



IPRT
Irish Penal Reform Trust

IPRT Position Paper 4
Human Rights in Prison

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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.

Through its work, IPRT seeks to stimulate public debate on issues relating to the use of imprisonment, including on sentencing law and practice in Ireland. This is one in a series of Position Papers, which underpin the work of the IPRT.

Introduction

1. Imprisonment as Punishment not for Punishment – Prisoners’ Rights

2. Sources of Human Rights Law relating to Imprisonment

3. Main Human Rights Standards in Practice

3.1 Human rights and conditions of detention

3.2 Human rights and the obligation on the authorities to prevent death or self-harm or suicide

3.3 Human rights and health in prison

3.4 Human rights and the right to family life

3.5 Human rights and the right to freedom of correspondence

3.6 Human rights and the length of detention on remand

3.7 Human rights and disciplinary proceedings while in prison

4. Ireland’s Record on the Protection of Human Rights in Prisons.

5. Summary and Conclusions

Introduction

Under international human rights treaties ratified by the Irish Government and approved by the Oireachtas, Ireland has accepted a body of legal obligations conferring rights on all persons resident in the State. Many of these rights have particular relevance to the situation of persons in detention and impose obligations in relation to conditions and regimes in the prisons and basic minimum standards of care for all prisoners. In its work, IPRT is committed to ensuring that the rights of prisoners are respected and that Irish penal policy is based on the implementation of these obligations. In line with the principle of safe custody, meeting human rights standards must be taken as a base-line below which the situation in Irish prisons should not be allowed to fall.

This Position Paper outlines the main human rights standards pertaining to the situation of individuals in prison and provides examples of how they are interpreted by international monitoring bodies. This interpretation impacts on the practice and policy in Irish prisons and IPRT believes that it should therefore be carefully considered by the State authorities responsible for the development of such policy and those responsible for the day-to-day operation of prisons in Ireland. To this end, **IPRT calls for information about international human rights standards to be made widely available to courts and Prison Service staff, as well as prisoners in Ireland.**

1. Imprisonment as Punishment not *for* Punishment – Prisoners' Rights

IPRT believes in the principle of 'imprisonment as punishment': that it is the sentence of deprivation of liberty in itself that is the core punitive sanction in criminal cases; treatment accorded while in prison should not be used as additional punishment. Accordingly, while restrictions on freedom of movement are necessarily introduced in prisons by the very nature of this sanction, prisoners should retain all other rights to the greatest possible degree while serving their sentences. In particular, IPRT believes that prisoners have the right to be treated with dignity and respect for their rights; they have the right to safety and security of the person; and they have the right to be treated humanely and to be free from torture, degrading or inhuman treatment or punishment.

The principle of imprisonment *as* punishment and not *for* punishment is expressed in the European Prison Rules (2006) which state in Rule 2:

Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.

Similarly, the UN Human Rights Committee in its *General Comment No.21*, concerning humane treatment of persons deprived of their liberty, observes that:

[...] respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subjects to the restrictions that are unavoidable in a closed environment.¹

Furthermore, the enjoyment of the rights enshrined in the European Convention on Human Rights (ECHR) is protected by Article 14 of that Convention, guaranteeing everyone in the State equal access to rights, without discrimination. IPRT is concerned that judicial practice so far in Ireland appears to support a different view of the role of imprisonment, with Irish Courts ruling that prisoners' rights are necessarily diminished by virtue of their imprisonment.² Judgments in two leading Irish cases in this regard – that of *State (McDonagh) v Frawley*³ and *Gilligan v Governor of Portlaoise Prison*⁴ – expressed the Courts' view that prisoners' rights are suspended during the period of their imprisonment, and that:

While so held as a prisoner pursuant to a lawful warrant, many of the applicant's normal constitutional rights are abrogated or suspended. He must accept prison discipline and accommodate himself to the reasonable organization of prison life laid down in the prison regulations.⁵

It is IPRT's view that such an approach stands in contrast to the principles expressed in particular in the European Prison Rules and in the case-law of the European Court of Human Rights (ECtHR)

¹ UN Human Rights Committee [1992] *General comment No. 21 Replaces general comment 9 concerning humane treatment of persons deprived of liberty* [Art. 10] : . 10/04/92. *CCPR General Comment No. 21. [General Comments]* (available at: <http://www.unhchr.ch/tbs/doc.nsf/0/3327552b9511fb98c12563ed004cbe59?Opendocument>)

² See: Herrick, L. (2009) 'Prisoners' Rights' in Kilkelly, U (ed) (2009) *ECHR and Irish Law*, Bristol: Jordan Publishing Ltd., pp. 325-351.

