ANALYSIS OF STRATEGIC REVIEW OF PENAL POLICY, 2014

**Irish policy review glosses over prison problems**

Written by Kevin Warner

**Introduction**

In Ireland, a focus on punishment and control among politicians and administrators over the past two decades has left us with a prison system that is a morass. Our prison population is now double what it was in 1995, going from just over 2,000 to about 4,000. Most Irish prisons are too large, overcrowded and dysfunctional; they are very costly warehouses of unacceptable conditions. One would have expected the *Strategic Review of Penal Policy* (Department of Justice and Equality, 2014)[[1]](#footnote-1), which was launched in September by Minister Frances Fitzgerald, to face up to such issues. This, however, has not happened.

In launching the report, Frances Fitzgerald said: “In the past, we have had plenty of reports but not enough implementation. I will not let this be the case with the Penal Policy Review”. Referring to the ignored Whitaker report of 30 years ago, she said there now exists “the deep-rooted determination and political will to make change happen in penal policy”. Unfortunately, the strategic review fails to address many of the deep-seated problems in Ireland’s prisons, and in many instances fails to even acknowledge them. It is easy, then, for the Minister to promise implementation of such an unchallenging report.

For the most part, the recommendations of the Strategic Review Group (SRG) are reasonable, and the penal system will be somewhat better if they are implemented. However, there are three immediate problems with the report. Firstly, many of the recommendations are far too vague and do not set targets that are substantial and sufficiently specific. Secondly, major problematic aspects of the prison system are left unacknowledged and unaddressed. A third problem arises from the first two: we can now expect the Department of Justice and Equality /Irish Prison Service (IPS) to constantly refer to the relatively weak requirements of the SRG and avoid referring to earlier and more challenging prescriptions, in particular the Whitaker Report (1985) and the *Report on Penal Reform* by the Joint Committee on Justice, Defence and Equality (Houses of the Oireachtas, 2013) - in much the same way as they now routinely note the Inspector of Prison’s (2011) lower standards, while ignoring the *European Prison Rules* (Council of Europe, 2006) and other Council of Europe Recommendations.

**Welcome aspects**

Among the aspects of the SRG report that should be welcomed are:

* Setting the aim of “a just, proportionate and humane penal system” (p.6), and also recognising the *European Prison Rules* (EPR) guiding principles for prisons (p.55). (However, it is notable that they avoid mentioning specific obligations that are also in the EPR, such as the requirement to have single cells).
* The acknowledgement that prison has detrimental effects (as opposed to the idea that ‘prison works’), and spelling out some of these (e.g. p.8, p.18)
* Advocating the principle that prison be used “as a sanction of last resort” (p.12) and recognising that at present it is, to some extent, used unnecessarily.
* The (at least partial) recognition of the problems of overcrowding and substandard conditions in prisons.
* The recommendations that there be new legislation, to limit the use of imprisonment, and to establish a Parole Board on a statutory basis – but not, unfortunately, to establish an independent Prison Board or Authority as recommended by Whitaker and many others. So, the Irish prison system seems set to remain within the “closed, secretive and silo-driven culture” of the Department of Justice and Equality, which was so strongly criticised in the recent report of the Independent Review Group (2014, p.2).
* The assertions that there should be greater consistency and transparency in areas such as the application of remission, Integrated Sentence Management and the Incentivised Regime Policy.

**Shortcomings**

However, there are many shortcomings in the report, including the following:

1. The SRG fail to specify what size of prison population Ireland should seek to achieve, although they do urge that it be reduced. This contrasts with other official reports such as Whitaker (1985), *The Management of Offenders: A Five Year Plan* (Department of Justice, 1994) and the 2013 Oireachtas *Report on Penal Reform*, all of which indicated a desired maximum prison population. The all-party Oireachtas report proposed that Ireland follow a Finnish model and cut its prison population by one-third; based on 2012 figures, this would allow about 2,850 in prison. Moreover, the Oireachtas members recognised the extent of the escalation in prison numbers since the 1990s, while the Strategic Review Group does not. For some strange reason, the SRG give a lot of data for the period 2009 – 2013, but not for the earlier years of Ireland’s ‘punitive turn’.
2. Similarly, while the SRG rightly assert that there should be an open prison option for women, they fail to specify the extent to which open prisons should displace closed ones in the system as a whole. They fail to see that an open option is also lacking at present for young men aged 18 to 21, and that far more adult men could be in open prisons.
3. The SRG correctly describes, in a whole chapter, the special needs and circumstances of women in prison. However, they failed completely to recognise that a similar approach is needed for another vulnerable and even larger group. The special circumstances of 18-21 year-old young men (225 of whom were incarcerated as of May 2014) were not addressed. Virtually all of them are held in inappropriate closed adult prisons, often in utterly indefensible conditions.
4. The SRG is very weak on the question of remission, basically adhering to a policy of one-quarter remission, in contrast to what was recommended in the Whitaker and Oireachtas Reports. This also means they recommend that Ireland should hold to a practice that is much more severe than in all nearby countries.
5. The SRG report is particularly weak on prison conditions. Once again, this is in stark contrast to Whitaker, which set out very clear and strong “basic living conditions” for people in prison (see Warner, 2014). The SRG makes much of the elimination of ‘slopping-out’, but this is really a very low target. Half of all prisoners will still continue to defecate in the presence of others (so much for the IPS claim in their mission statement that they treat them with dignity). The SRG relegates the idea that all men and women in prison should have single cells - which was a stipulation in Whitaker (1985) and the *European Prison Rules* (Council of Europe, 2006), and a priority in *Management of Offenders* (1994) - to an “aspiration” and “a long term goal” (p.54), thus kicking it into never-never land. The SRG report indicates satisfaction with the new prison planned for Cork, but this prison will be exceptionally cramped, virtually all prisoners will be doubled-up, lock-up time will continue to be excessive, and there is unlikely to be sufficient purposeful activity.

