



IPRT
Irish Penal Reform Trust

IPRT Position Paper 8
Community Sanctions

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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.

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Introduction

While there has been little evaluation of the effectiveness of community sanctions in Ireland over the years, some discussion of the potential for wider use of such sanctions has been more evident in recent times.¹ The 2009 report by the Department of Justice and the Probation Service, which gave some indication of the role and capacity of the Community Service Scheme in Ireland, is particularly welcome in this respect.² A comprehensive review has taken place with regard to the report of the Commission on Restorative Justice,³ also published in 2009, opening a way to the implementation of a comprehensive, national restorative justice scheme. Recent policy reviews in neighbouring jurisdictions also provide valuable analysis of how reform of community sanctions in Ireland might progress and the findings and recommendations on the matter made by the Corston Review,⁴ the Commission on English Prisons Today⁵ and the Scottish Prisons Commission⁶ have all informed this Position Paper.

It is IPRT's view that sanctions which can replace the use of imprisonment should form a significant part of a policy of penal moderation in Ireland.⁷ The implementation of such policy requires that a number of changes be introduced to the sentencing law and practice to ensure imprisonment is used only in cases where no other option is available to deal effectively with the offending behaviour.

A word of caution

While, for reasons outlined in detail below, community sanctions are generally preferable to custodial sentences, they need to be seen within the wider context of the role of the criminal justice system in society. To this end, it is important to stress that criminal sanctions, including those supervised in the community, **should not be seen as a way of dealing with complex social problems**, such as social exclusion, addiction and mental health problems. Systems of assistance should operate in the State to keep individuals away from the criminal justice system to the greatest extent possible, including prevention and early intervention mechanisms such as support for parents, communities and appropriate mental health services.⁸

It is very important to stress that international experience points to significant potential difficulties where the use of community sanctions results in what is called a 'net-widening' of social control measures, rather than diversion from detention. The net-widening effect of community-based sanctions can result in drawing some individuals deeper into the criminal justice system by imposing more severe sanctions on them simply because they are available, and not because they 'fit the

1 See for example: Seymour, M. (2006) *Alternatives to custody*, Dublin: Business in the Community and Irish Penal Reform Trust; Law Reform Commission (2003) *Report on Penalties for Minor Offences* (March 2003)(LRC 69-2003).

2 Department of Justice, Equality and Law Reform/Irish Probation Service (2009) *Value for Money and Policy Review of the Community Service Scheme* (available at: <http://www.justice.ie/en/JELR/FINAL%20CSO%20VFM%20-%20October%2009.pdf/Files/FINAL%20CSO%20VFM%20-%20October%2009.pdf>).

3 National Commission on Restorative Justice (2009) *Final Report, December 2009* (available at: <http://www.inis.gov.ie/en/JELR/NCRJ%20Final%20Report.pdf/Files/NCRJ%20Final%20Report.pdf>).

4 Home Office (2007) *A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System*, London: The Home Office (available at: <http://www.homeoffice.gov.uk/documents/corston-report>)

5 Commission on English Prisons Today (2009) *Do Better Do Less: The report of the Commission on English Prisons Today*, London: The Howard League of Prison Reform (available at: <http://www.howardleague.org/index.php?id=835>).

6 Scottish Prisons Commission (2008) *Scotland's Choice: Report of the Scottish Prisons Commission*, July 2008 (available at: <http://www.scotland.gov.uk/Publications/2008/06/30162955/0>).

7 See: *IPRT Position Paper on Imprisonment as a Last Resort* (available at: www.iprt.ie).

8 IPRT will be publishing a Position Paper on Prevention and Early Intervention early in 2010.

crime'.⁹ **It is important to stress, therefore, that community sanctions should only ever be used in cases where the individual would otherwise receive a custodial sentence proportionate to their offence.**

It is also important that community sanctions are not used as a 'step' towards custodial sentences.

