



**Submission to the UN Universal Periodic Review
12th session of the UPR Working Group of the Human Rights Council
October 2011**

Executive Summary

The Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for the rights of everyone in prison and the progressive reform of Irish penal policy, with prison to be used only as a last resort. IPRT is committed to reducing imprisonment and the progressive reform of the penal system based on evidence-led policies. IPRT works to achieve its goals through research, raising awareness, building alliances and growing our organisation. IPRT has consultative status with the United Nations Economic and Social Council. This submission focuses on issues relating to the Irish State's promotion and protection of human rights in the prison context.

1 Background and Framework

With the goal of ensuring a strong civil society input for Ireland's first Universal Periodic Review (UPR), IPRT joined with 17 other Non-Government Organisations to form the UPR Cross-Sectoral Steering Group (CS-SG), lead by the Irish Council for Civil Liberties (ICCL). IPRT has been a key member of the CS-SG, attending many consultations organised by ICCL, as well as those held by the Irish Human Rights Commission (IHRC) and the Department of Foreign Affairs. IPRT contributed to the CS-SG UPR Report and also made a submission to the IHRC's Report.¹ It is envisaged that IPRT will submit to the State's Report in due course, drawing up a list of voluntary commitments to rectify prison-related human rights infringements, including, but not limited to, the issues highlighted in this submission to the Human Rights Council.

¹ See Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, pp. 7-8., available at http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf (last accessed 14/03/11)

2 Promotion and Protection of Human Rights

A. Prison numbers and overcrowding in Irish Prisons

Ireland's prison population has doubled since 1997.² In 2006, the daily average number of people in custody was 3,191. On 25 January 2011 the prison population was 4,541. As far back as 1998, the European Committee for the Prevention of Torture (CPT) stated that overcrowding in Irish prisons was "endemic".³ Overcrowding has a direct effect on increasing incidences of inter-prisoner violence. In its recent Report, the CPT highlighted the dangerous levels of inter-prisoner violence in Irish prisons, observing that "[s]tabbings, slashings and assaults with various objects are an almost daily occurrence."⁴

Despite the largest ever prison-building programme undertaken in Ireland in the last 30 years, overcrowding has worsened.⁵ Prison-building alone has not, and will not, provide a lasting response to overcrowding. Since 1997, more than **1,930** new spaces have been added to the prison system, with planned new prisons at Thornton Hall in Dublin and Kilworth in Cork. However, these new prison spaces have not matched the increase in prisoner numbers. The financial crisis means that the planned development of the two new prisons will not take place any time soon, if at all.

IPRT recommends the introduction of 'imprisonment as a last resort' legislation⁶ as a long-term measure to reduce the over-use of imprisonment.

As a short-term measure to address the over-crowding crisis, IPRT calls for the establishment of safe custody limits, informed by basic human rights standards.

A revised prison building programme must provide humane and safe conditions for all prisoners through the development of smaller local prisons and open and low-security options, wherever possible; this will enhance the economic efficiency of the system and allow the development of more effective and constructive regimes.

² See <http://www.iprt.ie/prison-facts-2> (last accessed 06/01/11) On 10 January 2011 the prison population was 4,369. This has been updated to figure of 4,541 on 25th Jan, following a phone-call with the Irish Prison Service.

³ *Report to the Irish Government 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 31 August to 9 September 1998*, paragraph 57, p.31.

⁴ *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 25 January to 5 February 2010*, paragraph 32, p. 21.

⁵ See Irish Penal Reform Trust, *IPRT Briefing on Overcrowding in Irish Prisons* available at http://www.iprt.ie/files/IPRT_Briefing_on_Overcrowding_June_2010.pdf (last accessed on 06/01/11). The document outlines short, medium and long-term measures for tackling the issue of overcrowding.

⁶ Judges should be legally required to first consider and rule out all other options before imposing a prison sentence.

