



**IPRT**  
Irish Penal Reform Trust

IPRT Position Paper 7

# **Complaints, Monitoring and Inspection in Prisons**

November 2009



The Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for the rights of everyone in the penal system, with prison as a last resort. IPRT is committed to reducing imprisonment and the progressive reform of the penal system based on evidence-led policies. IPRT works to achieve its goals through research, raising awareness, building alliances and growing our organisation.

Through its work, IPRT seeks to stimulate public debate on issues relating to the use of imprisonment, including on sentencing law and practice in Ireland. This is one in a series of Position Papers, which underpin the work of the IPRT.

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## Introduction

Monitoring and inspection of places of detention, as well as the establishment of an independent external mechanism for the review of prisoners' complaints, are central to the protection of human rights of prisoners and form part of Ireland's obligations under international law.<sup>1</sup> Prisons are closed institutions and, as such,

*[the] exceptional nature of the powers taken by the State over confined individuals makes effective external scrutiny of their use a matter of particular urgency.<sup>2</sup>*

An effective system of external oversight of prisons should fulfil three distinct functions:

a) Preventive function: an inspection regime should deter and prevent violations of rights inside the prisons. Oversight functions should be exercised at any time and without interference from Government. To this end, an inspection regime in particular must include the mandate to make unannounced visits to places of detention and the authority to gain unlimited access to individuals and necessary documentation held in prison facilities.

b) Improvement function: bodies authorised to visit places of detention should have the power to publish their findings, and make recommendations for improvement to practices found to be in breach of human rights standards or in breach of law governing the management of prisons on the national level. Publication of reports should not be subject to ministerial control, and a follow-up mechanism should exist to ensure the effective implementation of recommendations made.

c) Individual complaints review function – the system of external oversight should include an easily accessible mechanism for external and independent review of individual complaints brought forward by prisoners. Access to the courts, as a lengthy process often limited by its complexity and high cost, cannot be seen as sufficient in this regard.

This Position Paper outlines the international standards pertaining to external scrutiny mechanisms, and assesses the current system of oversight in Ireland against those standards. It further makes recommendations for the improvement of current mechanisms, including a call for the establishment of an Office of Prisoner Ombudsman to deal with individual complaints.

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<sup>1</sup> See for example: Penal Reform International (1997) *Monitoring Prison Conditions in Europe: Report of a European Seminar held in Marly-le-Roi, France on 25-27 October 1996*, Paris: Penal Reform International.

<sup>2</sup> Maguire, M. et al. (1985) *Accountability and prisons: opening up a closed world*, London: Tavistock Publications, at page 2.

# 1. International standards: the importance of creating accountability structures

## 1.1 International Standards

By ratifying a number of international human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR), the UN Convention against Torture (CAT) and the European Convention on Human Rights (ECHR), Ireland is obliged to treat all persons in any form of detention with dignity and with respect for their human rights. All such instruments, as well as customary international law, require that Ireland effectively prevents torture or inhuman or degrading treatment or punishment in its prisons.<sup>3</sup> Effective protection of the rights of prisoners in the State requires that independent accountability structures be in place.

The ratification of the European Convention on Human Rights (ECHR) ensures that victims of human rights violations have recourse to the European Court of Human Rights (ECtHR), while the ratification by Ireland of the First Optional Protocol to the International Covenant on Civil and Political Rights in 1989 means that individual complaints can be considered by the UN Human Rights Committee. Additionally, by ratifying the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Ireland agreed to be subjected to external scrutiny by the European Committee for the Prevention of Torture (CPT), which on a number of occasions has visited Ireland's places of detention and made observations and recommendations in its reports.<sup>4</sup>

At national level, the European Convention on Human Rights Act 2003 made the provisions of the ECHR directly enforceable through Irish courts. Many provisions of the ECHR are of direct relevance to the protection of prisoners' rights in Ireland. Additionally, the 2003 Act placed an obligation on all organs of the State, including the Irish Prison Service, to act in a manner compatible with the State's obligations under the ECHR.<sup>5</sup>

The central importance of inspection and independent monitoring to the oversight of practice in prisons is highlighted in the European Prison Rules 2006 (EPR 2006), and is one of the Basic Principles on which the Rules are based:

*All prisons shall be subject to regular government inspection and independent monitoring (Rule 9, EPR 2006).*

This requirement for an independent inspection also stems from international documents focusing on the management of prisons such as the UN Standard Minimum Rules for the Treatment of Prisoners (UN Rules, Rule 55) and the UN Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment (UN Body of Principles, Principle 29).

