

**REPORT OF THE  
THORNTON HALL  
PROJECT REVIEW  
GROUP**

## Letter from Chairman

**Mr. Alan Shatter, T.D**

*Minister for Justice and Equality,*  
Department of Justice and Equality,  
St. Stephen's Green,  
Dublin 2

8 July, 2011

Dear Minister,

On behalf of the Thornton Hall Review Group, I have pleasure in submitting our report to you.

The Terms of Reference required us to examine, while taking into account a number of other factors, two specific matters:

**(1) *The need for new Prison accommodation***

The number of persons committed to prison has increased in recent years placing the prison system under pressure. The overcrowding issues have also resulted in an increase in the number of prisoners granted temporary release, from an average of 4.4% in 2007 to an average of over 17% in 2011, with the rates for Mountjoy and Cork being 21% and 35% respectively.

Forecasts of trends in the rate of imprisonment over the next five years indicate further increases. These trends, if they crystallise, would require a temporary release rate of in excess of 30%. Temporary release at this level would create a real risk that public confidence in the criminal justice system would be undermined.

Overcrowding in prisons is pernicious and seriously impacts on the ability of the Irish Prison Service to provide safe and secure custody, together with structured regime activity for the prison population in its care, in accordance with the States obligation. It is in this context that the Review Group take the view that decisive action is required, on several fronts, to address the problem of overcrowding and poor physical conditions, particularly in Mountjoy and Cork Prisons.

**(2) *Development at Thornton Hall***

The State is currently exposed to significant risks, arising from the substandard conditions in parts of the prison estate. We have, therefore, recommended a number of actions to address the numbers in custody, as well as the shortfall capacity and substandard accommodation, which, in our view, will over time mitigate these risks.

We recommend that a new prison be developed at Thornton Hall, on a smaller scale than that previously envisaged for Phase I, and with a different design from that which was originally planned. A prison system should give practical effect to the principles of normalisation, progression and rehabilitation. In this regard, we have recommended that in addition to the cellular accommodation there should be step-down facilities for prisoners inside the secure perimeter.

We recognise once the decision was made by the previous Government that the full Thornton Hall project was to proceed on a phased basis, Mountjoy Prison will remain open in the medium term. However proceeding with a multi regime facility at Thornton Hall should enable the Irish Prison Service to reduce the occupancy levels at Mountjoy in line with its design capacity and availability of regime activity. This will, over time, mitigate the risks to the State which have been identified by the Review Group.

In the course of our review it became evident that substandard conditions and capacity issues at Cork Prison require urgent and immediate attention. We do not believe that there is any economic value in seeking to refurbish Cork Prison as it would only lead to minor improvement in conditions, and in so doing would reduce significantly the capacity.

Accordingly we have recommended that Cork Prison be closed at the earliest possible occasion and replaced by a new prison at Kilworth. The new prison should be based on a similar design to that which we have recommended for Thornton Hall.

We are acutely aware of the constraints facing the Exchequer in terms of funding and in developing our recommendations we have sought to balance these constraints with the risks identified and the budget allocation. In doing so we believe it will optimise the use of limited resources in mitigating the risks.

The overcrowding problem in the prison system will not be solved solely by building more prisons. Further steps are required to reduce the prison population. We are of the view that there is scope within the prison system to introduce a form of structured “*earned release*” for suitable offenders so as to encourage active engagement by prisoners in rehabilitation and progression, prior to release into the community. This would involve prisoners being eligible for consideration for a programme of work in the community and thereby reduce some of the pressure on the system.

The Review Group would like to express its appreciation for the assistance given to it by the staff of the Department of Justice and Equality and the Irish Prison Service. We would also like to thank all those who made a submission or presentation to the Review Group.

Finally, in order to effectively manage the prison estate, we would suggest that the impact of the recommendations in our report, along with other legislative changes such as the Fines Act and the Community Service Order Bill, should be reviewed after 5 years to assess their overall impact.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Brendan Murtagh". The signature is fluid and cursive, with a prominent flourish at the end.

**Brendan Murtagh, FCCA**  
**Chairman**  
**Thornton Hall Review Group**

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## List of Abbreviations

<b>CAT</b>	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>CPT</b>	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICT</b>	Information Communications Technology
<b>IPRT</b>	Irish Penal Reform Trust
<b>IPS</b>	Irish Prison Service
<b>NDFA</b>	National Development Finance Agency
<b>OPCAT</b>	Optional Protocol to the Prevention against Torture
<b>POA</b>	Prison Officers' Association
<b>PPP</b>	Public Private Partnership



## CHAPTER 1

### Introduction to the Review

The Government Programme for National Recovery committed the new Government “to review the proposal to build a new prison at Thornton Hall and to consider alternatives, if any, to avoid the costs yet to be incurred by the State in building such a new prison”. On 5 April 2011, on foot of that commitment, the Minister for Justice and Equality, Mr. Alan Shatter, T.D. set up this Review Group to review the need for the Thornton Hall Prison Project.

### Terms of Reference

The Minister set out the Review Group’s Terms of Reference as follows:

*To examine the need for new prison accommodation and to advise by 1 July 2011 whether or not the development of new prison accommodation at Thornton Hall should proceed taking into account:*

- *Current and future prisoner numbers for both men and women;*
- *The need for an adequate stock of prison accommodation that meet required standards including in particular, in cell sanitation, adequate rehabilitation, educational and work training facilities for prisoners as well as facilitating contact with family members and other standards identified by the Inspector of Prisons and relevant international bodies;*
- *The potential of alternatives to custody including legislative measures already proposed (Fines Act 2010), Criminal Justice, (Community Service) (Amendment) (No.2) Bill 2011 to reduce the prisoner population;*

- *The relevance of Thornton to the existing prison structure and, in particular, to the Dóchas Centre;*
- *The plans for prison developments at Thornton and elsewhere;*
- *Any significant changes in circumstances since previous decisions were made on a development at Thornton;*
- *Work already carried out in relation to Thornton and related expenditure;*
- *The view of interested parties including non-governmental agencies;*
- *The cost effectiveness of providing additional prisoner accommodation on other sites;*
- *Current and future construction costs;*
- *The economic constraints facing the State.*

## Membership of the Review Group

The members of the Review Group, appointed by the Minister for Justice and Equality, are:

- **Mr. Brendan Murtagh FCCA**, (Chairman), Former Global President of the Association of Chartered Certified Accountants, a Partner in the firm of LHM Casey McGrath, Chartered Certified Accountants.
- **Ms. Catherine McGuinness**, former judge of the Supreme Court, former President of the Law Reform Commission,
- **Mr. Brian Purcell**, Director General, Irish Prison Service.
- **Mr. Tom Cooney**, Special Adviser to Minister for Justice and Equality

The Secretary to the group is:

- **Mr. Jim Mitchell**, Deputy Director, Irish Prison Service.

## Introduction

The Terms of Reference of the Review Group are directly related to the possible development of new prison accommodation at Thornton Hall. They are, however, widely drawn, so as to enable the Review Group to consider a number of general issues of penal policy where these are relevant to this primary purpose. Both the immediate question of the development at Thornton Hall and the more general issues of penal policy must, however, be seen in a wider context.

Neither penal policy, nor the practical issue of the provision of prison places, exists in a vacuum. Both are inherent parts of general criminal law policy and of government, or public, policy as a whole. They must also be seen, as pointed out in the Terms of Reference, in the context of the economic constraints facing the State at present and in the foreseeable future.

Available statistics, as set out later in this Report, show that the number of persons committed to prison has increased steeply in recent years, and indeed has further increased since the original proposal to build a prison complex on a greenfield site was put forward in 2003, to replace the Mountjoy complex. Such forecasts as are available indicate further increases, reaching levels far in excess of the capacity within the prison estate and which cannot but cause concern to all concerned with criminal justice policy, penal policy and prison planning. In addition, the facilities within a number of existing prisons clearly fall below required standards, in particular the standards set out by the Inspector of Prisons in his report *“The Irish Prison Population – an examination of duties and obligations owed to prisoners.”*<sup>1</sup> Mountjoy Prison, Cork Prison, and parts of Portlaoise Prison are all very old buildings, suffer from inadequacy of space and facilities for constructive activities for the prisoners, and continue the unacceptable practice of “slopping out”. The situation in Cork Prison, as regards both conditions and overcrowding, is particularly severe. All these deficiencies are exacerbated by the overcrowding which affects them at present and for which there is no immediate solution.

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<sup>1</sup> [www. Inspectorofprisons.gov.ie](http://www.Inspectorofprisons.gov.ie)

The clear policy aims behind the Thornton Hall proposal were to enable the closure and replacement of Mountjoy Prison and to provide further accommodation to meet anticipated increases in prison numbers. A similar proposal, on a lesser scale, was made to replace Cork Prison by a new prison on a site at Kilworth. Substantial arguments can be made for these aims. They are in accord with the Mission Statement of the Irish Prison Service: *“To provide safe, secure and humane custody for people who are sent to prison”*. They also reflect the fact that as the law stands at present the Irish Prison Service must accept every prisoner committed to prison by the courts. There is no cap on the numbers to be held at each prison and no right to refuse admittance on the grounds of overcrowding. The Prison Service, of itself, does not create an increase in the numbers held in prison; it endeavours to deal with the issues caused by such an increase. If the number of persons committed to prison continues to increase at the present rate there is no doubt that all current and planned prison places, including Thornton Hall, will be filled, that the Mountjoy complex will not be replaced, and that overcrowding will remain a feature of the Irish prison system.

Due to financial constraint following the economic downturn, the then Government in 2010 decided at that time to proceed with the first phase only of the planned development at Thornton Hall. Given the continuing increase in prison numbers it is clear that this limited development would not enable the closure of Mountjoy Prison. This was how matters stood prior to the Minister’s decision to initiate the present review.

The Minister’s decision to examine the need for new prison accommodation and to review the Thornton Hall development proposal has the potential for the Minister, and for the Government, to look beyond the present issues of providing sufficient prison places and to widen that examination into a review of criminal law policy in general. This is, of course, not a task for the present Review Group.

It is clear that the Minister has already, in setting out as a Term of Reference that the Group should take into account “*the potential of alternatives to custody*”, gone further in his thinking than the limited aim of providing further prison places. An opportunity is now available to the Minister, and the Government, to consider more fully the reasons which lie behind the continuing steep increase in the numbers being held in prison and the repeated incidence of unacceptable overcrowding.

Such a review of wider policy considerations is particularly relevant at a time when, as now, the financial resources of the State are much depleted. Imprisonment is an extremely expensive form of punishment, and prisons, for reasons of security, are extremely expensive to build. The continuing costs of staffing and the provision of resources generally also place a heavy burden on the Exchequer. A further problem is that there is no real connection in terms of policy between sentencing policy and the planning of the level of prison accommodation.

In this context it is clear that, at a government policy level, change is being made in the direction of non-custodial solutions. This may be seen from the coming into force of the Fines Act 2010 and the introduction of the Criminal Justice (Community Service) (Amendment) (No.2) Bill 2011. Plans to reform the law concerning debt-related imprisonment are under active consideration. These changes are, however, mainly relevant to minor or summary offences which attract short custodial sentences. A reduction in short sentences will not necessarily be followed by a reduction in the numbers actually in custody in Irish prisons. Nevertheless, such changes in the law show an acceptance of the need to control prison numbers.

A broader consideration of general policy on crime and resulting penal policy must include such matters as criminal law policy and legislative changes, and the creation of new offences and new penalties such as the presumptive/mandatory ten year sentence for certain drug offences. The roles both of the Probation Service and of the Parole Board are crucially important. The role of a certain type of media reporting, and the perhaps over-eager reaction to it at a political and community level, falls to be

examined carefully. Further information concerning levels of sentencing needs to be collated and considered both at judicial and at government level. The proposed Judicial Council could have a positive role to play in developing overall sentencing policy and practice. These matters are merely an indication of the inter-related factors which, in the outcome, affect the numbers of persons held in custody in Irish prisons. While non-custodial solutions may be found in many areas of lesser offences provision must be made for the due punishment of those who commit serious crimes, in particular where a danger to the public is threatened. Such punishment will include the imposition of custodial sentences. In these cases the Prison Service has the task of accommodating prisoners and of managing their sentences to the best advantage both of the prisoner and of the community at large.

It is in this context that the Review Group must examine the need for new prison accommodation in the light of the Terms of Reference, and must make its recommendation as to whether the Thornton Hall project should now proceed.

### **The Irish Prison System**

The mission of the Irish Prison Service (IPS) is to:

*“Provide safe, secure and humane custody for people who are sent to prison. The Service is committed to managing custodial sentences in a way which encourages and supports prisoners in their endeavouring to live law abiding and purposeful lives as valued members of society.”*

The Minister for Justice and Equality has political responsibility for the prison system.

The Irish Prison Service, an executive office within the Department of Justice and Equality, manages and operates the prison system. The IPS is headed by a Director General supported by 7 Directors covering the following Directorates, all of which report directly to the Director General:

1. Corporate Affairs
2. Estates and ICT
3. Finance
4. Healthcare
5. Human Resources
6. Operations
7. Regimes

A non-statutory board, the Prisons Authority Interim Board, comprising 12 members of which there are two ex-officio members advises the Director General on the management of the prison system

The Prison service has a current annual gross operating budget of €313.183 million and a current annual capital budget of €34.4 million. The Service currently employs 3,522 staff, which includes civilian grades and headquarters staff, and had an average of 4,290 prisoners in custody in 2010. In addition there was an average of 732 prisoners on various forms of temporary release.

There are 14 institutions in the Irish prison system consisting of:

- Eleven traditional “closed” institutions.
- Two open centres, being Shelton Abbey and Loughan House, which operate with minimal internal and perimeter security.
- and one “*semi-open*” facility which has traditional perimeter security but minimal internal security. This is the Training Unit in the Mountjoy complex.

The prison estate comprises a mix of modern and Victorian designed prisons, of varying physical condition. Some of the older prisons, such as Mountjoy Prison, Cork Prison, Limerick Prison and part of Portlaoise Prison, were constructed in the 1800s.



**Table 1: Prison Bed Capacity**

Prison	Year Built	Accommodation	Bed Capacity
Arbour Hill	1845	Cellular	148
Castlerea	1995 2010	Cellular/housing	351
Cloverhill	1999	Cellular	431
Cork	1818, 1970	Cellular	272
Dóchas Centre	1999	Single and shared rooms	105
Limerick (male)	1821/1980s/2005	Cellular	290
Limerick (female)	1821/2002	Cellular	34
Loughan House		Single and shared rooms	160
Midlands	2000	Cellular	616
Mountjoy (male)	1850	Cellular	590
Portlaoise	1830/2010	Cellular	359
Shelton Abbey	1770/1973/2008	Single and shared rooms	110
St. Patrick's	1858	Cellular	217
Training Unit	1976	Residential rooms	127
Wheatfield	1989/2010	Cellular	700

The majority of female prisoners are detained in the purpose-built Dóchas Centre and the remainder are located in a separate part of Limerick Prison. St. Patrick's Institution is a place of detention for males aged 16 to 21 years of age and accommodates both remand and sentenced prisoners.

