

Progress in the Penal System (PIPS)

*A framework for penal reform
(2017)*



The Irish Penal Reform Trust is an independent non-governmental organisation campaigning for the rights of everyone in the penal system, with prison as a last resort.

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Sole responsibility for the content of this report lies with the author and IPRT.

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Senior Research & Policy Project Manager, Irish Penal Reform Trust

List of acronyms

BOBF:	<i>Better Outcomes, Brighter Futures</i> (National Children and Young People’s Policy Framework)
CEDAW:	Convention on the Elimination of Discrimination against Women
COC:	Close observation cell
CPT:	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CSO:	Community service order
ECOSOC:	United Nations Economic and Social Council
EPR:	European Prison Rules
ETB:	Education and Training Board
FOI:	Freedom of information
HIQA:	Health Information and Quality Authority
HSE:	Health Service Executive
ICCPR:	International Covenant on Civil and Political Rights
ICESCR:	International Covenant on Economic, Social and Cultural Rights
IHREC:	Irish Human Rights and Equality Commission
ILSU:	Independent Living Skills Unit
IOG:	Implementation Oversight Group (of the Strategic Review of Penal Policy)
IPRT:	Irish Penal Reform Trust
IPS:	Irish Prison Service
ISM:	Integrated Sentence Management
OPCAT:	Optional Protocol to the Convention against Torture
OSG:	Operational Support Group (in the Irish Prison Service)
NGO:	Non-governmental organisation
PMB:	Private Member’s Bill
PQ:	Parliamentary question
PSEC:	Prison Service Escort Corps
SOC:	Safety observation cell
SRGPP:	Strategic Review Group on Penal Policy

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Executive Summary

Progress in the Penal System (PIPS) sets out a clear vision for the future of Ireland’s penal system, with an ambition for Ireland to lead as a model of international best practice.

The overall purpose of PIPS is to monitor and assess progress across a broad range of issues in Ireland’s penal system over three years. To achieve this, IPRT has developed a series of 35 standards and indicators against which progress will be tracked over three years, with a series of short-term actions recommended for implementation each year. These recommended actions are intended to help facilitate continued progress in Ireland’s penal system and, more specifically, the prison system in Ireland.

While criminal justice stakeholders are assigned responsibility for implementation of these short-term actions throughout the report, it must be strongly acknowledged that overall responsibility remains with the State in terms of oversight and provision of adequate resourcing to relevant bodies.

The PIPS project is also intended as a means to inform a wide array of stakeholders, including: criminal justice stakeholders, politicians, media, the general public and international audiences interested in learning about the current state of the Irish penal system in comparison with other jurisdictions.

Finally, the overall aim of the PIPS project is to encourage constructive dialogue between a range of relevant stakeholders, which IPRT hopes will be strengthened as the project progresses.

Part 1:

The first part of the report briefly sets out the current context of the penal system in Ireland. It identifies and commends progressive penal policy developments that have occurred in Ireland since 2011. It also draws attention to some of the key human rights issues that still prevail in the prison system. IPRT then sets out our rationale for penal reform by outlining the principles and values that should underpin the system, as follows:

Principles of Penal Reform

1. Imprisonment as a last resort
2. Recognition of the harms and costs of imprisonment
3. Deprivation of liberty as the punishment
4. Balancing security, safety and protection of prisoners while ensuring a humane regime
5. Protection and promotion of human rights, equality and social justice
6. Emphasis on rehabilitation and reintegration

Values underlying the System

The values that must be embedded in the penal system, in particular the prison system as it is a closed institutional setting, are:

- Respect, dignity and protection from inhumane, discriminatory or degrading treatment
- Safety, protection of life and a duty of care
- Embedding accountability
- Applying consistency and promoting fairness and equality
- Promoting good relationships between prisoners, staff and management

Next, the process of the development of standards is articulated. IPRT’s standards are largely informed by international human rights standards and best practice. However, this set of standards aims to go beyond basic universal minimum human rights provisions and towards achieving a ‘world class’ penal system that other jurisdictions may seek to replicate.

IPRT’s 35 standards for Ireland’s penal system are set out at the end of this section. The standards encompass all key areas, including: conditions, regimes, oversight and accountability mechanisms, safety and protection, and reintegration. It is envisaged that amendments and inclusion of new standards may occur over the initial three-year period of the PIPS project.

Part 2:

The second part of the PIPS report assesses the current state of Ireland's penal system against the 35 standards, detailing the key indicators and providing an overall analysis under each standard.

A. An Effective and Humane Penal System

The first chapter of part two outlines the broader aspects of the penal system requiring reform in order to promote a system that can be characterised as 'effective and humane.' Six key standards are covered in this chapter: implementation of penal policy; use of imprisonment as a last resort; ensuring safe custody limits; establishing smaller prisons; and increasing provision of lower security settings and open prisons.

1. Implementation of penal policy

The continual monitoring and implementation of penal policy reforms can be described as a 'gold' standard if Ireland is to lead as a model of international best practice. The implementation of two national penal policy documents is evaluated: the *Oireachtas Sub-Committee Report on Penal Reform* (2013) and the *Strategic Review Group on Penal Policy Final Report* (2014). Overall analysis finds a considerable number of progressive penal policy commitments over the past five years, but identifies the need to ensure these commitments are being monitored, fully implemented and evaluated. Particular emphasis is placed on the need to publish criminal justice and prisons data in order to identify trends and inform policy and service provision.

2. Imprisonment as a last resort

Imprisonment as a last resort is an overarching principle that guides the work of IPRT. Standard two examines whether imprisonment is currently being used as a sanction of last resort and highlights the importance of a focus on alternatives to custody. While significant progress has been made in reducing Ireland's prison population over the past five years, reducing prison numbers further should be an ongoing objective; all criminal justice stakeholders have a role to play in achieving this. Overall analysis finds that while Ireland has the fourth lowest daily imprisonment rate in Europe, high committal rates and sentence lengths suggest that imprisonment is currently not being used as a last resort. This is particularly the case for the female prison population, despite the evidence that non-violent offences are largely associated with females who offend.

Nonetheless, legislation such as the *Criminal Justice*

(*Community Service*) (*Amendment*) *Act 2011* is to be welcomed, although further analysis should be undertaken in order to assess its effectiveness at reducing sentences of imprisonment of less than 12 months. IPRT sets a medium-term goal of reducing the prison population from 79 per 100,000 to 50 per 100,000. If achieved, this would mean Ireland has the lowest imprisonment rate in Europe.

3. Safe custody limits

Safe custody limits are an important feature of any prison system. Safe custody limits reduce the risk of violence and ensure the safety of prisoners. This standard highlights that all prisons should be operating at 10% below maximum capacity levels. A number of factors must be considered when estimating prison capacity levels, for example, closure of prison wings for refurbishment periods and access to regimes. Published capacity figures must be updated regularly to reflect such changes. Furthermore, special cells (including safety observation cells¹ and close supervision cells²) should not be included in capacity figures.

4. Smaller prisons

Prisons must be safe. Small prisons are more likely to ensure this. Small prisons reduce the likelihood of violence, and facilitate and encourage positive relationships between staff and prisoners. Research by a leading criminologist, Michael Tonry, indicates that the maximum prison size should be 300. Currently five out of the 12 Irish prisons have operational capacities above this figure, including Midlands Prison at 870 and Mountjoy Prison at 755. In total, seven of Ireland's prisons are operating above the ideal prison service of between 200 and 250.

5. & 6. Increasing low security settings and open prison provision

The final two standards in this chapter focus on minimising the institutional effects of imprisonment, a recommendation strongly conveyed by the Council of Europe. Low security prison settings should be available to prisoners determined through regular risk assessment. There are limited low security prison settings available across the estate, with the exception of the 'Grove Unit' in Castlerea Prison and Harristown House. The only other low security prison settings are two open prisons: Shelton Abbey, Co. Wicklow and Loughan House, Co. Cavan. Despite policy commitments to increase open prison provision, there has been a reduction in the provision of open prisons in 2017. Open prisons allow and facilitate for a more structured, gradual,

1 Safety observation cells are used to detain prisoners with serious mental health issues.

2 Close supervision cells are used to detain prisoners with challenging or violent behaviour.

reintegrative transition into society. There is a lack of access to lower security settings and open prison provision for some prisoner populations, in particular women and prisoners on protection. There should be a more transparent process and criteria for access to open prison facilities.

Overall Observations

IPRT welcomes the substantial reduction in prison population numbers. However further work is required in other areas in order to ensure progressive penal policy. Safe custody limits and smaller prisons ensure the safety of prisoners, while increasing low security settings and open prison provision will reduce the institutional effects of imprisonment while facilitating a rehabilitative and reintegrative approach.

B. Prison Conditions

Prison conditions should reflect basic living conditions on the outside. The ‘deprivation of liberty as the punishment’ is a principle laid out by the Council of Europe, and must be instilled in both policy and public debate.

7. & 8. General prison conditions

There has been substantial progress in a number of key areas related to the physical conditions of Irish prisons. One of the most notable achievements has been the dramatic reduction, albeit not full elimination, in the number of prisoners slopping out over the past five years. However, the considerable number of prisoners toileting in the presence of others is an area that requires further work. There have also been significant reforms in other areas, including: refurbishment of prisons, such as that of Mountjoy prison. Visible improvements have also been made to visiting conditions in some parts of the estate. Other conditions that affect the daily life of prisoners that need further attention include: diet and nutrition, tuckshop prices, gratuity payments, and access to legal representation. IPRT recommends that regular audits of general prison conditions should be undertaken throughout the estate.

9. Single-cell accommodation

Access to single-cell accommodation for those who choose it is a vital component of any decent prison system. Single-cell accommodation reduces the risk of violence and is an overall important feature in ensuring prisoner safety. However, just over half of the prisoner population currently resides in single-cell accommodation. In 2016, the newly-constructed Cork Prison was designed for double-cell occupancy, contravening international best practice standards.

10. Separation of remand from sentenced prisoners

The requirement to separate remand prisoners from sentenced prisoners is identified in various international human rights standards, including the *International Covenant on Civil and Political Rights*. Published data shows that a number of remand prisoners are sharing cells with sentenced prisoners, and there appears to be no separation of remand female prisoners from sentenced female prisoners.

11. Rights of Children and Families affected by Imprisonment

Prisoners, their families and children have a right to privacy and family life under the *European Convention on Human Rights*, and provisions of the *UN Convention on the Rights of the Child* apply to children who are affected by parental imprisonment. The rights and needs of children and families affected by imprisonment must be met, and family involvement in the sentence management of their family member should be encouraged and facilitated. IPRT welcomes some positive developments in this regard, including: recognition of children affected by parental imprisonment in the *Better Outcomes, Brighter Futures: the National Policy Framework for Children and Young People 2014-2020*; and a commitment made by the Irish Prison Service in July 2017 to ensure all visiting conditions across the estate are child-friendly within 12 months. However, improvements to other forms of contact such as increasing provision of telephone calls and Skype are needed to better support relationships between families and prisoners. It must be recognised that children and families play a key role in the rehabilitation and desistance process. In addition, the distinct needs of children affected by parental imprisonment should be recognised as an inter-departmental issue; mental health and education supports should be made available for this cohort of children.

12. Access to healthcare

Prisoners are likely to have disproportionate healthcare needs. The ‘equivalence of care’ principle requires that prisoners have access to a full range of preventative services and continuity of healthcare in the community. The responsibility of healthcare in Irish prisons currently lies with the Irish Prison Service. This is despite growing trends in Europe whereby prison healthcare is under the remit of Ministries of Health. The Department of Justice and Equality and Department of Health are in discussions about a possible transfer, however there has been no recent update on its progress. Recommended actions include the transfer of healthcare to Department of Health, and an annual review of prison healthcare services.

13. Mental health

In 2017, it was reported that 20-30 prisoners were awaiting transfer to the Central Mental Hospital. IPRT is clear that people with serious mental health issues should not be in prison, and should be diverted immediately to appropriate treatment. Nevertheless, mental health supports should also be available to prisoners in the system. The current ratio of psychologists to the prison population in Ireland is quite low by international standards.

14. Addiction and treatment

The link between addiction, social exclusion and crime is well-established. Until the root causes of social exclusion and addictions are addressed with increased provision and access to treatment in the community, the high number of people with addictions in the prison system will remain. A prompt health response is the most appropriate form of action, as recommended by the Council of Europe. In this respect, IPRT welcomes the new *National Drugs Strategy*³ which places emphasis on recognising drug addiction primarily as a health issue. This section highlights the current lack of treatment services to meet demand both while in prison and post-release.

15. Privacy

A prisoner has a right to privacy. This report highlights the intrusive role the media sometimes plays, while also recommending that routine censorship of prisoner correspondence should end.

Overall Observations

Progress is visible in terms of the physical aspects of prison conditions, however more work is required in improving aspects of prisoners daily living environment, for example, prices in tuckshops that consider gratuity payment levels. Healthcare is a vast issue which deserves a report in itself (beyond the scope and expertise of this current project). In particular, mental healthcare and addressing addictions and social exclusion are key areas that require considerable work by stakeholders outside of the criminal justice system.

C. Regimes

16. Out-of-cell time

Purposeful activity is a central feature of a constructive prison regime. Every prisoner should spend a minimum of five hours a day engaged in structured meaningful activity, in addition to a further seven hours' out-of-cell time. In 2017, staff shortages have reportedly led to closure of schools and workshops in prisons. This is of serious concern. Furthermore, over 10% of the prison population are on a restricted regime (spending 19+ hours in cell), which means a substantial proportion of the prison population has limited access to purposeful activity.

17. Individual sentence management

Sentence management is a vital component in ensuring prisoner progression and rehabilitation. Therefore, individualised sentenced management should begin at very early stages of the sentence, with the positive facilitation and inclusion of family involvement. Tailored sentence management planning is essential. In 2008, the Irish Prison Service introduced Integrated Sentence Management (ISM). However, there are currently only 24 designated ISM officers across the prison estate; this is a small number considering the current prison population exceeds 3,500. Further resourcing is required to ensure the effective implementation of integrated sentence management.

18. Developing life skills

Assuming personal responsibility and developing life skills is a key standard that IPRT has created. Developing and maintaining life skills while in prison is essential in order to ensure prisoners either acquire or maintain the everyday skills needed upon release. In this regard, IPRT welcomes the provision of Independent Living Skills Units (ILSU) by the Irish Prison Service. An ILSU has been introduced in Wheatfield Prison with another due to open in Mountjoy Prison shortly. Areas that require further progress include increasing the number of prisoners who have access to communal dining across the estate.

19. Education

Education in prison has the potential to transform the lives of individuals. The prison population is generally characterised as having low levels of educational attainment. However, it is imperative that education in prisons caters for and reflects the diverse educational needs of the prison population. The Irish Human Rights and Equality Commission

3 Department of Health (2017) Reducing Harm, Supporting Recovery 2017-2025
<http://health.gov.ie/blog/publications/reducing-harm-supporting-recovery-2017-2025/>.

(IHREC) recently highlighted the depletion of funds for prison education to the UN Committee against Torture (CAT). Furthermore, staff shortages have led to closures of schools across the estate. Further monitoring of the current situation is required in order to negate the effects and access to education by the prison population, which is a fundamental human right.

20. & 21. Community involvement and civic and political participation

Community involvement and civic and political participation should be encouraged to promote participation by the prisoner population. A number of programmes have been developed by external agencies in Irish prisons, which appear to have a powerful impact on the prison population. However, low voting levels indicate poor prisoner participation. Increasing prisoner representation groups would help facilitate and empower prisoners.

Overall Observations

IPRT has particular concerns over the limited out-of-cell time prisoners currently have, in particular prisoners who are placed on a restricted regime. Access to education and purposeful activity is of utmost importance. IPRT welcomes new provisions of the Irish Prison Service, such as the Independent Living Skills Units (ILSU). However, adequate resourcing must be in place – in particular, to ensure all prisoners have access to education in prison.

D. Complaints, Accountability, Inspections & Oversight Mechanisms

Transparency and accountability are essential elements to ensure both the protection and promotion of human rights in the Irish prison system. Any individual placed in a closed institutional setting is at increased vulnerability to potential human rights violations. Therefore, safeguards must be robust and attained at the highest level in order to prevent any human rights abuses occurring.

22. & 23. Complaints system

In 2016, a total of 76 serious complaints (known as 'Category A') were made by prisoners. A low level of complaints may be an indicator of a lack of confidence in the system by prisoners. The Inspector of Prisons (2016) previously highlighted deficiencies in the internal prisoner complaints system, and recommended an overhaul of the system. A recommended action here is that prisoners should receive an outcome of their complaint within a three-month timeline. Currently prisoners in Ireland have no access to an independent complaints mechanism. The Department of Justice and Equality stated that prisoners would

be able to make complaints independently to the Office of the Ombudsman by the end of 2017. This is a welcome step, and the timeline must be met.

24. Monitoring and inspections

Regular and unannounced inspections by external bodies, such as the Inspector of Prisons, help provide for increased transparency in the prison system. However, just one prison inspection report has been published since 2014. The Inspector of Prisons does not have the authority to publish reports, which is currently the decision of the Minister of Justice. The Inspector of Prisons' remit has broadened over the years, and includes responsibility for investigations into any death occurring while in custody or on temporary release.

In particular, PIPS highlights the urgent importance of the State's ratification of the *Optional Protocol to the Convention against Torture (OP-CAT)*. Ireland signed OPCAT on 2nd October 2007 but has yet to ratify it. The ratification of OPCAT would mean the development of a National Preventative Mechanism (NPM), which would increase both national and international inspections of places where persons are deprived of their liberty. **IPRT sees this prolonged delay of ratification of OPCAT as a major failure by the State.**

25. Investigations into deaths in custody

The State has a duty to care to all persons in custody. In this regard, an independent, robust and timely investigation is required into all deaths of any person in custody or while on temporary release, with recommendations implemented in order to protect against potential future deaths or serious incidents.

Overall Observations

Independent oversight is an area that requires significant progress in order to ensure the protection of human rights of everyone in the prison system. The ratification of OPCAT is crucial in this regard, along with adequate resourcing of the Office of the Inspector of Prisons for the delivery of timely inspection reports. The Inspector of Prisons should have the authority to publish reports directly. Access to an independent prisoner complaints system is a significantly important feature, and a timeline of end 2017/early 2018 at latest is a progressive step in the right direction.

E. Safety and Protection in Irish Prisons

The safety and protection of everyone in the prison system is essential.

26. Solitary confinement

Solitary confinement must only be used as a last resort and applied for the shortest amount of time possible: no more than 15 consecutive days in accordance with international human rights standards. Solitary confinement removes meaningful activity and human contact and therefore, the reasons for solitary confinement must be recorded. The Irish Prison Service has made significant progress in reducing the number of prisoners in solitary confinement by 80% since 2013. An amendment to the Prison Rules to comply with the UN Mandela Rules requires that all prisoners have at least two hours' out-of-cell time with access to meaningful human contact. The Irish Prison Service has published its policy on the elimination of solitary confinement, which is welcomed. Emphasis must now be placed on the implementation of transition programmes for prisoners returning from this harmful regime back to the general prison population and community.

27. Violence in Irish prisons

Violence remains a feature of Irish prisons. Factors that would contribute to a reduction in the levels of violence include: safe custody limits; access to single-cell accommodation; facilitation of positive family contact; and access to a wide and varied constructive regime, with increased levels of out-of-cell time. Proper record-keeping of violent incidents is essential. IPRT welcomes the proposed establishment of a new therapeutic unit to manage and address prisoners who display violent and disruptive behaviour.

28. Prisoners under escort

Issues relating to escort conditions in Ireland include: prisoners being handcuffed in small cellular compartments; conditions for prisoners while under escort, such as toilet breaks; treatment of prisoners with medical conditions; and the standard practice of handcuffing. The Prison Service Escort Corps is currently not under any inspection regime. Good practice from Northern Ireland and the UK affirms the importance of reviews on escort conditions.

29. Staff training

Ongoing staff training is important to ensure staff carry out their duties effectively. The *Council of Europe Code of Ethics for Prison Staff* provides good guidance for staff in this regard. The additional recruitment of prison officers and accredited training are positive steps in the right direction. Human rights and equality should be an essential feature in the training of all prison staff, and staff must be supported in order to carry out their duties to the highest level.

30. & 31. Developing positive relationships

Good relationships between staff, management and prisoners is an essential component in promoting positive culture in Irish prisons. Metrics should be in place to gauge this across each individual prison. Relationships are key to ensuring the safety and protection of everyone. Therefore, conflict resolution techniques should be applied, with the use of force or restraint only as a last resort.

32. Groups at Risk of Discrimination

Particular groups of people at risk of discrimination due to age, gender, sexuality, disability or ethnicity should be protected and safeguarded. A zero tolerance approach must be taken to any form of discrimination. The implementation of Section 42 of the Public Sector Duty under the *Irish Human Rights and Equality Act 2014* is essential in this respect.

Overall Observations

There have been a number of positive developments, including the proposed establishment of a therapeutic unit for prisoners with violent or disruptive behaviour. Furthermore, the Irish Prison Service has taken steps to reduce the number of prisoners in solitary confinement and work towards damaging its harmful impact. Further work is required to attain the highest standard in all of these areas, including escort conditions. The Department of Justice and Equality review of prisoner escort services should be published.

F. Reintegration

Supporting rehabilitation and reintegration is essential for safer communities and a safer society. A number of strategies have made reference to this area over the last number of years. However, implementation of commitments has been weak. This is one key area that needs strong collaborative inter-agency work that goes beyond the remit of criminal justice stakeholders. This responsibility extends to welfare, housing, education, employment, health and other services.

33. Parole system

Issues relating to life sentences and the parole system continue to be of concern to prisoners, including: the lack of independence of the Parole Board; delays in parole hearings; and lack of assurance among prisoners that they can fulfil the recommendations made by the Parole Board. Some progress is evident in the introduction of the *Parole Bill 2016*. While IPRT welcomes the proposal to place the parole system on a statutory footing, IPRT has reservations relating to certain aspects of this Bill. More broadly, reform of the parole system is required.

34. & 35. Barriers to reintegration

A number of barriers to reintegration exist within the current context of the socio-economic situation of Ireland, such as access to accommodation upon release. In the current homelessness crisis, emergency/short-term accommodation has become a dominant feature of Irish society. This type of accommodation is wholly unsuitable for any individual, including those coming out of a prison setting who, as a result, are at increased risk of re-offending without proper supports in place. Lack of supports or proper linking in with relevant services upon release increases the individual's vulnerability to offending behaviour. Families must also be supported during this period, to minimise pressure and strain which may result in a breakdown in familial relationships if the transition is not properly supported.

Overall Observations

Overall analysis indicates the need for forward planning and inter-agency co-operation. Legislation or policy requiring this may act as a safeguard towards ensuring supports are made available by the relevant responsible bodies. A review of the current spent convictions legislation should be a priority, as its limitations continues to act as a massive barrier to the reintegration of people with a convictions history.

Conclusion

The short-term actions laid out in this first Progress in the Penal System report aim to make all of society safer through supporting individuals to transform their lives positively. It is important to note, however, that crime cannot be viewed as a social problem in isolation from deeper social and economic issues. While this report focuses on reform of the penal system, a greater shift in social policy towards combatting social exclusion and social injustice, is also needed if the State is to achieve real substantive change.

This time next year, IPRT will be assessing progress achieved on the recommended actions set out in this report. We look forward to working constructively with all stakeholders to engaging and developing a strong partnership to work together to achieve positive change in the penal system in Ireland.

Foreword

The Irish Penal Reform Trust (IPRT) came of age in 2015, marking 21 years of contribution to the pursuit of progressive penal policy and practice in Ireland. This coming of age provided a timely opportunity for the Board and staff to take stock and consider our vision and ambitions for a humane penal, one that would be underpinned by a bedrock of decency and respect in the decades ahead.

This process of reflection and consideration, accompanied by a strategic planning process, led us to this conclusion: what is required in Ireland is a step change in performance throughout the penal system to realise the vision of a humane, just system which uses imprisonment only in cases of last resort, which seeks out community alternatives that can sustain the relationships of those convicted with families, allow them to contribute to society, and that recognises their rights as citizens and human beings. In the case of imprisonment, it should be understood that the deprivation of liberty is the sole punishment and in all other respects, those imprisoned are treated with respect and dignity and afforded genuine opportunities to flourish as valued members of society.

In this context we see the role of IPRT in the period ahead as working constructively with the penal system and setting out a vision of a decent, humane penal system by identifying measurable standards of good practice, regularly appraising Irish penal practices against these standards, commending good practice, supporting continuous improvement, ensuring accountability, and challenging wilful neglect.

It is in this context that the Progress in the Penal System (PIPS) initiative was developed and progressed over the past year. We are committed to further developing and sustaining this project in the years ahead as a means to enabling the realisation of an Irish penal system that becomes recognised and known for treating people humanely, that works well and fairly for all involved – prisoners, family, friends and staff – and as one that increasingly meets human rights standards and best practice.

We would like to take this opportunity to thank all the staff involved, in particular Michelle Martyn and Fíona Ní Chinnéide; our Board colleagues; our Advisory Board colleagues for this project, Prof Ian O'Donnell, Niall Walsh and David Perry; and our funders for this work in particular.

We commend this report to you and encourage you in your engagement with the penal system and wider social justice agendas in whatever capacity to draw upon this report to advance our collective efforts to realise a humane and decent penal system in Ireland.

Seamus Taylor

Chair, IPRT

Prof Aislinn O'Donnell

*Chair, PIPS Advisory Group
Board member, IPRT*



Introduction

Progress in the penal system (PIPS) is an ambitious new project developed by the Irish Penal Reform Trust (IPRT), Ireland's leading non-governmental organisation advocating for penal reform since 1994.

The aim of PIPS is to set out a clear vision for Ireland's penal system, with the aspiration to lead as a model of international best practice, ensuring imprisonment is a sanction of last resort, and the protection and promotion of human rights in Ireland's prison system.

This report describes Ireland's penal system and sets out standards developed by IPRT, which are informed by and build on international human rights standards and examples of best practice. We ask that the State and relevant stakeholders commit to working towards achieving these standards. In a context where international human rights standards are universally applicable and where much poorer countries are obliged to meet minimum human rights standards, Ireland should not only be meeting but exceeding international human rights standards. In this respect, the PIPS project looks beyond basic human rights to set out the standards that should be met in order to achieve the goal of a 'world-class' penal system.

When IPRT talks about our vision for the 'penal system', this refers to the wider reform of punishment, what is viewed as punishment, the purpose of punishment, and why we need to look beyond prison and promote the use of alternatives to custody.

Constructive process

Informed by international¹ and European² human rights standards and best practice, IPRT has developed its own set of 35 standards across a number of key areas, including: prison conditions, regimes, oversight mechanisms and reintegration. To monitor performance against these standards, indicators have been formulated and adapted to the local context of the Irish penal system. Key short-to-medium-term tangible actions are identified regarding each indicator. We hope that by setting out short-term actions, this will in effect help achieve long-term progress, widely promoting and respecting the rights of everyone in the penal system.

This process will be used to evaluate the State's progress over an initial three-year period. Annual reports on progress towards meeting these standards will be published. These annual reports aim to act as an advocacy tool for the full realisation of human rights and achieving best practice in Ireland's penal system.

