinement, Isolation, Protection and Special Regimes**

The Irish Penal Reform Trust

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 to the progressive reform of the penal system based on evidence-led policies.

The Issues

On any given day in the Irish prison system, upwards of 150 prisoners are being held on 23-hour lock up for reasons of protection, with a further unspecified number on 23-hour lock up for other reasons, including discipline.

IPRT acknowledges the difficult challenge for any prison service in balancing prisoner safety (respecting the right to life) on the one hand, while at the same time providing prisoners with a reasonable and humane regime (respecting rights such as the right to private and family life). However, when drawing this balance, it is IPRT's position that the potential harm to prisoners' mental health that can be caused by extended periods of isolation means that the practice of holding any category of prisoner on 23-hour lock up **must only ever be a temporary measure; that this cannot be a solution in itself to prisoner safety concerns; and that robust safeguards must be in place in relation to the use of such regimes.**

IPRT also acknowledges that managing risk in an overcrowded prison system, and a system where cell-sharing has become the norm across most of the prison estate, is particularly difficult. To this end, commitments by Government and the Irish Prison Service to reduce overcrowding must be met if the current high rate of reliance on 23-hour lock up is to be reduced.

Defining the Terms

Solitary confinement is internationally regarded as the physical isolation of individuals who are confined to their cells for 22 to 24 hours a day.¹ Meaningful contact or interaction with other people is generally reduced to a minimum, with prisoners in many jurisdictions only allowed out of their cells for one hour of solitary exercise each day.

In Ireland, **protection prisoners** are defined under Rule 63 of the *Prison Rules 2007* as those prisoners considered to be under threat or at risk from other prisoners "who are reasonably likely to cause significant harm to him". Prisoners may be put 'on protection' either as a result of a request from the prisoner or after consideration by the prison governor. The majority of prisoners who seek protection do so at committal stage. The prison service attributes this practice to prisoners' fear of repercussions related to issues that occurred outside prison (drug debts, gang rivalry and perceived cooperation with Gardaí) rather than the fear of random acts of violence.

¹ *The Istanbul Statement on the Use and Effects of Solitary Confinement*, adopted at the International Psychological Trauma Symposium, Istanbul (9 December 2007).

Defining the Terms (contd.)

Rule 62 of the *Prison Rules* also provides a basis for prisoners to be removed from structured activity “on grounds of order”. Considered together Rules 62 and 63 provide for prisoners to be placed on “restricted regimes”. In more than 20% of cases this means 23-hour lock up; in some cases this means isolation from all other prisoners.

Under section 13 of the *Prisons Act 2007*, prisoners under punishment can be confined to a cell for up to three days.

In relation to children detention schools, the Irish Youth Justice Service refers to **separation** as the final stage in a continuum of interventions which results in the young person being separated from his/her peers in his/her bedroom (or other designated room/area) for as short a period of time as is necessary to reduce the risk of harm to self/others.²

Figures

23-hour lock up

- As of 21 March 2013, there were 193 prisoners locked up for 23 hours per day across the Irish prison system.³
- St. Patrick’s Institution alone made up 23% of this figure, including two 17 year old boys.
- 23-hour lock up has been on the rise in St. Patrick’s in recent years, going from no prisoners in July 2010, to two prisoners in November 2011, to 66 in July 2012.

Protection

- As of 17 May 2013, there were 673 prisoners on protection throughout the Irish prison system. Of those:
 - 155 were on a restricted regime;
 - 113 were in Cloverhill – a remand prison;
 - 48 were in St. Patrick’s Institution for young offenders, 35 of whom were on lock up for 20 hours or more each day. This is particularly worrying considering the age and vulnerability of the young offenders involved;
 - 385 prisoners had been on protection for longer than six months.⁴
- These figures do not include those held on lock up of 20 hours or more for reasons other than protection (including discipline).

The Effects of Solitary Confinement

Isolation or solitary confinement reduces socially and psychologically meaningful contact to a level that is too low for many prisoners to remain mentally healthy. The adverse health effects associated with isolation range from insomnia and confusion to hallucinations and mental illness. These health risks can arise after only a few days and can increase with each additional day spent in isolation.

Research from the US found that almost a third of the prisoners studied in solitary confinement experienced illusions or hallucinations, while over half reported a progressive inability to tolerate ordinary stimuli. Many of the confined prisoners also suffered from panic attacks, paranoia and difficulty with concentration or memory.⁵

2 Irish Youth Justice Service, *Separation Policy for Children Detention Schools* (September 2012).

3 Written answer to Dáil Question no. 200, 21st March 2013: <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2013032100065?opendocument#WRT01150>

4 Written answer to Dáil Question no. 202, asked 21st March 2013.

5 S. Grassian, “Psychiatric Effects of Solitary Confinement” (2006) 22 *Journal of Law & Policy* 325.

Human Rights Standards

International human rights law prohibits in absolute terms the use of torture or other cruel, inhuman or degrading treatment or punishment. Both the UN Human Rights Committee (HRC) and the UN Committee against Torture (CAT) have stated that, in certain cases, prolonged solitary confinement of imprisoned persons can amount to a breach of this prohibition.⁶ At a minimum, CAT has proposed that any isolation of prisoners be strictly and specifically regulated by law (in terms of maximum duration, conditions, etc.) and exercised under judicial supervision.⁷

The *European Prison Rules* also clearly state that solitary confinement should only be used in exceptional cases for a specified period of time, which shall be as short as possible.⁸ In addition, the European Committee for the Prevention of Torture (CPT) has repeatedly called for the abolition of specific regimes; limiting the use of solitary confinement to exceptional circumstances; and increasing the level of meaningful social contact available to isolated prisoners.

