

Briefing Paper

Towards a Progressive and Effective Penal Policy

May 2010

The Irish Penal Reform Trust (IPRT) believes there is an urgent need for the development of a new and more coherent policy for the punishment of crime in Ireland; one based on clear principles and informed by solid evidence of what works in reducing crime and creating a safer society. In this Briefing Paper we set out what we believe are the objectives and principles that should underpin such a policy, before addressing the main issues currently facing the Irish penal system. We have set out detailed positions in relation to many of the themes and issues addressed here in our body of Position Papers and Briefing Papers; these are referred to in this submission and are all available at www.iprt.ie.

1. Why Reform?

🕒 A Prison System in Crisis

The prison system is overwhelmed and in crisis. Chronic overcrowding, rising violence and demeaning physical conditions in our prisons have contributed to institutions which are likely to exacerbate rather than address criminality. In short, our older prisons are an international disgrace, with the Council of Europe Committee for the Prevention of Torture describing them as “unsafe” for staff or prisoners, and the Inspector of Prisons directing that Mountjoy should not be operating at its current levels of overcrowding “because of [his] serious concerns for safety or life.”

🕒 The Social and Economic Cost

Our prison system is currently growing at 10% each year, increasing from 2,400 in 1997 to over 4,200 today, and projections of this figure reaching 5,000 by end 2010. We have one of the world’s most expensive prison systems (per prisoner) and rising prisoner numbers are placing an increasing financial burden on the State at a time of great need in other areas of social spending. Public spending on prisons is unsustainable and delivers poor value for money.

🕒 Failure of Current System

At the same time, the public are rightly concerned about the failure of our crime policies. Reoffending rates are high among our released prisoners and by planning to expand an already failing prison system, we are essentially planning for the future failure of our social policies.

⌚ **Need to Change Direction**

A tendency to legislate rather than address practical issues of crime detection and prevention has undermined public confidence. Recent response to crime has focussed on sentencing and the fair trial rights of suspects, when all evidence points to crime prevention and detection as being the most important areas to address. Promises to “re-balance” the criminal justice system from the suspect to the victim of crime have proved empty and misguided.

2. Core Principles for a New Penal Policy

While there has been a temptation in the past to mimic failed crime policies from the United Kingdom or the United States, IPRT believes that a uniquely Irish penal policy is possible with great potential for a smaller, efficient and more effective penal system. The first step in developing such a policy is to set out clear goals and principles. IPRT’s vision for the Irish penal system is one that is based on three core principles:

- ⌚ First, the **human rights of all persons in the criminal justice system must be respected** in line with Ireland’s obligations under international law and the Constitution. We are committed to respect for the dignity of everyone in society, including those we punish, and IPRT also believes that there is significant scope for greater tangible and practical supports for the victims of crime.
- ⌚ Secondly, we are committed to the principle of **imprisonment as a last resort**. Where more effective and appropriate alternatives to imprisonment are available they should be used. IPRT believes that the harm caused by imprisonment should be ameliorated by minimising its use to cases where public safety or justice dictate that no other sanction would be appropriate.
- ⌚ Thirdly, we are committed to the development of **evidence-led policies**. We believe that available research must inform policy formulation in Ireland to a much greater extent. Ultimately, we have identified there is strong evidence that a more humane and focussed penal system will also be more effective in reducing crime.

3. Translating Policy into Action – A Realistic Programme for Reform

There have been a number of significant initiatives in the area of criminal justice policy in recent years, among them the Whitaker Report on Reform of the Prison System (1985); the Department of Justice’s strategy document “Management of Offenders” (1994); the report of the National Crime Forum (1998); and the NESF Report on the Reintegration of Offenders (2002). These initiatives made detailed and comprehensive recommendations for legislative and policy change. However, in many cases the recommendations emanating from these processes have not

been implemented. At the same time, we have seen a large volume of reactive legislation, often without proper consideration by the Oireachtas, in response to public concern around crime patterns.