Where a person refuses to engage with a particular community-based sanction, fails to keep up appointments, etc, or when the person re-offends following the end of a community sanction, imprisonment should not be treated as an automatic and inevitable consequence of such a result. All available avenues of engagement with such sanctions based on individual circumstances should be considered as far as possible before a custodial sentence is ordered, and a failure or perceived failure of one sanction should not be automatically seen as leaving no alternative to imprisonment. The provisions of the Children Act 2001 provide an encouraging example of how other community-based solutions should be first considered in cases of a non-compliance with the initial sanction, and an extension of such an approach to adult offenders should be considered with urgency.¹⁰

Finally, community sanctions **need to be age and gender specific**. General sanctions included in the law, such as Probation Orders, may not always be appropriate for children and young people. Questions have also been raised recently as to whether sanctions currently used in the UK are appropriate for work with women offenders.¹¹

1. The use of imprisonment and the use of community sanctions in Ireland

Ireland systematically overuses imprisonment as punishment. While the average prison population on any given day is close to the European average, the rates of committal to prison on sentence – the 'flow' of prisoners through the system – means that Ireland has one of the most punitive criminal justice systems in Europe. Additionally, high numbers of people are sent to prison for short term sentences, often for less than 6 months. Significant numbers of those who are sent to prison are committed there for non-violent offences, for fine default or for relatively minor road traffic offences. Irish prisons are chronically overcrowded, and IPRT's view is that many prisoners who are sent to prison could safely be dealt with using non-custodial means.¹²

In 2008, the Irish Prison Service reported that offences against a person constituted around 12% (939) of all committals under sentence (8,043). In the same year, a total number of committals under sentence for offences against property was 2,090 with only 65 of those classified as offences against property with violence.¹³ In 2008, 2,254 committals under sentence related to road traffic offences, in which category the highest number of people sent to prison were sentenced for driving without insurance (928). In the category of 'Other Offences' (2,123 committals), the highest number of committals were ordered for people who displayed 'threatening/abusive/insulting behaviour in a public place' (569); debtor offences (255); and for people 'intoxicated in a public place' (192). The Irish Prison Service Annual Report 2008 also recorded that 1,382 committals on road traffic-related

9 Mclvor, G. (1992) Intensive Probation Supervision: Does More Mean Better? in *Probation Journal* 1992: 39: 2.

10 See for example: Children Act 2001, sections: 122 (regarding non-compliance with day centre order); 128 (regarding failure to observe the conditions of a probation order) or 130 (regarding non-compliance with a suitable person (care and supervision) order).

11 Home Office (2007) *A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System*, London: The Home Office (available at: <http://www.homeoffice.gov.uk/documents/corston-report/>)

12 See: *IPRT Position Paper on Imprisonment as a Last Resort* (available at: www.iprt.ie).

13 Irish Prison Service (2009) *Annual Report 2008* (available at: <http://www.irishprisons.ie/documents/IPSanualreport2008e.pdf>).

sentences were for less than three months, with a further 543 committals in the same category between three and six months. A staggering 1,472 committals on sentences for 'other offences' were for less than three months.¹⁴ While an in-depth analysis of Irish Prison Service data is difficult, particularly due to the lack of any accompanying contextual information (i.e. circumstances of the offence; previous offending history; history of the use of community-based sanctions with prior offences if any, etc.), it appears that the sanction of imprisonment in Ireland is used to a large extent to deal with relatively less serious offences.

The statistics for 2008 show that the Probation Service supervised 2,676 Probation Orders (POs) (a decrease on previous year from 2,756) and 1,413 Community Service Orders (CSOs), which was a decrease on 1,519 in the previous year.¹⁵ In total 4,089 people were subject to those two sanctions, with a further 2,045 individuals subject to Orders for Supervision During Deferment of Penalty.¹⁶ It is difficult to assess these figures against the total number of committals to prison, as some of the supervision sanctions may have been ordered in previous years and continued in 2008. It is important to note, however, that while the number of committals on sentence to prisons rose by 13.6%, the number of people subject to POs and CSOs has fallen in comparison to the previous year, when 4,275 individuals were supervised by the Probation Service in the community.¹⁷ These figures clearly paint a picture of a criminal justice system leaning significantly towards the use of imprisonment as the main criminal sanction.¹⁸

