

‘Doing Nothing Is Not an Option’: Recent Milestones towards Improving Prison Conditions and Addressing Overcrowding

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Summary: Following decades of neglect and inaction on the part of the Irish State, this paper focuses on recent milestones towards safeguarding the most basic human rights of prisoners with regard to steps taken (a) to improve living conditions (most notably by providing in-cell sanitation, thereby eliminating the inhuman and degrading practice of ‘slopping out’) and (b) to address overcrowding through increased use of Community Service Orders and novel schemes such as Community Return. The paper also discusses the contributions of the Thornton Hall Review Group, the Sub-Committee on Penal Reform and the Irish Penal Reform Trust in prompting a much-needed rethink of prison policy.

Keywords: Prisons, prison conditions, overcrowding, human rights, prison policy, decarceration, courts, sentencing, Community Service, Community Return.

Introduction

Conditions in our prisons deteriorated considerably during Ireland’s boom years, often resulting in serious violations of the human rights of the people confined there. Chronic overcrowding, squalid conditions (including the prevalence of ‘slopping out’), political intransigence regarding the inadequacies of the complaints system, the continued detention of children at St Patrick’s Institution and a massive increase in the imprisonment of women were all features of increasingly punitive penal policies at a time of apparent economic plenty.

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The prison population more than doubled between 1995 and 2013, outpacing the largest prison-building programme undertaken in Ireland in 30 years. Overcrowding worsened, with new capacity unable to accommodate increased numbers. Instead of pausing to analyse the factors behind the stark increase in incarceration (for instance, issues relating to sentencing including non-payment of fines, excessive use of imprisonment for low-level offenders instead of alternatives to custody such as Community Service Orders, and presumptive sentencing schemes such as the one governing Section 15A drugs offences), government proceeded to build more prison spaces, without closing down Victorian prisons such as Mountjoy, Cork and Limerick, which feature the worst conditions.

As the financial prospects of the country were on the turn, plans to construct super-prisons on green-field sites (Thornton Hall in Dublin and Kilworth in Cork), far from urban centres, emerged as the proposed remedy for the more shameful human rights violations in Irish prisons. The fiscal crisis means that neither institution can be built any time soon. This is a positive development, since international best practice dictates that small, local prisons are far safer, more effective, easier to manage and better equipped to facilitate reintegration than large prisons housing a range of security levels on one campus.

Nonetheless, it is ironic that just as the nation is on its knees financially, resources have been made available in an effort to discharge the State's obligations to prisoners in its care and custody. Mountjoy – in the past described as beyond redemption – has recently been judged fit for refurbishment and is currently undergoing major renovation. The change of political leadership in the 2011 General Election presented prison reform advocates such as the Irish Penal Reform Trust (IPRT) with a fresh opportunity to impress on policy-makers that a different approach to prison and prisoners was both desirable and necessary.

Prison conditions and overcrowding: The context

As far back as 1998, the European Committee for the Prevention of Torture (CPT) stated that overcrowding in Irish prisons was 'endemic' (see CPT, 1999, p. 30). In 2006, the daily average number of people in custody was 3,191. On 22 July 2011, a total of 5,479 prisoners were in the prison system, with a further 612 on temporary release due to overcrowding. There is a direct correlation between overcrowding and

increased violence among prisoners. In 2010 the CPT noted that ‘Stabbings, slashings and assaults with various objects are an almost daily occurrence’ (CPT, 2011, p. 21).

A quarter of Irish prisoners do not have in-cell sanitation, which means they must urinate and defecate in buckets in their cells during lock-up, which is generally from 7.30pm to 8.00am and at mealtimes during the day. A small number of prisoners are under 23-hour lock-up with no in-cell sanitation. In Limerick, Cork and Mountjoy prisons slopping out is combined with multi-cell occupancy, long lock-down periods and a lack of meaningful out-of-cell activities, exacerbating the indignity suffered by prisoners.

Despite Government assurances since 1993 that it would bring an end to slopping out, the ‘inhuman and degrading’ practice continues to this day (see Inspector of Prisons, 2010; CPT, 2011, p. 29). The CPT has consistently called on the Irish authorities to ‘eradicate’ it from the prison system and demanded that action be taken to minimise its degrading effects until this can be achieved, including the provision of toilet patrols during the night (see CPT, 2010).