The responsibility for regular oversight of prison conditions and the situation of prisoners, as well as of the management of prisons, lies with the Government.<sup>6</sup> National authorities have to make sure that

<sup>3</sup> Association for the Prevention of Torture (APT) (2006) *Establishment and Designation of National Preventive Mechanism*, Geneva: APT, at page 10.

<sup>4</sup> For recommendations contained in the most recent CTP report on the visit to Ireland see: *Report to the Irish Government 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 2 to 13 October 2006* [available at: <http://www.cpt.coe.int/documents/irl/2007-40-inf-eng.pdf>].

<sup>5</sup> Section 3 of the European Convention on Human Rights Act 2003.

<sup>6</sup> van Zyl Smit, D., Snacken, S. (2009) *Principles of European Prison Law and Policy*, New York: Oxford University Press, at page 117.

prisons are managed in accordance with national and international law, including international human rights standards.<sup>7</sup> Internal, governmental inspection is not, however, considered sufficient to ensure the appropriate independent oversight of prisons; neither is the existence of an internal complaints mechanism. The European Committee for the Prevention of Torture (CPT) stresses that

*Effective grievance and inspection procedures are fundamental safeguards against ill-treatment in prisons. Prisoners should have avenues open to them both within and outside the context of the prison system, including the possibility to have confidential access to an appropriate authority. The CPT attaches particular importance to regular visits to each prison by an independent body [...] possessing powers to hear (and if necessary take action upon) complaints from prisoners and to inspect the establishment's premises.<sup>8</sup>*

Considering the very diverse legal and prison systems across Europe, the standards do not prescribe any one model of independent monitoring of prison conditions. While the commentary to the EPR 2006 mentions a prison ombudsman as one of the options available, “[Other] formats are not precluded [...] as long as the authorities involved are independent and well equipped to perform their duties.”<sup>9</sup> What is also important is that such a body, or bodies, make public their findings and any recommendations made to the management of prisons.

## 1.2 Optional Protocol to the UN Convention against Torture

The requirements of the European Prison Rules 2006 in relation to the independent monitoring of places of detention closely reflect the requirements of the Optional Protocol to the UN Convention against Torture (OPCAT) regarding “setting up and maintaining domestic preventive mechanism [...]”.<sup>10</sup> The OPCAT aims to “establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman, or degrading treatment or punishment.”<sup>11</sup>

This unique mechanism comprises a two-level approach, with the Sub-committee on the Prevention of Torture (SPT) authorised to carry out visits to places of detention in countries that are signatories to OPCAT, and the National Preventive Mechanisms (NPM) authorised to carry out similar work continuously on the national level. The OPCAT does not prescribe the format of the NPM, leaving States significant flexibility in deciding what body or a group of bodies should carry out such function in accordance with the State’s particular circumstances. The OPCAT does, however, contain a number of guidelines for the establishment of a national mechanism, stating that NPMs will have: functional independence,<sup>12</sup> access to information and wide powers of investigation,<sup>13</sup> and the authority to publish their findings.<sup>14</sup> By becoming a party to the OPCAT, States undertake to enter into a dialogue with NPMs about the implementation of any recommendations they may make.<sup>15</sup>

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7 European Prison Rules 2006 (EPR 2006), Rule 92.

8 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2002) *The CPT Standards: Substantive sections of the CPT's General Reports*, Strasbourg: Council of Europe, at page 19.

9 Council of Europe (2006) *European Prison Rules*, Strasbourg: Council of Europe Publishing, at page 92.

10 Ibid.

11 Article 1 of the Optional Protocol to the UN Convention Against Torture (OPCAT).

12 Article 18 of the OPCAT.

13 Article 19 of the OPCAT.

14 Article 23 of the OPCAT.

15 Article 20 of the OPCAT. See also: van Zyl Smit, D., Snacken, S. (2009) *Principles of European Prison Law and Policy*, New York: Oxford University Press, at page 121.