### **Principles of Human Rights**

The prison system operates within a rule-of-law framework based on human rights principles. This review refers to the international, European, and domestic human-rights principles which furnish a benchmark of legitimacy for prison law, policy and practice. Their basis is the conviction that people who are sent to prison keep their status as bearers of fundamental rights. Appendix 2 summarises the human-rights framework. Here we note the core principles:

- Imprisonment should be used as a sanction of last resort;
- Imprisonment is punishment and is not for punishment;
- All prisoners must be treated with respect for their human rights;
- Prisoners retain all rights that are not lawfully taken away by the decision to send them to prison;
- Restrictions placed on prisoners must be the minimum necessary and proportionate to the legitimate objectives for which they are imposed;
- Prisoners should be given opportunities to exercise personal responsibility in daily prison life (the principle of responsibility);
- Life in prison should approximate as closely as possible the positive aspects of life in the community (the principle of normalisation);
- Imprisonment should be managed in a way that helps the reintegration of prisoners into free society (principle of reintegration);
- Discrimination based on sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, is prohibited (the principle of non-discrimination);
- Consideration should be given to the diversity of personal characteristics to be found among long-term prisoners and account taken of them to make individual plans for the implementation of the sentence (the principle of individualisation);
- Consideration should be given to not segregating long-term prisoners on the sole ground of their sentence (principle of non-segregation);
- Individual planning for the management of long-term sentences should aim at securing progressive movement through the prison system (the principle of progression);

- The recruitment, training and conditions of work of prison staff should enable them to maintain high standards in their care of prisoners;
- Prison management must recognise the human dignity and human rights of all prisoners;
- All prisons must be subject to regular government inspection and independent monitoring.

The law of human rights holds that the use of imprisonment should be minimised and that the dignity and human rights of people in prison should be protected. Principles of human rights flow from three sources Domestic, European and International.

### **Domestic**

Prison law and policy must be compatible with the Constitution, which is itself a source of human rights. Legislation enacted by the Oireachtas establishes the legal framework of the prison system.<sup>2</sup> The prison system is subject to monitoring by an Inspector of Prisons, an independent office set up under the Prisons Act 2007. The inspector reports to the Minister for Justice and Equality in relation to the following areas of the management and operation of prisons by the IPS.

- its general management, including the level of its effectiveness and efficiency,
- the conditions and general health and welfare of prisoners detained there,

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<sup>2</sup> The central plank of the statutory framework is the Prisons Act 2007 and the Prison Rules 2007 (SI 252 OF 2007). Other relevant statutes include the Prisons (Visiting Committees) Act 1925, the Criminal Justice Act, 1960, the Criminal Justice (Miscellaneous Provisions) Act 1997, the Criminal Justice Act 2007, other criminal justice Acts and the Transfer of Sentenced Persons Acts, 1995 and 1997.

- the general conduct and effectiveness of persons working there, compliance with national and international standards including in particular the prison rules, programmes and other facilities available and the extent to which prisoners participate in them,
- security and discipline.

The Inspector of Prisons has published key documents, including his annual reports to the Minister for Justice and Equality, about standards and procedures in the prisons.<sup>3</sup>

### **European**

European law of human rights is also relevant to the operation of the prison system. The institutions of the Council of Europe at Strasbourg – the Committee of Ministers of the Council, the European Convention on Human Rights (ECHR), the European Court of Human Rights (ECtHR) and the Committee for the Prevention of Torture (CPT) help to shape the character and content of European prison policy and law. The Council of Europe has also framed the 2006 European Prison Rules, whose ‘Basic Principles’ give guidance on the rights of persons in prison. Primary sources of European prison law and policy include the case law of the European Court of Human Rights, the reports of the CPT and the Recommendations of the Council of Europe.

The European institutions have been active in protecting the rights of prisoners. The Council of Ministers has, in a Recommendation concerning “*Prison Overcrowding and Prison Population Inflation*”, condemned prison overcrowding and recommended early release as a

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<sup>3</sup> See also: *Standards for the Inspection of Prisons* (24 July 2009); *Standards for the Inspection of Prisons - Juvenile Supplement* (1 September 2009); *The Irish Prison Population – an examination of duties and obligations owed to prisoners* (29 July 2010); *Report of an Investigation on the use of ‘Special Cells’ in Irish Prisons* (26 August 2010); *Guidance on Best Practice relating to Prisoners’ Complaints and Prison Discipline* (10 September 2010); *Guidance on Best Practice relating to the Investigation of Deaths in Prison Custody* (21 December 2010); *Standards for the Inspection of Prisons – Women Prisoners’ Supplement* (1 February 2011). ([www.inspectorofprisons.gov.ie](http://www.inspectorofprisons.gov.ie)).

way of countering the rise in the prison population.<sup>4</sup> The European Court of Human Rights has applied the ECHR to issues about the treatment of prisoners. It has ruled that severe prison overcrowding can be stigmatised under Article 3 of the ECHR as a form of inhuman or degrading treatment. In developing its jurisprudence in this field, the court has considered not only binding treaties but also the Recommendations of the Committee of Ministers of the Council of Europe. Significantly, the court also refers to the CPT's findings and standards. The CPT was set up under the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("ECPT").<sup>5</sup> It has authority to prevent the abuses of torture and inhuman and degrading treatment. It has long endorsed the proposition that prison overcrowding or substandard prison conditions cause these abuses. And it has argued that strategies to limit or reduce the prison population are the most effective ways of preventing these abuses. The result of this is that the soft-law recommendations made by the Committee of Ministers and standards articulated by the CPT find hard-law expression in the rulings of the court.

In this context it is of importance that the *European Convention on Human Rights Act 2003* provides that in interpreting any statutory provision or rule of law a court shall as far as possible do so in a manner compatible with the State's obligations under the provisions of the Convention. The 2003 Act also provides that courts can take account of the decisions of the European Court of Human Rights and of the Committee of Ministers. This relates the ECHR much more closely to domestic law than is the case with the United Nations and other Conventions.

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<sup>4</sup> Recommendation R(99)22 of the Committee of Ministers to Member States concerning *Prison Overcrowding and Prison Population Inflation* adopted by the Committee of Ministers on 30 September 1999.

<sup>5</sup> 26 November 1987 CETS 126.

## International

International human rights standards influence the operation of the prison system. In 1955, the First United Nations Congress on the Prevention of Crime approved the United Nations Standard Minimum Rules for the Treatment of Prisoners, a general statement of requirements in relation to prisons. This now outdated measure lacks an explicit human rights basis. Although they lack binding legal force, two resolutions of the General Assembly of the United Nations state general standards relevant to the prison system: the 1988 Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment<sup>6</sup>, and the 1990 Basic Principles for the Treatment of Prisoners<sup>7</sup>.

Of particular importance in the prison context are two international human rights treaties to which Ireland is a party that set human rights standards for the treatment of prisoners: the 1966 International Covenant on Civil and Political Rights<sup>8</sup> (“ICCPR”) and the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>9</sup> (“CAT”). The ICCPR prohibits torture and cruel, inhuman or degrading treatment or punishment.<sup>10</sup> It also sets general standards for the treatment of prisoners.<sup>11</sup> The CAT outlaws the practice of torture. In 2006, the Optional Protocol to the Convention against Torture (“OPCAT”), which Ireland has ratified, came into force.<sup>12</sup> It provides for international inspections as well as national monitoring.

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<sup>6</sup> GA Res 173 (XXXXIII), annex, 9 December 1988, 43 UN GAOR Supp (No 49) 298, UN Doc A/45/49 (1990).

<sup>7</sup> Ga Res 111 (XXXV), annex, 14 December 1990, 45 UN GAOR Supp (No 49A) 2000, UN Doc A/45/49 (1990).

<sup>8</sup> 16 December 1966, GA Res 2200A (XXI), 21 UN GAOR Supp (No 16) 52, UN Doc A/6316 (1966), entry into force 23 March 1976.

<sup>9</sup> 10 December 1984, GA Res 39/46, annex, 39 UN GAOR Supp (No 51) 197, UN Doc A/39/51 (1984), entry into force 26 June 1987.

<sup>10</sup> Art 7.

<sup>11</sup> Thus Art 10(1) says that ‘all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person’. Art 10(3) says that ‘the penitentiary system shall comprise the treatment of persons, the essential aim of which shall be their reformation and social rehabilitation’. Art 10 commits Ireland to rehabilitative policies in prison.

<sup>12</sup> Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002 at the fifty-seventh

Both the ICCPR and the CAT require country reports as part of their means of enforcement. Recently, the Committee against Torture examined Ireland's record under Article 19 of the CAT. At a meeting held on 1 June 2011,<sup>13</sup> the Committee against Torture adopted concluding observations on, among other matters, prison conditions in Ireland.<sup>14</sup>

### **Background to the Thornton Hall Prison Project**

The Review Group notes the steps being taken to update and modernise the prison estate to comply with the standards set down by the Inspector of Prisons. The IPS has modernised parts of the existing prison estate and created additional accommodation for prisoners.

The primary purpose behind the original decision to build a new prison campus at Thornton Hall, Kilsallaghan, County Dublin was to replace Mountjoy Prison, to meet future operational needs, to eliminate the practice of slopping out, to modernise the prison estate and to address the problem of overcrowding in the prison system.

Opened in 1850, and taking approximately 3,000 committals per year, Mountjoy Prison is the largest committal prison, holding about a third of the total prison population. The prison is operating at over 105% of bed capacity. The phrase "*bed capacity*" simply refers to the number of beds or bunks available in the prison to accommodate offenders. The more accurate statistic specifies, in the light of best practice, the maximum number of prisoners that the prison should accommodate given the size of cells. On this approach, Mountjoy Prison is operating at over 115% of cell capacity. The other institutions at the Mountjoy complex, the Training Unit, St. Patrick's Institution and the Dóchas Centre the female prison, are also operating over capacity. The overcrowding problem is particularly acute at the female prison where it is operating at 156% over its Cell design capacity and 116% over bed capacity

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session of the general Assembly of the United Nations by resolution A/RES/57/199, entered into force on 22 June 2006.

<sup>13</sup> (CAT/C/SR.1016),

<sup>14</sup> (<http://www2.ohchr.org/english/bodies/cat/cats46.htm>) (last accessed 10 June 2011).

Conditions at Mountjoy Prison have, in the past, been trenchantly condemned by the Inspector of Prisons and the CPT. The IPS have improved conditions at Mountjoy Prison through undertaking various work including the more recent refurbishment of the basement of "C" wing as a dedicated committal area. An important feature of the upgrade is that each of the 36 cells will have in-cell sanitation. The next phase of this project involves the installation of toilets and wash hand basins in the entire "C" wing. The prison has, however, a heavy Victorian structure. The Review Group was informed that undertaking a complete overhaul of the prison was not cost effective, would take a very long time, and would not resolve the problem of overcrowding. The Inspector of Prisons has, however, more recently recognised and acknowledged the significant steps being taken to update Mountjoy and other prisons and in doing so rendering the facilities more compliant with the requisite standards.

Because of its setting Mountjoy Prison faces significant security challenges. It is located in a dense urban setting but lacks an adequate sterile, perimeter, buffer zone. As a result, the prison continually faces issues of contraband, weapons and drugs being passed over the perimeter wall of the prison. The IPS indicated to the review group that in its assessment the Mountjoy Prison complex is past its sell-by date, and is not capable of enabling the delivery of prison regimes and services expected of a modern prison system with the current occupancy levels and regime restrictions.

In 2003, the Prisons Authority Interim Board evaluated various options in relation to the redevelopment of Mountjoy Prison and recommended that a new prison be developed on a greenfield site. The IPS looked for expressions of interest by means of advertising in national newspapers seeking suitable sites. As a result of this exercise, 37 sites were offered. The Minister for Justice, Equality and Law Reform established the Mountjoy Complex Replacement Committee made up of officials from the Department, the IPS and the Office of Public Works to evaluate the site offered against set criteria. The outcome of the site selection process was to recommend the site at Thornton Hall to the Minister for Justice, Equality and Law Reform as the most satisfactory option available.



## Process of Review

The Review Group carried out its work as follows:

### **Written Submissions**

On 14 April a notice calling for submissions from interested parties was published in the national press. Twelve submissions were received in response to the advertisement from interested parties and were considered by the group. Details of the submissions received are set out in Appendix 1.

### **Review Group meetings**

The group met on 12 occasions to consider material and issues falling within its terms of reference. In addition to augment this the committee requested and received presentations from the following:

- *Professor Ian O'Donnell*, Institute of Criminology, University College Dublin;
- *Mr. Tom O' Malley*; Law Lecturer, National University of Ireland, Galway;
- *Mr. Liam Herrick, Dr. Mary Rogan, and Ms Jane Mulcahy*, Irish Penal Reform Trust.
- *Mr John Conlan*, Project Director, Thornton Hall Prison Campus Project, *Ms. Barbara Heslin*, Finance Director, Irish Prison Service;
- *Mr Michael Donnellan & Mr Vivian Geiran*, Probation Service;
- *Judge Michael O'Reilly*, Inspector of Prisons;
- *Mr. G. Cahillane and Mr JP Corkery*, National Development Finance Agency;
- *Mr. Dermot Nolan and Mr. Dermot Quigley*, Department of Finance;
- *Mr. Ciaran Breen and Mr. Pat Kirwan*, State Claims Agency;
- *Mr. Séan Aylward*, Secretary General, Department of Justice and Equality;
- *Ms. Deirdre O'Keeffe, Mr. Tim Maverley*, Department of Justice and Equality;
- *Mr. Gerry McDonagh*, Parole Board;
- *Mr Eric Murch, Director*, the Scottish Prison Service

### ***Prison Visits***

Members of the Review Group undertook visits to the following prisons:

- Mountjoy male prison
- Dóchas Centre
- St. Patrick's Institution
- Training Unit
- Midlands Prison
- Cork Prison

### ***Visit to Thornton Hall Site***

The Thornton Hall site was also visited to experience first hand the extent of the site and to fully appreciate its urban/rural setting. In addition it gave an opportunity to view the works to date which have been carried out on the site in preparation for the commencement of construction.

### ***Visit to Glenbeigh Construction Facility***

The purpose of the visit was to inspect the mock cell developed by the IPS for the new prisoner-accommodation wing at Midlands Prison. This cell is compliant with domestic, European and International standards and the standard to be used in Thornton Hall. In addition it gave an opportunity to view a standard compliant benchmark against which other existing cells can be assessed.

### **Structure of the Report**

In chapter 2 we consider the trends in the rate of imprisonment and the issue of overcrowding. Chapter 3 describes the original and revised plans for the proposed new prison development at Thornton Hall. In chapter 4, the issues arising from the proposal to build the new prison complex are identified and evaluated. In chapter 5, we consider alternatives to custody, and offer some recommendations to address the increasing number of committals to prison. Finally, in chapter 6, we set out our conclusions and recommendations.

## **Chapter 2**

### **The Need for Prison Accommodation**

In this chapter we consider the trends in the rate of imprisonment and how the issue of overcrowding affects the ability of the prison system to meet its obligations under domestic and international human rights legal instruments. We also consider the current plans of the Prison Service to increase the capacity of the prison estate to cater for the increase in committals.

#### **System capacity**

The prison system is today operating under considerable pressure due to the number of people being committed to prison. This leads to problems of overcrowding and a consequential impact on the availability of structured activities for prisoners. The Prison Service is required to accept all prisoners committed to its custody by the courts, regardless of the capacity of the prison estate. The number of committals greatly exceeds the capacity of the prison estate to accommodate all those committed by the courts. To compound the problem, the Inspector of Prisons and the CPT have been strongly critical of conditions in the older prison stock, while recognising the commitment to and advances in improving the quality of the older elements of the estate. The rapid rise of the prison population in recent times has, however, resulted in an increase in overcrowding. The problem of overcrowding was traditionally associated with the older prisons like Mountjoy and Cork Prisons but is now beginning to impact on some of the newer prisons with Castlerea operating at 110% of bed capacity, Cloverhill at 111%, while Midlands and Wheatfield are operating at or near full capacity.<sup>15</sup> Overcrowding puts substantial pressure on prison management, prison staff and prisoners. Prison management often has no choice but to double-up prisoners in cells which have not have been designed for multiple occupancy,

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<sup>15</sup> Custody statistics on 19 April 2011 IPS

The bed capacity of Mountjoy Prison on the 19 April 2011 was 590. On that day there were 620 prisoners in custody with a further 172 on temporary release. The extent to which the prison estate is operating to and beyond its capacity is shown in Table 2. The growth in prisoner numbers at rates exceeding the growth in bed capacity has resulted in high levels of temporary release as well as numbers in custody in excess of the bed capacity of the various prisons. On 19 April 2011, 16% of all prisoners in the system, that is, 916 prisoners, were on temporary release while the number in custody exceeded the total bed capacity by 53.