At the NGO briefing session before the UN Committee against Torture (UNCAT) in Geneva in May 2011, Ireland’s leading penal reform NGO, IPRT, was asked if it supported the development at Thornton Hall (see ICCL and IPRT, 2011). While IPRT reiterated its opposition to the super-prison on grounds of location, size, proposed mixture of security levels and the fact that it would almost certainly lead to further penal expansion rather than cell closures elsewhere, it acknowledged that in order to comply with international human rights standards urgent action was necessary to address both overcrowding and inhuman and degrading conditions, most notably the lack of in-cell sanitation (see IPRT, 2011a). IPRT, therefore, requested the committee to seek clarification from the Irish State regarding its intention to proceed with the Thornton Hall development and to provide a clear timeline for its construction, or any refurbishment of existing prisons.

Accordingly, in June 2011 the Committee against Torture recommended that Ireland ‘Adopt specific timeframes for the construction of new prison facilities which comply with international standards. In this regard, the Committee requests the State party to inform it of any decisions taken with regard to the Thornton Hall prison project.’

As to existing prison conditions, the committee recommended that the Irish State ‘strengthen its efforts to eliminate, without delay, the practice

of “slopping out”, starting with instances where prisoners have to share cells. The Committee further recommends that until such a time as all cells possess in-cell sanitation, concerted action should be taken by the State party to ensure that all prisoners are allowed to be released from their cells to use toilet facilities at all times’ (UNCAT, 2011, para. 12).

While the Thornton Hall Project Review Group recommended a scaling-down of the original proposals for a large prison at Thornton Hall (i.e. the construction of 300 cells, capable of accommodating 500 prisoners, with 20 secure step-down facilities capable of accommodating up to 200 prisoners in an open centre-type setting), it also recommended keeping Mountjoy open in the medium term (Thornton Hall Project Review Group, 2011, p. 68). This, in effect, meant further expansion of the prison estate.

Despite the Review Group’s proposals to build a smaller prison on the site as well as a prison at Kilworth to address the crisis in physical conditions at Cork prison (Thornton Hall Project Review Group, 2011, pp. 69–70), both developments have been ‘mothballed’; they will not be built any time soon, if at all. However, significant steps have been taken to explore the reasons behind the explosion in the prison population through the Strategic Review Group on Penal Policy, established in late 2011 following another recommendation of the Thornton Hall Project Review Group.

The Review Group provided the first official statement that prison-building alone cannot provide a lasting response to overcrowding, describing it as ‘pernicious’. The primacy afforded to the human rights of prisoners and the group’s unequivocal message that overcrowding ‘will not be solved solely by building more prisons’ – endorsed by the Minister for Justice – were also particularly significant (Thornton Hall Project Review Group, 2011, p. iii; Department of Justice and Equality, 2011).

Following years of scathing CPT reports (CPT, 1999, 2007, 2011), critical reviews by the Inspector of Prisons and the UN Committee Against Torture’s strong concluding observations on prison conditions (UNCAT, 2011), the review group’s statement that ‘doing nothing’ was not an option was long overdue (Thornton Hall Project Review Group, 2011, p. 65). Its admission that the deplorable physical conditions and overcrowding levels in Cork and Mountjoy ‘expose the State to significant reputational, legal and financial risk’ was noteworthy, as were the proposals on alternatives to custody, the possibility of home detention and novel ‘back-door strategies’ such as an incentivised scheme for early

release including supervised community service (Thornton Hall Project Review Group, 2011, pp. 62–63).

Promises made and concrete steps taken to improve living conditions

Improving conditions in Irish prisons has been painfully slow, but there have been notable signs of progress in the past two years. Significantly, the capital programme of the Irish Prison Service's *Three Year Strategic Plan 2012–2015* focuses on improving current physical prison conditions, rather than expanding the prison estate (Irish Prison Service, 2012a, p.12). This is a welcome development.

Under *Strategic Action 5: Prison Estate* of its *Three Year Strategic Plan 2012–2014*, the Irish Prison Service pledges to provide a toilet and wash basin in every cell. Prisoners in the B and C Wings at Mountjoy prison have been provided with in-cell sanitation, and work is under way in A wing. The refurbishment project is due for completion in September 2014, 'when slopping-out and overcrowding in Mountjoy will end and the prison will house 540 prisoners' (Lally, 2013).

There has been no progress at Cork or Limerick prisons to end slopping out. IPRT has reported that prisoners have alleged that they are not released from their cell to use toilet facilities at night in some prisons. Until the elimination of slopping out, all prisoners should be released from their cell to use toilet facilities at all times (ICCL and IPRT, 2011, p. 33; UNCAT, 2011, para. 12).