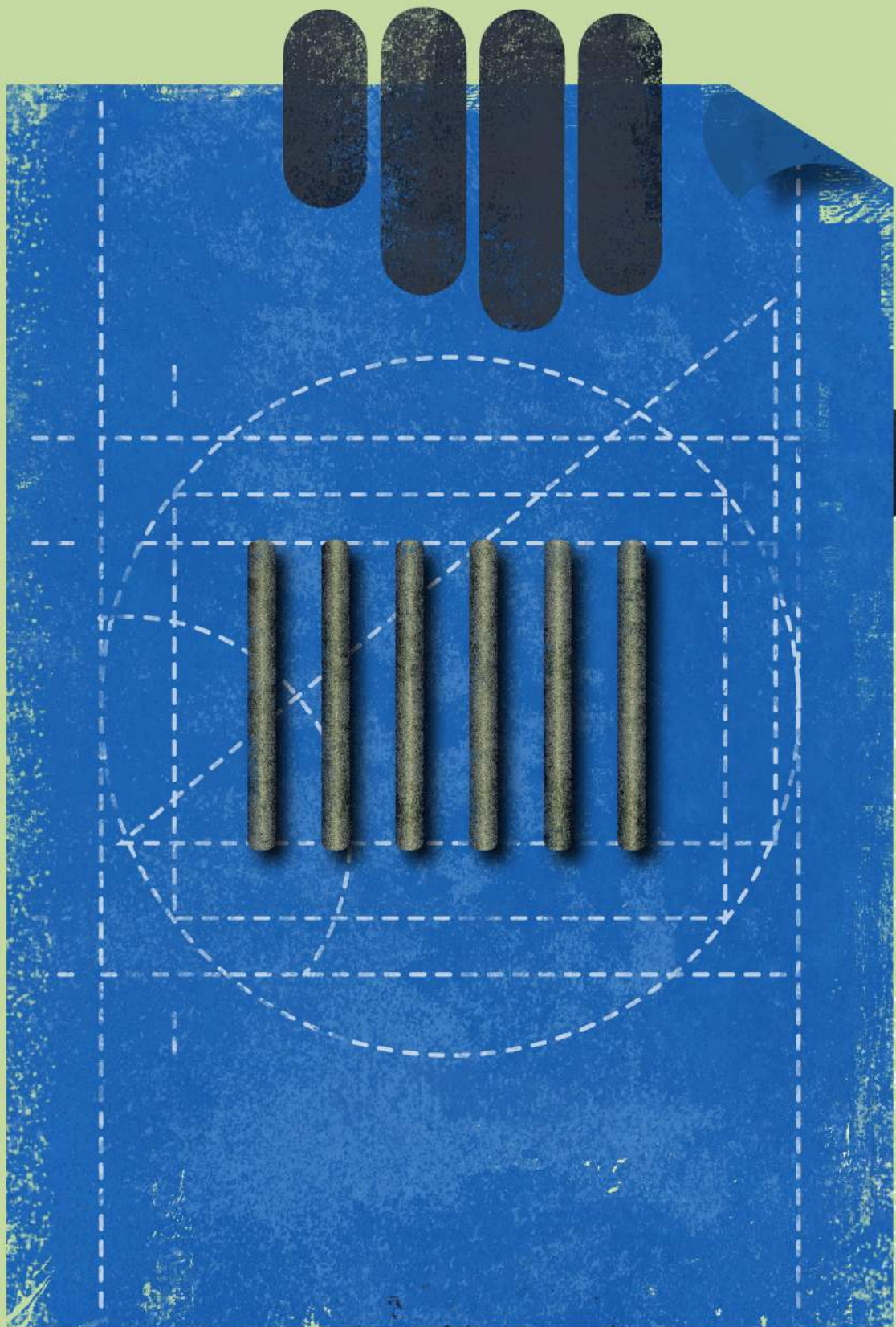
Genesis of the project

The PIPS project was conceived by the Board of the Irish Penal Reform Trust as a means to inform, educate, raise awareness and provide a greater understanding of the current state of the Irish penal system, and in particular human rights, in Irish prisons. Relevant target audiences include: criminal justice policymakers and practitioners, politicians, media, the general public, and an international audience interested in learning and comparing the Irish penal system to other jurisdictions.

The emphasis of this project is on a continuous process: through engagement and dialogue with a variety of stakeholders, IPRT will strengthen and develop this project on an annual basis.

The PIPS project has been guided by an Advisory Group comprised of four members who have expertise in a diverse range of backgrounds. The Advisory Group has been instrumental in shaping the vision of the project and in providing reflective and critical feedback for this report.

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- 1 UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules, revised version, adopted by the General Assembly in 2015) https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf, UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules) <https://www.penalreform.org/priorities/women-in-the-criminal-justice-system/bangkok-rules-2/>, UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) <http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>, UN Convention against Torture (CAT) and Other Cruel, Inhuman or Degrading Treatment or Punishment <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>, UN Convention on the Rights of the Child <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>, International Covenant on Civil and Political Rights <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>, International Covenant on Economic, Social and Cultural Rights <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf> and the Convention on the Elimination of all Forms of Discrimination against Women <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.
 - 2 European Prison Rules (2006) <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>, European Convention on Human Rights http://www.echr.coe.int/Documents/Convention_ENG.pdf, European Convention for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment <https://rm.coe.int/16806dbaa3> All COE recommendations are available to access here: <http://www.coe.int/en/web/prison/conventions-recommendations>.



PART 1:

Setting the Standards

Guidelines for achieving a world-class penal system

1.1 Context

Since 1994, IPRT has worked solidly to advocate for reform in the Irish penal system on a number of issues. Since 2011, a number of progressive developments have been visible and strongly welcomed by IPRT. These reforms include:

- ending the practice of sending children to prison (St. Patrick's Institution) in 2017;³
- safely reducing the prison population from over 4,600⁴ in February 2011 to 3,712⁵ in June 2017;
- the near elimination of the practice of 'slopping out'⁶ from 1,003⁷ in December 2010 to 56⁸ prisoners in April 2017;
- the introduction of innovative schemes including the Community Return Programme in 2011,⁹ the Community Support Scheme in 2013,¹⁰ and the recently piloted Integrated Community Model Scheme¹¹ introduced and supervised by the Probation Service; and
- the enactment of progressive legislation including: the *Criminal Justice (Community Service) (Amendment) Act 2011*,¹² the *Fines (Payment and Recovery) Act 2014*,¹³ and although currently overly restrictive¹⁴ in its scope, the introduction of legislation to expunge minor convictions – the *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016*.¹⁵

3 Department of Justice and Equality, *Tánaiste announces closure of St. Patrick's Institution*: <http://www.justice.ie/en/JELR/Pages/PR17000117>.

4 International Covenant on Civil and Political Rights (2017) *Concluding observations on the fourth periodic report of Ireland*, p.6. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f4%2fAdd.1&Lang=en

5 Irish Prison Service, *Prisoner Population on 30th June 2017*: <http://www.irishprisons.ie/index.php/information-centre/statistics-information/2015-daily-prisoner-population/2017-prison-populations/>.

6 'Slopping out' is the use of a chamber pot or bucket to toilet during the night with the emptying of waste when cells are unlocked the following morning.

7 Written Answers, *Prisoner Statistics*: <https://www.kildarestreet.com/wrans/?id=2011-01-27.524.0&s=prison+section%3Awrans>.

8 *Census of Cell Occupancy and In Cell Sanitation April 2017 Report*: <http://www.irishprisons.ie/index.php/information-centre/statistics-information/census-reports/>.

9 More information on the Community Return Programme can be found here: <http://www.justice.ie/EN/PB//WebPages/WP16000037>.

10 More information on the Community Support Scheme can be found here: <http://careafterprison.ie/community-support-scheme/>.

11 For further information on Integrated Community Model Scheme, see *Probation Service Annual Report 2016*, p. 6: <http://www.pprobation.ie/EN/PB//WebPages/WP17000014>.

12 The Criminal Justice (Community Service) (Amendment) Act 2011 requires that judges must consider a community service order for all sentences of less than 12 months. More information available here <http://www.irishstatutebook.ie/eli/2011/act/24/enacted/en/html>.

13 See *Fines (Payment and Recovery) Act 2014* here: <http://www.irishstatutebook.ie/eli/2014/act/7/enacted/en/html>.

14 For the limitations of the current spent conviction legislation, see IPRT's Press Advisory, *Passing of Spent Convictions Legislation a historic step for Ireland, but could go much further*: <http://www.iprt.ie/contents/2856>.

15 To view the spent convictions legislation, see: <http://www.irishstatutebook.ie/eli/2016/act/4/enacted/en/html>.

Despite these welcome developments, a number of fundamental human rights concerns in the Irish prison system remain, outlined below.

Overcrowding: Overcrowding persists, with a number of prisons operating above the Inspector of Prisons' recommended maximum capacity, including the Dóchas Centre (female), Limerick Prison (male) and Limerick Prison (female).¹⁶

Restricted regimes: Out of a total population of 3,750, 430 prisoners are on a restricted regime, with limited out-of-cell time. This means approximately 11% of the prison population are locked up for more than 19 hours a day.¹⁷

Solitary confinement: A total of 44 prisoners are currently in solitary confinement (this means locked in a cell for 22–23 hours on a daily basis).¹⁸

Cell-sharing: Almost half (46%) of the prison population are cell-sharing, with 1,396 prisoners in a double cell, 240 in a triple cell and 74 in a quadruple cell or room.¹⁹

Healthcare deficiencies: Both the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)²⁰ and the Inspector of Prisons²¹ (2016) have highlighted deficiencies in the provision of healthcare in a number of prisons.

Drug dependency: An estimated 70% of the prison population²² is reported to have drug dependency issues with even higher rates recorded for the female prison population, at 85%.²³ Recent figures indicate that almost 1,800 prisoners received methadone during 2016.²⁴

Mental illness: Mental illness is prevalent in Irish prisons, with an average of 20 prisoners awaiting transfer to the Central Mental Hospital at any given time.²⁵

Violence: Violence is endemic in Irish prisons.²⁶

Lack of complaints mechanism: Prisoners have no access to an independent complaints mechanism.

OPCAT: The State has yet to ratify the Optional Protocol to the Convention against Torture (OPCAT), ten years on from signing the treaty, which would allow for greater monitoring and inspections of all places where people are deprived of their liberty.²⁷

16 Prisoner Population figures 8 June 2017: http://www.irishprisons.ie/wp-content/uploads/documents_pdf/08-June-2017.pdf.

17 Ibid.

18 Census of Restricted Regimes April 2017: http://www.irishprisons.ie/wp-content/uploads/documents_pdf/April-2017-Restriction.pdf.

19 Census Prison Population Cell Occupancy and In-Cell Sanitation April 2017: <http://www.irishprisons.ie/index.php/information-centre/statistics-information/census-reports/>.

20 Council of Europe (2015) Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture: <https://rm.coe.int/1680696c9a>. Herein, this committee is referred to by its acronym (CPT) or as the Committee for the Prevention of Torture.

21 Inspector of Prisons (2016) Healthcare in Irish Prisons: http://www.justice.ie/en/JELR/Healthcare_in_Irish_Prisons_Report.pdf/Files/Healthcare_in_Irish_Prisons_Report.pdf.

22 More than 70% of prisoners have addiction issues, The Irish Times: <http://www.irishtimes.com/news/crime-and-law/more-than-70-of-prisoners-have-addiction-issues-1.2961144>.

23 Clarke, A and Eustace, A (2016) Drug and Alcohol Treatment Services for Adult Offenders in Prison and in the Community, Eustace Patterson Limited. p. 74..

24 Written Answers, Prison Drug Treatment Service available at <https://www.kildarestreet.com/wrans/?id=2017-02-28a.270>.

25 Prison Medical Services: <https://www.kildarestreet.com/wrans/?id=2017-02-28a.266>.

26 This issue of violence in Irish prisons was recently raised by UN CAT in 2017 and previously by the European Committee for the Prevention of Torture (2015).

27 If OPCAT were ratified, this would provide for greater transparency through regular international and national inspections (with the establishment of a national preventative mechanism) for all places where people are deprived of their liberty, in order to prevent human rights violations occurring.

1.2 Ireland, human rights and the prison system

Ireland's population is approximately 4.75 million²⁸ and the prison population is 3,712.²⁹ Twelve prisons comprise the entire Irish prison estate: Mountjoy Prison (male, including Mountjoy West, formerly St Patrick's Institution), the Dóchas Centre (female prison, part of the Mountjoy Campus), Arbour Hill Prison (male), Cloverhill Prison (male remand), Wheatfield Place of Detention (male), Limerick Prison (male and female), Cork Prison (male), Midlands Prison (male), Portlaoise Prison (male), Castlerea Prison (male) and Ireland's two open prisons: Shelton Abbey in County Wicklow and Loughan House in County Cavan (both male).

The Prisons Act 2007³⁰ and the Prison Rules 2007³¹ provide the main statutory framework for the prison system in Ireland. Other relevant legislative provisions include: the Prison (Visiting Committees) Act 1925, the Criminal Justice Act 1960, the Criminal Justice (Miscellaneous Provisions) Act 1997, the Criminal Justice Act 2007 and the Transfer of Sentenced Persons Acts 1995 and 1997.³² The State is also obliged to comply with the Constitution of Ireland and the European Convention on Human Rights Act 2003. Other international treaties that Ireland has signed up to include: the Convention for the Prevention of Torture and Inhuman or Degrading Treatment, the International Covenant on Civil and Political Rights (ICCPR), the United Nations Convention against Torture, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Elimination of All Forms of Racial Discrimination (UNCERD). The European Prison Rules 2006 (EPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and recommendations made by the Council of Europe also provide best practice guidance.

Four key philosophies underlie the purpose of punishment. These are: retribution, deterrence, rehabilitation and incapacitation. In 2014, the Strategic Review Group on Penal Policy (SRGPP) highlighted that the 'dual purposes of punishment and rehabilitation should be the primary considerations in the imposition and management of criminal sanctions as being in the interests of best serving society, protecting victims of crime and deterring future offending.'³³

28 Central Statistics Office (CSO) figures 2016: <http://www.cso.ie/en/census/census2016reports/census2016preliminaryreport/>.

29 Irish Prison Service, *Daily Prisoner Population 30 June 2017*: <https://www.irishprisons.ie/index.php/information-centre/statistics-information/2015-daily-prisoner-population/>.

30 Prisons Act 2007: <http://www.irishstatutebook.ie/eli/2007/act/10/enacted/en/html>.

31 Prison Rules 2007: <http://www.irishstatutebook.ie/eli/2007/si/252/made/en/print>.

32 Irish Prison Service, *Annual Report 2016*, p. 3.

33 Department of Justice and Equality, *Strategic Review of Penal Policy Final Report (2014)* p. 8: <http://www.justice.ie/en/JELR/Pages/PB14000244>.

1.3 Principles that should underpin the penal system

IPRT advocates that the following six principles should underpin and guide penal reform and the penal system:

1. imprisonment as a last resort;
2. recognition of the harms and costs of imprisonment;
3. deprivation of liberty as the punishment;
4. balancing safety and protection of prisoners while ensuring a humane regime;
5. protection and promotion of human rights, equality and social justice; and
6. emphasis on rehabilitation and reintegration.

GUIDING PRINCIPLE 1: Imprisonment as a last resort

IPRT's overarching guiding principle is that imprisonment must be a sanction of last resort, one that should be reserved for the most serious offences and for those who present a serious risk to society. This principle is a policy recommendation that dates as far back as the Report of the Committee of Inquiry into the Penal System³⁴ (most commonly known as the Whitaker Report), in 1985.

Figures outlined in this report (*Standard 2*) highlight the necessity of enshrining the principle of imprisonment as a last resort into domestic legislation. In this respect, IPRT welcomes the statement by Tánaiste and then Minister for Justice and Equality, Frances Fitzgerald TD, that 'the use of prison as a sanction of last resort is a core principle of penal reform' (June, 2017).³⁵

GUIDING PRINCIPLE 2: Recognition of the harms and costs of imprisonment

Prison is a harmful and damaging environment. Short periods of imprisonment can have damaging effects, including loss of employment or a breakdown in familial relationships. Children and families on the outside often feel and experience stigmatisation. In addition, families may face financial difficulties through the loss of an income or through additional costs associated with travelling to prison and providing personal items such as clothing to the prisoner.

The impact of having a criminal conviction itself also acts as a barrier to reintegration into communities and society. It can often prevent an individual from accessing housing, insurance, travel, education and employment upon release. These harms and costs associated with imprisonment must be recognised, as a shift towards alternative community sanctions would benefit both offenders and society.

A previous IPRT report illustrated the benefits of community sanctions.³⁶ It showed how they can facilitate communities to actively engage in the legal and practical process of 'paying back'.³⁷

Community sanctions also help individuals who offend in terms of preventing isolation from the community and preventing the adverse effects imprisonment can have. Other forms of alternative measures, such as restorative justice, allow for a

34 *The Report of the Committee of Inquiry into the Penal System* (1985) Government of Ireland, Dublin.

35 Department of Justice and Equality, *Speech the Tánaiste and the Minister for Justice and Equality Frances Fitzgerald TD at the launch of the Irish Prison Service and Probation Service Annual Reports 2016*: <http://www.justice.ie/en/JELR/Pages/SP16000163>.

36 IPRT Position Paper 8, *Community Sanctions*, p.5: http://www.iprt.ie/files/IPRT_Position_Paper_8_-_Community_Sanctions.pdf.

37 'Payback' is terminology coined by Scottish Government where a Community Payback Order was introduced in 2011. Community payback orders were introduced in Scotland for the offender to 'payback' the harms caused to the community through the use of unpaid work.

more victim- and community-oriented approach towards crime and punishment.

Furthermore, the financial costs of imprisonment to communities and society is considerable; keeping one individual in prison amounts to €69,421 per annum.³⁸ This figure contrasts starkly with the costs associated with imposing a community service order (CSO), at €2,500.³⁹ Therefore, both the social and economic costs associated with imprisonment must be considered. Use of alternatives to custody, where appropriate, can lead to benefits to the community, including unpaid work being carried out within and for communities, as well as to the offender, who can develop new skills and participate as an active member of the community.

Nonetheless, the harm caused by offending behaviour to individuals, communities and wider society must be strongly acknowledged. There must be clear consequences to offending behaviour. The rights of victims must be protected and safeguarded, and the criminal justice system should be vigilant and seek to minimise any potential effect of secondary victimisation. In this respect, IPRT welcomes the European Union (EU) Victims' Directive,⁴⁰ due to be implemented in Ireland in 2017. IPRT believes it is necessary to protect and promote the human rights of everyone within the penal system, and that the rights of victims and the rights of prisoners should not be viewed as incompatible. Decisions around punishment, sentencing or the release process must be guided by principles of due process and fair procedures by impartial bodies such as the courts.

GUIDING PRINCIPLE 3: Deprivation of liberty as the punishment

That the deprivation of liberty is the punishment is a principle that must be embedded in public and political debate.⁴¹ Restrictions in prison life should be minimal and proportionate, and poor prison conditions must not be used as further punishment.

As it is, being in prison can involve missing out on many aspects of daily life that are often taken for granted. Examples include eating in a cell alone, with limited access to and contact with family members.

Prison life should be as close as possible to life on the outside.⁴² Prisoners should have a structured routine, with access to regular work, vocational training and educational and recreational activities.

The deprivation of liberty must also be understood in the context of the rights of children who are affected by parental imprisonment.⁴³ Both children and families have the right to regular contact with their loved one, and their rights should not be impinged upon as a result of the imprisoned family member's status.⁴⁴

GUIDING PRINCIPLE 4: Balancing security, safety and protection of prisoners while ensuring a humane regime

The Irish Prison Service's mission statement is to provide 'safe and secure custody, dignity of care and rehabilitation to prisoners for safer communities.'⁴⁵ It is important to acknowledge the challenges associated with ensuring prisoner safety and balancing this with a humane prison regime. While IPRT recognises the need for rigorous security measures in order to provide for safety and good order in Irish prisons, this should not be at the expense of decent living conditions and constructive regimes.⁴⁶

38 Irish Prison Service, *Annual Report 2016*, p. 5:

http://www.irishprisons.ie/wp-content/uploads/documents_pdf/12631-IPS-annualreport-2016_Web.pdf.

39 Figures provided by the Probation Service: <http://www.probation.ie/EN/PB/WebPages/WP16000055>.

40 EU Victims Directive: http://ec.europa.eu/justice/criminal/victims/index_en.htm.

41 Under the European Prison Rules (2006), "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. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective they are imposed" (Basic Principles 2-3 of the EPR): <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>.

42 Principle 4 Council of Europe Recommendation Rec 2003 (23) on the Management by Prison Administrations of Life Sentence and Other Long-term Prisoners: <https://www.coe.int/en/web/prison/conventions-recommendations>.

43 Ireland ratified the UN Convention on the Rights of the Child in 1992 and has a duty to fulfil these rights. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

44 Under the UN Convention on the Rights of the child, two of its basic provisions are ensuring the 'best interests' principle is applied in decision-making related to children's care arrangements, and contact with parents, where the voice of the child is considered. The right to respect for private and family life under Article 8 of the European Convention on Human Rights (ECHR) must also be taken into consideration in this regard.

45 Irish Prison Service, *Annual Report 2016*, p. 4:

http://www.irishprisons.ie/wp-content/uploads/documents_pdf/12631-IPS-annualreport-2016_Web.pdf.

46 Informed and as outlined by the Council of Europe, custodial sentences require "striking a balance between the objectives of ensuring security, good order and discipline in penal institutions, on the one hand, providing prisoners with decent living conditions, active regimes and constructive preparation for release, on the other." Council of Europe, Recommendation

Ensuring a humane regime in prison builds towards preparation for release and reintegration.

**GUIDING PRINCIPLE 5:
Protection and promotion of human rights,
equality and social justice**

Protection and promotion of human rights

The protection and promotion of human rights is a fundamental and unconditional requirement in prison settings. Therefore, conditions and treatment in places where people are deprived of their liberty should be monitored on a regular basis, involving frequent unannounced inspections. Ireland in the past has witnessed the profound consequences of a lack of robust accountability mechanisms in institutional care settings. A stark reminder and example of this is the killing of Gary Douch by his cellmate in Mountjoy prison on 1 August 2006.^{47, 48}

Protection and promotion of equality and social justice

The protection and promotion of equality and social justice forms part of this guiding principle of penal reform. The link between crime and social exclusion is well documented. Recent research on the social demographic profile of the prison population in Ireland is limited; however, one 1997 study of the characteristics of the prison population in Mountjoy Prison found that 85% of prisoners came from Dublin with almost “all areas characterised by a high proportion of corporation housing and often by the prevalence of opiate drug abuse and high levels of long-term unemployment.”⁴⁹ A more recent study highlighted that the most deprived areas in the country had a much higher percentage of prisoners, at 145.9 per 10,000 population compared with 6.3 per population in the least deprived areas of the country.⁵⁰

Therefore, in order to break the cycle of crime and social exclusion, broader examination of wider social policy issues is critical. This also means that the criminal justice system should not be viewed as a response to addiction, for example, but rather as a point of intervention whereby offenders who have substance misuse or mental health issues are directed to the appropriate treatment. IPRT believes that investing in communities and adopting early intervention and prevention strategies is essential.

The implementation of the Public Sector Duty⁵¹ by all criminal justice stakeholders places a positive duty on public sector bodies to eliminate discrimination, promote equality of opportunity and treatment of its staff and the persons it provides a service to, while protecting the human rights of its staff and persons it provides a service to. This duty should be met by all criminal justice bodies.

**GUIDING PRINCIPLE 6:
Emphasis on rehabilitation and reintegration**

A strong focus on rehabilitation and reintegration is essential for breaking the cycle of crime and imprisonment.⁵² Sentence planning, access to services, supports and treatment with a continuum of care post-release are all vital components of this process. The reintegration of prisoners as active citizens upon release enhances and ensures safer communities. In its annual report 2016, the Irish Prison Service makes a statement of commitment to work towards achieving a ‘world-class Prison Service’.⁵³ The approach the Service sets out to achieve this is through providing ‘rehabilitation and opportunities’ for prisoners to enhance public safety, while working in collaboration with a number of relevant stakeholders.

Rec 2003 (23) of the Committee of Member States on the management of prison administrations of life sentences and other long term prisoners. The UN Mandela Rules (Rule 36) also state that “discipline and order shall be maintained with no more restriction than is necessary to ensure safe custody, the secure operation of the prison and well-ordered community life.”

47 *Report into the Death of Gary Douch, Executive Summary and Recommendations*, p. 26: <http://www.justice.ie/en/JELR/Pages/PB14000112>.

48 Gary Douch had requested to be placed on protection due to fears for his own safety. Mr. Douch was placed in a cell with six other prisoners. He was subsequently killed by a mentally-ill prisoner who had been recently transferred back from the Central Mental Hospital to Cloverhill Prison before his transfer to Mountjoy Prison. This was at a time when Mountjoy Prison held 525 prisoners, with a bed capacity of only 445.

49 O’Mahony, P (1997) *Mountjoy Prisoners: A Sociological and Criminological Profile*, Government of Ireland, p. 39: <http://www.drugsandalcohol.ie/3464/1/616-mountjoy.pdf>.

50 O’Donnell, I, Teljeur C, Hughes N, Baumer E and Kelly A (2007) ‘When prisoners go home: Punishment, social deprivation and the geography of reintegration’, *Irish Criminal Law Journal*, 17(4): 3–9.

51 Irish Human Rights and Equality Commission (2016) *The Public Sector Duty*: <https://www.ihrec.ie/documents/public-sector-duty-leaflet/>.

52 Under Article 10(3) ICCPR: “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.”

53 Irish Prison Service, *Annual Report 2016*, p. 6: <https://www.irishprisons.ie/index.php/information-centre/publications/annual-reports/>.



1.4 Embedding values in the prison system

“It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.” Nelson Mandela

This section presents values, which, if instilled among the relevant stakeholders, would help promote a more positive prison environment and culture. They are:

- respect, dignity and protection from inhumane, discriminatory or degrading treatment;
- safety, protection of life and duty of care;
- embedding accountability;
- applying consistency and promoting fairness and equality; and
- promoting good relationships between prisoners, staff and management.

These are the basic minimum values that should be reflected and committed to by everyone working in the penal system.

Respect, dignity and protection from inhumane, discriminatory or degrading treatment

There is a positive obligation on the State to ensure that every person in prison is treated with respect and dignity, with effective safeguards in place to ensure that no person is subjected to inhumane, discriminatory or degrading treatment.

Safety, protection of life and duty of care

The State has a duty to protect the lives of those in custody⁵⁴ and a duty of care to protect the health and welfare needs of the prison population. Every prisoner and staff member working in the prison environment should feel safe and protected from violence and any other form of abuse.

Embedding accountability

Accountability is a vital aspect in any organisational system. The Inspector of Prisons (2015) previously identified that the lack of record keeping, together with the absence of line management structures, indicate that ‘protection of the system’⁵⁵ is given greater weight than the ‘rights of the individual.’⁵⁶ Robust accountability structures should be valued and promoted to safeguard everyone in the penal system.