**Table 2: Prison bed capacity and prisoner population 19 April 2011**

<b>Prison</b>	<b>Bed capacity</b>	<b>In custody</b>	<b>% of bed capacity</b>	<b>On temporary release (TR)</b>	<b>% on TR</b>
Mountjoy (Male)	590	620	105	172	21.7
Dóchas Centre	105	136	130	72	34.6
St. Patrick's Institution	217	214	99	29	11.9
Cork	272	307	113	171	35.7
Limerick (male)	290	297	102	89	23.1
Limerick (female)	34	36	106	46	56.1
Castlerea	351	387	110	59	13.2
Cloverhill	431	478	111	8	1.6
Wheatfield	700	696	99	95	1.2
Portlaoise	359	275	77	11	3.8
Arbour Hill	148	153	103	0	15.3
Midlands	616	591	96	99	14.3
Training Unit	127	118	93	15	11.2
Loughan House	160	150	94	29	16.2
Shelton Abbey	110	105	95	21	16.6
<b>Total</b>	<b>4,510</b>	<b>4,563</b>	<b>101</b>	<b>916</b>	<b>16.7</b>

### **Committals to Prison**

We can more fully understand the use of imprisonment by examining the annual committal statistics. These statistics do not give us the rate of imprisonment, because a person can be committed to prison several times in the one year. For example, a person who is remanded or convicted more than once in the year gives rise to multiple committals on remand and sentence. The committals to prison from 2001 to 2010 are set out in Table 3. This shows that committals to prison were relatively steady from 2002 to 2007. This situation changed, quite dramatically, from 2008. In 2008, there were 13,557 committals increasing by 3,622 to 17,179 by 2010. In 2010, a total of 13,758 persons accounted for 17,179 committals to prison. Of these committals, 11,861 were under sentence and 4,836 on remand. The remainder of 482 were committals under immigration law and committals for contempt of court.

**Table 3: Committals to Prison 2001 - 2010**

<b>Year</b>	<b>Total</b>	<b>Persons</b>	<b>Male</b>	<b>Female</b>
2001	12,127	9,539	8,616	923
2002	11,860	9,716	8,673	1,043
2003	11,775	9,814	8,669	1,145
2004	10,657	8,820	7,914	906
2005	10,658	8,686	7,780	906
2006	12,157	9,700	8,740	960
2007	11,934	9,711	8,556	1,155
2008	13,557	10,928	9,703	1,225
2009	15,425	12,339	10,880	1,459
2010	17,179	13,758	12,057	1,701

The rates of other committals fell from 2008. For example committals for immigration purposes fell by 30% between 2008 and 2009 and by just under 31.4% between 2009 and 2010. The number of committals for contempt of court has had no material impact on prison statistics. The number of committals on remand is quite significant: 4,836 in 2010. The periods of remand are normally quite short. It is clear from Table 4 that there is no significant increase in the number of remand prisoners in the context of the overall prison population

**Table 4: Committals on Remand 2006 – 2010**

Year	Total committals on remand	Number of remand prisoners on a specific day	Snapshot date
2006	5,311	519	7 December 2006
2007	4,967	619	5 December 2007
2008	5,052	711	4 December 2008
2009	4,519	602	4 December 2009
2010	4,836	709	30 November 2010

### Sentenced Prisoners

Sentenced prisoners make up the largest segment of the prison population. Table 5 illustrates that there has been a substantial increase in the number of sentenced persons committed to prison annually. The number of sentenced prisoners more than doubled between 2005 and 2010, rising from 5,088 to 12,487. The most marked increase is a 93 % increase from 2007.

Table 5 also illustrates the substantial increases since 2005 in the number of sentences of 12 months or less. In 2005, 3,944 persons were committed to prison with a prison sentence of 12 months or less. That figure represented 77.5% of the total number of persons committed to prison that year. By 2010 the figure had increased to 10,919, which represented 87% of the total number of sentenced persons committed that year.

**Table 5 committals under sentence**

Year	<6 months	6-12 months	1-2 years	2-3 years	3-5 years	5-10 years	10+ Years	Life	Total
2005	2,982	962	465	259	225	143	35	17	5,088
2006	3,473	1,134	458	281	250	166	20	18	5,802
2007	3,667	1,285	509	333	360	231	47	23	6,455
2008	5,020	1,404	610	359	346	219	65	20	8,043
2009	7,655	1,561	440	408	469	240	70	22	10,865
2010	9,405	1,514	453	351	420	282	44	18	12,487

A high percentage of offenders are sentenced to prison for 12 months or less. This fact may seem to explain the rise in the prison population. Closer analysis shows that this is not the case. Significantly, Table 6 illustrates that, since 2006 the number of prisoners serving a sentence less than 12 months on a particular day has fallen but increased again in 2010. Although there has been a significant increase in the number of committals of persons with sentences of less than 12 months, this has not resulted in a significant increase in the numbers in prison.

**Table 6: Sentence profile of prisoners in custody on a particular day for each of the years 2005 – 2010**

Year	<6 months	6-12 months	1-2 years	2-3 years	3-5 years	5-10 years	10+ Years	Life	Total
2005	260	278	369	273	476	565	195	221	2,637
2006	251	323	376	284	486	582	189	234	2,725
2007	183	275	352	293	516	631	207	239	2,696
2008	174	283	377	329	592	684	241	264	2,944
2009	141	326	423	418	767	784	283	276	3,418
2010	197	373	452	403	816	909	285	286	3,721

The reason why there has not been an increase in the number of short-term prisoners in prison is that this group of prisoners is in practice managed through the device of temporary release, which is actually a non-custodial alternative.

An important related point is that short-term prisoners are not needlessly kept in prison. This is illustrated by looking at the number of offenders in prison for minor offences on 24 January 2011.<sup>16</sup> On that date, 457 prisoners in custody, who did not have further court appearances, were serving sentences of less than 12 months. Of these 144 prisoners were serving a sentence of less than six months. There were 4522 prisoners in custody on that day. This means that 1 in 10 of the total number of prisoners in custody had been convicted of minor offences. Of the 457 offenders 128 prisoners were sentenced for sexual, drug-related or violent offences; 162 had previous convictions for

<sup>16</sup> Statistical analysis prepared by IPS

these offences; and the remaining 167 prisoners were repeat offenders. All of the 457 offenders had previously been in custody whether on sentence or remand. This analysis demonstrates the fact that the prisons are not full of short-term prisoners who should not be there.

The most striking feature of the prison-population statistics is that prisoners serving long sentences make up the bulk of the prison population. Table 6 shows the number of committals of persons receiving a sentence of more than 6 months broken down by sentence length. This table gives a snapshot of the prison population in custody from 2005 to 2010. It reveals that 84% of sentenced persons are serving sentences longer than one year. In 2010, 1,725 prisoners or 46% of the total number of prisoners were serving sentences of 3 to 10 years.

The most notable trend evident from Table 7 lies in the overall increase in the total number of committals of persons receiving more than 12 months, which is up by 48% between 2005 and 2009.

**Table 7: Prison Committals with sentences more than 12 months 2005-2010**

Year	1-2 years	2-3 years	3-5 years	5-10 years	10+ Years	Life	Total
2005	465 41%	259 23%	225 20%	143 12.8%	35 3.1%	17 1.5%	1,114
2006	458 38%	281 23%	250 21%	166 14%	20 1.7%	18 1.5%	1,193
2007	509 34%	333 22%	360 24%	231 15%	47 3.1%	23 1.5%	1,503
2008	610 38%	359 22%	346 21%	219 13.5%	65 4%	20 1.2%	1,619
2009	440 27%	408 25%	469 28%	240 14.5%	70 4.2%	22 1.3%	1,649
2010	453 28.8%	351 22.3%	420 26.7%	282 17.9%	44 2.8%	18 1.1%	1,568



The number of prisoners attracting longer prison sentences when combined with the increase in the prison population is placing the prison system under pressure on a number of fronts. The essential point is that the increase in the number of long-term prisoners is causing a 'silting-up' phenomenon in the prison system.

### **Overcrowding**

It does not fall within our terms of reference to explore in depth why there has been an increase in the number of long-term prisoners in the prison system. Sentencing and the prisons are simply part of the wider criminal justice system. Various factors may have contributed to the rise in the prison population. There have been changes in the pattern of offending in an increased population. In recent years, the incidence of drug-related offending, gangland offending, and murder has increased. There has been a substantial increase in the number of Gardai and also increases in the number of judges and the number of court sittings. The outcome of this increase has been an increase in the numbers of offenders arrested and charged, given the increase in the level of detection of crime.

In recent years, there has been a more punitive turn in criminal-justice and penal policies. Legislators have responded to the more hard-line climate of opinion in society. Legislation became more prescriptive in terms of sentencing in some areas. Legislation has increased the number of offences on the statute book with high maximum sentence levels. The high maximum sentence tends to influence the level of sentences imposed. An example of this is legislation which has introduced the mandatory minimum sentence, which was not the norm in this country.<sup>17</sup> The tariff or time spent in prison for life sentence prisoners has increased from an average of about 12 years to about 17 years. The courts appear to be handing down longer sentences.

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<sup>17</sup> See the Misuse of Drugs Act 1977, s 27, as amended by Criminal Justice Act 1999, s 5, which provides for a presumptive mandatory minimum sentence in relation to the offence of possessing drugs for sale or supply under the Misuse of Drugs Act 1977, s 15A. The Criminal Justice Act 1999, s 25, provides for presumptive mandatory sentences for offences mentioned in the Second Schedule of the Criminal Justice Act 2007.

There has also been intense media and political pressure for the imposition of increasingly severe prison sentences.

### **The Demand for Prison Places Exceeds Supply**

The number of committals to prison exceeds the capacity of the prison estate to accommodate all those committed by the courts. Overcrowding and the consequential adverse impact on the availability of structured activities for prisoners is now a general problem within the system. Overcrowding puts substantial pressure on prison management, prison staff and prisoners. Prison management often have no choice but to double-up prisoners in single cells, which are not, by definition, designed for multiple occupation. The consequences of overcrowding are more acute in the older prisons of Mountjoy and Cork.

We note that the Inspector of Prisons has recommended a safe maximum number of prisoners for each prison which we show in Table 8.

**Table 8: Occupancy rates versus recommended maximum rate on 23 July 2010**

<b>Prison</b>	<b>Bed Capacity</b>	<b>No. in Custody</b>	<b>Recommended Maximum</b>
Mountjoy (Male)	630	728	540
Dóchas Centre	105	140	85
St. Patrick's Institution	217	210	218
Cork	272	316	146
Limerick (male)	290	322	185
Limerick (female)	20	23	10
Castlerea	351	414	300 (360 short term)
Cloverhill	431	462	446
Wheatfield	470	507	378 (465 short term)
Portlaoise	359	273	359 (with more activities)
Arbour Hill	148	151	131 (146 short term)
Midlands	566	568	497 (560 short term)
Training Unit	107	114	96 ( 115 short term)
Loughan House	160	142	160 (with more activities)
Shelton Abbey	110	108	110+ (with more activities)

Overcrowding means that large numbers of prisoners are being held in cells designed for one or two prisoners. The method of keeping statistics does not show this fact. Table 2 shows the extent to which the prison estate is operating beyond its capacity to supply beds or bunks to prisoners. For example, the bed capacity of Mountjoy Prison on the 19 April 2011 was 590. On that day there were 620 prisoners in custody with a further 172 on temporary release. The table also shows that overcrowding has resulted in high levels of temporary release. On 19 April 2011, 16% of all prisoners in the system - 916 prisoners - were on temporary release while the number in custody exceeded the total bed capacity by 53.

The problem of overcrowding as detailed in Table 2 is worse than it appears. The figures in Table 2 merely tell us that there are beds or bunks for that number of prisoners. It does not state the actual numbers of prisoners in each prison in relation to the normal accommodation or uncrowded capacity given the design of the prison. Therefore, the degree to which the prison population exceeds the design or cell capacity of the prison is not clear.

The Inspector of Prisons has drawn attention to the need to describe prison capacity by reference to design capacity and not bed capacity.<sup>18</sup> In recognising this it is clear that overcrowding in our prisons is more severe than the statistics on prison population indicate. The concept of design capacity focuses on the design capacity of occupied cells in a prison. In his 2008 report, the Inspector illustrated the point by considering accommodation in Mountjoy Prison. In 1850, Mountjoy Prison opened with 500 cells for individual occupation. Over time, parts of the prison were altered or demolished. Most cells were designed as single cells.

On 16 February 2009, the Inspector considered the use of accommodation cells in the prison. The Inspector observed that the design capacity of the prison on the date of inspection was for 489 prisoners. The IPS stated that the bed capacity was for 573 prisoners. This meant that 84 cells were doubled with bunks added. He also noted that when the prison population exceed 573,

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<sup>18</sup> See Office of the Inspector of Prisons *Annual Report 2008* (6 May 2009) paras 7.8-7.13..

the additional prisoners had to sleep on mattresses on the floor of cells that were already occupied. Bed capacity therefore exceeds the design capacity of prisons and in using bed capacity as a benchmark it masks the extent of the overcrowding issue in the system.

In addition, overcrowding presents a clear risk from an operational perspective. The Review Group acknowledge that overcrowding on its own does not necessarily create operational issues, however, it may be a contributing factor which can exacerbate any incident as it arises.

### **Temporary release**

Temporary release has increased substantially in recent years. The IPS consider a normal rate of temporary release to be 5% of the prison population. As the prison system has come under increasing pressure to accommodate committals, the exercise of the power of temporary release has become a “*front-door*” device for reducing prison overcrowding. The rate of temporary release at present is 17%. This varies in individual prisons as set out on Table 2 with the highest rate of temporary release in Cork Prison at 35.7%. This could potentially increase very significantly if the number of people being committed to prison continues unabated, or increases, and where no additional prison accommodation is provided. The concern must be that increasing the use of temporary release heightens the risk of releasing prisoners who pose a risk of harm to others. High rates of temporary release, for the purpose of addressing shortfalls in capacity, potentially undermine the criminal justice system and reduce the deterrent effect of imprisonment. It also poses risks for the community and the State in the event that a prisoner who has been release early from custody commits further crime, in addition to the wider economic impact.

### **Projected Increase in the Prison Population**

Estimating the size of the prison population in the future is a challenge because estimates are subject to variation depending on the impact of various factors. In addition, the position of the Irish Prison Service at the end stage of the criminal-justice process makes it more susceptible to changes occurring

'upstream' in the other criminal justice agencies such as the Garda Síochána, the Office of the Director of Public Prosecutions and the Criminal Courts. The IPS have advised that the prison population projections will now be reviewed every 2/3 years.

In December 2005, prisoner-population projections prepared by the Prison Service calculated a prison population of 3,490 in 2009 rising to 3,626 in 2015. In fact the number of prisoners in 2009, excluding those on temporary release, was 3,880. In October 2009 researchers from the University of Limerick completed a low, medium and high projection of prison population in the future. Under its highest projection the study calculated that in 2010 the average number of people in the prison system, including those on temporary release, would be 5,030. The actual figure was 5,022. The highest projection for 2011 calculated that the average number of people in the prison system would be 5,612. On 14 March 2011 the actual number was 5,312, and on 21 April it was 5,556. The study predicts that the total number in the prison system will be 7,358 in 2014, and 7,940 in 2015.

**Table 9: Prisoner Population Projections 2009-2016**

Year	Projected "High"	Projected "medium"	Projected "Low"
2009	4255	4099	3942
2010	5030	4533	4036
2011	5612	4871	4130
2012	6194	5209	4224
2013	6776	5547	4318
2014	7358	5885	4412
2015	7940	6223	4505
2016	8522	6561	4599

On these predictions, assuming that the number on temporary release remains at 900 prisoners, the IPS will have to find 1,948 new prison spaces within the next three years. If the rate of temporary release remains at 17% of the total prison population, then the number of new spaces will be 1,598.