So far, Ireland has not ratified the OPCAT, but preliminary discussions have taken place regarding the possible future shape of the NPM.<sup>16</sup> **IPRT calls on the Government to ratify without delay the Optional Protocol to the UN Convention against Torture, and to establish effective National Preventative Mechanisms (NPM) under the Protocol, in which the proposed Prisoner Ombudsman should play a vital role, together with the Inspector of Prisons and reformed and strengthened Prison Visiting Committees.**

It is IPRT's view that, while some elements of independent inspection and monitoring of prisons in Ireland are currently in place, the system as a whole falls short of what is required by international human rights standards in this respect. The following sections, therefore, analyse the current situation in Ireland in further detail.

## 2. International standards v Irish practice

### 2.1 Review of individual complaints

The European Prison Rules 2006 (EPR 2006) require that prisoners have ample opportunities to make requests and bring complaints to the prison management, as well as any other competent authority.<sup>17</sup> If complaints are rejected or requests denied, prisoners should have the right to appeal to an independent authority.<sup>18</sup> The Rules also state that complaints from prisoners' relatives should be taken into consideration by such an authority if they believe that a prisoner's rights are being violated by the prison administration.<sup>19</sup>

In Ireland, while the Prisons Act 2007 outlines in detail the procedure to be followed in cases of breach of discipline by a prisoner, the Act itself is silent regarding any opportunities for prisoners to bring their complaints to the attention of the Governor. Instead, the internal complaints procedure to be taken by prisoners is outlined in Rules 55 – 57 of the Prison Rules 2007, enacted by the Minister for Justice, Equality and Law Reform.

In accordance with the Prison Rules, a prisoner can request a meeting with the prison's Governor.<sup>20</sup> If the prisoner makes a complaint or a request at such meeting, the Governor is required to notify the prisoner of the outcome of such complaint "as soon as is practicable thereafter".<sup>21</sup> The Governor is obliged to record details of every meeting, including details of the particular complaint or request, and details of any decision and/or action taken by the Governor in response.

The Prison Rules do not outline any detailed procedure regarding the appeals process that could be used if a prisoner is not satisfied with the outcome of his or her complaint brought to the Governor. According to Rule 57, however, a prisoner can request a meeting with an officer of the Minister to bring any requests or complaints to him or her, including an appeal against any decision made by the Governor.

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16 'Ireland and the OPCAT', APT (available at: <http://www.apr.ch/content/view/103/100/lang,en>)

17 EPR 2006, Rules 70.1 to 70.7.

18 EPR 2006, Rule 70.3.

19 EPR 2006, Rule 70.5.

20 Rule 55(1).

21 Rule 55(2).

In practice, very little is known about the nature of complaints lodged internally by prisoners, or of their outcomes; the recent report of the Inspector of Prisons on Mountjoy Prison, however, provides some insight into the situation in that particular prison.<sup>22</sup> At paragraph 7.5 of the report the Inspector notes:

*I ascertained that 67 complaints had been lodged by prisoners between 1st January 2008 and 14th May 2009. Of these a significant number related to allegations of assault, bullying, intimidation or harassment by prison officers. The complaints book did not contain adequate information. In some cases the names of the officers complained of were not recorded. The investigation of many of the complaints did not appear to have been finalised. Where prisoners were released this seemed to signal the end of the investigation.*

The shortcomings in the investigation of often very serious complaints by prisoners identified by the Inspector are of serious concern and **IPRT welcomes the Inspector’s assertion that the absence of an Office of Prisoner Ombudsman with a remit to review such complaints is a significant gap in the accountability system in Ireland.**

In the 2006 report following a visit to Ireland, the CPT noted that many prisoners “did not have confidence in the complaints system and did not wish to file a complaint, even if it involved ill-treatment”.<sup>23</sup> It went on to say:

*The CPT is of the view that an independent complaints system should to be established to deal with all prisoner complaints. Such a system would reinforce prisoners’ confidence in the complaints mechanism [...]*<sup>24</sup>

Despite the Government’s statement during the CPT visit to Ireland that consideration will be given to the establishment of such mechanism,<sup>25</sup> to date no progress has been made in this regard.