2. Why community sanctions make sense

2.1 More appropriate response to non-violent offences

The use of imprisonment to deal with non-violent offenders who do not constitute a serious threat to the community is expensive and ineffective, and may cause more harm to the individuals and communities affected than it produces visible positive results and change.¹⁹ In some cases, it is treated as a short-term solution to social problems that lie beyond the immediate offence, dealing only with the consequences of social exclusion, deprivation, poor mental health and other factors which prison is unable to address. Indeed, in its *Strategy Statement 2001-2003*, the Irish Prison Service clearly recognized this difficulty²⁰ and this assessment of the limited effectiveness of custody is shared by the Irish Probation Service.²¹

14 Ibid.

15 These numbers refer to adult offenders only. See: The Probation Service (2009) *Annual Report 2008* (available at: [http://www.probation.ie/pws/websitepublishing.nsf/AttachmentsByTitle/Probation+Service+Annual+Report+2008/\\$FILE/Probation+Service+Annual+Report+2008.pdf](http://www.probation.ie/pws/websitepublishing.nsf/AttachmentsByTitle/Probation+Service+Annual+Report+2008/$FILE/Probation+Service+Annual+Report+2008.pdf)), at pages 27-28.

16 This sanction was based on judicial practice and does not have statutory basis. It is hard to assess whether it has been a true 'community-based sanction' as while the person was subject to supervision by the Probation Service, lack of engagement with the conditions for deferment or lack of capacity to engage in a community-based programme could have resulted in final committal to prison. (See: Irish Probation Service <http://www.probation.ie/pws/websitepublishing.nsf/Content/Work+in+Courts>).

17 Irish Probation Service (2008) *Annual Report 2007* (available at: [http://www.probation.ie/pws/websitepublishing.nsf/AttachmentsByTitle/Probation+Service+Annual+Report++2007/\\$FILE/Annual_Report_2007.pdf](http://www.probation.ie/pws/websitepublishing.nsf/AttachmentsByTitle/Probation+Service+Annual+Report++2007/$FILE/Annual_Report_2007.pdf)).

18 See also: O'Donnell, I. (2004) "Imprisonment and Penal Policy in Ireland" in *The Howard Journal*, Vol. 43, No.3, pp.253-266. The author argues that prison has for a long time now been used as the dominant sanction in Ireland and that there is a 'strong orientation towards custody among Irish judges', a view that would certainly appear to be supported by the analysis provided in the current Position Paper.

19 See: *IPRT Position Paper on Imprisonment as a Last Resort* (available at: www.iprt.ie).

20 Irish Prison Service (2001) *Strategy Statement 2001-2003*, at page 12 (available at: http://www.irishprisons.ie/documents/Strategy_statement.pdf).

21 Irish Probation Service (2007) *Annual Report 2007* (available at: [www.probation.ie/pws/websitepublishing.nsf/AttachmentsByTitle/Probation+Service+Annual+Report+2007/\\$FILE/Probation+Service+Annual+Report+2007.pdf](http://www.probation.ie/pws/websitepublishing.nsf/AttachmentsByTitle/Probation+Service+Annual+Report+2007/$FILE/Probation+Service+Annual+Report+2007.pdf)).

In an overview of the Scottish prison system, the Scottish Prisons Commission recently painted a picture of the situation that closely echoes the current state of Irish prisons:

Our review shows that we are not using prisons mainly to tackle serious crime. Many in the current population are there for very short periods. This is often to provide communities with short-term respite. Sometimes this is because we find it more convenient to keep an accused in prison before trial because he has no fixed abode or finds it difficult to keep appointments. And sometimes we do not know what else to do with someone whose drug problem means they are unable to stick to the conditions of their parole licence or probation order. The problem is that none of these uses makes people better or communities safer.²²

Instead of the use of prisons in such situations, the Scottish Commission suggested that communities can, and should, be involved in the work with offenders in a system based on the principle of a 'pay-back' to the community. The Commission therefore recommended that "paying back in the community should become the default position in dealing with less serious offenders".²³

