

**'Behind the Door':
Solitary
Confinement
in the Irish
Penal System**

Irish Penal Reform Trust



IPRT

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The Irish Penal Reform Trust is an independent non-governmental organisation campaigning for the rights of everyone in the penal system, with prison as a last resort.

This report was written by Dr Agnieszka Martynowicz and Dr Linda Moore, and was generously supported by the Irish Human Rights and Equality Commission.

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Sole responsibility for the content of this report lies with the authors and IPRT.



Foreword

Segregation has been described as “the most onerous and depriving experience that the state can legally administer”.

For that reason, IPRT has been campaigning for a number of years to abolish solitary confinement and substantially reduce the use of what has been commonly known as ‘restricted regimes’. Since IPRT’s campaign began in 2013, the numbers held in solitary confinement in Ireland have been regularly published by the Irish Prison Service, and the numbers locked up for 22 or more hours per day have reduced significantly.

However, IPRT remains seriously concerned about the increase in the numbers held in isolation for 19–21 hours per day, (which are higher now than they were in 2013) and about the lengths of time that individuals are held in solitary confinement, with some individuals reported as remaining in isolation for over a year. The exceptional and devastating harm to prisoners’ mental health that can be caused by extended periods of isolation means that the practice of holding any category of prisoner on 22- or 23-hour lock-up must be abolished. Restrictive regimes must only ever be an exceptional measure; it cannot be a solution in itself to prisoner safety concerns.

In November 2016, IPRT was awarded grant funding from the Irish Human Rights and Equality Commission for our project, *Abolishing Solitary Confinement in Prisons in Ireland*, an evidence-based research and awareness campaign. This report forms the central plank of that project. We are honoured that on 2nd February 2018 the former United Nations Special Rapporteur on Torture, Professor Juan Méndez will launch this major piece of research in Dublin.

Our goal is ambitious but achievable – the abolition of solitary confinement in Ireland in the short term and the gradual elimination of the use of restricted regimes with the ultimate target of 12 hours out-of-cell time daily for all prisoners across the prison estate. I hope that one day in the near future this goal will have become a reality and the practice of solitary confinement in Ireland will have been relegated to the history books.

Deirdre Malone

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January 2018



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Executive Summary

Solitary confinement exists in “some shape or form, in every prison system” (CPT, 2011: para. 53). Prisoners can be held in solitary confinement for reasons of discipline, order, punishment, safety and security. In some situations, isolation is used as a “substitute for proper medical or psychiatric care” (*Istanbul Statement, 2007: 1*).

While *solitary confinement* may be defined in different ways, the consensus in the relevant literature and human rights standards is that it involves confinement in isolation (individually or with a small number of other prisoners) for 22 hours a day or more, with consequent restrictions in regimes. *Prolonged* solitary confinement has been defined by the United Nations (UN) *Mandela Rules (2015)* as isolation lasting 15 or more consecutive days.

Human rights principles require prison regimes to be **safe, respectful, purposeful and effective** (World Health Organisation (WHO) cited in HM Inspectorate of Prisons, online). It is difficult, if not impossible, to achieve these standards in situations where prisoners are confined in isolation for long hours, even where this falls short of 22-hour lock up.

Therefore, this study analyses the use of solitary confinement in Ireland that comes *within* the definition of 22 or more hours of confinement in a cell (individually or sharing), and *also* conditions on restricted regimes more generally, especially for prisoners locked up for 19 hours or more. This is in keeping with the idea of solitary confinement, segregation and restricted regimes as forming a “continuum of exclusion” (Shalev and Edgar, 2015: v).

The focus on isolation as a continuum is particularly pertinent to the current situation in Ireland. As noted previously by the European Committee for the Prevention of Torture (CPT, 2015), and more recently reported to the UN Committee on the Prevention of Torture (IPRT, 2017), the levels of violence in Irish prisons are high; a situation exacerbated by the presence of what some of the interviewees referred to as “gangs”. This has resulted in high numbers of prisoners being segregated from the general population due to perceived threats of violence, able to associate only with others in their particular ‘grouping’. While the number of prisoners locked in their cells for 22 or 23 hours a day has decreased significantly over the last four years (from 211 in July

2013 to 9 in October 2017¹), the overall number of prisoners on so-called ‘restricted regimes’ (i.e. all those locked up for 19 hours a day or more) has continued to increase. In October 2017, this number stood at 428 individuals, 385 of whom were segregated for reasons of ‘protection’² (mostly on Rule 63 of the *Prison Rules 2007*). The majority of all prisoners on ‘restricted regimes’ were in 21-hour lock-up (245).

At present prisoners may be placed on ‘protection’ simply on the basis that they have asked for this to happen. Yet those regimes are significantly impoverished as prisoners face restricted access to education, physical activities and fresh air; limitations on family visits and phone contact; and difficulties in accessing health and addiction support. Such restrictions may impair effective reintegration upon release.

As the findings of this research show, the Irish Prison Service (IPS) expects the number of ‘protection’ prisoners who are subject to restricted regimes to either remain at a similar level (of nearly 11% of the overall prison population) or increase in the next few

years. The IPS intends to introduce an assessment on committal regarding potential risks to the individual’s safety posed by others within the prison environment, which it hopes will to some extent prevent such increases. On the other hand, plans are also afoot to designate parts of Mountjoy (male) and of Midlands as ‘protection prisons’. IPS intends that these ‘protection prisons’ will offer improved regimes and more out-of-cell time for prisoners segregated from the general prison population. However, fear was expressed during the research that, despite having real safety concerns, some prisoners may be deterred from requesting placement ‘on protection’ due to the prospect of being transferred further from their families.

‘Protection’ prisoners, while constituting the greatest number of prisoners on ‘restricted regimes’ in the Irish prison system, are not the only prisoners subject to such restrictions. Others include, for example, prisoners segregated from the general prison population for reasons of ‘order’ (Rule 62 of the *Prison Rules 2007*), some of whom are considered to be ‘violent and disruptive’. An initiative currently under development is the creation of a unit based at the Midlands Prison for a small number of ‘violent and disruptive’ prisoners. This unit is expected to open in spring 2018 and will be run jointly between the Prison Psychology Service and operational prison staff.

Irish prisons hold a considerable number of prisoners with mental ill-health. In September 2017, a reported 20 prisoners with the most acute psychiatric difficulties were waiting for beds to become available in the Central Mental Hospital (CMH) (Dunne, 2017). In prisons, a small number of these individuals are held in Safety Observation Cells (SOCs). The CPT (2015) found in 2014 that individuals with severe psychiatric disorders were detained inappropriately in Irish prisons because there were insufficient hospital spaces available. This situation persists three years on.

Based on a review of national and international literature, and a series of interviews and informal discussions with 27 participants including serving and former prisoners, prison staff and managers, legal and medical professionals, representatives from oversight bodies, and other relevant stakeholders, this report makes the following recommendations:

1 Irish Prison Service Prison Population Census Reports (available at: <https://www.irishprisons.ie/index.php/informationcentre/statistics-information/census-reports/>)

2 Some prisoners who are recorded as being ‘on protection’ throughout the prison estate do have access to the full regime and do not feature in statistics relating to ‘restricted regimes’. This report is concerned with those who are held in their cells for 19 or more hours a day.

1. Elimination of the use of solitary confinement:

- 1.1 The Minister for Justice and Equality should develop and consult on a *Strategy for the Elimination of Solitary Confinement* based upon principles of decarceration.
- 1.2 The Irish Prison Service should ensure, as a minimum, full compliance with the *Mandela Rules* and should amend its policy on ‘the elimination of solitary confinement’ (IPS, 2017) accordingly.
- 1.3 The Irish Prison Service should set the **minimum** out-of-cell time at 8 hours per day. Additionally, a **target** should be set of at least 12 hours’ out-of-cell time per prisoner per day, based upon meaningful human contact and access to services and activities.
- 1.4 The term ‘meaningful human contact’ should be defined as contact with family and peers; interactions with professionals, staff or volunteers within the prison system should not be used as a substitute for such contact.
- 1.5 Separation of a prisoner from others should not be permitted for reasons of punishment, but only for reasons of safety in emergency situations, and for the shortest possible period of time.
- 1.6 The placement in solitary confinement of adults with mental health difficulties or mental or physical disabilities should be prohibited.
- 1.7 The placement in solitary confinement of pregnant or breastfeeding women prisoners or mothers with babies should be prohibited.
- 1.8 Adequate community mental health services should be provided, including access to psychiatric beds, to ensure that no one is detained in prison who would be more appropriately accommodated in mental health facilities.
- 1.9 The Minister for Children and Youth Affairs should provide, as a matter of urgency, statutory rules governing detention of children. In line with the most recent *Concluding Observations* by the UN Committee against Torture, such rules should include an absolute prohibition of the use of solitary confinement for children.

2. Separation for reasons of protection:

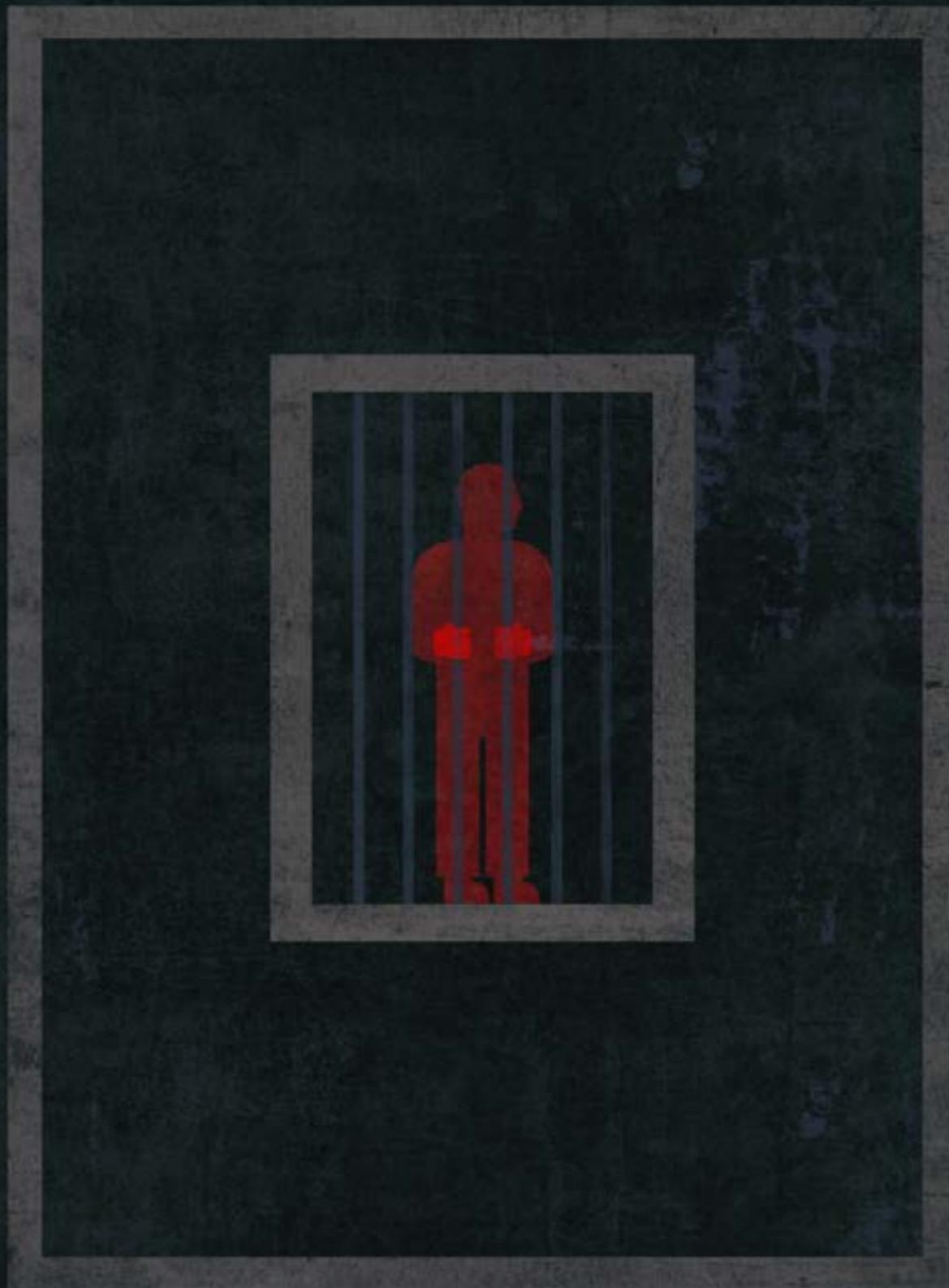
- 2.1 The Irish Prison Service should research and develop a range of initiatives to address violence in prisons. These may include, but should not be limited to, restorative justice approaches and weapons amnesties.
- 2.2 The IPS should ensure all staff are trained on the impact of solitary confinement and restricted regimes as well as in conflict management techniques such as de-escalation
- 2.3 Prisoners being placed, or requesting to be placed, on a restricted regime for their own protection should be given information, in accessible language, about the implications of such placement including details of the restricted access to education, vocational training, association, etc.
- 2.4 Where a prisoner requests to be kept on protection for an extended period, this should be kept under constant review.
- 2.5 Special supports should be put in place to encourage prisoners to come off a restricted regime where it is assessed as safe to do so, including access to a step-down programme.
- 2.6 Prisoners on protection or other restricted regimes should be provided with meaningful access to work, training and education, as well as other activities and services. As far as possible this should be in association with other prisoners.
- 2.7 Prisoners on restricted regimes should have increased access to family contact, through telephone and visits.
- 2.8 The *Prison Rules 2007* should be further amended to include regular examination of prisoners isolated under Rule 63 by a prison doctor. Such examination should include both physical and mental health assessment by appropriately trained medical personnel.

3. Access to justice:

- 3.1 There should be a **mandatory** notification provided to their solicitors where prisoners are placed on Rule 62 and Rule 63. Prisoners should also be informed that they have the right to contact their solicitor and should be given an opportunity to do so as soon as practicable.
- 3.2 There should be a **mandatory** notification to a legal representative in cases of placement in Safety Observation Cells and Close Supervision Cells, regardless of the length of time for which such placement is envisaged.
- 3.3 The situation of prisoners held in isolation and/or subjected to a restricted regime should continue to be afforded particular attention by the Inspector of Prisons, including through thematic inspections. The Government should provide the Office of the Inspector of Prisons with appropriate resources to enable it to fulfil its mandate in this regard.
- 3.4 Prisoners held in isolation and/or subjected to a restricted regime should have strengthened access to independent complaints mechanisms and should be afforded appropriate assistance to avail of those mechanisms.

4. Collection and publication of statistics:

- 4.1 The Irish Prison Service should regularly collect and publish data relating to the *length of time* prisoners spend on restricted regimes in all prisons.
- 4.2 Data relating to repeated and multiple placements of the same prisoner(s) on restricted regimes should be collected, in particular where such repeated placements concern prisoners with mental health difficulties and those segregated for reasons of discipline.
- 4.3 Separate statistics for Limerick (male) and Limerick (female) prisons, should be provided.
- 4.4 The Irish Prison Service should disaggregate data by other characteristics, including ethnicity, nationality, sexual orientation, and disability, to enable monitoring for potential disproportionate use of restricted regimes among particular groups.



1. Introduction

In October 2017, 428 individuals held in Irish prisons were subject to a restricted regime (nearly 11% the prison population).³ Nine of those were held in 22- to 23-hour lock-up. While there are a number of reasons why prisoners are faced with restrictions, by far the largest number in this group (385) had their regime curbed for reasons of personal safety (prisoners 'on protection').

Following the most recent examination of Ireland's record under the UN Convention against Torture (UN CAT) in July 2017, the Committee against Torture in its *Concluding Observations* stated that "The regime for holding prisoners requiring protection is inadequate, including lack of outdoor exercise and almost no contact with the outside world" (UN CAT, 2017b: 5). The Committee also noted that adult prisoners in Ireland can spend lengthy periods in solitary confinement, including for reasons of discipline. It recommended that the Irish Government ensure that solitary confinement is only ever used as a last resort, and is applied for the shortest time possible, under strict supervision and subject to judicial review, under clear and specific criteria (UN CAT, 2017b: 6).

The Committee further stated that solitary confinement should never be applied to children (ibid); that the Government should ensure that no person with psychosocial disability is ever placed in solitary confinement, and that they are instead provided with appropriate therapeutic interventions (ibid: 7). The Committee also recommended that the Irish Prison Service undertake initiatives to reduce inter-prisoner violence and enhance the monitoring and protection of vulnerable prisoners, including those presenting disciplinary issues (ibid: 7). It stated that prisoners requiring protection should not be "penalized by their situation and have contact with the outside world, sufficient purposeful activities and out-of-cell exercise and family visits" (ibid: 6). Moreover, with respect to children, the Committee added that Ireland should abolish solitary confinement as a "disciplinary measure" and "strengthen existing and develop new educational and rehabilitation programmes aimed at encouraging pro-social behaviour, and improve extra-regime activities" (ibid: 7).