³ [1978] IR 131.

⁴ (Unreported) 12 April, 2001, High Court, McKechnie, J.

⁵ *Ibid.*

based on the provisions of the European Convention on Human Rights (ECHR). In this context, it is worth noting that the practice of the ECtHR, while initially supportive of the ‘principle of inherent limitations’ – i.e. that deprivation of liberty automatically entails loss of other rights and freedoms – has moved significantly away from that view, and on to wider protection of fundamental human rights during imprisonment.⁶ **It is clear that international human rights standards state that prisoners should continue to enjoy access to all rights guaranteed to all persons in the State, subject only to restrictions that are unavoidable, necessary and proportionate in the context of imprisonment. IPRT calls on the Government and the criminal justice agencies to ensure that this principle is implemented in Irish prisons.**

2. Sources of Human Rights Law relating to Imprisonment

There is a wide range of international human rights standards that detail the rights of prisoners. These have been developed at the UN and Council of Europe level and come in the form of more general rights provisions that have application to prisons, as well as more specific standards which focus on detention issues. These standards can also be distinguished into binding standards and non-binding or ‘soft law’ standards.

Perhaps the most important international human rights instrument in an Irish context is the ECHR, which provides a right of individual petition to everyone in the area of the Council of Europe to the ECtHR. The ECHR is the only major international human rights treaty that has been given the force of domestic law in Ireland through the European Convention on Human Rights Act 2003. The interpretation of ECHR rights in the context of deprivation of liberty should impact significantly on the practice of Irish courts, as well as on the policy and practice of State authorities responsible for Irish penal policy. Since 1975, the ECtHR has upheld a number of complaints made by prisoners, particularly regarding breaches in a number of contexts of Article 3 of the ECHR (freedom from torture, inhuman or degrading treatment or punishment); Article 2 (the right to life); Article 5 (the rights to liberty and security of person); Article 6 (the right to fair trial), Article 8 (the right to private and family life) and Article 3 of Protocol I to the Convention (the right to vote).

Additionally, recognising the identified weaknesses of the Convention process in the protection of prisoners and ensuring that prison conditions are subject to regular, rather than ad-hoc, monitoring, the Council of Europe developed the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT), establishing the European Committee for the Prevention of Torture (CPT).⁷ This Committee provides a specialist system of oversight of places of detention and over the years has developed a set of standards based on international human rights instruments, and the ‘soft-law’ standards formulated by the Council of Europe.⁸ While these are not directly enforceable in courts, the European Court of Human Rights has considered them in a number of cases before it, and in particular used the information provided in country reports by the CPT in a number of cases regarding application of Article 3 of the ECHR to prison conditions (including overcrowding). Standards developed by the CPT, as well as its work in monitoring conditions of detention in States-parties to the Convention significantly impact, therefore, on the Court’s judgments.

⁶ van Zyl Smit, D., Snacken, S. (2009) *Principles of European Prison Law and Policy: Penology and Human Rights*, Oxford: Oxford University Press, at page 10.

⁷ *Ibid*, pp.13-14.

⁸ European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT) (2006) *The CPT Standards: “Substantive” sections of the CPT’s General Reports*, [available at: <http://www.cpt.coe.int/en/docsstandards.htm>]

The Council of Europe has issued a number of recommendations in relation to the treatment of persons in detention, and other aspects of policy and practice connected to detention, such as the transfer of sentenced prisoners between countries. While these are not all discussed here in detail, two recommendations are of particular importance: the *Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (European Prison Rules 2006)* and the *Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse (Remand Rules 2006)*.

The European Prison Rules 2006 (EPR) outline the most comprehensive set of standards and guidelines that should govern the policy and practice of detention in member states of the Council of Europe. It is important to note that the EPR are based on nine Basic Principles, the first three of which deal directly with the protection of human rights of prisoners.⁹ Those Basic Principles state that:

1. *All persons deprived of their liberty shall be treated with respect for their human rights.*
2. *Persons deprived of their liberty retain all the rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.*
3. *Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.*

The European Prison Rules 2006 outline standards in relation to all aspects of imprisonment, including, among others, standards relating to: admission; allocation and accommodation; hygiene; contact with the outside world; prison regime; education; release, etc.