B. Cell Conditions, Sanitation and Slopping Out in the Irish Prison System

Conditions in our older prisons are in clear violation of a number of human rights standards. The ongoing practice of ‘slopping out’ in Mountjoy, Cork, Limerick and Portlaoise prisons has received national and international condemnation. A quarter of Irish prisoners do not have in-cell sanitation.⁷ Where no in-cell facilities exist, prisoners urinate and defecate in buckets or portable units in the cell during lock up, which varies but is generally from 7.30pm to 8.00am and mealtimes during the day. A small number of prisoners are under 23-hour lock-up with no in-cell sanitation. Some limited refurbishment is occurring in the worst affected prisons,⁸ but, at this point, the State does have any plan to abolish slopping out across the entire prison estate within a reasonable timeframe.

Despite Government assurances since 1993 that it will bring an end to this inhuman and degrading practice, it continues. The CPT has consistently called upon the Irish authorities to “eradicate” slopping out from the prison system and demanded action to be taken to minimise its degrading effects until such time as this is achieved, including the provision of toilet patrols during the night.⁹ Slopping out has a “direct and substantial bearing on the prison regime” and amounts to “inhuman and degrading treatment” according to the UN Human Rights Committee (UN HRC),¹⁰ the Inspector of Prisons¹¹ and the CPT.¹² Most significantly, in Limerick, Cork and Mountjoy prisons the practice of slopping exists in overcrowded cell conditions. In these prisons the practice of slopping out is combined with multi-cell occupancy, long lock-down periods and an impoverished regime, exacerbating the impact on prisoners.

IPRT recommends that the Government commits to ending slopping out completely by a fixed and reasonable timeframe. Within this strategy, there must be a commitment to end slopping out where it is combined with overcrowding as an urgent priority.

⁷ On December 17th 2010, 1,003 prisoners out of a total of 4,397 prisoners were required to slop out. See <http://www.iprt.ie/prison-facts-2>. See also Department of Justice, Equality and Law Reform Parliamentary Question on Prisoner Statistics, 27 January 2011 available at <http://www.kildarestreet.com/wrans/?id=2011-01-27.524.0&s=prison+section%3Awrans> (last accessed 15/03/11).

⁸ The Irish Prison Service has also recently begun a €7 m revamp to alleviate the overcrowding problems in Mountjoy prison, creating 38 more spaces for prisoners. Work has begun on refurbishing the C base, where the cells will have their own toilet facilities. This refurbishment is expected to be completed spring 2011.

⁹ *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 25 January to 5 February 2010*, paragraph 48, p. 29.

¹⁰ See Concluding Observations of the Human Rights Committee Ireland, CCPR/C/IRL/CO/3, 30 July 2008.

¹¹ Inspector of Prisons, *The Irish Prison Population: An examination of the duties and obligations owed to prisoners*, July 2010, p. 20.

¹² *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 25 January to 5 February 2010*, paragraph 48, p. 29.

C. Lack of an independent complaints mechanism for prisoners

There is no independent system to receive, investigate and act upon complaints made by prisoners in Ireland. Under the Prison Rules 2007, prisoners can only lodge complaints with the Prison Governor or the Minister for Justice, Equality and Defence, neither of which is credible as an impartial adjudicator of complaints. Prison Visiting Committees can receive complaints but have no power to resolve them and so do not satisfy the criteria for an independent complaints body. The Inspector of Prisons may not receive individual complaints or investigate individual matters unless the Minister for Justice asks him to do so. This “leaves prisoners in a lacuna.”¹³ Calling for an independent complaints system for prisoners in Ireland, the CPT has stated that “such a system would reinforce prisoners’ confidence in the complaints mechanism and also assist prison management to deal appropriately with that minority of prison officers who overstep the mark”.¹⁴ In its recent Report, the CPT expressed concerns about the inadequate investigation of complaints regarding allegations of ill-treatment of prisoners by staff, poor recording of alleged incidents, and deficient or no medical examination of prisoners who make complaints.¹⁵

IPRT recommends that the successful operation of the Prisons Inspection system be complemented by an independent complaints system, either through the prompt establishment of a Prisoner Ombudsman, or through amending or extending the remit of existing bodies. The establishment of a specific mechanism to investigate deaths in prison is also necessary.

