

Shadow Report for Ireland’s Fifth Periodic Review Under the International Covenant on Civil and Political Rights

1. Summary of Report

1. The Irish prison system has many ongoing serious issues and areas for urgent concern.¹ This shadow (or alternative) report for Ireland’s fifth periodic review under the International Covenant on Civil and Political Rights (ICCPR) will only focus on the imprisonment of women. This singular focus is not to mitigate or, in anyway, lessen the seriousness of the issues affecting male prisoners—proliferation of short sentences for non-violent offences, over-crowding, lack of rehabilitative opportunities, high usage of restrictive regimes, and the warehousing of people with untreated mental illness—but to impress upon the Committee the retrograde steps being taken in the imprisonment of women in Ireland.

2. This report will support the periodic review process by providing additional information in light of the Committee’s previously published List of Issues. Particular focus will be maintained on two sections of the List of Issues: the right to life (arts. 6-7) (CCPR/C/IRL/Q/5, para. 13); and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the treatment of persons deprived of their liberty and privacy (arts. 7, 9-11 and 17) (CCPR/C/IRL/Q/5, para. 17).

3. Four key areas within female imprisonment in Ireland have been identified by the Jesuit for Faith and Justice for further consideration and interrogation by the Committee:

- 3.1 Unpublished Female Prison Investigation Reports.
- 3.2 Regression in Commitment to the Bangkok Rules on Female Imprisonment.
- 3.3 Expansion of Prison Capacity for Women.
- 3.4 High Level of Category A Complaints in Female Prisons.

2. Introduction

4. The Jesuit Centre for Faith and Justice (JCFJ) is an agency of the Irish Jesuit Province, dedicated to undertaking social analysis and theological reflection in relation to issues of social justice, including housing and homelessness, penal policy, environmental justice, and economic ethics. Established in 1978 by a small group of Jesuits living and working in the north side of Dublin city, the Centre was intended to promote social justice and critically examine issues of structural injustice and poverty.

¹ The most recent area of urgent concern is the incidence of six prisoners who had to be released ‘immediately’ as they had been given the incorrect sentence release date due to a miscalculation by the Irish Prison Service upon committal. See Helen McEntee TD, ‘Departmental Reviews – Parliamentary Questions (33rd Dáil)’, Houses of the Oireachtas, 25 May 2022, <https://www.oireachtas.ie/en/debates/question/2022-05-25/167?highlight%5B0%5D=sentences>.

5. The JCFJ provides submissions to human rights agencies and Government departments requesting input in penal policy reform. Through research reports and advocacy, the Centre is focused on a number of key issues within penal reform. Our ultimate goal is the formation of a climate of decarceration in which the number of people being imprisoned will continually decrease. For those who do serve a custodial sentence, prison should be a safe and humane environment with rehabilitative services accessible in prison and effective services on leaving prison to aid re-integration.

3. Responses to List of Issues (CCPR/C/IRL/Q/5)

3.1 Unpublished Female Prison Investigation Reports

Point of Response: **Prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the treatment of persons deprived of their liberty and privacy (arts. 7,9-111 and 17) (CCPR/C/IRL/Q/5, para. 17).**

6. Following the submission of two investigative reports on conduct within the Dóchas Centre (Mountjoy female prison) to the current Minister for Justice, the Department of Justice have decided to publish neither report. Both reports were completed and furnished to the Minister by the Office of the Inspector of Prisons. The former, a “three-day monitoring report,” has been with the Department since August 2020 and its publication has been on hold as the Minister wanted to consider the report in light of the latter. The second report, an investigative report ordered by the Minister for Justice under section 31(2) of the Prisons Act, was submitted by the Inspector of Prisons in February this year. The stated justification for the reports to remain unpublished was based on legal counsel sought by the Minister and her Department.