IPRT’s view is that an Office of Prisoner Ombudsman should be established, empowered to receive and consider individual complaints directly. Similar bodies exist, for example, in Northern Ireland,<sup>26</sup> England and Wales<sup>27</sup> and Scotland,<sup>28</sup> and contribute significantly to the protection of prisoners’ rights and transparency of practice in the penal system. **IPRT calls on the Government to implement the recommendations made by the CPT in this regard, and to establish an independent Office of Prisoner Ombudsman as soon as is practicable.**

### 2.1.2 Special note on St. Patrick’s Institution

An additional concern in relation to the review of individual complaints arises in relation to the situation of 16-17 year-old boys held in St. Patrick’s Institution. While the Ombudsman for Children’s Office has a statutory remit to consider individual complaints lodged by children held in Children

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22 Office of the Inspector of Prisons (2009) *Report on an Inspection of Mountjoy Prison by the Inspector of Prisons* (available at: <http://www.inspectorofprisons.ie/en/IOP/Mountjoy%20Report%202009.pdf/Files/Mountjoy%20Report%202009.pdf>), Chapter 7.

23 *Report to the Irish Government 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 2 to 13 October 2006* (available at: <http://www.cpt.coe.int/documents/irl/2007-40-inf-eng.pdf>), at para 37.

24 Ibid.

25 Ibid.

26 See: <http://www.niprisonerombudsman.gov.uk>

27 See: <http://www.ppo.gov.uk>

28 See: <http://www.scotland.gov.uk/spcc>



Detention Schools in Ireland, the Ombudsman is explicitly barred by the legislation from receiving complaints from St. Patrick's Institution. This situation is highly unsatisfactory and breaches international children rights standards regarding independent oversight of places of detention for children. **IPRT calls on the Government to extend the remit of the Ombudsman for Children's Office to provide the power to receive and consider individual complaints from those children who are held in St. Patrick's Institution.**

## **2.2 Deaths in custody – the need for strengthened mechanisms of accountability**

When a death occurs in custody, effective mechanisms of investigation must be in place to uncover all circumstances in which the death took place and, if necessary, hold those who may be responsible for such deaths to account, as required by Article 2 of the European Convention on Human Rights (ECHR), as interpreted by the European Court of Human Rights and national courts in other jurisdictions. Such investigation should go beyond the mere apportioning of blame to the direct assailant or assailants, or, in cases of suicide in custody, beyond the establishment of the fact that the prisoner took his or her own life. An investigation into deaths occurring while in the custody of the State must look at all circumstances which may have contributed to the loss of life, including the management of the prison and behaviour of prison staff (systemic issues). When deaths occur in custody, it is the duty of the State to provide a satisfactory and convincing explanation as to the circumstances and causes of such death.

The requirements for an effective investigation of deaths in custody were set out in the case of *Jordan v UK* in which the ECtHR stated that for such investigation to be seen as effective and independent, a number of elements must be in place:

- a) the investigation must be undertaken on the State's own initiative;
- b) it has to be capable of leading to a determination of responsibility and the punishment of those responsible;
- c) the investigation has to be independent both institutionally and in practice;
- d) it must be prompt;
- e) the investigation has to allow for sufficient public scrutiny to ensure accountability; and
- f) the next-of-kin has to be allowed to participate in the process.<sup>29</sup>

In Ireland, deaths in custody are normally subject to investigation by the Garda Síochána, and an inquest into such death is held by the coroner under the Coroners Act 1962. IPRT is concerned that currently the cumulative effect of the law and practice concerning investigations into deaths in custody falls short of the requirements of the ECHR, particularly in relation to the involvement of the next-of-kin in the process; the ability to establish responsibility, if any, of the Irish Prison Service; and the ability to examine the wider context in which the death took place, or any systemic issues.<sup>30</sup> The Garda

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<sup>29</sup> *Jordan v UK* [2003] 37 EHRR 2.