D. Detention of children at St Patrick’s Institution

The ongoing practice of detaining children at St. Patrick’s Institution - a medium-security prison housing male offenders between the ages of 16 and 21 – is in breach of international human rights standards. Imprisoning children with adults directly contravenes the United Nations Convention on the Rights of the Child. In 2009, there were a total of 227 children committed to St. Patrick’s; this represents a slight decrease on the 2008 figure of 241 children. The CPT recently repeated concerns about the suitability of St. Patrick’s Institution for the detention of juveniles due to problems with conditions, the regimes and staffing, and criticised the lack of a clear timetable for the transfer of 16 and 17 year olds to a Children Detention School.¹⁶ The

¹³ See Inspector of Prisons, *Guidance on Best Practice relating to Prisoners’ Complaints and Prison Discipline* 2010, p. 18.

¹⁴ *Report to the Irish Government 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 2 to 13 October 2006* (available at: <http://www.cpt.coe.int/documents/irl/2007-40-inf-eng.pdf>), p. 21.

¹⁵ *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 25 January to 5 February 2010*, paragraphs 31-34, pp. 20-22.

¹⁶ *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 25 January to 5 February 2010*, paragraph 26, p. 17.

Irish government had planned to develop new juvenile facilities at Oberstown in Lusk, but the future of this development is now uncertain due to the financial crisis.

IPRT recommends that the imprisonment of children in St Patrick’s Institution must end immediately. A plan must be put in place to allow for the gradual transfer of children from the prison to the Children Detention Schools. The planned development of the Oberstown facility should proceed in a timely manner, notwithstanding current economic difficulties.

The remit of the Ombudsman for Children must be extended to allow individual complaints from children held in prison and in detention on the same basis as children detained elsewhere.

E. Spent convictions legislation and extension of the grounds of discrimination under the Employment Equality Act 1998

Having a criminal record is a barrier to accessing employment. Moreover, unemployed ex-prisoners are twice as likely to re-offend as those in full or even part-time employment. The outgoing Government had proposed spent convictions legislation which would have allowed certain convictions to be “spent” for the purpose of disclosing a criminal record when seeking employment or accessing services.¹⁷ The timely introduction of spent convictions legislation in Ireland by the new government is crucial so that an ex-offender can move on from their past ‘in law’ as well as in practice. The wider question of discrimination on the grounds of a person having a criminal conviction was examined in a 2004 report for the Department of Justice, Equality and Law Reform conducted by University College Cork.¹⁸ Following that report’s analysis of equivalent schemes in six other jurisdictions, the IHRC recommended to Government that a new grounds should be created under the Employment Equality Act 1998 relating to discrimination on the basis of a criminal conviction.¹⁹ To date, no action has been taken on foot of that recommendation. IPRT supports the extension of the grounds of discrimination under the Equality Act 1998 to include discrimination on the basis of a criminal conviction.

IPRT recommends that spent convictions legislation be introduced and that the grounds of discrimination under the Employment Equality Act 1998 be extended to include discrimination on the grounds of a criminal conviction.

¹⁷ Section 4(b) of the Spent Convictions Bill 2007, which was introduced as a private member’s Bill during the previous administration, provided that qualifying offenders will not have to divulge criminal convictions and that any such “spent conviction” cannot be used as a proper ground for a dismissal from employment.

¹⁸ Kilcommins, McClean, McDonagh, Mullally and Whelan, *Extending the Scope of Employment Equality Legislation: Comparative Perspectives on the Prohibited Grounds of Discrimination*, Department of Justice, Equality and Law Reform, 2004.

¹⁹ See the Irish Human Rights Commission, *Extending the Scope of Employment Equality Legislation*, 2005, pp. 6-9.