In February 2017, the Irish Penal Reform Trust (IPRT) commissioned the authors to conduct a study on the use of solitary confinement in Ireland to support the organisation's campaign and awareness-raising activities towards abolition of the use of solitary confinement and 'restricted regimes' in Ireland. In the course of the research, the authors reviewed international and national literature on the nature and impact of solitary confinement on prisoners (adults and children in detention), prison staff and prison systems in the context of developments in medicine, psychology and law.

Interviews and informal discussions were held with 27 interviewees comprised of serving and former prisoners; prison staff and prison managers; volunteers within the prisons; legal professionals; representatives of oversight bodies; and health professionals with relevant expertise. As part of the research, the authors visited Mountjoy Prison (male) and Wheatfield Place of Detention, where they were able to observe relevant parts of the prison regime, including the physical conditions of detention.

The findings of the research are outlined in the sections below. Section 2 describes the research methodology. Section 3 briefly outlines the historical context of the use of solitary confinement, as well as providing definitions of what is currently understood to constitute solitary confinement and 'restricted regimes'. The evidence on the psychological and physical impacts of solitary confinement of prisoners and prison systems is then discussed in Section 4, while Section 5 discusses how certain groups of prisoners may experience solitary confinement in particular ways.

The report then outlines international human rights standards relevant to the use of solitary confinement with adult prisoners and with children and young people in Section 6. Examples of international initiatives aimed at limiting or abolishing the use of solitary confinement are discussed in Section 7. Section 8 focuses on the situation in Ireland. This includes discussion of the legal and policy framework regulating the placing of prisoners in solitary confinement or on 'restricted regimes', together with relevant jurisprudence. The section analyses the publicly available statistics on the use of those measures in adult prisons in Ireland, before moving to a discussion of the research findings. The report closes with a discussion of recommendations in Section 9.

³ Irish Prison Service (2017) Census of restricted regime prisoners October 2017 (available at: https://www.irishprisons.ie/wp-content/uploads/documents_pdf/October-2017-Restriction.pdf)

3. History and definitions of solitary confinement

3.1 Solitary confinement: historical context

Solitary confinement has a long history within places of detention, and in religious and medical institutions. Within the prison system it became widely used as a method of ‘rehabilitation’ from the nineteenth century. Reformers including John Howard and Elizabeth Fry were critical of jails where men, women and children were held together in dirty, over-crowded conditions and believed that time spent alone in individual cells would encourage “virtuous thoughts” and prevent prisoners “corrupting” each other (Guedes, 1979: 151).

Two distinct forms of solitary confinement emerged in the United States (US), later influencing other jurisdictions. Under the ‘separate system’ prisoners were let out of cells only for exercise and religious worship. Within the ‘silent system’ prisoners could eat, work and worship together but were forbidden to communicate (Johnston, 2008). Mountjoy Prison opened in Dublin in 1850, inspired by the ‘separate’ model with prisoners held in individual cells along wings radiating from a central circular area. Twelve punishment cells formed “mini-prisons within a prison” (Carey, 2000: 44). Under the ‘Irish system’, it was obligatory to serve nine months of solitary confinement in Mountjoy before being transferred to other prisons with opportunities for education and work (Butler, 2015). Irish female prisoners began their sentence with four months in solitary confinement (Quinlan, 2010).

By the close of the nineteenth century, there was mounting international evidence of the “catastrophic” (Grassian, 2006: 328) impact of solitary confinement. Isolated prisoners were reported as experiencing “pallor, depression, debility, infirmity of intellect, and bodily decay” (Chief Medical Officer, Fremantle Convict Establishment, Western Australia, cited in Shalev, 2014: 28, note 11); “loss of gregarious habits”, “wasted strength”, “emaciated bodies” and even death (Laurie, 1846: 51). In 1890 the US Supreme Court ruled that solitary confinement for a prisoner awaiting execution was “additional punishment” of the “most painful character” (*In re Medley*, 1890: 134), thus forbidden under the Constitution.

History shows solitary confinement to be a “severe burden for prisoners” that cannot be withstood for long “without running the risk of psychological derailment” (O’Donnell, 2014: 33). Yet, the “philosophy

behind the separate system has never entirely disappeared” (Johnston, 2008: 271). Solitary confinement persists internationally for the purported purposes of punishment, rehabilitation and protection (Hresko, 2006). In particular, the US has seen an explosion in its use, especially within ‘supermax’ prisons where *all* prisoners are detained in isolation (ibid). While ‘supermaxes’ are not part of Ireland’s penal estate, elements of solitary confinement are routinely used. As Grassian (2006: 329) argues, it is “tragic and highly disturbing” that historical lessons are “so completely ignored” within contemporary imprisonment.

3.2 Definitions

Solitary confinement exists in “some shape or form, in every prison system” (CPT, 2011, para. 53). Yet, defining its meaning is not straightforward and the language used to describe the process varies:

Different jurisdictions refer to solitary confinement

It is “tragic and highly disturbing” that historical lessons are “so completely ignored” within contemporary imprisonment.

by a variety of terms, such as isolation; administrative, protective, or disciplinary segregation; permanent lockdown; maximum security; supermax; security housing; special housing; intensive management; and restrictive housing units. (National Commission on Correctional Health Care, 2016: 257)

In general, prison systems choose to avoid the term solitary confinement, preferring labels

such as “segregation” or “restrictions” in regime (Solitary Watch, online). However:

Regardless of the term used, an individual who is deprived of meaningful contact with others is considered to be in solitary confinement. (US National Commission on Correctional Health Care, 2016: 257)

Prisoners in such conditions generally experience regimes with limited, or no, access to education, training and association. In-cell conditions are often basic with few personal belongings permitted (Shalev, 2014).

Over the past decade, human rights organisations have attempted to define solitary confinement primarily for the purpose of monitoring and limiting its use. The *Istanbul Statement on the Use of and Effects of Solitary Confinement* (2007: 1)⁴ states that:

Solitary confinement is the physical isolation of

individuals who are confined to their cells for twenty-two to twenty-four hours a day. In many jurisdictions prisoners are allowed out of their cells for one hour of solitary exercise. Meaningful contact with other people is typically reduced to a minimum. The reduction of stimuli is not only quantitative but also qualitative. The available stimuli and the occasional social contacts are seldom freely chosen, and generally monotonous, and are often not empathetic.

The European Committee for the Prevention of Torture (CPT 2011: para. 54) describes solitary confinement as occurring:

whenever a prisoner is ordered to be held separately from other prisoners, for example, as a result of a court decision, as a disciplinary sanction imposed within the prison system, as a preventative administrative measure or for the protection of the prisoner concerned.

The CPT definition includes situations where a prisoner is segregated from the general population but held together with one or two other prisoners. This is important as, according to the *Istanbul Statement*: “small group isolation in some circumstances may have similar effects to solitary confinement and such regimes should not be considered an appropriate alternative.”

Similar to the *Istanbul Statement*, the *Mandela Rules* (2015) (which updated the 1995 *United Nations Standard Minimum Rules for the Treatment of Prisoners*) define solitary confinement as involving “22 hours or more a day without meaningful human contact”. The Rules add that:

Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days. (Rule 44)

The consensus across these definitions is that solitary confinement can be described as **confinement in isolation (individually or with a small number of other prisoners) for 22 hours a day or more, with consequent restrictions in regimes.**

Alongside the *Mandela Rules* (2015) there are other human rights principles that require prison regimes to be **safe, respectful, purposeful and effective** (World Health Organisation cited in HM Inspectorate of Prisons, online). It is difficult, if not impossible, to achieve these standards in situations where prisoners are confined in isolation for long hours, **even where this falls short of 22-hour lock up**. Therefore, the research on which this report is based analyses not only those instances of solitary confinement in Ireland that come *within* the definition of 22 or more hours confined to cell (individually or sharing), but also conditions for prisoners on

restricted regimes more generally. This is in keeping with the conceptualisation of solitary confinement, segregation and restricted regimes as forming a “continuum of exclusion” (Shalev and Edgar, 2015: v).

Key to IPRT’s concerns about solitary confinement is the lack of meaningful human contact that prisoners experience under this type of regime, an issue which is further considered below.

3.3 Reasons why prisoners are placed on solitary confinement

The reasons given by prison systems for holding prisoners in solitary confinement may include: discipline, order, punishment, safety and security. In some situations, isolation is used as a “substitute for proper medical or psychiatric care” (*Istanbul Statement*, 2007: 1).

Whereas isolation for disciplinary purposes tends to be legally regulated in terms of time and proportionality, there are generally fewer restrictions on separation for reasons of ‘dangerousness’ or safety (Van Zyl Smit and Snacken, 2009). Procedures are often arbitrary, with prison managers having authority to decide who will be isolated and for how long (Jeffreys, 2016). Solitary confinement and segregation regimes “claim to employ due process”, but prisoners “rarely prevail when contesting a decision to send them to isolation” (Jeffreys, 2016: 176).

Although segregation is usually imposed at the discretion of the prison system, individuals sometimes request separation, for example if they feel unsafe in the general population (CPT, 2011: 4). This may offer a degree of safety, especially in the short term, but it can be “very difficult for a prisoner to come off protection” (ibid). We return to this issue later in this report.

⁴ See: <http://www.solitaryconfinement.org/istanbul>. The *Istanbul Statement* was also annexed to the 2008 interim report by the UN Special Rapporteur on Torture, Manfred Nowak, in which the Rapporteur considered the issue of solitary confinement in

section IV (see: UN General Assembly (2008) Interim report of the *Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/63/175). The report by Mr Nowak is discussed later in this review.

4. The impact of solitary confinement

The United Nations (UN) Special Rapporteur on Torture has described the use of solitary confinement as “global in nature and subject to widespread abuse”, amounting in some circumstances to “cruel, inhuman and degrading treatment and even torture” (UN General Assembly, 2011: 7). While, individual prisoners react to isolation in different ways, as the *Istanbul Statement* stated in 2007:

The central harmful feature of solitary confinement is that it reduces meaningful social contact to a level of social and psychological stimulus that many will experience as insufficient to sustain health and well-being.

Since its inception, a body of evidence has developed showing the harmful impact of solitary confinement. Findings from this evidence are discussed below in relation to: conditions and regimes; effects on psychological and physical health; and ‘desistance’ and resettlement.

4.1 The impact on conditions and regimes

The reality of solitary confinement involves three core elements: “social isolation, reduced activity and environmental input, and loss of autonomy and control over almost all aspects of daily life” (Shalev, 2014: 27). On the latter, Gresham Sykes’ seminal 1958 study of an American high-security prison found loss of autonomy to be a deeply painful experience that threatens prisoners’ core sense of self. As Lord Woolf explains:

The way prisoners are treated in segregation can frequently be a barometer for their general treatment in an establishment. The prison service principles of decency must surely apply especially to segregation units and close supervision centres. These are that: prisoners should not be punished outside of prison rules; promised standards within the prison are delivered; facilities should be clean and properly equipped; there should be prompt attention to proper concerns; prisoners should be protected from harm; prisoners’ time should be actively filled and prisoners should be fairly and consistently treated by staff. (cited in Shalev and Edgar, 2015: iii)

Yet, the reality often falls far short of these principles. Much of the research on solitary confinement comes from the US where ‘supermax’ regimes are characterised by confinement in a cell for approximately

22 hours a day. Prisoners eat meals alone in cells, exercise is often taken in solitude, and they are largely excluded from educational and vocational services. Technological advances (especially in electronic surveillance) result in minimal contact with staff (Vasiliades, 2005). Access to toiletries, e.g. toothpaste and shaving cream, is highly restricted (Ross, 2016). High levels of security prevail, and to be released from cells prisoners typically have to kneel, putting their hands through a slot in the door to be handcuffed (Ross, 2016).

Prisoners elsewhere, including in Europe, also experience poor conditions. The CPT (2011: paras 58–60) notes that too often solitary confinement takes place within small, damp cells with little furniture or access to light and ventilation, inadequate exercise yards and unnecessary restrictions in regimes and family contact. Prisoners in solitary confinement often have limited, or no, access to education, training and association (Shalev, 2014). In-cell conditions are usually basic with few personal belongings permitted. Prisoners are closely monitored by staff or with the use of technology and are routinely strip-searched. Family visits may be held in ‘closed’ conditions, the prisoner separated by a glass panel to prevent physical contact.

“Negative effects of solitary confinement are analogous to the acute reactions suffered by torture and trauma victims, including post-traumatic stress disorder.”

4.2 Psychological harms

The negative psychological impacts of solitary confinement have been well documented in different jurisdictions and types

of regimes. American psychologist Professor Craig Haney (2003) reviewed the findings of an extensive range of studies on solitary confinement. The range of symptoms identified included: hypertension, appetite and sleep disturbance; anxiety and panic attacks; rage; aggression and loss of control. Other symptoms include: paranoia; hallucinations; self-harm and suicidal ideation and behaviour; withdrawal; hopelessness; lethargy; hypersensitivity; cognitive dysfunction; depression and feelings of impending mental breakdown. The review also found higher levels of violence in regimes based on isolation, including attacks on prisoners and staff and destruction of property. Haney (2003) concluded that the “negative effects of solitary confinement are analogous to the acute reactions suffered by torture and trauma victims, including post-traumatic stress disorder.”

Grassian (2006: 338) goes so far as to suggest that the combination of symptoms manifesting in

prisoners subject to solitary confinement forms a unique “isolation syndrome” involving symptoms such as “delirium”, “EEG abnormalities”, “perceptual and cognitive disturbances, fearfulness, paranoia, and agitation; and random, impulsive and self-destructive behavior.”

Shalev (2014) observes that both duration and uncertainty as to the length of time the prisoner can expect to spend in isolation affects psychological wellbeing. Adverse effects may depend on the context and conditions of confinement, including the services the prisoner can access, items they can have in their cell, contact with staff, and so on. Haney (2003) suggests that negative psychological effects occur after as little as 10 days. Research suggests different rates of psychological distress experienced by prisoners isolated by the prison system for security reasons (higher prevalence of distress) and those in protective custody at their own request (lower prevalence) (Haney, 2003). However, prisoners often perceive solitary confinement as an expression of penal power, aimed at breaking their spirits, and may be reluctant therefore to disclose ill effects on their wellbeing (Jeffreys, 2016).

Prisoners with pre-existing mental health problems are even more affected and at greater risk of the effects of isolation turning into “something more permanent and disabling” (Haney, 2003: 142). As these prisoners may be more likely to breach prison rules or refuse to comply with staff requests due to their illness (Joliffe and Haque, 2017), they are also more likely to spend consecutive and repeated periods in solitary confinement as punishment (Haney, 2003). This may partially account for the over-representation of prisoners with mental illness in segregation units (Shalev, 2014) and for longer time spent on their own in the cell more generally (Joliffe and Haque, 2017). Where sufficient resources are not available to address the needs of those prisoners, “disciplinary isolation and supermax confinement seems to offer a neat solution to an otherwise difficult dilemma” (Haney, 2003: 142). In such circumstances, prisoners with mental illness may end up in a “vicious cycle”, where “these very conditions make them worse and less able to abide by the rules and regulations” (Shalev, 2003: 29). Time out of cell can help prisoners with mental health difficulties to cope through keeping busy, while long lock-up has been reported to exacerbate their mental ill-health (HMIP, 2008).

4.3 Self-harm and deaths in custody

In some systems, including in Ireland, prisoners at risk of self-harm and suicide are placed in solitary conditions for reasons of safety, and observed either by officers or by CCTV. As noted by the Howard League (2016a: 5) prisoners “who are struggling to cope and most at risk of suicide are likely to be the most challenging and the most likely to be punished or placed in solitary confinement.” Yet, solitary confinement may exacerbate symptoms, and fear of being placed in isolation for ‘observation’ may result in reluctance to reveal suicidal thoughts (Moore and Scraton, 2014).

A New York-based study (Kaba et al, 2014) found that prisoners who had at least one experience of solitary confinement were significantly more likely to self-harm. Prisoners were reported as saying that they would do anything to avoid solitary confinement, including hurting themselves. Kaba et al (2014) noted the “ethically complex” position of mental health professionals whose role includes ‘clearing’ prisoners as fit for placement in solitary confinement.

Expressing concerns about deaths in solitary conditions, the Prisons and Probation Ombudsman for England and Wales (PPO, 2015: 8) warned that isolation “inherently reduces protective factors against suicide and self-harm, such as activity and interaction with others”, and should be used only exceptionally with prisoners known to be at risk of suicide (see also: Joliffe and Haque, 2017). The increased risk of suicide for prisoners who have experienced solitary confinement extends even after release (Howard League, 2016a).

