

'Behind the Door': Solitary Confinement in the Irish Penal System



IPRT

Irish Penal Reform Trust

Executive Summary

Solitary confinement exists in “some shape or form, in every prison system” (CPT, 2011: para. 53). Prisoners can be held in solitary confinement for reasons of discipline, order, punishment, safety and security. In some situations, isolation is used as a “substitute for proper medical or psychiatric care” (*Istanbul Statement, 2007: 1*).

While *solitary confinement* may be defined in different ways, the consensus in the relevant literature and human rights standards is that it involves confinement in isolation (individually or with a small number of other prisoners) for 22 hours a day or more, with consequent restrictions in regimes. *Prolonged* solitary confinement has been defined by the United Nations (UN) *Mandela Rules (2015)* as isolation lasting 15 or more consecutive days.

Human rights principles require prison regimes to be **safe, respectful, purposeful and effective** (World Health Organisation (WHO) cited in HM Inspectorate of Prisons, online). It is difficult, if not impossible, to achieve these standards in situations where prisoners are confined in isolation for long hours, even where this falls short of 22-hour lock up.

Therefore, this study analyses the use of solitary confinement in Ireland that comes *within* the definition of 22 or more hours of confinement in a cell (individually or sharing), and *also* conditions on restricted regimes more generally, especially for prisoners locked up for 19 hours or more. This is in keeping with the idea of solitary confinement, segregation and restricted regimes as forming a “continuum of exclusion” (Shalev and Edgar, 2015: v).

The focus on isolation as a continuum is particularly pertinent to the current situation in Ireland. As noted previously by the European Committee for the Prevention of Torture (CPT, 2015), and more recently reported to the UN Committee on the Prevention of Torture (IPRT, 2017), the levels of violence in Irish prisons are high; a situation exacerbated by the presence of what some of the interviewees referred to as “gangs”. This has resulted in high numbers of prisoners being segregated from the general population due to perceived threats of violence, able to associate only with others in their particular ‘grouping’. While the number of prisoners locked in their cells for 22 or 23 hours a day has decreased significantly over the last four years (from 211 in July

2013 to 9 in October 2017¹), the overall number of prisoners on so-called ‘restricted regimes’ (i.e. all those locked up for 19 hours a day or more) has continued to increase. In October 2017, this number stood at 428 individuals, 385 of whom were segregated for reasons of ‘protection’² (mostly on Rule 63 of the *Prison Rules 2007*). The majority of all prisoners on ‘restricted regimes’ were in 21-hour lock-up (245).

At present prisoners may be placed on ‘protection’ simply on the basis that they have asked for this to happen. Yet those regimes are significantly impoverished as prisoners face restricted access to education, physical activities and fresh air; limitations on family visits and phone contact; and difficulties in accessing health and addiction support. Such restrictions may impair effective reintegration upon release.

As the findings of this research show, the Irish Prison Service (IPS) expects the number of ‘protection’ prisoners who are subject to restricted regimes to either remain at a similar level (of nearly 11% of the overall prison population) or increase in the next few

1 Irish Prison Service Prison Population Census Reports (available at: <https://www.irishprisons.ie/index.php/informationcentre/statistics-information/census-reports/>)

2 Some prisoners who are recorded as being ‘on protection’ throughout the prison estate do have access to the full regime and do not feature in statistics relating to ‘restricted regimes’. This report is concerned with those who are held in their cells for 19 or more hours a day.

years. The IPS intends to introduce an assessment on committal regarding potential risks to the individual's safety posed by others within the prison environment, which it hopes will to some extent prevent such increases. On the other hand, plans are also afoot to designate parts of Mountjoy (male) and of Midlands as 'protection prisons'. IPS intends that these 'protection prisons' will offer improved regimes and more out-of-cell time for prisoners segregated from the general prison population. However, fear was expressed during the research that, despite having real safety concerns, some prisoners may be deterred from requesting placement 'on protection' due to the prospect of being transferred further from their families.

'Protection' prisoners, while constituting the greatest number of prisoners on 'restricted regimes' in the Irish prison system, are not the only prisoners subject to such restrictions. Others include, for example, prisoners segregated from the general prison population for reasons of 'order' (Rule 62 of the *Prison Rules 2007*), some of whom are considered to be 'violent and disruptive'. An initiative currently under development is the creation of a unit based at the Midlands Prison for a small number of 'violent and disruptive' prisoners. This unit is expected to open in spring 2018 and will be run jointly between the Prison Psychology Service and operational prison staff.

Irish prisons hold a considerable number of prisoners with mental ill-health. In September 2017, a reported 20 prisoners with the most acute psychiatric difficulties were waiting for beds to become available in the Central Mental Hospital (CMH) (Dunne, 2017). In prisons, a small number of these individuals are held in Safety Observation Cells (SOCs). The CPT (2015) found in 2014 that individuals with severe psychiatric disorders were detained inappropriately in Irish prisons because there were insufficient hospital spaces available. This situation persists three years on.