<sup>30</sup> See: IPRT Submission to the Commission of Investigation into the Death of Gary Douch in Mountjoy Prison in August 2006 (available at: [www.iprt.ie](http://www.iprt.ie)). See also: Hamilton, C. and Kilkelly, U. (2008) 'Human Rights in Irish Prisons' in *Judicial Studies Institute Journal*, 2008:2, pp. 83-84.

Síochána Ombudsman Commission already investigates all deaths in police custody.<sup>31</sup> The creation of an independent body with a remit to review all deaths in custody of the Irish Prison Service would ensure the equality of provision across the various agencies responsible for custody of individuals coming into contact with the criminal justice system. **IPRT therefore urges the Government to include in the remit of the proposed Office of Prisoner Ombudsman in Ireland the duty to investigate all deaths in the custody of the Irish Prison Service.**

### 2.3 Inspection and monitoring of prisons in Ireland

The Inspector of Prisons and the Prison Visiting Committees are currently responsible for the independent inspection and monitoring of prisons in Ireland.

The Office of the Inspector of Prisons was established in 2002, and placed on a statutory footing by the Prisons Act 2007. The Minister for Justice, Equality and Law Reform appoints the Inspector.<sup>32</sup> Section 30(5) states that the Inspector of Prisons is independent in the performance of his or her functions, which are outlined in Sections 31(1) and 31(2) of the 2007 Act:

*31 (1) The Inspector of Prisons shall carry out regular inspections of prisons and for that purpose may-*

*(a) At any time enter any prison or any part of a prison.*

*(b) Request and obtain from the governor a copy of any books, records, other documents (including documents stored in non-legible form) or extracts therefrom kept there, and*

*(c) In the course of an inspection or arising out of an inspection bring any issues of concern to him or her to the notice of the governor of the prison concerned, the Director General of the Irish Prison Service, or the Minister or of each one of them, as the Inspector considers appropriate.*

*(2) The Inspector may, and shall if so requested by the Minister, investigate any matter arising out of the management or operation of a prison and shall submit to the Minister a report on any such investigation”.*

The Inspector of Prisons is expressly excluded from investigating or adjudicating on individual complaints from prisoners, although he or she may examine the circumstances relating to such complaint.<sup>33</sup> The Inspector used this power recently in relation to complaints lodged by prisoners in Mountjoy Prison, as referred to above.

The Inspector of Prisons carries out announced and unannounced inspections to all prisons, not only during business hours and at night.<sup>34</sup> Reports of such inspections, as well as an annual report on the Inspector’s activities, are presented to the Minister for Justice, Equality and Law Reform who in turn is obliged to lay a copy of each report before the Oireachtas.<sup>35</sup> While the Prisons Act 2007 states that reports should be laid before the Oireachtas “as soon as practicable” after their receipt from the Inspector, these have been delayed in the past. The previous Inspector, the late Judge Kinlen,

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31 Section 102, Garda Síochána Act 2005.

32 Section 30(2)(c) of the Prisons Act 2007.

33 Section 31(6) of the Prisons Act 2007.

34 See description of inspection procedures at: [http://www.inspectorofprisons.gov.ie/en/IOP/Pages/Prison\\_Inspections](http://www.inspectorofprisons.gov.ie/en/IOP/Pages/Prison_Inspections).

35 Section 31(3) and Section 32(3) of the Prisons Act 2007.

also expressed concerns about the restrictions on the content of such reports<sup>36</sup> as the Prisons Act 2007 allows the Minister to omit any matter from any report where he or she is of opinion that: its disclosure may be prejudicial to the security of the prison or the State, its disclosure would be contrary to the public interest, or that it may infringe the constitutional rights of any person.<sup>37</sup> The delays in recent years in the publication of Inspector's reports by the Minister for Justice,<sup>38</sup> as well as the existence of ministerial powers to redact parts of any report are of concern, and **IPRT calls on the Government to introduce the necessary legislation empowering the Inspector of Prisons to publish his reports directly. IPRT also calls on the Government to give an undertaking that all of the Inspector's recommendations will be implemented without delay.**

The Prisons Act 2007 outlines the general areas on which the Inspector is obliged to report in respect of any prison. These include:

- a) the general management of the prison, including the level of its effectiveness and efficiency;
- b) the conditions and general health and welfare of prisoners detained there;
- c) the general conduct and effectiveness of persons working there;
- d) compliance with national and international standards, including in particular the Prison Rules;
- e) programmes and other facilities available and the extent to which prisoners participate in them;
- f) security, and
- g) discipline.<sup>39</sup>

While providing the outline of the general areas that should be subject of inspection, the Prisons Act 2007 fails to provide any further direction as to what measures should be used to assess the situation in prisons. Recognising this gap, the Inspector of Prisons published his *Standards for the Inspection of Prisons in Ireland* on the 24th July 2009,<sup>40</sup> as well as supplementary set of standards for the inspection of the conditions in which 16-17 year old boys are held in St. Patrick's Institution published on 1st September 2009.<sup>41</sup> The standards against which particular areas of prison management will be now judged are closely based on the requirements of international human rights law. **IPRT welcomes the publication by the Inspector of Prisons of a set of standards that will constitute a benchmark for the assessment of prison conditions in Ireland. IPRT is looking forward to the publication of the first reports on the situation in Irish prisons based on an assessment against those standards.**

<sup>36</sup> Inspector of Prisons (2007) *Fifth Annual Report of the Inspector of Prisons and Places of Detention for the Year 2006-2007* (available at: <http://www.justice.ie/en/JELR/annualreport2007pdf.pdf/Files/annualreport2007pdf.pdf>).

<sup>37</sup> Section 31(4) and Section 32(4) f the Prisons Act 2007.

<sup>38</sup> For example, the Inspector's Annual Report was submitted to the Minister on the 6 May 2009 (see: [http://www.inspectorofprisons.gov.ie/en/IOP/Pages/annual\\_report\\_2009\\_presented](http://www.inspectorofprisons.gov.ie/en/IOP/Pages/annual_report_2009_presented)), and only published by the Minister on the 14th August 2009, with a four-month delay (see: [http://www.inspectorofprisons.ie/en/IOP/Pages/News\\_&\\_Events](http://www.inspectorofprisons.ie/en/IOP/Pages/News_&_Events)).

<sup>39</sup> Section 32(2) of the Prisons Act 2007.

<sup>40</sup> Available at: <http://www.inspectorofprisons.gov.ie/en/IOP/Standards%20for%20the%20Inspection%20of%20Prisons%20in%20Ireland.pdf/Files/Standards%20for%20the%20Inspection%20of%20Prisons%20in%20Ireland.pdf>

<sup>41</sup> Available at: [http://www.inspectorofprisons.ie/en/IOP/Pages/inspection\\_stds\\_juvenile\\_supp](http://www.inspectorofprisons.ie/en/IOP/Pages/inspection_stds_juvenile_supp)

In their current form, the *Standards for Inspection of Prisons in Ireland* are not legally binding, although they are based on the requirements of national and international law that the Irish Prison Service is obliged to observe. **IPRT calls on the Government to introduce necessary legislation to put the Standards on a statutory footing.**

The system of monitoring by the Prisons Visiting Committees was established in 1925.<sup>42</sup> Each prison establishment has its own Committee, whose members are appointed by the Minister for Justice, Equality and Law Reform for a term of three years. The Prisons (Visiting Committees) Act 1925 outlines the duties and powers of such Committees which include the duty to visit the prison frequently and at regular intervals, to hear complaints from prisoners, to report to the Minister any abuses observed or found in the prison, and to report to the Minister any matters that the Committee feel needs to be brought to his or her attention.<sup>43</sup>

Members of the Visiting Committees are entitled to visit prisons at all times, and should be given access to any person in the prison if they so require.<sup>44</sup> A prisoner can also request a meeting with the Visiting Committee or an individual member of it through the Governor of any prison.<sup>45</sup> The Visiting Committees report annually to the Minister of Justice, Equality and Law Reform.<sup>46</sup>

Monitoring of prisons must be conducted independently from the bureaucratic operation of the prison system.<sup>47</sup> Such independence should encompass not only independence guaranteed in law (statute) but also organisational, *de facto* independence, including by provision of funding separate from budgets of the prison system or its parent Government department.<sup>48</sup> As the membership of Visiting Committees is by government appointment, they cannot be viewed as an independent monitoring mechanism as required by international standards.<sup>49</sup>

