



IPRT Presentation to Oireachtas Joint Committee on Justice and Equality

Prisons, Penal Policy and Sentencing

8th February 2017

Opening Statement

The Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for rights in the penal system and the progressive reform of Irish penal policy. Our vision is of a penal system that is just and humane; that protects and promotes human rights, equality and social justice; and that only uses prison as a sanction of last resort.

We are delighted to have been invited to meet with the Joint Committee today, and we will do our best to respond to any questions that you may have following my opening remarks on penal policy, prisons, and sentencing.

I'd like to begin with an overall observation that reforms achieved since 2011 means that there is now a strong foundation on which to work towards a progressive penal system in Ireland – a penal system led by innovation and best practice and not crisis-management; a penal system that addresses and does not merely compound social inequalities.

Taken together, the cross-party consensus achieved in the *Joint Committee on Justice, Defence and Equality Report on Penal Reform* (March 2013) in particular, and the cross-agency consensus achieved in the *Strategic Review of Penal Policy Final Report* (July 2014) means that there is a strong basis for reform. Indeed, implementation of the recommendations in both reports would represent significant advances on achieving a just and humane penal system, which would in turn contribute to safer and more equal communities.

CHARACTERISTICS

Ireland's penal system is characterised by the systematic overuse of imprisonment as punishment. Although Ireland's daily prison population is average by European standards, our rates of committal to prison (and consequently our rates of release) are sixth highest of the 46 countries of the Council of Europe area, and third highest in the EU. In 2015, 89.6% of sentenced committals to prison were for sentences of 12 months or less. This includes 9,883 committals for non-payment of court-ordered fines, of which 2,667 (27%) were female.

The prison population is characterised by mental health issues, addictions (often together: "dual diagnosis"), homelessness, poverty, unemployment, educational disadvantage, chaotic family backgrounds and social marginalisation. An estimated 70% of people in prison have addictions (85% of female prisoners); and the prevalence of mental illness ranges from 16% to 27% among male prisoners, and from 41% to 60% among female prisoners. In this context, it is not surprising that reoffending rates on release from prison are high, with 45.1% of prisoners committing a further offence within 3 years of release.

It's important to emphasise that this does not mitigate the harm that is caused by offending, nor does it minimise the impact on victims and the community of crime. However, if Ireland's criminal justice system and penal policy is to meet its goal of safer communities, it must have at its centre *addressing the causes of offending behaviour*, and not just punishment.

As an overarching recommendation, IPRT calls for a clear Government commitment to evidence-informed criminal justice policy, grounded in data and evidence of what works to reduce crime and improve community safety.

PENAL POLICY

IPRT's starting point is that imprisonment itself causes a number of serious social harms, therefore imprisonment should only be used sparingly at the point of sentencing and the numbers in prison should be reduced. It is worth restating here the two principles that underpin penal reform:

1. It is the deprivation of liberty is the punishment, and prison conditions cannot be used as further punishment. (*Human Rights*)
2. At its core, prison is damaging in itself, and the negative impacts of prison – on individuals, on families, and on communities – mean that it should only ever be a sanction of last resort, reserved for the most serious offences and for those offenders who continue to present a serious risk to society. (*Penal Moderation*)

Therefore, the emphasis of a progressive, just and humane penal policy should be on:

- investment in early intervention, prevention and diversion strategies;
- investment in community-based sanctions and non-custodial alternatives (community service, restorative justice, community courts, bail supports, etc);
- protecting human rights and meeting best practice standards in prison, in cases where prison is the only appropriate response;
- greater investment in rehabilitation services and post-release supports, including:
 - improved inter-agency co-operation between prisons, probation, health, mental health, housing, social welfare and voluntary services; and
 - a review of the *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016*, which is currently so limited that it fails to fulfil its rehabilitative purpose.

In all cases, provision must be on a nationwide basis, and not solely concentrated in Dublin.

PRISONS

Positive reforms in recent years includes the safe reduction of the prison population from over 4,600 in 2011 to 3,700 today; a reduction in the number of men slopping out from 1,003 in December 2010 to less than 50 today; and innovations including incentivised early release programmes and supported community service schemes. Progressive legislation includes the *Criminal Justice (Community Service) Act 2011*, the *Fines (Payment and Recovery) Act 2014*, and (although very limited in its reach) the *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016*.

Despite these positive reforms, many serious issues remain, including:

- Crowding in a number of prisons, including Cloverhill and the two women's prisons;
- 45% of prisoners do not have access to private toilet facilities;
- Majority of prisoners are locked up for 16 or 17 hours per day, with 428 on restricted regimes, including 72 in solitary confinement – a damaging practice, which does not contribute to public safety; *[To this end, IPRT strongly welcomed the introduction by Deputy Clare Daly of the Prisons (Solitary Confinement) (Amendment) Bill 2016.]*
- 30 prisoners with serious mental health issues currently awaiting transfer to the Central Mental Hospital.
- Parole Board has not yet been established on a statutory basis, and release decision-making remains in political control; *[To this end, we strongly welcome the introduction of the Parole Bill 2016 by Deputy Jim O'Callaghan and look forward to its debate at Committee stage.]*
- Systems of accountability are weak:
 - prisoners still do not have access to an effective independent complaints mechanism;
 - Ireland has not yet ratified the OP-CAT (Optional Protocol to the Convention against Torture), which it will have signed 10 years ago in October 2017;
 - no inspection report by the Office of the Inspector of Prisons has been published since September 2014.

Robust independent oversight is crucial to the prevention of torture and degrading or inhuman treatment out of sight behind prison walls, and strengthening Ireland's systems of prisons accountability must be a priority.

SENTENCING

IPRT believes that necessary sentencing reforms should be informed by the principles of: *penal moderation* (that is, prison as a sanction of last resort); *proportionality*; and *judicial independence*. Imprisonment should only be used sparingly at the point of sentencing, and judges should exhaust all other options before imposing a custodial sentence. All mandatory or presumptive sentencing regimes should be repealed, and the establishment of a Sentencing Council should be explored as a potential mechanism to achieve greater transparency around sentencing, whilst maintaining judicial independence.

Community-based non-custodial sanctions are a cheaper and more effective response to less serious offending, while the community benefits directly from the work carried out (“community payback”). However, despite the introduction of the *Criminal Justice (Community Service) Act* in 2011, which obliges judges to consider community service in lieu of custodial sentences of 12 months or less, the number of community service orders made has fallen every year since 2012. Given that prison committals have continued to rise, this is a concern.

To this end, there is a need to ensure consistency in the availability, use and operation of community sanctions and supported community sanction schemes nationwide. Proposals for the establishment of community courts should be brought forward, and the drug court should be continued. Investment in restorative justice strategies, which have been found to be of benefit to both victims and offenders, should be prioritised. Finally, the youth justice strategies and approaches that have proven so successful with children and young people aged under-18 – including diversion, mentoring, and supported bail schemes – should be extended to young people aged up to 25. In February 2014, IPRT welcomed provisions for the differential treatment of 18-21s that were included in the *General Scheme of Criminal Justice (Community Sanctions) Bill*. We believe this is an area of sentencing reform that deserves further attention.

I’d like to conclude by thanking the Committee for its invitation and its attention to penal reform issues. I am ready to respond to the Committee’s questions as best I can.

Fíona Ní Chinnéide
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Irish Penal Reform Trust