2.2 Lower social cost for individuals and communities

In the *IPRT Position Paper on Imprisonment as a Last Resort*,²⁴ we outline how imprisonment carries with it profound negative social impacts on the prisoner's family and on his or her community, and often the consequences of even a short period of imprisonment are permanent for both the prisoner and those close to him. Losing contact with family, employment and social or community services, even for a short period, can have long-lasting negative effects.²⁵

Conversely, community sanctions prevent isolation and have the potential to avoid most of the negative consequences of incarceration on both individual and community. By using the concept of 'paying-back', such sanctions support society's need for the individual to take responsibility for harm caused by the crime, and they place reparation, not isolation, at the centre of the response to criminal behaviour.²⁶ When supported by a range of services available to an individual offender to address his or her needs that are often at the core of offending – such as drug dependency, mental health difficulties, social and economic exclusion – community-based sentences maximize the chances of real progress.²⁷ Community sanctions also actively engage communities in the legal and practical process of the 'paying-back', bringing the justice process closer to them and allowing the wider society to find solutions that are advantageous to the communities in question.

2.3 Lower cost for the State

In 2006, Seymour reported that the average cost of keeping a person in custody for one year was €87,950 (based on 2003 figures), while the average estimated cost of a community service order stood at €1,500 (2003); the average cost of supervision during deferment of penalty was €4,100 and the

[ion+Service+Annual+Report++2007/\\$FILE/Annual_Report_2007.pdf](#)], at page 9.

22 The Scottish Prisons Commission (2008) *Scotland's Choice: Report of the Scottish Prisons Commission*, at page 11.

23 Ibid, at page 26.

24 Available at: www.iprt.ie

25 See: *IPRT Position Paper on Imprisonment as a Last Resort* (available at: www.iprt.ie).

26 See: National Economic and Social Council (2002) *Re-integration of prisoners. Forum Report No.22* (available at: <http://www.nesf.ie/dynamic/pdfs/No-22-Re-integration-of-Prisoners.pdf>), at page 63.

27 The Scottish Prisons Commission (2008) *Scotland's Choice: Report of the Scottish Prisons Commission*, at page 33 (available at: <http://www.scotland.gov.uk/Publications/2008/06/30162955/16>).

average cost per offender on a probation order stood at €6,100.²⁸ The disparity of costs appears to be even higher in Ireland than in other jurisdictions. Figures reported in Scotland in 2002 indicated that the average annual cost per prisoner place in 2000-01 was £28,114, while the estimated average cost of a probation order stood at £1,936 and a cost of a community service order was estimated at £1,828.²⁹ The Howard League for Penal Reform in the UK reported that while sending one person to prison for one year cost £37,500 on average in 2006, the cost of one-year community rehabilitation order was £3,000; one-year community punishment order was £2,000 and one-year drug treatment order was £8,000 on average.³⁰ The average cost of holding a prisoner in Irish prisons in 2007 was €97,700,³¹ while an estimated cost per offender under supervision on Community Service Order (CSO) in 2007 was €4,295. It is clear from the comparison of the overall Prison Service budget (€406,346,000 in 2008) and Probation Service budget in 2008 (€54,019,000) that the use of imprisonment places a disproportionate burden on public finances in comparison to its effectiveness.

2.4 Lower rates of re-offending

There is a growing body of evidence from a variety of jurisdictions that individuals given community sentences are much less likely to re-offend than those sent to prison. In the UK in 2002, the re-offending rate after two years for individuals sentenced to a term in prison was 67%, while for those on a community sentence was 54%.³²

The review of evidence provided to the Scottish Prisons Commission suggested strongly that when people are imprisoned, particularly for short period of times, “they are more likely than those on community sentences, to be reconvicted and re-imprisoned”.³³

More recently, research evidence has emerged that re-offending rates in Spain follow a similar pattern, with lower recidivism rates observed for those who were given a suspended sentence in the community in comparison to those given a custodial sentence.³⁴

A major shift in the use of sanctions away from short- and medium-term imprisonment to community sanctions should therefore be central to a criminal justice system that focuses on effectiveness of rehabilitative processes and reduction in re-offending rates, and ultimately a reduction in crime.³⁵

28 Seymour, M. (2006) *Alternatives to custody*, Dublin: Business in the Community/Irish Penal Reform Trust, at page 7.

29 The Scottish Parliament Information Centre (2002) *Alternatives to Custody, Briefing 02/61* [available at: http://www.scottish.parliament.uk/business/research/pdf_res_brief/sb02-61.pdf].