Recognition of the potentially devastating effects of solitary confinement has led to a number of health and other professional associations calling for an abolition of isolation or its strict limitation to cases where its use is considered absolutely necessary (and for the shortest possible time). In 2013, the American Public Health Association (APHA, online) stated that solitary confinement for security purposes should only ever be used where “no other less restrictive option is available to manage a *current, serious, and ongoing threat* to the safety of others” (emphasis added). The APHA called for the abolition of isolation for disciplinary reasons and stressed that those prisoners separated for their own protection should be housed “in the least restrictive conditions possible” and afforded access to services comparable to that available in the general population. The same conditions should apply to prisoners segregated for clinical reasons, whose isolation must be for the shortest possible time. The APHA called for prisoners with serious mental illnesses to be diverted into secure therapeutic programmes. The APHA position

Isolation “inherently reduces protective factors against suicide and self-harm, such as activity and interaction with others”

is that children and young people under the age of 18 should never be subjected to solitary confinement for any length of time.

Also in the US, the National Commission on Correctional Health issued a position statement in April 2016⁵ which recommended that children, prisoners with mental illness and pregnant women prisoners should never be placed in isolation. While allowing for isolation on medical grounds, it recommended that this is only in exceptional circumstances and under strict supervision of medical personnel, for the shortest possible time. The Commission stated that medical personnel should not be involved in certifying prisoners as ‘fit’ for isolation. This aligns with the position taken by the World Health Organisation (WHO, 2014) that prison doctors should not be involved in certifying prisoners as ‘fit’ for isolation or any other form of punishment. The WHO (2014: 13) is also clear that while doctors may be required to isolate prisoners on purely medical grounds, they “should not collude in moves to segregate or restrict the movement of prisoners” for other reasons.

4.4 Physical harms

Although there is less research available on the topic, there is evidence that solitary confinement not only causes psychological difficulties but also affects physical health. There is little opportunity for fresh air, exercise or healthy diet for prisoners enduring lengthy periods of confinement. Shalev (2014: 28) observed that prisoners held in solitary confinement often display physiological signs such as: gastro-intestinal and genito-urinary problems; deterioration of eyesight; lethargy, weakness and fatigue; heart palpitations; migraines; weight loss; back and joint pains.

4.5 Desistance and resettlement

There has been relatively little research focus on the effects of solitary confinement on prisoners’ likelihood of reoffending.

A thematic inspection in England and Wales found that prisoners who were unlocked for 10 or more hours a day engaged in more positive activities, had better access to healthcare, and had more contact with families. They were also more likely to consider that their time in prison would make them less likely to re-offend in the future (HMIP, 2008).

Conversely, solitary confinement may impact negatively on prisoners’ capacity to adapt to life after isolation (be it within prison or in the community). Some become institutionalised, experiencing difficulties in initiating or carrying out tasks or

connecting to other people. This can ultimately result in social withdrawal. Some prisoners on leaving supermax conditions “lash out against those who have treated them in ways they regard as inhumane” (Haney, 2003: 139). Haney (ibid: 141) observes that,

Those who are not blessed with special personal resiliency and significant social and professional support needed to recover from such atypical and traumatic experiences may never return to the free world and resume normal, healthy, productive social lives. These are extraordinary – I believe often needless and indefensible – risks to take with human psyche and spirit.

As noted above, prisoners in solitary confinement have very limited opportunities to prepare for establishing life in the community. As Cloud et al (2015: 21) note, this is not only a prisons issue, as “the overwhelming majority of people incarcerated will be released, and the impact of long periods of isolation on their health, employability, and future life chances will be felt in the families and communities to which they return.”

Within the US context, Lovell et al (2007) found that while experience of confinement in a supermax did not in itself result in increased recidivism, prisoners who were released directly from supermax conditions into the community had significantly higher rates of early reoffending. Lovell et al (ibid: 650) suggested the most plausible explanation is that such conditions “may induce perceptual and emotional states, such as paranoia and social anxiety, that make it more difficult to cope with the demands of society”.

4.6 Financial costs

While providing a much poorer environment, solitary confinement regimes are expensive to run, primarily due to higher staffing costs. In the US supermax system, for example, confinement costs in the region of 75,000 dollars per cell annually, as compared to 25,000 dollars for an ‘ordinary’ state prison cell (Ross, 2016: 102). Figures for England and Wales show that each close supervision bed costs an average £100,000 per year to run (Casey, 2016), as compared to the average annual cost of a regular prison place of just over £32,000 (Prison Reform Trust, 2017).

5. The differential impact of solitary confinement

Evidence across jurisdictions suggests that minority groups may be more likely to end up in solitary confinement, particularly Black, Asian and Minority Ethnic prisoners (BAME) (Arrigo and Bullock, 2008). Solitary confinement also has a differential impact on certain groups, including those who are young or older, female, LGBT+, and/or BAME. The impact of such differential treatment is discussed below.

5.1 Children and young people

Children and young people in custody are a particularly vulnerable group, with experiences of poverty and social exclusion, trauma and bereavement, emotional, physical and sexual abuse, living within the care system, addictions, mental ill-health and a high level of learning disabilities (Prison Reform Trust, 2010). An Irish-based study found high rates of mental ill-health among young people in custody, and noted that the stress of imprisonment exacerbated these problems (Flynn et al, 2012 cited in IPRT, 2015).

Official discourse tends to camouflage the scale and impact of solitary confinement for children and young people, softening or rebranding the terms used (Feierman et al, 2017). For instance, young people may be described as having a “time out” rather than having been isolated.

For young people, isolation may be “especially frightening, traumatizing, and stressful”, triggering past experiences of trauma and abuse

(Feierman et al, 2017: 10). Solitary confinement has a differential impact due to adolescents’ psychological, neurological and social immaturity (Haney, 2014). The brain is still developing and isolation may damage “essential developmental processes” potentially resulting in “irreparable” harm (Feierman et al, 2017: 10). Moreover, young people are generally more impulsive and may respond with frustration to their confinement thus exacerbating their situation (ibid). Lack of adult coping skills may result in “aggressive or antisocial behavior, self-harm or even suicide” (Gallagher, 2014: 251).

In 2006, the Carlile Inquiry found that children and young people in custody in England and Wales were often placed in isolation for ‘normal’ teenage behaviours, such as refusal to comply with staff instructions. Carlile recommended that: prison segregation units should not be used for children;

‘time out’ should last no more than a few minutes; isolation should never be used as punishment; and children should have access to advocates when held in separation (Carlile, 2006). A decade later, a review by the Howard League for Penal Reform (2016b) found little change in practice, and recommended that youth segregation units should close immediately.

Research conducted for the Children’s Commissioner for England in 2015 identified factors that increased the use of solitary confinement,⁶ including: institution size, building design, staff to young person ratio, influence of gangs, and institutional culture. Certain groups were more likely to experience solitary confinement, including BAME, care-experienced, disabled and suicidal young people. Concurrent with other research cited here, the report found that isolated young people experienced boredom, stress, apathy, anxiety, anger, depression and hopelessness. Even brief spells in solitary could “trigger self-harm”, exacerbate the impact of past trauma and provoke psychotic episodes. Solitary confinement also restricted young people’s access to core activities, hampering the possibilities of rehabilitation.

The above report’s recommendations included: an absolute prohibition of solitary confinement (that is isolation of 22 or more hours per day); a minimum of eight hours a day out-of-cell time, except in response to serious concerns for children’s safety;

development of an isolation reduction strategy; reintegration plans for any child isolated for four hours or more; and a review of why some groups are over-represented in isolation. The report also recommended developing smaller units closer to children’s homes, and better staff to young person ratios (Children’s Commissioner for England, 2015).

Within the US context, Human Rights Watch and the American Civil Liberties Union (ACLU) (HRW, 2012; online) found that young people in solitary confinement felt “doomed” and “abandoned”, some “cutting themselves with staples or razors, hallucinations, losing control of themselves, or losing touch with reality.” Those with previous experiences of trauma or abuse suffered post-traumatic reactions when isolated. Isolation also reduced access to education, training and rehabilitative programmes. Human Rights Watch and the ACLU recommended that young people could be “better

For young people, isolation may be “especially frightening, traumatizing, and stressful”, triggering past experiences of trauma and abuse

5 Published in: *Journal of Correctional Health Care*, 2016, Vol. 22(3): 257-263.

6 This particular study identified isolation as spending a minimum of 16 hours out of 24 without social contact with peers, whether through placement in a special unit or confinement to cell.

managed in specialized facilities, designed to house them, staffed with specially trained personnel, and organized to encourage positive behaviors.”

Research published by the US-based Juvenile Law Center (Feierman et al, 2017) noted the disproportionate use of solitary confinement for Black and Latino, LGBT+, and disabled young people. The study found that many young people were placed in solitary confinement without any type of administrative hearing; routinely deprived of essentials such as mattresses, showers, eating utensils and mental health services; and often refused access to possessions such as books, paper and pens. The core recommendation was for broader decarceration as the best way to avoid solitary confinement. Specific recommendations included: a ban on solitary confinement for children except to prevent immediate harm; limits on its use even in emergencies; increased emphasis on de-escalation strategies; and clarity around definitions.

5.2 Older prisoners

Solitary confinement also has disproportionate effects on older prisoners, many of whom are in poor physical health.⁷ The physical impact of lengthy lock-ups can damage older prisoners’ physical health, for example through lack of exercise increasing risks of arthritis, heart disease and diabetes. Lack of sunlight may create deficiency in vitamin D, exposing prisoners to fractures. Sensory deprivation can exacerbate mental health difficulties in older prisoners (Williams, 2016).

Older prisoners can find themselves isolated simply through a lack of accessibility within institutions built with younger people in mind, and regimes that do not meet their needs. For example, research published by the Irish Penal Reform Trust (IPRT, 2016b) cites the case of a 65-year-old man in Midlands Prison who, due to his lack of mobility, spent most of his time confined to his landing and cell, unable to participate in the normal regime.

5.3 Disabled prisoners

Solitary confinement also has a differential impact on disabled prisoners. Those with learning disabilities may be more likely to be placed in solitary confinement either for disciplinary reasons, if they have difficulty understanding or complying with instructions, or for ‘their own safety’ in cases of bullying. In solitary conditions, prisoners with physical disabilities may be confined without adequate access to equipment such as appropriate wheelchairs or walking aids, hearing or sight aids, or interpreters (ACLU, 2017). They may be “left without the means to walk, shower, clothe themselves, or even use the toilet” (ibid: 4). Confinement within a small cell does not allow for appropriate exercise, thereby exacerbating physical illness and disabilities. Blind and deaf prisoners “often experience a heightened form of sensory deprivation while trapped in the mind-numbing emptiness of solitary confinement” (ibid: 5).

Notably, the *Mandela Rules* (2015) forbid the use of solitary confinement for prisoners with mental or physical disabilities where their conditions would be “exacerbated by such measures” (Rule 45: 2).

5.4 Women prisoners

Solitary confinement is a gendered experience. Women’s imprisonment increased significantly globally from the end of the twentieth century onwards, despite the fact that women are less likely than men to commit serious violent offences (Corston, 2007; ACLU, 2014; Prison Reform Trust, 2017). Women prisoners are more likely to have serious mental health difficulties, to self-harm and to commit suicide (Corston, 2007). Moore and Scraton’s (2014) study of women in prison in Northern Ireland found that women were often afraid to disclose depression and mental ill-health, fearing that they would be placed in isolation. They also noted that women’s different physical health needs were often neglected during confinement in a cell, in relation to menstruation, pregnancy and menopause for example.

In the US, solitary confinement is often used for pregnant women, Transgender women, and even as retaliation for women who allege they have been sexually abused by prison guards (ACLU, 2014). Women may be placed in solitary confinement for ‘their own protection’ against self-harm. Women’s privacy is threatened, with guards often able to view them through the cell door (ACLU, 2014). Placing women in solitary confinement also adversely affects their children, through restrictions on visits.

As discussed in Section 8 of this report, the *Bangkok Rules* (UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, 2010) provide particular protection for women with regard to solitary confinement, especially those who are pregnant or breastfeeding.

5.5 LGBT+ prisoners

Trans prisoners are a particularly vulnerable group, at disproportionate risk of suicide, being bullied and assaulted (Prisons and Probation Ombudsman, 2017). In some jurisdictions, Trans women are placed in male prisons, and then segregated for ‘protection’ (ACLU, 2014). Research conducted for the Irish Penal Reform Trust (2016a) found that in Irish prisons protective custody is sometimes used as a “fall-back response” for Trans prisoners’ safety. The report concluded that this concerning issue “needs to be looked at in the broader context of placement and accommodation options for transgender prisoners” (ibid: 30). The use of segregation for protection for LGBT+ prisoners has been the subject of legal challenges including at the European Court of Human Rights, and in an Irish case of *Connolly vs Governor of Wheatfield* in 2013.

5.6 Black, Asian and Minority Ethnic (BAME) prisoners

Recent research studies in a variety of countries note significant racial disparities in the use of solitary confinement. A 2016 report looking at the use of such confinement in 43 US states recorded, for example, that Black male prisoners constituted 45% of those held in solitary confinement, while representing 40% of the total male prisoner population (Association of State Correctional Administrators, 2016). Greater disparities were reported for women where Black prisoners were much more likely to be held in solitary: while constituting 24% of all of the incarcerated female population across the 40 states that provided relevant data, Black prisoners comprised 41% of the female population held in isolation. In 16 out of the 40 states for which data were available, Hispanic women prisoners were also over-represented (ibid).

Summarising a number of US-based studies, Arrigo and Bullock (2008) note that Black prisoners are often stereotyped as aggressive and rule-breakers, and are more likely to be segregated for disciplinary reasons. Racial disparities were also revealed in a 2016 *New York Times* investigation into disciplinary punishments which found that Black prisoners were 65% more likely to be sent to solitary following an adjudication (Schwartz, Winerip and Gebeloff, 2016). Similarly, in Canada, Anderson (2017) noted that between 2005 and 2015, the Black Canadian prison population increased by 77.5% while the numbers sent to solitary confinement increased by over 100%. During the same period admissions into isolation declined for White prisoners.

Disproportionate use of discipline has also been noted in studies in England and Wales (see for example: Genders and Player, 1989; Edgar 2004), along with differential use of force and segregation for BAME prisoners (Joliffe and Haque, 2017). A recent study of Close Supervision Centres (CSCs) in England and Wales noted that in June 2015, BAME prisoners constituted over half of all prisoners held in CSCs who declared their ethnicity to the prison (Shalev and Edgar, 2016). Those identifying as Black/Black British were also more likely to be held in solitary confinement in excess of 84 days (ibid).

7 Most prison-based research defines ‘older’ as beginning between 50 – 55 years (Howse, 2011).

6. International human rights standards

6.1 Adult prisoners

Considering both the characteristics and the impact of solitary confinement on prisoners discussed in the earlier sections, it is clear that it may be viewed as an extreme form of deprivation of liberty that may amount to torture, inhuman or degrading treatment. As the *Istanbul Statement* (2007: 2) points out, "solitary confinement places individuals very far out of sight of justice" and this "can cause problems even in societies traditionally based on the rule of law". For that reason, "Safeguarding prisoner rights becomes especially challenging and extraordinarily important where solitary confinement regimes exist" (ibid).

The use of torture and cruel, inhuman or degrading treatment or punishment is prohibited by a number of international human rights instruments. The Universal Declaration of Human Rights (1948) contains such prohibition in Article 5, while the International Covenant on Civil and Political Rights (ICCPR) (1966) provides for it in Article 7. In addition to the general prohibition, the ICCPR states in Article 10 that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

The European Convention on Human Rights and Fundamental Freedoms (ECHR, 1950) contains the general prohibition in its Article 3, stating, "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." Article 15 of the ECHR makes clear that States cannot derogate – under any circumstances – from such a prohibition, i.e. protection from such treatment is absolute and no exceptions are permitted.

