



**IPRT Submission to
Department of Children, Equality, Disability, Integration and Youth:
Draft State Report to the
UN Committee on the Rights of the Child**

10th November 2021

About IPRT

Established in 1994, the Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for the rights of everyone in the penal system and the progressive reform of Irish penal policy, with prison as a sanction of last resort. We are committed to respecting the rights of everyone in the penal system, and to reducing the use of imprisonment. IPRT publishes a wide range of evidence-informed policy positions and research documents; we campaign across a wide range of penal policy issues; and we have established IPRT as the leading independent voice in public debate on the Irish penal system.

Introduction:

IPRT welcomes the opportunity to make a submission on the State's Draft Combined Fifth and Sixth State Report to the United Nations Committee on the Rights of the Child (CRC), in preparation for the final report that is due in February 2022.

In July 2021, IPRT launched a report, [*Piecing It Together: Supporting Children and Families with a Family Member in Prison in Ireland*](#). The report addressed the experience of children and families of people in prison in Ireland and made key recommendations to a variety of stakeholders such as the Government of Ireland, the Department of Justice, the Department of Children, Equality, Disability, Integration and Youth, the Irish Prison Service, and the Courts. A copy of the report is enclosed with this submission and IPRT invites the Department to closely consider its key findings and recommendations before finalising the State's Report. The enclosed report is very comprehensive and

therefore, IPRT will keep this submission brief, addressing only 1) the gaps in the State’s Draft Report as identified by IPRT and 2) a summary of IPRT’s recommendations for the State’s Report before submission to the CRC.

For context, please also note that IPRT is co-founder of the [Action for Children and Families of Prisoners Network](#). This Network consists of members from a variety of backgrounds such as researchers, academics, advocacy groups, community-based organisations, and people with experience of imprisonment. All members have expertise in the issues facing children and families of prisoners. The Network meets regularly, and its work includes monitoring the progress in implementing the recommendations made in IPRT’s *Piecing it Together* report.

1. Gaps in the State’s Draft Report:

Acknowledging Children with a Family Member in Prison:

In signing up to the United Nations Convention on the Rights of the Child (UNCRC) in 1992, Ireland committed to promoting and ensuring the rights of all children. This is reflected in the amended article 42A of the Constitution of Ireland which states that “*all children*” are rightsholders and the State is responsible for the protection and vindication of such rights.¹ Thus, all rights outlined in the UNCRC apply equally to children with a family member in prison. Notwithstanding, the Draft State Report to the CRC contains no mention of this specific cohort of children. This suggests that this group of children are not being acknowledged as a distinct group with a distinct set of needs. Recommendation 6.1 of IPRT’s report, *Piecing It Together* upholds that:

“All government departments should recognise children with a family member in prison as a specific cohort in need of support, and at increased risk of negative outcomes, in all relevant policies, reports, briefings and papers.”²

This recommendation has been completely overlooked in the Draft State Report. IPRT urge the State to include an acknowledgement of the needs of children with a family member in prison in the final State Report.

General Measures and Implementation:

Under ‘General Measures and Implementation Art. 4(a)’, the Draft State Report have highlighted that the UNCRC does not form part of domestic law. IPRT strongly advocate that the State must fully incorporate the UNCRC into Irish law to ensure that all public bodies comply with the Convention and to allow citizens to rely on the Convention before the Irish courts (see Recommendation 1.2 of *Piecing it Together*).³

¹ Constitution of Ireland, Amended Article 42a: *The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.*

² Irish Penal Reform Trust (IPRT), (2021). *Piecing It Together: Supporting Children and Families with a Family Member in Prison in Ireland*. [Online]. IPRT. Available from: https://www.iprt.ie/site/assets/files/6958/piecing_it_together_supporting_children_and_families.pdf. [10 November 2021]. Recommendation 6.1. P. 8.

³ Ibid. Recommendation 1.2. P.5.

Allocation of Resources:

Under 'Allocation of Resources 6(e)(e)', it is recommended that the State "*ensure that children, in particular those in vulnerable situations, are not affected by regressive measures taken in response to the COVID-19 pandemic*". The Draft State Report highlights that "[c]onsiderable efforts have been made to protect children and their families from the adverse effects of the COVID-19 pandemic". However, there is no mention of what measures were taken, or are intended to be taken, to reduce the negative impact of COVID-19 for children with a family member in prison.