30 The Howard League for Penal Reform (2006) *Community sentences cut crime – Factsheet* [available at: http://www.howardleague.org/fileadmin/howard_league/user/pdf/Community_sentences_factsheet.pdf].

31 Irish Prison Service (2008) *Annual Report 2007* [available at: http://www.irishprisons.ie/documents/IPS_AR_2007.pdf]. In its *Annual Report 2008*, the Irish Prison Service reported the average cost of a prison place to be € 92,717; this sum, however, excludes costs such as teachers’ pay which were included in previous years as a cost to the Exchequer. When the percentage adjustment for re-stated figure for 2007 (€ 85,362 instead of € 97,700 included in the 2007 *Annual Report*) is applied in reverse to the 2008 figure, the cost of a prison place in 2008 goes up to over € 105,000 per year.

32 The Howard League for Penal Reform (2006) *Community sentences cut crime – Factsheet* [available at: http://www.howardleague.org/fileadmin/howard_league/user/pdf/Community_sentences_factsheet.pdf].

33 The Scottish Prisons Commission (2008) *Scotland’s Choice: Report of the Scottish Prisons Commission*, at page 33 [available at: <http://www.scotland.gov.uk/Publications/2008/06/30162955/16>], at page 15.

34 Cid, J. (2009) ‘Is Imprisonment Criminogenic?: A Comparative Study of Recidivism Rates between Prison and Suspended Prison Sanctions’ in *European Journal of Criminology*, 2009: 6: 459.

35 United Nations Office on Drugs and Crime (2006) *Custodial and Non-custodial Measures: Alternatives to Incarceration*, New York: United Nations, at page 1.

3. Community-based sanctions in Ireland

A number of community-based sanctions, operating both with and without supervision, are available to Irish courts, and include:

- a) **Dismissal and conditional discharge** – a sanction imposed if a person is charged with an offence and the court thinks the charge has been proven, but either the trivial nature of the offence or extenuating circumstances in the case deem dismissal to be the most appropriate sanction. When ordering such sanction, the court can attach a number of conditions including supervision, payment of compensation to the victim, etc.
- b) **Probation order (PO)** can be imposed for up to three years with the purpose of rehabilitating the offender, protecting the public and preventing re-offending. Probation orders can have a number of conditions attached, including residence requirements; treatment requirements; reporting requirements; or others.
- c) **Compensation order (CO)** requires the offender to pay recompense to the victim; CO can be imposed in conjunction with another sanction such as a fine or as a condition attached to a PO or conditional discharge.
- d) **Community Service Order (CSO)** can be imposed with the aim of reintegrating the offender into the community through “positive and demanding work”.³⁶
- e) **Fines** can be imposed for the majority of offences, and are imposed with consideration of the offender’s means and proportionality in relation to the gravity of offence. Non-payment of a fine within the stipulated time automatically results in committal to prison for a period of up to 90 days.³⁷ The system of fines is currently being changed with the publication of the *Fines Bill 2009* which will introduce provisions allowing the courts to impose a CSO on a person who has not paid a fine to avoid committing them to prison,³⁸ but for the new law to be effective, the *Fines Bill 2009* requires some additional amendments that are discussed in more detail below.³⁹
- f) **Suspended sentences** involving the imposition of a custodial sentence with suspension on condition that the person does not re-offend within a specified period of time and that they will engage with a number of additional conditions such as addiction treatment, training or therapy, etc.⁴⁰
- g) The **Drug Treatment Court Programme (DTC)**, a pilot project established in Dublin, is available to those offenders who: live in Dublin; are over 17 years of age; and want to get off drugs. The programme focuses on individuals who have pleaded guilty and/or have been convicted of non-violent offences, and who apply to be included into the project. The DTC offers a number of treatments, including detoxification in the community or hospital placements.
- h) In a welcome development in the area of youth justice in Ireland, section 96 of the Children Act 2001 states that detention of children should only be used as a last resort. Additionally, section 143(2) stipulates that where detention is ordered, the Court must give its reasons for