Irish penal policy, as well as day-to-day practice in prisons, needs to consider the impact of international conventions and other human rights standards developed at the United Nations. These include the UN Covenant of Civil and Political Rights (ICCPR) and the UN Convention against Torture and Inhuman or Degrading Treatment (CAT). Of particular importance for inspection and monitoring of prisons in Ireland are the provisions of the Optional Protocol to CAT (Op-CAT) which Ireland signed in October 2007, but is yet to ratify to make applicable in this jurisdiction. The Op-CAT, adopted by the UN General Assembly in 2002, came into force in 2006 and sets up a new international monitoring body, the UN Sub-Committee for the Prevention of Torture (UN-SPT). It also requires States to designate or create effective National Preventive Mechanisms (NPM) to carry out independent inspections of places of detention.

3. Main Human Rights Standards in Practice

Many of the standards now embodied, in particular in the European Prison Rules, have been developed through the practice of the European Court of Human Rights (ECtHR) and the European Committee for the Prevention of Torture (CPT). In particular, the ECtHR in recent years interpreted the provisions of the ECHR in a number of cases brought forward by prisoners complaining about issues such as: physical conditions in places of detention; provision of health care; prevention of deaths and self-harm and suicide; aspects of prison regime (such as censorship of correspondence; access to visits and protection of the right to family life); access to justice; and voting while in prison. Not all of those standards are analysed in this paper; instead it focuses on the seven most central to the proper administration of places of detention.

⁹ European Prison Rules 2006 [available at: <https://wcd.coe.int/ViewDoc.jsp?id=955747>]; see also: van Zyl Smit, D., Snacken, S. (2009) *Principles of European Prison Law and Policy: Penology and Human Rights*, Oxford: Oxford University Press, at page 99.

3.1 Human rights and conditions of detention

In public debate, the mention of torture or other inhuman or degrading treatment or punishment often brings to mind images of the maltreatment of detainees emanating from prisons such as the infamous Abu Ghraib in Iraq. In reality, conditions of detention that may breach prisoners' human rights can be found in places of detention much closer to everyday life, including in Irish prisons.

It is well established in the jurisprudence of the ECtHR that seriously deficient physical conditions in prison may raise an issue under Article 3 of the ECHR, namely the right to be free from torture or other inhuman or degrading treatment or punishment. The ECtHR has found, for instance, that overcrowding and its consequences for individual prisoners (such as a negative impact on their health) may constitute inhuman and degrading treatment in certain circumstances.¹⁰ Similarly, the Court has judged that the situation of a particular prisoner that results from poor or inadequate conditions of detention may also amount to such treatment. For example, in the case of *Price v UK* (2001) the Court criticised the treatment of a female disabled prisoner who was kept in a cell in which she couldn't reach her bed or access washing facilities. Most importantly, in more recent years, an opinion was formed by the Court that for prison conditions to be found breaching prisoners' rights there doesn't have to be any intention to humiliate or debase the prisoner on the part of state authorities.¹¹ It is the combination of physical conditions or treatment afforded that may constitute the breach of rights in itself.

Conditions of detention were also found to breach prisoners' right to dignity in domestic courts in the UK. In the Scottish case of *Napier v Scottish Ministers* concerning the practice of 'slopping-out' (lack of in-cell sanitation), the Court found that such practice, combined with overcrowding and particular medical problems suffered by Robert Napier, were contrary to human dignity. In the Irish context, it is important to note that the CPT has repeatedly condemned the slopping-out in Irish prisons as degrading and humiliating, and in the 2006 report said that regimes in all Irish prisons with the exception of Wheatfield were deficient in this regard.¹²

3.2 Human rights and the obligation on the authorities to prevent death or self-harm or suicide

The State authorities have an obligation to protect the right to life of everyone in their territory, an obligation stemming from Article 2 of the ECHR (the right to life). In its practice, the ECtHR has interpreted the provisions of Article 2 as having three distinct elements: the negative obligation on the State to desist from causing unlawful deaths; the positive obligation to take preventative action in relation to avoidable deaths, and a positive obligation to appropriately investigate deaths directly or indirectly caused by the actions of negligence of State officials.¹³

In the context of imprisonment, prison authorities should be aware of the implications of Article 2 for use of force in prisons. The ECtHR stated that the relevant provision of the ECHR covers not only situations where killing by State officials is intentional, but also situations where "it is permitted to

¹⁰ See: *Kalashnikov v Russia* (2003).