Applying consistency and promoting fairness and equality

The State should ensure that prisoners perceive and experience fairness in the system, and should allow all prisoners equal access to services, regimes and supports. Consistency within and across the prison estate in the decision-making process is essential.

Promoting good relationships between prisoners, staff and management

Good relationships between prisoners, prisoners and staff, prisoners and management, and prison staff and management are all vitally important for creating a healthy prison environment.

54 Council of Europe, *European Convention on Human Rights*, Article 2: http://www.echr.coe.int/Documents/Convention_ENG.pdf.

55 Office of the Inspector of Prisons *Report Culture and Organisation in the Irish Prison Service: A Road Map for the Future*, p. 5: <http://www.justice.ie/en/JELR/Pages/Culture-and-Organisation-in-the-Irish-Prison-Service-A-Road-Map-for-the-Future>.

56 Ibid.

1.5 Development of IPRT's standards and indicators

The standards outlined below have been created by IPRT. They are largely informed by, and build on, international and European human rights standards and best practice. However, the standards also include vital areas not covered by human rights standards. If Ireland as a nation aims to lead, it needs to go beyond minimum standards and set goals related to enhancing the penal system.

In this report, indicators and actions required are set out for the first time. The indicators, through which progress can be evaluated, may be refined and amended as the project evolves over a three-year period. Evidence used to assess performance against the standards comes from a number of sources including: parliamentary questions; data and reports (including annual reports) published by the Irish Prison Service and Probation Service; reports from the Inspector of Prisons; findings from the European Committee for the Prevention of Torture (CPT), the United Nations Committee Against Torture (CAT) and the Committee on the Elimination of Discrimination against Women (CEDAW); information published by the media under freedom of information (FOI) requests; and other relevant studies, including reports by the Irish Human Rights and Equality Commission (IHREC) and academic literature.

The project is also informed by the voices of prisoners who have engaged with IPRT through information sessions, IPRT's annual prisoner membership survey 2017, and the voluntary participation of prisoners in a number of IPRT reports including: *"In Here, Time Stands Still": The Rights, Needs and Experiences of Older People in Prison* (2016),⁵⁷ *Out on the Inside: The Rights, Experiences and Needs of LGBT People in Prisons* (2016),⁵⁸ *Travellers in the Irish Prison System: A Qualitative Approach* (2014)⁵⁹ and *"Picking Up the Pieces": The Rights and Needs of Children and Families Affected by Imprisonment* (2012).⁶⁰

IPRT also held a consultation with stakeholders working with people in prison and those on post-release, which greatly informed this work. It also consulted with a number of relevant professionals on an individual basis throughout the process of preparing this report.

The issues presented in this report will be prioritised on an annual basis with scope to expand or amend them. The development of standards and indicators should enhance clarity around progress in key areas of the penal system over the course of the project, and act as a reflective tool for stakeholders on actions required to improve overall human rights compliance in the Irish prison system. The standards form the basis of each section in the following chapters of this report. The standards outlined below aim to positively and progressively impact on penal policy and the prison system in the future.

Future development

This report covers a diverse range of issues relevant to everyone in the penal system. While all standards apply to everyone in the penal system, we are particularly conscious of the needs of specific cohorts, including those of women in the criminal justice system. It is IPRT's position that the vast majority of women should not be in prison due to the non-violent nature of their crimes and relatively short sentences received. Therefore, emphasis must be placed on the use of gender-specific alternatives to custody. However, where prison is the only appropriate response, conditions should meet the needs of women. In this respect, the State should be fully compliant with the *UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules)* and the *Convention on the Elimination of Discrimination against Women (CEDAW)*. IPRT proposes to develop a new standard on women in prison in year two of the project.

57 IPRT (2016) *Older People in Prison*: http://www.iprt.ie/files/IPRT-Older_People_in_Prison_Report_web.pdf.

58 IPRT (2016) *Out on the Inside*: http://www.iprt.ie/files/IPRT_Out_on_the_Inside_2016_EMBARGO_TO_1030_Feb_02_2016.pdf.

59 IPRT (2014) *Travellers in the Irish Prison System: A Qualitative Study*: http://www.iprt.ie/files/IPRT_Travellers_Report_web.pdf.

60 IPRT (2012) *'Picking up the Pieces': The Rights and Needs of Children affected by Imprisonment*: http://www.iprt.ie/files/IPRT_Children_of_Imprisoned_Parents2.pdf.

IPRT standards for progress in the penal system

Standard 1:	Penal policy is continually monitored, implemented, evaluated and evolving.
Standard 2:	Imprisonment is used as a last resort. This principle is enshrined in domestic legislation, with focus on the promotion and proportionate use of alternatives to custody.
Standard 3:	Every closed prison is operating at least 10% below its recommended maximum capacity.
Standard 4:	Each prison is limited to a prison population not exceeding 300, but ideally 200–250.
Standard 5:	Prisoners are detained in the least restrictive prison security setting, as determined through risk assessment.
Standard 6:	Open prisons comprise 30%-35% of the prison estate.
Standard 7:	Every prisoner is provided with respect, dignity and humanity and has access to decent living conditions.
Standard 8:	Every prisoner has 24-hour access to toilet facilities that respect the dignity and privacy of the individual.
Standard 9:	Every prisoner has access to single-cell accommodation.
Standard 10:	Remand prisoners are held separately from sentenced prisoners across the entire prison estate.
Standard 11:	Every prisoner is encouraged and facilitated to maintain positive family and close, significant relationships.
Standard 12:	The healthcare needs of individual prisoners are met. Every prisoner has access to healthcare that goes beyond the 'equivalence of care' principle, with a full range of preventative services and continuity of healthcare in the community.
Standard 13:	People with serious mental health issues are diverted from the prison system and receive the appropriate treatment and supports in a timely manner.
Standard 14:	People with addiction issues are diverted from the prison system and receive the appropriate treatment. Where imprisonment is the only appropriate response, treatment is made available within prison, with a continuum of care upon release.
Standard 15:	A prisoner's right to privacy, and that of his/her family members, is respected and protected.
Standard 16:	Every prisoner spends a minimum of five hours a day engaged in structured meaningful activity for five days a week, in addition to a further minimum seven hours' out-of-cell time.
Standard 17:	Every prisoner and his/her family members, where desired, are facilitated and actively involved in his/her sentence planning from the beginning of sentence through to the point of release.
Standard 18:	Prisoners are encouraged and facilitated to develop and maintain life skills and assume personal responsibility while in prison.

Standard 19:	Every prison provides each prisoner with access to a range of educational activities that meet the individual's needs and take into account their aspirations.
Standard 20:	Civil society access to prisons is encouraged, and there are opportunities for prisoners to participate and engage in the community through structured forms of temporary release.
Standard 21:	Prisoners are encouraged to engage with their political and civic rights.
Standard 22:	Prisoners have access to a robust and effective complaints mechanism. All complaints are dealt with in a timely manner, and the outcome of a decision is clearly communicated to the prisoner, with a satisfactory resolution if the complaint is upheld.
Standard 23:	Prisoners have access to an external, independent complaints and appeal mechanism, including access to a prisoner ombudsman or equivalent.
Standard 24:	Structures are in place for the regular inspection and monitoring of prisons. Inspection reports are made publicly available within a clear timeframe.
Standard 25:	The death of, or serious incident involving, a prisoner is investigated by an independent body immediately, and the investigation report published promptly.
Standard 26:	Solitary confinement is used as a last resort and only in exceptional circumstances. It is used for the shortest period possible and for a maximum of 15 days. Reasons for and lengths of time a prisoner is held in solitary confinement must be recorded.
Standard 27:	Prisoners and everyone in the prison system feel safe and protected from violence in the prison environment.
Standard 28:	The health and welfare of prisoners is prioritised while they are under escort.
Standard 29:	All staff receive relevant ongoing training and supports in order to effectively carry out their duties to a high standard.
Standard 30:	Good relationships between management, staff and prisoners are facilitated and encouraged. Management ensures that a positive working culture is created in the prison.
Standard 31:	Prison protocols emphasise de-escalation and conflict resolution approaches. Use of force and restraint are a measure of last resort.
Standard 32:	Management in the prison system takes a proactive approach towards protecting anyone who is at risk of discrimination due to their age, gender, ethnicity, sexuality, disability or other.
Standard 33:	The parole system is fair, transparent and removed from political control.
Standard 34:	All prisoners have comprehensive preparation and structured plans for release. National policy and legislation provides for a structured release system.
Standard 35:	Protocols are in place for inter-agency co-ordination in order to ensure the successful reintegration of prisoners on release.

PART 2:

Measuring Progress against the Standards

A: An effective and humane penal system

As described in chapter one, IPRT's overarching vision of an effective and humane prison system is characterised by the use of imprisonment as a last resort, in a system that protects and promotes human rights, equality and social justice. Therefore, the emphasis of a progressive, just and humane penal policy must be largely focused on:

- investment in early intervention, prevention and diversion strategies;
- investment in community-based sanctions and non-custodial alternatives;
- protecting human rights and promoting best practice in cases where prison is the only appropriate response;
- strengthening connections between communities and prisons; and
- greater investment in rehabilitation and post-release supports.

Standards 1 to 5 focus on broader aspects of penal policy, which, if achieved, would help to create the essential conditions to form the foundations of a strong and effective penal and prison system in Ireland.

Towards a progressive penal policy

Standard 1:
Penal policy is continually monitored, implemented, evaluated and evolving.

Rationale

Penal policy must be viewed as an ever-evolving process. It should reflect the guiding principles of penal reform (see Part 1); however, policy must be flexible enough to adapt to issues arising within the system, as well as responding to the changing needs of the prison population. Implementation is a vital part of the process. Therefore, penal policy needs continual monitoring, examination, implementation and review.

Current context

Two recent national policy documents committed to a number of actions in penal reform: the Oireachtas *Sub-Committee Report on Penal Reform*⁶¹ (referred to as Oireachtas Sub-Committee report herein) (2013) and the *Strategic Review Group on Penal Policy – Final Report* (SRGPP) (2014).⁶²

The Oireachtas Sub-Committee (2013) made five specific recommendations in its report. Table 1 presents these five recommendations and progress made to date.

61 Houses of the Oireachtas Joint Committee on Justice, Defence and Equality (2013) *Report on Penal Reform*: <https://www.oireachtas.ie/parliament/media/Penal-Reform-Report-13-March-2013-Final.pdf>.

62 The Strategic Review Group on Penal Policy (SRGPP) was established to review and work towards the development of progressive penal policy in Ireland. There were 43 recommendations made by the SRGPP. The Implementation Oversight Group publishes progress reports on a six-monthly basis in order to track the progress. The *Strategic Review of Penal Policy* (2014) is available here: <http://www.justice.ie/en/JELR/Pages/PB14000244>.

Table 1: Progress to date in implementing recommendations from Oireachtas Sub-Committee Report on Penal Reform

Recommendation	Progress	Summary
1. Reduce the prison population by one-third over ten years.	Prison population in 2017: c. 3,750, a reduction of 900 on 2011 levels.	Some progress
2. Commute sentences of less than six months imposed for non-violent offences and replace with community service orders (CSOs).	Snapshot figures from the Irish Prison Service <i>Annual Report 2016</i> ⁶³ show that 133 people were serving prison sentences of less than six months. This compares with 185 persons in 2011. ⁶⁴	Some progress
3. Increase remission from 25% to 33% for all sentences over one month, and establish an enhanced remission scheme of up to one half of sentence, which should be made available for certain categories of prisoners, particularly those serving a prison sentence for the first time.	There has been no increase in remission amounts.	No progress
4. Introduce a single piece of legislation that would form the basis of a structured release system.	No single piece of legislation has been introduced that focuses on a structured release system. A Parole Bill 2016 [PMB] was introduced in 2016, but this legislation is specific to the release of long-term prisoners and therefore narrower than this key recommendation.	Mixed
5. Address overcrowding and prison conditions with increased use of open prisons.	While there has been a reduction in overcrowding and some positive developments related to improved prison conditions, this is not consistent across the estate. Furthermore, open prison provision has been reduced in 2017 from 9% to 6.7%. (See <i>Standard 5</i> for further information).	Mixed

63 Irish Prison Service, *Annual Report 2016*, p. 28: http://www.irishprisons.ie/wp-content/uploads/documents_pdf/12631-IPS-annualreport-2016_Web.pdf.

64 Irish Prison Service, *Annual Report 2011*, p. 23: <http://www.irishprisons.ie/images/pdf/annualreport11.pdf>.

The SRGPP established an Implementation Oversight Group, which publishes progress reports on a six-monthly basis regarding the 43 penal policy recommendations made in the final report. This is a welcome and positive framework set up to monitor implementation of policy recommendations. To date, there have been three progress reports published. In the third (most recent) one, *Report of the Implementation Oversight Group (2017)*⁶⁵, only two key recommendations out of 43 are described as being ‘fully complete.’ These relate to:

- the introduction of provision of community sentence in lieu of part of sentence of imprisonment in excess of one year; and
- consideration of the possibility of weekend sentencing, (on which it was concluded that this was not a priority at this point).

Of the remaining 41 recommendations, 24 are described as ‘on track’, 13 as ‘not complete’, three as ‘not complete/on track’ and one as ‘complete/on track.’

One of the key recommendations made by the SRGPP is in relation to the collation and publication of criminal justice data:

*The Department of Justice and the criminal justice agencies should develop a shared agreement outlining how data is to be collected, managed and published by all criminal justice agencies and access to this data should be provided to researchers, within appropriate time limits.*⁶⁶

This is one key SRGPP action that could be implemented by the end of 2018. There should also be a role for external researchers in order to ensure that the data collated by criminal justice agencies is reliable and valid, and that analysis of the data is independently interpreted and analysed.

Recent years have seen improvements in the publication of data by the Irish Prison Service. For example, the number of prisoners on restricted regimes has been published on a quarterly basis since July 2013, while figures from a *Census of cell-occupancy and in-cell sanitation* have been made available since early 2014. The Irish Prison Service also provides daily prison population figures on its website.

However, significant data deficits were highlighted by the IHREC to the UN Committee against Torture (2017) including: the lack of data on the lengths of time prisoners are spending on remand, the

absence of a database on the number of deaths in custody, the unknown prevalence of disability (including serious mental health conditions) among the prison population, as well as the absence of gender-specific data.⁶⁷ Following Ireland’s examination under the UN Convention against Torture (2017), the Irish Prison Service committed to publishing more prison data on a quarterly basis, including the average time prisoners spend on remand.

Overall analysis

Significant progress has been made in terms of policy commitments to achieving penal reform. The inclusion of an IOG to monitor the implementation of the SRGPP’s policy recommendations is a welcome framework that tracks and monitors progress on commitments. However, further work is needed to ensure that policy commitments are implemented. In addition, gaps in criminal justice data needs to be addressed, and independent researchers and analysts should have access to such data to ensure that criminal justice policy is transparent and evidenced-based.

Indicators for Standard 1

The following indicators will be used to assess Ireland’s progress in terms of Standard 1 – that penal policy must be continually monitored, implemented, evaluated and evolving.

Indicator S1.1:

The number of policy commitments made by the Oireachtas Sub-Committee (2013) and the SRGPP (2014) that have been fully implemented.

Indicator S1.2:

Progress on the publication of sentencing, prison and probation data to inform evidence-based criminal justice policy.

Indicator S1.3:

Implementation of IPRT standards.

65 *Third Report of the Implementation Oversight Group to the Minister for Justice and Equality (2017)*: http://www.justice.ie/en/JELR/Pages/Penal_Policy_Review.

66 *Ibid*, p.29.

67 The Irish Human Rights and Equality Commission (2017) *Ireland and the Convention against Torture, Submission to the United Nations Committee against Torture on Ireland’s Second Periodic Report*: <https://www.ihrec.ie/app/uploads/2017/07/Ireland-and-the-Convention-against-Torture.pdf>.

Short-term actions required for Standard 1

The following short-term actions set out immediate steps that can be taken towards achievement of Standard 1.

- Action 1.1:** The Department of Justice and Equality should work towards progressing the five key recommendations set out by the Oireachtas Sub-Committee with particular regard to introducing a single piece of legislation on a structured release system (incorporating increased remission levels) by end of 2018.
- Action 1.2:** The Department of Justice and Equality must progress, deliver and positively complete and implement five key SRGPP recommendations by the end of 2018. One of these should be the development of an agreement across all criminal justice agencies to ensure the collection and publication of data to support evidenced-based policy.
- Action 1.3:** The Irish Prison Service must publish further prisons data, including in the areas of: education, health, remand periods, waiting lists for access to drug and mental health treatment and other prisons data as recommended by IHREC on a quarterly basis.
- Action 1.4:** The State and relevant stakeholders should consider and commit to working towards progressing and implementing the developed IPRT standards with positive benefits to the wider penal system.

Imprisonment as a last resort

Standard 2:
Imprisonment is used as a last resort. This principle is enshrined in domestic legislation, with focus on the promotion and proportionate use of alternatives to custody.⁶⁸

Rationale

The social and economic costs of imprisonment are enormous to individuals and communities. Separation from family can lead to a breakdown in relationships, while the experience of imprisonment itself can result in institutionalisation, which can have profound damaging effects on the individual. Imprisonment can also act as a barrier to employment upon release, as well as a significant barrier in accessing other supports such as housing.⁶⁹

Community sanctions, by contrast, can motivate and provide individuals with a sense of purpose by participating and making a contribution to society, while also allowing those who have caused harm to ‘pay back’ or make reparation directly to the community.

The use of alternatives to custody should be viewed as a ‘penal equivalent’ to imprisonment. Imprisonment as a last resort was recommended more than 30 years ago by the Whitaker Report (1985). This principle is as relevant today, with the recent publication of a resolution by the United Nations Economic and Social Council (ECOSOC) (2017): *Promoting and encouraging the implementation of alternatives to imprisonment as part of a comprehensive crime prevention and criminal justice policies*.⁷⁰ ECOSOC (2017) place emphasis on the importance of considering the proportionality of the sanction to the offence committed.

68 Informed by Council of Europe (2006) *European Prison Rules* p.5: <https://rm.coe.int/16806f3d4f>, Council of Europe (1999) *Recommendation No.R (99) 22 Concerning Prison Overcrowding and Prison Population Inflation*: <https://rm.coe.int/16804d8171> and recommendation made by the Committee of Inquiry into the Penal System in Ireland.

69 The SRGPP (2014) recommended that “all of the key players involved in the administration of criminal justice and penal policy should take into account the aim of rehabilitation and reintegration of the offender when imposing and implementing criminal sanctions”. Source: Implementation of Penal Policy Review Group Recommendations, p. 2: http://www.justice.ie/en/JELR/Pages/Penal_Policy_Review.

70 United Nations Economic and Social Council (2017) *Promoting and Encouraging the Implementation of Alternatives to Imprisonment as Part of a Comprehensive Crime Prevention and Criminal Justice Policies*, p.3: “promote and encourage the implementation of non-custodial measures and sanctions as alternatives to imprisonment, including through restorative justice and the provision of treatment and rehabilitative programmes for offenders in the community, and further encourages Member States to implement development-oriented interventions for offenders and their local communities that are aimed at addressing underlying problems leading to offenders contact with the criminal justice system and facilitating their reintegration into society”. Source: <https://www.un.org/ecosoc/en/documents/resolutions>.

Current context

A snapshot of the prison population in 2016 shows that out of a total population of 3,077 sentenced prisoners in custody, 33 people were serving sentences of less than three months, while 415 people were serving sentences of less than 12 months.⁷¹ The largest offence group for sentences imposed was ‘theft and related offences’, at 592.⁷² Both the offence category and short sentence lengths indicate that imprisonment is currently not being used as a sanction of last resort.

Furthermore, women’s prisons in Ireland suffer from chronic overcrowding, despite the fact that female offenders are largely associated with committing non-violent offences. The female prison population increased by 6.9% from 2015 to 2016.⁷³

Ireland’s imprisonment rate, currently at 79 per 100,000,⁷⁴ is low compared with England and Wales (146 per 100,000).⁷⁵

Following Nordic countries, the Netherlands and Germany, Ireland has the lowest rate of imprisonment in Europe.⁷⁶ However, considerably lower imprisonment rates exist in Nordic countries of similar size to Ireland, such as Sweden at 53 per 100,000,⁷⁷ Finland at 57 per 100,000⁷⁸ and Denmark at 59 per 100,000.⁷⁹ Moreover, while Ireland’s daily prison population rate is average by European standards, its prison committal rates have been rated sixth highest among the 46 countries of the Council of Europe area and the third highest in the EU.⁸⁰

In 2016, 90.4% (n. 10,996) sentenced committals (including fine committals) to prison were for sentences of 12 months or less.⁸¹ In that same year, 468 persons were committed under sentence (this

figure excludes fine committals) for a period of less than three months.⁸² Recent research⁸³ suggests that there has been a decline in both CSOs and prison committals for less than 12 months (excluding those committed for fines default). According to figures provided by the Probation Service, there was a downward trend in the use of community service orders (CSO) from 2011 to 2015, with a slight increase in 2016.⁸⁴ Prison committals have declined at an even greater rate than CSOs since 2011.⁸⁵

Further monitoring and analysis of current trends are required to identify reasons for declines in both the use of short sentences and CSOs.

Table 2: Use of CSOs, 2011–2016

Year	2011	2012	2013	2014	2015	2016
Number of CSOs issued	2,738	2,659	2,354	2,197	1,938	2,067

Source: Probation Service

The *Criminal Justice (Community Service) (Amendment) Act 2011* and the *Fines (Payment and Recovery) Act 2014* were both introduced with a view to reducing the number of people being sent to prison. The commencement of the *Fines (Payment and Recovery) Act 2014* may have helped reduce the number of committals to prison: while no direct inferences can be made until further analysis is carried out, there was a 12.2% reduction in overall prison committals in 2016.⁸⁶ There were 8,439 committals for the non-payment of a court ordered fine in 2016, which is a decrease of almost 15% on figures for 2015.⁸⁷

Under the *Criminal Justice (Community Service) (Amendment) Act 2011*, courts must consider

71 Irish Prison Service, *Annual Report 2016*, pp.26-27:

http://www.irishprisons.ie/wp-content/uploads/documents_pdf/12631-IPS-annualreport-2016_Web.pdf.

72 Ibid, p. 29.

73 Ibid, p. 27.

74 *World Prison Brief, Ireland*, May 2017: <http://www.prisonstudies.org/country/ireland-republic>.

75 *World Prison Brief, England and Wales*, May 2017: <http://www.prisonstudies.org/country/united-kingdom-england-wales>.

76 O’Donnell, I (2017) ‘Ireland’s shrinking prison population’, *Irish Criminal Law Journal*, 27(3), p.76.

77 *World Prison Brief, Sweden*, May 2017: <http://www.prisonstudies.org/country/sweden>.

78 *World Prison Brief, Finland*, May 2017: <http://www.prisonstudies.org/country/finland>.

79 *World Prison Brief, Denmark*, May 2017: <http://www.prisonstudies.org/country/denmark>.

80 Council of Europe *Annual Penal Statistics Space 1 – Prison Populations Survey 2014*: http://wp.unil.ch/space/files/2016/05/SPACE-1-2014-Report_final.1.pdf.

81 Irish Prison Service *Annual Report 2016*, p. 25:

<https://www.irishprisons.ie/index.php/information-centre/publications/annual-reports/>.

82 Ibid. p.25.

83 O’ Hara, K and Rogan, M (2015) ‘Examining the use of community service orders as alternatives to short prison sentences in Ireland’, *Irish Probation Journal*, 12, 22-45.

84 The Probation Service, annual reports: <http://www.probation.ie/EN/PB/WebPages/WP16000121>.

85 O’ Hara, K and Rogan, M (2015) ‘Examining the use of community service orders as alternatives to short prison sentences in Ireland’, *Irish Probation Journal*, 12, 22-45.

86 Irish Prison Service, *Annual report 2016*, p. 5: <https://www.irishprisons.ie/index.php/information-centre/publications/annual-reports/>.

87 Ibid, p. 27.

community service in lieu of imprisonment for an offence that would attract a custodial sentence of 12 months or less. However, courts are not currently required to provide written reasons for the imposition of a sentence of imprisonment for 12 months or less, which was a recommendation of the Law Reform Commission.⁸⁸

The Community Return Programme has helped reduce the prison population through its structured form of release where compliance rates are reported above 90%.^{89, 90} The Probation Service has also introduced the Community Support Scheme and a pilot scheme referred to as ‘integrated community service’. However, no independent evaluations of these schemes have been undertaken.

The SRGPP (2014) also made proposals for the introduction of a community courts⁹¹ pilot scheme and restorative justice programmes. However, such initiatives have yet to be rolled out at a national level.

Recent research highlights the discretionary sentencing system that exists in district courts throughout Ireland; for example, the number of CSOs imposed in one district court was seven times higher than short-term prison sentences.^{92, 93, 94} In another district court, the number of short-term prison sentences imposed was 11 times greater than CSO sentences. Only eight district courts out of 24 imposed more CSOs than short-term prison sentences.⁹⁵ This apparent inconsistency highlights the need to enshrine the principle of imprisonment as a last resort in Irish legislation, with clear guidelines on the use of CSOs as an equivalent to short-term prison sentences, to prevent any ‘net widening’ effects.

Overall analysis

Ireland’s daily prison population rate has significantly reduced since 2011. However, committal rates and sentence lengths show that imprisonment is not being used as a last resort. Further analysis must be conducted to ensure that alternatives to custody are being used.

Indicator S2.1: Ireland’s imprisonment rate (committal rates, daily prisoner population rates and release rates) compared to European rates.
Indicator S2.2: The percentage of short sentences of less than 12 months.
Indicator S2.3: An increase in the use of alternatives to custody as a substitute to the use of short-term sentences.

Short-term actions required for Standard 2

The following short-term actions set out immediate steps that can be taken towards the achievement of Standard 2.

- | | |
|-------------|--|
| Action 2.1: | Legislators must enshrine the principle of imprisonment as a last resort into legislation, by way of the proposed Criminal Justice (Sentencing and Parole) Bill, with a restated commitment to this in 2018 by the new Minister for Justice. |
| Action 2.2: | Criminal justice stakeholders, including the courts and prison service, must work towards reducing Ireland’s rate of imprisonment from 79 per 100,000 in 2017 to 50 per 100,000 by 2021. |
| Action 2.3: | The Minister for Justice should commute all sentences under six months for non-violent offences and replace these with CSOs, as recommended by the Oireachtas Sub-Committee. |
| Action 2.4: | The Criminal Justice (Community Sanctions) Bill should be progressed in 2018. |
| Action 2.5: | The State should introduce a pilot of community courts in 2018. |
| Action 2.6: | Sentencing guidelines should be introduced, as recommended by the SRGPP. |

88 Law Reform Commission (2003) *Report on Penalties for Minor Offences*: <http://www.lawreform.ie/news/report-on-penalties-for-minor-offences.670.html>

89 The Community Return Programme is an incentivised scheme for the supervised release of qualifying prisoners who complete unpaid community work as a condition of their release: <http://www.justice.ie/EN/PB//WebPages/WP16000037>.