The UN Special Rapporteur on Torture has suggested 15 days as the limit between ‘solitary confinement’ and ‘prolonged solitary confinement’ based on evidence that some of the harmful psychological effects of isolation can become irreversible at this stage.⁹ He then proposed a worldwide ban on prolonged solitary confinement, as well as solitary confinement used as a penalty, in pre-trial detention, for persons with mental disabilities, and for juveniles.¹⁰

The European Court of Human Rights has also recognised prolonged solitary confinement as a violation of Article 3 of the ECHR,¹¹ recently reaffirming that solitary confinement cannot be imposed indefinitely and should not be applied to prisoners who are not dangerous or disorderly or do not continue to pose a security risk.¹²

In relation to pre-trial detainees, the UN Special Rapporteur warned that the effects of solitary confinement may be even worse than for other prisoners, as they have an increased rate of suicide and self-harm within the first two weeks of isolation.¹³ It is also thought to create a situation of de facto psychological pressure which can influence pre-trial detainees to confess or plead guilty; this is seen as coercive and can amount to torture.¹⁴

In relation to children and detention, the Council of Europe has set out rules permitting separation only in very exceptional cases for security or safety reasons; this must be carried out by a competent authority on the basis of procedures laid down in national law which specify the nature, maximum duration and grounds on which it may be imposed.¹⁵

In Ireland, the High Court in *Kinsella v Governor of Mountjoy Prison* found that the right to bodily integrity under Article 40.3.2° of the Irish Constitution extended to the human mind and personality; this right was held to be violated by isolation which amounted to “a form of sensory deprivation” and gave rise to the risk of psychiatric disturbance.¹⁶

6 UNCAT General Comment No.20 concerning prohibition of torture and cruel treatment or punishment (3 October 1992), para.6.

7 Conclusions and Recommendations issued by the Committee against Torture at its 288th meeting on 1 May 1997: Denmark, *Third Periodic Report* (1996), p.57, para.16.

8 *Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (Adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies)*, para.60.5.

9 <http://www.un.org/News/Press/docs/2011/gashc4014.doc.htm>

10 The UN Committee on the Rights of the Child has also called for the abolition of the use of solitary confinement for minors. See for example CRC/C/15/Add.273, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Denmark* (30 September 2005), para.58(b).

11 *Ramirez Sanchez v. France*, Grand Chamber, 4 July 2006, para.123.

12 *Babar Ahmad and Others v the United Kingdom* [2012] ECHR 609 (10 April 2012).

13 A/63/175, *Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (28 July 2008), para.82.

14 *The Istanbul Statement on the Use and Effects of Solitary Confinement*, adopted at the International Psychological Trauma Symposium, Istanbul (9 December 2007).

15 *Recommendation CM/Rec(2008)11 of the Committee of Ministers to Member States on the European Rules for juvenile offenders subject to sanctions or measures (Adopted by the Committee of Ministers on 5 November 2008 at the 1040th meeting of the Ministers' Deputies)*, para.93

16 [2011] IEHC 235.

Recommendations

- 1. Holding a prisoner in isolation for 22 hours or more per day should only be used as a measure of last resort in very exceptional cases, and for as short a period of time as possible; this principle should be clearly grounded in policy.**
- 2. Prisoners on protection or other restricted regimes must be provided meaningful access to work, training, education and rehabilitation, as well as other activities and services; as far as possible this should be in association with other prisoners.**
- 3. Protection or punishment prisoners should have the same access to the Inspector of Prisons (or his/her representatives) and any complaint procedure as other prisoners. If necessary, special procedures or supports should be put in place to ensure effective access to these mechanisms for protection prisoners.**
- 4. The situation of protection prisoners and other prisoners on restricted regimes should continue to be afforded particular attention by the Inspector of Prisons.**
- 5. Protection prisoners and other prisoners on restricted regimes must be facilitated to receive the same number and duration of family visits as other prisoners.**
- 6. In line with UN and Council of Europe recommendations, no prisoner should be held in isolation in excess of 15 consecutive days.**
- 7. In order to prevent situations where prisoners are returned to isolation after short breaks, amounting to quasi-isolation for prolonged periods, there should be a strict limit on the number of days in a month, and in a year, that a prisoner can spend on a restricted regime.**
- 8. Where a prisoner requests to be kept on protection for an extended period, this should be kept under constant review and special supports may need to be put in place to encourage the prisoner to come off a restricted regime.**
- 9. The use of solitary confinement or any restricted regime should be absolutely prohibited in relation to children under 18 years of age, remand prisoners and persons with mental disabilities. Its use as a disciplinary sanction should also be strictly prohibited.**
- 10. IPRT calls on the Irish Prison Service to publish a plan in relation to protection which includes commitments to meet these recommendations and to reduce the use of solitary confinement in the Irish prison system.**

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