The European Court of Human Rights have previously stated that "the prohibition of contacts with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment" but that "complete sensory isolation, coupled with total social isolation" amounts to inhuman treatment that "cannot be justified by requirements of security or any other reason" (*Messina v Italy* [2000], para. 191). When subjecting prisoners to isolation "the state must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him 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 health and well-being are adequately secured" (*Piechowicz*

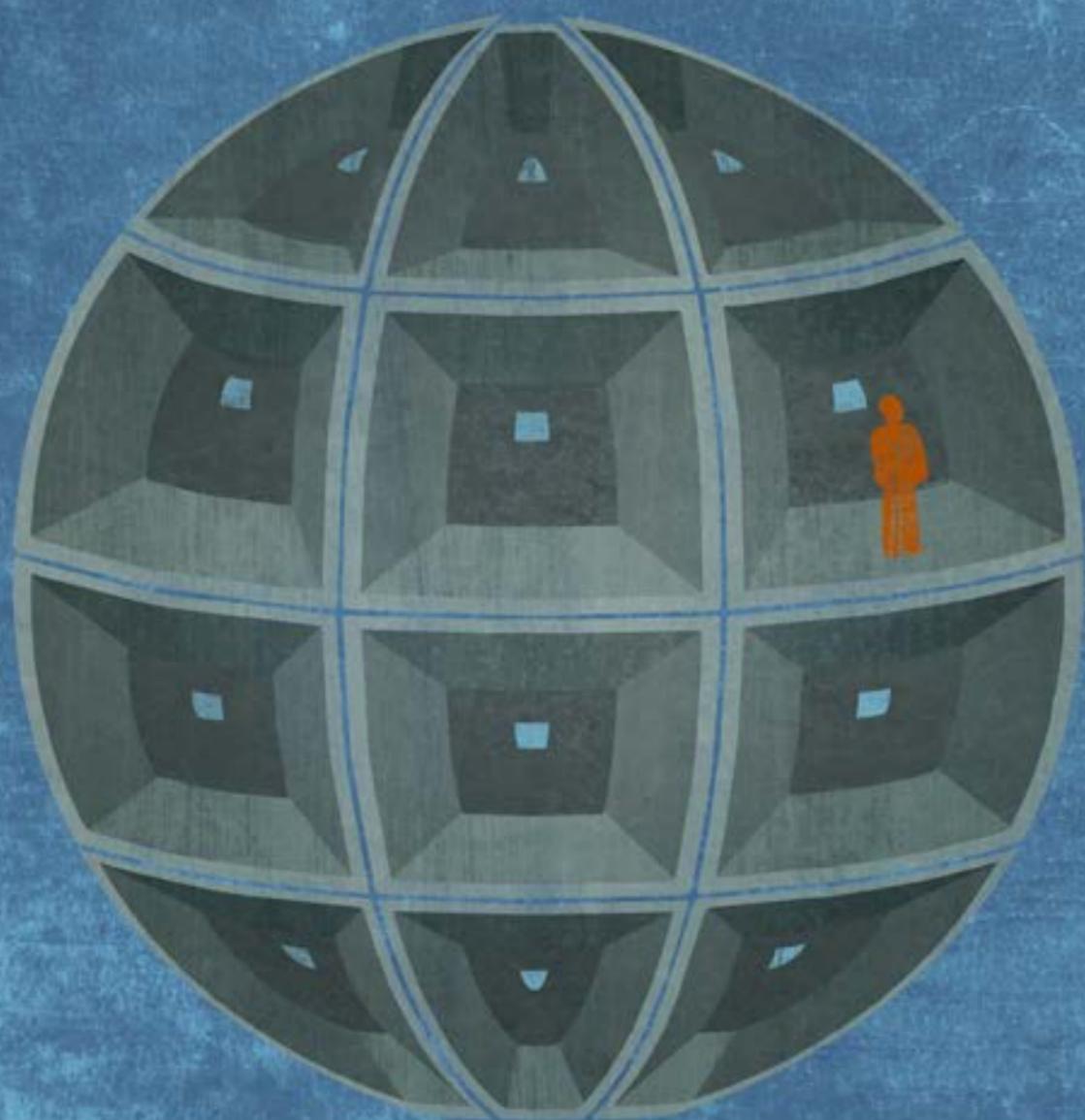
v Poland [2012], para. 162). Alternative solutions should be sought for individuals considered dangerous and for whom detention in an ordinary prison under the ordinary regime is considered inappropriate (see *Ramirez Sanchez* [2006], paras. 145-146; also *Piechowicz v Poland* [2012], para. 163).

While allowing a margin of appreciation to individual States, the Court is clear that all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects, resulting in a deterioration of mental faculties and social abilities (see *Csüllög v. Hungary* [2011], para. 30 and *Piechowicz v Poland* [2012], para. 172). In light of this, the Court is clear that solitary confinement, even in cases entailing only *relative* isolation, cannot be imposed on a prisoner indefinitely, and should not be applied to prisoners who are not dangerous or disorderly or do not continue to pose a security risk (*Babar Ahmad and Others v the UK* [2012]).

The standards articulated in international human rights treaties have long been the subject of interpretation by other human rights monitoring bodies, as well as by experts such as the UN Special Rapporteur on Torture. In 1992, the UN Human Rights Committee in its *General Comment No. 20* stated that prolonged solitary confinement may amount to a violation of

the prohibition of torture, inhuman or degrading treatment. However, the Committee did not expand on this point. In 2006, the European Prison Rules (agreed by the Council of Europe) stated that solitary confinement should only be used in exceptional circumstances and for a strictly specified period, which should be as short as possible.

In 2007 a group of experts from different countries, including lawyers, doctors and psychiatrists, drafted the *Istanbul Statement on the Use and Effects of Solitary Confinement*. Noting its increase internationally, they stated that while solitary confinement may be necessary "in exceptional cases", the situation had become "very problematic and worrying." In recognition of its damaging effects, the *Statement* declared that solitary confinement should be kept to a minimum. Rather, meaningful social contact for prisoners should be facilitated between prisoners and staff or volunteers, such as clergy, and among prisoners themselves. Contact with the outside world, including with families, was considered particularly important. States were urged to completely prohibit solitary confinement for certain groups: prisoners sentenced to death or life-imprisonment, mentally-ill prisoners, and children under 18 years of



age. It also demanded complete prohibition on the deliberate use of isolation as a tool of psychological pressure. The Statement concluded that, “as a general principle solitary confinement should only be used in very exceptional cases, for as short a time as possible and only as a last resort.”

The *Istanbul Statement* was later annexed to the 2008 *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*. In Section IV of the report, the Special Rapporteur Manfred Nowak stated that in his view “prolonged isolation of detainees may amount to cruel, inhuman or degrading treatment or punishment and, in certain instances, may amount to torture”. Recalling the UN Committee against Torture recommendation that solitary confinement should be abolished except in exceptional circumstances, the Special Rapporteur recommended that the use of solitary confinement should be kept to a minimum, used in very exceptional cases, for as short time as possible. He also noted that, where the measure is used, efforts should be made to increase prisoners’ contact with staff and other prisoners, and to provide greater access to visits and appropriate access to mental health services.

As stated earlier, in 2010 the *UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders* (known as the *Bangkok Rules*) prohibited the use of solitary confinement or ‘disciplinary segregation’ for pregnant women, breastfeeding mothers or mothers with infant children. In 2011, the UN Special Rapporteur on Torture Juan Méndez called for an absolute prohibition of solitary confinement exceeding 15 consecutive days, and a ban on the use of the measure for prisoners with mental illness or for children or young people. Also in 2011, the European Committee for the Prevention of Torture (CPT) stated that solitary confinement is *not inherent* in the fact of imprisonment and therefore further restricts the already limited rights of those deprived of their liberty, while also carrying significant risks to prisoners. As such, the CPT recommended that its imposition should always be separately justified and subject to five tests: those of proportionality, lawfulness, accountability, necessity and non-discrimination.

The revisions to the *UN Standard Minimum Rules for the Treatment of Prisoners* (the *Mandela Rules*) agreed in December 2015 reflect the most recent evidence relating to the impact of solitary confinement, and are the first international human rights instrument to explicitly outline limitations on its use. The Rules define solitary confinement as detention of prisoners for 22 hours or more without meaningful human contact, while *prolonged* solitary confinement is defined as a period lasting 15 days or more (Rule 44). The Rules explicitly prohibit the use of prolonged or indefinite solitary confinement and urge that in any

instance, it should be “used only in exceptional cases as a last resort, for as short time as possible and subject to independent review, and only pursuant to authorization by a competent authority” (Rule 43). The Rules prohibit the use of solitary confinement as a sentence, or any use in relation to pregnant and breastfeeding women (Rule 45). Prisoners with mental health issues or physical disabilities should not be held in solitary confinement if this would exacerbate their condition (Rule 45).

6.2 Children in detention

All of the international standards presented in the preceding section apply to children and young people. In addition to these, standards specifically focusing on the treatment of children are clear that, owing to their stage of physical and mental development, children are to be provided with extra protections by the State.

Article 19 of the UN Convention on the Rights of the Child (UN CRC) requires that States take legislative, administrative, social and educational measures to protect children from *all forms* of physical and psychological violence. Examining this requirement in connection with Article 37 of UN CRC (prohibiting torture, or other cruel, inhuman or degrading treatment or punishment), the UN Committee on the Rights of the Child (2007: 6) stated that the UN CRC “does not leave room for any level of legalized violence against children” (see also: UN Special Rapporteur, 2011). Dealing (in the context of corporal punishment) with the suggestion made by some States that the use of ‘moderate’ or ‘reasonable’ violence may be justified as being in the best interests of the child (Article 3 UN CRC), the Committee was clear that the principle of best interests “cannot be used to justify practices, including [...] forms of cruel or degrading punishment, which conflict with the child’s human dignity and right to physical integrity” (UN CRC, 2007: 7). Protection from violence must be provided for without discrimination (UN CRC, Article 2).

As well as prohibiting torture and inhuman or degrading treatment or punishment, Article 37 of the UN CRC also requires that any child deprived of their liberty be treated with humanity and respect for their inherent dignity. The *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (1990) (the *Havana Rules*) state that “all disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including... solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned” (1990, para. 67). It is the view of the UN Committee on the Rights of the Child (2007) that solitary confinement of children – of any duration – violates Article 37 UN CRC. This view is shared by the UN Special Rapporteur

on Torture (2011: para. 77) who stated that an “imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading treatment and violates article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture.” In 2015, the *Mandela Rules* provided an explicit prohibition on the use of solitary confinement for juveniles (Rule 45).

Placing children in solitary confinement or restricted regimes negatively impacts on their exercise of other rights, including: to family life (Article 9 UN CRC); to express their views and have those taken into consideration by decision-makers (Article 12); freedoms of expression (Article 13); religion (Article 14); and association (Article 15); to receive information (Article 17); the highest attainable standard of mental and physical health (Article 24); and to education (Article 28). Isolation also impacts on the enjoyment by children of their right to leisure, play and recreation (Article 31).

While prohibiting the use of solitary confinement for children, the *European Rules for juvenile offenders subject to sanctions or measures* (2008) permits the use of segregation for both disciplinary as well as security and safety reasons *in exceptional circumstances*. When a child is separated from others for safety and security reasons, this must be done in accordance with the law and clear procedures that specify the nature and maximum duration of such separation and the grounds on which it may be imposed (ibid: para. 93.1). Such separation must be subject to regular review and the child must have access to an effective complaints procedure (ibid: para. 93.2). Situations when segregation may be imposed as a disciplinary measure must be clearly stipulated in national law, together with the procedures to be followed at any disciplinary hearings (including the right of appeal) (ibid: para. 94.3). Segregation may only be imposed as a last resort, for as short a time as possible, and only when other sanctions would not be effective (ibid: para. 95.4). When in segregation, children should be given meaningful human contact, provided with reading material, and offered at least one hour of exercise each day (ibid: para. 95.4). The segregation regime must not restrict family contact (ibid: para. 95.6).

In light of the growing consensus on the damaging effects of isolation on children and young people, the European Committee for the Prevention of Torture (CPT) (2017) recommended in its most recent report on prison conditions in the United Kingdom (UK) that young people should not be placed in segregation

for the purposes of good order and discipline. Instead placement in in small, staff-intensive units where their often-complex needs could be better addressed was recommended. The CPT endorsed Rule 45 of the *Mandela Rules* stating that solitary confinement should not be used for children and young people and that when it comes to young people, “any form of isolation may have a considerably detrimental effect on the physical and/or mental well-being” (CPT, 2017: 59). In situations where segregation is necessary, this should be done as a last resort, for a short time only, and while providing the young person “with additional support from staff and ensuring access to purposeful activities, including physical exercise and education” (ibid).

“imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading treatment and violates article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture.”

7. International initiatives regarding the abolition or limitation of solitary confinement

In response to the significant growth of solitary confinement, there have been attempts to limit its use in recent years. As noted in a 2016 report prepared on behalf of Juan Méndez, UN Special Rapporteur on Torture, this has involved initiatives in different jurisdictions such as:

1. Limitations on **scope** – for example, prohibition of its use as punishment, or a ban on solitary confinement of children;
2. Limitations on the **length of time** for which solitary confinement can be imposed;
3. Introduction of **procedural safeguards** or regulations on specific conditions of solitary confinement (for example, relating to minimum cell size, in-cell facilities, access to light and air, and so on).

Examples of initiatives to limit or end solitary confinement, from the US, Canada and Europe (England, Netherlands and Germany), are explored below.

7.1 US-based initiatives

In recent years, initiatives have emerged from the US where campaigning organisations⁸ have been “clear and unapologetic” in seeking an end to solitary confinement for children and restrictions on its use among adults (Frost and Mouteiro, 2016: 2). US examples highlight the need to acknowledge that “extreme isolation is a grave problem” and to monitor the “prevalence and conditions” of the practice (Gottschalk, 2016: 266).

In 1998, West Virginia became the first US state to ban solitary confinement of more than 10 days for children aged under 18 years. However, in 2012 two children successfully sued for non-compliance (Hager and Rich, 2014). New York State legislation in 2008 required the removal of prisoners with mental illness from isolation and development of a “therapeutic, non-disciplinary” unit (ibid, 2014). In Maine in 2010 a restriction was introduced that detention in the Special Management Unit (‘the hole’) for over 72 hours required the approval of the Commissioner of the Department of Corrections.

This initiative, accompanied by improved staff training, halved the use of solitary confinement and reduced the average time spent in solitary (ibid, 2014).

Prisoner hunger strikes in California drew further attention to solitary confinement from 2011 through to 2013 (Gottschalk, 2016). In 2012, a congressional hearing⁹ was held on the issue. By 2015, “dozens of pieces of legislation had been introduced in the US placing new limits on the use of solitary confinement and a few had been passed” (Casella and Ridgeway, 2016: 14). In July 2015, President Obama announced a review of solitary confinement (US Department of Justice, 2016). This was based on the premise that regimes should be as unrestricted as possible, compatible with safety, and – even within restricted regimes – out-of-cell time should include opportunities for “recreation, education, clinically appropriate treatment therapies, skill-building, and social interaction with staff and other inmates” (ibid, 2016: 94-103). Recommendations included: a ban on solitary confinement for children or for minor breaches of rules; diversion of mentally-ill prisoners away from the prison system; limits on the use of protective custody; and time restrictions (US Department of Justice, 2016).

Colorado is considered a ‘model of reform’ in reducing solitary confinement (Casella and Stahl, 2016). Levels of incarceration rose rapidly after all felony sentences were doubled in the 1980s (Colorado Criminal Justice Reform Coalition online). In 1993, the Colorado Department of Corrections (CDOC) built a separate facility for prisoners considered dangerous or at risk of serious harm to themselves or others. Over time, however, its use had spread beyond this group, with some prisoners spending years in the facility. ‘Administrative segregation’¹⁰ was restricted by law in 2011.¹¹ Further, a review (Austin and Sparkman, 2011) commissioned by the CDOC Director recommended: that prisoners undergo mental health assessment prior to segregation; use of disciplinary segregation for short, specified periods rather than the more indefinite administrative segregation; return of ‘compliant’ prisoners to the general population; and a step-down process to ease transition from segregation. As a result of the reforms, more than 700 prisoners

8 Including Amnesty International, the American Civil Liberties Union (ACLU), Human Rights Watch (HRW), Solitary Watch, and the Vera Institute of Justice, among others.

9 By the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights.

10 Administrative segregation refers to the practice of separating ‘problematic’ prisoners from the general population. This may be long-term and for unspecified time lengths. It differs from disciplinary segregation, which is used for dealing with a particular offence and for a specified time. See Frost and Mouteiro, 2016.

11 Senate Bill 11-176, General Assembly of the State of Colorado.

were removed from segregation (Casella and Stahl, 2016).¹²

Despite the changes, prisoners with serious mental illness continued to be ‘warehoused’ in solitary confinement (ACLU, 2013). The American Civil Liberties Union (ACLU) lobbied for: an end to solitary confinement for prisoners with serious mental illness; medical health professionals’ involvement in disciplinary processes involving those prisoners; and a minimum of 20 hours weekly out-of-cell time for seriously mentally-ill prisoners (including 10 hours of therapeutic time). Consequently, legislation in 2014 prohibited the segregation of prisoners with mental illness, except in “exigent circumstances” (Associated Press, 2014). By May 2016, there had been a dramatic fall in numbers in solitary confinement in Colorado (Hall, 2016).