Change may be imminent for prisoners in Cork and Limerick, however. Instead of proceeding with the Kilworth facility, the Irish Prison Service plans to construct a new 150-cell facility with all related and supported ancillary services provided on the car park site adjacent to the existing Cork prison (Department of Justice and Equality, 2013a; Irish Prison Service, 2012b, p. 7). An environmental impact survey on the proposed new prison has been undertaken and, following the capital allocation of €24 million to the Department of Justice in Budget 2013, construction work should commence in 2013. Retrogressive aspects of the new Cork prison design include the plan to increase capacity to accommodate 275 prisoners (according to the Inspector of Prisons, the current capacity at Cork is 146, although it has frequently held 270 prisoners) by building cells large enough to house two prisoners, rather than implement the 'decarceration' strategy, discussed below, and commit

to single cell occupancy in line with international best practice (Inspector of Prisons, 2013, para. 2.9).

The Irish Prison Service's 40-month capital plan will replace outdated accommodation in Limerick prison and Portlaoise E Block. In June 2012 Minister Shatter announced plans to upgrade accommodation at Limerick Prison, including provision of in-cell sanitation, a dedicated committal unit and a high-support unit (Department of Justice and Equality, 2012). IPRT cautioned against any expansion in the number of cells at that prison, stating that construction must only seek to relieve overcrowding 'and not serve to increase numbers accommodated at that prison' (IPRT, 2012a). The building of a new block of 100 cells would mean an increase on the 55 existing cells in wings A and B (28 in A wing and 27 in the recently decommissioned B wing) at Limerick Prison. On 3 November 2011, 104 prisoners were accommodated in 55 cells, effectively 200% of the single-cell design capacity. It is likely that many of these prisoners could have been managed more effectively and humanely in the community.

The Irish Prison Service's *Strategic Plan 2012–2015* also states that a new accommodation block at the Midlands prison will provide 300 additional spaces, as well as additional work, training and educational facilities. The new wing has been completed and the spaces are coming on stream in a phased roll-out. The first cohort of prisoners was accommodated in the new wing in November 2012. The Midlands and Wheatfield prisons are both in danger of becoming super-prisons due to recent expansion.

Towards reducing overcrowding

(a) Greater use of Community Service Orders

Recent Irish measures aimed at reducing the use of imprisonment at the lower end of the scale seem to accord with the view of the Scottish Prisons Commission that paying back in the community should become the default position in responding to less serious offenders (Scottish Prisons Commission, 2008, p. 26; IPRT, 2011b) In enacting the Criminal Justice (Community Service) (Amendment) Act 2011, the Minister for Justice, Alan Shatter TD, lent his full support to the greater use of community service as an alternative to imprisonment.

Prior to its enactment, IPRT made a persuasive argument for strengthening the presumption against imprisonment in section 3(1)(a)

by not only requiring the sentencing judge to *consider* imposing a Community Service Order (CSO) in lieu of imprisonment for a qualifying sentence, but *obliging* him or her to give written reasons behind a decision to imprison the convicted person (IPRT, 2011b). Examples of legislation where judges are required to give reasons for the decision to imprison include section 143 of the Children Act 2001 and section 17(3B) of the Criminal Justice and Licensing (Scotland) Act 2010. While the passage of the legislation was progressive, the minister's decision not to require judges to give written reasons for every decision to imprison is unfortunate, since a public record of all decisions to imprison would have enhanced accountability regarding sentencing at District Court level and would have been a very useful tool in monitoring the success of the legislation.

Providing for greater judicial accountability by statute does not mean the separation of powers would be breached, or that judicial discretion would be compromised. Judges would still be free to sentence as they see fit under the circumstances, but they would have to explain any decision to impose a short jail sentence instead of imposing a CSO. Improved data collection on the sentencing decision-making process would lead to a more accurate appraisal of the efficacy of legislation to make the desired change; namely a reduction in custodial sentences of 12 months or less. Providing brief written explanations for sentencing decisions at District Court level would also, arguably, enhance public confidence in the administration of justice, as the shroud of mystery surrounding sentencing would be removed.

