



Joint Committee on Disability Matters
Meeting to Discuss the Topic of ‘Accessing Justice’
23rd June 2022

Opening Statement

Thank you for the invitation to meet with the Joint Committee on Disability Matters today to discuss the topic of ‘Accessing Justice’.¹ People with disabilities are a significant but overlooked population in the Irish penal system, and IPRT accordingly welcomes the opportunity to highlight the challenges that these individuals face and identify the ways in which the State can better vindicate their rights in accordance with the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

By way of background, the Irish Penal Reform Trust (IPRT) is Ireland’s leading NGO campaigning for rights in the penal system and the progressive reform of Irish penal policy. Our core message is that a penal system that protects and promotes human rights, equality and social justice, and relies upon prison only as a measure of last resort, will contribute to safer communities for everyone.

The topic under discussion today is wide-ranging but in this brief opening statement we will focus on three key issues:

1. The lack of data on disability within the penal system.
2. The treatment of people with disabilities in the penal system.
3. The importance of diversion from the criminal justice system.

1. The Lack of Data on Disability within the Penal System

IPRT’s research has identified significant gaps in data on the prevalence of disability in Irish prisons.² Reasons for this may include some disabilities going unrecognised within the penal system³ and/or issues arising in respect of the screening tools used in prison.⁴

¹ It is important to note that, within the discussion today, IPRT will follow the guidance of Article 1 UNCRPD in defining persons with disabilities as “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

² Irish Penal Reform Trust (IPRT). (2020). *Making Rights Real for People with Disabilities in Prison*. [Online]. Available from: https://www.iprt.ie/site/assets/files/6565/people_with_disabilities_in_detention_-_single_pages.pdf. [17 June 2022]. Pp.10-12. [Hereinafter referred to as *Making Rights Real*].

³ *Ibid.*, at p.12. It is important to note, however, that the Irish Prison Service does deliver disability awareness training to staff as part of their recruit training and continuous professional development.

⁴ Gulati, G., Murphy, V., Clarke, A., Delcellier, K., Meagher, D., Kennedy, H., Fistein, E., Bogue, J. & Dunne, C.P. (2018). Intellectual disability in Irish prisoners: systematic review of prevalence. *International Journal of Prisoner Health*, 14(3):188-196.

The limited data that is available in Ireland primarily relates to psychosocial (mental health) disabilities and intellectual disabilities within the prison system. For example:

- a. Mental health among the prison population is a serious concern, with some studies estimating that the prevalence of severe mental illness among the prison population is four times that of the general population.⁵
- b. It is estimated that nearly one in three prisoners in Ireland have an intellectual disability (although data is incomplete).⁶ The Inspector of Mental Health Services has noted that people with intellectual disability are overrepresented in all parts of the criminal justice system, including police custody.⁷

The absence of robust and current data on the extent of disability, of all forms, within the prison population and those interacting with the criminal justice system makes it difficult to address the rights and needs of these individuals.

Recommendation 1. Systems for collection of data on disability should be devised and implemented across the criminal justice system to identify and address the barriers faced by people with disabilities in accessing their rights.⁸

2. The Treatment of People with Disabilities in the Penal System

Prisoners with disabilities face many challenges in navigating the prison environment. For example, IPRT's 2020 research report, *Making Rights Real for People with Disabilities in Prison*, identified as follows:

- a. Significant concerns about the environmental accessibility of Irish prisons for people with disabilities, with some individuals being unable to leave their cells or wings for large portions of their prison stay and accordingly have limited access to education, employment and recreational activities.⁹
- b. Difficulties for prisoners with disabilities in accessing healthcare services such as physiotherapy and speech therapy, as well as mental health supports that go beyond psychiatry.¹⁰
- c. Inaccessible information and a lack of information on the prison and its rules,¹¹ which in turn can cause difficulties for people with disabilities in following the disciplinary regime.¹²
- d. Lack of awareness among prisoners with disabilities on their right to reasonable accommodations, with some describing being denied access to devices that they relied upon outside prison.¹³
- e. Concerns around people with mental health illness being held in isolation and/or safety observation cells,¹⁴ which in some circumstances amounted to solitary confinement (i.e. confinement in isolation for 22+ hours a day).¹⁵

⁵ Gulati G., Cusack A., Kelly B.D., Murphy V.E., Kilcommins S., and Dunne C.P.. (2021). Trans-institutionalisation in Ireland: New and Emerging Congregated Settings for People with Disabilities. *Health & Human Rights Journal*. [Online]. Available from: <https://www.hhrjournal.org/2021/08/trans-institutionalisation-in-ireland-new-and-emerging-congregated-settings-for-people-with-disabilities/>. [17 June 2022].

⁶ Ibid.

⁷ Mental Health Commission (MHC), (2021). *Access to Mental Health Services for People in the Criminal Justice System*. [Online]. MHC. Available from: <https://www.mhcirl.ie/publications/access-mental-health-services-people-criminal-justice-system>. [17 June 2022]. P.17.

⁸ This would align with Article 31 of UNCPRD, which states: "State Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention."

⁹ IPRT, *Making Rights Real*, at pp.27-30, 36-38.

¹⁰ Ibid., at pp.4, 38-43.