Although solitary confinement as punishment for children had been banned by Colorado legislation since 1999, a 2014 ACLU investigation found repeated violations. Legislation introduced in 2016 places a time limit of four hours on the solitary confinement of children, except in ‘emergency situations’ where continued isolation had to be authorised by a doctor in consultation with a mental health professional. A court order is required to hold a child in solitary for eight hours. The legislation also requires that solitary confinement be recorded and information reported to a statutory oversight board (Lutz et al, 2017: 173–174. See also Maes, 2016).

A further US initiative is the Clinical Alternative to Punitive Segregation unit (CAPS) for prisoners with serious mental illness introduced in New York City in 2013. An “alternative” to punitive segregation, and requiring a high level of resourcing, CAPS offers “therapeutic activities and interventions” including “individual and group therapy, art therapy, medication counseling and community meetings” (Glowa-Kollisch, 2016: 181). Prisoners with less serious mental illness who breach rules are placed in Restrictive Housing Units (RHU), combining solitary confinement with access to clinical programmes. Research found less self-harm among prisoners in CAPS than those in RHUs. Thus, the CAPS approach has been adapted for use in other mental health units (Glowa-Kollisch, 2016). Since 2016, punitive segregation has been ended for those aged under 21 and “therapeutically oriented alternative housing models” developed (New York City website, 2016).

7.2 Canadian initiatives

Awareness has grown in Canada of the damaging impact of solitary confinement, especially following the death of 19-year-old Ashley Smith in 2007 through self-strangulation while in segregation in Grand Valley Institution for Women, Ontario. The coroner’s recommendations at the inquest into Ashley Smith’s death included an end to indefinite solitary confinement and to segregation of more than 15 days for women with mental health difficulties. In 2015 Prime Minister Justin Trudeau ordered a review of the implementation of these recommendations (Blanchfield, 2017).

More recently, attention was drawn to the issue through media coverage of the case of Adam Capay, an indigenous prisoner with mental health difficulties, who spent four years on remand in isolation in a permanently-lit cell, with minimal access to reading materials or washing facilities (White, 2017). As a result of the publicity, the Ontario Ombudsman launched an investigation into solitary confinement processes. His review found that although “theoretically, an inmate should only be placed in segregation as a last resort after every other option has been exhausted”, in practice, this was often not the case (Ombudsman Ontario, 2017: 6). The Ombudsman’s recommendations focused on monitoring and accountability and included: a review of the definition of solitary confinement in line with international standards, so as to ensure consistency across regimes; enhanced staff training; improved monitoring of the use of segregation based on a “standardized method for accurately tracking and reporting on inmates who spend 60 days in segregation over a 365-day period” (Ombudsman Ontario, 2017: 62). He also recommended that the Ministry monitor the use of solitary confinement for prisoners with mental health difficulties, including whether a treatment plan was in place (ibid, 2017: 63); and publication of statistical information on “gender, race, mental health status, aboriginal status, and other relevant personal factors, as well as instances of self-harm, increased medical treatment, hospitalization, and deaths occurring during segregation” (ibid, 2017: 64).

As in the US, prison litigation has been an important strategy in challenging the use of and conditions in solitary confinement in Canada. A 1976 judicial decision found that eight prisoners imprisoned within the Special Correction Unit of British Columbia Penitentiary had been subject to “cruel and unusual punishment” in breach of the *Canadian Bill of Rights* (Parkes, 2017). One prisoner gave evidence of cleaning up the blood of others who had harmed themselves, and setting fire to his own cell in a bid to escape from solitary, saying “I remember

12 The CDOC Director Tom Clements was killed by a recently-released prisoner in 2013. His successor Rick Raemisch was also committed to reducing the use of solitary confinement.

watching the space beneath the door get bigger. I thought I could crawl beneath it and be free [...] I don’t care if I die, I never want to go back to that position again” (cited in Parkes, 2017: 171).

Over the following decades, legal challenges resulted in the release of some prisoners from solitary, due to conditions of detention, flawed procedures, or failure to follow procedures (Parkes, 2017). In 2015, lawyers for the British Columbia Civil Liberties Association and John Howard Society of Canada argued at the British Columbia Supreme Court that administrative segregation in federal prisons constitutes “cruel and unusual treatment or punishment” and breaches other constitutional rights such as “life, liberty, and security of the person” (Parkes, 2017: 172). In June 2017, the federal government passed legislation restricting the use of solitary confinement (Blanchfield, 2017). If implemented this will establish a time limit of 21 days, which will be reduced to 15 days once the legislation has been in place for 18 months.

Having reviewed the use of legal challenges, Parkes (2017: 177) argues that while media coverage and monitoring reports can highlight abuses and occasionally lead to policy change, only courts have the power to “enforce rights and require meaningful changes to be made.” She warns that prison systems tend to make changes that ultimately consolidate the institution and fail to remove the problem at root source and therefore litigation strategies must be coupled with broader strategies aimed at reducing and even abolishing the use of imprisonment.

7.3 Initiatives in Europe

7.3.1 England: Close Supervision Centres

In England since 1998, Close Supervision Centres (CSC) were introduced to “remove the most significantly disruptive, challenging, and dangerous prisoners from ordinary location, and manage them within small and highly supervised units” (High Security Prisons Group cited in Shalev and Edgar, 2015: 6). CSCs differ from ‘normal’ segregation in that:

For segregated prisoners, ‘regime’ can mean as little as half an hour out of cell per day, with very limited activities. For CSC residents, the regime can include some association and access to activities. Prisoners can be removed to segregation by a governor’s decision, whereas CSC selection is a multi-disciplinary, central process, informed by psychological input. (Shalev and Edgar, 2015: 1)

Rather than a short-term response, detention in a CSC can last for years. Shalev and Edgar’s (2015) review found that regime activities in CSCs were “more diverse” than in normal segregation, including television, exercise equipment and facilities for

cooking. Some, but not all, prisoners were able to associate during these activities. Officers working in the units had specific training in working with people with mental health problems. However, the research also found the environment to be restrictive and enclosed, and opportunities for association limited. At that stage, in 2015, the intended joint psychology-prison service programmes were not functioning in the CSCs observed.

A problem identified by prisoners was that spending long periods in the CSC meant that human contact was restricted to those detained, or working in, that environment. Some prisoners also voiced frustration about the lack of autonomy and limited involvement in decision-making. Positive aspects identified by prisoners included increased access to healthcare staff and having support in learning about their own problems and how to deal with these. Perhaps most positively, 100% of prisoners interviewed in CSCs said that there were officers they “got on with” (Shalev and Edgar, 2015: 71). The researchers spoke particularly highly of a CSC (not named in the report) where interactions were “closely monitored”, yet “the regime fostered a greater sense of community and a progressive purpose” (ibid, 2015: 88). However, in general prisoners viewed CSCs as lacking legitimacy and many did not know when they were likely to return to the normal regime. The report recommended that:

CSCs should provide more programmes and activities which address, on an individual basis, the conduct or reasons which led to a prisoner’s placement. A clear structure for individuals to progress should include clear expectations, a statement of services and support to be provided, and interim targets set. (Shalev and Edgar, 2015: 139)

7.3.2 Germany and the Netherlands

The US-based independent research organisation, Vera Institute of Justice, reported on a fact-finding visit to Germany and the Netherlands on sentencing and penal practice. The report (Subramanian and Shames, 2013) includes analysis of how both jurisdictions maintain low rates of solitary confinement, and low rates of incarceration more generally. Both have strict time limits: solitary confinement may not exceed four weeks in Germany and two weeks in the Netherlands; thus solitary confinement is “rarely used” and only for “brief periods” (ibid: 13). Staff in the Netherlands are trained on the negative consequences of solitary confinement. In Germany, they are trained on the “use of incentives and rewards”, with an “emphasis on positive reinforcement” so that “disciplinary measures – such as solitary confinement – are used sparingly” (ibid: 12). In Germany’s Waldeck prison, for men sentenced to over two years, solitary confinement was used only two to

three times in a year, while in Neustrelitz prison for young adults the segregation cell was used “twice in five years, and only for a few hours each time” (ibid: 13). The Vera report recommended decarceration, less restrictive prison regimes, and alternative ways of managing breaches of rules and disruptive behaviour, including staff training on conflict de-escalation.

Although it is useful to consider how other jurisdictions such as Germany and the Netherlands approach the question of solitary confinement, it is clear that each system has its own difficulties. In the Netherlands, for example, immigration detention facilities have been highly criticised by Amnesty International (2017), including the use of solitary confinement in these.

7.4 Pointers from across the jurisdictions

The examples above demonstrate methods that have been used in different jurisdictions to address high levels of solitary confinement. They are not panaceas and the ‘pains of imprisonment’ are felt in each setting. Rising incarceration brings increased use of solitary confinement and decarceration is critical to avoiding the harms of solitary confinement.

Key points which can be drawn from the examples discussed above include:

- The importance of prison activism, lobbying/campaigning, and media campaigns in inspiring public and political interest;
- Legal strategies can be helpful in challenging non-rights compliant policies and practices which impact on individuals and groups;
- The need to put in place specific restrictions on isolation and requirements for time out of cell and association;
- The importance of resourcing support for prisoners in transitioning to the general population, for example, adequate assessment and staffing;
- The necessity of monitoring compliance with legislation and rights;
- The role played by strong leadership (political and prison/criminal justice management) in driving change and dealing with internal opposition;
- The need to consider ways of reducing the prison population and encourage different responses to social harms.



8. Legislation, policy and practice in Ireland

Ireland's prison estate is comprised of 12 places of detention: 10 closed prisons and two open centres. In 2017, the 'semi-open' facility (the Training Unit) in Dublin was closed. The majority of women prisoners are accommodated in the Dóchas Centre on the Mountjoy campus in Dublin, with some also held in a female unit within Limerick Prison. According to published Irish Prison Service figures, on 31 October 2017, there were 3,665 prisoners in custody in Ireland. Ireland has a relatively low prison rate of 75 per 100,000 of the population. As in other western jurisdictions the prison population increased substantially at the end of the twentieth century, rising by 400% between 1970 and 2011; however, prison numbers have fallen considerably since then.

This part of the report analyses the use of solitary confinement within the Irish prison system, including a discussion of the legal and policy framework, and pertinent jurisprudence. Statistical analysis and the findings from the primary research for this report are also included.

8.1 Legislation, case law and policy – adults

8.1.1 The legal framework regulating the placing of prisoners in isolation or on a ‘restricted’ regime in Ireland

There are a number of reasons why prisoners may find themselves placed in isolation or having their regime restricted, and those situations are regulated mainly by the 2007 *Prison Rules* outlining circumstances when a prisoner may be segregated on grounds of order (Rule 62), protection in cases of vulnerability (Rule 63), or where the use of a safety observation cell is necessary (Rule 64). Rules 66 and 67, in conjunction with Part 3 of the Prisons Act 2007, regulate segregation for reasons of discipline.

Removal of a prisoner on ‘Grounds of Order’

Under Rule 62 (removal of a prisoner from structured activity or association on grounds of order), a Governor may direct that a prisoner may not be permitted to engage in structured activities (generally or for specified activities) with other prisoners, participate in recreation with other prisoners, or associate with other prisoners. For such a direction to be issued, the Governor has to reasonably believe (on the basis of information supplied) that to allow a particular prisoner to engage in activities or to associate with others would result in a significant threat to the maintenance of order or safe or secure custody.

Not all prisoners placed on Rule 62 will be subjected to 22- or 23-hour lock-up; some will be accommodated in shared cells and some will have access to more open regimes. There is no upper limit on the period of such segregation, and the *Prison Rules* only state that the measure should be used for no longer than necessary to ensure the maintenance of good order or safe or secure custody. The Governor must review the placement every seven days,¹³ and the prisoner should be given the reasons for the initial application of the measure, and for any extension. The *Prison Rules* require that a prisoner subject to segregation under Rule 62 is regularly visited by a doctor and has access to a chaplain.

Segregation for Protection

Segregation of vulnerable prisoners (segregation for protection) is regulated by Rule 63 of the 2007 *Prison Rules*. Unlike in the case of Rule 62, the request to be segregated from all or parts of the general prison population can come from the prisoner, and in Irish prisons a considerable number of prisoners

request such a measure, most often due to fearing for their safety. The rule applies to situations where there is reasonable belief that other prisoners are likely to cause significant harm to the prisoner in question.

Prisoners on protection are not necessarily accommodated on their own – they may be accommodated in single cells; share a cell with another prisoner; may be accommodated in segregated wings (or units); may be subject to lengthy lock-up or have access to parts of the prison regime. Similar to Rule 62, there is no express time limit on the application of such a measure, and the *Prison Rules* do not explicitly require that segregation of vulnerable prisoners be regularly reviewed. However, since 2012 Governors are required to review the circumstances of all prisoners placed on Rule 63 monthly.¹⁴

Safety Observation

The use of Safety Observation Cells (SOC) is regulated by Rule 64 of the 2007 *Prison Rules*. The initial placement of a prisoner in a SOC is limited to 24 hours, and may only be used in circumstances when “it is necessary to prevent the prisoner from causing imminent injury to himself or herself, or others and all other less restrictive methods of control have been, or would, in the opinion of the Governor, be inadequate in the circumstances” (Rule 64).

A prisoner placed in a SOC must be examined by a doctor, and be regularly observed by staff at 15-minute intervals. The Governor, in consultation with a doctor, may extend the initial period of placement in a SOC to five days overall; the Director General of the Irish Prison Service must authorise any extension beyond that time. The *Prison Rules* prohibit the use of placement in SOCs as punishment and require that a prisoner placed in such a cell is regularly visited by a doctor and the Governor.

Close Supervision

The use of Close Supervision Cells (CSCs) appears to be regulated by policy rather than in accordance with the *Prison Rules* (see: UN CAT, 2016: para. 125). The cells are used for “managing violent and distressed prisoners” (ibid) and used for a maximum of 5 days, with the extension of every 24-hour period within those five days having to be authorised by the Director General of the Irish Prison Service (UN CAT, 2017a: para. 7).

¹³ Under Rule 62(9), an extension of such segregation beyond 21 days requires a decision by the Director General of the Irish Prison Service.

¹⁴ Circular OPS/19/2010 (recently appended to the IPS Policy for the Elimination of Solitary Confinement, available at: https://www.irishprisons.ie/wp-content/uploads/documents_pdf/Elimination-of-solitary-confinement-Policy.pdf).

Breach of Discipline

Lastly, solitary confinement may be used as a sanction for breaches of prison discipline. Section 13(1)(c) of the 2007 *Prisons Act* provides explicitly that a prisoner who is found to have breached prison discipline may be confined to a cell (other than a SOC) for up to three days. However, another sanction – a sanction of the loss of all privileges provided for by Section 13(1)(d) – may also result in a situation where a prisoner is held in conditions akin to solitary confinement. This is because under the relevant provisions, a prisoner may (for a period of up to 60 days¹⁵) be prohibited from: engaging in structured or recreational activities; receiving visits;¹⁶ sending or receiving letters; spending their own money; using the phone; or possessing articles that are normally provided to prisoners as a ‘privilege’.

Minimum out-of-cell time

In July 2017, the *Prison (Amendment) Rules 2017* provided a change to the regulations on minimum out-of-cell time in Irish prisons.¹⁷ In accordance with the amendment, prisoners should be provided with a minimum of 2 hours a day out-of-cell time, with “an opportunity during that time for meaningful human contact including, at the discretion of the Governor, contact with other prisoners” and/or “as much time” out-of-cell each day “as is practicable and, at the discretion of the Governor, to associate with other prisoners in the prison”. “Meaningful human contact” is further defined by the amendment as “interaction between a prisoner and another person of sufficient proximity so as to allow both to communicate by way of conversation”.

While introducing a general principle of minimum out-of-cell time, the amendment also allows for exemptions for reasons of discipline (in accordance with Part 4 of the *Prison Rules 2007*) and subject to Part 3 of the *Prison Rules 2007* on association and activities, many of which are provided at Governors’ discretion.

8.1.2 Jurisprudence

Although the courts in Ireland have long held the view that prisoners retain certain rights under the Constitution, they have allowed for limitations on the exercise of many of the rights due to the fact of imprisonment (see, for example, *State (McDonagh) v Frawley*, 1978). However, the courts also recognise that any limitations on the exercise of constitutionally protected rights must be proportionate and necessary. This principle was expressed in *Mulligan v Governor of Portlaoise Prison* (2010, at para. 14), where the court held that any restrictions:

... must be proportionate; the diminution must not fall below the standards of reasonable human dignity and what is expected in a mature society. Insofar as practicable, a prison authority must vindicate the individual rights and dignity of each prisoner.