Based on a review of national and international literature, and a series of interviews and informal discussions with 27 participants including serving and former prisoners, prison staff and managers, legal and medical professionals, representatives from oversight bodies, and other relevant stakeholders, this report makes the following recommendations:



1. Elimination of the use of solitary confinement:

- 1.1 The Minister for Justice and Equality should develop and consult on a *Strategy for the Elimination of Solitary Confinement* based upon principles of decarceration.
- 1.2 The Irish Prison Service should ensure, as a minimum, full compliance with the *Mandela Rules* and should amend its policy on 'the elimination of solitary confinement' (IPS, 2017) accordingly.
- 1.3 The Irish Prison Service should set the **minimum** out-of-cell time at 8 hours per day. Additionally, a **target** should be set of at least 12 hours' out-of-cell time per prisoner per day, based upon meaningful human contact and access to services and activities.
- 1.4 The term 'meaningful human contact' should be defined as contact with family and peers; interactions with professionals, staff or volunteers within the prison system should not be used as a substitute for such contact.
- 1.5 Separation of a prisoner from others should not be permitted for reasons of punishment, but only for reasons of safety in emergency situations, and for the shortest possible period of time.
- 1.6 The placement in solitary confinement of adults with mental health difficulties or mental or physical disabilities should be prohibited.
- 1.7 The placement in solitary confinement of pregnant or breastfeeding women prisoners or mothers with babies should be prohibited.
- 1.8 Adequate community mental health services should be provided, including access to psychiatric beds, to ensure that no one is detained in prison who would be more appropriately accommodated in mental health facilities.
- 1.9 The Minister for Children and Youth Affairs should provide, as a matter of urgency, statutory rules governing detention of children. In line with the most recent *Concluding Observations* by the UN Committee against Torture, such rules should include an absolute prohibition of the use of solitary confinement for children.

2. Separation for reasons of protection:

- 2.1 The Irish Prison Service should research and develop a range of initiatives to address violence in prisons. These may include, but should not be limited to, restorative justice approaches and weapons amnesties.
- 2.2 The IPS should ensure all staff are trained on the impact of solitary confinement and restricted regimes as well as in conflict management techniques such as de-escalation
- 2.3 Prisoners being placed, or requesting to be placed, on a restricted regime for their own protection should be given information, in accessible language, about the implications of such placement including details of the restricted access to education, vocational training, association, etc.
- 2.4 Where a prisoner requests to be kept on protection for an extended period, this should be kept under constant review.
- 2.5 Special supports should be put in place to encourage prisoners to come off a restricted regime where it is assessed as safe to do so, including access to a step-down programme.
- 2.6 Prisoners on protection or other restricted regimes should be provided with meaningful access to work, training and education, as well as other activities and services. As far as possible this should be in association with other prisoners.
- 2.7 Prisoners on restricted regimes should have increased access to family contact, through telephone and visits.
- 2.8 The *Prison Rules 2007* should be further amended to include regular examination of prisoners isolated under Rule 63 by a prison doctor. Such examination should include both physical and mental health assessment by appropriately trained medical personnel.

3. Access to justice:

- 3.1 There should be a **mandatory** notification provided to their solicitors where prisoners are placed on Rule 62 and Rule 63. Prisoners should also be informed that they have the right to contact their solicitor and should be given an opportunity to do so as soon as practicable.
- 3.2 There should be a **mandatory** notification to a legal representative in cases of placement in Safety Observation Cells and Close Supervision Cells, regardless of the length of time for which such placement is envisaged.
- 3.3 The situation of prisoners held in isolation and/or subjected to a restricted regime should continue to be afforded particular attention by the Inspector of Prisons, including through thematic inspections. The Government should provide the Office of the Inspector of Prisons with appropriate resources to enable it to fulfil its mandate in this regard.
- 3.4 Prisoners held in isolation and/or subjected to a restricted regime should have strengthened access to independent complaints mechanisms and should be afforded appropriate assistance to avail of those mechanisms.

4. Collection and publication of statistics:

- 4.1 The Irish Prison Service should regularly collect and publish data relating to the *length of time* prisoners spend on restricted regimes in all prisons.
- 4.2 Data relating to repeated and multiple placements of the same prisoner(s) on restricted regimes should be collected, in particular where such repeated placements concern prisoners with mental health difficulties and those segregated for reasons of discipline.
- 4.3 Separate statistics for Limerick (male) and Limerick (female) prisons, should be provided.
- 4.4 The Irish Prison Service should disaggregate data by other characteristics, including ethnicity, nationality, sexual orientation, and disability, to enable monitoring for potential disproportionate use of restricted regimes among particular groups.