## **Investment in prison infrastructure**

The Review Group notes that the IPS has been investing in prison infrastructure to modernise the existing prison estate and to provide extra prison spaces. In the last 14 years, 1,934 new spaces have been provided. Since 2008, about 600 new places have been provided.<sup>19</sup> Despite this substantial building programme prison capacity is still an issue with the prison system. The IPS's objective of providing single-cell occupation for offenders is still a long way off, and the practice of slopping out still exists in some of the older parts of the prison estate.

We now turn to current projects under construction and look at the potential to provide additional accommodation across the prison estate excluding any development at Thornton Hall in Dublin and in Kilworth Cork which have been identified as the strategic options for capacity enhancement.

### ***Midlands Prison***

Work is in progress to build a new accommodation block at Midland Prison. This will provide an additional 179 cells with potential to accommodate up to 358 prisoners in multiple-occupation arrangements. The new block is scheduled to be commissioned by mid 2012. This will potentially increase the bed capacity of the Midlands Prison to 916, if operating at full capacity. The Review Group were informed that the IPS is currently exploring the possibility of adding a new wing at Midlands Prison which would provide a further 92 cells with a capacity for 160 prisoners. The cost of the new block is estimated at €X million including Vat and would take about 14 months to complete.

### ***Dóchas Centre***

A contract for the provision of 70 dormitory-style spaces for female prisoners at the Dóchas Centre on the Mountjoy campus is near completion. This project will increase the bed capacity at the Dóchas Centre to 175 prisoners.

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<sup>19</sup> Comprising: 30 extra spaces at Shelton Abbey open centre; 40 extra spaces at Loughan House open centre; 100 new spaces have been provided at Castlerea Prison; 200 new spaces at Portlaoise Prison; 176 cells (potential 200 spaces) at Wheatfield Prison.

**Wheatfield Prison**

The IPS informed the Review Group that scope exists to construct a new accommodation block with a design capacity of 75 cells capable of accommodating up to 150 prisoners at Wheatfield Prison. The estimated cost is approximately €X million including Vat and would take about 18 months to complete. This would increase the bed capacity at Wheatfield Prison to 850.

**Shelton Abbey**

There is scope to provide additional accommodation for 100 prisoners at Shelton Abbey open centre. Many of the prisoners who are likely to be suitable for an open centre are also likely to be eligible for consideration for temporary release. The cost of the new accommodation unit is estimated at €X million including Vat and would take approximately 12 months to complete. This would increase the bed capacity at the prison to 210 however the need for this type of additional accommodation in the system has yet to be established.

**Castlerea Prison**

There is a large vacant site within the boundary wall of Castlerea Prison, which is fully service and ready for development. This provides different options for future developments at the prison. The review group considered the developing 150 cell accommodation block which could accommodate 300 prisoners. This would bring the bed capacity at Castlerea Prison to 651. The estimated cost of the new accommodation block is €X million and would take about 18 months to complete.

**The Grove**

Castlerea Prison also has a semi-open facility, known as the Grove, where further development could take place. The Grove is made up of a number of individual houses within a self-contained area within the boundary wall of the prison. The IPS informed the Review Group that there is potential for the development of 5 to 7 more house units which would accommodate 60 to 70 prisoners. This could be done at a estimated cost of €X million including Vat and would take about 18 months to complete.

***Portlaoise Prison***

The Inspector of Prisons has indicated that in his view it is possible to provide additional accommodation at Portlaoise Prison, the State's only high security prison. The IPS has a site just under 3 acres adjacent to Portlaoise Prison and is capable of accommodating a new 180 cellular accommodation block at an estimated cost of €X million. The prison is not experiencing overcrowding. The older parts of the prison may need to be modernised.

***Limerick Prison***

Limerick Prison is one of the oldest prisons in the estate along with Cork Prison. All accommodation units in Limerick Prison do not have in-cell sanitation. A new 120 cellular accommodation block could be added on the existing site to replace the outdated parts of the prison. The cost of the new unit is estimated at €X million and would take approximately 18 months to complete. This will not create any new capacity in the prison.

***Cork Prison***

Built in the 1880s, Cork Prison, which accommodates male prisoners, is now the most overcrowded prison in the prison system. The IPS planned to close Cork Prison and replace it with a new prison at Kilworth, County Cork. This project has not progressed beyond site acquisition. The IPS has a site opposite Cork Prison where a new 150-cell block capable of accommodating up to 300 prisoners could be provided. The site is not ideal as it is separated from the main prison by a private roadway. It is not considered economical to develop Cork Prison further due to the age and logistics of the facility.



## Chapter 3

### The Plans for the Prison Development at Thornton

In this chapter we review the plans for the prison development at Thornton Hall noting the original plans for the site and how this approach was modified, to proceed with the development on a phased basis, in the light of economic conditions and the constraints facing the State.

In order to ensure that the Review Group had all necessary information available to it, the Irish Prison Service provided the Group with detailed background documentation on the policy and plans concerning the proposed Thornton Hall Prison Complex. This documentation was explained and clarified through oral presentation and discussion.

#### The Original Thornton Hall project

In recent years the need to replace Mountjoy Prison formed a leading part of the capital expenditure plans of the Irish Prison Service. The adult male prison lacks in-cell sanitation and has suffered periods of acute overcrowding. The physical infrastructure is not sufficiently large to facilitate the provision of useful regime activities for all the prisoners accommodated in the prison. The Dóchas Centre has suffered from overcrowding problems almost from the day it opened. This has forced prison management to convert areas of the prison into accommodation units, thus severely diluting the creative regime and ethos of the prison.

The IPS has explored various options in relation to the replacement of Mountjoy Prison. The Mountjoy Redevelopment Group was set up in 1999 as a consultative body to plan the development of the complex. The Group issued its first report in 1999 and a second report in 2001 in which it set out an “*outline development scheme*” for the prison. The development did not proceed due to cost and the fact that the new facility did not provide for a sufficient number of spaces to meet projected increases in the prisoner population.

A full assessment of the possibility of rebuilding the prison by refurbishing it wing by wing on a phased basis was carried out in 2003 by the Prisons Authority Interim Board. These options were deemed by the IPS not to be feasible for a number of reasons. These included the high cost, the fact that the proposals failed to address the severe accommodation demands on the prison and the length of time it would take to complete the rebuilding or refurbishment of the prison.

Making major changes to the internal layout of the prison would be challenging. The small size of the site would impair the ability of the IPS to provide facilities and services to prisoners within the appropriate standards. The closeness of the prison walls to the nearby built-up area would make building operation difficult and there would be significant logistical issues for the Irish Prison Service in finding alternative accommodation for prisoners while construction work was in progress. Given these issues it was the view of the IPS that a more appropriate and practical option for meeting current and future needs would be the building of a new prison complex on a greenfield site.

### **Thornton Hall site acquisition**

In 2003, following an appraisal of various options in relation to the replacement of Mountjoy Prison the Prisons Authority Interim Board recommended that the preferred option would be to build a new prison on a greenfield site in the Dublin area. The new prison development, including site acquisition costs, would be funded by the sale of surplus prison lands at Shanganagh Castle which had been closed since 2002 and the eventual disposal of the Mountjoy Prison site. It is clear that at the time of this recommendation the commercial value of the Mountjoy Prison site, as possible development land, could have been very considerable. This is no longer the case.

In 2004 the Minister for Justice, Equality and Law Reform set up a Mountjoy Complex Replacement Committee, made up of officials from the Department, the Irish Prison Service and the Office of Public Works to evaluate the offered sites. The Committee identified certain criteria to determine the most suitable site. The criteria were:

- size, shape and topography.
- general location and accessibility to courts, other prisons etc.
- planning and community impact.
- availability of emergency services.
- proximity for public transport.
- access and egress options.
- availability of services: power and sewage.

The Committee also commissioned planning, environmental and engineering studies to inform itself on salient characteristics of the sites with the most potential. The outcome of the site selection process was to recommend Thornton Hall to the Minister for Justice, Equality and Law Reform as the most satisfactory option available. The Government then approved the purchase of the site.

### **Thornton Hall Prison Campus**

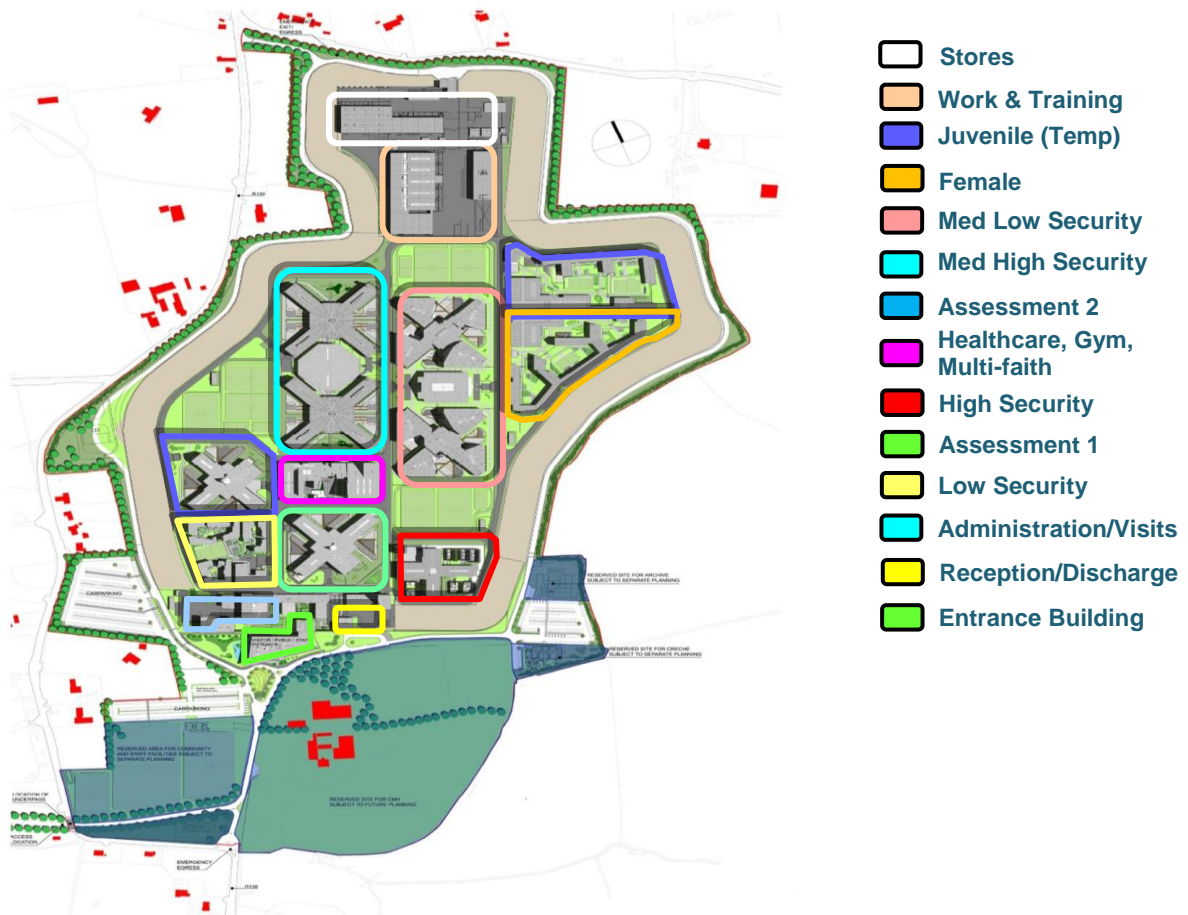
In 2006, the Government gave approval to the IPS to conduct a tender competition to design, build, maintain and finance the development of a new prison complex at Thornton, on a value for money public private partnership (“PPP”) basis. The new prison would have a design capacity of 1,400 with a built in operational flexibility to accommodate up to 2,200 prisoners should the need arise. The design of the prison was such as to allow for different types of regime for prisoners depending on their security categorisation and sentence management. It was envisaged that significant savings in the operation of the prison would be achieved through the centralisation of support services on the site on a scale not possible on the Mountjoy complex.

The design envisaged that the prison population at Thornton Hall would comprise a range of security categories of male and female prisoners, each category housed in separate secure facilities within the overall campus style environment. The development would have comprised eight individual, practically self contained facilities, each with its own unique and dedicated regime. Prison support facilities such as work-training, education, rehabilitative and other programmes including recreation would be provided as appropriate to the prison population in each unit.

A new female prison also formed part of the plans for the new prison at Thornton Hall. The design of the new female prison at Thornton Hall was to have capacity for 170 women. The design sought to build on the experience and lessons of the Dóchas Centre whilst expanding the regime options and fostering the ethos of Dóchas Centre which is a domestic-scale courtyard development consisting of a number of house units of single occupancy en-suite accommodation. Each house would have domestic style cooking and laundry facilities etc.

A pre-release unit to replace the Training Unit also formed part of the original plan for Thornton Hall. Its design would be based on apartment style living where prisoners would be given greater responsibility as they prepare for release back into society.

# TH1 – Project Overview



## Public Private Partnership

In March 2007, the Government approved the commencement of negotiations with the preferred bidder. The estimated total cost of the design and build of the Thornton Hall Project was €X million, which excludes site acquisition costs. The Irish Prison Service evaluated the financial proposal and notified the consortium in May 2009 that the proposal was not considered affordable due to significant increased costs of financing. The PPP competition was abandoned.

The Government in June 2009 approved in principle the launching of a new procurement competition for the construction of a more affordable and better value prison development at Thornton Hall. The necessary infrastructure preliminary works to facilitate the prison development being the dedicated access road to the site, the installation of off-site services to include water, foul, information communications technology and perimeter wall were to be procured by way of separate contracts.

In July 2010 in light of the economic circumstances and the risk the commercial funding would not be available for a PPP given the changed financial markets, the then Government decided that the development of the prison campus at Thornton Hall should proceed on a phased basis using traditional procurement methods. The project would be funded from the Capital Envelope of the Department of Justice and Equality at a cost of approximately €X million allocated at €X million per annum over four years. In the circumstances and having regard to the urgent need to provide additional capacity, the Government decided that Thornton Hall should proceed on a phased basis. In addition, adopting a phased approach to the development would facilitate spreading the capital costs of the project over a longer duration than for a single phase of the development.

### **Revised development plan**

The revised development plan for the Thornton Hall site maintained the original design concept. The intention was for the provision of a prison campus facility to provide accommodation for 1,400 prisoners with flexibility to accommodate up to 2,200 in multiple occupancy settings with appropriate regime and other support facilities.

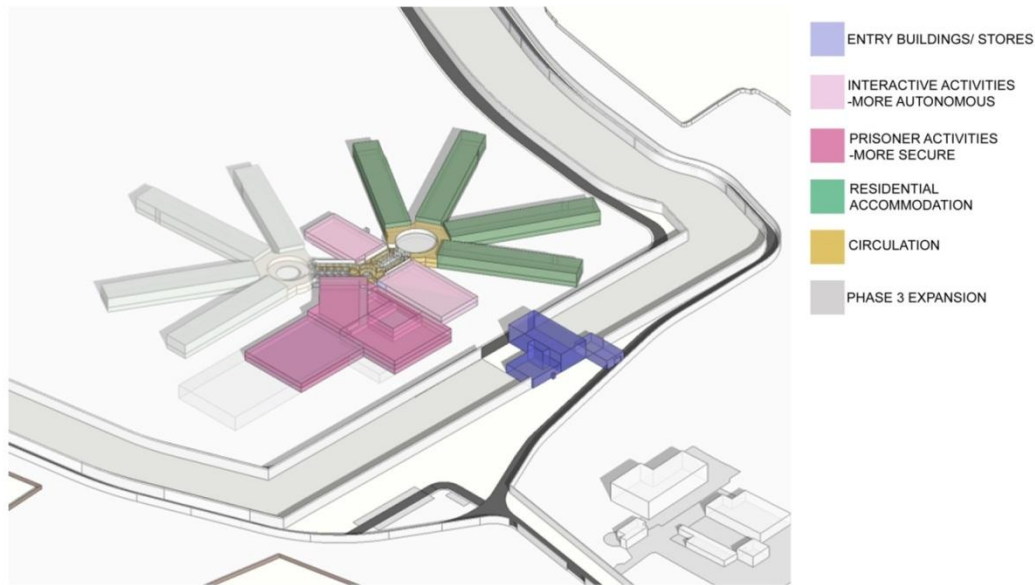
The first phase of the prison accommodation blocks would provide 400 cells capable of accommodating up to a maximum 700 prisoners. The cells would be 11 square metres and fully comply with the standards laid down by the Inspector of Prisons.