The courts in Ireland have traditionally allowed prison governors a wide margin of appreciation regarding application of prison rules, and in many instances subjugated the protection of the rights of prisoners to the protection of security and good order (see, for example, *Foy v Governor of Cloverhill Prison*, 2010). However, the courts are also clear that any restrictions must be justified and that the reasons for which prisoners are subject to such restrictions must be regularly reviewed (*McDonnell v Governor of Wheatfield Prison*, 2015).

Courts in Ireland have considered conditions of isolation in a number of cases and found that when a prisoner is separated from his or her peers, such isolation may affect their right to bodily integrity and dignity (see, for example, *Kinsella v Governor of Mountjoy Prison*, 2012) and they should be able to associate with others to avoid the risk to psychological wellbeing caused by isolation (*Devoy v Governor of Portlaoise Prison*, 2009). Prisoners have the right not to be subjected to inhuman or degrading treatment (see, for example, *Mulligan v Governor of Portlaoise Prison*, 2014) and in weighing up whether conditions of detention have breached any rights, the totality of those conditions will be taken into consideration. With respect to the latter, and in connection with conditions of solitary confinement or isolation, the courts found in the past that where

¹⁵ While the *Prison Rules* allow for the imposition of the sanction for up to 60 days, the Irish Prison Service appears to also have internal Guidance on the Imposition of Disciplinary Sanctions which limit the use of the measure to 40 days (see: Council of Europe (2015) 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 16 to 26 September 2014, Strasbourg: CPT, p. 43). Information supplied during this research by prison managers indicates that the measure is now applied within this latter limit.

¹⁶ Save for professional visits from individuals and organisations listed in Section 13(1)(d). The loss of visits with family was previously criticized by the European Committee for the Prevention of Torture (CPT); however the CPT noted after its periodic visit to Ireland in 2014 that such visits are now not completely withdrawn in disciplinary cases, and that prisoners are permitted one visit and one phone call a week.

¹⁷ Statutory Instrument No.276 – Prison (Amendment) Rules 2017 (available at: <http://www.irishstatutebook.ie/eli/2017/si/276/made/en/print>)

prisoners had contact with prison officers, legal representatives, medical personnel, and family visits, there was no breach of the prisoners’ constitutional rights (see, for example, *Devoy v Portlaoise Prison*, 2009 or *McDonnell v Governor of Wheatfield Prison*, 2015). The Irish Human Rights and Equality Commission appeared as amicus curiae in the *McDonnell and S.F. (a minor) and Others v Director of Oberstown Children Detention Campus and Others* [2016] case (below).

The High Court recently considered the use of solitary confinement with respect to children.¹⁸ This was the first Irish case to consider the situation of children in this regard. It centered on events of 29th August 2016 (and thereafter) at the Oberstown Children Detention Campus. During what was referred to as a “serious disturbance at the campus” (Oberstown Case: para. 3), a group of children (including the four boys who took the case) gained access to the roof of one of the campus buildings and were said to have caused “considerable damage”. Following the incident, the boys were placed in ‘separation’ in locked bedrooms “for a number of weeks” (ibid). At the start of the separation, they were deprived of running water, bedding, communication with their families, access to exercise or any type of “entertainment”, and communication with staff took place through the hatch of the door only. These conditions were later “ameliorated” and some of the deprivations “removed” (ibid) as time went on. (For example, access to fresh air was provided from day 10 or 11 of confinement, depending on the individual.) Oberstown management claimed that some of the boys had threatened and used violence and failed to engage with staff for a time after being segregated; however, conditions of detention were “relaxed” as they began to engage with staff (Oberstown Case: para. 21).

The boys argued that their conditions of detention (including the isolation itself) violated their constitutional rights to bodily integrity and dignity. Additionally, they argued that the treatment amounted to: a violation of the prohibition of torture, inhuman or degrading treatment or punishment (Art. 3 ECHR); a breach of their right to family life (Art. 8 ECHR); violation of the right to fair trial (Art. 6 ECHR) and the constitutional right to fair procedures; and, finally, that their confinement in solitary conditions was unlawful. While Oberstown management disputed the use of the term ‘solitary confinement’ and instead insisted that the boys were subjected to ‘separation’, with the implication that those terms

described different material situations, the Court accepted that – in practical terms – as the boys were segregated from their peers, their situation was equivalent to solitary confinement.

The Court acknowledged that there are no regulations equivalent to the *Prison Rules 2007* with respect to the detention of children in Ireland, and therefore ‘separation’ was governed by Oberstown’s policy (version of January 2016; see section 8.3 later in this report) rather than by any statutory instrument. It recalled that the policy stated that separation should be used for as short a period as necessary (and no more than three days) and only when the young person was at risk of causing harm to themselves or others or of causing serious damage to property. The use of separation under the policy was to be proportionate to that risk, and used as a “continuum of interventions” (Oberstown Case: para. 74); as such, separation was not to be used as a “primary tool to manage challenging behaviour” (ibid).

The Court stated that the authority of the Director to separate young people from their peers where it is necessary “for the maintenance of order and to prevent damage to property or injury to persons” (Oberstown Case: para. 111) may derive from the *Children Act 2001*, giving the Director overall responsibility for the detention school campus, including the safety of children, the staff and premises. As such, the Court found that the policy should be treated as guidance rather than a binding document, and therefore a “breach of the Policy would not, *per se*, be unlawful” (ibid: para. 112). However, it stated that children cannot have lesser protections under the law, including under the Constitution, than adults have. While stopping short of declaring that solitary confinement should never be imposed on children, the Court stated that any application of it to children must be strictly necessary, and for the shortest possible time. While not being overly prescriptive, the court stated that procedural safeguards must apply and these should include:

- a formal decision to separate a child;
- regular review at appropriate level of staff seniority;
- notification to the child of the duration of isolation and steps that the child can take to affect the duration (for example, change of behaviour);
- some form of ensuring that the voice of the child

is considered in decision-making about the use of isolation;

- appropriate medical and psychological monitoring to ensure that no harm is being caused to the child’s well-being (Oberstown Case: para. 119).

The Court stated that while many similar safeguards were included in the separation policy operating at Oberstown at the time of the events in question, these were not implemented, including that there was no authorisation by the Director of the separation and that there were no reasons given formally for the separation. However, on the issue of the length of separation, the Court found that even though it had lasted for three weeks, the boys’ Constitutional rights were not violated. The Court took into consideration the seriousness of the initial disturbance at the campus and the reported threats to staff made subsequently by the boys in the days that followed their initial separation. While finding the conditions of detention harsh (especially initially), the Court found that these were not intended to humiliate or debase the boys. However, the Court found that their rights were violated with respect to deprivation of daily exercise during separation, and deprivation of contact with their families for a period during the separation.

8.1.3 Policy initiatives

In its *Strategic Plan* for 2016-2018, the Irish Prison Service (2016) committed to a reduction in solitary confinement and restricted regimes. The *Plan* promised that where restricted regimes are necessary, prisons will ensure that this is done for a period no longer than required and implemented in a way that “upholds the prisoner’s right to access, where possible, prison services including education, training and healthcare” (ibid: 6). Solitary confinement was only to be used in “extreme cases and where absolutely necessary for security, safety or good order reasons and for the shortest possible time” (ibid). Prisoners in solitary confinement were to be provided with an individual management plan; be able to access services where possible; and be subject to a regular review of the prisoner’s mental health. In addition, the IPS committed to reviewing the “complex area of prisoners on protection” (ibid: 29) as well as to reducing the length of time prisoners spend on restricted regimes. While not fully committing to abolition of restricted or solitary regimes, a significant reduction in the number of prisoners subjected to such conditions would constitute an important step in the right direction.

In July 2017, the Irish Prison Service issued its *Policy for elimination of solitary confinement* (IPS, 2017), with the aim of incorporating Rules 44 and 45 of the *Mandela Rules* (as described above) into the operation of the Irish prison system. In accordance

with the policy, all prisoners who wish to do so should receive a minimum of two hours of out-of-cell time a day with “the facility for meaningful human contact” (IPS 2017: point 2). “Meaningful human contact” is defined as an “Interaction between a prisoner and another person of sufficient proximity so as to allow both to communicate by way of conversation” (ibid: point 6).

The policy obliges staff to record the out-of-cell activities of prisoners subject to restricted regimes under Rules 62–65 of the *Prison Rules 2007*. A refusal by a prisoner to engage in out-of-cell activities is also to be recorded. However, the *Policy* allows for a restriction of out-of-cell time to 2 hours or less, for as long as the Governor records the reasons for such a restriction (if other than medical), and notifies the Director of Operations of the IPS. **As such, the policy does not eliminate the possibility of greater restrictions being imposed in certain circumstances.**

8.1.4 Recent proposed legislative developments

A Private Member’s Bill, the *Prisons (Solitary Confinement) (Amendment) Bill 2016 [PMB]* was introduced by Clare Daly TD on the 10th of November 2016. The *Bill* was debated in the Dáil on 1st December 2016, and was scrutinised by the Joint Committee on Justice and Equality in February 2017. A report was laid on the 23rd March 2017 (Joint Committee on Justice, 2017). The *Bill*, if passed, will provide a definition of solitary confinement in Irish law, and place statutory restrictions on the use of isolation for prolonged periods.

The *Bill* defines solitary confinement as “the restriction of a prisoner’s opportunities for meaningful human interaction and communal association for 22-24 hours a day, whether by means of restricting the prisoner to a cell or by any other means” (Section 1). The *Bill* proposes to amend Section 35 of the *Prisons Act 2007* with provisions prohibiting the holding of a prisoner in solitary confinement for any reason for more than 15 consecutive days. The *Bill* also proposes that no prisoners should be held in solitary confinement for more than 30 days in any year.

The *Bill* states that solitary confinement should be prohibited as a punitive measure or for a breach of discipline and that certain groups of prisoners, including prisoners with a diagnosed mental illness or disability and prisoners on remand, should not be held in solitary confinement. The *Bill* states that solitary confinement should be seen as an exceptional measure, with any decision on its use being

18 This case ([2016 No.711 J.R.]) considered four combined suits, viz: a) *S.F. (a minor) v Director of Oberstown Children Detention Campus, Commissioner of An Garda Síochána, Minister for Children and Youth Affairs, Minister for Justice and Equality, Ireland and Attorney General*; b) *L.C. (a minor) v Director of Oberstown Children Detention Campus and the Minister for Justice and Equality*; c) *T.G. (a minor) v Director of Oberstown Children Detention Campus, Commissioner of An Garda Síochána, Minister for Children and Youth Affairs, Minister for Justice and Equality, Ireland and Attorney General*; d) *P.McC. (a minor) v Director of Oberstown Children Detention Campus and the Minister for Children and Youth Affairs*. For ease of citation, the authors refer to it collectively hereafter as ‘the Oberstown Case’.

authorised by a Governor within 24 hours. The *Bill* proposes that the initial decision should be reviewed by the Governor every three days, with written reasons being provided for continuation of solitary confinement. It also states that prisoners held in solitary confinement should have the same access as the rest of the prison population to work, training and education, family contact, the Inspector of Prisons and the complaints mechanism.

8.2 Solitary confinement and restricted regimes in Ireland – current numbers

According to official statistics, the number of prisoners subjected to 22/23-hour lock up in Irish prisons has decreased significantly since July 2013 (when the quarterly census of those prisoners was first completed and published). In October 2017, the recorded number of prisoners subjected to 22/23-hour lock up stood at 9, down from 72 in January 2017 and comparing with 211 in July 2013.

The reduction in the number of prisoners on 22/23-hour lock up is welcome. However, it is important to state that at the same time, the number of prisoners on 19 to 21+ hour lock-up has gone up from 128 to 419. **In the time since the publication of the first census data in July 2013, the overall number of all prisoners on 19+ hour lock-up increased from 339 to the current number of 428, i.e. by just over 25%.**

The publicly available statistics do not provide adequate information on the length of detention on restricted regimes of individual prisoners, nor do they provide a picture of repeat placements in solitary confinement of the same prisoners. **However, some partial figures published by *The Irish Times* in October 2016 (McCracken, 2016) and provided by the Irish Prison Service for a ‘snap-shot’ day of 1st January 2016 showed that 6 prisoners had been held on 22- or 23-hour lock-up for between 101 and 200 days; 9 for 201 days up to a year; and 9 had spent more than one year in such conditions.**

Table 1: Prisoners on lengthy lock-up (all prisons): July 2013 – October 2017 ¹⁹

Date	23 hr	22 hr	21 hr	20 hr	19 hr	TOTAL
July 2013	150	61	65	0	63	339
October 2013	65	70	61	0	67	263
January 2014	44	6	58	42	78	228
April 2014	43	0	134	44	53	295
July 2014	32	10	114	6	91	269
October 2014	51	1	111	10	84	257
January 2015	22	35	125	1	117	300
April 2015	29	14	82	124	52	301
July 2015	58	7	241	0	93	399
October 2015	31	47	158	1	152	389
January 2016	26	25	237	3	48	339
April 2016	64	21	238	10	35	368
July 2016	35	39	225	9	94	402
October 2016	14	17	170	22	201	424
January 2017	7	65	186	49	121	428
April 2017	17	27	174	135	77	430
July 2017	7	3	295	26	84	415
October 2017	4	5	245	77	97	428

¹⁹ Numbers collated from published ‘Prison Population Census Reports’ (available at: <https://www.irishprisons.ie/index.php/information-centre/statistics-information/census-reports/>)

In October 2017, the largest number of prisoners (379) had their regime restricted under Rule 63 (protection) “at their own request”.²⁰ Moreover, the overall number of prisoners on restricted regimes for reasons of ‘protection’ (Rule 63, voluntary and involuntary) relative to the prison population has doubled in recent years, from 5.3% of the overall population in October 2013 to 10.7% in October 2017.

Table 2: Restricted regime by reasons of restriction (all prisons): October 2013 – October 2017 ²¹

Date	Rule 62	Rule 63 (Voluntary)	Rule 63 (Involuntary)	Rule 64 (Special Observation)	Rule 67 (Discipline)	Other	TOTAL
October 2013	7	213	16	0	19	8	263
January 2014	17	183	18	1	5	4	228
April 2014	37	249	2	5	1	1	295
July 2014	24	228	10	0	5	2	269
October 2014	16	230	11	0	0	0	257
January 2015	15	264	14	3	4	0	300
April 2015	17	253	6	0	10	15	301
July 2015	40	329	3	6	1	20	399
October 2015	39	324	1	4	0	21	389
January 2016	15	313	5	0	0	6	339
April 2016	21	334	9	0	0	4	368
July 2016	28	344	4	3	3	20	402
October 2016	31	367	11	1	0	14	424
January 2017	24	389	8	0	0	7	428
April 2017	23	394	7	0	0	6	430
July 2017	16	368	16	4	0	11	415
October 2017	27	379	6	3	0	13	428

²⁰ Ibid.

²¹ Ibid. Statistics for July 2013 have been excluded from the table as these were not recorded in a format comparable to the rest of the sets.

The publicly available statistics show that the use of restricted regimes for women is relatively rare, although it should be stated here that data are only available for the Dóchas Centre (part of the Mountjoy Campus in Dublin). Statistics for Limerick Prison (where the other female unit is located) are not disaggregated by gender. The numbers for the Dóchas Centre include:

- a) one prisoner on 23-hour lock-up under Rule 62 in April 2014;
- b) two prisoners on 23-hour lock-up under Rule 62 in October 2014;
- c) one prisoner on 19-hour lock-up under Rule 62 in October 2015;
- d) two prisoners whose regime was restricted on the basis of Rule 63 (voluntary) to 19 hours and 21 hours in lock-up (respectively) in January 2016;
- e) one prisoner on 23-hour lock-up under Rule 62 in April 2016;
- f) one prisoner on 19-hour lock-up under Rule 63 (voluntary) in July 2017; and
- g) three prisoners on 19-hour lock-up under Rule 63 (involuntary) in October 2017.²²

Quarterly statistics on the use of Safety Observations Cells (SOCs) and Close Supervision Cells (CSCs) have also been publicly available since July 2016. The available statistics show that the number of prisoners held in those cells is relatively low: in July 2016, 3 people were held in SOCs and 11 in CSCs; in October 2016, 5 and 8 respectively; and in January 2017, 5 and 9. The most recent numbers show that in July 2017, there were 3 prisoners in SOCs and 7 in Close Supervision Cells, and in October 2017, there were 2 and 10 prisoners respectively.

As stated above, the statistics do not provide a clear picture of the length of time individuals spend in these conditions nor whether any of the placements are continuous or repeated placements of the same individuals. Additional difficulty in assessing the scale of their use lies with the fact that the above numbers represent census numbers only (i.e. collected only on a particular day of the month, every three months) rather than more detailed monitoring data. While data is disaggregated by age, there is no disaggregation currently provided by any other characteristics such as ethnicity or disability. This is a significant omission as this limits the possibilities of monitoring for differential impact of solitary and restricted regimes on different groups of prisoners.