Such features are very evident currently in the largest prison in the country, the Midlands Prison, which now holds about 900 men (but which was not visited by the SRG, nor were other overcrowded prisons such as Cloverhill and Castlerea). The concept of ‘overcrowding’ used by the SRG, which refers to bed capacity, is woefully inadequate. The SRG also fail to see that most of the country’s larger prisons are not just ‘overcrowded’ by any sensible definition, but actually dysfunctional. In these oversized prisons, the extent of the education (which is the largest service provided in Irish prisons) available per prisoner has been significantly reduced. Much the same applies to other services. This situation is then made much worse by severe segregation in most prisons. In addition, there are then widespread and ongoing access problems on an almost daily basis.

The SRG also fail to acknowledge that the provision of third level education in prisons – which for decades has been a crucial facility for many long-term prisoners in particular – has been cut to one-quarter of what was available up to six years ago, and is clearly being phased out altogether (141 were studying at university level in 2008, this is now down to 36 on Open University courses).

In parroting the much-used, but untenable, mantra of the IPS that its plans for prisons reflect “international best practice” (see, for example, page 56), the SRG undermines its own credibility.

1. The SRG report and recommendations fail to address the excessive lock-up times in Irish prisons. Whitaker (1985) regarded lock-up for 16 hours a day (which was typical at the time) as “excessive” and recommended it be *less than 12 hours*. However, lock-up times have worsened considerable, rather than improved, since then. Today, some 85% of people in prison are locked up even more excessively, using Whitaker’s standard – and indeed by the standards of ‘international best practice’! Today, most are held in cells for close to 18 hours each day. Several hundred are regularly locked-up for 22 or 23 hours a day, supposedly for their own ‘protection’. This constitutes ‘solitary confinement’, so the IPS have begun to move many of this group to regimes that involve 20 or 21 hour lock-ups, thus technically taking them out of the solitary confinement category – but they are still subject to very excessive confinement. In congratulating the IPS for this wheeze (p.57), the SRG group again undermines its own credibility, and fails to address very damaging conditions as it should have (and as it was required by its terms of reference).
2. An underlying fault in the SRG report is an inadequate sense of social context. Whitaker (1985) had a whole chapter on ‘Society and Crime’, which stressed the relationship between crime and inequality and deprivation; it considered ‘offending’, not just ‘reoffending’. Even the Department of Justice’s *Management of Offenders* (1994) spoke of people in prison as “valued members of society” (pp. 21-22). However, the SRG adopt far too readily the current IPS practice of habitually referring to ‘offenders’ – a stereotype that depicts men and women in negative and one-dimensional terms, as if there were no other aspect to their lives and personalities.[[2]](#footnote-2) Another example of narrow thinking embedded in the report is the concept of rehabilitation put forward by the SRG: desistance is seen primarily as a matter of individual choice, with only occasional reference to social issues such as homelessness. Whitaker (1985), by contrast, speaks of rehabilitation as “a background of conditions favourable to reform” (p.89).
3. Finally, there are a range of things described in the Strategic Review Group’s report that indicate a serious lack of awareness of the actual situation in Irish prisons, and beg the question ‘what planet are they on?’ Among these descriptions are:

\*The commentary on the Incentivised Regimes Scheme, which is actually a punitive arrangement introduced to cut every prisoner’s meagre gratuity, but which cuts some by more than others.[[3]](#footnote-3)

\*The description of regime activities (pp. 75-77) gives the impression ‘programmes’ which purport to ‘address offending behaviour’ are the primary regime activities available. In fact, education remains, as it has been for decades, by far the most substantial purposeful activity throughout the prison system (despite recent cuts and access problems).

\*The continuing pretence that men and women in prison need to be ‘incentivised’ to ‘engage with’ services such as education, when the real issue is much-reduced provision per prisoner. Such reductions have arisen largely because of oversized prisons. Often, additional cells for hundreds are built without a corresponding increase in facilities for activity, and sometimes there are no new supportive facilities at all.[[4]](#footnote-4) The problem is then exacerbated by multiple segregation within these prisons. Further, as noted above, there are then widespread and ongoing access problems to even such reduced levels of provision.

**References**

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1. The report of the Strategic Review Group is available at http://www.justice.ie/en/JELR/Strategic%20Review%20of%20Penal%20Policy.pdf/Files/Strategic%20Review%20of%20Penal%20Policy.pdf [↑](#footnote-ref-1)
2. The report uses the term ‘offenders’ for people in prison even where this is technically incorrect, as when it refers to those on remand (and thus innocent under the law) as ‘offenders’ (see, for example, page 68, where there is discussion of “the remand of female offenders”). [↑](#footnote-ref-2)
3. For a description of the reality of this scheme, see ‘Negative, Miserly, Punitive’ by Kevin Warner in *The Irish Examiner*, 31 July 2012, available at <http://www.irishexaminer.com/analysis/negative-miserly-punitive-202527.html>. [↑](#footnote-ref-3)
4. This happened with extensions to Midlands, Wheatfield and Castlerea prisons, and to a lesser extent in the Dochas Centre. [↑](#footnote-ref-4)