The following additional facilities were planned for inclusion in the first phase development:

- Vehicle gate lock,
- Main control room,
- Administration and staff facilities,
- Reception/discharge facility where prisoners are admitted and discharged from prison
- Prisoner visiting facility,
- Healthcare facility,
- Catering facilities
- Laundry facilities,
- Education facilities
- Work-training facilities,
- Multi-faith facilities

The Review Group was informed by the IPS that a core requirement of the revised design for Thornton is to provide regime activity for the maximum number of prisoners and which complies with international and domestic standards for prisons.

## First Phase Development Plan



### Future phases of the project

The second phase of the project envisaged the provision of approximately 500 cells for adult males, capable of accommodating up to 750 prisoners, as well as the expansion of regime and other facilities provided in the previous phase in order to cater for the increase in the prison population on the site.

The final phase of the project would see the provision of approximately 500 cells capable of accommodating up to 750 prisoners, together with related support services. It was intended that this phase would comprise two separate prisons being accommodation facilities for 300 female prisoners and a facility to accommodate up to 200 adult males in a pre-release or low security setting. The precise scope of phase two and three would be determined through the master planning of the overall campus.

The Government has not made a decision in relation to proceeding with future phases of the project.



### Expenditure to date on the Thornton Hall Project

The total gross expenditure on the Thornton Hall development to end April 2011 was €44.9m. This includes site cost and various engineering studies. The Review Group was informed that the cost of the site was largely offset by the sale of surplus prison lands at Shanganagh Castle, County Dublin for €29 million. This gives a total net expenditure of €15.9m to end April 2011. Further expenditure will be incurred in the coming months as the contracts for the construction of the access road and off-site (Water, Foul & ICT ducts) are completed by mid 2011. This will bring the total cost to €47.9m, which amounts to €18.9 million net of the sale proceeds of Shanganagh Castle.

**Table 9: Thornton Hall Project expenditure to date:**

<b>Expenditure</b>	<b>€'m</b>
Site Costs – main site and access road land	31.2
Site Preparation & Surveys	3.0
Landscaping	0.5
Security & Site Supervision	0.5
Professional Advice re PPP	7.5
Phase 1 – Access Road Construction	2.7
Phase 1 – Off-Site Services	2.5
<b>Estimated Gross Expenditure (including contractual commitments)</b>	<b>47.9</b>
Sale of lands at Shanganagh Castle	(29.0)
<b>Estimated Net Expenditure to 31 March 2011(including contractual commitments)</b>	<b>18.9</b>

### Operational expenditure

If the Government were to proceed with building prison facilities at Thornton Hall on a phased basis, Mountjoy Prison would have to remain open. It would not be possible to close it given the issue of overcrowding and the projected increase in the prison population. This would impose a substantial additional burden on the current budget profile of the IPS at a time when all aspects of Government expenditure are under pressure to achieve more for less.

The Review Group was informed that to operate Mountjoy Prison and Thornton Hall would result in an estimated overall increase in operational costs of approximately €X million.

## Chapter 4

### Assessment of the Issues

In this chapter we examine the case for building new prison facilities at Thornton Hall. The essence of the argument for building the new prison is that there is a pressing need for modern prison facilities to solve the shortfalls in current and projected prison capacity in the country. Critics of the proposal to build the prison facilities do not dispute two facts about the prison system: that it is necessary to imprison those who are a danger to society and who cannot be managed in any other way,<sup>20</sup> and that overcrowding in our prisons endangers the whole point and effectiveness of prison. The real ground of their objection is that we overuse prison and that building the prison would continue that overuse. We consider the relevant issues now in turn.

#### *The Issue of Capacity*

In Chapter 2 we noted the rate of detention in Ireland has been increasing consistently. This has resulted in serious prison overcrowding. To make matters worse, the average daily number of prisoners in prison is forecast to rise substantially by 2015. The Irish Prison Service has no discretion to refuse committals to prison. Nor is there a cap of the prison population. The result is that there is a need for new prison facilities that will be able to accommodate the continuing growth in the prison population. Eliminating overcrowding is not the only reason why new prison accommodation is needed. The Inspector of Prisons has stated that Ireland would not meet its obligations under various international instruments if we did not provide appropriate services and regimes to ensure the safety of prisoners.<sup>21</sup>

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<sup>20</sup> The Irish Penal Reform Trust (IPRT): ‘The overarching goal of any criminal justice system is to reduce crime and to create and maintain a safe society.’

The Jesuit Centre for Faith & Justice (JCFJ); ‘As all crime is injurious to individual and the community we regard it as essential that the legitimate authorities of the State respond effectively, fairly and proportionately to the actions of offenders.’

<sup>22</sup> The Irish Prison Population – an examination of duties and obligations owed to prisoners, 2010, p7

Some argue against the proposition that new prison facilities are needed to meet the shortfall in prison capacity. First, there is the argument that building more prisons runs counter to the principle of imprisonment as a last resort, which is set out in the Council of Europe's 1999 Recommendation concerning *Prison Overcrowding and Prison Population Inflation*.<sup>22</sup> The principle of restraint in the use of custodial sentences argues for the use of non-custodial sentences instead of custodial ones, and for shorter custodial sentences instead of longer ones. This objection recognises that the problem of prison overcrowding can amount to inhuman and degrading treatment.<sup>23</sup> The essence of the objection is that current penal policies in this country have produced prison overcrowding. The State has, the argument goes, pursued an expansionist policy that involves increasing the prison population. This produces serious prison overcrowding and the expansion of prison capacity and staff.

The Review Group accepts the proposition that criminal justice policies are important in determining the size and composition of prison populations. We stress, however, that changes in prison populations flow from a confluence of factors. There are factors external to the criminal justice system, such as the economic and demographic evolution of the societies concerned; internal factors encompassing penal policies and decision-making at all points in the criminal justice systems; criminal law legislation; criminality; and intermediate factors, including public opinion, the media and the views of politicians.<sup>24</sup> Building new prison facilities at Thornton Hall is a legitimate way of dealing with the need for prison places that meet human-rights standards. Doing this does not preclude the State from reducing our use of imprisonment by introducing a range of community sanctions.

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<sup>22</sup> Recommendation No R (99) 22 of the Committee of Ministers to Member States concerning Prison Overcrowding and Prison Population Inflation.

<sup>23</sup> CPT 2nd General Report [CPT/Inf (92) 3] para 46; CPT 11th General Report [CPT/Inf (2001) 16 at Para 13.

<sup>24</sup> Snacken et al 'Changing prison populations in western countries: fate or policy?' (1995) 3 European Journal of Crime, Criminal Law and Criminal Justice 18-53.

Second, some critics suggest that it would be unwise to engage in building new prison facilities in the absence of a co-ordinated penal policy that spells out the most effective use of the different elements of the penal system, its agencies and resources available to the State.<sup>25</sup> The Review Group endorses the constructive view that a co-ordinated approach to criminal justice policy is fundamental. In addition the Review Group recognises and accepts the urgent need to address capacity, given the existing demand on the estate in respect of which policy interventions are being developed for implementation. In this regard the Review Group note that a White Paper on Crime is being prepared.<sup>26</sup>

Third, to reduce the prison population while improving prison conditions the IPS should decommission four prison spaces for every three new prison spaces it provides. The financial savings associated with this initiative could be used to develop programmes intended to divert young people away from offending.<sup>27</sup> The Review Group does not accept that there would be a material financial saving from this approach, moreover, it recognised it would also increase capacity pressure, and perhaps lead to an unacceptable level of temporary release while policy interventions are being developed. The Review Group is of the opinion that once policy interventions have taken effect the option to rationalise the older substandard elements of the estate will always be available.

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<sup>25</sup> IPRT: ‘What is necessary to build safer communities is a coordinated criminal justice policy which is mindful of the relationship between crime and wider social policy; and which makes the most effective and efficient use of the various elements in the criminal justice system (police, courts, probation, prison etc.).’

The Prison officers’ Association (POA): ‘The Prison officers’ Association are now clearly of the view that there must be a wider crime policy that includes examining alternatives that can help reduce the prison population ...’.

<sup>26</sup> [http://www.justice.ie/en/JELR/Pages/White\\_Paper\\_on\\_Crime](http://www.justice.ie/en/JELR/Pages/White_Paper_on_Crime) (last accessed 18 June 2011).

<sup>27</sup> Professor Ian O’Donnell: ‘I have a single policy recommendation to make to the Review Group. In my view, there is one way to combine a reduction in prisoner numbers with an improvement in the quality of prison life. This is to ensure that for every three new prison spaces provided four old ones are taken out of commission. This would result in fewer prisoners being held in better conditions. The financial savings associated with such a strategy could be spent on diverting young people from crime and reducing recidivism.’

In 1985, the Whitaker Committee recommended that, as a guide to policy, a limit should be set from time to time on the acceptable prison population and any tendency for the limit to be exceeded should signal the need for revised policies and strategies.<sup>28</sup> In 1994, the Department of Justice's own review of progress in giving effect to the Whitaker Committee's recommendations endorsed this capping approach.<sup>29</sup> More recently, in 2010, the Inspector of Prisons states that the capacity of each prison should be capped having regard to the design, accommodation and overall facilities in each prison. If this was implemented no prison would admit prisoners above the number for which its certified normal accommodation provided.

The Review Group's view is that this cannot be achieved without resorting to increasing levels of temporary release with all the attendant public safety issues. In addition if the policy alternatives being developed work a cap will effectively be achieved.

### **The Issue of use of Imprisonment**

Some suggest that there are people in prison who should not be there and that the rise in the rate of detention in prison has resulted in severe overcrowding in our prisons. It would be wrong to assume that overcrowding in prison can be remedied simply by changing sentencing practice. We noted, in chapter 2, that it is untrue to say that at present the prison system detains people on short sentences who should not be in prison. We revisit the statistics now to make the point that, in general, Judges do not lightly commit offenders to custody.

On 24 January 2011 there were 457 people in prison serving sentences of less than 12 months.<sup>30</sup> This number amounted to 10% of the total number of prisoners in custody which was 4,552, on that day. Of these, 144 prisoners, or 3% of the total number of prisoners in custody, were serving sentences of less than six months. An analysis of these figures does not justify the inference that these prisoners are people who should not be in prison. A more

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<sup>28</sup> *Report of the Committee of Inquiry into the Penal System* (Dublin: Stationery Office 1985) p 18.

<sup>29</sup> Department of Justice *The Management of Offenders: A Five Year Plan* (1994) p 32.

<sup>30</sup> These prisoners did not have any further court appearances.

informative breakdown of these figures shows that of the 457 prisoners, 128 had been sentenced for sexual, violent or drug-related offences. Another 162 of the prisoners had previous convictions for these offences. Each of the remaining 167 prisoners had been in custody before receiving their current sentence. Thirty two had numerous previous convictions and so could be classified as persistent offenders. Three prisoners were serving sentences for breaching barring orders. Twenty seven of the prisoners had extremely negative garda reports on their behaviour while free in society. Thirty eight of the prisoners were either in or awaiting transfer to an open centre. This analysis seems to suggest that the Judges who tried these offenders had determined that only imprisonment was capable of marking the seriousness of their offences. All 457 prisoners had previously been in custody either under sentence or on remand.

The imposition of prison sentences for serious offences is central to penal practice in Ireland. Indeed penal policy in Western Europe, although favouring the use of non-custodial sentences for less serious crimes, has increased the severity of sentences at the upper end of the penal range. More and longer prison sentences are being imposed for violent, sexual and drug-related offences. The result is that prison populations are increasingly made up of recidivists and of long-term prisoners imprisoned for violent, sexual or drug-related offences. Irish penal practice also shows a trend towards longer sentences. The Review Group considers that this fact supports the view that the need for new prison facilities is grounded in penal reality.

### **The Issue of the Rule of Law**

The rule of law gives primacy to regular as opposed to arbitrary power.

A fundamental principle behind the rule of law requires that like cases should be treated alike, and different cases differently. Equality before the law at the punishment phase of the penal system is assured if like offenders are treated alike. Prison overcrowding jeopardises this principle in two ways. First, an offender who is committed to an overcrowded prison will experience a prison regime that is more punitive as a result of overcrowding. His chances of

benefiting from rehabilitative intervention in prison will also be reduced. A sentence served in the older Cork prison is very different from a sentence served in the modern Midlands Prison. Second, if offender A is given early release solely because the prison to which he or she is committed is overcrowded, and similar offender B has to serve his or her sentence because the prison to which he or she is committed is operating to normal capacity, the effect is an inequality of treatment. The difference in treatment arises, not because of any discriminatory intent, but as a result of the need to ease the pressure of prison overcrowding. The principle of equality before the law indicates that an offender should not, on account of prison overcrowding, be treated more favourably than another like offender.

### **The Issue of Human Rights in Prison**

As a matter of principle, convicted prisoners do not forfeit their human rights. The sentence itself is their punishment; they are not sentenced for punishment. The state, through the IPS, has an obligation to treat prisoners decently in relation to conditions, sanitation, food, clothing, constructive activities, and so on. There are also pragmatic reasons why the state must treat prisoners decently. Bad prison conditions can contribute to prison unrest, and to reoffending on release.<sup>31</sup> The material conditions of imprisonment are therefore the basis for all efforts to create a humane and decent prison regime. At the heart of those conditions is the quality of prisoners' accommodation and the structure of the constructive activities that they have open to them.

Crucially, the European Prison Rules, the case law of the European Court of Human Rights, the reports of the Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment, and the reports of the Inspector of Prisons, insist that an adequate prison regime is an essential condition to ensure that imprisonment does not degenerate into an inhuman or degrading form of treatment.

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<sup>31</sup> Home Office *Prison Disturbances April 1990* Cm 1456 (Woolf Report 1991) para 10.27.



The European Court of Human Rights has emphasised that the state must ensure that a person is detained in conditions that are compatible with respect for his or her human dignity, that the manner and method of execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately protected.<sup>32</sup> The conditions in several Irish prisons, most notably Mountjoy and Cork Prisons fail to meet these normative requirements.

Three aspects in particular have been subject to frequent comments and assessments:

#### **1. Accommodation does not meet required standards**

Suitable accommodation of prisoners is essential to ensure respect for the privacy and dignity of prisoners. The 2006 European Rules stress the need to all accommodation to satisfy *'the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation'*.<sup>33</sup>

Although the European Prison Rules or Council of Europe CPT do not state a minimum space requirement, the Inspector of Prisons in Ireland states that best practice requires that cell sizes conform to the following sizes:

- For single occupancy – 7 square metres with a minimum of 2 metres between walls. Such cells should have in-cell sanitation. It would be preferable to have sanitary facilities screened.
- For each additional prisoner – an additional 4 square metres. Where two or more prisoners share a cell there must be in-cell sanitation which, in all cases, must be screened.

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<sup>32</sup> Dougoz v Greece 6 March 2001 para 46.

<sup>33</sup> See Article 18.1 of the 2006 European Prison Rules.