90 Written Answers, *Community Return Programme*: <https://www.kildarestreet.com/wrans/?id=2013-05-15a.567>.

91 Strategic Review Group on Penal Policy (2014) pp. 36-38: <http://www.justice.ie/en/JELR/Pages/PB14000244>

92 O’Hara, K and Rogan, M (2015) ‘Examining the use of community service orders as alternatives to short prison sentences in Ireland’, *Irish Probation Journal*, 12, 22-45.

93 District courts are the lowest courts in Ireland and deal with the least serious offences.

94 O’Hara, K & Rogan, M. (2015) Examining the use of Community Service Orders as alternatives to short term prison sentences in Ireland, *Irish Probation Journal*, p.37.

95 Ibid. p. 41.

Safe custody limits

Standard 3:
Every closed prison is operating at least 10% below its recommended maximum capacity.

Rationale

Safe custody limits ensure the safety of both prisoners and staff. Prisoners should not be detained in overcrowded conditions as it is unsafe and may result in detrimental consequences.⁹⁶

Current context

IPRT is of the view that published capacity figures often do not accurately reflect the reality of the situation in Irish prisons. A number of factors need to be taken into consideration to determine safe custody limits, including: closure of prison wings, periods of refurbishment, and closures related to schools due to staff shortages. For example, it was recently stated by the Minister for Justice that areas of Cloverhill Prison are closed as a result of 'upgrading the fire alarm system and sprinklers resulting in the temporary closure of part of the prison and reducing bed capacity.'⁹⁷ Prison capacities should be reduced accordingly. Overcrowding and unsafe custodial limits were contributing factors in the killing of Gary Douch in 2006. In order to ensure safe custody limits, each prison should be below 10% of its full capacity.

The Office of the Inspector of Prisons is currently adjusting prison capacity figures.⁹⁸ This is in the context where the Inspector of Prisons bed capacity presupposes that relevant structured activity takes place for all prisoners for a minimum of 5 hours a day, 5 days per week in addition to appropriate out-of-cell time, exercise and recreation periods'. The SRGPP (2014) also recommended the adoption of a strategy to reduce prison numbers to a safe level and highlighted the need to increase the use of alternatives to custody.

Table 3 presents the difference between usable cells and prison capacity of each closed prison in Ireland.

Table 3: Usable cells versus prison capacity in Irish closed prisons

Prison	Usable cells	Prison capacity	Difference
Arbour Hill	117	142	25
Castlerea	243	340	97
Cloverhill	182	431	249
Cork	169	273	104
Limerick	163	213	50
Midlands	605	870	265
Mountjoy (M)	585	684	99
Mountjoy (F)	94	105	11
Portlaoise	208	291	83
Wheatfield	463	550	87
Total	2,829	3,899	1070

Sources: Information on usable cells provided by Irish Prison Service; information on prison capacity accessed from Irish Prison Service, Prisoner population on Friday 21st July 2017, available at https://www.irishprisons.ie/wp-content/uploads/documents_pdf/21-July-2017.pdf.

Overall analysis

Overall figures above show that the prison population needs to be reduced by a further 1,000, with all prisons operating below 90% capacity to maintain a safe custody limit. Prison capacities must be continually updated to reflect fluctuating capacity, including access to regimes.

Indicator S3.1:
Each closed prison operating at least 10% below capacity.

Short-term actions required for Standard 3

The following short-term actions set out immediate steps that can be taken towards the achievement of Standard 3.

Action 3.1 All criminal justice stakeholders must work to further reduce the prison population numbers by 1,000 over the next five years.

Action 3.2 The Inspector of Prisons must review and publish new operational capacity levels in Irish prisons in 2018.

96 Prisoners should not be held in overcrowded conditions. Provision should be made for alternative community sanctions to address this issue. See Council of Europe, Committee of Ministers, *Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation*.

97 Written Answers, *Prison Accommodation*, (289) <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2017071100078?opendocument#WRS00200>

98 See footnote by the Irish Prison Service in their *Daily Prison Population* figures: http://www.irishprisons.ie/wp-content/uploads/documents_pdf/05-June-2017.pdf.

Size of prisons

Standard 4:
Each prison is limited to a prison population not exceeding 300, but ideally 200–250.

Rationale

Research by leading criminologist Michael Tonry suggests that a prison should have a maximum of 300 prisoners, with the ideal maximum prison size of 200–250 prisoners.⁹⁹ Research shows that smaller prisons work better in terms of ensuring safety, reducing levels of violence and providing a good quality of life in prisons, where staff can build relationships leading to more positive outcomes in the rehabilitative process for prisoners.¹⁰⁰

Table 4: Prison by bed capacity

Prison	Bed capacity (Irish Prison Service)	Bed Capacity (Inspector of Prisons) ¹⁰¹
Midlands	870	870
Mountjoy (male)	755	*
Wheatfield	550	550
Cloverhill (remand)	431	414
Castlereagh	340	300
Cork	296	*
Portlaoise	291	291
Limerick (male)	210	185
Arbour Hill	142	131
Loughan House (open)	140	140
Shelton Abbey (open)	115	115
Mountjoy (female)	105	105
Limerick (female)	28	24

Note: The figure for Mountjoy (male) includes Mountjoy West, formerly known as St Patrick’s Institution.

Source: Irish Prison Service, ‘Daily prison population on 3rd August 2017, bed capacity figures’, available at <https://www.irishprisons.ie/index.php/information-centre/statistics-information/2015-daily-prisoner-population/>.

Current context

Figures outlined below show that many prisons in Ireland are above the ideal prison size. The newly built Cork Prison (completed in 2016), for example, has a capacity below 300 but above the recommended maximum of 250. Its cells were built for double-occupancy, which contravenes international best practice standards.

Overall analysis

Five out of 12 prisons in the Irish prison estate have a bed capacity higher than the recommended 300, with a further two (Portlaoise and Cork) exceeding the ideal maximum prison size of 200–250. That makes seven in total that are beyond the ideal maximum prison capacity. Further progress is required here.

Indicator S4.1:
 The number of prisons in the Irish prison estate below the ideal maximum prison size of 200–250 prisoners.

Short-term action required for Standard 4

Action 4.1: The Department of Justice and Equality and the Irish Prison Service should commit to reducing each prison’s capacity to below a maximum of 300 prisoners, aspiring to a maximum of 200–250 to help ensure safer prisons. The next Irish Prison Service strategy (current Strategy runs until 2018) should include a commitment to this.

Action 4.2: Special cells (including Safety Observation Cells and Close Supervision Cells) must not be included in prison capacity figures, as recommended by the Inspector of Prisons.¹⁰²

99 Tonry, M (2006), *The Future of Imprisonment*, Oxford University Press: Oxford.

100 *Titan Prisons: A Gigantic Mistake*, A Prison Reform Trust Briefing, pp.7–9: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Titan%20prisons%20-%20a%20gigantic%20mistake.pdf>.

101 The Office of the Inspector of Prisons’ capacity figures for Mountjoy and Cork are currently being updated and therefore are unavailable.

102 Inspector of Prisons (2010) *Report of an Investigation on the use of ‘Special Cells’ in Irish Prisons*, p. 25: <http://www.justice.ie/en/JELR/Pages/IOP-report-09>

Minimum prison security settings

Standard 5: Prisoners are detained in the least restrictive prison security settings as determined through risk assessment.

Rationale

In order to prevent the damaging effects of institutionalisation and to promote normalisation, prisoners should be able to avail of the least restrictive regimes appropriate to the risk they present, determined through a risk assessment. There are a number of long-term benefits to availing of lower-security prison settings, including: greater out-of-cell time for prisoners, enhanced family contact, and the reduced costs associated with lower-security settings.¹⁰³

The Whitaker Report (1985) previously recommended the use of minimal security settings:

*The regime for prisoners should be the least restrictive consistent with the security risk they present. The appropriate maximum level of security for individual prisoners should be assessed when they are committed, and at intervals thereafter, by reference to their records, attitudes and development needs.*¹⁰⁴

Current context

Ireland has few low-security prisons. There are four areas within the prison estate that operate a low security regime which include: Loughan House (120), Shelton Abbey (118), the semi open area of Castlerea Prison known as 'the Grove' (54) and Harristown House (15). A distinction should be made between low-security settings and open prisons (as addressed in Standard 6 below). Low-security settings may include access to more relaxed regimes within closed prison environments.

There are no low-security prison settings for women, only two medium-security ones: the Dóchas Centre and Limerick female prison.

The Irish Prison Service made a commitment to the provision of low-security regimes in its *Capital Strategy 2016–2021*:

An overriding principle is that prisoners should to the greatest degree possible be accommodated with security standards and regimes that are

*appropriate to their needs, and to the security risks they pose, and should not be subjected to security standards substantially and unnecessarily beyond those needs, as this compromises other objectives such as dignity, humanity, rehabilitation, cost effectiveness and proportionality.*¹⁰⁵

The SRGPP (2014) also recommended:

*Prisoners should, to the greatest extent possible, only be detained at a security level appropriate to their personal circumstances.*¹⁰⁶

Overall analysis

While areas of good practice can be found across the prison estate, it is currently not clear how many prisoners should be availing of lower-security settings.

Indicator S5.1:

Number of prisoners accommodated in low-security settings.

Short-term actions required for Standard 5

Action 5.1: The Irish Prison Service must carry out needs analyses at regular intervals to identify the number of prisoners requiring low-, medium- and high-security settings.

Action 5.2: The Department of Justice and Equality and the Irish Prison Service must ensure the committed timeline of early 2018 to provide a step down facility or equivalent for female prisoners is met.

Open prison provision

Standard 6: Open prisons comprise 30%–35% of the prison estate.

Rationale

The concept of an 'open prison' was formulated at the *First United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, in 1955.¹⁰⁷ The general characteristics that make a prison an open prison were outlined: (a) the absence of

¹⁰³ The SRGPP also found that "transfer of suitable offenders from high to lower security settings would result in financial savings". Source: *Strategic Review Group on Penal Policy*, p. 59: http://www.justice.ie/en/JELR/Pages/Penal_Policy_Review.

¹⁰⁴ *The Report of the Committee of Inquiry into the Penal System* (1985) Government of Ireland, Dublin.

¹⁰⁵ Irish Prison Service, *Capital Strategy 2016–2021*, p. 21: http://www.irishprisons.ie/wp-content/uploads/documents_pdf/capital_strategy_2016.pdf.

¹⁰⁶ *Strategic Review Group on Penal Policy* (2014) p. 59: <http://www.justice.ie/en/JELR/Pages/PB14000244>.

¹⁰⁷ Lopez-Rey, M and Germain, C (2013) *Studies in Penology*, p. 124.

security measures, both material and staff provisions in the form of walls, locks, bars, armed or unarmed posts; and (b) a regime based on voluntary discipline of prisoners and on their sense of responsibility for the community of which they are part.

The Nordic penal culture is characterised by consistently low rates of imprisonment, with humane prison conditions.¹⁰⁸ In 2015, open prison provision was at 36% in Norway, 32% in Denmark, 29% in Iceland and 12% in Sweden (the low proportion in Sweden is due to its decreasing prison population).¹⁰⁹

Open prisons are a vital component of the pre-release process; they enable prisoners' gradual transition back into society, and can counteract any harmful effects of institutionalisation.

Current context

There are currently two open prisons in the Irish prison estate: Loughan House in County Cavan and Shelton Abbey in County Wicklow. Both are for men and are located in rural areas of the country. This makes it harder for prisoners to maintain relationships with families, who often have to travel considerable distances to visit them. Access to educational programmes and services can be limited in these remote locations. Open prisons must have meaningful structured activity in place to ensure better outcomes for prisoners upon release.

Open prison provision capacity currently comprises 6.7% of the entire Irish prison estate. Open prison provision declined by 2.3% in 2017 following the closure of the Training Unit¹¹⁰ semi-open prison facility on Mountjoy Campus in May 2017. There are unpublished plans for a broader restructuring of Mountjoy Campus.^{111, 112}

There have been a series of commitments made to increase open prison provision, which was a key recommendation in two national penal reform policy documents. Recommendation 18 of the *SRGPP Final Report (2014)* specifically proposes the need for an open prison in the Dublin area, well as the need for an open prison for female prisoners.

Despite commitments made by the SRGPP for provision of a step-down (or equivalent facility) for women by the second quarter of 2017, this has yet to happen. The Department of Justice and Equality, in the *National Strategy for Women and Girls 2017–2020*,¹¹³ committed to providing a step-down facility or equivalent for women by the first quarter of 2018.

Overall analysis

It is clear that there has been regress in this area in 2017 with a decrease in open prison provision capacity.

Indicator S6.1:
Open prison provision in the Irish prison estate

Short-term actions required

Action 6.1: The Irish Prison Service must ensure the current proposed timeline of early 2018 for an open prison (or equivalent) for women is met.

Action 6.2: The Irish Prison Service should publish *Mountjoy Campus 15-Year Masterplan*, including details on plans for the development of an open prison in Dublin.

108 Ugelvik, T (2016) 'Prisons as welfare institutions? Punishment and the Nordic model', in J Bennett, Y Jewkes and B Crewe (eds.) *Handbook on Prisons*.

109 Kristofferson, R., (2016) *Correctional Statistics of Denmark, Finland, Iceland, Norway and Sweden 2011–2015*, Kriminalomsorgen.

110 IPRT position on the closure of the Training Unit: <http://www.iprt.ie/contents/3103>.

111 Office of the Inspector of Prisons (2014), *An Overview of Mountjoy Prison Campus with Particular Emphasis on the Separation Unit by the Inspector of Prison, Judge Michael Reilly* 23 July, p.16: <http://www.justice.ie/en/JELR/Pages/PB14000234>.

112 See also Irish Prison Service, *Annual Report 2016*, p. 59: <https://www.irishprisons.ie/index.php/information-centre/publications/annual-reports/>.

113 Department of Justice and Equality (2017) *National Strategy for Women and Girls 2017–2020: Creating a Better Society for All*, p. 46: http://www.justice.ie/en/JELR/Pages/National_Strategy_for_Women_and_Girls_2017-2020.

B: Prison conditions

Humane prison conditions

Standard 7:
Every prisoner is provided with respect, dignity and humanity and has access to decent living conditions.

Rationale

This right is upheld in a number of human rights instruments.¹¹⁴ The deprivation of liberty is the punishment for the offence committed once someone is imprisoned. Therefore, prison living conditions should aim to reflect ordinary daily life and be of a standard that ensures the respect and dignity of each individual.

Current context

A number of other factors outlined by the CPT are relevant when assessing humane conditions in prison as highlighted in the indicators below.¹¹⁵ These include physical conditions but also general conditions related to diet and nutrition, religious practice and other aspects of prison life, such as gratuities.

Overall analysis

It is difficult to assess conditions across the prison estate, as they can vary considerably by prison.

Indicators for Standard 7

The following indicators will be used to assess Ireland's progress in meeting Standard 7 – that every prisoner must be treated with respect, dignity, and humanity and have access to decent living conditions.

Indicator S7.1:

Standards within the prison estate regarding: state of repair and cleanliness; natural light, ventilation and heating; sanitary facilities (see Standard 8 below)

Indicator S7.2:

Prisoners' access to a balanced diet and nutritious food; facilitation of religious practice; legal representation; regular family contact (see Standard 11); gratuity payments; and a tuckshop, with prices in line with gratuity payments received by prisoners.

Short-term action required

Action 7.1 Regular audits should be carried out to ensure that all prisons are meeting basic living standards and humane prison conditions. These audits should review: accommodation, physical repair, diet and nutrition, regimes, legal representation, gratuity payments and prices in tuckshops. Conditions for each of these items should be of a high standard and consistent across the prison estate.

114 Article 3 of the European Convention on Human Rights, Article 7 on the International Covenant on Civil & Political Rights, Article 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 37 on the Convention on the Rights of the Child.

115 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2015) *Living Space per prison in prison establishments: CPT standards*, p. 7: <https://rm.coe.int/16806cc449>.

In-cell sanitation

Standard 8:
Every prisoner has 24-hour access to toilet facilities that respect the dignity and privacy of the individual.

Rationale

The practice of ‘slopping out’ is a degrading form of treatment.¹¹⁶ Every person in prison should be able to avail of toilet facilities in private, which is a recognised universal minimum standard. The European Prison Rules state that all prisoners should have access to sanitary facilities that are hygienic and respect the prisoner’s privacy.¹¹⁷

Current context

Since 2010, Ireland has made great progress in reducing the practice of ‘slopping out’. However, the practice continues in parts of Portlaoise and Limerick prisons. In total, 56 prisoners are still slopping out: 37 in Portlaoise Prison and 19 in Limerick Prison. Numerous timelines have been set to end it, and the Irish Prison Service has recently committed to doing so by 2020 (stated at Ireland’s examination by the UN Committee against Torture 2017), something the CPT has been calling for since 1993.

In addition, a considerable percentage (41%) of prisoners must toilet in the presence of others.¹¹⁸

Overall analysis

Ireland has progressed substantially on decreasing the number of prisoners ‘slopping out’ since 2011. However, further work is required in the complete elimination of this practice and in reducing the number of prisoners toileting in the presence of others.

Indicators

Indicator S8.1:
The number of prisoners currently slopping out.

Indicator S8.2:
The number of prisoners using a toilet in the presence of others.

Short-term actions required

Action 8.1: The Department of Justice and Equality and the Irish Prison Service must eliminate the practice of slopping out by end of 2018.

Action 8.2: The Department of Justice and Equality and the Irish Prison Service should reduce the numbers toileting in the presence of others by a third during 2018, with a mid-term goal of ensuring that every prisoner has 24-hour access to a toilet in private.

116 In 2015, the CPT stated that “No prisoner in Europe should be obliged to slop out, a practice that is degrading both for the prisoners and for the staff members who have to supervise such a procedure.” See COE recommendation, p. 7: <https://rm.coe.int/16806cc449>.

117 EPR 19.3. This is also provided for in the Mandela Rules (Rule 15).

118 Irish Prison Service (2017) *Census of Cell Occupancy and In Cell Sanitation April 2017*: <https://www.irishprisons.ie/index.php/information-centre/statistics-information/census-reports/>.

Single-cell accommodation

Standard 9: Every prisoner has access to single-cell accommodation.

Rationale

This standard is supported by Article 12 of the Mandela Rules, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) standards, and the European Prison Rules.^{119,120} The provision of single-cell accommodation in a prison environment has many benefits. It reduces the risk of violence, including sexual violence. Generally, prisoners prefer single-cell accommodation for privacy reasons. Where prisoners wish to share, risk assessment should determine the suitability of two individuals sharing a cell.

Current context

The importance of single-cell accommodation is starkly illustrated by an investigation report on a death in custody, where it was found that inappropriate cell-sharing contributed to the death of an individual prisoner in 2013.¹²¹

Currently, 54% of the prison population is accommodated in single cells.¹²² This means that 46% of the prison population have no access to single-cell occupancy, of whom 1,396 share a double cell, 240 share a triple cell and 74 share a four-man cell or room.^{123, 124}

According to the Inspector of Prisons, single cell sizes should conform to 7m² with a minimum of 2m walls and in-cell sanitation.¹²⁵

Overall analysis

The implementation of a double-occupancy policy in the new Cork Prison contravenes international best practice: prisoners should have the choice of single-cell occupancy. Single-cell occupancy must be standard practice when renewing or renovating Irish prisons. Further progress is required to ensure every prisoner has access to single-cell accommodation.

Indicators

Indicator S9.1:

The number of prisoners accommodated in a single cell.

Indicator S9.2:

The proportion of single cells across the prison estate.

Short-term actions required

Action 9.1: The Department of Justice and Equality and the Irish Prison Service must commit to achieving single cell occupancy as standard across the closed prison estate.

119 Article 12 of the Mandela Rules states: "Where sleeping accommodation is in individualised cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or a room". The CPT states that cells should be 6m² for single-cell occupancy and a sanitary facility. Source: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) *Living Space Per Prisoner in Prison Establishments: CPT standards*. See also *Inspector of Prisons, An Assessment of the Irish Prison System by the Inspector of Prisons Judge Michael Reilly*, May 2013, p.7: <http://www.inis.gov.ie/en/JELR/Pages/PB13000265>.

120 Under rule 18 of the European Prison Rules (2006), "18.5 Prisoners shall normally be accommodated during the night in individual cells except where it is preferable to them to share sleeping accommodation. 18.6 Accommodation shall only be shared if it is suitable for this purpose and shall be occupied by prisoners suitable to associate with each other. 18.7 As far as possible, prisoners shall be given a choice before being required to share sleeping accommodation."

121 Inspector of Prisons (2013) *Death in Custody Prisoner B*: http://www.inspectorofprisons.gov.ie/en/iop/pages/deaths_in_custody_reports.

122 Census Prison Population April 2017, *Cell-Occupancy-In Cell Sanitation*: <https://www.irishprisons.ie/index.php/information-centre/statistics-information/census-reports/>.

123 Ibid.

124 Where the term 'room' is used, this relates to provision in open prisons.

125 Inspector of Prisons (2010) *The Irish Prison Population-an Examination of duties and obligations owed to prisoners*, p. 10: <http://www.justice.ie/en/JELR/Pages/IOP-report-09>

Separation of remand prisoners from sentenced prisoners

Standard 10:
Remand prisoners are held separately from sentenced prisoners across the entire prison estate.

Rationale

It is a basic human rights standard that remand prisoners must be separated from sentenced prisoners.¹²⁶

Current context

Cloverhill Prison is the main remand prison facility for male prisoners in Ireland. It appears there is currently no separation of female remand prisoners from sentenced prisoners in the two women's prisons.

On the 6th of July 2017, there were 24 sentenced prisoners in custody in Cloverhill [Remand] Prison. Six of those were in single occupancy cells while 18 were sharing a cell with remand prisoners.¹²⁷ Table 5 shows the number of people on remand held alongside sentenced prisoners on the same date.

Table 5: Cell-sharing of remand with sentenced prisoners¹²⁸

Prison	Remand prisoners mixed with sentenced prisoners (n.)
Castlerea Prison	9
Cloverhill Remand Prison	18
Cork Prison	10
Limerick Prison (Female)	1
Limerick Prison (Male)	16
Midlands Prison	21
Mountjoy Prison (Female)	12
Mountjoy Prison (Male)	0
Portlaoise	4
Wheatfield Place of Detention	1
Total	92

Overall analysis

A total of 92 remand prisoners across the prison estate were required to cell share with sentenced prisoners. While there are no publicly available data on the lengths of time people are placed on remand, the Irish Prison Service made a commitment in July 2017 to publish this data on a quarterly basis, which is a welcome step.¹²⁹

Indicator

Indicator S10.1:
The number of remand prisoners held alongside people serving a prison sentence.

Short-term actions required

Action 10.1: The Irish Prison Service must publish data on time individual prisoners spend on remand in prison, and time spent by remand prisoners alongside sentenced prisoners.

Action 10.2: The Irish Prison Service must provide a clear timeframe for separation of remand prisoners from sentenced prisoners across the entire prison estate, in particular the female prison population.

¹²⁶ Rule 18.8 of EPR, 11 (b) of the UN Mandela Rules, ICCPR 10 2 (A).

¹²⁷ Written Answers, *Prison Accommodation*, 11 July 2017: <https://www.kildarestreet.com/wrans/?id=2017-07-11a.710>.

¹²⁸ Ibid.

¹²⁹ UN Web TV, *Consideration of Ireland, 1551st Meeting 61st Session Committee Against Torture*: <http://webtv.un.org/search/consideration-of-ireland-contd-1551st-meeting-61st-session-committee-against-torture/5526421662001/?term=Ireland&sort=date>.

Family contact

Standard 11:
Every prisoner is encouraged and facilitated to maintain positive family and close, significant relationships.

Rationale

Prisoners have the right to frequent and regular access to their family.¹³⁰ Children and families affected by imprisonment are often described as the ‘hidden victims of crime’. The ripple effects of imprisonment on families are often disregarded, including the separation or loss of a parent, as well as the additional costs families face on the outside. Children and families often play a key role in the rehabilitation and desistance process of the prisoner on their release; supporting their needs and facilitating their participation in their loved one’s sentence is vitally important. This should be achieved through the use of regular forms of communications, including high-quality child- and family-friendly visits that allow for physical contact, as well as regular access to other forms of communication including phone calls and provision of video calls such as Skype.

Current context

In relation to family contact for prisoners, the Whitaker Report (1985) many years ago recommended ‘minimum use of supervision’ and ‘maximum personal contact’. A ban on contact visits in the old Cork Prison attracted the following response from the CPT: “such a systematic ban on physical contact between prisoners and their

families, in particular their children, is unreasonable, given the search procedures in place”.¹³¹

There were over 130,000 family visits over the course of 2016 to Irish prisons.¹³² In *Better Outcomes Brighter Futures 2012–2020*, the national framework for children and young people, the Department of Justice and Equality has committed to improving prison visiting conditions for children. While there have been improvements in some parts of the prison estate, it is not clear how many prisons have implemented this commitment to introducing child-friendly visiting conditions. However, during Ireland’s recent examination under the UN Convention against Torture (2017), the Director General of the Irish Prison Service committed to providing roundtable visiting conditions for children and families in all prisons within the next 12 months.¹³³

A recent, unpublished survey of prisoners undertaken by the Irish Prison Service, IPRT and Datakind, found that prisoners would like more access to alternative forms of contact with their families, including more telephone calls and use of Skype.¹³⁴

Overall analysis

There has been progress in relation to child-friendly visiting conditions, with a recent commitment having been made to ensuring that child-friendly visiting facilities are available across the estate by July 2018. However, government departments such as the Department of Health and the Department of Education and Skills need to commit to supporting this cohort of children and their specific needs, in particular to ensure positive outcomes; this should include facilitating access to mental health and educational supports.

130 “Prisoners shall be allowed under necessary supervision to communicate with their family and friends at regular intervals” (Rule 58(1) of Mandela Rules). “Prisoners shall be allocated to the extent possible to prisons close to their homes or their places of social rehabilitation” (Rule 59 of Mandela Rules, 17.1 of EPR). “Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable and in the best interests of both” (Rule 106 of UN Mandela Rules). “Search and entry procedures for visitors shall not be degrading” (Rule 60(2), UN Mandela Rules, Rule 54.1-54.10 of EPR are also relevant). Article 8 of the European Convention on Human Rights highlights the right to privacy and family life, while the UN Convention on the Rights of the Child which Ireland has ratified sets a number of obligations including the voice of the child must be heard, ‘best interests’ should apply when decisions are being made that affect the child, no child should be discriminated against because of their parental status are of particular relevance to children of prisoners. Furthermore, Article 23 of the International Covenant on Civil and Political Rights, states “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State”: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

131 CPT (2011) *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, p. 51: <https://rm.coe.int/1680696c98>.

132 Written Answers, *Prisoner Data*: <https://www.kildarestreet.com/wrans/?id=2017-07-11a.740>.

133 Ireland’s Examination under UNCAT oral hearing in 2017.

134 Datakind analysed the data for this survey; IPRT is also involved in this project, originally initiated by the Childhood Development Initiative.

Indicators

Indicator S11.1:
Availability of child-friendly visiting conditions across the prison estate.

Indicator S11.2:
Regular family contact, specifically via phone calls, Skype programmes, contact visits and availability of weekend, and evening visits.