7. In response to parliamentary questions, seeking further clarification on the ongoing safety of the women in custody and the existence of potential criminal investigations, the Minister reaffirmed her initial position that the reports would not be published. She added that “[b]ased on legal advice received by my Department, it is not proposed to publish these report at this time, or to comment on the considerations which prevent publication.”² No reassurances were made to civil society or human rights bodies that the conduct which initiated both reports, no longer posed a risk to the safe and humane custody of the women held in the Dóchas Centre. Little is known about the serious issues which occurred in the Dóchas Centre—prompting the Minister to order a statutory inquiry—though media reports suggest that the issues include the “manipulation of prisoners by some staff

² Helen McEntee TD, ‘Departmental Reports – Parliamentary Questions (33rd Dáil)’, Houses of the Oireachtas, 25 May 2022, <https://www.oireachtas.ie/en/debates/question/2022-05-25/165?highlight%5B0%5D=d%C3%83%C2%B3chas&highlight%5B1%5D=d%C3%83%C2%B3chas&highlight%5B2%5D=d%C3%83%C2%B3chas>.

members and the use of prisoners by some staff to target other staff members.”³ Eighteen months previous, incidences of “verbal abuse, xenophobic remarks, threatening language and pointed exclusion/favouritism of others” in the Dóchas Centre became public in the Dóchas Chaplaincy Service’s annual report.⁴

8. With the likelihood of the publication of either report in a timely or transparent manner now closed, it raises serious concerns over both the Department of Justice’s ability to fulfil its remit on the State’s commitment to the Istanbul Convention and the goal of combatting gender-based violence. Former Minister for Justice, Charlie Flanagan TD, announced Ireland’s ratification of the Istanbul Convention committing the Irish Government to prevent and combat violence against women, including domestic violence.⁵ Article 5 of the Istanbul Convention states explicitly that “[p]arties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation.”⁶

9. As an international legal document, the Istanbul Convention understands violence against woman broadly to include domestic violence, sexual harassment, and psychological violence. While likely related to a small number of staff, this conduct likely falls within the definition provided by the Istanbul Convention, ratified on behalf of the State by the former Minister for Justice. Ultimately, the alleged conduct must have been deemed of a degree serious enough in order to prompt the direct ordering of an investigative report by the Minister for Justice.

Recommendation/s:

- **Immediate publication of both reports - the three-day monitoring report and the statutory inquiry under section 31(2) of the Prisons Act – by the Minister.**
- **Legislative changes are required so reports can be published directly by the Office of the Inspector of Prisons.**

³ Mick Clifford, ‘TD’s Call for More Capacity in Prisons Displays Ignorance of Penal Policy’, Irish Examiner, 5 May 2022, <https://www.irishexaminer.com/opinion/commentanalysis/arid-40865414.html>.

⁴ Dóchas Chaplaincy Service, ‘Dóchas Chaplain’s Report 2019’ (Irish Prison Service, 2019), 7, https://www.irishprisons.ie/wp-content/uploads/documents_pdf/CR_Dochas-Centre-2019.pdf.

⁵ Department of Justice, ‘Minister Flanagan Announces Ratification of the Istanbul Convention by Ireland on International Women’s Day’, Department of Justice, 8 March 2019, <https://www.justice.ie/en/JELR/Pages/PR19000066>.

⁶ Council of Europe, ‘Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’, 2011, <https://rm.coe.int/168008482e>.

3.2 Regression in Commitment to the Bangkok Rules on Female Imprisonment

Relevant Article: **The right to life (arts. 6-7) (CCPR/C/IRL/Q/5, para. 13)**

10. Since Ireland's fourth periodic review under the ICCPR, and in direct conflict with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), the Dóchas Centre implemented a regime change for its female prisoners more in keeping with how a male prison functions. Towards the end of 2019, the overall regime became more restrictive with a greater focus on security and less out-of-cell time.