8.3 Legislation and policy – children in detention

Under the *Children Act 2001* (Section 52), the age of criminal responsibility in Ireland is set at 12 (with some exceptions of most serious offences, where it is set at 10). Children between the ages of 10 and 18 can be sentenced to a period of custody in the Oberstown Children Detention Campus (Section 142 of the 2001 Act) as a “measure of last resort”. Under Section 153 of the 2001 Act, the Minister (currently, the Minister for Children and Youth Affairs who has overall responsibility for children detention schools) should make rules that govern the running of child detention centres. It is our understanding that, at the time of writing, such rules are yet to be promulgated. The Oberstown Campus is currently certified to hold 54 young people and in October 2017 held 52, including one girl; 46 of the children were between the ages of 16 and 18 (Oberstown Campus, 2017a). In the absence of the rules promulgated by the Minister, it appears that the running of the Oberstown Children Detention Campus is based on a set of policies established by the Campus’ Board of Management. This includes the *Single Separation Policy* (Oberstown Campus, 2017b), the current version of which was published in May 2017.

The *Policy* defines *single separation* (at Point 5.1) as a situation where the child is separated from other children to a designated room, for as short a period as necessary, if: a) the child is likely to cause significant harm to themselves or others, and/or b) the child is likely to cause significant damage to property that would compromise security and impact on the safety of others. Separation is only to be used as a measure of last resort, and when all other interventions proved to have been or would be ineffective (at Point 2). The *Policy* states that the designated room must be fitted with a call bell and CCTV and be furnished in a way that minimises the risk of self-harm or death by suicide (at Point 5.2). While making brief reference to international human rights standards (at Point 4.1), the *Policy* does not apply those in much detail; however, it does state that the implementation of the use of single separation should be guided by the principles of the best interests of the child, and the safety, dignity and privacy of children placed in single separation must be maintained (at Point 4). The *Policy* also requires that the use of separation is based on risk assessment and that it must be safe, effective and proportionate (at Point 2). The decision to use single separation can only be taken by the Campus Director (at Point 2).

The brief nature of the current *Policy* stands in contrast to the much more detailed version from January 2016 (Oberstown Campus, 2016). The previous version not only engaged to a greater extent with

international human rights standards and guidance (including guidance from the European Committee for the Prevention of Torture), it also included more detail regarding the appropriate processes and responsibilities of staff when implementing single separation of children.

The most recent inspection of the Oberstown Campus by the Health Information and Quality Authority (HIQA) in March 2017 found that single separation was overused as a way of behaviour management, and criticised the lack of robust management of its use (HIQA, 2017). The inspectors recorded that single separation was used: on admission (when full risk presented by the child was not known); to “manage violent or threatening behaviour; when a child was found to have prohibited substances; and when a child damaged property or when a child was in conflict with other children” (HIQA, 2017: 19). **HIQA reported that there were over 3,000 instances of single separation in 2016** and it was HIQA’s view that the initial reasons for placement were mostly appropriate; staff made efforts to interact with children and provide them with some association with others; children were also provided with individual programmes. However, HIQA also found that records lacked detail as to whether separation was used as a last resort and what other interventions had been attempted before single separation was used; separation was not always authorised in line with the Campus’s own policy; extensions or reasons thereof were not always recorded; and it was not always evident that a review had taken place in line with the policy in place at the time. As a consequence, HIQA criticised the lack of robust management oversight of the practice of single separation. An Operational Review of Oberstown was commissioned in Autumn 2016 and completed in March 2017 but to date the full report has not been published.

8.4 Practice with respect to adult prisoners – fieldwork findings

As part of the study the researchers visited two male prisons in Dublin: Mountjoy Prison (main) on two occasions and Wheatfield Place of Detention on one occasion. In both prisons, the researchers were given the opportunity to observe the physical conditions of detention of prisoners subjected to restricted regimes on ‘protection’ units/wings, as well as being able to see the conditions in Safety Observation Cells and Close Supervision Cells. Interviews and informal discussions were held with serving prisoners, prison staff, and others who work with the prisoners. In addition to prison visits and prison-based interviews, the researchers spoke to a number of professionals with knowledge and expertise relevant to the study.

It is important to restate here that our focus in the next sections is on those prisoners who are

experiencing the most restricted regimes and the least out-of-cell time. Not all ‘protection’ prisoners (those with Rule 63 direction), for example, will be placed under a restricted regime; they can and are accommodated and associate with other prisoners in different establishments across the prison estate. The same is true of some prisoners subject to Rule 62 where they can be accommodated with others provided that such association is assessed as not threatening the “good order and security and safety” of the prison establishment or other prisoners.

8.4.1 Physical conditions of detention

The physical conditions of detention differed between the two prisons visited. In Mountjoy, the area which currently accommodates ‘protection’ prisoners (i.e. those placed voluntarily or involuntarily on Rule 63) extends to one full wing of the main prison and houses around 100 prisoners on three floors. ‘Protection’ prisoners have recently been moved to the main prison from what used to be St Patrick’s Institution (more recently renamed as Mountjoy West).

The main building was opened in 1850 and as such, the cells are quite small, approximately 7 feet by 12 feet. All prisoners are accommodated in single cells with recently added in-cell sanitation (toilet and small sink) and each cell contains a bed, a locker and a small shelf/table where an electric kettle and a TV are placed; prisoners are also provided with a wall-mounted board to pin photographs, drawings, etc. The toilet (which is screened off to the side, the screen providing partial barrier between the toilet and the bed) is very close to the bed and while the cells were clean and freshly painted, they were also very cramped and felt claustrophobic. Prisoners eat all their meals alone in their cells. Communal showers are provided on each floor, and there is access to an outside yard. There are no multi-purpose rooms or classrooms on this particular wing, although there are visit rooms provided.

During the visits to Mountjoy, the researchers were also shown the Safety Observation Cells located in the C-Base of the main prison. Similar in size to the other cells in the building, those cells were very bare, with a plinth bed covered by thin mattress; steel toilet (with no cover) and sink; and a TV mounted high on a wall above the door, behind reinforced glass. The TV channels can only be changed by staff from outside the cell. There are no personal items permitted, and prisoners wear tear-proof clothing (a poncho). A tear-proof blanket is also provided but there are no pillows.

In Wheatfield, the researchers visited the secure unit. This comprised a number of Safety Observation Cells, Close Supervision Cells, and a number of general purpose cells. The cells were larger and brighter than those in Mountjoy, and some of the prisoners held there on protection were allowed

personal items in the general-purpose cells, where they also had a TV and in-cell sanitation. In contrast, the SOCs were quite bare, with a TV mounted behind reinforced glass, a steel sink and a steel toilet. Windows in the cells were fitted with a ventilation panel (which could be controlled by the prisoner) and a set of blinds fitted between panes of glass. During the visit, some prisoners were able to associate with each other and had access to an exercise yard.

Outside of the secure unit, the researchers were also shown a protection unit where prisoners could associate with each other, even if segregated from the rest of the prison’s population. This unit comprised 16 individual cells, staff pod, a recreation room with a pool table, and an association area with a kitchenette and a communal TV. A multi-purpose room was also available on the unit and it is our understanding from discussions with staff that prisoners have access to their own yard directly from the unit. Prisoners appeared to be able to move freely around the unit during unlock.

After the research visits, and before the authors’ final report was drafted, a decision was taken to move some of the protection prisoners to other prisons in light of the fact that Wheatfield is designated as a work and training establishment. It is the authors’ understanding that at least some of the prisoners were already moved at the start of December 2017, with more relocations to follow.

8.4.2 The regime

The current ‘protection’ regime in Mountjoy Prison provided prisoners with minimal out-of-cell time (up to two hours a day, with an occasional three-hour unlock), with scarce access to facilities; as one of our interviewees reported, “there is the yard and the cell and that’s it”. Staff managed seven to eight different groups of prisoners (members of which could not associate between groups for reasons of safety) on one wing, resulting in the unlock time having to be choreographed to avoid contact between prisoners from the different groups. This had the impact of restricting “the times that you can get them out and the times that they can actually engage in something that’s productive” (prison manager). Prisoners also mentioned that things like the need to unlock one group of prisoners for family visits might mean that those from other groups do not get unlocked as staff resources need to be put into escorts. This also often impacts on access to prisoners by, for example, the prison chaplains.

While in lock-up, prisoners would try “to keep [their] heads steady” with things like watching TV and

going to the gym when they could to “stay healthy”. Access to ‘incentivised’ regimes was limited as prisoners could get an ‘enhanced’ status but this only meant higher monetary allowance and an extra phone call while in the ‘normal’ regime prisoners could be rewarded for their behaviour and participation in structured activities with greater access to facilities, greater contact with the outside world, better accommodation, and enhanced daily regime (including more time out of cell) (see: Irish Prison Service, 2013).

When prisoners were unlocked, activities such as cleaning the cells, showering and phoning families all counted towards the two hours of out-of-cell time requirement. The only other facilities accessible to prisoners under this particular regime were the gym and the exercise yard, although prisoners stated that they are not always allowed to exercise outside if it rains; they also stated that there is no routine to the regime, so it can be “different every day”, “there is no structure”. The only structure was to family visits, which took place three times a week. It appeared from interviews in the prison and with professionals outside of the prisons that nearly “every minute” out of cell is currently being counted and that the two-hour requirement has become a target rather than time spent on actual meaningful contact with others or meaningful activities. While this may follow the *letter* of the *Mandela Rules* (which, in any case, establish a very low base as a minimum standard), this practice was believed by some of the interviewees to contradict the spirit of the Rules.

Prisoners and prison staff alike agreed that the current ‘protection’ regime is impoverished and insufficient. Both staff and prisoners saw the regime as reactive rather than proactive, implemented in response to the growing number of prisoners on ‘protection’ but also impacted on by the recent changes to where the ‘protection’ prisoners are held. Prisoners stated that the regime on the former St Patrick’s site (now Mountjoy West) had better access to services such as school, workshops and crafts, for example, and more out-of-cell time. Now in the main prison they often felt “forgotten about” and, while they appreciated the efforts by landing staff, as one prisoner put it, “there’s punishment, and then there’s this” suggesting that conditions of detention on restricted regimes were doubly penalising and akin to a ‘prison within a prison’.

Landing staff and prison managers were in agreement that the provision of ‘protection’ regimes is staff intensive but that the number of staff that would be required to provide more unlock time is not

...they often felt “forgotten about” ... as one prisoner put it, “there’s punishment, and then there’s this” suggesting that restricted regimes were doubly penalising and akin to a ‘prison within a prison’.

sufficient at the moment, in particular in Mountjoy Prison. This appeared to be more connected to the detailing of staff 14 days in advance (which can create local shortages if a member of staff is unable to work on a particular day they have been detailed to work) rather than simply the overall number of staff available. The researchers were told that this impacts on what the staff can do on the units in relation to unlock, but also the level at which they can engage with prisoners (for example, talking to them or encouraging prisoners to leave their cells for certain activities). This impact was felt both for both ‘protection’ regimes as well as regular regimes, with researchers being told that security and safety-related tasks are currently often prioritised over access to activities such as school or workshops. There was also a visible impact on staff of providing the current ‘protection’ regimes which are physically draining due to intense staff activity throughout the day.

The nature of the secure unit in Wheatfield meant that most of the prisoners who were there at the time of the research visit would have been in their cells for 22 or 23 hours a day as they were a mixture of those in Close Supervision Cells (for reasons of ‘behaviour management’), those in Safety Observation Cells (i.e. for medical reasons) and those on ‘protection’. Some were able to associate with each other during unlock (in their cells or in the exercise yard) if the staff assessed that it was safe for them to do so; the time out of cell for those prisoners would normally be three hours a day. During lock-up, the prisoners would “just watch telly, Gordon Ramsay and whatever else there’s on.” Prisoners had no access to the school or any other activities, but were visited regularly by the chaplains which they appreciated greatly. Prisoners stated that when they first entered the restricted regime they felt, “A bit of agitation [...], you know, then you get used to it [...]”. They said that association with other prisoners, even for a short time each day, and doing jobs such as cleaning on the landing, helped them cope with the restrictions. They felt that if someone was “segregated on their own, it’d be stressful.” The ‘protection’ prisoners in the unit said that they were getting two family visits a week, and had access to phones.

8.4.3 Relationships with staff

The importance of experienced staff on ‘protection’ units was underlined by both prisoners and officers; one of the staff stated, for example, that those officers who are in charge of ‘protection’ prisoners get to know them all well and establish personal relationships with them. A manager described the role of the staff on ‘protection’ units as more of a caring role:

[...] the officer, when you are dealing with a protective regime, you’re highly interacting with prisoners at all times, you’re always face to face

with them, there’s never a time when there’s a period when you’re not dealing with them. An ordinary class officer, when his landing is clear and they’re gone to a workshop or education, or they go to the exercise yard, or the gym, then his landing is clear and he’s free time to sort of go and do stuff like get items from the stores or whatever, whereas the protection officers are there all the time with the prisoners [...] it’s more of a caring role.

Prisoners appreciated when staff took interest in their personal issues, with one interviewee recalling how an officer showed concern about the prisoner not receiving any family visits and “sorted this out” for him. Prisoners reported relatively positive relationships with staff, saying: “if you need something, they will get it for you” but that “they have their bad days and their good days as well and you have to sort of allow for that as well, do you know what I mean?”

8.4.4 Future plans regarding ‘protection’ regimes

There was a recognition that the conditions and regime (in particular in Mountjoy Prison) are currently very restrictive. As one of the senior managers explained, “we’re very restricted at the moment because not only have we areas closed, because of the construction process, but we never really had great facilities in the first place”. The construction process referred to is the work currently being undertaken to extend and expand another Division (a whole wing) within the main prison to accommodate ‘protection’ prisoners, including those from other prisons. The new accommodation will include multi-purpose rooms and workshops (to provide education), access to separate exercise yards and the gym.

The construction of the new facilities is taking place with a view to providing a more open regime with more out-of-cell time (up to six hours a day), with the option of keeping prisoners from different groups in different areas where they would be able to associate within those groups without the need for “corralling”. This is planned to go hand in hand with increasing and ring-fencing higher staffing complement for the new Division “to manage the regime properly” (senior manager). However, we understand from our discussions with prison managers and staff that this new Division will not *replace* but *expand* the physical capacity to accommodate prisoners on ‘protection’ and the existing ‘protection’ wing, described above, will remain as is.

8.4.5 Mental health and Psychology Services

Mental health was acknowledged by staff and volunteers within the prisons as “one of our greatest challenges”. Some prisoners have a diagnosis and clearly defined mental health support needs. However, a greater number have not been diagnosed with a particular mental illness or disability but nonetheless have complex needs and difficulties. As in prisons elsewhere, these individuals have backgrounds which include trauma and bereavement, loneliness, interpersonal difficulties, alcohol and drug-related problems and personality disorder traits. They have tended to “fall beneath the cracks” in terms of services.

A health professional working within the Irish Prison Service suggested that up to 70% of prisoners fall into this category of having some mental health needs without meeting criteria for diagnosis. Since a recent review of Psychology Services (Porporino, 2015), the Irish Prison Service has changed its way of working to target this group of prisoners for psychological intervention, particularly through the work of supervised Assistant Psychologists. The intention is to “pick up on the mental health needs of prisoners from day one”. Referrals are made to the Psychology Service, following screening by healthcare or by the Integrated Sentence Management officer, although the Psychology Service operates an open referral policy in that any member of staff or prisoner alike can make a referral. The prisoner is triaged by a qualified psychologist and a decision taken on whether their needs can be met by an Assistant Psychologist or require more specialised support from a more senior, qualified psychologist. Through the changes in practice, accompanied with some increase in resources, the Psychology Service has observed overall decreases in the expression of anxiety and depression in clients seen from pre- to post-intervention. However, the central point remains: restricted regimes reduce meaningful social contact which can have a significant impact on psychological health.

An initiative under development is the creation of a new unit for ‘violent and disruptive’ prisoners based in Midlands prison. At present a small number of prisoners are managed under the Violent and Disruptive Prisoner Policy, some of whom display significant mental health issues. The Irish Prison Service intends that some of these prisoners will be placed within the new unit, where it is hoped that they will benefit from “focused assessment and intervention.