Indicator S11.3:
Supports for children affected by parental imprisonment.

Short-term actions required

Action 11.1: The Irish Prison Service must deliver on its commitment to introduce round-table child-friendly visiting conditions across all prisons by July 2018.

Action 11.2: The Irish Prison Service must increase the availability of phone calls and Skype (or equivalent) across the estate to maintain family relationships.

Action 11.3: The Department of Children and Youth Affairs should recognise this group of children as a vulnerable cohort with specific needs and supports in their own right and must lead and develop a cross-sectoral strategy to address their needs.

Access to healthcare services

Standard 12:
The healthcare needs of individual prisoners are met. Every prisoner has access to healthcare that goes beyond the 'equivalence of care' principle, with a full range of preventative services and continuity of healthcare into the community.

Rationale

The right to healthcare in prison equal to that enjoyed by the general population is laid out in the Mandela Rules, the Bangkok Rules and the European Prison Rules.¹³⁵ The healthcare needs of the prison population are in fact higher than those of the general population. These needs must be met, particularly because of the lack of autonomy prisoners face in terms of their access, choice and responsiveness to healthcare.

Current context

Healthcare in Irish prisons is currently operated by the Irish Prison Service. The World Health Organization (WHO) has stated that "prison health services

should generally be provided by Ministries of Health and not prison departments."¹³⁶ As highlighted by the CPT (2015), "The recent policy trend in Europe has favoured prison health-care services being placed either to a great extent, or entirely, under the responsibility of the Ministry of Health".¹³⁷

A report on healthcare by the Inspector of Prisons was published by the Minister for Justice and Equality in February 2017.¹³⁸ In it, the Inspector of Prisons highlighted the CPT's (2015) findings that healthcare in certain prisons had deteriorated, particularly identifying Midlands Prison.¹³⁹ The Inspector recommended a comprehensive assessment of the health needs of prisoners followed by a staffing needs analysis, as well as the appointment of a Director of Healthcare. The appointment of a medical director is a recommendation that dates back to the Whitaker Report (1985).¹⁴⁰ The CPT (2015)¹⁴¹ and the UN Committee against Torture¹⁴² (2017) recommended an urgent review of prison healthcare in Ireland.

Responsibility for the healthcare of prisoners should be transferred to the Department of Health, which would allow for the inspection of prison healthcare services by the Health Information and Quality Authority (HIQA). Currently, no independent healthcare inspections are carried out.

135 "The provision of healthcare is a state responsibility. Prisoners should enjoy the same standards of care that are available in the community, and should have access to necessary healthcare services free of charge without discrimination on the grounds of their legal status" (Art 24(1) of UN Mandela Rules). "Healthcare services should be organised in a close relationship to the general public health administration and in a way that ensures continuity of treatment and care including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence" (Art. 24(2) of UN Mandela Rules). "Every prison shall have in place a health care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners paying particular attention to prisoners with special healthcare needs or with health issues that hamper rehabilitation" (Article 25(1) of UN Mandela Rules). "Medical services in prison shall be organised in close relation with the general health administration of the community or nation." (Rule 40.1 EPR). "All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner for that purpose" (Rule 40.5 EPR). "Prison authorities shall safeguard the health of all prisoners in their care" (Rule 39, European Prison Rules). "Gender-specific health-care services at least equivalent to those available in the community shall be provided to women prisoners." (Rule 10, the Bangkok Rules). "Individualised, gender sensitive, trauma informed and comprehensive mental health care and rehabilitation programmes shall be made available for women prisoners with mental health care needs in prison or in non-custodial settings" (Rule 12, Bangkok Rules). "The prison medical service shall provide for the psychiatric treatment of all prisoners who are in need of such treatment and pay special attention to suicide prevention" (Rule 47.2, European Prison Rules).

136 UNODC and WHO (2013) *Good Governance for Prison Health in the 21st Century: A policy brief on the organization of prison health*, World Health Organisation available at: <http://www.euro.who.int/en/publications/abstracts/good-governance-for-prison-health-in-the-21st-century-a-policy-brief-on-the-organization-of-prison-health-2013>. The equivalence of health care principle has been highlighted by the UN Mandela Rules and also the right to health outlined under the International Covenant on Economic, Social and Cultural Rights (ICESCR). Furthermore, under Article 8 of the European Convention on Human Rights (ECHR), the State has a positive obligation to protect prisoner's physical integrity.

137 Council of Europe (2015) *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)* from 16-24th September, CPT/Inf (2015), p. 34: <https://rm.coe.int/pdf%20/1680727e23>.

138 *Healthcare in Irish Prisons Report by Judge Michael Reilly, Inspector of Prisons November 2016*: http://www.justice.ie/en/JELR/Healthcare_in_Irish_Prisons_Report.pdf/Files/Healthcare_in_Irish_Prisons_Report.pdf.

139 *Ibid*, p.5.

140 *Report of the Committee of Penal Enquiry*, p. 14.

141 Council of Europe (2015) *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*.

142 UN Committee against Torture (2017) *Concluding Observations on the Second Periodic Report of Ireland*, http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_COC_IRL_28491_E.pdf.

Overall analysis

In 2017, the Department of Health and the Department of Justice and Equality continued discussions concerning a review of prison healthcare. However, there has been no evident progress on this review; neither has there been an annual report on medical services in prisons. Further progress is required in the area of healthcare.

Indicators

Indicator S12.1:
Responsibility for prisoner healthcare moving to the HSE, with independent inspections from HIQA.

Indicator S12.2:
Publication of an annual report on prison medical services as recommended by the the CPT.

Short-term actions required

Action 12.1: The Department of Health and the Department of Justice and Equality must conduct a healthcare review examining the feasibility of transferring prison healthcare to the Department of Health in 2018, and publish the findings.

Action 12.2: The Irish Prison Service should undertake a health needs assessment of the prison population and staffing analysis as recommended by the Inspector of Prisons and publish these findings by the end of 2018.

Mental healthcare

Standard 13:
People with serious mental health issues are diverted from the prison system and receive the appropriate treatment and supports in a timely manner.

Rationale

It is well established that the prison environment exacerbates mental health issues. Mental illness in the context of prison must be viewed as a health issue requiring an effective and prompt health intervention, including diversion to appropriate treatment services outside prison.

Current context

In 2015, the CPT highlighted that 'Irish prisons continued to detain persons with psychiatric disorders too severe to be properly cared for in a prison setting.'¹⁴³ Furthermore, it highlighted that staff in prisons were not trained to deal with mentally ill prisoners. In 2017, there were 20 prisoners awaiting to be transferred to the Central Mental Hospital.¹⁴⁴

Safety observation cells are currently being used to detain prisoners who have serious mentally ill issues. At the time of writing, four prisoners were being held in such cells.¹⁴⁵ However, no information is available on the length of time prisoners are held in them.

Overall analysis

The State must ensure that prisoners with serious mental health issues are referred directly to appropriate mental health services. Prison should not be used as a holding ground for people with serious mental health issues. For individuals who are not assessed as in need of transfer to facilities outside prison, access to mental health supports should be available in prison. A recent review indicates that the resourcing and ratio of psychologists to prisoners at 1:220 is well below the acceptable standard.¹⁴⁶ In other jurisdictions such as Canada the ratio is 1:78 while in Scotland it is 1:123.¹⁴⁷

Indicators

Indicator S13.1: The number of prisoners awaiting transfer to the Central Mental Hospital.
Indicator S13.2: The lengths of time individual prisoners are being held in safety observation cells.
Indicator S13.3: Number of High Support Units across prisons nationwide.
Indicator S13.4: Ratio of one psychologist to 150 prisoners.

Short-term actions required

- Action 13.1:** The Irish Prison Service should publish data on mental health assessment waiting lists; the waiting period for prisoners to be transferred to mental health facilities; and information on the length of time individual prisoners spend in safety observation cells.
- Action 13.2:** The Department of Health should work towards eliminating mental health assessment waiting lists.

143 Council of Europe (2015) *Report to the Government of Ireland on the Visit to Ireland Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)* from 16-24th September, CPT/Inf. (2015) p. 41: <https://rm.coe.int/pdf%20/1680727e23>.

144 The Irish Times, *Bed Capacity in the Central Mental Hospital at 'critical' level*, 18th September 2017 <https://www.irishtimes.com/news/health/bed-capacity-in-the-central-mental-hospital-at-critical-level-1.3224197>.

145 Irish Prison Service, *Census Prison Population April 2017 – Cell Occupancy, In Cell Sanitation*: <https://www.irishprisons.ie/index.php/information-centre/statistics-information/census-reports/>.

146 Porporino F., (2015) "New Connections" *Embedding Psychology Services and Practice in the Irish Prison Service*, T3 Associates Ottawa, Canada p. 11: <https://www.irishprisons.ie/index.php/prisoner-services/psychology-service/>.

147 Ibid., p. 26.

Drug and alcohol treatments

Standard 14:
People with drug and alcohol addictions are diverted from the criminal justice system to receive appropriate treatment. Where imprisonment is the only appropriate response, treatment must be made available within prison, with a continuum of care upon release.

Rationale

Addiction is often characterised by past experiences of trauma, as well as being linked to social exclusion. Addiction should primarily be viewed as a health problem, where people with drug/alcohol dependency issues should be diverted away from the criminal justice system with a prompt health response as the most appropriate form of intervention, a point made by the Council of Europe in 1993.¹⁴⁸

Current context

It has been reported that approximately 70% of the prison population have addiction issues.¹⁴⁹ The figure is even higher for the female prison population, at 85%.¹⁵⁰ A total of 1,793 prisoners received methadone substitution treatment during 2016. On 31 December 2016, 465 prisoners were receiving methadone substitution treatment.¹⁵¹

Given such high numbers, the level of drug and alcohol treatment within the prison estate is inadequate. In February 2017, there were 54 persons on a waiting list for drug treatment programmes in prison, and 519 persons engaging with drug treatment services in prison.¹⁵²

Table 6: Prisoners engaging in drug treatment per prison, February 2017¹⁵³

Prison	Prisoners
Castlerea Prison	9
Cloverhill Prison	91
Cork Prison	28
Limerick Prison	36
Dóchas Centre	42
Mountjoy Prison	145
Wheatfield Place of Detention	69
Portlaoise Prison	11
Midlands Prison	81
Total	519

In total, 16% of the Irish Prison Service's health expenditure budget was for addiction in 2014.¹⁵⁴ The Probation Service and Irish Prison Service have a combined annual expenditure of €3.3 million.¹⁵⁵ Treatment options available in the prison system include: detoxification, methadone maintenance, residential counselling, addiction counselling, after-care, education and awareness raising and family support.¹⁵⁶ In addition, there are three drug-free landings operating in the prison system.¹⁵⁷ There are currently two main detox programmes available: an eight-week programme for prisoners stable on methadone whereby addiction counselling and drug treatment is an essential part of the process, and a six-month programme whereby participants must also attend one-to-one counselling with a counsellor or a psychologist.¹⁵⁸

148 The Council of Europe (1993) recommended: "non-custodial measures should be more widely used by courts or other competent authorities in order to encourage drug addicts to seek treatment in health or social institutions. Drug addicts should be encouraged to follow such treatment programmes." *Recommendation No. R (93) 6 (no. 20), of the Committee of Ministers to Member States concerning Prison and Criminological Aspects of the Control of Transmissible Diseases Including Aids and Related Health Problems in Prison adopted by the Committee of Ministers of Council of Europe on 18th October 1993.*

149 Oireachtas Joint and Select Committees, *Public Accounts Committee*, 2 February 2017: <https://www.kildarestreet.com/committees/?id=2017-02-02a.112&s=offend%23g126>.

150 Clarke, A and Eustace, A (2016) *Drug and Alcohol Treatment Services for Adult Offenders in Prison and in the Community*, Eustace Patterson Limited. p. 74.

151 See KildareStreet.com (2017), *Prison Drug Treatment Service*: <https://www.kildarestreet.com/wrans/?id=2017-02-28a.270>.

152 Written Answers, *Prison Drug Treatment Programmes*: <https://www.kildarestreet.com/wrans/?id=2017-02-28a.270>.

153 Ibid.

154 Clarke, A and Eustace, A (2016) *Drug and Alcohol Treatment Services for Adult Offenders in Prison and in the Community*, Eustace Patterson Limited. p.21.

155 Ibid., p. 24.

156 Ibid., p. 24.

157 Ibid, p. 69.

158 Ibid., p. 64.

Despite this range of treatments, a number of gaps in service provision for the treatment of offenders with substance misuse issues were identified, in relation to: treatment services for women offenders; recognition of other addictions including alcohol and gambling; integrated dual treatment for offenders presenting with co-morbidities; and the absence of a peer-led drug-free environment.¹⁵⁹

Ireland has a Drug Treatment Court. A review in 2010 highlighted a number of restrictive criteria associated with it.¹⁶⁰ Since 2000, only 6% of offenders have successfully completed the Drug Treatment Court Programme. In particular, the lack of residential treatment options available is a key barrier attributed to its low success rate compared to similar programmes in other jurisdictions.¹⁶¹

In 2014, the SRGPP recommended that community sanctions could be imposed with the possibility of drug treatment.¹⁶² Since then, a pilot integrated community service has been established by the Probation Service; however this has yet to be evaluated.

IPRT welcomes commitments made under the new *National Drugs Strategy 2017*, which sends a strong message that drug addiction should be viewed as a health issue and not a criminal justice issue.¹⁶³ The need to develop and incorporate harm reduction programmes into the treatment regime within prisons has also been highlighted.¹⁶⁴ The provision of needle exchange programmes is not currently being considered by the Irish Prison Service,¹⁶⁵ despite evidence of its benefits including promoting safety and reducing the risk of diseases among the prisoner population.

In relation to post-release care, 350 prisoners due for release have been referred to St. Francis Farm, a facility provided by Merchants Quay Ireland. However, this facility has only 40 spaces and as a result, waiting lists for this service are between three and six months.¹⁶⁶

Overall analysis

Further progress is required in diverting offenders with substance misuse away from prison to the relevant treatment services. There is low provision of drug treatment services both in prison and upon release. Further analysis is required to ensure that alternatives such as the Drug Treatment Court and the integrated community service model effectively meet the needs of this cohort of offenders.

Indicators

Indicator 14.1: Waiting lists for addiction services in prison.
Indicator 14.2: Number of places on drug treatment programmes available in prison.
Indicator 14.3: Number of drug-free wings across the prison estate.
Indicator 14.4: Harm reduction options available in the prison estate.
Indicator 14.5: Availability of detoxification beds in the prison estate.
Indicator 14.6: Waiting lists for post-release addiction services.

159 Ibid, pp. 8–9.

160 These included: the exclusion of offenders under 18 years; the exclusion of offenders who have committed a violent offence; the fact that offenders can only be referred to the Drug Treatment Court at post-conviction stage; the lack of awareness among the judiciary and other legal professionals that the Drug Treatment court is an option; and the need for management support. Source: Department of Justice, Equality and Law Reform (2010) *Review of the Drug Treatment Court*: <http://www.justice.ie/en/JELR/Drug%20Court%20Report%20final.pdf/Files/Drug%20Court%20Report%20final.pdf>.

161 Gallagher, C (2017) "Drug Treatment Court: Life-saving option for drugs offenders", Irish Times 6 January 2017: <https://www.irishtimes.com/news/crime-and-law/drug-treatment-court-life-saving-option-for-drugs-offenders-1.2926609>.

162 SRGPP (2014) *Penal Policy Report*. <http://health.gov.ie/wp-content/uploads/2017/07/Reducing-Harm-Supporting-Recovery-2017-2025.pdf>.

163 Department of Health (2017) *Reducing Harm, Supporting Recovery, A Health Led response to drug and alcohol use in Ireland 2017–2025*.

164 Ibid. p. 10.

165 This information was submitted by the Irish Prison Service in its oral hearing on Ireland's examination under the UNCAT hearing 2017.

166 Clarke, A and Eustace, E (2016) *Drug and Alcohol Treatment Services for Adult Offenders in Prison and in the Community*, Eustace Patterson Limited. p.72.

Short-term actions required

Action 14.1: The Irish Prison Service should publish information on waiting lists in terms of accessing treatment in prisons and post-release.

Action 14.2: The Irish Prison Services healthcare should reduce reliance on methadone maintenance in Irish prisons, and increase alternative treatment options.

Action 14.3: The Department of Health should increase provision of drug treatment residential places in the community, including facilities that accept prisoners irrespective of their category of offending behaviour.

Action 14.4: The Department of Health must commit to implementing recommendations made in the National Drugs Strategy.

Action 14.5 Further evaluation of the Drug Treatment Court should be conducted to assess how it might work more effectively.

Privacy

Standard 15:
A prisoner's right to privacy, and that of his/her family members, is respected and protected.

Rationale

Every prisoner has a right to privacy and family life.¹⁶⁷

Current context

The media plays a significant role in the portrayal of prisoners in public debate. While the media has a duty to report on matters that are in the public interest, sensationalist media articles on high profile prisoners are published on a regular basis. This not only breaches prisoners' right to privacy; it also affects his/her children and family members. The harm this can cause to children and families must be acknowledged, and their rights should be given greater protection.

Since the establishment of the Press Ombudsman in 2008, 30 communications have been directly made by prisoners. Only some of these complaints were directly processed as formal complaints.¹⁶⁸ A prisoner has three months from the publication of an article to make a complaint; for someone living in a prison, this timeframe may present a limitation.

Other unnecessary invasions of prisoners' privacy also need to be looked at, including the routine censorship of letters to and from family members.

Overall analysis

Analysis shows that more needs to be done to respect that prisoners' right to privacy, and that of their families, both in relation to the media and prison practices regarding censorship of letters, is respected.

Indicators

Indicator S15.1:
The number of complaints about breaches of privacy made by prisoners and/or their families to the Irish Prison Service, the Press Ombudsman and the Broadcasting Authority of Ireland.

Short-term actions required

- Action 15.1: The Irish Prison Service and all other public bodies must ensure that a code of ethics relating to the privacy of a prisoner is respected, with clear sanctions in place for those found to have breached these sanctions.
- Action 15.2: The Irish Prison Service should end routine censorship of prisoner correspondence.

¹⁶⁷ "Everyone has the right to respect for his private and family life, his home and his correspondence" (Art 8 of ECHR). Rule 73 of the UN Mandela Rules is also relevant here.

¹⁶⁸ Some of these complaints were initial enquiries that were not subsequently followed up by the prisoner, or related to articles that were published more than three months before the complaint was submitted and therefore could not be followed up any further.

C. Regimes

Out-of-cell time

Standard 16:
Every prisoner spends a minimum of five hours a day engaged in structured meaningful activity for five days a week, in addition to a further minimum seven hours of out-of-cell time.

Rationale

A number of human rights instruments uphold the right of prisoners to engage in meaningful activity. Therefore, a high level of out-of-cell time is imperative. Purposeful activity is a key component to helping prisoners cope with their sentence while also being a vital aspect of the rehabilitation of prisoners.¹⁶⁹

Current context

Staffing issues impact on out-of-cell time and access to regimes for the prison population. In 2013, the Inspector of Prisons highlighted the importance of provision and access to relevant structured activities and that resources should not be used as an excuse for failure to comply. The Inspector highlighted the practice of double-counting prisoners attending workshops, which gave a false sense of high numbers participating in workshops and school when the opposite was the case.¹⁷⁰ Again, in 2017, closures of workshops and education classes are reportedly widespread across the prison estate.¹⁷¹

Access to workshops, education and services for prisoners on a 'restricted regime' (those spending

in excess of 19 hours+ per day locked up) is even more problematic. The Irish Prison Service has committed to ensuring that every prisoner has at least three hours of out-of-cell time with meaningful activity.¹⁷² As highlighted by the SRGPP, those on a restricted regime or on protection must be 'removed from that regime as soon as possible'.¹⁷³ A minimum of 12 hours of out-of-cell time was recommended in the Whitaker Report (1985), which described the lock up time of 16 hours or more as 'excessive'.

As of April 2017, there were 430 prisoners on a restricted regime, of which 394 were there of their own request, while 23 prisoners were on a restricted regime as a result of 'grounds of order' under Rule 62 of the *Prison Rules 2007*.¹⁷⁴ In a recent parliamentary question,¹⁷⁵ it was stated that Wheatfield Place of Detention offers prisoners on restricted regimes opportunities to engage in education at specific time periods over different days of the week. All activities provided to those on restricted regimes are similar to those made available to the general prison population. However, no information was provided on this issue regarding the rest of the prison estate.

Restrictions such as the disciplinary system, incentivised regimes¹⁷⁶ and Rule 62¹⁷⁷ have the capacity to significantly impact on the way prisoners experience imprisonment, in particular their perception and experiences of fairness in the system.

169 The regime provided for all prisoners shall offer a balanced programme of activities.' (European Prison Rules, 25.1) Rule 25.2 of the European Prison Rules: "Regimes should allow all prisoners to spend as many hours a day outside their cells as necessary". The CPT recommended that both sentenced and remand prisoners should have eight hours of access to meaningful structured activity. See recommendation made by the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT) (2015): *Living Space per Prison in Prison Establishments: CPT Standards*, p. 7: <https://rm.coe.int/16806cc449>. "Good order in prison shall be maintained by taking into account the requirements of security, safety and discipline, while also providing prisoners with living conditions that respect human dignity and offering them a full programme of activities" (Rule 49 EPR).

170 *An Assessment of the Irish Prison System by the Inspector of Prisons (2013)*, Judge Michael Reilly May 2013, p. 13: http://www.inspectorofprisons.gov.ie/en/iop/pages/other_reports.

171 See for example, Written Answers, *Educational Services for Prisoners*, 11th July 2017 <https://www.kildarestreet.com/wrans/?id=2017-07-11a.731>. Basic principle 4 of the European Prison Rules outlines that "prison conditions that infringe prisoners' rights are not justified by a lack of resources".

172 This information is provided in the Irish Prison Service's *Census of Restricted Regime Prisoners April 2017*: http://www.irishprisons.ie/wp-content/uploads/documents_pdf/April-2017-Restriction.pdf.

173 Recommendation 17 of the Strategic Review Group on Penal Policy, p. 10: <http://www.justice.ie/en/JELR/Pages/PB14000244>.

174 Irish Prison Service, *Census of Restricted Regime Prisoners April 2017*: http://www.irishprisons.ie/wp-content/uploads/documents_pdf/April-2017-Restriction.pdf.

175 Written Answers, *Educational Services for Prisoners*, PQ 297, 11th July 2017 <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2017071100079>.

176 The Incentivised Regimes policy was introduced in 2012 and provides for differentiation (basic, standard and enhanced) of privileges according to a prisoner's level of engagement and behaviour. More information here: Irish Prison Service, *Incentivised Regimes Policy* <https://www.irishprisons.ie/index.php/about-us/care-and-rehabilitation/incentivised-regimes-policy/>.

177 Rule 62 of the Irish Prison Rules 2007 refers to the removal of a prisoner from structured activity or association on grounds of order.

Overall analysis

Evidence currently suggests that the general prison population has a limited amount of out-of-cell time. Prisoners on restricted regimes have very limited out-of-cell time. Further progress in this area is required.

Indicators

Indicator S16.1:
Hours out-of-cell time for all prisoners, including prisoners on a restricted regime.

Indicator S16.2:
The number of prisoners who have daily access to a minimum of five hours structured educational, vocational and work programmes, and publication of this information.

Short-term actions required

Action 16.1: The Irish Prison Service must ensure that all prisoners, including those on a restricted regime, have access to a minimum of five hours of meaningful activity (education, training, work) on a daily basis, in addition to further out-of-cell time, by end 2018.

Action 16.2: The Inspector of Prisons should undertake a review on the practice of restricted regimes across the prison estate.

Sentence management

Standard 17:
Every prisoner and his/her family members, where desired, are facilitated and actively involved in his/her sentence planning from the beginning of sentence through to the point of release.

Rationale

The requirements for sentence management are laid out by the Council of Europe.¹⁷⁸ Access to purposeful activity, including work and vocational training, as well as access to services and treatment programmes, including those addressing addictions, are essential components of any response that aims to meet prisoners' rehabilitative needs effectively. Individualisation is an essential component of sentence management, whereby sentence plans must be tailored to the specific needs of the individual.

Current context

The programme 'integrated sentence management' (ISM) was introduced by the Irish Prison Service in 2008. The purpose of ISM is to provide an individualised plan to prisoners serving more than one year in prison. This plan is reviewed on an annual basis by the ISM officer in conjunction with the prisoner. However, evidence from the CPT suggests that a number of prisoners were still without an individual plan in 2014.¹⁷⁹

There are currently 24 dedicated ISM officers across the prison estate.¹⁸⁰ However, their current caseload is unknown.

Overall analysis

Given that the prison population is approximately 3,700 and there are only 24 designated ISM officers, sentence management of all prisoners cannot be effectively achieved. Further information and work is required in this area.

Indicator

Indicator S17.1:
The number of dedicated ISM officers across the prison estate and their caseloads.

Short-term action required

Action 17.1: The role of ISM officer should be ring-fenced in all prisons, and their number should be increased.

Action 17.2: The Irish Prison Service should publish data on caseloads of ISM officers, the lengths of time prisoners are engaging with ISM, and the number of prisoners with sentence management plans in place, on a quarterly basis.

178 Principles of sentence management for life sentence and long sentence prisoners are outlined by the Council of Europe. They include the need for comprehensive sentence plans for each individual and they emphasise the importance of individualisation: "Consideration should be given to the diversity of personal characteristics to be found among life sentence and long term prisoners and account taken of them to make individual plans for the implementation of the sentence" (individualisation principle) whereby "individual planning for the management of the prisoner's life or long sentence should aim at securing progressive movement through the prison system" (progressive principle).

See Council of Europe, *Recommendation Rec (2003) 23 of the Committee of Ministers to Member States on the management by prison administrations of life sentence and other long-term prisoners*.

179 Council of Europe (2015) *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)* from 16–24 September, CPT/Inf (2015) p. 28: <https://rm.coe.int/pdf%20/1680727e23>.

180 Written Answers (2017), *Prison Service Staff* 11th July 2017: <https://www.kildarestreet.com/wrans/?id=2017-07-11a.727>.

Life skills

Standard 18:
Prisoners are encouraged and facilitated to develop and maintain life skills and assume personal responsibility while in prison.

Rationale

Prisoners must be encouraged to develop and maintain life skills and exercise personal responsibility while in prison.¹⁸¹ Prisoners must be able to work and undertake regular responsibilities such as preparation of foods, cooking, cleaning and maintenance.

Current context

Personal development is vital to the reintegration process.

The provision of an Independent Living Skills Unit (ILSU) marks a welcome development; though not equivalent to a semi-open facility, this unit aims to replicate community living insofar as is possible in a closed prison environment. There is currently one ILSU in Wheatfield Place of Detention, with another one due to open in Mountjoy Prison by the end of 2017.

Furthermore, the number of prisoners who have access to communal dining is low. There are currently few communal dining facilities in any of the closed male prisons, with the exception of the Grove Unit in Castlerea Prison, where approximately 38 prisoners have access to communal dining.¹⁸² In addition, the ILSU in Wheatfield Place of Detention facilitates communal dining for 12 prisoners. In a recent parliamentary question, the Minister stated that a number of prisoners on enhanced regimes who are involved in kitchen work for example also have access to communal dining.¹⁸³ The total number of prisoners in the closed prison estate who have access to communal dining is approximately 290. This means that approximately 80% of the prison population eat their meals in their cells.

