

I want to thank the Office of the Inspector of Prisons for the invitation to speak here today at this important and timely event. Established in 1994, the Irish Penal Reform Trust (IPRT) is Ireland's principal independent non-governmental organisation working for systemic penal reform and change. Our vision is a just, humane Ireland where prison is used as a last resort. We advocate for a progressive criminal justice system that prioritises alternatives to prison, upholds human rights, and champions reintegration. We do this through conducting research, campaigning, and changing attitudes.

Today I've been asked to focus on the future prospects of a criminal justice NPM in Ireland but before looking to the future, I think it's important to take stock of the present political and policy-making context and how close we actually are to ratifying OPCAT and finally establishing a criminal justice NPM in Ireland.

Last year, IPRT was delighted to welcome the publication of the General Scheme of the Inspection of Places of Detention Bill as a significant step forward in making OPCAT ratification a reality despite signing the Protocol in 2007. The legislation is long overdue, having been on the political agenda since the drafting of such a General Scheme was first approved in May 2011 and appearing in successive Governments' Legislative Programmes since July 2017. It is worth noting that the current Programme for Government committed to ratify the Protocol in its first 18 months in office yet we are now heading towards the final year of the current coalition. Unless the legislation is prioritised in the first half of next year, we in IPRT are concerned that ratification could be deferred once again.

However, on a positive note, there is a clear solution as Article 24 of OPCAT makes clear that its ratification is not dependent on the passing of this legislation. Rather, the Government could ratify OPCAT today and simply make a declaration postponing the implementation of their obligations for up to five years with an additional year to then designate the NPM after ratification. IPRT believes this would be a pragmatic approach and would signify the present Government's commitment to ratification while at the same time ensuring that it must be a priority for the incoming Government. In fact, this is the approach recommended by the Oireachtas Joint Committee on Justice in March of this year, following its pre-legislative scrutiny process in 2022. While we know it is government policy not to ratify international treaties before dotting all the 'i's' and crossing all the 't's' in the underpinning legislation, we believe that this would instead provide a clear timeline for ensuring the required legislation is implemented and would show a real commitment to providing a robust regime of inspection and monitoring of places of detention in Ireland.

The importance of OPCAT cannot be overstated. It is an international human rights treaty which assists States in **preventing** torture and other forms of ill-treatment in places of detention by identifying systemic issues arising and making concrete recommendations to address these issues. Its purpose is specifically to provide for the effective prevention of torture through international and national monitoring of all places where people are deprived of their liberty. Clearly this includes prisons but it goes wider than this. In this regard, we were pleased to see the Justice Committee recommend the adoption of a broader approach towards the definition of places of detention, to enable NPMs to inspect all places where an individual is deprived of their liberty. This is much more in line with the definition set out in OPCAT.

So, when thinking about how OPCAT would operate domestically and the establishment of an Irish NPM, there are different arrangements that can be made. That's why this conference is an important opportunity to learn from the experience of others who are further down this road than we are. The current proposal is to establish individual NPMs for each sector with the Irish Human Rights and Equality Commission (IHREC) acting as an overarching 'NPM coordinator' that effectively coordinates the activities of the individual NPMs and liaises with international bodies in relation to visits to Irish places of detention.

So, for example, the Office of the Inspector of Prisons will become the 'Inspectorate of Places of Detention' and effectively perform the NPM function for the adult justice sector by monitoring prisons, Garda Síochána stations, vehicles used to transport detainees and any place where a person is detained immediately before and after their appearance in court. In the past IPRT has raised a concern regarding the expansion of the remit to police custody as the new body would need to have the necessary expertise to examine and inspect Garda stations but we know and welcome that this is something that the OIP is very cognisant of in terms of ongoing recruitment for the current and future office.

By contrast, the NPMs for other sectors, such as health or social care, are not yet identified in the draft legislation but we anticipate that existing bodies may be designated as the NPM by their respective Ministers e.g. HIQA will likely continue as the appropriate designated NPM for Oberstown youth detention facility while the Mental Health Commission would be the natural fit for the designated NPM looking at mental health facilities. IHREC, as the coordinating NPM and focal point also has an opportunity to facilitate a truly collaborative model which we hope will ensure that information, expertise and skills are shared in a holistic manner by the different designated NPMs. This would also enable a 'cross-fertilisation' of innovative approaches, different perspectives, maximising resources and upskilling across the different sectors.