36 See: Seymour, M. (2006) *Alternatives to custody*, Dublin: Business in the Community, pp7-8.

37 Ibid.

38 See: *Fines Bill 2009 and the Explanatory Memorandum* (available at: <http://www.oireachtas.ie/viewdoc.asp?DocID=11600&&CatID=59>).

39 See also: IPRT Submission to the Report Stage, *Fines Bill 2009 as amended in the Committee* (will be made available at: www.iprt.ie).

40 See: Part 10 of the *Criminal Justice Act 2006*.

doing so in an open court. Critical to ensuring detention is used only as a measure of last resort is the implementation of the range of community sanctions for which Part 9 of the Children Act 2001 makes provision. These include Day Centre Orders, Probation Orders incorporating training or activities, intensive supervision and residential supervision, Suitable Person (Care and Supervision) Orders, Mentoring Orders. The establishment of Young Person's Probation and the further resourcing of the Probation Service to undertake this work means that alternatives to detention are slowly becoming part of the range of choices available to the courts nationwide.⁴¹

4. Options for Reform

4.1 A single Community Service Order

The Irish criminal justice system is characterized by a relatively wide variety of options for community sanctions for adult offenders. Although the *Final Report of the Expert Group on the Probation and Welfare Service* recommended in 1999 an extension of available community sanctions to include, for example, treatment orders, mediation orders or counselling orders,⁴² IPRT believes that expansion can potentially further complicate the system without making obvious improvements to the system itself. It has recently been suggested that an effective system of punishment in the community does not have to have an excessive number of sanctions, rather it has to be established in such a way that “makes community sentences more meaningful, visible and immediate in their operation and impact”.⁴³ Rather than expanding a range of community sanctions that will remain invisible to the wider public, and rarely discussed in relation to their effectiveness, provision of solid information and assessment of a limited number of sanctions that are widely used can contribute to the understanding of the system, and to wider public support for its use.

The Scottish Prisons Commission recommended that where sentences involving supervision are imposed on the offender, there should be “one single Community Supervision Sentence (CSS) with a wide range of possible conditions and measures”.⁴⁴ Steps have also been taken in England and Wales to streamline the system of community sanctions through the introduction of a generic Community Order (CO) with a variety of requirements that can be attached to such a sentence by the courts.⁴⁵

Most recently, the Department of Justice and the Irish Probation Service published the results of their own review of the Community Service Scheme showing that – despite its significantly smaller economic cost, and increased benefits to victims, communities, and offenders – community service orders are still significantly underused in Ireland.⁴⁶ More importantly, the report clearly stated the view of the Probation Service that the scheme has the potential to be significantly expanded. IPRT believes that a political decision must now be made to move towards the use of community sanctions as the default penal sanction for less serious offences; punishment by imprisonment should be

41 The Probation Service (2007) *A Century of Change, Challenge and Service: Annual Report 2007*, Dublin: The Probation Service (available at: <http://www.probation.ie/pws/websitepublishing.nsf/Content/Publications---+General+Information-Annual+Reports%2C+Reviews+and+Statistics>).

42 Expert Group on the Probation and Welfare Service (1999) *Final Report of the Working Group on the Probation and Welfare Service*, Dublin: Stationery Office. See also: Seymour, M. (2006) *Alternatives to custody*, Dublin: Business in the Community, at page 8.

43 The Scottish Prisons Commission (2008) *Scotland's Choice: Report of the Scottish Prisons Commission*, at page 32.

44 Ibid, at page 33.

45 See: Salomon, E. 'Community justice' in Prison Reform Trust (2008) *Prison Report: Unlocking community solutions to crime*, at page 12.