Overall analysis

The introduction of an ILSU in Wheatfield Place of Detention is a welcome measure. However, this option is not available across the rest of the prison estate and only a low proportion of prisoners have access to communal dining.

Indicators

Indicator S18.1:

The number of Independent Living Skills Units in the closed prison estate.

Indicator S18.2:

The number of prisoners across the closed prison estate who have access to communal dining.

Short-term actions required

Action 18.1: The Irish Prison Service must meet its timeline and ensure that the ILSU in Mountjoy Prison is open by the end of 2017.

Action 18.2: The Irish Prison Service must increase the proportion of prisoners with access to communal dining, and facilitate increased personal responsibility such as preparation of meals.

¹⁸¹ Council of Europe, *Recommendation Rec (2003) 23 of the Committee of Ministers to Member States on the Management by Prison Administrations of Life Sentence and Other Long-term Prisoners* (see the 'responsibility principle').

¹⁸² Written Answers, *Prisoner Data* 11th July 2017: <https://www.kildarestreet.com/wrans/?id=2017-07-11a.756>.

¹⁸³ *Ibid.*

Education

Standard 19:
Every prison provides each prisoner with access to a range of educational activities that meet the individual's needs and take into account their aspirations.

Rationale

Prison by its unique environment can have potentially damaging effects on the prison population. The demographic has a unique and complex set of needs. Therefore, efforts should be made to maximise the positive role education can play in this context.¹⁸⁴ The prison population is often characterised as one with a low level of educational attainment.¹⁸⁵ For many, past experiences of the education system have been negative. For this reason, education in prisons should be innovative. It should involve the promotion of forms of non-traditional learning with alternative methods of assessment and accreditation. There is a need for the education system to be comprehensive and reflect the diverse needs and interests of the prison population. A person-centred approach is required whereby both basic and continued learning is catered for. Choice, availability and accessibility are all important features of the curriculum.

Research has highlighted the importance of examining prisoners' motivation to engage in education in

prison. Studies have found a vast variety of reasons for engagement, including: learning new skills; adapting to the prison; to alleviate boredom with the regime; and transformation and personal development.¹⁸⁶ Many human rights instruments refer to the importance of education in the prison context.¹⁸⁷ Prison education should help an individual cope with their sentence, while also being used to effect change in prisoners' lives.

Current context

In 2003, an Irish literacy survey found that 52% of the prison population had literacy levels of one (the lowest level of literacy) compared to 25% of the general population.¹⁸⁸ Figures provided by the Irish Prison Service suggest that 42% of the prison population participated in education activities in March 2017.¹⁸⁹

Education services in Irish prisons are provided in partnership with a number of bodies such as the Education and Training Boards (ETB), the Public Library Service, the Open University and the Arts Council.¹⁹⁰ The Department of Education allocates 220 whole-time equivalents across the prison estate.¹⁹¹ Curricula in Irish prisons can be broadly categorised into the following areas: basic education, creative arts, technology, general subjects, life skills and healthy living.¹⁹²

The Irish Prison Service and the ETBs developed a three-year joint education strategy for 2016–2018.¹⁹³ One priority included in the strategy is the provision of services and supports to prisoners, such as educational facilities, that are adequately

184 "Education has the capacity to render the situation less abnormal, to limit somewhat the damage done to men and women through prison." Council of Europe (1990) *Education in Prison*, Strasbourg, p. 10.

185 It is well-known that the prison population is often characterised by low levels of educational attainment. While no exact data are available, an EU report estimates 3%–5% of the prison population would be qualified to undertake higher education, where in many countries early school leaving is strong characteristic associated with the prison population. Source: Hawley, J, Murphy, I and Souto-Otero, M (2013), *Prison Education and Training in Europe Current State of Play and Challenges* p. 41: http://ec.europa.eu/dgs/education_culture/repository/education/library/study/2013/prison_en.pdf.

186 Behan, C (2014), "Learning to escape: Prison education, rehabilitation and the potential for transformation", *Journal of Prison Education and Re-entry*. 1(1), 20–31.

187 Every person has the right to access education outlined under the *International Covenant for Civil and Political Rights (Article 13, ICCPR)*. The right to education for persons in prison is also outlined under Principle 6 of the *Basic Principles for the Treatment of Prisoners* and the *UN Standard Minimum Rules for the Treatment of Prisoners (Rule 104 & 105, Mandela Rules)*. Rule 28.1 of the *European Prison Rules (2006)* states that "every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their needs which take into account the individual needs while taking into account their aspirations." Council of Europe Committee of Ministers, Recommendation No. R (89) 12 of the Committee of Ministers to Member States on Education in Prisons, Strasbourg: Europe available at <http://www.epea.org/education-in-prison-council-of-europe-recommendation/>.

188 Mongan, M and Kett, M (2003), *The Prison Adult Literacy Survey: Results and Implications*, Irish Prison Service: http://www.iprt.ie/files/adult_literacy_survey.pdf.

189 Written Answers, *Educational Services for Prisoners*, 11 July 2017: <https://www.kildarestreet.com/wrans/?id=2017-07-11a.731>.

190 Irish Prison Service, *Prison Education*: <https://www.irishprisons.ie/index.php/prisoner-services/prison-education-service/>.

191 Ibid.

192 Ibid.

193 Joint IPS/ETB Strategy (2016), *Education Strategy 2016-2018*: http://www.irishprisons.ie/wp-content/uploads/documents_pdf/education_strategy_2016.pdf.

resourced.¹⁹⁴ Access to digital education must also be a part of the curriculum in order to ensure prisoners gain skills that are required following their release in terms of accessing education and employment.

Recently, the IHREC highlighted the deteriorating budget for education in prisons between 2013 to 2017 in their submission to the UN Committee against Torture.¹⁹⁵ A deteriorating budget for prisoners' access to Open University courses has also been identified. In 2008, the Irish Prison Service spent €220,539 on Open University courses, catering for 108 prisoners; this compares unfavourably to 2015, when, with a budget of €137,860, 54 prisoners availed of Open University courses.^{196, 197} As recently acknowledged by the Irish Prison Service, there have also been school closures across the prison estate as a result of prison staff shortages.¹⁹⁸

Efforts need to be made to address the specific barriers faced by certain cohorts of prisoners in relation to accessing education. With high numbers of prisoners across the estate being placed on a restricted regime, a strategy must be in place to ensure that this cohort of prisoners has access to education. The Irish Prison Service and ETB also need to consider the specific needs of foreign prisoners whose first language is not English.

Table 7 provides a full breakdown of participation rates across the entire prison estate in March 2017.¹⁹⁹

Table 7: Prisoners participating in education by prison, March 2017²⁰⁰

Education Unit	Prisoners participating in education (%)
Arbour Hill Prison	64.0
Castlerea Prison	42.9
Cloverhill Prison	22.0
Cork Prison	54.7
Dóchas Centre	55.9
Limerick Prison	42.1
Loughan House	79.5
Midlands Prison	44.6
Mountjoy Prison	36.4
Portlaoise Prison	42.3
Shelton Abbey	54.4
Mountjoy West	54.1
Training Unit	30.6
Wheatfield Place of Detention	23.9
Total	42.0

Overall analysis

Education and training plays a vital role in addressing the rehabilitative needs of the prison population. There has been a deterioration in education budgets within the prison estate in recent years. In addition, staffing shortages have resulted in a reduction in school hours. Publication of information on education in Irish prisons is required in order to monitor performance in this area.

194 The Irish Prison Service *Strategic Plan 2016–2018*: <http://www.justice.ie/en/JELR/Irish-Prison-Service-Strategic-Plan-2016-2018.pdf/Files/Irish-Prison-Service-Strategic-Plan-2016-2018.pdf>.

195 Irish Human Rights and Equality Commission (2017) *Ireland and the Convention Against Torture: Submission to the United Nations Committee against Torture on Ireland's Second Periodic Review*, p.33: <https://www.ihrec.ie/our-work/cat/>.

196 The Journal (2014) "Irish prison education": <http://www.thejournal.ie/irish-prison-education-1472729-May2014/>.

197 The Irish Times, "Irish prisoners knuckling down to the books behind bars": <https://www.irishtimes.com/news/crime-and-law/irish-prisoners-knuckling-down-to-the-books-behind-bars-1.2198761>.

198 Written Answers, *Educational Services for Prisoners*, 11 July 2017: <https://www.kildarestreet.com/wrans/?id=2017-07-11a.731>.

199 Ibid.

200 Ibid.

Indicators

Indicator S19.1:
Participation rates of prisoners in education.

Indicator S19.2:
Access to education for prisoners on restricted regimes and regular publication of information on same.

Indicator S19.3:
The number of people in prison completing further or higher education (including Open University courses and QQI courses) and regular publication of information on same.

Short-term actions required

Action 19.1: The ETBs should record the frequency and proportion of schools being open across the prison estate in order to ensure that prison staff shortages are not impacting on access to education for the prison population.

Action 19.2: The ETBs and the Irish Prison Service should adopt Council of Europe recommendations on education, with particular emphasis on prisoners attending courses outside the prison and ensuring that educational initiatives also involve the community coming into the prison.

Action 19.3: The ETBs and the Irish Prison Service should publish data on both participation and completion rates for accredited learning courses and modules.

Action 19.4: The Education and Training Boards (ETBs) and the Irish Prison Service should maintain records to ensure educational achievements and competences of prisoners are maintained and ensure students have access to a digital portfolio system to document their own learning.

Community engagement & involvement

Standard 20:
Civil society access to prisons is encouraged and there are opportunities for prisoners to participate and engage in the community through structured forms of temporary release.

Rationale

Strengthening engagement and exchange between civil society and prisons is a vital component in the rehabilitation process.²⁰¹ Prisoners should be encouraged to be continually involved in communities on the outside and should not be excluded from society as a result of imprisonment. This should be viewed as a two-way process whereby members of civil society regular visit prisons and engage with prisoners, while prisoners are given opportunities to be released to engage with families and communities, including having access to external education and employment opportunities.

Current context

One of the best examples of community orientation is the work of the Red Cross, known for yielding positive community-oriented results. The Red Cross Programme runs programmes in order to support prisoners develop new skills in prisons. One example of this is where prisoners volunteer with the Irish Red Cross to improve healthcare in the Irish prison system. As a result of this programme, cutting weapon attacks were reduced from 97% to 6% of prisoner-on-prisoner attacks in Wheatfield Place of Detention, through an amnesty.²⁰² Other examples of positive initiatives include the Alternatives to Violence Programme.²⁰³

For Christmas release 2016, 177 prisoners were granted temporary release, of whom 176 prisoners returned to prison.²⁰⁴ However, there has been a notable reduction in the number of prisoners being granted release for Christmas; research has found that twice as many prisoners were released for Christmas in 1996 compared to 2016.²⁰⁵

Overall analysis

A number of civil society organisations run positive programmes across the prison estate. Further analysis to show the extent of community engagement is required.

Indicators

Indicator S20.1:

The number and scale of NGO-run programmes in prisons

Indicator S20.2:

The number of prisoners on home leave or temporary release, and rates of compliance.

Short-term action required

Action 20.1: The Irish Prison Service and the community sector should work together to strengthen opportunities for engagement and exchange between communities and prisons.

201 "The treatment of prisoners should emphasise not their exclusion from the community but their continuing part in it. Community agencies should therefore be enlisted where possible to assist prison staff in the task of social rehabilitation of prisoners" (Rule 88(1) of UN Mandela Rules). As highlighted under the basic principles of the European Prison Rules, no. 7, "Co-operation with outside social services and as far as possible, the involvement of civil society in prison life shall be encouraged". p. 7: <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>.

202 Irish Red Cross, *Annual Report 2015*, p. 17 available at <https://www.redcross.ie/wp-content/themes/twentyfourteen/download1.php?filename=/2016/10/IRC-Annual-Report-2015-WEB-FINAL.pdf>.

203 More information on the AVP project is available here: <http://avpireland.ie/index.php/impact-report-2017/>.

204 Irish Prison Service, *Christmas Releases 2016*: <https://www.irishprisons.ie/index.php/christmas-temporary-releases-2016/>.

205 O'Donnell, I (2017) "Ireland's shrinking prison population", *Irish Criminal Law Journal*, 27(3), 75.

Political and civic participation

Standard 21: Prisoners are encouraged to engage with their political and civic rights.

Rationale

Civic and political engagement should be encouraged, whereby groups are organised to develop and promote citizenship participation among the prison population. The development of prisoner representative groups and other forms of community engagement encourages and motivates political and civic participation.

Current context

The right to vote²⁰⁶ is one measure that can be used to assess prisoner engagement with their civic and political rights. Prisoners in Ireland were provided with the right to vote in 2006. The year 2007 was the first election in Ireland at which prisoners were entitled to vote: 3,202 prisoners were eligible to vote that year. Among them, 451 prisoners were registered to vote, with 322 prisoners voting on the day.²⁰⁷ The number of prisoners eligible to vote in 2011 was 4,400, of whom 334 were registered to vote and 254 voted.²⁰⁸ Only 6.2% of the prison population voted in 2016.

Certain prisons such as Mountjoy Prison, Wheatfield Place of Detention and Midlands Prison saw significant increases in voting numbers; however, a number of prisons saw a marked decrease in voting over this period, including: Arbour Hill Prison, Castlerea Prison, Cork Prison, the Dóchas Centre, Limerick Prison and St. Patrick's Institution for Young Offenders. In five prisons, no prisoner registered to vote. Prisons with the highest voting rates included: the Training Unit (now closed) (19%), Portlaoise Prison (18%) and Wheatfield Place of Detention (13%).²⁰⁹

Overall analysis

There appears to be a very low level of voting among the prison population. This may be an indicator, albeit a fairly crude one, of high levels of disenfranchisement among the prison population. However, it is only one means of assessing political and civic engagement. Further information is required on the number of prisoner representative groups across the prison estate, and on the number of prisoners involved in other forms of social and community engagement.

Indicators

Indicator S21.1:

The number of prisoner representative groups in each prison.

Indicator S21.2:

The number of prisoners voting (%) in elections.

Indicator S21.3:

The number of prisoners involved in other forms of social and community engagement.

Short-term actions required

Action 21.1: The Irish Prison Service should work towards increasing the number of prisoner representative groups throughout the prison estate.

Action 21.2: The Irish Prison Service should encourage, increase and track the number of prisoners participating in elections across the prison estate.

206 Under Article 25(b) of the International Covenant on Civil and Political Rights, every person shall have the right and opportunity to vote: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

207 Behan, C and O'Donnell, I (2008) "Enfranchisement and the burden of responsibility: Prisoners, politics and the polls", *British Journal of Criminology*, 48: 328.

208 Behan, C (2014) *Citizen Convicts: Prisoners, Politics and the Vote*, Manchester, Manchester University Press, p. 120.

209 The Irish Examiner, "Just 4% of prisoners have registered to vote" 23rd February 2011: <http://www.irishexaminer.com/ireland/election-2011/just-4-of-prisoners-have-registered-to-vote-146234.html>.

D: Complaints, accountability, inspections and oversight mechanisms

Complaints system

Standard 22:
Prisoners have access to a robust and effective complaints mechanism. All complaints are dealt with in a timely manner with the outcome of decisions clearly communicated to the prisoner with a satisfactory resolution if the complaint is upheld.

Rationale

Every prisoner must be able to make a complaint regarding their treatment to the prison authorities.²¹⁰ Prisoners should have full confidence in the complaints system. Safeguards must be in place for prisoners to raise a complaint in a confidential manner. The outcome of a decision should be clearly communicated to a prisoner in a prompt manner. Delays in outcomes can create distrust among the prison population of the system.

Current context

The Inspector of Prisons (2016) highlighted ‘significant deficiencies’ in relation to the internal complaints system for prisoners.²¹¹ The Inspector of Prisons’ 2016 review of complaints among a sample of a number of prisons found that “timelines for completed investigations exceeded the Irish Prison Service policy timelines in 38% of cases ranging in time from one month to 17 months.”²¹²

There are currently six categories of complaints, from A (most serious) to F.^{213, 214} Categories of complaints are assigned to different levels of investigation by prison management. The Inspector of Prisons (2016) found that a number of complaints that were classified as category B had been miscategorised and should have been identified as category A complaints. These complaints often related to intimidation, discrimination and abuse.^{215, 216}

As a result of the findings, the Inspector of Prisons recommended an overhaul of the internal complaints system where there would be only two distinct type of complaints categories: category A (serious) and category B (minor).

Both the Inspector of Prisons (2016) and CPT (2015) found that prisoners had little confidence in the system; with prisoners being ‘encouraged’ to not make or to withdraw a complaint, threatened with being transferred to another prison, or fearing for

210 “Every prisoner shall have the opportunity each day to make requests or complaints to the prison director or the prison staff member authorised to represent him or her” (Rule 56(1) of UN Mandela Rules). “Every prisoner shall be allowed to make a request or complaint regarding his or her treatment, without censorship as to substance, to the central prison administration and to the judicial or other competent authorities including those vested with reviewing or remedial power” (Rule 56(3) of UN Mandela Rules). “Every request or complaint shall be promptly dealt with and replied to without delay. If the request or complaint is rejected, or in the event of undue delay, the complainant shall be entitled to bring it before a judicial or other authority” (Rule 57(1) of UN Mandela Rules). “Safeguards shall be in place to ensure that prisoners can make requests or complaints safely and if so requested by the complainant, in a confidential manner. A prisoner or other person mentioned in para 4 of rule 56 must not be exposed to any retaliation, intimidation or negative consequences as a result of having submitted a request or complaint” (Rule 57(2) of UN Mandela Rules).

EPR 2006 70.1-70.7 ‘Ample opportunities to bring requests and complaints to prison management.’ Rules also state complaints of visitors/relatives should also be considered by independent authority. See also The CPT Standards: “Substantive sections of the CPT’s General Reports, Strasbourg: Council of Europe, at page 19.

211 *Review, Evaluation and Analysis of the Operation of the present Irish Prison Service Prisoner Complaint Procedures* by Judge Michael Reilly, Inspector of Prisons, April 2016, p.3: http://www.inspectorofprisons.gov.ie/en/iop/pages/other_reports.

212 *Ibid.*, p. 24.

213 Under Rule 57b(1) of the Prison Rules 2007 category A complaints relate to “assault or use of excessive force against a prisoner, or ill-treatment, racial abuse or discrimination, intimidation, threats or any conduct against a prisoner of a nature or gravity to bring discredit on the Irish Prison Service”.

214 Category B complaints are of a serious nature. Examples include verbal abuse of prisoners by staff and inappropriate searches. Category C complaints are service-level complaints; examples include complaints about visits, phone calls and not receiving post on time. Category D complaints specifically concern those made against health professionals. Category E relates to complaints made by visitors, while category F concerns complaints relating to decisions made by IPS in granting temporary release and transfers. For more on this see Irish Prison Service (2014) Prisoner Complaints, Policy Document http://www.irishprisons.ie/wp-content/uploads/documents_pdf/complaints_policy.pdf.

215 *Review, Evaluation and Analysis of the Operation of the present Irish Prison Service Prisoner Complaints Procedure* by Judge Michael Reilly, Inspector of Prisons p. 29.

216 *Ibid.*, pp. 54–55

their safety and protection.^{217, 218}

The number of category A complaints received in 2016 across the prison estate are outlined below. Information on complaints made under categories B, C, D, E and F was not published. (A recent parliamentary question indicates that this information is currently not available.) Furthermore, information on the average length of time it took to complete each complaint process and communicate the outcome was not published.

Table 8: Category A complaints by prison, 2016²¹⁹

Prison	Complaints (n.)
Mountjoy Prison	7
Dóchas	2
St Patrick's Institution	0
Cloverhill Prison	6
Wheatfield Place of Detention	11
Arbour Hill Prison	1
Portlaoise Prison	6
Midlands Prison	21
Cork Prison	4
Castlerea Prison	15
Limerick Prison	3
Training Unit	0
Total	76

Outcomes	
Upheld	6
Not upheld	52
Not proven	0
Terminated 57B (5) (c)	8
Incomplete	10
Total	76

In 2017, the Committee against Torture made a number of recommendations relating to the complaints system, including the establishment of an independent mechanism for complaints made by prisoners as well as a new individual complaints procedure.²²⁰

Overall analysis

The low complaints levels may indicate a lack of confidence among prisoners in the current complaints system. To date, there has been no evident progress in this area in 2017. However, during Ireland's examination by the Committee against Torture in July 2017, the Irish Prison Service stated that an internal review of all complaints files was being carried out.

Indicator

Indicator S22.1:
Data on the number of internal complaints, in particular Category A complaints (upheld, resolved and dismissed), including the length of time it takes to complete and communicate outcomes of a decision to a prisoner.

Short-term actions required

Action 22.1: The Irish Prison Service must ensure that prisoners receive outcomes of a complaint within a three-month period. The outcome should address the complaint, reasons for the outcomes, and provide a solution if the complaint was justified.

Action 22.2: The Department of Justice and Equality and the Irish Prison Service should ensure that a new individual complaints policy is introduced and implemented by the end of 2017 as recommended by the Inspector of Prisons.

217 Council of Europe (2015) *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)* 16–24 September, CPT/Inf (2015) p. 64: <https://rm.coe.int/pdf%20/1680727e23>.

218 *Review, Evaluation and Analysis of the Operation of the present Irish Prison Service Prisoner Complaints Procedure* by Judge Michael Reilly, Inspector of Prisons, p. 46.

219 Written Answers, *Prisoner Complaints Procedures*, 11th July 2017 <https://www.kildarestreet.com/wrans/?id=2017-07-11a.704>.

220 Committee against Torture (2017) *Concluding Observations on the Second Periodic Report of Ireland*, p. 8. http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_COC_IRL_28491_E.pdf.

Independent complaints or appeal mechanism

Standard 23:
Prisoners have access to an external independent complaints and appeal mechanism, including access to a prisoner ombudsman or equivalent.

Rationale

Due to the vulnerability of prisoners, who live in a closed environment deprived of their liberty, opportunities to raise complaints regarding their treatment and conditions in detention are imperative.²²¹ Having access to an independent external complaints mechanism acts as an important safeguard against any potential violation of the human rights of those detained in prison. If a prisoner is unhappy with the findings of an outcome of a complaint, he/she must have access to an independent external appeals mechanism.

Current context

Prisoners in Ireland currently have no independent body to which they can make or appeal a complaint. Following a review of the complaints system in 2016, the Inspector of Prisons made a number of recommendations, including that prisoners should be able to bring complaints to a judicial or other authority.²²² The Inspector of Prisons identified the Office of the Ombudsman as best placed to investigate prisoner complaints. In June 2016, the then Minister for Justice and Equality, Frances Fitzgerald TD, accepted a recommendation from the Inspector of Prisons that prisoners could make complaints to the Office of the Ombudsman. The timeline for this to happen is end of 2017.²²³ In 2017, the Committee against Torture made a recommendation to ensure greater oversight of complaints made by prisoners by an independent body with a need for an appeal procedure outside the prison system.²²⁴

Overall analysis

The extension of the Ombudsman's remit to investigate prisoner complaints was accepted by the Minister for Justice in 2016; however, this has yet to occur. The Department of Justice has committed to this happening by the end of 2017, which is a welcome commitment that must be met.

Indicator

Indicator S23.1:
Prisoners' access to an independent external complaints mechanism.

Short-term action required

Action 23.1: The Department of Justice and Equality must ensure that the stated timeline of end 2017 for prisoners to be able to make complaints to the Office of the Ombudsman is met.

221 "Every prisoner shall be allowed to make a request or complaint regarding his or her treatment, without censorship as to substance, to the central prison administration and to the judicial or other competent authorities including those vested with reviewing or remedial power" (Rule 56(3) of UN Mandela Rules). "If the request or complaint is rejected, or in the event of undue delay, the complainant shall be entitled to bring it before a judicial or other authority" (Rule 57(1) of UN Mandela Rules).

222 *Review, Evaluation and Analysis of the Operation of the present Irish Prison Service Prisoner Complaints Procedure* by Judge Michael Reilly, Inspector of Prisons.

223 Information provided by the Department of Justice and Equality at a NGO consultation ahead of Ireland's examination under the UN Convention against Torture, July 2017.

224 Committee against Torture (2017) *Concluding Observations on the Second Periodic Report of Ireland*, p. 8.

Inspections and monitoring

Standard 24:
Structures are in place for the regular inspection and monitoring of prisons. Inspection reports are made publicly available within a clear timeframe.

Rationale

In order to prevent human rights abuses occurring in prisons, regular independent monitoring and inspections are crucial to increasing levels of accountability and transparency within the prison system.²²⁵

Current context

The Office of the Inspector of Prisons is responsible for undertaking independent prison inspections in Ireland.²²⁶ However, up to a report on the Training Unit being published in May 2017, no inspection reports on a prison had been published since 2014. The Training Unit inspection report was published only after its closure. Since 2008, full inspection reports have been published on only seven out of the 14 prison establishments in Ireland.²²⁷ Investigations into deaths in custody have been published regularly,²²⁸ while the Inspector published a number of other important thematic reports over this period.²²⁹ The Inspector has no authority to publish reports directly, which is the decision of the Minister for Justice.

In the UK, inspections reports are published within 18 weeks of an inspection taking place. Prior to their publication, the Prison Service is invited to correct any inaccuracies within the report and an action plan is to be prepared within two months of publication, and progress reports after 12 months. This is an example of good practice that should be replicated in the Irish context.

Ireland signed the Optional Protocol to the UN Convention against Torture (OPCAT) in 2007. The aim of OPCAT is to prevent torture or ill-treatment through independent inspections at both international and national level, and through the creation of ‘national preventative mechanisms’ (NPM). Despite signing the OPCAT, one decade on the government has yet to ratify it. Furthermore, the UN Committee against Torture (2017) made a recommendation that the State should ratify OPCAT ‘forthwith’ and establish an NPM, while also highlighting that “existing bodies are able to make repeated and unannounced visits to all places of deprivation of liberty”.²³⁰ It also recommended that the Inspection of Places of Detention Bill should be expedited.

Reform of Ireland’s prison visiting committees is needed to ensure the system is effective. A recommendation made by the Whitaker Report (1985) still stands today regarding the reform of Prison Visiting Committees in Ireland:

*Steps should be taken to bring about greater confidence in Visiting Committees by altering their method of appointment, their procedures and their duties.*²³¹

Overall analysis

The prisons inspection and monitoring process in Ireland is currently operating well below best practice standards. The lack of published annual reports and prison inspection reports may indicate inadequate resourcing of the Office of the Inspector of Prisons. Further reform is also required to transform the role, functions and independence of Prison Visiting Committees. This is an area that requires urgent reform.