The Inspector also says that where possible prisoners should have individual cells to sleep in.

The Review Group notes that on 19 April 2011 there were 4,563 prisoners in custody with a further 916 on temporary release. The number of cells was 2,935. There is insufficient cell capacity, within the current estate, to give each prisoner his or her own cell. There are 1,696 prisoners in single cell accommodation. The remaining 2,867 prisoners are in multiple-occupancy cells. A substantial number of cells, including almost all cells in Cork Prison, are occupied by two or more prisoners and do not meet the Inspector's or CPT standards for double occupancy cell.

## 2. In-cell Sanitation

Approximately 72% of cells across the prison estate have in-cell sanitation. Providing prisoners with pots or buckets to slop out does not meet minimum standards for prisons. The Inspector of Prisons has described this as '*inhuman or degrading treatment*'. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has also condemned the practice of '*slopping out*'.<sup>34</sup> There have been a number of cases on "*slopping out*" in other jurisdictions. In *Napier v the Scottish Ministers* [2004] UKHRR 881, a Scottish court held that '*slopping out*' amounted to degrading treatment in breach of Article 3 of the European Convention of Human Rights and that it was open to prisoners to claim that '*slopping out*' was in breach of the prohibition of inhuman or degrading treatment or punishment under Article 3 of the ECHR.

The Review Group was informed by the State Claims Agency that there are currently 500 potential claims from serving or former prisoners who claim that their human rights were breached by having to "*slop-out*". The most significant is the case of *Mulligan v. Governor of Portlaoise and Anor* [2010] IEHC 269 in which the High Court

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<sup>34</sup> CPT Ireland Visit 2002 [CPT/Inf (2003) 36] para 45

considered the issue of slopping out. The judge found that decisions of the European Court of Human Rights condemning sanitation conditions in prisons did not directly bear on the claim before him, because in those cases there were worse conditions combined with overcrowding and lack of privacy, however the judge cautioned that on a different set of facts the outcome of the case might be different.

The Review Group agree with the State Claims Agency that certain factors which would apply in many instances, in light of the case of *Mulligan v Governor of Portlaoise and Anor* [2010] IEHC 269, highlights the exposure of significant financial risk faced by the State in relation to the lack of in-cell sanitation.

### **3. *Reintegration of prisoners into society***

The European Prison Rules express the principle of normalisation. Thus Rule 5 of the Basic Principles of the 2006 European Rules states that '*Life in prison shall approximate as closely as possible the positive aspects of life in the community*'. That principle flows logically from the principle that imprisonment is the punishment and is not for punishment.

The point is that, if the deprivation of liberty suffices for the purposes of punishment, then the prison regime should reflect society outside prison as far as possible. It is striking that Rule 5 provides that the prison regime should come as close as possible to the '*positive aspects*' of life outside.

Normalisation means the services inside prison are, insofar as possible, equivalent to those offered in the wider community. The services include, for example, healthcare, education and training. Moreover, the vast majority of prisoners will at some time be released from prison. It is important, therefore, that regimes and rehabilitation programmes are designed to help prisoners address those issues that led to their imprisonment, while also preparing them for reintegration into society.

Rule 6 of the European Prison Rules states as a Basic Principle the requirement that '*All detention shall be managed so as to facilitate the reintegration into free society of all persons who have been deprived of their liberty*'. Here reintegration refers to the objective of enhancing the capacities of prisoners to return to and function normally in society after release. Rule 102.1 provides that '*In addition to the rules that apply to all prisoners, the regime for sentenced prisoners shall be designed to enable them to lead a responsible and crime free life*'. The implication is that the prison system must attend to each new prisoner's future by clearly defining the main function of his or her prison sentence and managing it so that every means is used to help him or her towards successful reintegration and resettlement.

The Council of Europe in its Recommendation on the Management of Prison Administrations of life sentence prisoners and other Long-Term Prisoners recommends that attention be given to providing activities to counter the potentially destructive effects of long-term imprisonment while preserving the prisoner's focus on eventual release.<sup>35</sup> The Recommendation emphasises that prison regimes for long-term prisoners should be based on, among other principles, the principle of progression.<sup>36</sup> This principle requires prison authorities to structure the prisoner's movement through the system so that the prisoner can foresee a meaningful future. The objective is for prisoners to perform purposeful activities.

An examination of the prison statistics, show that the Irish Prison Service has the capacity to provide 1,079 work training places across the prison system, if all posts were fully staffed. This is equivalent to 24% of the current prison population. However, there are currently 83 posts vacant in this area and this has reduced the number of work training places to 806 or 17% of the prison population on any given day.

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<sup>35</sup> Recommendation Rec (2003) 23 on the Management by Prison Administrations of Life-sentence and other Long-term Prisoners.

<sup>36</sup> Also relevant are the principles of normalisation, responsibility, integration, individualisation, and non-segregation.

If the number of vocational training places were increased to provide work training to approximately 50% of the current prison population, being 2,250 places, it is estimated that an extra 200 prison staff would be required. Other factors come into play if the system is to be expanded, such as funding and suitable space for workshops. The Review Group notes that the shortage of space in Mountjoy Prison means that only 100 prisoners can avail of facilities in the prison workshop. Even if the prison had an adequate complement of staff it could not, at present, accommodate all the prisoners who would wish to engage in work training activities, due to the lack of suitable accommodation for workshops.

In 2010, approximately 35% of prisoners participated in education. The level of engagement varies from one hour to full-time participation. Two hundred and twenty teachers deliver education classes across the prison system. The Inspector of Prisons recommended in his 2010 annual report that an independent education audit be commissioned by the IPS on the adequacy, efficiency and relevance of the prison education system. This audit is currently underway.

The condition of some parts of the prison estate, notably the older prisons like Mountjoy Prison, Cork and parts of Limerick prison impair the ability of the IPS to give full and proper effect to the principles of normalisation, progression and reintegration. This issue in itself creates risks which will require, amongst other things, improvement in the estate if they are to be comprehensively addressed.

The review group acknowledges there is a deficiency in the provision of regime in certain parts of the estate and recognises the obligation of the state to provide regimes aimed at giving effect to the principles of normalisation, progression and reintegration.

## The Issue of Prison Size

Some oppose building new prison facilities at Thornton Hall on the basis that they would comprise a 'super prison'.<sup>37</sup>

The issue of prison size is important. The prison authorities must set security, control and justice in prisons at the right level and ensure the right balance between them.<sup>38</sup> Assuring security means preventing prisoners escaping. Having control means preventing prison disturbances. Providing justice means treating prisoners decently and fairly, protecting their human rights, and giving them opportunities to serve their sentences in a constructive way.<sup>39</sup>

Lord Woolf in his report on the prison system in England and Wales after the riots, in 1990, in Strangeways Prison recommended that prisons should not normally hold more than 400 prisoners on the basis that the evidence suggested that exceeding this number caused a marked fall-off in all aspects of a prison's performance. Her Majesty's Inspectorate of Prisons has found that size is the most influential factor in how prisons performed.<sup>40</sup>

In 2009, the Prisons Inspectorate assessed all inspected prisons against four 'healthy-prison' tests: whether prisoners are held safely; whether they are treated with respect for their human dignity; whether they are able to engage in purposely activity; and whether they are prepared for resettlement back into the community. On each test, each prison was assessed as performing either well, reasonably well, not sufficiently well, or poorly. The results showed that smaller prisons consistently performed better than larger ones on most measures, including re-offending. Dame Anne Owers, the Chief Inspector of Prisons, observed that, *'prisons holding 400 or fewer prisoners were significantly more likely to perform well in these tests than larger prisons holding more than 800 prisoners. Smaller prisons were four times more likely to perform well overall than large prisons holding more than 800 prisoners, when the age of the prison was controlled for.'*<sup>41</sup>

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<sup>37</sup> POA: 'The Prison Officers' Association welcomes the Minister's decision to review the previous government's plans to build a super prison at Thornton Hall.'

<sup>38</sup> Woolf & Tumin *Prison Disturbances April 1990 Report of an Inquiry* Cm 1456 (London: HMSO 1991) para 1.148.

<sup>39</sup> At para 1.149.

<sup>40</sup> HM Inspectorate of Prisons *Prison Performance* January 2009.

<sup>41</sup> At p 6.

The Review Group considers that the plan for the prison facilities at Thornton Hall was not a plan to build a 'Super' or 'Titan' or 'Mega' prison. The split-site campus was designed to accommodate 1,400 prisoners, comprising more than one population type, in a range of different prison settings. The proposed complex comprised eight individual, almost self-contained, accommodation buildings with differing security levels, each with its own distinct interior prison regime. This complex of facilities ranged from the traditional closed prison to house-and-apartment style accommodation. The proposed campus included a central stores and maintenance area and kitchen facilities. Except for the main control centre, the buildings were confined to two storeys to reduce the visual effects of the prison and to provide ready access to light and space. There was provision for facilities for work-training, education and rehabilitative programmes. The proposal for the prison regimes and services reflected the principles of normalisation, progression, and reintegration.

The Review Group is opposed in principle to the idea of a '*super prison*', which seeks to imprison as many offenders as possible as cheaply as possible. Its primary rationale reflects a too narrow sense of cost-effectiveness in the short-term and disregards the evidence about what constitutes a genuinely effective prison over the longer term.<sup>42</sup>

### **The Issue of Vulnerable Groups in Prison**

Another view forcefully expressed that: a large isolated prison will make the '*pains of imprisonment*' worse for vulnerable prisoners.<sup>43</sup> The Review Group recognises that imprisonment is a lived experience of relative deprivation and scarcity.

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<sup>42</sup> House of Commons Justice select committee, *Towards Effective Sentencing*, Fifth Report of Session 2007-08, Volume I, p 14.

<sup>43</sup> IPRT: 'Prison is the most expensive and socially disruptive of criminal sanctions and, as set out in the Scottish prison Commission review, "prison sometimes does good but it always does harm ...".'

## 1. Prisoner-on-Prisoner Violence

The European Prison Rules, Article 52.2, make it clear that ensuring the safety of prisoners and other persons in the prison is an essential responsibility of the prison system and of prison staff.<sup>44</sup> The CPT has said that, '*The duty of care which is owed by custodial staff to those in their charge includes the responsibility to protect them from other inmates who wish to cause them harm.*'

The response in Irish prisons is to separate prisoners in danger from the rest of the prison population. Some of these may be kept in their cells for most of the day. Almost 900 prisoners are currently '*on protection*' across the Irish prison system and of these approximately one third are on a restricted regime.

A number of submissions refer to inter prisoner violence. This needs to be framed in the context of actual statistics for 2010 of 765 incidents, which is an average of two a day, from a population of 4290. The review group is of the view that a modern purpose built prison, with appropriate regime services, would reduce rather than aggravate inter prisoner violence.

## 2. Prisoners Experiencing Mental Illness

Imprisonment can aggravate mental health problems, heighten vulnerability and increase the risk of self-harm and suicide.<sup>45</sup> There is a higher prevalence of mental disorder in prisons than in the community at large. In every prison there are people who should more properly be treated in some form of therapeutic environment, either secure or community-based. Some of these people are casualties of the decision to close large mental hospitals without providing adequate community-based care.

There are circumstances in which it would be extremely helpful to have better provision outside prison for those with particular mental health needs. More resources are needed to provide community based care and alternative

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<sup>44</sup> 'Procedures shall be in place to ensure the safety of prisoners, prison staff and all visitors and to reduce to a minimum the risk of violence and other events that might threaten safety.'

<sup>45</sup> Lord Bradley Report on People with Mental Health Problems or Learning Disabilities in the Criminal Justice System London: Ministry of Justice.



accommodation to protect this vulnerable group of offenders. The Review Group recognises there is a need to examine and evaluate the issue of prisoners with mental illness in the criminal justice system<sup>46</sup>.

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<sup>46</sup> IPRT: 'The Prison In-reach and Court Liaison Service at Cloverhill Court has succeeded in diverting some mentally ill accused persons away from the prison system and into more appropriate community or forensic mental health services. The expansion of this system would achieve further diversion. It is probable that similar investment in diversion for chronic drug addicts could have similar beneficial results.'

## CHAPTER 5

### Non Custodial Alternatives

The Review Group endorses the principle that imprisonment must be a sanction of last resort. The creation of additional capacity of itself will not deal with the issue of overcrowding. An integrated approach towards reducing the use of imprisonment as a sanction is required in the prison population is to be managed in an effective way. An alternative approach is to substitute more cost effective sanctions, based in the community, for less serious offences<sup>47</sup> where appropriate.

In order to reduce the use of imprisonment as a sanction<sup>48</sup> and therefore reduce or manage the prison population more effectively, the Review Group considered the application of alternatives to custody from two perspectives, Front-door and Back-door strategies.

Front-door strategies try to limit the flow of offenders into prison by limiting the use of sentences of imprisonment and by giving the courts a menu of options in relation to community sanctions. The menu of options allows the use of non-custodial alternatives such as fines, probation, community service or community-based sentences of imprisonment. The key assumption is that, in the absence of compelling reasons justifying a custodial sentence, a sentencing court should favour sanctions not involving total confinement.

The courts use a number of non-custodial sentencing options at present. The options include: a suspended sentence; a community service order, a fine<sup>49</sup> or

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<sup>47</sup> The option of suspending a sentence has long been recognised by the courts: *The State (McIlhagga) v Governor of Portlaoise Prison* unreported Supreme Court 29 July 1971. The power is now provided for in the Criminal Justice Act 2006, s 99, as amended by the Criminal Justice Act 2007, s 60.

<sup>48</sup> Rutherford *Prisons and the Process of Justice: The Reductionist Challenge* (London: Heinemann, 1984).

<sup>49</sup> The Criminal Law Act 1997, s 10(3), provides that when a person is convicted on indictment of any offence other than an offence for which the sentence is fixed by law, the court has a general power to impose a fine.

compensation order<sup>50</sup> or both; a probation order<sup>51</sup>; an order to undergo treatment for substance abuse; an order requiring supervision of an offender during deferment of the sanction<sup>52</sup>; adjournment, and binding over to keep the peace and be of good behaviour<sup>53</sup>.

The penal system is taking further steps away from prison sentences and towards community-based options for non-violent and less serious offenders.

- 1 The Children Act 2001 requires courts when dealing with offenders under 18 years to use custody only as a last resort and to give priority to the use of community sanctions.
- 2 The Fines Act 2010 provides for the use of community service for the non-payment of fines in less serious cases. It also provides for various mechanisms to deal proportionately with inability to pay. It provides for payment by instalments and recovery by appointment of a receiver. The Government intends to enact measures that would allow recovery of fines through attachment-of-earnings orders.
- 3 The Criminal Justice (Community Service) Act 1983 is being amended to require Judges to consider community service as an alternative to custody in all cases in which a custodial sentence of 12 months or less is appropriate.

Back-door strategies involve using early release in some form. In Ireland, there are three forms of early release.

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<sup>50</sup> The Criminal Justice Act 1993, s 6(1), provides that the court may make a compensation order in respect of any convicted offender instead of, or in addition to, dealing with him or her in any other way.

<sup>51</sup> Probation of Offenders Act 1907, s 1.

<sup>52</sup> The Criminal Justice Act 2006, s 100, spells out the process. Deferment may be used, for example, to give an offender a chance to benefit from treatment for substance abuse or alcohol abuse. The court has power to defer a sentence and impose a fine.

<sup>53</sup> Courts (Supplemental Provisions) Act 1961, s 54. The Criminal Law Act 1997, s 10(4), provides that the power to bind the offender over to keep the peace or be of good behaviour may be exercised without imposing a fine or imprisonment on the offender.