46 Department of Justice, Equality and Law Reform/Irish Probation Service (2009) *Value for Money and Policy Review of the Community Service Scheme* (available at: <http://www.justice.ie/en/JELR/FINAL%20CSO%20VFM%20-%20October%2009.pdf/Files/FINAL%20CSO%20VFM%20-%20October%2009.pdf>).

reserved for the most serious of offences and imposed for the shortest appropriate period of time.

4.2 Detailed analysis of available services in Ireland

From the evidence available it is clear that the most important condition of effectiveness of community sanctions is the availability of services in the community, which would enable the judges to avail of such measures in sentencing practice. Lack of integrated services in the community has been identified as a significant factor in low use of community sanctions in England and Wales,⁴⁷ as well as in Ireland.⁴⁸ It is therefore imperative that **detailed assessment of the services available in Ireland is undertaken as soon as practicable to ensure appropriate provision in all court districts. Detailed, up-to-date information should be made available to the judiciary on a regular basis.**

4.3 Reform of fines

IPRT is very concerned at the continuing rise in the number of people being imprisoned in Ireland for failure to pay court-ordered fines: 3,366 people were imprisoned from January to the end of October 2009. This represents a jump of over 50% on the total figure for 2008.⁴⁹ The rise in imprisonment for fine default continues to persist despite chronic overcrowding in Irish prisons, the high costs of imprisonment, and solid evidence that community service programmes are far more successful than custodial sentences in dealing with fine defaulters, over 85% of whom return to prison within 4 years.⁵⁰ IPRT considers that in cases of non-payment of fines, Community Service Orders or other community-based sanctions should be used as a default sanction.

In this context, IPRT welcomes the introduction of the *Fines Bill 2009* which, when implemented, will go some way towards alleviating the current situation of the over-use of imprisonment in cases of non-payment of fines. However, for the legislation to provide a system in which imprisonment is only ever used as a measure of last resort in relation to fine default, some changes still need to be introduced before it is enacted into law. These include, for example, the removal of the lower limit of fines below which payment by installments is not possible (currently proposed to be set at €100); introduction of a CSO as a default sanction upon fine default (rather than the proposed use as an alternative to a term of imprisonment which would remain as a primary sanction); and the power of the Court to impose a fine higher than reasonably expected should be limited to exceptional cases and an explanation of why such sanction is decided upon should be provided in Court.⁵¹ Subject to those amendments, **IPRT urges the Oireachtas to complete the legislative process as a matter of priority to enable the Government and the Courts to introduce the appropriate system of management of fines as early as possible in 2010.**

4.4 Restorative Justice

Restorative justice is a victim and community oriented approach which requires the perpetrator to face up to the harm he or she has caused and to repair or make good the damage done. It places

47 See: Salomon, E. 'Community justice' in Prison Reform Trust (2008) *Prison Report: Unlocking community solutions to crime*, at page 13.

48 Seymour, M. *op.cit.* at note 39.

49 <http://www.irishtimes.com/newspaper/ireland/2009/1231/1224261476554.html>

50 Ian O'Donnell, Eric P.Baumer and Nicola Hughes (2008) 'Recidivism in the Republic of Ireland'. *Criminology and Criminal Justice*, 8 (2):123-146.

51 For a more detailed submission see: IPRT Submission to the Report Stage, Fines Bill 2009 as amended in the Committee (will be made available at: www.iprt.ie).

the victim at the centre of the process. IPRT welcomes the publication of the *Final Report* from the National Commission on Restorative Justice, published at the end of 2009, and fully supports the Commission's view that:

[...] the implementation of restorative justice on a nationwide basis will make a positive contribution to the lives of all citizens, and particularly to those more closely connected to the offending behaviour. Victims, offenders, their families and their communities can all benefit from a restorative approach to criminal behaviour [...] ⁵²

The report describes Restorative Justice as an “invaluable cost effective” option for the criminal justice system, citing a pilot project cost of €3,250 per adult, compared with €97,700 annually for a prisoner in detention. The report suggests that annual savings of up to €8.3 million can be made through the use of Restorative Justice. Restorative Justice should be applied in respect of persons before the District and Circuit Criminal Courts on criminal charges and should target cases of up to three years imprisonment, according to the report, which states: “It will provide a real prospect of diverting some offenders from a custodial sentence as well as deflecting them from committing further serious criminal acts.” The report shows clearly that the restorative approach provides an opportunity for the victims and communities to be involved in the administration of justice, and brings the process closer to the people directly affected by crimes.