IPRT believes that a coherent programme of reform is achievable based on a recognition of how the various elements of our penal system work in relation to each other. Such a programme of reform would be assisted by setting clear targets and timetables for delivery. There are many areas where there is clear need for urgent reform and where it should be possible to bring forward proposals for change. Most positively, the programme of reform we set out here will have wide ranging social and economic benefits. IPRT believes that there are four key elements to our system of punishment:

1. Youth Justice
2. The Prison System
3. Planning the Future of our Prisons
4. Alternatives to Prison

3.1 Youth Justice

The area of youth justice is critical, not only because of the devastating effect of crime and detention on young people, but also because of the wider significance of youth justice policy for the adult criminal justice system. IPRT believes that the Children Act 2001 and the National Youth Justice Strategy provide a solid framework for the progressive reform of youth justice policy and practice. The issue here is one of implementation - if the existing strategy is supported it will provide the basis for the continuing decline in the need to detain children. However, there are gaps in the current system and the full implementation of the Act requires resources and political support.

🕒 Community Policing and Garda Diversion

The role of the Garda as the first contact that young people have with the justice system is crucial in forming attitudes to crime and justice among young people. The continuing growth of the Garda Diversion Programme is a major success story in preventing young people getting drawn into the criminal justice system. This programme must continue to receive appropriate support and resources.

🕒 Case Management, Remand and Bail

We still have a high rate of detention of children on remand and long delays in bringing young people before the court. Delays in prosecution may sometimes be inevitable, however in some instances delays can mean that opportunities are missed to respond to offending behaviour before it becomes more serious. Delays and the need for detention on remand can both be reduced by practical measures such as the case management system being implemented in Dublin at present.

🕒 **Alternatives to Detention**

Many of the alternative sanctions set out in the Children Act, such as family conferencing, are only available in certain parts of the country and being used in a low number of cases. This suggests that there is potential for even greater levels of diversion away from detention in cases where young people are before the courts.

🕒 **Youth Detention**

The continuing use of St. Patrick's Institution for the imprisonment of children is a clear violation of Ireland's human rights obligations and should cease immediately. While there is much good practice in the child detention school system, the absence of any independent complaints mechanism and the exclusion of children held in St. Patrick's from the complaints remit of the Ombudsman for Children are a major gap in accountability that can be addressed easily through legislation (see *IPRT Research Paper on Detention of Children in Ireland*).

3.2 The Prison System

A fundamental principle informing all of our work is that the human rights obligations of Ireland as a State-party to treaties such as the International Covenant on Civil and Political Rights, the European Convention on Human Rights and the UN Convention Against Torture must be fully respected (see *IPRT Position Paper on Human Rights in Prison*). Areas of clear violations of human rights at present include:

🕒 **Prison Conditions**

The physical conditions in our older prisons are completely unacceptable and have been the subject of consistent criticism from international bodies. IPRT believes that these can be addressed separately from the issue of prison expansion and that the replacement or refurbishment of old prison stock can be pursued without the huge costs that would be involved in the proposed scale of prison expansion (see below).

🕒 **Overcrowding**

The Inspector of Prisons and international human rights bodies have categorically stated that overcrowding is the most important risk factor in relation to prisoner violence and self-harm. The Inspector has already recommended safe custody limits for certain prisons and in our *Briefing Paper on Overcrowding in Irish Prison* IPRT has set out a number of practical measures that can be taken to reduce overcrowding in the short term. Overcrowding not only exacerbates problems such as violence and drug use in prisons; it also undermines attempts at rehabilitation of offenders.

🕒 **Accountability**

The continuing absence of an independent complaints mechanism, such as a Prisoner Ombudsman, within the prison system is a major weakness of the system, as is the absence of an effective system for the investigation of deaths in prison (see IPRT *Position Paper on Complaints, Monitoring and Inspection*).

🕒 **Women in Prison**

Women in the criminal justice system have specific needs and rights. In general, they also pose a lower security risk and the lack of any open detention facility for women is a major gap in our system. The great progress made in providing a progressive prison regime for women at the Dóchas Centre is now being undermined by overcrowding, and conditions at Limerick Women's Prison are unacceptable.

🕒 **Release and Reintegration of Offenders**

Given the high rates of re-offending by released prisoners, the area of reintegration of offenders is critical. In IPRT's *Research Paper on Reintegration of Offenders*, we have identified a number of obstacles to reintegration and opportunities for breaking the cycle of offending.

3.3 Planning the Future of our Prison System

Our recent prison-building programmes were initiated in a situation when little data on prison populations was publicly available, and certainly not published. IPRT's *Position Paper on Planning the Future of Irish Prisons* sets out how IPRT believes that prison population projections need to be transparent and subject to public interrogation.