While issues with facilitating quality family contact between children and their family members in prison existed before the pandemic, COVID-19 has intensified the separation of children from their family members in prison, as in-person visits were suspended on and off across the Irish Prison estate in 2020 and 2021 as a result of infection control measures.⁴ As in-person visits recommence, there are still several issues with the quality of these visits e.g. the current policy allows a maximum of one child only per visit and further requires that all visits involve the use of both screens and masks, with no physical contact allowed.⁵ These restrictive, non-contact visits have been found to have a particularly negative impact on young children who are left confused as to why they cannot touch their parents and find it difficult to sit still for long periods of time.⁶

The Draft State Report further does not mention the new measures of family contact introduced in prisons in 2020 (such as in-cell telephones and video calls), nor is there any reference to plans to ensure the continuation of such measures. While IPRT is clear that these alternative forms of family contact should be used only to supplement in-person visits, and not replace them, it would be worth including reference to such measures in the final State Report.

Data Collection:

Under 'Data Collection 7(a)', it is recommended that the State "[i]mprove the collection and quality of disaggregated data on the implementation of the Convention". In this section, there is no mention of any action or intended action to collect and record data on the number of children with a family member in prison in Ireland. There is currently no data available in Ireland on the number of children with a parent in prison. Any data that has been collected by the Irish Prison Service is inadequate as it is only collected on committal to prison, relies upon voluntary disclosure, and does not include details about age or geographic location to map and target service provision.⁷ It has been estimated that approximately 5,267 children in Ireland have a parent in prison on any given day.⁸ Recommendation CM/Rec (2018) 5 of the Committee of Ministers to Member States concerning children with

⁴ Irish Prison Service, (2020). *Important Notice - Suspension of All Family Visits (Professional visits remain unaffected)* [Press Release]. [Online]. IPS. Available from: https://www.irishprisons.ie/wp-content/uploads/documents_pdf/Press-Release-suspension-of-visits-covid-19.pdf. [10 November 2021].

⁵ Irish Prison Service, (2021). *Visit a Prison*. [Online]. IPS. Available from: <https://www.irishprisons.ie/visiting-a-prison/>. [10 November 2021].

⁶ O'Dwyer, K., Kelliher, S. and Bowes, J. (2019). *Prisoners Returning Home: Prisoners and Family Reintegration*. [online]. Dublin: Childhood Development Initiative. Available from: <https://www.cdi.ie/wp-content/uploads/2019/11/CDI-Prisoners-Returning-Home-min.pdf>. [10 November 2021].

⁷ On 29 April 2021, there were 3,788 prisoners in custody, of whom 2,068 declared that they had children, and the total number of children declared was 5,150. See: Houses of the Oireachtas. (2021). Prisoner Data [online] Available from: <https://www.oireachtas.ie/en/debates/question/2021-05-05/466/> [10 November 2021]

⁸ Children of Prisoners Europe (COPE), (2021). Statistics in Ireland. [Online]. COPE. Available from: https://childrenofprisoners.eu/facts_and_figures/statistics-ireland/. [10 November 2021].

imprisoned parents ('The CoE Recommendation') makes clear that the prison administration should keep an updated record of the number of children each prisoner has, including their ages and their primary caregiver.⁹

General Principles:

Under 'General Principles 2,3,6 & 12', the State's Draft Report makes no reference to children with a family member in prison despite many of these principles being of particular relevance to this cohort of children:

General Principle 2 Relating to Non-Discrimination:

Article 2 of the UNCRC makes clear that States must ensure that the rights of the child are protected without discrimination based on the status of their parents, legal guardians or family members and that States should take "*appropriate measures*" to ensure this.¹⁰ Previous meetings of the CRC have highlighted issues facing children with a family member in prison and the importance of tackling social stigmatisation, social exclusion, and discrimination through targeted education programmes.¹¹ According to the CoE Recommendation, States are responsible for ensuring that awareness is raised of the specific needs of this cohort of children to reduce the risk of prejudice and discrimination.¹²

The State Report should accordingly bring attention to children with a family member in prison in Ireland by outlining any action taken, or any action intended to be taken, to ensure that awareness is raised on the specific needs of this cohort of children. The *Piecing It Together* report highlights how teachers can play a vital role in tackling discrimination and stigma and that schools should consider teacher training and awareness raising. Furthermore, the CoE Recommendation highlights the role professionals play in educating the public on the impact of imprisonment on children and families, and advocates for the public to be provided with "*reliable and up-to-date data and good practice examples*" to raise awareness of the numbers of children affected by imprisonment and reduce discrimination against this cohort.¹³

⁹ CM/Rec(2018)5 of the Council of Europe of 4 April 2018 to member States concerning children with imprisoned parents [online]. Available from: <https://rm.coe.int/cm-recommendation-2018-5-concerning-children-with-imprisoned-parents-e/16807b3438> [10 November 2021].