This general approach to implementing OPCAT in Ireland has advantages and it has been acknowledged that there are already organisations which might naturally fulfil the role of NPM in their respective sectors. However, there are concerns about the first iteration of the legislation and while many of these concerns were addressed by the Justice Committee in its report and recommendations, it is still not entirely clear if the next version of the legislation will incorporate or reflect any or all of these changes.

OPCAT emphasises that NPMs must be **independent**. Such independence must be made explicit within the legislation and backed up by clear provisions around the financial, functional and operational autonomy of each NPM. IPRT questions whether it is appropriate for the Minister for Justice to be involved in appointing or removing the Chief Inspector – as currently outlined in the draft Heads of Bill - or if the budget of the new Inspectorate of Places of Detention should remain within the Department of Justice vote. While we welcome that the drafters of the legislation have indicated that the Chief Inspector of Places of Detention would be directly accountable to the Oireachtas (Irish Parliament), we are concerned that they could be prevented from questioning or expressing an opinion on the merits of Government policy given how useful this aspect of an NPM has been in other jurisdictions.

Resourcing for the NPM is a huge issue. The new Inspectorate of Places of Detention must be sufficiently resourced if it is to take on the role of NPM for all places of detention including the 120 Garda Stations around the country. Similarly, IHREC will need additional resources – both financial and in terms of staff – to carry out the coordination function and the extensive additional duties that are expected to be assigned to it and to ensure that it can fulfil its mandate. This cannot simply be done through existing resources.

It will also be important to maintain the **distinction** between an organisation's existing functions and NPM functions as many of the organisations envisioned to take on the role of NPM also have a complaints / investigative function (e.g. the Inspector of Prisons currently investigates deaths in custody in Irish prisons). If an organisation is to be expected to maintain both functions, there must be a clear distinction between their existing investigative role and their new NPM, preventive, role to ensure that there is no blurring of the lines. This could be achieved by ensuring separate staff, separate budget lines and separate units within each organisation. Communications, education and awareness raising will be particularly important to maintain this distinction for staff in the bodies themselves, stakeholders that they work and engage with and the wider public.

Another key aspect of the future NPM, and one particularly close to IPRT's heart, is what **role civil society** will play in both designating and feeding into the work of NPMs. International guidance reiterates the important role of civil society and other countries have adopted models which include a formal role for civil society organisations within the national OPCAT framework. A good example of this is the Australia OPCAT Network. This Network comprises over 200 organisations, statutory offices, academics and lived experience experts, and their work has included: making joint submissions to the SPT; advocating on legislation; organising webinars; and engaging with media. In Denmark, the Parliamentary Ombudsman is the designated NPM but has formal agreements with both the Danish Institute for Human Rights and the NGO Dignity to monitor conditions in Danish prisons and closed institutions. There is no one size fits all way to establishing an NPM and we will need to think about what would work best in the Irish context but there is an opportunity to build in a clear legislative basis for civil society engagement from the outset, and there are examples of similar provisions within the Irish Human Rights and Equality Act 2014, namely their advisory committees.

To finish, I want to underline just how important it is to ratify OPCAT and establish the NPM as a matter of urgency. The number of people detained in Irish prisons today is at a record high. This overcrowding is having a negative impact on all aspects of prison life: people are sleeping on mattresses on the floor beside toilets, families are not getting to see their loved ones as regularly as they would like because of the high demand for visits and the inability to cater for this demand due to space constraints and staff shortages. Prison schools are not operating as they should effectively denying people their right to participate in meaningful education and we continue to hear about long waiting lists for mental health services and addiction counselling. The need for a strong and independent NPM is greater than ever to strengthen the culture of human rights within Irish detention facilities, shine a light on systemic issues, put in place safeguards to ensure that some of the most vulnerable individuals in our society are adequately and appropriately protected, and hold the State to account for its duty of care.

I'd like to thank you for listening and I look forward to today's discussions.