11. Coinciding with high levels of over-crowding, the shift in the prison regime in the Dóchas centre resulted in out-of-cell time being cut by a third.⁷ Before the regime change, women in the six standard houses had a daily unlock time of 11 hours and 10 minutes, running from 08.20 to 19.30. Women in the four privileged houses had a daily unlock time of 11 hours and 20 minutes. Following the change in policy, the six standard houses were unlocked from 08.15 to 08.30, from 09.15 to 12.00, from 14.10 to 16.30, and from 17.15 to 19.30, totalling seven hours and 35 minutes. This represented a 32% decrease on out-of-cell time for women in the standard houses.⁸

12. At a time when female prisons should be continually moving towards low-security and open options, we are witnessing instead the progressive 'masculinisation' of female imprisonment in Ireland. When the Minister was asked about how the recent changes in regime were in line with the *spirit* of the Bangkok Rules, she claimed that the Irish Prison Service operated in "full compliance" with the Rules.⁹ Considering the recent loss of out-of-cell time for prisoners in the Dóchas Centre, this challenges the Department of Justice's narrow interpretation of the Bangkok Rules, its assessment of having satisfied the Standards, and its culture towards only meeting the minimal standards required.

Recommendation

- **The regime in the Dóchas Centre should be restored to maximal out-of-cell time for female prisoners under their care.**

⁷ Dóchas Chaplaincy Service, 'Dóchas Chaplain's Report 2019', 5.

⁸ Dóchas Chaplaincy Service, 5.

⁹ Helen McEntee TD, 'Prison Service – Parliamentary Questions (33rd Dáil)', Houses of the Oireachtas, 15 December 2021, <https://www.oireachtas.ie/en/debates/question/2021-12-15/157?highlight%5B0%5D=d%C3%83%C2%B3chas&highlight%5B1%5D=dochas&highlight%5B2%5D=dochas&highlight%5B3%5D=dochas>.

3.3 Expansion of Prison Capacity for Women

Relevant Article: The right to life (arts. 6-7) (CCPR/C/IRL/Q/5, para. 13)

13. The opening of a new prison block at Limerick Prison later in 2022, with capacity for 50 women,¹⁰ will increase the official capacity for female prisoners across the Irish prison estate to 196 spaces. This is an increase of almost 50% from 133 spaces less than three years ago, and indicates a dramatic shift in prison policy for women.

14. On 12th December 2019, the State's capacity for female prisoners increased from 133 spaces to 174 spaces [146 in the Dóchas Centre and 28 in Limerick]; an increase of a third. The original design capacity of the Dóchas Centre was increased from 105 to 146 women. In response to a number of parliamentary questions in December 2020, following the Council of Europe's Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT) report on Ireland, Minister for Justice Helen McEntee TD said that the Department's response to overcrowding a year earlier was to have the Irish Prison Service conduct a full cell audit to maximise occupancy.¹¹ Confirmed clearly by the Minister, the overall aim of the 2019 exercise was "an examination of the capacity of cellular accommodation in accordance with minimum standards for multiple occupancy."¹²

15. Administratively, 'overcrowding' disappeared in the Dóchas Centre when the minimum standards were applied, as the percentage of prisoners to bed spaces decreased from 133% to 96% without one prisoner being released or any extension added to the buildings. It is of no coincidence that this process of formalised overcrowding and the shift to a more restrictive regime with less out-of-cell time occurred almost simultaneously.

16. At present, there are 36 female prisoners in Limerick prison (129% of bed capacity of 28) and 130 female prisoners in the Dóchas Centre (89% of the revised bed capacity of 146).¹³ Almost a third of the women in Irish prisons are on remand at any time.

17. The development of the new Limerick Prison block for women should also be a source of concern for those seeking a decarceral approach to female imprisonment. Firstly, a salient point is that, for generations, Irish prison committals have always risen in line with increased capacity. Yet, the vast majority of women are imprisoned for non-violent property crimes. On March 31st 2022, there were

¹⁰ Helen McEntee TD, 'Prison Service – Parliamentary Questions (33rd Dáil)', 4 May 2022, <https://www.oireachtas.ie/en/debates/question/2022-05-04/363?highlight%5B0%5D=prisoners&highlight%5B1%5D=prison&highlight%5B2%5D=limerick&highlight%5B3%5D=prison>.