🕒 **Prison Population Projections and Prison Building**

In other jurisdictions complex models for projecting prison population trends are employed and are made accessible to members of the public. The proper design and planning of institutions should be based on detailed data on demographic trends, including age and gender, in the prisons and in the general population.

🕒 **Moving towards Smaller and Local Prisons**

A geographical breakdown of offenders and prisoners should be used to identify the areas of the country where prisons might most usefully be located, incorporating the principle of more small prisons rather than larger institutions (so called 'localism'). A detailed picture of the current prison population – types of offenders, length of sentences being served – should also inform the general security classification needs of our prisons

(e.g. the need for an open prison for women and the need for a prison for young adult offenders).

🕒 **Setting Goals to Limit the Prison Population**

Ultimately, the size of the prison population in a given society is determined by a complex series of factors, but is predicated in the first instance on a political choice. The long-term direction of prison policy must be informed by a decision about the number of prisoners Ireland *wants* to have. IPRT believes the guiding principle in making this choice should be that imprisonment should be used sparingly. If diversion in youth justice policy continues to be supported; if changes are introduced to sentencing law to divert offenders; and if community sanctions are properly resourced; then IPRT believes that prison expansion will no longer be necessary and our current prison population can be reduced.

🕒 **Sentencing**

The single biggest factor determining prison population size is sentencing law and practice. IPRT believes that greater transparency and consistency of sentencing can be achieved while retaining the proper independence of the judiciary. Presumptive and mandatory sentencing regimes (see IPRT *Position Paper on Mandatory Sentencing*) have a corrosive effect on the criminal justice system, increasing the numbers of people incarcerated, removing necessary judicial discretion and frustrating proportionate sentencing. The presumptive sentencing regime under section 15A of the Misuse of Drugs Act is having a significant effect on the size of the prison population, although it is less clear what impact it is having on the scale of the trade in illegal drugs or on senior figures in that trade. Recent analysis also shows the ineffectiveness of a strategy to combat gun crime which has focussed on sentencing.

4.3 Alternatives to Prison

Our historic approach to punishing crime is based on the centrality of the prison in our justice system. It is clear that the effective resourcing of community sanctions offers a cheaper and more effective way of punishing and preventing many categories of crime (see IPRT *Position Paper on Community Sanctions*). There is sometimes a need to use detention to protect society and to punish the most serious offenders, but prison is a wasteful and unnecessary option in many cases and it should not be the default sanction in our justice system. We have identified a number of categories of prisoners that could be completely or largely diverted from the prison system immediately and we have also identified changes to sentencing law and practice that will have a long-term effect in this regard.

Removal of Certain Categories from the Prison System

- ⌚ The prevalence of very short sentences being imposed at the District Court level as being a particularly problematic aspect of our penal system. There is much international and domestic evidence that such sentences are counter-productive and present significant administrative difficulties for the prison system.
- ⌚ The commitment in the revised Programme for Government to “ensure that prison is the option of last resort for non-serious crime” in general, and specifically the measures proposed in the Fines Bill and recent initiatives to end the use of imprisonment for civil debt, are most welcome. In this regard, the operation of the Fines Act 2010 must be monitored to ensure that it succeeds in reducing the practice of imprisonment for non-payment of fines.
- ⌚ In 2008, IPRT jointly founded the Women in Prison Reform Alliance and in November 2009, the Alliance made a proposal to the Minister for Justice, Equality and Law Reform for a review of policy and practice with regard to women offenders. We believe that such a review could identify non-custodial sentencing options for a significant proportion of our female prison population.

Changes to Sentencing at the District Court

- ⌚ The introduction of a statutory provision equivalent to section 96 of the Children Act, which would oblige judges to exhaust all alternatives before imprisoning someone in the District Court, is a key element. This should be accompanied by an obligation on sentencing judges at the District Court level to provide written explanations of all custodial sentences.
- ⌚ We do not believe that there is a need to create new or more complicated community sanctions options at the point of sentence. However, making diversion a reality requires resources to be invested in the Probation Service to administer schemes such as the Community Service Order Scheme.
- ⌚ Legislation and resources may not be enough to change judicial practice, so dialogue with the judiciary and collation of sentencing practice across the country will provide the necessary evidence base to allow more informed sentencing.

Submitted to Pat Rabbitte T.D

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On behalf of the Irish Penal Reform Trust and Claire O’ Regan

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