¹⁰ UN Convention on the Rights of the Child, Article 2 states "*State Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment based on the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.*"

¹¹ Robertson, O., (2012). *Collateral Convicts: Children of Incarcerated Parents Recommendations and Good Practice from the UN Committee on the Rights of the Child*. [online]. Geneva: Quaker United Nations Office. Available from: https://www.guno.org/sites/default/files/resources/ENGLISH_Collateral%20Convicts_Recommendations%20and%20good%20practice.pdf . [10 November 2021].

¹² CM/Rec(2018)5 of the Council of Europe of 4 April 2018 to member States concerning children with imprisoned parents [online]. Available from: <https://rm.coe.int/cm-recommendation-2018-5-concerning-children-with-imprisoned-parents-e/16807b3438>. [10 November 2021].

¹³ *ibid*

General Principle 3 & 12: Relating to the Best Interests and Views of the Child

Article 3 of the UNCRC upholds that the best interests of the child must be the “*primary consideration*” in any decisions or actions taken by “*public or private institutions, courts of law, administrative authorities or legislative bodies.*”¹⁴ Furthermore, Article 12 states that the child is “*capable of forming his or her own views*” and has the right to have those views heard in all matters which affect them including in “*any judicial and administrative proceedings*” either directly or through a representative body.

Under this heading in the Draft State Report, the majority of examples where the child’s best interests and views have been considered in decision-making processes relate to care and guardianship and there is no reference to the child being considered in sentencing decisions relating to a primary caregiver. Children have a fundamental right to be considered and heard at each stage of the criminal justice system and yet there is no mechanism in place in Ireland to ensure children’s best interests and views are taken into account in these situations.

IPRT would welcome the inclusion in the Draft State Report of any measures taken or intended to be taken to ensure that children’s best interests and views are incorporated into sentencing decisions made in respect of their parents/guardians, particularly where that person is the child’s primary caregiver. IPRT reinforces recommendation 4.3 of the *Piecing It Together* report and urges the Department of Justice to consider implementing a formal process whereby a child’s voice can be heard in all judicial decisions that may affect the child, including where the child’s primary caregiver may be sent to prison.¹⁵ If this is already a common practice in court proceedings, it should be recorded and outlined in the State report.

¹⁴ UN Convention on the Rights of the Child, Article 3(1) states “*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*”

¹⁵ Irish Penal Reform Trust (IPRT), (2021). *Piecing It Together: Supporting Children and Families with a Family Member in Prison in Ireland*. [Online]. IPRT. Available from: https://www.iprt.ie/site/assets/files/6958/piecing_it_together_supporting_children_and_families.pdf. [10 November 2021]. Recommendation 4.3. P.7.

1. Summary of Recommendations for the State's Report:

IPRT reiterates the importance of incorporation of the UNCRC into Irish law and recommends that the State provide a clear timeline for such incorporation within the final report submitted.

In the final report to the Committee on the Rights of the Child, the State should:

- acknowledge children with a family member in prison as a cohort with a distinct set of rights and needs, and address this group of children individually throughout the final State Report;
- acknowledge the negative impact of prison measures taken during COVID-19 on children with a family member in prison and outline what measures were taken (and will be taken) to reduce this negative impact and resume family visits as quickly as possible;
- outline what measures were taken, or what measures are intended to be taken, to improve the collection and quality of data on the number of children with a family member in prison in Ireland;
- outline what measures were taken, or what measures are intended to be taken, to raise awareness of the issues faced by children with a family member in prison in Ireland in order to reduce the stigmatisation, social exclusion and discrimination of this cohort of children;
- outline what measures are taken to ensure that the best interests of the child are considered in the sentencing of a primary caregiver in Ireland; and
- outline what measures are taken to ensure that the views of the child are heard, represented and respected in sentencing decisions relating to a primary caregiver in Ireland.

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