While the 1925 Act states that members of the Visiting Committees can hear complaints from prisoners, their function does not include a formal power to adjudicate on such complaints or to make any binding recommendations to the Governor or any other member of the Prison Service. Despite some recognition of the fact that the Visiting Committees currently report on some important issues such as overcrowding in prisons, the function and effectiveness of the Visiting Committees has been questioned in the past, particularly as their annual reports are seen as providing very few details of the visits undertaken and rarely outlining the nature of complaints made by the prisoners and the outcomes of such complaints.<sup>50</sup> Members of the Visiting Committees themselves have also brought it to the attention of the Minister for Justice in recent years that they view their training as insufficient to perform their functions as an independent monitoring mechanism.<sup>51</sup> **IPRT calls on the Government to make resources available to ensure that all members of the Visiting Committees are appropriately**

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42 See: Prisons (Visiting Committees) Act, 1925 (the Visiting Committees currently still operate under this legislation).

43 Section 3 of the above Act.

44 Section 3(2) of the above Act.

45 Section 56 of the Prisons Act 2007.

46 Those reports can be accessed at: [http://www.justice.ie/en/JELR/Pages/Publications\\_prisons\\_and\\_probation](http://www.justice.ie/en/JELR/Pages/Publications_prisons_and_probation).

47 van Zyl Smit, D., Snacken, S. (2009) *Principles of European Prison Law and Policy*, New York: Oxford University Press, at page 118.

48 Ibid.

49 Hamilton, C. and Kilkelly, U. (2008) 'Human Rights in Irish Prisons' in *Judicial Studies Institute Journal*, 2008:2, at page 66.

50 The most recent reports available cover the year 2007. Rogan, M. (forthcoming) *Visiting Committees and accountability in the Irish prison system: some proposals for reform*. See also: O'Donnell, I. (2008) 'Stagnation and Change in Irish Prison Policy' in *Howard Journal of Criminal Justice* (2008) 47(2), pp. 121 – 133.

51 See: *Annual report of the St. Patrick's Institution Visiting Committee 2007 and Annual report of the Castlereagh Visiting Committee 2007* (available at: [http://www.justice.ie/en/JELR/Pages/Publications\\_prisons\\_and\\_probation](http://www.justice.ie/en/JELR/Pages/Publications_prisons_and_probation)).

**trained, including in international human rights standards pertaining to the situation of people in any form of detention.**

The Prisons Visiting Committees are the sole lay monitoring mechanism of prisons in Ireland, and they should therefore play an important role in the oversight of conditions in and the management of prisons. While it is recognised that some of the Committees have recently played an increasing role in making information about the situation in prisons available, doubts have also been expressed about their organisational independence, as well as their impact on the situation in prisons as regards bringing about a positive change.<sup>52</sup> Many of those shortcomings are structural, and relate to the lack of effective powers for the Visiting Committees and the absence of any mechanism for implementation of their recommendations or a follow-up to their observations. An overall reform of the system of Visiting Committees is therefore needed. **IPRT calls on the Government to review the existing functions and powers of the Visiting Committees, as well as the appointments and reporting process, with a view to strengthening their role as a lay monitoring mechanism.**