¹¹ See: *Peers v Greece* (2001).

¹² *Report to the Irish Government 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 2 to 13 October 2006* (available at: <http://www.cpt.coe.int/documents/irl/2007-40-inf-eng.pdf>).

¹³ See for example: Kelly, M. (2005) *The Right to Life. A Practical Guide to the European Convention on Human Rights*, Belfast: Northern Ireland Human Rights Commission.

‘use force’ that may result, as an unintended outcome, in the deprivation of life”.¹⁴ This is clearly of relevance to the actions of prison officers who are authorised to use force in certain circumstances, particularly to restore order or deal with violent prisoners.¹⁵

Article 2 of the ECHR requires the State authorities to take steps to protect the lives of those who they know or ought to have known are at risk.¹⁶ Deaths in custody have been reviewed from this perspective on a number of occasions by the ECtHR, both in the context of police custody and in the context of imprisonment, and the Court stated that this positive obligation is breached in circumstances where the authorities fail to take reasonable measures within the scope of their powers to prevent death.¹⁷ The obligation to take steps to protect life extends to the prevention of suicide in custody. As the Court observed, “where detained persons are concerned, the State has a positive obligation to take ‘general measures and precautions’ to ‘diminish the opportunities for self-harm’”.¹⁸

A number of violent deaths have occurred in Irish prisons in recent years, including that of Gary Douche who was beaten and strangled to death by a mentally-ill prisoner while under ‘protection’ in a holding cell in Mountjoy Prison.¹⁹ It is important to note that the circumstances of his death are somewhat similar to those in a case of *Edwards v UK* (2002), who died in prison having been assaulted by another prisoner with a history of violent behaviour and schizophrenia. In that case, the ECtHR concluded that the systematic failure on the part of a variety of authorities – including the medical staff and the police – to pass on information to the prison regarding the violent prisoner contributed to the death of Mr Edwards.

Lastly, if deaths occur in the prisons, it is the obligation of the prison authorities to conduct a prompt and independent investigation into the circumstances of such death. Such investigation has to be: undertaken on the State’s own initiative; independent both institutionally and in practice; prompt; capable of leading to a determination of responsibility and the punishment of those responsible; transparent to ensure accountability; and involve the next-of-kin in its proceedings.²⁰ When a person dies in the care of the State, including deaths in prison custody, the burden of proof is regarded as resting firmly on the authorities to provide a satisfactory and convincing explanation as to how and why the death occurred.²¹

3.3 Human rights and health in prison

The issue of the provision of adequate healthcare facilities to prisoners is central to the international standards. The European Court of Human Rights has considered a number of cases brought by prisoners where it found that poor or inadequate care breached the provisions of the ECHR, particularly Article 3 and Article 8 (the right to private and family life). For example, the Court stated that prison authorities have a positive obligation under Article 8 to protect prisoner’s physical

¹⁴ See: *McCann and Others v UK* (1995).

¹⁵ See: Rule 93 of the *Prison Rules 2007* (available at: <http://www.justice.ie/en/JELR/prison%20rules%202007.pdf/Files/prison%20rules%202007.pdf>).

¹⁶ See: *Osman v UK* (1998).

¹⁷ Herrick, L. (2009) ‘Prisoners’ Rights’ in Kilkelly, U (ed) (2009) *ECHR and Irish Law*, Bristol: Jordan Publishing Ltd., p. 333.

¹⁸ See: *Keenan v UK* (2001).

¹⁹ See: ‘Prisoner gets life sentence for killing cellmate’, *The Irish Times*, Tuesday, June 30, 2009 (available at: <http://www.irishtimes.com/newspaper/ireland/2009/0630/1224249782224.html>). At the time of writing the circumstances of Gary Douche’s death are the subject of an ongoing Commission of Investigation, overseen by Gráinne McMorrow SC.

²⁰ See: *Jordan v UK* (2001) and *Edwards v UK* (2002).