225 “All prisons shall be subject to regular government inspection and independent monitoring” (Rule 9 of European Prison Rules). See also Rule 83-85 UN Mandela Rules. OPCAT aims to “establish a system of regular visits undertaken by national and international bodies to places where people are deprived of their liberty in order to prevent torture and other cruel inhumane or degrading treatment”. European Committee for the Prevention of Torture: “Effective grievance and inspection procedures are fundamental safeguards against ill-treatment in prisons. Prisoners should have avenues open to them both within and outside the context of the prison system, including the possibility to have confidential access to an appropriate authority. The CPT attaches particular importance to regular visits to each prison by an independent body... possessing powers to hear [and if necessary take action upon] complaints from prisoners and to inspect the established premises.” European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2002): “Substantive sections of the CPT’s General Reports, Strasbourg: Council of Europe, at page 19.

226 See *Her Majesty’s Inspectorate of Prisons*, p.3: <http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/hmip2011.pdf>.

227 Note: The prison estate has been reduced from 14 to 12 prisons in 2017 following the re-designation of St. Patrick’s Institution as Mountjoy West and the closure of the Training Unit semi-open facility.

228 See: http://www.inspectorofprisons.gov.ie/en/iop/pages/deaths_in_custody_reports.

229 See: http://www.inspectorofprisons.gov.ie/en/iop/pages/other_reports.

230 Committee against Torture (2017) *Concluding Observations on the Second Periodic Report of Ireland*, p. 3.

231 *The Report of the Committee of Inquiry into the Penal System (1985)* Government of Ireland, Dublin, p. 16.

Indicators

Indicator S24.1:
The State's ratification of OPCAT and establishment of an National Preventative Mechanism.

Indicator S24.2:
Frequency of publication of Inspector of Prisons reports.

Indicator S24.3:
Reform of Prison Visiting Committees.

Short-term actions required

Action 24.1: The State must ratify OPCAT.

Action 24.2: Legislators should progress the Inspection of Places of Detention Bill.

Action 24.3: Legislation should be amended to allow the Inspector of Prisons to publish inspection reports directly, and be adequately resourced to do so within 18 weeks of the inspection being carried out. There should be an annual programme of independent inspections.

Action 24.4: The Department of Justice and Equality should reform the Prison Visiting Committees, including the appointment of members through the Public Appointment Service with various backgrounds of expertise required.

Investigations into deaths in custody

Standard 25:
The death of, or serious incident involving, a prisoner is investigated by an independent body immediately and the investigation report published promptly.

Rationale

The State has a duty of care to all persons in custody. As a person is under the care of the State while in custody,²³² the State must initiate a robust and prompt investigation providing clear communications to families following the death of a loved one.^{233, 234} Supports for both prisoners and staff should be in place following the death of a person in custody.

Current context

Over the last decade, there have been 129 deaths in prison custody in Ireland, of which one-third occurred on temporary release.²³⁵ In 2012, the remit of the Office of the Inspector of Prisons was extended to investigations of all deaths, whether they occurred within a prison or while a prisoner was on temporary release.

In recent years, the Inspector of Prisons' 'deaths in custody' reports have identified deficiencies in internal review mechanisms by the Irish Prison Service into serious incidents, including insufficient record keeping.²³⁶ In his most recently published annual report, the Inspector stated:

When reports of incidents or operational reports are generated it appears that only the minimum is included. In certain cases such reports are incomplete, inaccurate and at times misleading.²³⁷

Nine deaths in custody reports have been published for 2016; the report for at least one investigation appears to not yet be published.

Overall analysis

The majority of reports on investigations into deaths in custody have been published in a reasonably timely manner. The reasons for the delay in publication of individual investigation reports is unclear. The systematic implementation of recommendations in investigation reports has been inconsistent.

232 The European Committee for the Prevention of Torture (CPT) raised concerns regarding four deaths of prisoners, concluding that the Irish Prison Service had failed in its duty of care. They outlined concerns that recommendations from healthcare staff were not being listened to by prison management. Council of Europe (2015) *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)* from 16-24th September, CPT/Inf (2015) 38, p.7: <https://rm.coe.int/pdf%20/1680727e23>.

233 Under Article 2 of the European Convention on Human Rights (ECHR), the State has a duty to protect the right of life of everyone with three distinct elements including (1.) Negative obligation on the State to desist from causing unlawful deaths (2.) Positive duty to take action to prevent avoidable deaths (3.) Positive obligation to appropriately investigate deaths directly or indirectly caused by the action of negligence by State officials. In Kelly, M (2005) *The Right to Life. A Practical Guide to the European Convention on Human Rights*, Belfast : Northern Ireland Human Rights Commission, cited in IPRT Position Paper 4 (2009) *Human Rights in Prisons*, p. 6: http://www.iprt.ie/files/IPRT_Position_Paper_4_-_Human_Rights_in_Prison.pdf.

234 The Jordan Principles outline a number of principles that should apply following the deaths of a person in custody which includes: a formal investigation must be initiated by the State, the investigation must be conducted in an independent manner, it must be thorough to determine in the case of force, if it was justified, and should be initiated in a prompt manner, there must be an element of public scrutiny whereby family members should be involved. See Adeleke, A; Ni Aingléis, B; Cooney, L; Lynch, J; Murray, N; Sheedy, K; and Yousef, A, "Deaths in Custody; Is Ireland's Investigative Process Compliant with Article 2 of the European Convention on Human Rights?" (2015). *Students Learning with Communities*. 42, p. 38: <http://arrow.dit.ie/comlinkoth/42>.

235 The Irish Times, "Spike in prison inmate deaths with 22 fatalities last year": <http://www.irishtimes.com/news/crime-and-law/spike-in-prison-inmate-deaths-last-year-with-22-fatalities-1.2910359>

236 The Office of Inspector of Prisons (2014) *A Report by Judge Michael Reilly Inspector of Prisons into the Deaths of Prisoners in custody or on Temporary Release for the Period of 1st January 2012–11th June 2014*: <http://www.justice.ie/en/JELR/Pages/PB14000235>.

237 Office of the Inspector of Prisons (2014) *Annual Report 2013/2014*, p. 15: <http://justice.ie/en/JELR/Pages/PB14000274>.

Indicator

Indicator S25.1:
Implementation of recommendations of
investigations by the Inspector of Prisons

Short-term actions required

Action 25.1: The Department of Justice and Equality must commit to publishing investigations reports in a prompt manner.

Action 25.2: The Irish Prison Service must develop a mechanism to ensure that learnings are identified, monitored and acted upon, including implementation of all recommendations made by the Inspector of Prisons.

E: Safety and protection in Irish prisons

Solitary confinement

Standard 26: Solitary confinement is used as a last resort and only in exceptional circumstances. It is used for the shortest period possible, and for a maximum of 15 days. Reasons for and lengths of time a prisoner is held in solitary confinement must be recorded.

*While prisoners are not completely [isolated] in that they have contact with staff and may be able to hear a neighbour's muffled shouts, such exchanges do not come close to meaningful engagement. A person's sense of self is forged in a social context and is maintained through social interactions with others. Even the most solidly constructed identity needs occasional reinforcement or else it will be undermined, the extent of the damage depending on the quality of the original structure.*²⁴⁰

Rationale

Solitary confinement is a form of imprisonment in which a prisoner is isolated in a cell for more than 22 hours. There are a number of reasons why a prisoner might be placed in solitary confinement. For example, a prisoner may request to be placed on protection for reasons of safety.

However, the effects of solitary confinement or isolation are extremely damaging to the overall health and well-being of any individual.²³⁸ It involves the removal of any meaningful social contact and an absence of purposeful activity, sometimes for prolonged periods of time.²³⁹ Recent research has highlighted the impact of solitary confinement, in particular the lack of meaningful social interaction:

Current context

A recent amendment under Article 27 (1) of the Prison Rules 2007 establishes that all prisoners are entitled to two hours out-of-cell time a day, during which prisoners “shall have an opportunity... for meaningful human contact, including, at the discretion of the Governor, contact with other prisoners.”²⁴¹ This amendment came into operation on 3 July 2017.

In 2016, the Prisons (Solitary Confinement) Amendment Bill (a Private Member's Bill) was introduced.²⁴² This proposes an amendment to the Prisons Act 2007 to ensure that “the holding of prisoners in solitary confinement shall be an exceptional measure of last resort and the decision to do so shall be authorised by a prison governor within 24 hours of being taken”. The Bill proposes that no prisoner be held in

238 Solitary confinement is defined under the Istanbul Statement on the Use and Effects of Solitary Confinement, p. 1 as “the physical isolation of individuals who are confined to their cells 22 to 24 hours a day”. According to the Special Rapporteur on Solitary Confinement, 15 days is the maximum amount of time between solitary confinement and prolonged solitary confinement, from this point onwards the harmful psychological effects become irreversible: http://solitaryconfinement.org/uploads/Istanbul_expert_statement_on_sc.pdf. “The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice continues to apply. For prisoners who are, or who have been, separated, the prison administration shall take the necessary measures to alleviate the potential detrimental effects of their confinement on them and on their community following release from prison” (Rule 38(2) UN Mandela Rules). The Istanbul Statement articulates its harmful effects: “the central harmful feature of solitary confinement is that it reduces meaningful social contact to a level of psychological stimulus that many will experience as insufficient to sustain health and wellbeing.”, p. 2 The European Court and former Commission on Human Rights and the European Committee for the Prevention of Torture have found that the use of solitary confinement can amount to torture and can violate Article 3 of the European Convention on Human Rights. Specific cohorts of prisoners such as the mentally ill and young people should never be subjected to solitary confinement. Article 43 (1) of the Mandela Rules prohibits indefinite solitary confinement and prolonged solitary confinement Rule 43-45 of UN Mandela Rules, <https://cdn.penalreform.org/wp-content/uploads/1957/06/ENG.pdf>. Other relevant rules include Rule 60.5, 43.2, 43.3 of the EPR, see also Council of Europe, *CPT Prison standards*, CPT/Inf/E (2002) 1 – Rev. 2015; Council of Europe, *21st General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*; CPT/Inf (2011) 28 at 39 [CPT (2011) 28]; Article 7 ICCPR; Article 3 of ECHR.

239 In 2015, the CPT acknowledged the Irish Prison Service's effort to reduce the numbers on protection; however, they made a key recommendation that prisoners on protection must have access to purposeful activity. The CPT further made recommendations that prisoners should have the right to be informed the reasons for this measure, contest it and have their case regularly reviewed. Source: Council of Europe (2015) *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)* from 16th–24th September, CPT/Inf (2015), p. 8: <https://rm.coe.int/pdf%20/1680727e23>.

240 O'Donnell, I (2016) *Prisoners, Solitude and Time*, Oxford University Press, p.64.

241 *Prison (Amendment) Rules 2017*: [http://justice.ie/en/JELR/SI%20276_of_2017_PRISON_\(AMENDMENT\)_RULES_2017.pdf/Files/SI%20276_of_2017_PRISON_\(AMENDMENT\)_RULES_2017.pdf](http://justice.ie/en/JELR/SI%20276_of_2017_PRISON_(AMENDMENT)_RULES_2017.pdf/Files/SI%20276_of_2017_PRISON_(AMENDMENT)_RULES_2017.pdf).

242 See *Prisons (Solitary Confinement) (Amendment) Bill 2016*: <https://www.oireachtas.ie/documents/bills28/bills/2016/9516/b9516d.pdf>.

solitary confinement for longer than 15 consecutive days and that no prisoner should be held in solitary confinement for more than 30 days in a year.

One of the key recommendations made by the UN Committee against Torture (2017) is that solitary confinement should be used as a last resort, never applied to juveniles, and take place under strict supervision and judicial review.²⁴³

On 1 January 2016, 51 prisoners were being held in their cells for at least 22 hours a day, with half of them held there for more than 100 days, and at least nine prisoners had spent more than a year in such conditions.²⁴⁴ These figures were provided in response to an FOI request and not published on a regular basis.

The Irish Prison Service committed to developing a policy on solitary confinement by quarter 1 of 2017, a commitment that was met in July 2017.²⁴⁵

Overall analysis

Progress has been made in reducing the number of prisoners in solitary confinement in Ireland. Between July 2013 and April 2017, the number of prisoners on 22–23 hour lock up fell from 211 people to 44 – a reduction of 167 people, or 80%. In 2017, an amendment to the Prison Rules committed to ensuring that every prisoner had at least two hours of out-of-cell time involving meaningful activity. In the same year, the Irish Prison Service published their policy on solitary confinement. Nonetheless, further progress is required if this practice is to be fully abolished.

Indicators

Indicator S26.1:
The number of prisoners on 22–24 hour lock up.

Indicator S26.2:
The duration of time spent by prisoners on 22–24 hour lock up.

Short-term actions required

Action 26.1: The Irish Prison Service should reduce the number of prisoners being held in solitary confinement, and develop and implement transition programmes for prisoners returning to the (i.) general prison population and (ii.) community.

Action 26.2: The Irish Prison Service must ensure that prisoners held in solitary confinement have at least two hours of meaningful human contact daily.

Action 26.3: The *Prisons (Solitary Confinement) Act 2016* [PMB] should be passed and enacted.

243 Committee against Torture (2017) *Concluding Observations on the Second Periodic Report of Ireland*, p. 6.

244 The Irish Times, 'Dozens of Irish prisoners held in solitary confinement', 24 October 2016: <https://www.irishtimes.com/news/crime-and-law/dozens-of-irish-prisoners-held-in-solitary-confinement-1.2840394>.

245 Irish Prison Service, 2017, *Elimination of Solitary Confinement*: https://www.irishprisons.ie/wp-content/uploads/documents_pdf/Elimination-of-solitary-confinement-Policy.pdf.

Violence in Irish prisons

Standard 27:
Prisoners and everyone in the prison system feels safe and protected from violence in the prison environment.

Rationale

All prisoners and everyone in the penal system should feel safe and protected from harm, abuse and violence.²⁴⁶ A number of factors help prevent violence occurring in prisons. These include: providing safe custody limits; access to single-cell accommodation; creation of positive and humane prison conditions whereby prisoners have access to regular forms of communication with their families; and a high level of out-of-cell time with access to a wide and varied regime and effective prison management.

The role of prison officers in reducing prison violence should not be underestimated; research highlights the importance of early intervention by prison officers, a factor that has been identified as more effective than reacting with force to violent incidents after they occur.²⁴⁷ The positive role prisoners can play in reducing violent incidents should also be acknowledged and encouraged through the implementation of conflict resolution programmes (see Standard 31 for more on this).

Current context

Prisoner-on-prisoner violence

Between January 2014 and September 2016, 73 prisoners were hospitalised because of actual or suspected assaults; 34 (47%) of these incidents occurred in Mountjoy Prison.²⁴⁸ The fact that Mountjoy is one of the larger prisons in the Irish prison estate may be a contributing factor. Evidence from the last CPT (2015) visit highlighted the lack of recorded data on violent incidents. The Committee found that two serious assaults in Midlands Prison had not been recorded by the prison authorities.²⁴⁹ The CPT also found that there were more cases of inter-prisoner violence in that prison than were being recorded in incident books.²⁵⁰ Midlands Prison is also large, again suggesting a possible relationship between the size of a prison and levels of violence.

The Committee against Torture (2017) made a key recommendation that the State “should enhance steps to prevent and reduce inter-prisoner violence by improving prison management and the ratio of staff to prisoners and strengthen the monitoring and protection of vulnerable prisoners and those presenting disciplinary issues.”²⁵¹

Latest figures released in media reports highlight that there have been approximately two assaults a day, on average, with a vast proportion of these prisoner-on-prisoner assaults.²⁵² For example, in 2016, 85% of 670 assaults that occurred were prisoner-on-prisoner assaults.

246 “The safety and security of prisoners, staff and security providers and visitor shall be ensured for at all times” (Rule 1 of UN Mandela Rules). Procedures shall be in place to ensure the safety of prisoners, prison staff and all visitors and to reduce to a minimum risk of violence and other events that might threaten safety” (Rule 52.2 EPR).

247 See Speech by Dr. Kimmitt Edgar, *Making Prisons Safe*: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Making%20Prison%20Safe.pdf>.

248 The Irish Times, ‘Prisoners swallowed batteries and blades records show’: <https://www.irishtimes.com/news/crime-and-law/prisoners-swallowed-batteries-and-blades-records-show-1.2929375>.

249 Council of Europe (2015) *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)* from 16th to 24th September, CPT/Inf (2015) p. 23: <https://rm.coe.int/pdf%20/1680727e23>.

250 Ibid.

251 Committee against Torture (2017) *Concluding Observations on the Second Periodic Report of Ireland*, p. 7.

252 The Journal (2017) ‘The Dóchas Female Prison experienced the highest number of assaults by convicts on officers last year’: <http://www.thejournal.ie/dochas-centre-assaults-3501377-Jul2017/>.

Table 9: Prisoner-on-prisoner assaults by prison, 2012–2016 ²⁵³

Prison/Place of Detention	2012	2013	2014	2015	2016
Arbour Hill Prison	4	7	6	5	0
Castlerea Prison	73	103	119	117	139
Cloverhill Prison	97	76	90	88	82
Cork Prison	43	30	51	27	33
Dóchas Centre	25	21	16	47	30
Limerick Prison	45	31	37	24	5
Loughan House	1	0	0	1	0
Midlands Prison	68	88	77	47	50
Mountjoy Prison	92	107	96	176	156
St. Patrick's Institution	156	57	9	2	0
Portlaoise Prison	12	5	11	2	15
Shelton Abbey	1	0	0	0	0
Training Unit	0	0	1	0	0
Wheatfield Place of Detention	98	77	74	47	55
PSEC	0	2	2	4	7
Total	715	604	589	587	572

Figures are not published on sexual violence in the prison estate; however, two incidents of sexual violence have been reported to the Irish Prison Service in the past five years. ²⁵⁴

Prisoner-on-staff violence

According to a survey undertaken by the State Claims Agency's *Review of Assaults on Operational Prison Staff by Prisoners*, nearly 78% of prison staff report having been assaulted over the course of their duties. ²⁵⁵ The same review found that a relatively small number of prisoners carried out these assaults, and that those who did had "an established pattern of challenging behaviours and/or mental health problems". ²⁵⁶ When asked "what in their opinion was the most common cause of physical assaults on staff", 20% of respondents identified

mental illness and drugs and alcohol, while 53% stated that additional mental health services would help alleviate and improve conditions. ²⁵⁷ In relation to prisoner-on-prisoner assaults, the violence was attributed by staff to substance abuse and drug debts. ²⁵⁸

Table 10: Prisoner-on-staff assaults by prison, 2012–2016 ²⁵⁹

Prison	2012	2013	2014	2015	2016
Arbour Hill Prison	0	0	1	0	0
Castlerea Prison	7	5	9	11	1
Cloverhill Prison	9	12	20	8	21
Cork Prison	7	8	13	7	3
Dóchas Centre	3	7	8	5	26
Limerick Prison	10	5	3	2	4
Loughan House	0	0	0	0	0
Midlands Prison	10	7	13	17	7
Mountjoy Prison	19	34	30	22	12
St. Patrick's Institution	36	49	20	0	0
Portlaoise Prison	0	3	2	6	5
Shelton Abbey	0	0	0	0	0
Training Unit	0	0	0	0	0
Wheatfield Place of Detention	6	10	26	10	12
PSEC	0	7	6	3	5
OSG	0	0	0	0	2
Total	107	147	151	91	98

Responses to violence in prison

In April 2017, 11 prisoners were being held in close supervision cells. ²⁶⁰ Information is not publicly available on the lengths of time prisoners spend in close supervision cells. ²⁶¹

In September 2016, the Irish Prison Service introduced 'critical incident stress management' (CISM) which sets out proposals to protect the psychological well-being of employees. INSPIRE is a 24/7/365 days a week service, set up to offer counselling for all staff members of the Irish Prison Service.

253 Figures provided by the Irish Prison Service following a request submitted by freelance journalist Gordon Deegan.

254 Information provided by the Irish Prison Service at UNCAT hearing of Ireland, July 2017.

255 State Claims Agency (2016) *Review of Assaults on Operational Prison Staff by Prisoners*, Dublin: State Claims Agency, p. 29: <http://stateclaims.ie/wp-content/uploads/2016/11/Review-of-Assaults-on-Operational-Prison-Staff-by-Prisoners-November-2016.pdf>.

256 Ibid, p.7.

257 Ibid, p. 53.

258 Ibid.

259 Figures provided by the Irish Prison Service following a request submitted by freelance journalist Gordon Deegan.

260 Irish Prison Service (2017) *Census Prison Population April 2017, Cell Occupancy In-Cell Sanitation*: http://www.irishprisons.ie/wp-content/uploads/documents_pdf/April-2017-In-Cell.pdf.

261 Close supervision cells are used to hold prisoners with challenging or violent behaviour.

In 2017, the Minister for Justice and Equality outlined plans to develop, in Midlands Prison, the first therapy-focused unit for prisoners who are violent and disruptive.²⁶² The aim of the unit is twofold: to protect staff and other prisoners who have a history of violent acts and are considered to be a high risk for causing injury to another person; and to make efforts to intervene with prisoners categorised as a ‘violently disruptive prisoner’ in order to reduce their risk of violence. This unit will be jointly led by an operations governor and a senior psychologist, and will involve specially selected and trained staff.

Overall analysis

Figures recorded by the Irish Prison Service appear to show a reduction in the number of prisoner-on-prisoner assaults across the prison estate since 2012, and a reduction in prisoner-on-staff assaults since 2014. However, record keeping plays a vital role in assessing the trends or patterns of violence across the prison estate. The establishment of a national violent and disruptive prisoner unit (planned to open in the first quarter of 2018) is a welcome development.

Indicators

Indicator S27.1: The number of violent incidents across the prison estate.
Indicator S27.2: The prevalence of sexual violence across the prison estate.
Indicator S27.3: The number of prisoners kept in close supervision cells and duration of time spent in these cells.
Indicator S27.4: The establishment of a therapy-focused unit for prisoners who are violent and disruptive.
Indicator S27.5: Supports available to staff.

Short-term actions required

Action 27.1: The Department of Justice and Equality and the Irish Prison Service must ensure that the proposed timeline for the opening of the new therapy-focused unit for prisoners who are violent and disruptive is achieved. Careful monitoring of the operation of this unit is required.

Action 27.2: The Irish Prison Service and the Psychology Service must work to ensure that prisoners reside in the above unit for the shortest length of time necessary for their behavioural issues to be addressed, with a reintegration plan put in place.

Action 27.3: The Irish Prison Service must develop a standardised approach to collecting and recording information on all types of incidents, including violent and sexual assaults.

Prisoner escorts

Standard 28: The health and welfare of prisoners is prioritised while they are under escort.

Rationale

A duty of care to prisoners under escort is fundamentally important; the health and welfare needs of prisoners while under escort must be met.²⁶³

Current context

Prison escort conditions are currently not under any independent scrutiny or inspection process in Ireland. Currently, the Inspector of Prisons has no authority to inspect escort conditions, despite previous concerns raised by international bodies in relation to the safety and well-being of prisoners.²⁶⁴ In the UK, the Criminal Justice Inspectorate carried out a thematic review into escort conditions in 2014. This examined: the number and type of escorts; condition of vans; seatbelt provision; journey lengths; toilet breaks; treatment by escort staff; health and welfare; and the complaints process.²⁶⁵ In Northern Ireland, as a result of a review of escort conditions, a new policy has been introduced whereby handcuffing has been based on risk assessment since 2014.²⁶⁶

Key issues²⁶⁷ raised regarding escort conditions in Ireland include:

- prisoners being handcuffed in small cellular compartments in prison escort vans that are double locked;
- conditions for prisoners while under escort (including the long periods of time detained in prison vans, food breaks, toilets breaks);
- prisoners with medical conditions and older prisoners being detained in prison escort vans (a cause for particular concern);
- absence of seat belts in prison escort vans, which may result in injury to prisoners;
- impact of staffing shortages and redeployment of prison officers to the Prison Service Escort Corps (PSEC), which impacts negatively on prison regimes and access to education; and
- communication protocols between the PSEC and the Irish Prison Service.

IPRT previously made recommendations that performance indicators similar to those of the Northern Ireland Criminal Justice Inspectorate could be adopted, as outlined overleaf.²⁶⁸

263 According to the *UN Standard Minimum Rules for the Treatment of Prisoners (Rule 73)*, transfers should be carried out in a way to reduce the public exposure of a prisoner and transport should not cause undue hardship. The *European Prison Rules* also states that transport in vehicles which do not offer adequate ventilation or light or which causes physical hardship is unacceptable. (Rule 32.2) of European Prison Rules. See recommendations made by the Council of Europe (2015) *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)* from 16 to 24 September, CPT/Inf (2015) p. 36: <https://rm.coe.int/pdf%20/1680727e23>.

264 The European Committee for the Prevention of Torture (2015) previously raised concerns about escort conditions in Ireland. The practice of handcuffing during external medical examination was one such practice where the CPT described this practice as 'unacceptable' in terms of both medical ethics and human dignity. As highlighted by the CPT (2015): "practices of this kind prevent an adequate medical examination from being carried out, will inevitably jeopardise the development of a proper doctor-patient relationship, and may even be prejudicial to the establishment of objective medical observations". Other issues identified from the CPT's visit included complaints related to escort conditions by prisoners such as being held in individual compartments in prison vans for prolonged periods, the absence of holding cells in a number of courthouses, where as a result, some prisoners spent up to 12 hours in the vehicle and had to urinate in a closed compartment of the transport vehicle due to the lack of staff to facilitate escorts. The CPT also learned of older people, people with disabilities and women all being routinely handcuffed where the Committee recommended that handcuffing during escort should only be used as a last resort "only when risk assessment in the individual case clearly warrants it and be done in a way that minimises any risk of injury to the detained person". The issue of handcuffing was further highlighted by the UN Committee against Torture in 2017 where the Irish Prison Service stated that the use of handcuffs during transportation was policy with the exception of pregnant women and older people. The Irish Prison Service also stated that it is procedure that prisoners would be handcuffed during medical examination unless the doctor requests the removal of handcuffs (UNCAT hearing, 2017).

265 HM Inspectorate of Prisons (2014) *Transfers and Escorts in the Criminal Justice System*: <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/12/Transfers-and-escorts-thematic-review-2014.pdf>.

266 Criminal Justice Inspection Northern Ireland (2014) *Prisoner Escort and Court Custody Arrangements in Northern Ireland: A Follow-Up Review on Inspection Recommendations*: <http://www.cjini.org/getattachment/a6b3edcd-4f37-441a-b039-43f8f75147e6/Prisoner-Escort-and-Court-Custody-Follow-up-re.aspx>.

267 IPRT (2017) *Submission on Review of Prisoner Escort Services in the Criminal Justice Sector, to the Department of Justice & Equality*: Unpublished.

268 Criminal Justice Inspectorate (2014) *Prisoner Escort and Court Custody Arrangements in Northern Ireland*.

Overall analysis

In early 2017, the Department of Justice and Equality undertook a review of escort services for prisoners; however, this has yet to be published. Key recommendations have been made by UN CAT (2017) in this regard, including ensuring that prisoners are not injured during transportation, and that handcuffing during transport is an exceptional measure, after appropriate risk assessment.²⁶⁹

Indicators

Indicator S28.1:
Independent inspections of prisoner escort services.

Indicator S28.2:
Publication of data on escorts, including: numbers, distance, frequency and reason for escort, analysis of any impact on local prison staffing and regimes, recording of delays or cancellations of court or hospital appointments, length of time prisoners are held in cellular vehicles, adequate provision of rest breaks, complaints received while under escort and the conditions of vehicles.