### 3. Summary and Recommendations

- IPRT considers that **the current system for prisoners' complaints does not fully comply with international human rights standards for independent review of such complaints.** The most significant gap in the system concerns the possibility of making a complaint to an external body that would be empowered to receive individual complaints and have the power to adjudicate on the matter raised and to make binding recommendations for improvement. The IPRT's view is that an Office of Prisoner Ombudsman should be established, empowered to receive and consider individual complaints directly. **IPRT calls on the Government to implement the recommendations made by the CPT in this regard by establishing an independent Office of Prisoner Ombudsman as soon as practicable.**
- The internal grievance process, as outlined above, does not afford prisoners with a possibility of bringing an appeal against Governor's decision to an independent authority, and it therefore does not fulfil the requirements of the EPR 2006. The opportunity to bring the complaint to the attention of an officer of the Minister during a meeting does not fulfil such function. **IPRT calls on the Government to change the provisions of the Prison Rules 2007 in this regard, and to introduce a process of external review of such appeals by a body independent of the Irish Prison Service and the Department of Justice, Equality and Law Reform. Consideration should be given to empowering the Office of Prisoner Ombudsman to hear such appeals.**
- While the Ombudsman for Children's Office has a statutory remit to consider individual complaints lodged by children held in Children Detention Schools in Ireland, the Ombudsman's remit in this area does not extend to St. Patrick's Institution. This situation is highly unsatisfactory and breaches international children rights standards regarding independent oversight of places of detention for children. **IPRT calls on the Government to extend the remit of the Ombudsman for Children's Office to provide the power to receive and consider individual complaints from those who are held in St. Patrick's Institution.**
- IPRT is concerned that currently the cumulative effect of the law and practice concerning investigations into deaths in custody falls short of the requirements of the ECHR. We note

<sup>52</sup> Rogan, M., op.cit. at note 51.

that the Garda Síochána Ombudsman Commission investigates all deaths in police custody. The creation of an independent body with a remit to review all deaths in custody of the Irish Prison Service would ensure the equality of provision across the various agencies responsible for custody of individuals coming into contact with the criminal justice system. **IPRT therefore urges the Government to include in the remit of the proposed Office of Prisoner Ombudsman in Ireland the duty to investigate all deaths that occur while in the custody of the Irish Prison Service.**

- The IPRT welcomes the new initiative undertaken by the Inspector of Prisons in relation to the establishment of a set of standards for inspection of prison establishments in Ireland. In the absence of a national statutory basis for prisoners rights, the publication of the *Standards for the Inspection of Prisons in Ireland* are an encouraging step towards a strengthened protection of individuals in detention. While welcome, their status as a non-binding document, combined with the lack of mechanism for the implementation and follow-up on any recommendations made by the Inspector of Prisons, may significantly weaken their potential influence. **IPRT calls on the Government to introduce legislation that puts the *Standards* on a statutory footing. Furthermore, IPRT calls on the Government to introduce a binding mechanism for the implementation of recommendations made by the Inspector of Prisons and to introduce the necessary changes to the Prisons Act 2007 as soon as possible.**
- The current Inspector of Prisons has made it known that he will perform his functions in an independent manner, as required by the statute. While there is no reason to doubt that this will be the case in relation to inspections of places of detention, concerns remain regarding the power of the Minister of Justice, Equality and Law Reform to restrict the content of any resulting reports by the Inspector, and the promptness of their publication. **IPRT calls on Government to introduce changes to the Prisons Act 2007 that would enable the Inspector of Prisons to report directly to the Oireachtas. Such a reporting mechanism will strengthen the independence of the Office of the Inspector of Prisons.**
- The Prisons Visiting Committees are the sole lay monitoring mechanism of prisons in Ireland, and they should therefore play an important role in the oversight of conditions in and the management of prisons. While it is recognised that some of the Committees have recently played an increasing role in making information about the situation in prisons available, doubts have also been expressed about their organisational independence, as well as their impact on the situation in prisons as regards bringing about a positive change. Many of those shortcomings are structural, and relate to the lack of effective powers for the Visiting Committees and the absence of any mechanism for implementation of their recommendations or a follow-up to their observations. An overall reform of the system of Visiting Committees is therefore needed. **IPRT calls on the Government to review the existing functions and powers of the Visiting Committees, as well as the appointments and reporting process, with a view to strengthening their role as a lay monitoring mechanism.**
- Members of the Visiting Committees have brought to the attention of the Minister for Justice that they view their training as insufficient to perform their functions as an independent monitoring mechanism. **IPRT calls on the Government to make resources available to ensure that all members of the Visiting Committees are appropriately trained, including in international human rights standards pertaining to the situation of people in any form of detention.**

- **Lastly, IPRT calls on the Government to ratify without delay the Optional Protocol to the UN Convention against Torture, and to establish effective National Preventative Mechanisms (NPM) under the Protocol, in which the proposed Prisoner Ombudsman should play a vital role, together with reformed and strengthened Prison Visiting Committees.**