²¹ See: *Salman v Turkey* (2000).

integrity.²² The State's positive obligation to protect the well-being of detainees takes on even greater importance when a prisoner is more vulnerable due to severe health concerns such as physical disability,²³ or indeed drug use.²⁴ In the context of the obligations towards drug-using prisoners, among them an obligation to provide treatment for withdrawal symptoms, it is important to note that the CPT's report on the visit to Ireland in 2006 highlighted the endemic nature of the drug problems in Irish prisons. It also identified the drug-related issues as heightening the levels of inter-prisoner violence. The importance of access to preventative measures was recognised in the report, and the CPT encouraged Irish authorities to take harm-reducing measures to minimise the transmission of blood-borne viruses among prisoners.²⁵

The Court has found in a number of cases that the authorities have a duty to provide appropriate medical care, particularly in the context of the need to effectively monitor the mental health of a prisoner held in solitary confinement.²⁶ Failure to provide timely medical assistance when needed may also violate prisoners' human rights. Such violation was judged to have taken place in a case where a prisoner had not seen a doctor for 18 months, even after taking part in a hunger strike,²⁷ in a case where a gap in monitoring of the prisoner's condition over the weekend resulted in a decline in her health, and later her death.²⁸ The Court also stated that the right to timely medical care in cases where a prisoner has a serious medical condition should include regular access to specialised diagnostic care.²⁹

According to the interpretation of human rights provisions, states are under an obligation to prevent the spread of infectious diseases in prisons. In recent years, states have been held responsible for breaches of human rights in cases where they did not take steps necessary to prevent the spread of tuberculosis.³⁰ The Court has also stated that the fact that a prisoner contracted a disease while in prison can be seen as evidence that the overall prison regime is inhuman or degrading.³¹

3.4 Human rights and the right to family life

In relation to the protection of prisoners' family life (under Article 8 of the ECHR), the ECtHR considered a number of cases establishing the standards under the ECHR. Most importantly in the context of imprisonment the Court stated that State authorities have an obligation to assist serving prisoners in maintaining contact with their families.³² Such obligation may, in some circumstances, extend to transferring a prisoner to another prison.³³ The duty on the State in this respect may be more extensive if the prisoner wishes to maintain contact with his or her children, while in the case of contact with a spouse it can be expected that they will travel more easily to visit a prison even if a

22 See: *Pantea v Romania* (2005).

23 See: *Price v UK* (2001).

24 See: *McGlinchey and Others v UK* (2003).

25 *Report to the Irish Government 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 2 to 13 October 2006* (available at: <http://www.cpt.coe.int/documents/irl/2007-40-inf-eng.pdf>).

26 See: *Rhode v Denmark* (2005).

27 See: *Newmerzhitsky v Ukraine* (2005).

28 See: *McGlinchey and Others v UK* (2003).

29 See: *Paladi v Moldova* (2007).

30 See for example: *Melnik v Ukraine* (2006).

31 See for example: *Newmerzhitsky v Ukraine* (2005) or *Benediktov v Russia* (2007).

32 See for example: *X v UK* (1982) and *McCotter v UK* (1993).

33 See: *Campbell v UK* (1978).

certain distance is involved.³⁴ The Court recognises the importance of prisoners' relationships with others and that it requires a degree of association for prisoners.³⁵

It is important to note here that in its consideration of the extent of the protection of family life of prisoners, the Court found that refusal to facilitate an assessment for the purposes of artificial insemination by a prisoner of his life partner living outside the prison breached the human rights standards under the ECHR.³⁶

3.5 Human rights and the right to freedom of correspondence

Article 8 of the ECHR also protects the prisoner's right to private life and freedom of correspondence, and the ECtHR has developed a number of standards in this area. Firstly, the Court states that any correspondence between a prisoner and his or her legal representative is privileged and should not be read by the prison authorities.³⁷ While agreeing that the opening of prisoners' letters may be justified on the basis of necessary checks for illicit materials, the reading of the content is not, and letters should be opened in the presence of the prisoner to ensure that his or her privacy is not breached.³⁸