¹¹ Helen McEntee TD, 'Prison Mental Health Services – Parliamentary Questions (33rd Dáil)', Houses of the Oireachtas, 10 December 2020, <https://www.oireachtas.ie/en/debates/question/2020-12-10/55?highlight%5B0%5D=capacity&highlight%5B1%5D=capacity&highlight%5B2%5D=d%C3%83%C2%B3chas>.

¹² McEntee TD.

¹³ Irish Prison Service, 'Prisoner Population on Monday 23rd May 2022', 23 May 2022, https://www.irishprisons.ie/wp-content/uploads/documents_pdf/23-May-2022.pdf.

32 women under sentence for theft or related offences in the Dóchas Centre, of which 16 of these sentences were for shoplifting.¹⁴ On that night, there were 92 women (not including remand prisoners) in the Dóchas Centre — so over a sixth of women under sentence were there for shoplifting. More prison capacity will likely result in more capacity for women sentenced for non-violent offenses.

18. Secondly, at the end of March 2002, 100 women out of 130 (or 77%) in the Dóchas Centre self-reported that they had children.¹⁵ A similar proportion exist in the current female wing of Limerick prison. If the State's capacity for female prisoners increases at the end of 2022, more children will be separated from their mothers for, what are typically, short sentences for non-violent property crimes. All the sequelae of imprisoning primary care-givers will be increased for more families.

19. Thirdly, the promised development of better facilities and trauma-sensitive practice at the new female wing of Limerick Prison is a positive change. However, there is the risk of a two-tier prison system for women developing. One (Limerick) is more attuned to the differences in female imprisonment as outlined in the Bangkok Rules but the other (Dóchas Centre) is modelled on a 'masculinised' regime with a focus on security and reduced out-of-cell time.

Recommendation:

- **With the new capacity in Limerick Prison, the Dóchas Centre should now revert back to the original design capacity of 105 women and its founding regime should be reinstated.**

¹⁴ Helen McEntee TD, 'Prison Service – Parliamentary Questions (33rd Dáil)', text, Houses of the Oireachtas, 4 May 2022, <https://www.oireachtas.ie/en/debates/question/2022-05-04/362?highlight%5B0%5D=d%C3%83%C2%B3chas&highlight%5B1%5D=centre>.

¹⁵ Helen McEntee TD, 'Child Protection – Parliamentary Questions (33rd Dáil)', Houses of the Oireachtas, 10 May 2022, <https://www.oireachtas.ie/en/debates/question/2022-05-10/659?highlight%5B0%5D=doch%C3%83%C2%A1s&highlight%5B1%5D=centre&highlight%5B2%5D=d%C3%83%C2%B3chas&highlight%5B3%5D=centre>.

3.3 High Level of Category A Complaints in Female Prisons

Relevant Article: **Prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the treatment of persons deprived of their liberty and privacy (arts. 7,9-111 and 17) (CCPR/C/IRL/Q/5, para. 17).**

20. Of the 67 Category A complaints¹⁶ received in monthly reports by the Office of the Inspector of Prisons in 2020, eight were from the Dóchas Centre, which only had a population of 116 at the end of the year.¹⁷ Aware that many more women spent time in the Dóchas during the year, there was one Category A complaint for every 15 prisoners. The average across the prison estate is one for every 54 prisoners. Looking at this from a slightly different vantage point, the Dóchas Centre had 3.2% of the total prison population in 2020 but 11.9% of the Category A complaints in the prison system as a whole.