¹¹ Ibid., at pp.30-31, 33-34

¹² Ibid., at pp.4, 51-52

¹³ Ibid., at pp.34-35.

¹⁴ Ibid., at p.52.

¹⁵ See Irish Penal Reform Trust (IPRT), (2018). *'Behind the Door': Solitary Confinement in the Irish Penal System*. [Online]. IPRT. Available from: https://www.iprt.ie/site/assets/files/6439/solitary_confinement_web.pdf. [17 June 2022]. P.6. The *Making Rights Real* report also noted that while prison

Finally, bullying of prisoners with disabilities has been identified as a matter of concern in both IPRT's report and a recent report from the Inspector of Mental Health Services. This can sometimes result in people trying to hide their disability while in prison.¹⁶

Recommendation 2. The Irish Prison Service should undertake accessibility audits of all prison settings and engage in a disability equality analysis of its service, and ensure that all those working in prison receive training on responding to the needs of prisoners with disabilities.

Recommendation 3. All prisoners experiencing mental health difficulties should be offered appropriate non-psychiatric responses (including access to psychology, counselling, and survivor-led peer support).

Recommendation 4. The placement of people with disabilities in solitary confinement should be prohibited, in line with international human rights standards.¹⁷

3. The Importance of Diversion from the Penal System

IPRT wishes to take the opportunity to re-emphasise that people with severe psychosocial disability should not be in prison and should – wherever possible – be diverted from the criminal justice system and provided with access to appropriate treatment in the community or an alternative therapeutic environment.¹⁸ The focus of the recently established High-Level Task Force on diversion is welcomed,¹⁹ and IPRT eagerly awaits publication of the Task Force's final report and implementation plan.²⁰

In regards the potential human rights issues in diverting prisoners into secure psychiatric settings,²¹ IPRT is clear that there must be robust consent processes and procedural safeguards in place whenever a transfer is to take place.²² IPRT is currently commissioning research on the rights of people detained in secure forensic settings in Ireland which will further inform and develop this position.²³

Recommendation 5. The High-Level Task Force final report and high-level implementation plan should be published without further delay.

Closing Remarks

Thank you again for the invitation to attend today's session. We would be happy to further discuss and answer any questions that the Committee might have on the issues raised, or anything else of relevance to this topic.

staff were clear that safety observation cells were distinct from solitary confinement, prisoners themselves saw it as solitary confinement and experienced it as such. Ibid., at pp.52-53.

¹⁶ *Making Rights Real*, at pp.47-49. See also: Mental Health Commission (MHC), (2021). *Access to Mental Health Services for People in the Criminal Justice System*. [Online]. MHC. Available from: <https://www.mhcirl.ie/publications/access-mental-health-services-people-criminal-justice-system>. [17 June 2022]. P.16.

¹⁷ See Committee on the Rights of Persons with Disabilities (CRPD), (2013). *Observations on the Standard Minimum Rules for the Treatment of Prisoners*. CRPD. Para.12.

¹⁸ See e.g. IPRT's presentation to the High-Level Task Force in July 2021, Irish Penal Reform Trust (IPRT), (2021). *IPRT presentation to High Level Task Force on mental health and addiction*. [Online]. IPRT. Available from: <https://www.iprt.ie/latest-news/iprt-to-present-to-high-level-task-force-on-mental-health-and-addiction/>. [16 June 2022].

¹⁹ See Department of Justice (DoJ), (2022). *Parliamentary Question 596 – 5 April 2022*. [Online]. DoJ. Available from: <https://www.justice.ie/en/JELR/Pages/PQ-05-04-2022-596>. [17 June 2022].

²⁰ The implementation plan was initially promised by the end of 2021, but it appears the final report and implementation plan will be received by the Minister in or around June 2022, see: Department of Justice (DoJ), (2021). *Establishment of a High-Level Taskforce to consider the mental health and addiction challenges of persons interacting with the criminal justice system*. [Online]. DoJ. Available from: <http://www.justice.ie/en/JELR/Pages/PR21000071>. [13 June 2022]; and Department of Justice (DoJ), (2022). *Parliamentary Question 562 – 31 May 2022*. [Online]. DoJ. Available from: <https://www.justice.ie/en/JELR/Pages/PQ-31-05-2022-562>. [17 June 2022].

²¹ Such issues include the fact that secure psychiatric detention may involve longer periods of detention and/or increased risk of forced treatment or the use of seclusion/restraint measures, see Centre for Disability Law and Policy (CDLP) National University of Ireland Galway (NUIG). (2019). *Disability-specific forms of deprivation of liberty*. [Online]. NUIG. Available from: <https://www.nuigalway.ie/media/centrefordisabilitylawandpolicy/files/DoL-Report-Final.pdf>. [16 June 2022].

²² *Making Rights Real*, at p.12.

²³ More information about this project is available on IPRT's website, see: Irish Penal Reform Trust (IPRT). (2021). *Invitation to Tender: Access to rights for people detained in secure forensic mental health facilities in Ireland*. [Online]. IPRT. Available from: <https://www.iprt.ie/latest-news/invitation-to-tender-access-to-rights-for-people-detained-in-secure-forensic-mental-health-facilities-in-ireland/>. [17 June 2022].