3.6 Human rights and the length of detention on remand

The ECHR (Article 5) protects the right of any person not to be deprived of their liberty in an arbitrary way. The Convention clearly allows for detention in a number of specific situations, including arrest and detention with a view to bringing a person to trial for an alleged offence. The ECtHR has considered a number of cases regarding the length of detention on remand and it is clear from the statements made by the Court that Article 5 protects the right of any person deprived of their liberty to be put on trial within reasonable time or be released pending trial.³⁹ Moreover, the State practice should be in presumption of release on bail, i.e. a person charged with an offence must always be released on bail pending trial unless the State can show that there are "relevant and sufficient" reasons for continuing pre-trial detention.⁴⁰

3.7 Human rights and disciplinary proceedings while in prison

The ECHR (Article 6) protects the right to fair trial and the ECtHR in its practice has stated that certain disciplinary proceedings against prisoners fall under the definition of 'criminal charges' and legal representation should therefore be provided to prisoners in such circumstances.⁴¹ This is of relevance to disciplinary proceedings governed in Ireland by the provisions of Prison Rules 2007 (sections 66-69) which do not make provision for legal representation in proceedings initiated by a prison governor. While the provision is made under section 15 of the Prisons Act 2007 for an appeal of the governor's decision to the Appeal Tribunal at which the prisoner may be legally represented (and may be provided with legal aid), doubts have been expressed whether this procedure complies with the fair trial

34 See: *Ouinan v France* (1990). See also: *Herrick, L. op.cit.* at note 16 above, p. 349.

35 See: *McFeeley v UK* (1980).

36 See: *Dickson v UK* (2007).

37 See: *Campbell v UK* (1992).

38 *Ibid.*

39 See: *Neumeister v Austria* (1968) or *I.A. v France* (1998).

40 Hamilton, C. (2009) 'Detention: Issues of Procedure and Substance' in Kil Kelly, U. (ed) (2009) *ECHR and Irish Law*, Bristol: Jordan Publishing Ltd, p. 227.

41 See: *Campbell and Fell v UK* (1984); *Ezeh and Connors v UK* (2000).

requirements of Article 6.⁴² Further, the current Prison Rules provide for the disciplinary proceedings (first stage) to be conducted by the governor – an arrangement that does not satisfy the requirement for cases to be heard by an independent and impartial tribunal.⁴³

In light of the human rights standards outlined above, IPRT calls on the Government and the Irish Prison Service to ensure their implementation in day-to-day practice in Irish prisons. In particular, IPRT calls for policy and practice change to affect the following:

- Prevent overcrowding, particularly through the implementation of the principle of imprisonment as a last resort,⁴⁴ and address poor physical conditions in Irish prisons;
- Implement effective policies in relation to the prevention of deaths in custody, and where these occur, provide for an independent and effective investigation of all circumstances of such deaths;
- Provide adequate health care facilities in prisons, including in particular adequate mental health assessment and services and drug-dependency services;
- Support family contact and maintenance of links with family and the communities outside through a provision of regular visits, opportunities for contact by phone and written correspondence. Contact with the outside world should be facilitated to the greatest possible effect, and should not be compromised by considerations of prison security. Any restrictions should be strictly necessary and proportionate.
- Provide for legal representation before an independent and impartial tribunal in the first stage of disciplinary proceedings instituted under the provisions of Prison Rules. Prison Rules 2007 should be amended accordingly, and include provision for legal aid to ensure equality of arms for the prisoner concerned.
- Make information on international human rights standards available to all prisoners.
- Provide training in human rights standards to all prison staff and make up-to-date information about international human rights standards available on a regular basis.

4. Ireland's Record on the Protection of Human Rights in Prisons

The physical conditions in Irish prisons, as well as some aspects of prison regimes, have been criticised by international monitoring bodies in the past. Not all those criticisms will be repeated here, but it is necessary to mention the two most recent reports: the report by the CPT following its visit to Ireland in 2006, and the UN Human Rights Committee's concluding observations following the examination of Ireland's human rights record under the ICCPR in 2008.

Following its visit to Ireland in 2006, the CPT made a number of recommendations and expressed concern about physical conditions in Irish prisons. The CPT also highlighted the high levels of inter-

⁴² Hamilton, C., Kilkelly, U. 'Human Rights in Irish Prisons' in *Judicial Studies Institute Journal* 2008:2 (pp. 58-85).

⁴³ See: *Ezeh and Connors v UK* (2000).