21. Timeliness is a key element of a functioning prison complaints system to maintain trust in the system for prisoners. At the time of the publication of the Inspector of Prisons' 2020 Annual Report in 2021, there were still a dozen cases outstanding from 2018, as yet unaddressed.¹⁸

22. Overall, 85 per cent (n=61) of the Category A complaints proceeded to the investigation stage by the IPS but only 25 (40 per cent) full investigation reports had been received by the Inspectorate with a further nine (15 per cent) interim reports, which are required if investigations take longer than three months. Only two (8 per cent) Category A complaints from 2020 were grounded or upheld. It may turn out that such a small proportion of successful claims is reasonable, but they are strikingly low numbers.

23. Overall, the Inspector of Prisons was concerned about "the poor adherence by the IPS to the law in relation to prisoner complaints" and concluded that levels of noncompliance renders "the present operation of the existing system inadequate and unreliable."¹⁹ These conclusions echo observations made by the Council of Europe CPT Inspectors in 2019 during a visit to Ireland.²⁰ The Inspector of Prisons also identified that the existence of "a robust and fair complaints system" is not just critically important for prisoners but also for prison staff and the wider public, so we can have confidence in what happens in our name. In both 2019 and 2020, the Inspectorate was informed by the IPS that it was their intention to have a new Prisoner Complaints System operational at the end of each respective year. No system has been implemented.

¹⁶ Category A Complaints are complaints made by a prisoner alleging serious ill treatment, use of excessive force, serious intimidation/discrimination or threats by a member of staff.

¹⁷ Office of the Inspector of Prisons, 'Annual Report 2020' (Dublin: Office of the Inspector of Prisons, 2020), 20–23.

¹⁸ Office of the Inspector of Prisons, 20–23.

¹⁹ Office of the Inspector of Prisons, 24.

²⁰ Council of Europe, 'Report to the Government of Ireland on the Visit to Ireland Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 4 October 2019.' (Strasbourg: Council of Europe, 2020), <https://rm.coe.int/1680a078cf>.

24. Prisoners are permitted to send and receive an unopened letter from the Inspector of Prisons. In 2020, the Office received 59 letters from prisoners, mostly in ones and twos from each prison each month. However, October 2020 clearly stands out as the Inspector received eleven letters²¹ from female prisoners during a time when reports of xenophobic bullying, harassment and intimidation were emerging.²² This small variance further underlines the importance of the Inspectorate to hear the voice of prisoners when they have no confidence in the internal complaint mechanism and risk reprisal and retaliation from prison officers.²³

Recommendation:

- **Expand the remit of the National Ombudsman to include complaints from prisoners.**

4. Conclusion

25. Transparency and accountability are core to the functioning of a safe and humane prison system. Without either, many cruelties and injustices can be perpetrated by the State in the name of its citizens, who trust the State with the task of imprisonment. While this shadow report was able to provide supporting information for the latter three of the four keys areas identified—regression in commitment to Bangkok Rules, expansion of prison capacity for women, and high level of Category A complaints in female prisons—little to no information could be provided on the most pressing area of concern.

26. The decision by the Department of Justice and the Minister for Justice to leave two reports by the Office of the Inspector of Prisons unpublished; risks both undermining trust in the State’s criminal justice system and further checking the limited independence of the Office of the Inspector of Prisons. If conduct which poses a risk to both the wellbeing of prisoners and prison staff²⁴ is hidden from public view, a culture of secrecy and opaqueness is created thereby setting the foundation for future degrading treatment and affronts to human dignity. Positively, the opportunity exists here for society to better understand its prisons but the decision by the State to keep this hidden from view prevents this process occurring. And the opportunity to seek change for how we treat those on the margins is foregone.

Report Details

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²¹ Office of the Inspector of Prisons, ‘Annual Report 2020’, 26–27.

²² Dóchas Chaplaincy Service, ‘Dóchas Chaplain’s Report 2019’.

²³ Noel Baker, ‘Prisoners Fear “reprisals” If They Make Complaints, Study Finds’, Irish Examiner, 20 January 2022, <https://www.irishexaminer.com/news/arid-40789419.html>.

²⁴ Clifford, ‘TD’s Call for More Capacity in Prisons Displays Ignorance of Penal Policy’.