In line with Porporino’s (2015: 4) statement that Psychology “does not (should not and cannot) function on its own in achieving the key aims of modern correctional practice”, the unit will be jointly run by the Psychology Service and operational prison staff and is expected to be operational by spring 2018. Psychology and prison staff visited Close Supervision Centres in England to observe practice and inform the plans. The unit will initially

hold up to six prisoners for intervention and four prisoners for assessment. In conjunction with UCD, a PhD student has been tasked with reviewing prisoners’ progress and experiences, and the experiences of staff during the unit’s first four years. It is important that the new unit also be monitored by independent bodies to assess compliance with human rights standards and whether the work of the new unit has any positive impact on reducing the use of solitary confinement for this particular group of prisoners. However, two central points remain: first, that prison is not an appropriate environment for prisoners with serious mental health difficulties, especially in conditions of isolation; and second, that restricted regimes reduce meaningful social contact which can have a significant impact on psychological health.

8.4.6 Access to justice, accountability and monitoring

Considering the serious potential consequences of placement on long hours of lock-up, a recurring theme in the research interviews and informal discussions was prisoners’ access to legal protections and representation. A number of issues arose in this respect.

Firstly, concerns were raised as to whether prisoners placed ‘on protection’ (Rule 63) or removed from association on the grounds of order (Rule 62) or on medical grounds (Rule 64) fully comprehend the consequences of such a decision. Prison managers stated that once a decision is taken by the Governor and the appropriate form filled in, detailing the reasons for segregation on the basis of Rule 62 or Rule 63, prisoners are given a copy of such decision and are free to contact their legal representatives if any issues arise. However, concerns were raised by other interviewees that this puts the onus on the prisoner not only to get in touch with their solicitor, but also requires that they fully understand the legal justifications and legal and practical ramifications of such a decision. While some prisoners are very likely to fully comprehend those issues, others will not. As such, some interviewees suggested that an automatic notification should be made to the prisoners’ solicitors should they be placed on Rule 62 or Rule 63. Considering the seriousness of reasons for placement in Safety Observation Cells and Close Supervision Cells (as explained in the sections above), there is also a need for mandatory notification of solicitors when prisoners are placed in those conditions, regardless of the length of time for which such placement is envisaged.

Secondly, a number of systemic issues have been identified with respect to challenging prison conditions through the courts, should such need arise. While legal aid is available for prison law cases, the level at which it is provided often does not cover the costs of litigation (see: Martynowicz,

2016). Further, costs can only be recovered upon successful conclusion of a case, and even then, the award does not always cover the full outlay. In the circumstances, it may be difficult for both the client and/or a lawyer to finance challenges to prison conditions, including the holding of a prisoner in solitary confinement or on a severely restricted regime, and lack of funding is a “significant bar to issues being litigated” (ibid).

There appears to be a limited number of solicitors who specialise in prison litigation and, as prisoners are only allowed one number for a solicitor on their phone card, they may not always have access to a representative versed in prison law. Other difficulties identified by interviewees included delays in the correspondence with prisons, quality of evidence, and the long-standing doctrine prevalent in Irish courts with respect to prison cases of minimum

interference by the judiciary in the day-to-day running of the prisons (Martynowicz, 2016). In these circumstances, the use of the IPS complaints procedure is offered as an alternative, despite well-documented reluctance to and difficulties with the use of it by prisoners (Inspector of Prisons, 2016; Martynowicz, 2016).

In light of the concerns raised above, it becomes vital that other systems of oversight – such as prison inspections – are appropriately resourced to enable effective monitoring of the situation of prisoners held in isolation, on whatever grounds. However, as has been documented elsewhere (Inspector of Prisons, 2013; Martynowicz, 2016), current mechanisms such as the Office of Inspector of Prisons are under-resourced and therefore may need to limit the areas on which their oversight activity can focus at any given time.

Violence in prisons

- 670 violent incidents took place in 2016; 85% of these (572) involved prisoners experiencing violence from other prisoners.¹ The highest number of such incidents took place at Mountjoy (156), followed by Castlerea (139) and Cloverhill (82).
- There were 826 recorded incidents where a Control and Restraint (C&R) team was deployed in 2016. Of these, 373 were in Portlaoise; 273 were in Mountjoy; and 102 were in Cloverhill Prison.²
- Between January 2014 and September 2016, 73 prisoners were hospitalised as a result of actual or suspected assaults, with 34 (47%) of incidents coming from Mountjoy prison.³
- Mountjoy Prison also had the highest number of self-harm incidents at 21.⁴
- Increasing levels of violence among the female prisoner population have also been reported.⁵
- 98 prison officers were recorded as being injured by prisoners in 2016, a small rise on the previous year. A review of major assaults on prison staff demonstrated that these are carried out by a relatively small number of prisoners with “an established pattern of challenging behaviours and/or mental health problems”.⁶

The UN Committee against Torture (UN CAT, 2017b) highlighted their concern at the continued high rates of incidents in some of the prisons. The Committee recommended that the State intensify its efforts to tackle inter-prisoner violence by, inter alia:

(a) Addressing the factors contributing to inter-prisoner violence, such as the availability of drugs, the existence of feuding gangs, lack of purposeful activities, lack of space and poor material conditions;

(b) Providing sufficient members of staff who also receive training on the management of inter-prisoner violence;

(c) Addressing the issue of intimidation of the Traveller community and investigating all allegations of such intimidation.

The Committee also recommends that the State provide statistical data so as to enable the Committee to evaluate the effectiveness of the State’s measures to tackle inter-prisoner violence.

1 ‘The Dóchas female prison experienced the highest number of assaults by convicts on officers last year’, thejournal.ie, 17 July 2016, available at: <http://www.thejournal.ie/dochas-centre-assaults-3501377-Jul2017/>

2 Response of Minister for Justice & Equality Charles Flanagan TD, Parliamentary Question, 11 July 2017, available at: <https://www.kildarestreet.com/wrans/?id=2017-07-11a.723>

3 The Irish Times, Prisoners swallowed batteries and blades records show (available at: <https://www.irishtimes.com/news/crime-and-law/prisoners-swallowed-batteries-and-blades-records-show-1.2929375>)

4 Ibid.

5 Assaults in the Dóchas Centre rose from 5 in 2015 to 26 in 2016. See The Irish Examiner, Special Units to be established for most violent inmates (at: <http://www.irishexaminer.com/ireland/special-unit-to-be-established-for-most-violent-inmates-448798.html>)

6 State Claims Agency publishes major review of assaults on prison staff (at: <http://stateclaims.ie/2016/11/state-claims-agency-publishes-major-review-of-assaults-on-prison-staff>)



9. Conclusions and recommendations

As stated earlier in this report, human rights principles require prison regimes to be **safe, respectful, purposeful and effective** (World Health Organisation cited in HM Inspectorate of Prisons, online). It is difficult, if not impossible, to achieve these standards in situations where prisoners are confined in isolation for long hours, whether this is 22 to 23 hours a day, or even 19+ hours. As such, the research on which this report is based looked at the instances of long lock-up in Ireland that comes within the definition of solitary confinement understood as confinement in a cell for 22 or more hours a day (individually or sharing), as well as conditions for prisoners on restricted regimes more generally, especially those locked up for 19 hours or more. This is in keeping with the conceptualisation of solitary confinement, segregation and restricted regimes as forming a ‘continuum of exclusion’ (Shalev and Edgar, 2015: v).

This focus on a continuum is particularly pertinent to the current situation in Ireland. As noted previously by the Committee for the Prevention of Torture (CPT, 2015) and recently reported to the UN Committee against Torture (IPRT, 2017), high levels of violence in Irish prisons persist, exacerbated by ‘gang’ feuds and drug use. For this reason, high numbers of prisoners are segregated from the general population due to perceived threats of violence, able to associate only with others in their particular ‘grouping’. While the number of prisoners subject to 22- and 23-hour lock up has decreased significantly over the last four years (from 211 in July 2013 to 9 in October 2017²³), the overall number of prisoners on so-called ‘restricted regimes’ (i.e. locked-up for 19 hours a day or more) has continued to increase to the current number of 428. The largest group of prisoners on ‘restricted regimes’ in October 2017 were held in 21-hour lock-up (245).

At present prisoners may be placed on ‘protection’ simply on the basis that they have asked for this to happen. Yet those regimes are significantly impoverished as prisoners face restricted access to education, physical activities and fresh air; limitations on family visits and phone contact; and difficulties in accessing health and addiction support. Such restrictions may impair effective reintegration upon release.

As the findings of this research show, the Irish Prison Service (IPS) expects the number of ‘protection’ prisoners who are subject to restricted regimes to

either remain at a similar level (of nearly 11% of the overall prison population) or increase in the next few years. The IPS intends to introduce an assessment on committal regarding potential risks to the individual’s safety posed by others within the prison environment which it hopes will at least to some extent prevent such increases. On the other hand, plans are also afoot to designate parts of Mountjoy (male) and of Midlands as ‘protection prisons’. IPS intends that these ‘protection prisons’ will offer improved regimes and more out-of-cell time for prisoners segregated from the general prison population. However, fear was expressed during the research that, despite having real safety concerns, some prisoners may be deterred from requesting placement ‘on protection’ due to the prospect of being transferred further from their families.

‘Protection’ prisoners, while constituting the greatest number of prisoners on ‘restricted regimes’ in the Irish prison system, are not the only prisoners subject to such restrictions. Others include, for example, prisoners segregated from the general prison population for reasons of ‘order’ (Rule 62 of the *Prison Rules 2007*) some of whom are considered to be ‘violent and disruptive’. An initiative currently under development is the creation of a unit based at the Midlands Prison for a small number of ‘violent and disruptive’ prisoners. This unit is expected to open in spring 2018 and will be run jointly between the Prison Psychology Service and operational prison staff.

23 Prison Population Census Reports (available at: <https://www.irishprisons.ie/index.php/informationcentre/statistics-information/census-reports/>)

Irish prisons hold a considerable number of prisoners with mental ill-health. In September 2017, a reported 20 prisoners with the most acute psychiatric difficulties were waiting for beds to become available in the Central Mental Hospital (CMH) (Dunne, 2017). In prisons, a small number of these individuals are held in Safety Observation Cells (SOCs). The CPT (2015) found in 2014 that individuals with severe psychiatric disorders were detained inappropriately in Irish prisons because there were insufficient hospital spaces available. This situation persists three years on.

Having reviewed the evidence collected during this study, the authors make a number of recommendations.

1 Elimination of the use of solitary confinement:

In its most recent *Concluding Observations* on Ireland, the UN Committee against Torture recommended that the Irish Government ensure that solitary confinement is only ever used as a last resort, and is applied for as short a time as possible, under strict supervision and subject to judicial review, under clear and specific criteria (UNCAT, 2017: 6). It also stated that the Government should ensure that no person with psychosocial disability is ever placed in solitary confinement, and that instead they are provided with appropriate therapeutic interventions (ibid: 7). It follows that the use of solitary confinement should be strictly regulated and completely prohibited in certain cases. As such:

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| <p>1.1 The Minister for Justice and Equality should develop and consult on a <i>Strategy for the Elimination of Solitary Confinement</i> based upon principles of decarceration.</p> <p>1.2 The Irish Prison Service should ensure, as a minimum, full compliance with the <i>Mandela Rules</i> and should amend its policy on ‘the elimination of solitary confinement’ (IPS, 2017) accordingly.</p> <p>1.3 The Irish Prison Service should set the minimum out-of-cell time at 8 hours per day. Additionally, a target should be set of at least 12 hours’ out-of-cell time per prisoner per day, based upon meaningful human contact and access to services and activities.</p> | <p>1.4 The term ‘meaningful human contact’ should be defined as contact with family and peers; interactions with professionals, staff or volunteers within the prison system should not be used as a substitute for such contact.</p> <p>1.5 Separation of a prisoner from others should not be permitted for reasons of punishment, but only for reasons of safety in emergency situations, and for the shortest possible period of time.</p> <p>1.6 The placement in solitary confinement of adults with mental health difficulties or mental or physical disabilities should be prohibited.</p> <p>1.7 The placement in solitary confinement of pregnant or breastfeeding women prisoners or mothers with babies should be prohibited.</p> <p>1.8 Adequate community mental health services should be provided, including access to psychiatric beds, to ensure that no one is detained in prison who would be more appropriately accommodated in mental health facilities.</p> <p>1.9 The Minister for Children and Youth Affairs should provide, as a matter of urgency, statutory rules governing detention of children. In line with the most recent <i>Concluding Observations</i> by the UN Committee against Torture, such rules should include an absolute prohibition of the use of solitary confinement for children.</p> |
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2 Segregation for reasons of protection:

Following the most recent examination of Ireland’s record under the UN Convention against Torture (UN CAT) in July 2017, the Committee against Torture in its *Concluding Observations* stated that “The regime for holding prisoners requiring protection is inadequate, including lack of outdoor exercise and almost no contact with the outside world” (UN CAT, 2017b: 5). The current research confirmed the Committee’s findings in this respect. Further, the Committee recommended that the Irish Prison Service undertakes initiatives to reduce inter-prisoner violence and enhance the monitoring and protection of vulnerable prisoners, including those who may present disciplinary issues (ibid: 7). It stated that prisoners requiring protection should not be “penalized by their situation and have contact with the outside world, sufficient purposeful activities and out-of-cell exercise and family visits” (ibid: 6).

In this connection, initiatives such as the refurbishment of the additional division in Mountjoy Prison where the Irish Prison Service hopes protection prisoners will have access to more meaningful activities, have the potential to improve their conditions. **However, it is of concern that the refurbishment, while providing some improvement in conditions, is designed to expand and extend the provision of protection accommodation.** This, in the authors’ view, should not substitute initiatives aimed at addressing the causes, rather than the symptoms, of feelings of lack of safety and security in the prisons. As such, it is recommended that:

- 2.1 The Irish Prison Service should research and develop a range of initiatives to address violence in prisons. These may include, but should not be limited to, restorative justice approaches and weapons amnesties.
- 2.2 The IPS should ensure all staff are trained on the impact of solitary confinement and restricted regimes as well as in conflict management techniques such as de-escalation
- 2.3 Prisoners being placed, or requesting to be placed, on a restricted regime for their own protection should be given information, in accessible language, about the implications of such placement including details of the restricted access to education, vocational training, association etc.
- 2.4 Where a prisoner requests to be kept on protection for an extended period, this should be kept under constant review.
- 2.5 Special supports should be put in place to encourage prisoners to come off a restricted regime where it is assessed as safe to do so, including access to a step-down programme.
- 2.6 Prisoners on protection or other restricted regimes should be provided with meaningful access to work, training and education, as well as other activities and services. As far as possible this should be in association with other prisoners.
- 2.7 Prisoners on restricted regimes should have increased access to family contact, through telephone and visits.
- 2.8 The *Prison Rules 2007* should be further amended to include regular examination of prisoners isolated under Rule 63 by a prison doctor. Such examination should include both physical and mental health assessment by appropriately trained medical personnel.

3 Access to justice:

The rights of prisoners subjected to solitary confinement or placed on restricted regimes should be adequately protected and they should be provided with appropriate avenues and opportunities to raise their concern should they wish to do so. As such:

- 3.1 There should be a **mandatory** notification provided to their solicitors where prisoners are placed on Rule 62 and Rule 63. Prisoners should also be informed that they have the right to contact their solicitor and should be given an opportunity to do so as soon as practicable.
- 3.2 There should be a **mandatory** notification to a legal representative in cases of placement in Safety Observation Cells and Close Supervision Cells, regardless of the length of time for which such placement is envisaged.
- 3.3 The situation of prisoners held in isolation and/or subjected to a restricted regime should continue to be afforded particular attention by the Inspector of Prisons, including through thematic inspections. The Government should provide the Office of the Inspector of Prisons with appropriate resources to enable it to fulfil its mandate in this regard.
- 3.4 Prisoners held in isolation and/or subjected to a restricted regime should have strengthened access to independent complaints mechanisms and should be afforded appropriate assistance to avail of those mechanisms.

4 Collection and publication of statistics:

The publication of quarterly statistics on the number of prisoners held on restricted regimes is a welcome development. However, as stated earlier in the report, as these are based on a census (i.e. collected only on one particular day every three months), they give only a partial view of the use of such measures. The recently-initiated collection of statistics on a monthly basis is a welcome step. However, to provide a more detailed picture of the use of solitary confinement and restricted regimes in Ireland, further improvements are needed and therefore:

- 4.1 The Irish Prison Service should regularly collect and publish data relating to the *length of time* prisoners spend on restricted regimes in all prisons.
- 4.2 Data relating to repeated and multiple placements of the same prisoner(s) on restricted regimes should be collected, in particular where such repeated placements concern prisoners with mental health difficulties and those segregated for reasons of discipline.
- 4.3 Separate statistics for Limerick (male) and Limerick (female) prisons, should be provided.
- 4.4 The Irish Prison Service should disaggregate data by other characteristics, including ethnicity, nationality, sexual orientation, and disability, to enable monitoring for potential disproportionate use of restricted regimes among particular groups.

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