Where the liberty of a person is at stake, surely Irish judges would not balk at recording 'gravity of the offence', or 'frequent offender', etc. as the reason(s) for their decision to impose a custodial sentence in a given case. Their colleagues in the UK treasure their judicial independence in equal measure, yet all Crown Court judges are required to complete a short form every time they pass sentence. According to Justice Colman Treacy, Judge of the High Court of England and Wales, 'the form asks for information about the principal offence for which the offender is being sentenced identifying the guideline category, the aggravating and mitigating features, the number of relevant previous convictions, when any plea of guilty was entered and the allowance for that plea and other details' (Treacy, 2012). These forms are sent to the UK Sentencing Council on a monthly basis, and the purpose thereof is 'to understand how guidelines are being used and to inform the Council about their

effect – whether they are working to achieve a consistent approach to sentencing. Many judges now use them as a checklist in passing sentence.’

It is submitted that Irish judges should be obliged to fill in a similar form to their English counterparts when sentencing in order to measure compliance with the Criminal Justice (Community Service) (Amendment) Act 2011. These forms could also be a useful tool in monitoring adherence to sentencing guidelines, which may be developed by a Hibernian Sentencing Council, if established in the future.

(b) Community Return

A pilot Community Return project was launched in October 2012, prompted by the Thornton Hall Project Review Group Report. The project, run by the Probation Service and the Irish Prison Service, provides for earned early temporary release to be offered to offenders, who pose no threat to society, in return for supervised community service. The pilot project was successful and it will be rolled out nationally. At any one time, a maximum of 150 prisoners will be engaged in this scheme. Over the three-year life of the plan, up to 1,200 prisoners will participate. A week of community service is swapped for roughly one month of extra remission. Prisoners are eligible if their sentence is between one and five years’ imprisonment, and they can be released under the scheme as early as halfway through their sentence instead of at the normal three-quarter remission point (Houses of the Oireachtas Joint Committee on Justice, Defence and Equality, 2013, p. 21).

Participating prisoners must sign on every day at their local Garda Síochána (police) station and every week at the prison. Other conditions may also be imposed, i.e. attendance at drug treatment centres. The type of unpaid work includes painting community centres, graffiti removal or site cleaning. The potential benefits to the community of the scheme are considerable. Instead of releasing large numbers of prisoners on temporary release unsupervised, without any assessment or supports in place, the Irish Prison Service now has a structured programme, albeit for a small number of carefully selected, self-motivated prisoners. Importantly, the scheme can be used to facilitate their resettlement into the community by providing them with a place to go and work several days a week, giving their lives purpose and structure in the difficult weeks and months following release.

The dominant consideration in operating the scheme is public safety. The factors taken into account in considering the suitability of a prisoner

for community return include the nature and gravity of the offence to which the sentence being served relates; the sentence concerned and any recommendations made by the court in relation to it; the potential threat to public safety should the person be released; previous criminal record; the risk of the person failing to comply with any of the conditions of temporary release; the extent of the prisoner's engagement with therapeutic services while in custody, and conduct while in custody.

(c) Proposals for a 'decarceration' strategy

In October 2011 the cross-party Sub-Committee on Penal Reform was established by the Joint Oireachtas Committee on Justice, Equality and Defence 'to analyse the recommendations of the Thornton Hall Project Review Group in respect of non-custodial alternatives to imprisonment – in particular back-door strategies which involve some form of early release', including:

- the experience from other jurisdictions of potential models for such strategies, including 'earned temporary release'
- release under community supervision
- parole reform
- enhanced remission.

In November 2011 IPRT made an oral and a written submission to the sub-committee and subsequently produced a Position Paper on *Reform of Remission, Temporary Release and Parole*, which largely focused on existing 'back-door' deficits regarding the operation of remission, temporary release and parole and set out a comprehensive package of reform proposals geared towards increased transparency and accountability of the decision-making process and preparation for release of prisoners (IPRT, 2011c and 2012b).

Other penal reform experts also gave the sub-committee the benefit of their views and experience regarding the problems currently facing the Irish Prison Service and the prisoners in its care, offering ideas for penal reform including the need to tackle overcrowding and prison conditions, the desirability of promoting meaningful rehabilitation services and a structured approach to temporary release, the usefulness of looking to the success of the Finnish post-Second World War 'decarceration' initiative and the need for more open prisons (Houses of the Oireachtas Joint Committee on Justice, Defence and Equality, 2013).