- 1 The Government has an explicit constitutional power to commute or remit any sentence.<sup>54</sup>
- 2 Under the Prison Rules, certain prisoners can earn remission of 25% of their sentence.
- 3 The Executive has statutory power to grant '*temporary release*' to prisoners at any time before they qualify for standard remission. The Criminal Justice Act 1960, as amended by the Criminal Justice (Temporary Release of Prisoners) Act 2003, empowers the Minister for Justice to grant early release to imprisoned offenders. It spells out the grounds on which the Minister may grant release. Release may be granted, among other reasons, to assess the offender's ability to reintegrate into society, to prepare the offender for release from prison, for humanitarian consideration, to ensure the good government of the prison, or to ensure good order in, and humane and just management of, the prison. The Minister must consider various matters including public safety and security and any risk of the offender committing an offence while on temporary release.<sup>55</sup> The number of offenders granted temporary release to relieve prison capacity has substantially increased. This is why it is said that the temporary-release mechanism functions as a 'safety valve'.

A positive step would be for the Minister to introduce a form of earned temporary release with a requirement of community service to prepare offenders for release on completion of their sentences. This proposal could be an integral element of integrated sentence management and the, soon to be introduced, incentivised regime scheme. In addition it would contribute significantly to the principles of normalisation, progression and reintegration.

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<sup>54</sup> The Constitution of Ireland, article 13.6

<sup>55</sup> See Criminal Justice (Temporary Release of Prisoners) Act 2003, s 1, amending by substitution the Criminal Justice Act 1960, s 2.

## Community Service Orders

Community service orders require an offender to perform an activity in the community, for example, unpaid work. In the menu of sentencing options they stand below the suspended sentence. The Government is extending the use of community service orders by requiring judges who are considering the imposition of a sentence of twelve months or less on a convicted person to consider, first of all, the alternative sanction of community service. The argument for extending the use of community service orders is that public protection would be improved rather than reduced. Offenders who are suitable for community service would be enabled to pursue reform or rehabilitation or reparation in the natural conditions of community life.

The 2009 *Value for Money Report* by the Probation Service states that the rate of success for community service orders is between 80 and 85%.<sup>56</sup> It also says that community service supervisors could provide services to three times as many offenders, and that there is a need to identify projects for the community service scheme. The report considers the scheme to be cost-effective. The cost of a community service order per offender is about €4,295, while the average cost to the IPS of imprisoning an offender in 2010 was €70,513. The scheme absorbs about 11% of the Probation Service's spending.

The community service scheme is value for money. On this basis, the Review Group supports the introduction of a single generic sentence to community service that would require the offender to fulfil one or more of a range of requirements as stated by the trial judge.<sup>57</sup> The requirement should be proportionate in punitive weight to the gravity of the offence.

The Review Group considers that it is important to ensure that “*net widening*” does not occur either through the imposition of community service orders, in cases that would not normally attract a custodial sentence, or when dealing with breaches of community service orders.

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<sup>56</sup> The Probation Service *Value for Money and Policy Review of the Community Service Scheme* (2009) p 6.

<sup>57</sup> The Criminal Justice Act 2003 (UK) introduced a generic community sentence with this form.

## **Create alternative forms of detention**

Prisons are at their best in dealing with longer-term prisoners. Longer-term prison sentences for serious or dangerous offenders give prison staff and prisoners opportunities to develop relationships, to craft an integrated plan for the sentence, and to select activities or programmes for the prisoner to tackle his or her problems and to change. To enable prison staff to focus more effectively on the needs of longer term prisoners, it may be appropriate to reduce the use of imprisonment offenders. This could be achieved by giving the courts more sentencing options. There is merit in considering the introduction of a new sanction that sits directly between community sentences and custodial sentences. The objective would be to create community-based variations on imprisonment. Two forms of detention that do not involve total confinement are:

### **A. Home detention**

Home detention is a form of community-based detention. The core of the home-detention sentence is to confine offenders to their homes during specified times for the duration of the sentence under strict supervision and conditions. It may involve electronic monitoring.

### **B. Periodic imprisonment**

Periodic imprisonment requires an offender to be imprisoned for certain days of the week. It is also called intermittent or part-time or weekend custody. This form of imprisonment allows the offender to spend the remainder of his or her time at home, at work or in the community.

## **Earned Temporary Release into Community Service**

Back-door strategies aim to reduce the time that prisoners spend in prison as far as is realistically possible. They involve the use of various forms of early release of prisoners. The objective is to advance the principles of progression and reintegration. The Review Group considers that the problem of overcrowding in prison can be addressed, as part of an integrated package of measures, by the back-door strategy of increasing the number of prisoners on discretionary temporary release.

Temporary release is a form of conditional release governed by the Criminal Justice Act 1960 and the Criminal Justice (Temporary Release of Prisoners) Act, 2003. A prisoner on temporary release continues to serve his or her sentence and may be returned to prison if he or she breaches any of the conditions of release. The Review Group supports the introduction of a scheme for earned temporary release coupled with a requirement to do community service. The scheme could also provide for an electronic monitoring requirement and/or a curfew requirement. The objective being to create a framework in which the offender is more likely to reintegrate, and also pay back the community with a concrete benefit.

## **CHAPTER 6**

### **Conclusions and Recommendations**

The growth in the prison population in recent years has caused issues of overcrowding in the prison system. This is compounded by the fact that some elements of the prison estate are long past their sell-by-date. In those prisons, prisoners have to endure substandard conditions resulting in the State being in breach of its international obligations in relation to treatment of prisoners. The substandard conditions impose a strain on prisoners, staff, and the regime itself. Offenders serving custodial sentences in the older prisons have limited access to structured activities and are denied the right to live in an environment that is in compliance with international standards.

The Review Group advocates an approach that aims to reduce our reliance on imprisonment. We do not accept that the prison population must continue its upward spiral and that the only response to increases in the prison population should be to build more and more prisons. Equally, we believe that resorting to ever increasing levels of unstructured early release is not the solution to the problem.

We do not accept the proposition put forward by some commentators that our prisons are full of people who should not be there. Our analysis of the prisoner population, referred to on chapter 2, indicates clearly that judges do not lightly send offenders to prison. Nonetheless, as a society we need to consider alternatives to prison. Imprisonment should remain as a sanction for those who commit serious offences.

This places an obligation on the State to ensure that it has an adequate stock of prison accommodation that meets required standards so as to ensure that those who are sent to prison are detained in safe, secure custody and have the opportunity to engage in structured rehabilitation programmes that enable them to prepare for release back into society.



In addressing these issues we considered a number of options in relation to the pressure on the prison estate arising from increases in the number of committals to prison, the potential impact of anticipated increases in the prison population and the need for the prison system to meet human rights standards.

The options available to the State, irrespective of which one is selected, all have financial impact, which was considered in the context of the overall financial constraints facing the State. In this regard the Review Group noted the comment in the Report of the Special Group on Public Service Numbers and Expenditure Programmes

*“The Group considers that subject to economic and value-for-money considerations, the capital investment in modern prison facilities should proceed in a cost-efficient manner as soon as possible. When these facilities are complete the asset value of the Mountjoy and Cork Prisons sites can be realised. The running costs of new prisons should be lower than older prisons and the staffing complement should be less labour intensive.”*

### **Do nothing option**

We noted in chapter 1 that the prison estate comprises a mix of both modern and older prison stock. Some of the older prisons like Mountjoy and Cork prisons date back to the 19<sup>th</sup> century. Due to infrastructural deficits they are not capable of meeting the range of standards expected in a modern prison system or expanding the capacity to meet present and future requirements. The fact remains that parts of the prison estate need to be improved and brought up to acceptable standards. We have noted in chapter 4 that the conditions in some of our prisons may expose the State to significant reputational, legal and financial risk. The prison estate needs modernisation if these risks are to be reduced. Doing nothing, therefore, is not an option.

**Greenfield Site**

We noted in chapter 3 that substantial Exchequer sums have already been invested in the development of the Thornton Hall site. We do not believe it would make economic sense to suggest that prison facilities be developed on a new greenfield site as this would incur further substantial costs to render it construction ready. All such costs have now been committed or incurred in relation to the Thornton Hall site. In addition the future developments costs are unlikely to be materially different between a greenfield site and the Thornton Hall site. On the basis that proceeding with an alternative greenfield site would represent increased incremental costs to the project, which are unlikely to be offset by the disposal of the Thornton Hall site, the Review Group is of the opinion that there is no basis for considering a greenfield site as a viable alternative for enhancement of the prison estate

**Refurbishing Mountjoy Prison**

In chapter 3 we described how in the early part of the last decade the IPS explored a number of options to modernise Mountjoy Prison. These included the demolition of the prison and rebuilding it on the same site and the alternative option of refurbishing the prison on a wing by wing basis. These proposals did not proceed for cost reasons, operational difficulties and also the fact that they did not meet the capacity requirements of the Prison Service. Following due consideration, a decision was taken to acquire a greenfield site close to the city on which a new prison development would be built. This ultimately led to the decision to acquire the site at Thornton Hall.

The original policy objective of the plan to build a new prison campus at Thornton Hall was to enable the IPS to close and replace Mountjoy Prison and to provide accommodation to meet anticipated increases in the prison population. As we noted in chapter 3 that plan was to provide a prison with a design capacity for 1,400 prisoners with flexibility to accommodate up to 2,200 prisoners. We also noted that the plan was subsequently modified, due to budgetary pressures, to provide for the development of the prison campus on a phased basis over an extended period of time.

The Review Group accepts the IPS position that it would not be feasible to redevelop Mountjoy given current circumstances and operational constraints. We do not, however, believe that it will be possible to close Mountjoy in the short or medium term. It will therefore be necessary for upgrading to be carried out which will result in a reduction of capacity in this prison.

### **Extend the Prison Estate**

The IPS briefed the Review Group on current building projects as well as the potential scope to add additional capacity to the existing prison estate which we discussed in chapter 2. Undertaking further expansion at these sites would help to meet the shortfall in current capacity by providing approximately 600 spaces at a cost of approximately €X million. The advantage of this option is that there would be some cost savings from having the basic prison infrastructure such as gatelock, visiting facilities, regime activities and administrative offices already in place. The disadvantage of this option is that it does not provide the spaces in the areas where the IPS has identified the primary need being the greater Dublin area and in Cork. In addition this type of development will be restrictive in terms of the regime which can be facilitated.

### **Recommendations**

The Review Group have an integrated set of recommendations which will result in appropriate and effective intervention in the criminal Justice system. These recommendations will, over time, result in a more effective management of the prison population, in terms of current custody standards, capacity, risks to the State and future prison population growth.

### ***Plans for the prison development at Thornton Hall***

We have noted that Mountjoy Prison is overcrowded and lacks the infrastructure to provide regime activities on a sufficient scale to match the prison population. Although it has a recommended capacity for less than 540 prisoners, on the 29 June 2011, it had 604 prisoners in custody and 168 prisoners on temporary release. The lack of in-cell sanitation and other structural deficiencies at the prison exposes the State to substantial

operational, reputational, financial and legal risk. We have noted in earlier chapters, refurbishing the prison, while welcome, is only a temporary solution to the problem and will not address other structural deficits such as the lack of space to deliver structured regime activity for the prison population.

The Review Group is of the opinion that building a new prison at Thornton Hall is necessary although not on the same scale as the original concept where the prison was to have a maximum capacity for up to 2,200 prisoners. There still remains a need to address conditions at Mountjoy Prison as well as the need to ensure that there is an adequate stock of prison accommodation throughout the system that meets required standards.

***We recommend that the Government build a new prison at Thornton Hall on a reduced scale.*** We are of the view that the new prison should contain a mix of accommodation which places more emphasis on open or step down type accommodation. ***We recommend that the design of the prison should provide for 300 cells capable of accommodating 500 prisoners. In addition, the prison should have 20 secure step-down facilities, similar to the houses in the Grove area of Castlerea prison, capable of accommodating up to 200 prisoners in an open centre type setting within the secure perimeter.*** The development should be supported by the design and provision of structured regime activities to cater for this population.

While the original plans for Thornton contained step down or pre-release accommodation, Phase I of the revised plan was purely a traditional cellular prison design and included the construction of support facilities to cater for development to take place in Phase II and Phase III. The design we are proposing will be better able to deliver on the principles of normalisation, progression and reintegration.

We recognise that this means that Mountjoy Prison will have to remain open for the foreseeable future. As long as it remains open, there is a need to continue efforts to improve conditions at the prison. The Group believes that when taken in conjunction with our recommendation regarding Community Service orders the IPS will be able to reduce the number of prisoners in custody in Mountjoy Prison in keeping with the capacity recommended by the Inspector of Prisons which, in turn, will better facilitate the provision of structured regime activities for those in custody. We stress that if the Government decides to accept this recommendation, it is imperative that it provides the Irish Prison Service with the resources and staff necessary to operate the prison regime at Thornton and Mountjoy in a manner that enables delivery of normalisation, progression and reintegration.

We noted in chapter 3 that work is in progress to increase the capacity at the Dóchas Centre which will address the current overcrowding problem at the prison. Given the fact that the male prison will remain open at least in the short to medium term, we do not believe that there is any justification at this time to close the Dóchas Centre and relocate it to the Thornton site.

### **Cork Prison/Kilworth**

As noted above we have recommended the scaling down of the proposed prison development at Thornton Hall. This will significantly reduce the cost of developing the prison by an estimated €X million. This recommendation has, in part, been informed by the urgent and critical need for intervention in Cork prison. ***We recommend that the balance of the sums to be allocated for the Thornton project be used to build new prison facilities at Kilworth to replace Cork Prison and that Cork Prison should be closed on the earliest possible occasion.*** The Review Group are concerned about the exposure to operation, reputational, legal and financial risk arising from the poor conditions and overcrowding problems at Cork Prison, which the Review Group has identified, together with Mountjoy, as most in need of immediate intervention. Cork Prison is extremely overcrowded.

On 29 June, 2011 Cork Prison had a design capacity for 150 prisoners, but it had 300 prisoners in custody and 166 prisoners on temporary release. The poor physical infrastructure and lack of space at Cork Prison means that there is no scope for a minimally acceptable prison regime there. The Review Group are of the view that it would serve no practical purpose to spend money on putting in-cell sanitation into the prison. Doing so would reduce the prison's bed capacity by up to 50% and would create more strain on the capacity of the prison system. It would also likely lead to much higher rates of temporary release at Cork Prison, and the associated public safety risk, as there is no spare capacity in the prison system to absorb the number of prisoners who would be displaced.

***We recommend that the Government replace Cork Prison, as a matter of urgency, with a new prison development at Kilworth. The new prison at Kilworth should provide 200 cells with a capacity to accommodate up to 350 prisoners. In addition, a further 150 spaces should be provided in secure step down, housing type, facilities on the site within the secure perimeter of the prison.*** This type of facility is consistent with the Thornton Hall development recommendation and facilitates the type of progression in regime required to support the policy recommendations being made by the review group.

The new prison with a mix of closed and step down facilities as well as the use of modern security technology will mean that it will be cost neutral from an operational budget perspective.

The Review Group is concerned that recommendations in relation to Thornton Hall and Kilworth could be viewed as mutually exclusive. This is not the case. The recommendation in relation to the two sites should be viewed as one, in terms of dealing with the clear and present risks facing the State.

## **Earned Release**

The Review Group considers that the problem of overcrowding in prisons can be addressed in combination with the other measures we have suggested by increasing the number of prisoners on discretionary temporary release subject to certain conditions. A prisoner on temporary release continues to serve his or her sentence and may be returned to prison if he or she breaches any of the conditions of release.

***We recommend that the Minister for Justice and Equality should introduce an incentivised scheme for earned temporary release coupled with a requirement to do community service under supervision.*** The scheme could provide for an electronic tag and/or a curfew requirement, if required. The point is to create a framework in which the offender is more likely to reintegrate, and also pay back the community with a concrete benefit.

## ***Alternatives to Custody***

Imprisonment is an expensive sanction and prisons are expensive to build and to operate. Offenders discharged from prisons show higher rates of reoffending than offenders given other sanctions although this can perhaps be explained when one considers that criminals who end up in prison are generally of a more serious type than those who benefit from non-custodial options.