Indicator S28.3:
Introduction of a handcuffing by exception policy.

Short-term actions required

Action 28.1: The Department of Justice and Equality should publish its findings from *Value for Money and Policy Review of Escort Services in the Criminal Justice Sector* before the end of 2017.

Action 28.2: The Prison Service Escort Corps should be subject to external independent inspections and oversight.

²⁶⁹ Committee against Torture (2017) *Concluding Observations on the Second Periodic Report of Ireland*, p. 6.

Staff training

Standard 29:
All staff receive relevant ongoing training and supports in order to effectively carry out their duties to a high standard.

Rationale

The importance of careful selection and recruitment of prison staff cannot be underestimated.²⁷⁰ The *Council of Europe Code of Ethics for Prison Staff*²⁷¹ identifies the importance of values for prison staff that place emphasis on: accountability, integrity, respect for protection of human rights, care, fairness, impartiality and non-discrimination. Having staff with the appropriate characteristics and staff training in which such ethics embedded helps contribute to a safer and healthier prison environment where good relationships are fundamental. Staff should also feel supported by management in fulfilling their duties.

Current context

At end of 2016, there were 3,215.27 whole-time equivalent (WTE) staff members in the Irish Prison Service.²⁷² In 2008, an embargo had been set on the recruitment of prison staff, which was lifted in 2017 when the Department of Justice and Equality recruited 80 new prison officers. This is set to increase to 216 by 2018.²⁷³

The Irish Prison Service's current strategic plan also makes a commitment to promoting the *Council of Europe Code of Ethics*.²⁷⁴

Overall analysis

In 2017, a number of new prison officers completed their training (with more due to complete their training this year).²⁷⁵ These prison officers are the first new recruits since 2008. A new accredited training programme called *Higher Certificate in Custodial Care* has been developed by Waterford Institute of Technology, which shows some progress in this area of training. For example, prison staff are

provided with human rights and equality training. However, gaps remain. In its Concluding Observations, the UN Committee against Torture (2017) recommended that the provision of training on the Convention against Torture should be available to all staff, including prison staff who are in contact with persons deprived of their liberty.²⁷⁶

Support provided to prison staff is also relevant here. Currently, this includes the CISM programme, which helps staff manage stress, while INSPIRE provides a free counselling service for all staff members, 365 days a year, 24 hours a day.

Indicators

Indicator S29.1:

Training in human rights and equality, including the UN Convention against Torture, for existing and new staff.

Indicator S29.2:

Adoption of the Council of Europe's Code of Ethics for Prison Staff with annual assessments.

Indicator S29.3:

Support for staff.

Short-term actions required

Action 29.1: The Irish Prison Service must ensure all staff are trained in human rights and equality, including the UN Convention against Torture.

Action 29.2: The Irish Prison Service must adopt the *Council of Europe Code of Ethics for Prison Staff* and ensure it is provided in training and applied in practice.

Action 29.3: The Irish Prison Service should ensure staff are fully supported to carry out their significant role.

270 The prison administration shall provide for the careful selection of every grade of the personnel, since it is on integrity, humanity, professional capacity and personal suitability for the work that the proper administration of prison depends (Art 74(1) of Mandela Rules). Principle 8 of the European Prison Rules states, "prison staff carry out an important public service and their recruitment, training and conditions of work shall enable them to maintain high level standards in the care of prisoners".

271 Recommendation CM/Rec(2012)5 of the Committee of Ministers to Member States on the European Code of Ethics for Prison Staff <http://www.prisonstudies.org/resources/council-europe-code-ethics-prison-staff>.

272 Irish Prison Service, *Annual Report 2016*.

273 Written Answers, *Prison Service Staff*, 4 May 2017 <https://www.kildarestreet.com/wrans/?id=2017-05-04a.175>.

274 Irish Prison Service (2016) *Strategic Plan 2016–2018*, p. 17: <https://www.irishprisons.ie/index.php/information-centre/publications/strategy-statements/>.

275 Irish Prison Service (press release) "Minister Flanagan visits IPS college to meet new recruit officers": <https://www.irishprisons.ie/index.php/minister-flanagan-visits-ips-college-meet-new-recruit-prison-officers/>.

276 Committee against Torture (2017) *Concluding Observations on the second periodic report of Ireland* p. 5

Developing Positive Relationships and Work Culture

Standard 30: Good relationships between management, staff and prisoners are facilitated and encouraged. Management ensure that a positive working culture is created in the prison.

Rationale

Creating good working relationships helps ensure a positive prison environment.

Current context

The Inspector of Prisons has highlighted that the culture of an organisation “can be the strongest driver for positive change or the strongest inhibitor against it”.²⁷⁷ The Inspector associated a number of factors with culture, including leadership by management but also the nature of personnel who are recruited and their commitment, their identifications with the aims of the service, the respect they treat their colleagues and vice versa, and the manner in which they deal with prisoners.²⁷⁸

Overall analysis

In order to gauge the ‘morale’ of a prison and what qualifies as a ‘good performance’, independent assessment and research should be carried out on an annual basis.²⁷⁹

Indicator

Indicator S30.1
Measuring the Quality of Prison Life (MPQL) survey or equivalent is conducted on an annual basis, with per prison results published.

Short-term action required

Action 30.1: The Irish Prison Service should facilitate independent research to assess relationships between prisoners, staff and management in the prison environment.

²⁷⁷ Office of the Inspector of Prisons (2015) *Culture and Organisation in the Irish Prison Service: A Roadmap for the Future* http://www.inspectorofprisons.gov.ie/en/iop/pages/other_reports, p. 17.

²⁷⁸ Ibid.

²⁷⁹ For more information on this, see the work of Liebling, A and Arnold, H (2005) *Prisons and their Moral Performance*, Clarendon Studies in Criminology.

Use of force

Standard 31:
Prison protocols emphasise de-escalation and conflict resolution approaches. Use of force and restraint are a measure of last resort.

Rationale

Force must always be used as a last resort.²⁸⁰ The deployment of conflict resolution techniques, which helps promote and build positive relationships, is essential.²⁸¹

Current context

According to the *Control and Restraint Training Manual, 2013*, physical restraint “is only to be used when other methods not involving the use of force have been tried and failed, or are judged unlikely to succeed, and action needs to be taken to prevent injury to staff, prisoners, other persons or damage to property”.²⁸² A survey by the State Claims Agency asked staff, “when were you last trained in Conflict Resolution/De-escalation techniques?” In response, 71.2% stated that they had never been trained in this. When asked, “when was the last time you were trained in Control and Restraint?”, only 2.6% of respondents stated they had never been trained in this.²⁸³ This suggests that prison staff are more likely to be trained in control and restraint techniques than in conflict resolution. Following this finding, the State Claims Agency recommended that there be a refocus on conflict resolution techniques with a review of control and restraint training.

Data on the number of incidents per year de-escalated through conflict resolution approaches is not currently collated. Table 11 shows the number of incidents involving control and restraints in the Irish prison estate, by prison, in 2016. It shows that the number of such incidents was relatively high in some prisons, particularly Portlaoise Prison, Mountjoy Prison and Cloverhill Prison.

Table 11: Incidents involving control and restraints in the Irish Prison Service, by prison (2016)²⁸⁴

Prison	Incidents (n.)
Arbour Hill Prison	0
Castlerea Prison	5
Cloverhill Prison	102
Cork Prison	5
Dóchas Centre	0
Limerick Prison	0
Midlands Prison	6
Mountjoy Prison	273
Portlaoise Prison	373
Training Unit	0
Wheatfield Place of Detention	62
Total	826

Overall analysis

The evidence suggests a relatively high number of incidents involving control and restraints occur in the Irish prison system. Moreover, it seems that few prison staff receive training in conflict resolution and de-escalation techniques. Progress needs to be made in reducing the rate of control and restraint incidents in Irish prisons, a method that should only be used as a last resort.

280 The CPT (2015) made the following recommendation: “The CPT recommends that the Irish authorities reiterate to prison officers that no more force than is strictly necessary should be used in bringing an agitated/aggressive prisoner under control. Once a prisoner has been brought under control, there can be no justification for using force other than the application of authorised control and restraint techniques. Further, prison officers should be reminded that they will be accountable for any acts of ill-treatment (including verbal abuse) or any excessive use of force. To this end, it is essential that all prison officers receive regular refresher training in the use of control and restraint techniques and that communication skills and de-escalation techniques be promoted among all prison officers.” Council of Europe (2015) *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)* from 16th to 24th September, CPT/Inf (2015), p. 22: <https://rm.coe.int/pdf%20/1680727e23>.

281 “Prison administrations are encouraged to use, to the extent possible, conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts” (Rule 38(1) of Mandela Rules).

282 State Claims Agency (2016) *Review of Assaults on Operational Staff by Prisoners*, p. 35: <http://stateclaims.ie/2016/11/state-claims-agency-publishes-major-review-of-assaults-on-prison-staff/>.

283 Ibid., p. 35.

284 Written Answers, *Prison Discipline*, 11th July 2017 <https://www.kildarestreet.com/wrans/?id=2017-07-11a.723>.

Indicators

Indicator S31.1:
The number of incidents per prison per year de-escalated through conflict resolution approaches.

Indicator S31.2:
The number of incidents per prison per year in the Irish prison estate involving control and restraints.

Short-term actions required

Action 31.1: The Irish Prison Service must collate and publish data on the number of control and restraint incidents versus use of conflict resolution techniques across the prison estate on an annual basis.

Cohorts of prisoners at risk of discrimination

Standard 32:
Management in the prison system takes a proactive approach towards protecting anyone who is at risk of discrimination due to their age, gender, ethnicity, sexuality, disability or other.

Rationale

A number of cohorts in the prison system have specific needs or are at risk of discrimination.²⁸⁵ People with disabilities, ethnic minorities, older people, foreign nationals and those from the lesbian, gay, bisexual and transgender (LGBT) community all face an increased risk of discrimination in the prison context. Staff from diverse backgrounds are also at risk of discrimination and harassment. There should be a zero-tolerance approach to harassment and bullying

in prisons, which needs to be linked to a robust and safe complaints procedure.

Current context

Women: Women in the prison system have a distinct set of needs.²⁸⁶ Due to the small proportion of female offenders, sometimes their needs and provisions can be overlooked.²⁸⁷ In 2017, IPRT raised a number of these issues to the UN Committee on the Elimination of Discrimination against Women (CEDAW, 2017), including: the disproportionate number of female committals for non-violent offences, lack of gender-specific alternatives to custody, overcrowding in the two women's prisons, and the lack of an open or lower-security facility for women leaving prison.²⁸⁸ The Probation Service and the Irish Prison Service (2014) developed the *Joint Probation Service – Irish Prison Service Strategy 2014 – 2016: An Effective Response to Women who Offend*.²⁸⁹ This should be fully implemented.

285 "All persons are equal before the law and are entitled without discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Article 26 of the ICCPR). The Irish Human Rights and Equality Commission (2014) also sets out the positive duties that public bodies have to eliminate discrimination and protect human rights.

286 **Women:** "In order for the principle of non-discrimination, embodied in rule 6 of the Standard Minimum Rules for the Treatment of Prisoners to be put into practice, account shall take the distinctive needs of women prisoners in the application of the Rules. Providing for such needs in order to accomplish substantial gender inequality shall not be regarded as discriminatory" (Art 1 of the Bangkok Rules).

287 Council of Europe (2015) *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)* from 16-24th September, CPT/Inf (2015) p.53 available at <https://rm.coe.int/pdf%201680727e23>.

288 See IPRT's (2017) *Submission in Advance of the Examination of Ireland's combined sixth and seventh periodic reports under CEDAW*: http://www.iprt.ie/files/IPRT_Submission_in_Advance_of_the_Examination_of_Ireland_under_CEDAW_FINAL_20Jan20171.pdf.

289 Joint Probation-Irish Prison Service Strategy 2014-2016, *An Effective Response to women who offend*: http://www.irishprisons.ie/images/pdf/women_strat_2014.pdf.

Young people in prison: International research has identified the importance of recognising the specific needs of young people between the ages of 18 and 24 years, a period in which brain development and maturity levels continue to develop.²⁹⁰ Currently, this age category comprises 20% of the prison population. With the right interventions and supports in place, this group has the most capacity to desist from offending. Yet there is no published strategy for young people between the ages of 18 and 24 years in the criminal justice system.

People with disabilities in prison: There are no recent data on the prevalence of people with disabilities in the prison system. One Irish study that looked at the prevalence of disability across the prison estate in 2000 found that approximately 28.8% of the sample had a learning disability.²⁹¹ More recently, the UN Special Rapporteur on the right to education has highlighted that prisons are often unaware of the number of people with learning disabilities and difficulties;²⁹² In a recent study, estimates put the figure at between 20%–30% or even as high as 52%.²⁹³

Travellers in prison: Travellers are disproportionately represented in the prison system.²⁹⁴ Findings from the *All-Ireland Traveller Health Study* (2010) show that Traveller men comprise 0.6% of the general population, yet are between five to 11 times more likely than other men to be represented in the prison system.²⁹⁵ The figure is even higher for Traveller women, who are 18–22 times more likely to be imprisoned than the general female population.²⁹⁶ The Irish Prison Service has stated it is committed to “improving services for all Travellers within the system, in particular to examine the issues faced by

Traveller women”.²⁹⁷

Older prisoners: One-tenth of the prison population is aged 50 years or older.²⁹⁸ Older people have a higher rate of chronic illness and disability, which can make them more dependent on other prisoners and prison staff for support. Prisons are not physically built to cater for the needs of older people experiencing frailty or mobility problems; for example, showers have not been adapted. The Irish Prison Service has committed to developing a *Strategy for the Management of Older Persons*; however, this has yet to be published.

LGBT prisoners: LGBT prisoners can be subjected to bullying by other people in prison and maltreatment by prison staff.²⁹⁹ The *Yogyakarta Principles* (2007) with particular reference to principle 9 and 10, which aim to provide adequate placements and appropriate protective measures and implementation of the *Gender Recognition Act 2015*, are particularly important.³⁰⁰

Foreign national prisoners: Foreign national prisoners comprise 13.3% of the prison population in Ireland.³⁰¹ Foreign national prisoners have their own specific needs, including language barriers, and often have fewer supports; one issue here can be lack of family contact. There is also a heightened risk of racial or religious discrimination for this group. Special provision should be made for this group.

290 For more information on this, see IPRT (2015) *Turnaround Youth: Young Adults (18–24) in the Criminal Justice System*: <http://www.iprt.ie/contents/2733>.

291 Murphy, M, Harrod, M, Carey S. and Mulrooney, M (2000) *A Survey Level of Learning Disability among the Prison Population in Ireland*: http://www.iprt.ie/files/ireland/learning_disability_report.pdf.

292 United Nations General Assembly (2009) *Promotion and Protection of Human Rights, Civil, Political, Economic, Social and Cultural Rights, including Right to Development, the Right to Education of Persons in Detention, Report of the Special Rapporteur on the Right to Education*: http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/UNSR_RTE_of_Persons_in_Detention_2009.pdf.

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300 *Yogyakarta Principles* (2007): <http://www.yogyakartaprinciples.org/principles-en/>.

301 See Prison Studies, *World Prison Brief Ireland*, 31 January 2017: <http://www.prisonstudies.org/country/ireland-republic>.

Overall analysis

The Irish Prison Service has made progress in terms of acknowledging the needs of minority groups in the prison system, including female offenders, older people, LGBT staff and prisoners, and Travellers. Further recognition of other groups, such as people with disabilities and foreign national prisoners, is also required. A zero tolerance approach to discrimination should be taken for both staff and prisoners by management, including the positive promotion of equality.

Indicators

Indicator S32.1:
Progress towards implementation of the Public Sector Duty under s.42 of the Human Rights and Equality Act across the prison system.

Indicator S32.1:
Progress on implementation of strategies for vulnerable cohorts of people in prison.

Short-term action required

Action 32.1: The Irish Prison Service should develop and implement positive strategies, in order to ensure that the specific needs of prisoners and staff at risk of discrimination are met, and to safeguard them from discrimination, both at individual and systemic levels.

Action 32.2 The Irish Prison Service should pro-actively work towards full implementation of the Public Sector Duty (s. 42) to promote equality and human rights.

Group-specific actions required

Women:

Criminal justice stakeholders should take further measures to ensure that gender specific alternatives to custody are deployed, and full implementation of the *Joint Probation Service – Irish Prison Service Strategy 2014–2016: an Effective Response to Women who Offend*.

Young people:

Criminal justice stakeholders, including the Probation Service, Garda youth diversion projects and communities, should work to develop and enhance age-specific alternatives to custody.

People with disabilities:

The Irish Prison Service should recognise the needs of this group and work towards developing a strategy for people with disabilities.

Travellers:

The State must address the over-representation of Travellers in the prison system.

Older people:

Efforts should be made to ensure that older prisoners have access to appropriate accommodation and healthcare, as needed.

LGBT people:

The Yogyakarta Principles for Transgender prisoners should be implemented. Ensure LGBT prisoners are protected from harm through the implementation of policies that consider their needs.

F: Reintegration

Parole system

Standard 33:
The parole system is fair, transparent and fully independent of Ministerial control.

Rationale

The establishment of a statutory parole system independent of political control should provide fairness and transparency in the system. This would support a proper balance between the protection of the public and the rights of a sentenced person to a fair and balance system of release.³⁰²

Current context

A number of concerns have been raised by prisoners and others about the transparency and fairness of the current parole system, in which the Parole Board is currently under Ministerial control. Concerns relate to: delays for prisoners in accessing their files; delays in parole hearings; lack of reasons provided to prisoners on refusal to release; and lack of clarity around what a prisoner must do to achieve recommendations made by the Parole Board.³⁰³ Furthermore, the latest Parole Board annual report highlights that three prisoners were refused parole because of the lack of mental health supports in place in the community.

A Parole Bill 2016 has been introduced.³⁰⁴ However, IPRT has some reservations around aspects of proposals included in the Bill, such as the role of the victim in the decision-making process.

Overall analysis

The establishment of an independent statutory parole board has still not occurred. Progress has been made with the introduction of the Parole Bill 2016. However, there are some concerns related to certain aspects of the current Parole Bill 2016.

Indicators

Indicator S33.1:
The placement of the Parole Board on a statutory footing.

Indicator S33.2:
Parole Board hearings occurring in a timely manner, and outcomes communicated promptly to parole candidates.

Short-term actions required

Action 33.1: Legislators must progress legislation to ensure that the Parole Board is placed on a fully independent statutory footing.

Action 33.2: The Department of Justice and Equality must ensure that the Parole Board is resourced to undertake parole hearings in a timely manner.

Action 33.3: The Parole Board must publish data on delays in scheduled parole hearings.

Action 33.4: The Prison Service must ensure prisoners are facilitated to fulfil recommendations made by the Parole Board.

³⁰² The European Court of Human Rights has outlined a number of important provisions relate to parole including around independence of the decision-making process, speediness of parole hearings and reviews, legal representation and revocation.

³⁰³ Recommendations were made by the Parole Board in the Annual Parole Board Report 2015, p. 4. See: http://www.justice.ie/en/JELR/Parole_Board_Annual_Report_2015.pdf/Files/Parole_Board_Annual_Report_2015.pdf.

³⁰⁴ Parole Bill 2016. See: <https://www.oireachtas.ie/viewdoc.asp?DocID=33082&&CatID=59>.

Meaningful reintegration of prisoners

Standard 34:
All prisoners have comprehensive preparation and structured plans for release. National policy and legislation provides for a structured release system.

Standard 35:
Protocols are in place for inter-agency co-ordination in order to ensure the successful reintegration of prisoners on release.

Rationale

Leaving prison is one of the most vulnerable periods for prisoners. Lack of supports upon release can result in re-offending behaviour. Therefore, supporting the rehabilitation process is in the public interest to make society a safer place.³⁰⁵ Work on preparation for release must begin at the start of the individual's sentence in order to ensure positive outcomes upon release.³⁰⁶ Sentence management is a critical component for the successful reintegration of the prisoner. Family relationships should be facilitated throughout the entire sentence; prisoners should be encouraged to help maintain and support reunification upon release.

Inter-agency co-operation among a range of services (including criminal justice, health and housing agencies, social welfare and community-based organisations) is vital in order to ensure the successful reintegration of people back into the community. A resettlement policy is essential in

ensuring that all relevant agencies are committed to and support prisoners on release in an effective manner.

Current context

Little provision is currently made in Irish legislation or policy for the release of prisoners.³⁰⁷ However, the release process is critical to reducing the risk of recidivism and re-offending rates. A number of previous recommendations including a report³⁰⁸ by the National Economic and Social Forum in 2002 have been made on the reintegration of prisoners over many years on this issue; however, few have been implemented.

One of the biggest barriers to reintegration upon release is provision of accommodation as well as access to the appropriate services. Furthermore, having a criminal conviction limits a person's ability to access education, insurance, travel and employment. As the new National Drugs Strategy highlights, there is a need for a review of spent convictions legislation in Ireland, which is currently very limited in terms of the convictions to which it applies.³⁰⁹

Both the Oireachtas Sub-Committee and the Strategic Review on Penal Policy make key recommendations related to the release process, including ensuring adequate preparation and supports, having access to a less restrictive regime prior to release with transparent criteria available for access to an open regime and the need for supervised temporary release to support the release of a prisoner.³¹⁰ The SRGPP has also highlighted the potential need to legislate to ensure cross-departmental co-operation:

305 As highlighted by the SRGPP (2014), "the rehabilitation and reintegration of offenders resulting in desistance from crime is key to making Ireland a safer place". p. 11.

306 "The purposes of a sentence of imprisonment or similar measures of deprivation of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so they can lead a law-abiding and self-supporting life" (Rule 4 (1) of UN Mandela Rules). "To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available including those of remedial, moral, spiritual, social, health and sports based nature. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners" (Rule 4 (2) of UN Mandela Rules). "Before the completion of a sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organised in the same prison or in another appropriate institution, or by release under trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid" (Rule 87 of UN Mandela Rules). "The treatment of prisoners should emphasise not their exclusion from the community but their continuing part in it. Community agencies should therefore be enlisted where possible to assist prison staff in the task of social rehabilitation of prisoners" (Rule 88(1) of UN Mandela Rules).

307 Rule 61 of the Irish Prison Rules 2007 states that the Governor should ensure the prisoner has sufficient means for travelling, clothing and subsistence.

308 NESF (2002) *The Re-Integration of Prisoners*, Report No.22, Dublin, National Economic and Social Forum: http://www.drugsandalcohol.ie/5823/1/NESF_No-22-Re-integration-of-Prisoners%5B1%5D.pdf.

309 Department of Health (2017) *Reducing Harm, Supporting Recovery, A Health Led response to drug and alcohol use in Ireland 2017-2025*, p. 56.

310 Strategic Review Group on Penal Policy (2014) *Final Report*, p. 11: <http://www.justice.ie/en/JELR/Strategic%20Review%20of%20Penal%20Policy.pdf/Files/Strategic%20Review%20of%20Penal%20Policy.pdf>.

There must be greater emphasis, if necessary through legislation, on promoting inter-agency co-operation in the management and rehabilitation of offenders. In addition to the criminal justice agencies, there is a need to recognise that a whole-of-Government approach is required in collaboration with relevant agencies and local authorities in addressing offending behaviour and assisting offenders in maintaining crime free lives.³¹¹

A similar recommendation was made by the Oireachtas Sub-Committee, which proposed the introduction of a single piece of legislation to ensure for a structured form of release. Despite this, there is no published resettlement policy in Ireland, and no specific legislation that currently provides for the release of prisoners. The *Action Plan for Housing and Homelessness* commits to planning for the release of prisoners to prevent them falling into homelessness, including by implementing effective national procedures and inter-agency arrangements to ensure the necessary supports.³¹² An inter-agency protocol between the Irish Prison Service, the HSE and others, aims to ensure that all people leaving prison would have access to medical cards upon release.³¹³

Indicators

Indicator S34.1:
The existence of a reintegration policy and/or legislation for prisoners.

Indicator S34.1:
The review and expansion of spent convictions legislation.

Overall analysis

While certain policies make commitments to improve release-planning and post-release supports, the lack of a joined-up approach and the ad-hoc nature of policies means policy development in this area requires further work. The current limitations of the spent convictions legislation provide a stark example of this; because of these limitations, a substantial cohort of people with convictions are prevented from moving on in their lives, facing instead barriers to education, employment, travel and insurance. Access to education and employment is vital in preventing people from re-offending.

Short-term actions required

Action 34.1: Legislation must be developed that provides clarity around temporary release, enhances inter-agency co-operation, and enables greater access to supports on release. The Department of Justice and Equality should work in tandem with other stakeholders in examining this.

Action 34.2: The Department of Justice and Equality must ensure that no category of offender is banned from accessing temporary release, incentivised early release or remission.

Action 35.1: Legislators should conduct a review of the current spent convictions legislation with a view to broadening the criteria of convictions to which it applies by the end of 2018.

311 Strategic Review Group of Penal Policy, *List of Recommendations*: <http://www.justice.ie/en/JELR/Recommendations.pdf/Files/Recommendations.pdf>.

312 *Rebuilding Ireland: An Action Plan for Housing and Homelessness 2016*: <http://rebuildingireland.ie/>.

313 The Irish Examiner, "Prisoners to get medical card when they leave jail": <http://www.irishexaminer.com/ireland/prisoners-to-get-medical-card-when-they-leave-jail-421351.html>.

Conclusion: Where to next?

This PIPS report aims to provide a description of the current state of the Irish penal and prison system, with a view to monitoring its progress in key areas over the next three years. By examining each of these areas, it will act as a 'critical friend' in order for IPRT and all key stakeholders, including the Irish Prison Service, Department of Justice and Equality and other bodies, to work together towards achieving a world-class penal system. This also includes politicians, legislators, criminal justice agencies, media and the general public. Many of the standards and recommendations laid out here reflect those of the UN Committee against Torture, who examined the state of Irish prisons in 2017. These recommendations should be further reflected upon in order to progress the prison system and, in particular, prison conditions in Ireland.

While this report focuses on reforming the prison system, It also highlights the central role that other criminal justice stakeholders, such as the judiciary, the Probation Service and others, play in ensuring diversion away from custody occurs – a process that would, in effect, reduce prison numbers. The report also highlights the significant role that stakeholders such as the Parole Board and those beyond criminal justice (such as housing, social welfare, education and employment authorities) play in ensuring that prisoners are supported upon release, thus facilitating desistance and reducing the likelihood of ex-prisoners re-offending.

The short-term actions laid out here aim to make all of society safer, with individuals supported to transform their lives positively. However, crime cannot be viewed in isolation from deeper social and economic issues. It must again be acknowledged that this report focuses on the penal system; a greater focus on social policy, emphasising social exclusion, is needed if the State is to see real substantive change.

This time next year, we will be assessing progress achieved on the recommended actions set out in this report. We look forward to working constructively with all stakeholders to engaging and developing a strong partnership to work together to achieve change in the penal system in Ireland.

The full bibliography will be available to access on IPRT's website www.iprt.ie





Progress in the Penal System (PIPS) A framework for penal reform (2017)