The report, authored by Senator Ivana Bacik, called for the swift implementation of its five key recommendations, which would lead to a ‘real change in Irish penal culture’ (Houses of the Oireachtas Joint Committee on Justice, Defence and Equality, 2013, p. 7). Recommending the adoption of an explicit ‘decarceration’ strategy to reduce the overall prison population by a third within 10 years, the report made a specific ‘front-door’ recommendation that all sentences of under six months’ imprisonment for non-violent offences should be commuted and replaced with Community Service Orders, and a ‘back-door’ proposal that standard remission should be increased from one-quarter to one-third off all sentences over one month, with an enhanced remission scheme of up to one-half available on an incentivised basis for certain categories of prisoner, such as first-time offenders. The sub-committee also endorsed the enactment of a single piece of legislation in line with IPRT’s recommendation, setting out the basis for a structured release system (Houses of the Oireachtas Joint Committee on Justice, Defence and Equality, 2013, p. 9; IPRT, 2012b, p. 15). More generally, the report recommended that prison conditions and overcrowding be addressed in order to ensure that structured release and incentivised remission programmes can operate effectively. It also recommended greater use of open prisons.

While some recommendations in the final sub-committee report are less radical than those proposed in IPRT’s submission, they are important in ‘offering a coherent plan for reform of the Irish penal system to reduce numbers in prison, reduce reoffending, leading to safer society’ (IPRT, 2013).

Conclusion

This paper details recent milestones towards safeguarding the basic human rights of Irish prisoners. It achieves this by highlighting prison overcrowding and grossly substandard living conditions, comments and recommendations of indigenous penal reform advocates and international human rights bodies, promises made by the current government to remedy the situation, and concrete steps taken to deliver on such promises thus far.

Much remains to be done. Despite considerable refurbishment at Mountjoy, prisoners there must still slop out in overcrowded conditions. There has been no improvement in Cork and Limerick. However, there

is cause for hope that change is both intended and achievable within two to three years, despite the country's financial woes. There appears to be a genuine appreciation at official level of the moral, legal and financial imperative to do things differently, as evidenced by statements and actions of the Minister for Justice and Equality, the Reports of the Thornton Hall Review Group and the Sub-Committee for Penal Reform and, significantly, the announcement in July 2013 that St Patrick's Institution will be closed as a young offenders' prison within six months, with 17-year-olds being temporarily housed at Wheatfield prison pending the development of the Oberstown complex (Department of Justice and Equality, 2013b).

The powers that be cannot in good conscience persist with a penal policy that has seen far too many people – many of them first-time or low-level offenders – pass through the gates of our overcrowded prisons without making genuine efforts to rehabilitate them or prepare them for release, and to protect their basic human rights while they are behind bars. The stark rise in prison numbers since the late 1990s has not made society substantially safer, as acknowledged by the Minister for Justice at IPRT's Annual Lecture in 2011 (Department of Justice and Equality, 2011). As far back as 1985 – long before the prison population reached the staggering levels that saw prison 'design capacity' so out of kilter with official Irish Prison Service 'bed capacity' figures – the Whitaker Committee recommended increasing the standard remission rate from one-quarter to one-third, a key recommendation made by the Sub-Committee on Penal Reform recently (Whitaker Report, 1985).

Time will tell whether the current administration has the courage to implement fully the recommendations of the sub-committee, particularly its call to adopt a 'decarceration' strategy, firmly committing to reduce prison numbers by a third within 10 years. If so, the decision to have double occupancy as the norm at the new Cork prison should be revisited and abandoned. It is hoped that the government has the mettle to 'decarcerate', which may prove to be a hard sell to the public and certain sections of the media. Cautious optimism seems appropriate, owing to the track record of the current Minister for Justice, who has been keen to distance himself from the inaction of predecessors, and the new leadership of both the Irish Prison Service and the Probation Service, who have displayed commitment to new, creative approaches to penal issues.

Not only does a 'decarceration' strategy make economic sense, but a substantially reduced prison population would mean that the people who must spend time in prison, due to the gravity of their crimes, have access

to humane conditions and structured activities that improve their rehabilitation prospects. The Minister for Justice commissioned a strategic review of penal policy in Ireland, and the committee is due to report in the coming months. It is hoped that its recommendations will bolster those of the Sub-Committee for Penal Reform regarding the desirability of an urgent ‘decarceration’ strategy.

It is an exciting time for penal reformers. As Liam Herrick, Executive Director of IPRT, recently stated: ‘The consensus for change across all main agencies and parties means we now have a once in a lifetime opportunity for real and lasting reform’ (IPRT, 2013).

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