⁴⁴ For details on the practical implementation of this principle, please see: *IPRT Position Paper on Imprisonment as a Last Resort and Penal Moderation* [available at: www.iprt.ie].

prisoner violence and, in its strongest statement yet regarding Irish prisons, it assessed Mountjoy Prison, Limerick Prison and St. Patrick's Institution as "unsafe, both for prisoners and for prison staff".⁴⁵ It also recorded a number of instances of ill-treatment of prisoners by staff and lack of appropriate recording of medical examination following such incidents.

Most recently, Ireland's record regarding protection of human rights was examined by the UN Human Rights Committee in 2008.⁴⁶ In its *Concluding Observations* the Committee noted the measures taken by Ireland in relation to the planned building of new prison at Thornton Hall, but expressed its concern regarding the increased number of prisoners in the State. It also highlighted the persistence of poor conditions in Irish prisons, pointing in particular at overcrowding, lack of in-cell sanitation in a number of prisons, non-segregation of remand prisoners, shortage of mental health services available, and the high level of inter-prisoner violence. The Committee recommended that Ireland should increase its efforts to improve conditions in places of detention, and in particular eliminate overcrowding and the practice of 'slopping-out'. It also required the Irish Government to provide it with detailed information showing progress in improving the conditions in prisons, and also regarding the promotion of alternatives to detention at the next examination.

In the year following the publication of the *Concluding Observations*, the situation in Irish prisons has deteriorated, particularly in relation to overcrowding and inter-prisoner violence. **IPRT calls on the Government to implement all recommendations of international monitoring bodies without delay. IPRT will continue to monitor such implementation and provide information on progress to national and international bodies.**

⁴⁵ Report to the Irish Government 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 2 to 13 October 2006 (available at: <http://www.cpt.coe.int/documents/irl/2007-40-inf-eng.pdf>).

⁴⁶ For all relevant documents see: www.rightsmonitor.org.

5. Summary and conclusions

- Imprisonment should only be used sparingly and as a measure of last resort. When it is used, deprivation of liberty is punishment in itself and should not be used to impose additional limitations on the rights and freedoms of those who are imprisoned. International human rights standards state that prisoners should continue to enjoy all rights guaranteed to all persons in the State, subject only to restrictions that are unavoidable, necessary and proportionate in the context of imprisonment.
- The interpretation of the international human rights standards by international courts and other bodies impacts on the practice and policy in Irish prisons and IPRT believes that their judgments and policy statements should therefore be carefully considered by the State authorities responsible for the development of such policy and those responsible for the day-to-day operation of prisons in Ireland. To this end, **IPRT calls for information about international human rights standards to be made widely available to courts and Prison Service staff, as well as prisoners in all establishments in Ireland.**
- In light of the standards outlined above, **IPRT calls on the Government and the Irish Prison Service to ensure their implementation in the day-to-day practice in Irish prisons. In particular, IPRT calls for the policy and practice change to affect the following:**
 - Prevent overcrowding, particularly through the implementation of the principle of imprisonment as a last resort,⁴⁷ and address poor physical conditions in Irish prisons;
 - Implement effective policies in relation to the prevention of deaths in custody, and where these occur, provide for an independent and effective investigation of all circumstances of such deaths;
 - Provide adequate health care facilities in prisons, including in particular adequate mental health assessment and services, and drug-dependency services;
 - Support family contact and maintenance of links with family and the communities outside through provision of regular visits, opportunities for contact by phone and correspondence. Contact with the outside world should be facilitated to the greatest possible effect, and should not be compromised by considerations of prison security. Any restrictions should be strictly necessary and proportionate.
 - Provide for legal representation before an independent and impartial tribunal in the first stage of disciplinary proceedings instituted under the provisions of Prison Rules. Prison Rules 2007 should be amended accordingly, and include provision for legal aid to ensure equality of arms for the prisoner concerned.
 - Provide independent system of inspection and monitoring of prison conditions and adherence to human rights standards by the Irish Prison Service in accordance with international best practice;
 - IPRT calls on the Government to implement all outstanding recommendations made by international monitoring bodies regarding the physical conditions in Irish prisons, as well as prison policies and practices.

⁴⁷ For details on the practical implementation of this principle, please see: *IPRT Position Paper on Imprisonment as a Last Resort and Penal Moderation* [available at: www.iprt.ie].