IPRT believes that the existing schemes in Ireland prove that restorative approaches work with very positive results with the majority of offenders, regardless of gender or age. We therefore strongly support the Commission's recommendations and **urge the Government to implement them without delay.**

5. Summary and Recommendations

IPRT is committed to the development of evidence-based policy in the criminal justice system in Ireland. It is therefore of concern that there is still a dearth of information available about the use and effectiveness of community sanctions as they are currently operating, although some information about the kinds of projects supported by the Probation Service, in particular, is publicly available.⁵³

While the argument based on the cost-effectiveness of community sanctions is easy to make, the system must also be seen publicly as working to the advantage of wider society; the public needs to be given clear information about the system of community sanctions and their effectiveness. The report of the Scottish Prisons Commission has linked the need for information with the credibility of the system.⁵⁴ For community sanctions to have the support of the public, and for the sanctions to be effective, it is therefore imperative that evidence-based information is provided regularly in the public domain.

- IPRT believes that in Ireland imprisonment is used too often to deal with minor and non-violent offences – a situation that contributes to dangerous levels of overcrowding in Irish

⁵² National Commission on Restorative Justice (2009) *Final Report, December 2009*, in Foreword at p.3 (available at: <http://www.inis.gov.ie/en/JELR/NCRJ%20Final%20Report.pdf/Files/NCRJ%20Final%20Report.pdf>).

⁵³ See: Irish Probation Service <http://www.probation.ie/pws/websitepublishing.nsf/Content/Work+in+Courts>.

⁵⁴ The Scottish Prisons Commission (2008) *Scotland's Choice: Report of the Scottish Prisons Commission*, at page 32. See also in relation to restorative justice: Cornwell, D. 'A bridge too far?' in *Prison Reform Trust (2008) Prison Report: Unlocking community solutions to crime*, at page 13.

prisons and, most importantly, to high levels of re-offending in cases of minor offences.

IPRT recommends that the use of community sanctions is extended and that appropriate resources are re-directed to the Probation Service and other organisations involved in the delivery of community-based sanctions.

- The use of community sanctions should be based on a number of caveats:
 - i. criminal sanctions should not be used as a way of dealing with social issues which create pathways to imprisonment;
 - ii. community sanctions should not widen the reach of the criminal justice system to include individuals who should be dealt with using prevention and early intervention mechanisms or restorative justice processes;
 - iii. community sanctions should not be used as a 'step' towards custodial sentences;
 - iv. the sanctions must be age and gender specific, and tailored to the needs of the individuals involved.
- **A detailed analysis of the services available locally should be undertaken** as the first step in assessment of the equality of provision across Ireland, with a view to making the system of community-based sanctions more effective regardless of the geographical location of the offence and the offender.
- IPRT sees the restorative justice process as one of the ways by which the principle of the use of imprisonment as a last resort can be progressed in Ireland, at the same time reducing the number of people coming into prolonged contact with the criminal justice system. IPRT strongly supports the recommendations made by the National Commission on Restorative Justice and **urges the Government to implement them without delay**
- The continuing practice of **imprisonment for non-payment of fines** should cease as soon as possible, and the *Fines Bill 2009* (amended to ensure the use of imprisonment as a last resort) should be enacted as a matter of priority.
- In cases where a criminal sanction is required, greater use should be made of Community Service Orders. It is clear that the system already in place is currently underused. A political decision must now be made towards the use of community sanctions as the default penal sanction for less serious offences and the Government should commit itself to the promotion of community sanctions throughout the whole criminal justice system as a replacement for imprisonment.