Reduction in the use of imprisonment as a sanction can be achieved by substituting more cost effective sanctions for less serious offences where appropriate. As a society we need to consider alternatives to prison. We recommend that greater use be made of Community Service Orders as set out in chapter 5 of our report.

***We recommend the introducing a system of home detention in appropriate cases whereby offenders would be confined to their homes during specified times, for the duration of their sentence, under strict supervision and conditions.***

## **Strategic Review of Penal Policy**

We recognise that the recommendations we have described above are not of their own solution for the dealing with the problem of overcrowding and poor conditions in some of our prisons. It will simply address the medium term needs of the Prison System. ***We, recommend that an all encompassing strategic review of penal policy should be carried out which will incorporate an examination and analysis of all aspects of penal policy including prevention, sentencing policies, alternatives to custody, accommodation and regimes, support for reintegration and rehabilitation, the issue of female prisoners and 16 and 17 year olds within the system.***

## **Prisoners with Mental Health Issues**

We noted in chapter 4 that imprisonment can aggravate mental health problems for people suffering from mental illness. We acknowledge that the problem of prisoners with mental health issues is one which needs to be addressed urgently. The Group also believes that people with mental health problems should be treated in a healthcare, as opposed to a prison, environment and, in this context, ***we recommend that the Government set up an inter-departmental group to examine the issue of people with mental illness coming into the criminal justice system.***

## **St. Patrick's Institution and Oberstown**

The Children Act 2001 provides that supervision of children age 16/17 who are sentenced to detention by the courts should be detained in a children detention school or children detention centre and should not be detained at St. Patrick's Institution. ***Pending the construction of new facilities at Oberstown House by the Irish Youth Justice Service, we recommend that to facilitate the transition the staff at Oberstown House be given the opportunity to work alongside prison staff at St. Patrick's Institution so as to assist in effecting a seamless transfer of responsibilities at the appropriate time.***



## **Statistical data**

We made the point elsewhere in our report that there is a general perception that a large number of persons convicted of relatively minor offences receive short prison sentences, and that there has been a marked increase in recent years in the length of sentences imposed for more serious crimes. The veracity of this perception is difficult to assess due to the lack of statistical information on sentencing practice in Irish courts.

The Review Group note that the Courts Service in 2007 established a project to plan for and provide information on sentencing decisions. This project is known as the Irish Sentencing Information System or ISIS ([www.irishsentencing.ie](http://www.irishsentencing.ie)). It aims to design and develop a computerised information system, on sentences and other penalties imposed for offences in criminal proceedings, which may inform judges when considering the sentence to be imposed for particular types of offences in previous cases. The system provides information; it is not, of course, intended in any way to interfere with the independence of the individual judges in imposing sentence. The project is overseen by a Steering Committee of judges, together with an expert on sentencing law, Mr. Tom O'Malley of NUI Galway. ISIS carried out pilot research projects in the Cork and Limerick Circuit Criminal Court, the Dublin District Court and the Court of Criminal Appeal. The results of these projects are published on the ISIS website, and provide very interesting real life information on sentencing practice.

We would suggest that, with the co-operation of the judges, that it would be desirable to extend the collection of sentencing information through ISIS or a similarly structured system. Discussions on sentencing, and on non-custodial alternatives, have previously taken place through the Judicial Studies Institute. All these issues, and the possible issue of judicially framed guidelines, could form part of the programme of the proposed Judicial Council.

The Review Group understands that legislation to provide for such a Council was drafted some years ago at the instigation of the judiciary itself. It is to be hoped that progress can be made towards its establishment.

Finally, we believe that the various practical measures we have recommended should not be seen as an end in themselves. It is in this context that we recommend a strategic review of penal policy within the State. We also suggest that the impact of the recommendations made in the report and other legislative measures such as the Fines Act and the Community Service Order Bill should be reviewed, perhaps after five years, in the context of the need to provide safe and secure custody and in light of the outcome of the strategic review of penal policy.

In suggesting a way forward we hope that this report will lead to a penal system that is both principled and sustainable.

## Appendix 1

### List of submissions received:

- 1) Mr. Dermot Diamond,
- 2) Construction Industry Federation,
- 3) Fr. Ciarán Enright, Head Chaplain, Irish Prison Service
- 4) Mr. Noel Browning,
- 5) Ms. Nadette Foley, Facing Forward Steering Group.
- 6) Chairman, Prison Authority Interim Board,
- 7) Prison Officers' Association,
- 8) Irish Penal Reform Trust,
- 9) Mr. Kevin Warner,
- 10) Jesuit Centre for Faith and Justice,
- 11) Katharine Howard Foundation,
- 12) Professor Ian O'Donnell, Institute of Criminology, University College Dublin.

## **Appendix 2**

### **European Prison Law and Human Rights**

The human-rights approach to the status of prisoners is most clearly stated in European prison law and policy. The aim of this Appendix is to summarise the main principles of human rights in the context of prison policy and practice. The best source for information on this subject is: Dirk van Zyl Smit & Sonja Snacken *Principles of European Prison law and Policy* (Oxford: Oxford University Press 2009).

#### ***The Prisoner in Europe is a Bearer of Rights***

European law and prison policy has departed from the notion that prison authorities have unrestrained discretion, and is evolving the idea that people in prison have rights and not just privileges. In other words, the prisoner retains the status of a rights-bearer.

The primary sources of European prison law and principle comprise: the case law of the European Court of Human Rights, the reports of the Committee for the Prevention of Torture, and the Council of Europe. The Council of Europe has made Recommendations designed to fashion European human-rights standards for the prison setting. It has also made the 2006 European Prison Rules. The Inspector of Prisons in Ireland has set out minimum standards The Basic Principles set out in the 2006 European Prison Rules gives guidance on the rights of people in prison. Rule 1 expresses the principle that, 'All persons deprived of their liberty shall be treated with respect for their human rights'.

#### ***Imprisonment is Punishment and is not for Punishment***

The principle of respect for human rights in prison has an articulate fit with the principle that imprisonment is the punishment and is not for punishment. The latter principle is reflected in the first three of the nine Basic principles of the European Rules. Those Rules read:

1. All persons deprived of their liberty shall be treated with respect for their human rights.
2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.
3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

Moreover, Rule 102.2 of the European Prison Rules says that, 'Imprisonment is by the deprivation of liberty a punishment in itself and therefore the regime for sentenced prisoners shall not aggravate the suffering inherent in prison'.<sup>1</sup>

The upshot is that no other 'pains of imprisonment' should be intentionally inflicted on people in prison. The rights of prisoners should only be limited if the requirements of legality and proportionality are satisfied. Legality requires that all restrictions on their rights should be spelt out in law. The principle of proportionality holds that restrictions should be the minimum necessary. The objective is to prevent disproportionately severe restrictions.

Through the gradual accretion of case law the European Court of Human Rights is developing a principled, human-rights approach to prison law and policy. Early cases adhered to the view that the deprivation of liberty involved in imprisonment automatically entailed loss of other rights and liberties. In 1975 the European Court of Human Rights moved away from this notion of inherent limitations. In *Golder v United Kingdom*,<sup>2</sup> the question before the court was the right of a prisoner to write a letter to his solicitor about a libel action that he wished to bring against a prison officer. The Home Secretary refused him permission to consult with his solicitor. The court ruled that the refusal breached the right of access to a court under Article 6 and the right to correspond under Article 8 of the ECHR. Striking is the court's rejection of the theory that the status of prisoners means that their rights are subject to

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<sup>1</sup> The European Court of Human Rights invoked this Rule in *Leger v France* 19342/02 [2006] ECHR 380 (11 April 2006) at para 44.

<sup>2</sup> 4451/70 [1975] ECHR 1 (21 February 1975).

automatic, inherent limitations. The gist of the court's reasoning is the necessity for interference with the rights of people in prison must be evaluated with reference to the 'ordinary and reasonable requirements of imprisonment' but that the interference has to be 'stipulated by law' and should be in accordance with the proportionality test, that is, 'necessary in a democratic society' and for the attainment of a 'legitimate aim' stipulated by the Convention.<sup>3</sup>

In *Hirst v United Kingdom (no 2)*,<sup>4</sup> the Grand Chamber of the European Court of Human Rights said: 'In this case, the Court would begin by underlining that prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty, where lawfully imposed detention expressly falls within the scope of Article 5 of the Convention.'<sup>5</sup> The obligation to respect and protect the human rights of prisoners is a positive obligation. Thus Rule 4 of the Basic Principles of the 2006 European Prison Rules says that, 'Prison conditions that infringe prisoners' rights are not justified by the lack of resources'. This principle harmonises with the case law of the European Court of Human Rights, which holds that prison overcrowding can amount to inhuman and degrading treatment in breach of Article 3 of the European Convention on Human Rights, even if the bad conditions are not intentionally imposed on prisoners but is the result of a lack of resources.<sup>6</sup>

### ***Imprisonment should be used as a Last Resort***

The loss of personal liberty is a profound interference in the lives of prisoners. It also has harmful implications for prisoners' families. For this reason European prison policy recommends the use of imprisonment as a last resort. The Recommendation formally adopting the 2006 European Prison Rules says that 'no one shall be deprived of liberty save as a measure of last resort and in accordance with a procedure prescribed by law'.

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<sup>3</sup> At para 45.

<sup>4</sup> 74025/01 [2005] ECHR 681 [GC] (6 October 2005).

<sup>5</sup> At para 69.

<sup>6</sup> *Poltoratskiy v Ukraine* 38812/97 [2003] echr 216 (29 April 2003) para 148.

Rutherford suggests that a reductionist penal policy is consistent with this principle.<sup>7</sup> A reductionist policy favours increasing the range of non-custodial sanctions and measures available, finds prison overcrowding unacceptable, and disfavours the expansion of prison capacity. The 1999 Recommendation concerning prison overcrowding and prison population inflation, in the section headed 'Basic Principles', provides as follows:

1. Deprivation of liberty should be regarded as a sanction or measure of last resort and should therefore be provided for only, where the seriousness of the offence would make any other sanction or measure clearly inadequate.
2. The extension of the prison estate should rather be an exceptional measure, as it is generally unlikely to offer a lasting solution to the problem of overcrowding. Countries whose prison capacity may be sufficient in overall terms but poorly adapted to local needs should try to achieve a more rational distribution of prison capacity.
3. Provision should be made for an appropriate array of community sanctions and measures, possibly graded in terms of relative severity; prosecutors and judges should be prompted to use them as widely as possible.
4. Member states should consider the possibility of decriminalising certain types of offence or reclassifying them so that they do not attract penalties entailing the deprivation of liberty.
5. In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of the main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing sentencing practices.

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<sup>7</sup> Rutherford, *Prisons and the Process of Justice: The Reductionist Challenge* (London: Heinemann, 1984).

***The 'principle of normalisation' holds that the prison regime should be like society outside as far as possible***

The European Prison Rules express the principle of normalisation. Thus Rule 5 of the Basic Principles of the 2006 European Prison Rules says that, 'Life in prison shall approximate as closely as possible the positive aspects of life in the community'. That principle flows logically from the principle that imprisonment is the punishment and is not for punishment. The point is that if the deprivation of liberty suffices for the purposes of punishment, then the prison regime should be like the society outside prison as far as possible. It is striking that Rule 5 says that the prison regime should come as close as possible to the 'positive aspects' of life outside. This is intended to prevent the quality of life for prisoners collapsing to the level of the worst-off in society and to ensure that services positively contribute to humane prison conditions.

Normalisation has two main dimensions. First, at the personal level it aims to develop a prison regime that recognises that the prisoner has other important social roles. He or she may be a parent or spouse or domestic partner. He or she may have children and friends in outside society. The social role of the prisoner as a family member in his or her normal society outside, for example, is recognised by allowing family visits. The collective level of normalisation, second, requires offering services inside prison that are like those offered in the society outside. The services include, for example, health care, education, and training. The nature and quality of those services should reflect the idea that prisoners as human persons are equally intrinsically valuable.

***The prison regime should facilitate the reintegration of prisoners back into society***

Rule 6 of the 2006 European Prison Rules states as a Basic Principle the requirement that, 'All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty'. Here reintegration refers to the objective of enhancing the capacities of prisoners to return to and function normally in society after their release. Rule 102.1 says that, 'In addition to the rules that apply to all prisoners, the



regime for sentenced prisoners shall be designed to enable them to lead a responsible and crime-free life'. The upshot is that the prison administration must attend to each new prisoner's future by clearly defining the main function of his or her prison sentence and managing it so that every means is used to help him or her towards successful reintegration. Consistent with this principle, the Grand Chamber of the European Court of Human Rights endorsed 'the idea of re-socialisation through the fostering of personal responsibility'.<sup>8</sup> The Council of Europe has also endorsed the principle of reintegration in several recommendations that seek to promote the preparation for and application of early release for all prisoners in the member States of the Council of Europe.<sup>9</sup>

The principle of reintegration goes further than this. It also requires prison administrations to consider how best to release prisoners to help reintegration. This means that all prisoners should at least be considered for release. Thought-out steps should be taken to give prisoners the best possible opportunity to reintegrate themselves into society. They need to be physically and mentally healthy, and to have a fair chance to train or educate themselves while in prison. The release procedures should be structured in a way that helps reintegration. When early release is allowed, for instance, conditions may be used to make reintegration more likely. Rule 7 of the 2006 European Prison Rules says that, 'Co-operation with outside social services and as far as possible the involvement of civil society in prison life shall be encouraged'. The idea is to promote a continuity of services so that prisoners have appropriate supports from cell to community.

### ***Prison officers and staff perform an important public service***

The interaction of prison staff and prisoners determines the climate of day-to-day prison life. Rule 8 of the European Prison Rules says that, 'Prison staff carry out an important public service and their recruitment, training and conditions of work shall enable them to maintain high standards in their care

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<sup>8</sup> *Dickson v United Kingdom* [GC] 44362/04 [2007] ECHR 1050 (4 December 2007) para 28.

<sup>9</sup> Recommendation Rec (2003)22 on conditional release (parole), and Recommendation Rec (2003)23 on the management of the prison administration of life-sentence and other long-term prisoners.

of prisoners'. Properly recruited and trained prison officers are 'the cornerstone of a humane prison system'.<sup>10</sup> They are more likely to be able to adopt less authoritarian styles of interacting with prisoners. The professionalism of prison officers requires that they should be able to deal with prisoners in a decent and humane manner while attending to matters of security and good order. The CPT urges prison management to encourage prison officers and other staff to have a reasonable sense of trust and expectation that prisoners are willing to behave. It says that the approach of prison officers should be based on 'a spirit of communication and care which should accompany measures of control and containment'.<sup>11</sup>

***Promoting respect for human rights in prison is an essential part of sound prison management***

A commitment to respect for human rights in prison is an essential part of sound prison management. Rule 72.1 (a) of the European Prison Rules says that,

Prisoners should be managed within an ethical context which recognises the human dignity of all prisoners, and according to consistently high standards that are in line with international human rights instruments.

***Government inspection and independent monitoring of prisons is required***

Rule 9 of the European Prison Rules gives the requirement for inspection and independent monitoring of prisons to the status of a Basic Principle:

All prisons shall be subject to regular government inspection and independent monitoring

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<sup>10</sup> CPT 11th General Report [CPT/Inf (2000)P 16] para 26.

<sup>11</sup> CPT 2nd General Report [CPT/Inf (92) 3] para 45.

### ***The Principle of Non-discrimination***

The European Prison Rules should be applied without discrimination. Rule 13 prohibits any discrimination on grounds 'such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.<sup>12</sup>

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<sup>12</sup> See *Stummer v Austria* 11 October 2007 (Admissibility): The European Court of Human Rights declared admissible a complaint that a prisoner was being unfairly discriminated against by the failure to count in the time he had worked in prison for the purpose of his post-retirement pension.